# THE COMPANIES ACT, 2013

## CHAPTER X

## AUDIT AND AUDITORS

### SECTION 139: APPOINTMENT OF AUDITOR

1. Appointment of Auditor in AGM

   Tenure: Till the conclusion of sixth AGM.

   Provided that it should be ratified in every AGM

   Written Consent and certificate from Auditor should be obtained before appointment. **[Refer Rule 4 Companies (Audit and Auditors) Rules, 2014]**

   Abovementioned certificate should provide the compliance of criteria provided in sec. 141

   Company shall inform the auditor concerned about his appointment and shall also file a notice with ROC within 15 days of meeting. **[Refer Rule 3 Companies (Audit and Auditors) Rules, 2014]**

2. LISTED COMPANIES and PRESCRIBED COMPANIES **[Refer Rule 5 Companies (Audit and Auditors) Rules, 2014]** shall not appoint or re- appoint

   - An individual as auditor for more than 1 term of five consecutive years:

   - An audit firm as auditor for more than 2 term of five consecutive years:

   Rest Period : 5 years.

   Provided that no partner of the proposed audit firm on the date of appointment should be partner in the audit firm whose tenure has expired in the immediately preceding financial years.

   Existing companies which are required to comply with the provisions of this act shall comply with the requirements of this act within a period of 3 years from the commencement of this act.

   The right of the company to remove the auditor before completion of tenure and right of the auditor to resign from the office are absolute/not affected by virtue of this section.

3. Subject to the provisions of this act, members of the company may resolve **[Refer Rule 6 Companies (Audit and Auditors) Rules, 2014]**

- The time period of rotation of auditing partner and his team within the audit firm appointed by them.

- That the audit shall be conducted by more than 1 auditor.

4. C.G. may make rules to prescribe the manner in which companies shall rotate their auditor in pursuance of above sub section 2.
   Explanation: For this chapter, “Firm” shall include LLP incorporated under LLP Act, 2008.

5. In case of

   Govt. Company

   Company owned and controlled, directly and indirectly, by

   C.G. or S.G. or partly by C.G. and S.G.

   C&AG shall appoint auditor for the financial year duly qualified to be appointed under this act within a period of 180 days from the commencement of financial year (Tenure: Till the conclusion of AGM).

6. APPOINTMENT OF FIRST AUDITOR OF THE COMPANY OTHER THAN GOVT. COMPANY

   By BOD within 30 days of registration.

   If BOD fails to appoint than inform to members

   Members will appoint within 90 days in EGM (Tenure: Till the conclusion of First AGM).

7. APPOINTMENT OF FIRST AUDITOR IN CASE OF GOVT. COMPANY, COMPANY OWNED AND CONTROLLED, DIRECTLY AND INDIRECTLY, BY C.G. OR S.G. OR PARTLY BY C.G. AND S.G.

   By C&AG within 60 days of registration.

   If C&AG does not appoint than BOD shall appoint within next 30 days.

   If BOD fails to appoint than inform to members

   Members will appoint within 60 days in EGM (Tenure: Till the conclusion of First AGM).

8. FILLING OF CASUAL VACANCY IN THE OFFICE OF AUDITORS WHERE THE AUDITOR IS NOT APPOINTED BY C&AG

   By BOD within 30 days where casual vacancy is not as a result of resignation.

If it is caused by resignation than BOD shall recommend the auditor and it should be approved in GM within 3 months of recommendation. (Tenure: Till the conclusion of Next AGM).

FILLING OF CASUAL VACANCY IN THE OFFICE OF AUDITORS WHERE THE AUDITOR IS APPOINTED BY C&AG

By C&AG within 30 days.

If C&AG does not fill than BOD shall fill the vacancy within next 30 days.

9. Subject to the provisions of sub-section (1), a retiring auditor may be reappointed at an AGM if-

- he is not disqualified for reappointment

- he has not given his unwillingness to be reappointed in writing to company and

10. A SR has not been passed at meeting to appoint some other auditor or not to reappoint the retiring auditor.
Where at any AGM, no auditor is appointed or reappointed than the existing auditor shall continue to be the auditor of the company.

11. If company is required to constitute audit committee u/s 177, than all appointments including filling of casual vacancy shall be subject to the recommendation of audit committee.

## ***SECTION 140: REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE***

1. Auditor may be removed from his office before the expiry of his term by

- Passing SR and

- Obtaining prior approval of CG in the prescribed manner **[Refer Rule 7 Companies (Audit and Auditors) Rules, 2014]**.

Provided that auditor should be given a reasonable opportunity of being heard before taking any action.

2. In case of resignation, auditor shall fill a statement in the prescribed form **[Refer Rule 8 Companies (Audit and Auditors) Rules, 2014]** to

- Company and

- ROC

Within 30 days of resignation.

