APPOINTMENT OF AUDITOR (Section -139)

Particulars	***Non Government Company***		***Government Company***
	Unlisted Company	Listed/Specified Company	
Appointment of **1st** Auditor **After Incorporation** (Till the conclusion of first AGM) {139 (6 & 7)}	**By BOD** (W- 30 days from the date of Regn.) **or** **By Members at EGM** (W-90 days of Information)	**By BOD** (W- 30days from the date of Regn.) **or** **By Members at EGM** (W-90 days of Information)	**By CAG** (W-60 days from the date of Regn.) or **By BOD** (W- next 30 days) **or** **By Member at EGM** (W- 60 days of Information)
Auditor at First AGM* The written consent **and** a certificate (appointment, shall be in accordance with the conditions) from the auditor:	**By Members** To hold office till conclusion of 6th AGM subject to ratification by members at every AGM	**By Members** (for Maximum one term of 5/10 consecutive years) Cooling off period of 5 years before next appointment	**By CAG** (W-180 days from 1st April)
Subsequent Auditors	**By Members** To hold office till conclusion of 6th meeting, subject to ratification by members at every AGM	**By Members** (for Maximum one term of 5/10 consecutive years)	**By CAG** (W-180 days from 1st April)
Casual Vacancy due to			
•Resignation:	**By Members within 3 months of recommendation of Board and till next AGM**		By CAG within 30 Days or By BOD within next 30 Days
•Other Reasons:	**By BOD within 30 days**		

REMOVAL OF AUDITOR (Section-140)

Particulars	*Non Government Company*	*Government Company*
REMOVAL BY MEMBERS		
•On Expiry of term	By Members at AGM	By CAG
•Before expiry of term (1)	Previous **CG approval and SR** at GM •ROOBH to Auditor •Special Notice to members •Forward the notice to auditor	Previous **CG approval and SR** at GM •ROOBH to Auditor •Special Notice to members •Forward the notice to auditor
SELF RESIGNATION(2)	File a statement of reasons and facts within 30 days to **Company and ROC**	File a statement of reasons and facts within 30 days to **Company and ROC and CAG**

REMUNERATION OF AUDITOR (sec-142)

Auditor	**Meeting**	**By**
First Auditor	Board Meeting/ General Meeting	BOD/Members
Subsequent Auditor	General Meeting	Members
Remuneration fixed above shall be in addition to following:		
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.		

AUDITORS TO SIGN REPORTS AND ATTEND AGM

Section	Heading	Particulars
145	Sign Audit Reports	➢ auditor of the company shall sign the auditor's report or sign or certify any other document of the company and ➢ the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company
146	Attend GM	• All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, • The auditor shall, unless otherwise exempted by the company, **attend either by himself or through his authorised representative**, who shall also be qualified to be an auditor, any general meeting • The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

AUDITOR NOT TO RENDER SPECIFIED SERVICES (144)

Heading	Particulars
Who	An auditor shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, but which shall not include any of the specified services (whether such services are rendered directly or indirectly) TO THE COMPANY or ITS HOLDING COMPANY or SUBSIDIARY COMPANY,
Specified Services	▪ accounting and book keeping services; ▪ internal audit; ▪ design and implementation of any financial information system; ▪ actuarial services; ▪ investment advisory services; ▪ investment banking services; ▪ rendering of outsourced financial services; ▪ management services; and ▪ any other kind of services as may be prescribed:
Transition period	An auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

ELIGIBILITY, QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS. (Sec-141)

Eligibility	•**In case Individual:** Chartered Accountant •**In case of Firm/LLP:** Partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.
Disqualifications	***<u>THE FOLLOWING PERSONS SHALL NOT BE ELIGIBLE FOR APPOINTMENT AS AN AUDITOR OF A COMPANY</u>***: - Body corporate other than LLP - Officer or employee of the Company - Person who is a partner, or who is in the employment, of an officer or employee of the company; - **PERSON WHO, OR HIS RELATIVE OR PARTNER—** 1. 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 (sister company)***: **RELATIVE MAY HOLD SECURITY OR INTEREST *<u>IN THE COMPANY</u>* OF FACE VALUE OF *<u>MAXIMUM RS. 1000</u>* OR SUCH SUM AS MAY BE PRESCRIBED.**

	2. Indebted to the **company,** or its **subsidiary,** or its **holding** or **associate** or a **subsidiary of such holding** company**,** in excess of such amount as may be prescribed. **3. 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. - Person or a firm, who, whether directly or indirectly, has **business relationship with** the **company**, or its **subsidiary**, or its **holding** or **associate** company or **subsidiary of such holding** company or **associate** company of such nature as may be prescribed. - Person whose relative is a director or is in the employment of the company as a director or KMP. - Person who is in **full time employment** elsewhere. - Person or a partner of a firm **holding appointment** as auditor **of more than twenty companies.** - Person who has been convicted by a court **of an offence involving fraud and 10 years has not elapsed** from the date of such conviction. - Person whose **subsidiary** or **associate** company or **any other form of entity**, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.