In case of companies referred in section 139(5), statement shall also be filled with C&AG.

Statement should indicate the reason and other facts relating with regard to resignation.

3. In case of non compliance of sub section (2), auditor shall be punishable with fine which may be between Rs.50,000 to Rs.5,00,000.

4. Special notice shall be required for a resolution at an AGM for

- Appointing a person other than retiring auditor

- Providing expressly that a retiring auditor shall not be reappointed

Except as provided in section 139(2).

On receipt of notice of such a resolution, company shall forthwith send a copy thereof to the retiring auditor.

Where retiring auditor makes a representation (not exceeding a reasonable length) with regard to notice received with the request to notify it to members, company shall, unless the representation is received by it too late for it to do it-

- in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

- send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company, and if the copy of representation is not sent as aforesaid to members

- Because it was received too late or because of the company’s default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.
- A copy thereof shall be filed with the Registrar

Provided that if Tribunal is satisfied that rights conferred in this sub section are abused by the auditor, on an application made to it either by the company or any other aggrieved person, than the copy of representation need not to be sent to members and need not to be read out in the Meeting.

5. Without prejudice to any action under the provisions of this Act or any other law for the time being in force, if tribunal is satisfied that auditor has acted, directly or indirectly, in a fraudulent manner or abetted or colluded in any fraud than it can direct company by order to change its auditor.

Tribunal can do so either suo motu or an application made to it by CG or any concerned person.

If application is made by CG and the tribunal is satisfied that change in auditor is required than it shall order within 15 days that existing auditor shall not function as auditor and CG may appoint another auditor in his place.

If any final order is passed under this section by tribunal against auditor then he shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of order and the auditor shall also be liable for action u/s 447.

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 director or officers.

## SECTION 141: ELEGIBILITY, QUALIFICATION AND DISQUALIFICATION OF AUDITOR

1. Only a CA is eligible to be appointed as a auditor of company.
   Further a firm whereof majority of partners practicing in India are qualified for appointment as an auditor by its firm name.

2. In case a firm is appointed as an auditor of the company, only the partners who are CA can act and sign on behalf of the firm.

3. Persons not eligible to be appointed as an auditor of the firm:

   - Body Corporate other than LLP.

   - Officer and employee of the company

   - a person who is a partner, or who is in the employment, of an officer or employee of the company

   - a person who, or his relative or partner—

     - 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:

     Relative may hold security or interest in the company of face value not exceeding one thousand rupees.

     - 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

     - 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 **[Refer Rule 10 Companies (Audit and Auditors) Rules, 2014].**

   - A person or 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

- a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

- 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;

- 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;

- 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.

4. If after appointment auditor incurs any of the disqualifications mentioned in this section then 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.

## SECTION 142: REMUNERATION OF AUDITORS

1. Shall be fixed in its general meeting or in such manner as may be determined therein. Provided that the Board may fix remuneration of the first auditor appointed by it.

2. Above remuneration will be in addition to any sum paid to auditor for reimbursement of expenses but shall not include any remuneration paid to him for any other service rendered by him at the request of the company.

## SECTION 143: POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS

1. Right to access at all times to the books of account and vouchers maintained anywhere and entitled to require information and explanation from the officers of the company and can inquire into the following matters-

    - 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 prejudicial to the interests of the company or its members;

    - whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

    - where the company not being 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;

    - whether loans and advances made by the company have been shown as deposits;

    - whether personal expenses have been charged to revenue account;

- where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received 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.

Provided that the auditor of the holding company shall also have right to access books of account to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

2. Auditor shall make a report to members on the accounts examined by him and on every financial statements which are required to be laid down before the company in GM, that 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.

   The above report shall be made after considering 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 to the best of his information and knowledge. **[Refer Rule 11 Companies (Audit and Auditors) Rules, 2014]**

3. The auditor's report shall also state—

   - 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;

   - 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 under sub-section (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;

   - 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, in his opinion, the financial statements comply with the accounting standards;

   - the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

   - whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;

- any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

- whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

- such other matters as may be prescribed.

4. Where any matter under this section is answered in negative or with a qualification that report shall also include the reasons therefor.

5. In case auditor is appointed by C&AG and direct such auditor the manner in which the accounts of the Govt. company are required to be audited then such auditor shall submit a copy of audit report to C&AG which shall include the directions issued by C&AG (In addition to the above matters), the action taken thereon and its impact on the accounts and financial statement of the company.

6. C&AG, within 60 days of receipt of audit report, has a right to

   - Conduct supplementary audit of the financial statements by such person or persons as he may authorise in this behalf.

   - Comment upon or supplement such audit report.

   Provided that the comments or supplements given by C&AG on audit report shall be sent to every person entitled to copies of audited financial statements u/s 136(1) and shall also be placed before the AGM.

7. C&AG has right to cause, by order, test audit of the accounts of the Govt. company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

8. Branch audit shall be conducted by Company's auditor or any other person qualified under this act. In case of foreign branch, auditor can be Company's auditor or any other person qualified under this act or any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

   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 such as may be prescribed.

   Provided that branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary. **[Refer Rule 12 Companies (Audit and Auditors) Rules, 2014]**

9. Every auditor shall comply with the auditing standards.

10. The Central Government may prescribe the standards of auditing recommended by the ICAI, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

11. Audit report shall include statement on such matters as may be specified in general or special order issued by the Central Government in consultation with the National Financial Reporting Authority.

12. If auditor during the conduct of audit 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 then he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed **[Refer Rule 13 Companies (Audit and Auditors) Rules, 2014]**.

13. Auditor of a company shall not be regarded as having been contravened any of his duties by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

14. The provisions of this section shall mutatis mutandis apply to—

    - the cost accountant in practice conducting cost audit under section 148; or
    - the company secretary in practice conducting secretarial audit under section 204.

15. IF any auditor, Cost accountant or Company secretary in practice do not comply with the provisions of sub section (12) then he shall be punishable with fine which may be in between Rs. 1,00,000 to Rs. 25,00,000.

## SECTION 144: AUDITOR NOT TO RENDER CERTAIN SERVICES

1. Auditor of a company shall not provide the following 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.

Auditor cannot provide the above mentioned services, directly or indirectly, to the company or its holding company or subsidiary company.

Auditor or audit firms providing non-audit services on or before 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.

Explanation.—"directly or indirectly" shall include rendering of services by the auditor,—

(i) in case of auditor being an individual,
either himself or through his relative or

any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;

(ii) in case of auditor being a firm,
either itself or through any of its partners or
through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

## SECTION 145: AUDITOR TO SIGN AUDIT REPORTS, ETC

Only auditor of the company shall sign the auditor's report or sign or certify the any other document.

The qualifications, observations or comments on financial transactions or matters 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.

## SECTION 146: AUDITORS TO ATTEND GENERAL MEETING

Auditor of the company shall be entitled to get notice of any GM and attend it by himself or by authorized representative who shall also qualified to be the auditor of the company and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

## SECTION 147: PUNISHMENT FOR CONTRAVENTION

1. Contravention of Sections 139 to 146
Company: Fine Rs. 25,000 to Rs. 5,00,000.
Officers in default: Imprisonment 1 Year
Fine Rs. 10,000 to Rs. 1,00,000.
Or both.

2. Contravention of Sections 139, 143, 144 or145 by auditor

- If acted in a good faith then punishable with fine Rs. 25,000 to Rs. 5,00,000.

- If contravened knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities then punishable with imprisonment for 1 year and with fine which may be in between Rs. 1,00,000 to Rs. 25,00,000.

3. If auditor has been convicted under sub section (2), he shall be liable to—

   (i) refund the remuneration received by him to the company; and

   (ii) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

4. 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

   - after payment of damages to such company or persons file a report with the CG.

5. If 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.
   **[Refer Rule 9 Companies (Audit and Auditors) Rules, 2014]**

## SECTION 148: CENTRAL GOVERNMENT TO SPECIFY AUDIT OF ITEMS OF COST IN RESPECT OF CERTAIN COMPANIES

1. CG may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies.

   CG shall, before issuing such order, consult with the concerned regulatory authority.

2. If the Central Government is of the opinion that, it is necessary to do so, it may, by order, direct to get audit of cost records , which are covered under

   - Sub section (1)

   - have a net worth of such amount as may be prescribed

   - turnover of such amount as may be prescribed.

3. Cost audit shall be conducted by Cost Accountant in practice who shall be appointed by BOD and remuneration shall be determined by members.

Statutory auditor cannot be appointed as cost auditor.

Cost Auditor shall comply with the cost auditing standards.

**[Refer Rule 14 Companies (Audit and Auditors) Rules, 2014]**

4. Cost audit shall be in addition to Statutory audit.

5. The qualifications, disqualifications, rights, duties and obligations applicable to Statutory auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor.

   It shall be the duty of the company to give all assistance and facilities to the cost auditor.

   Report on the audit of cost records shall be submitted to the BOD.

6. Company shall within 30 days from the date of receipt of copy of cost audit report furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

7. If after considering information under sub section (6), CG is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation.

   Company shall furnish the same within such time as may be specified by the Government.

8. If any default is made in complying with the provisions of this section,—

   (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;

   (b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

**COMPILED BY:**

*SANDEEP CHATURVEDI*

**E-MAIL I.D. : chturvedi.sandeep@gmail.com**
**CONTACT NO. : +91- 9968225854**