POWER AND DUTIES OF AUDITOR (Sec-143)

Power	•Right of access at all times to the books of account and vouchers of the company. •To require from the officers of the company relevant information and explanations. •Enquire into the specified matters [Sec-143(1)(a-e)]
Duties	Make a report to the members **on the accounts** examined by him and **on every financial statement** which are required by or under this Act to be laid in GM. •Balance Sheet •Profit &Loss Account •Cash flow Statement •Other Statements as may be prescribed. The auditor’s report shall also state— •Whether he has sought and obtained all the information and explanations ,necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements; •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; •Whether the report on the accounts of any branch office of the company audited by a person other than the company's auditor has been sent to him. •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; •Whether, the financial statements comply with the accounting standards. •Observations or comments of the auditors on financial transactions or matters which have any adverse effect. •Whether any director is disqualified from being appointed as a director. •Any qualification, reservation or adverse remark relating to the maintenance of accounts. •Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls; • Other matters as may be prescribed.
	•**Shall comply with the auditing standards.** •CA/CWA /PCS 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 specified time.[sec-143(12)]

*** Company shall inform the auditor** of its appointment, **and also file a notice** of such appointment **with the Registrar** within fifteen days of the AGM.

GOLDEN POINTS

- Automatic reappointment of existing auditor (without passing any resolution) at AGM where no auditor is appointed/ reappointed at AGM.
- Limited Liability Partnerships may be appointed as Auditors **(Clause 141)**
- Auditing Standards to be made mandatory **(Clause 143)**
- The limit in respect of maximum number of companies in which a person may be appointed as auditor has been proposed as 20 companies. In case of Firm, limit is made applicable to each partner.
- **comply with the provisions of rotation of auditors within a period of 3 years from the commencement of this Act**
- Appointment of auditor for a period of 5 years subject to ratification at every AGM

PENALTY FOR CONTRAVENTIONS

Violation		Penalty		
Section	Descriptions	Section	Contravention By	
140(2)	On resignation by auditor, he needs to intimate Company and ROC and may be CAG.	140(3)	Individual Auditor Min: 50000 Max: 500000	Firm Min: 50000 Max: 500000
141(3)	Disqualification of auditors	141(4)	Vacation of office	Vacation of office
143(12)	CA/CWA /PCS required to intimate to CG about an offence involving fraud is being or has been committed against the company by officers or employees of the company.	141(15)	Individual Auditor Min: 1,00,000 Max: 25,00,000	Firm Min: 1,00,000 Max: 25,00,000
139 to 146 Both Inclusive	Contraventions of Sec. 139 to 146 (both inclusive) by Company and its officer	147(1)	Company Min: 25000 Max: 5,00,000	Every officer in default **IMPRISONMENT** Min: 1 Day Max : 1 Year **FINE** Min: 10,000 Max: 1,00,000 either of above or both
139, 143, 144, 145	Contraventions by Auditor •139: Appointment of auditor •143: Power &duties of Auditor •144 Auditor not to render certain services •145: Auditor to sign audit report	147(2) &(3)	<u>**WILFULLY / KNOWNIGLY to deceive**</u> **Imprisonment** •Min: 1day •Max: 1 Year **AND** **fine** •Min: 100,000 •Max: 25,00,000 **AND** •Refund the remuneration •Pay for damages arising out of incorrect or misleading statements.	<u>**WITHOUT KNOWINGLY**</u> Min: 25,000 Max: 5,00,000 **AND** •Refund the remuneration •Pay for damages arising out of incorrect or misleading statements.
Special 147(5)	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 ✓ acted in a fraudulent manner or		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	

	✓ abetted or ✓ colluded in any fraud by, or ✓ in relation to or by, the company or its directors or officers,		jointly and severally.	

Dedicated
to

ICSI

By

AMIT KUMAR

(Amicus Curiae)

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