PART - I

Section 139

a) Term of office of Auditors { untill Conclusion of Next AGM.
If AGM not held ⇒ Shall Continue until the AGM is held }

b) Appointment of first Auditors

c) Appointment of Auditors in Casual Vacancy

d) Appointment of Auditors in AGM.

e) procedural Aspects.

Appointment of Auditors :-

Other than Govt.

- **First Auditor** — 139(6)
  - ⇓ By BOD (Meeting or Resolution by Circular)
  - (30 days) of incorporation (Rule of [illegible] Constitution)
  - ⇓ If not, BOD Shall inform to members
  - ⇓ (90 days) of incorporation
  - Hold office upto Conclusion of First AGM.

- **Subsequent Auditor** — 139(1)
  - ⇓ AGM
  - Max. 5yrs
  - 1st — 6th
  - ** Ratification each year
  - ↓ If not,
  - ↓ CASUAL VACANCY

Govt.

- **First Auditor** — 139(7)
  - ⇓ C & AG (60 days)
  - ⇓ BOD Next (30 days)
  - ⇓ Shareholders Next (60 days)
  - Hold office upto Conclusion of First AGM.

- **Subsequent Auditor** — 139(3)
  - ⇓ C & AG (180 days)

CASUAL VACANCY [139(8)]

- Non Govt
  - due to Resignation ↓ By BOD (30 days) — 3 month में GM मे Approval
  - Any other ↓ By BOD (30days)
- Govt. ↓ Any Reason ↓ By C&AG (30 days) ⇓ If C&AG fails, Then Next 30days मे By BOD.

Casual Vacancy Auditor Shall hold office upto Conclusion of Next AGM.

Rotation of Auditors [139(4)]

- Class or Classes of Companies
  - All listed
  - pub. listed 10cr.
  - pvt. 20 cr
  - pub. deposit 50 cr. or Borrowings
  - 5 साल
  - Two Terms of 5 years
  - 5 years का cooling period
- Others ↓ unlimited terms

procedural Aspects

☞ Before appointment at AGM, a Certificate Should be obtained from Auditors Covering the following :-

a) Eligible for appointment & Not disqualified under this Act, CA Act, 1949 & Rules.

b) The proposed appointment is within Term allowed under Act

c) —— " —— limit allowed under Act

d) His written Consent to act as Auditor

☞ Company has to Intimate Both Auditor & ROC within 15 days.

* ये Procedures केवल AGM वाले Auditors पर लगते है

i.e Not on – First Auditors
– Casual Vacancy Auditors.

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Audit & Auditors
(Sec 139 - 148)

Section 140

a) Removal of Auditor
b) Resignation of Auditors
c) Appointment other than Retiring
d) Removal of Auditor by Tribunal.

Quali

Removal of Auditor

By SH @ AGM

Before Expiry of Term

↓

"PRIOR APPROVAL OF C.G" (Board Resolution के 30 days में App. भेजते है)

+

Special Resolution @ AGM

within 60 days From Receipt of Approval.

After Expiry of Term

↓

Special Notice

+

ORDINARY RESOLUTION at AGM.

Removal By Tribunal

(A) On Application of Any person :-

- Fraudulent
- Colluded in Fraud.

(B) On Application of C.G :-

If NCLT Satisfied
↳ ok

** C.G will appoint Auditor.

Special Notice (Sec 102)

By Certain Members

- 1% of voting power
  or
- Holding Shares of Paid-up value 5 Lakh on the date of Notice.

{3m - 14 days} → 7 days में Members को Notice
[Clear days]

Newspaper

Resignation of Auditor :- Sec 140(2)

- **Non Govt Company**
  - After Resignation (auditor) Shall file ADT-3 to
    - Company & Registrar
- **Govt. Company**
  - After Resignation (auditor) Shall file ADT-3 to
    - C&AG & Registrar

within period of 30 days from Resignation.

+

Also indicate Reasons & other facts as may be Relevant with Regard to Resignation.

Neeraj Sharma

Section 141 Qualifications & Disqualification of Auditor

Qualifications Sec 141(1) CA ONLY + INDIA Practice

Sec 141(2) Firm
↳ Majority partners CA + India practice

Sec 141(3)(a) — Sec 141(3)(h) — 143(3)(I)

(A) Body Corporate (LLP allowed)

(B) Officer or Employee of Company [*ESB, clarification director Retire होने के 2 साल बाद तक]

(C) who is partner or employee of Officer/employee of Company.

(d) A person who himself or his partner, is holding Any Security or Intrest in "Those 5"

→ d(i) r/w Rule 10

Whose Relative is holding any Security or intrest of F.V "Exceeding" 1 लाख "Those 5"
[60 दिन के अन्दर Set करो]

→ d(ii) r/w Rule 10 (Himself or his Relative)

must not be Indebted More than 500000. "Those 5"

→ d(iii) r/w Rule 10 (Himself or his Relative)

has given gurantee or Security exceeding ₹ 100000. "Those 5"

(e) Must not have "Biz Relationship" "Those 5"
- ordinary course of Biz at Arm's length ✓

(f) Whose Relative is
- director
- KMP (CEO, CS, WTD, CFO)

COMPANY

(g) A person who is in full time employment elsewhere.

(h) Convicted by court under an offence involving fraud

And

a period of 10 has not been elapsed from date of such conviction.

(I) Must not be engaged in other services to Company as specified in Sec 144.

Section 141(4)

अगर Appointment के बाद कोई disqualification आई → CASUAL VACANCY

Then

Auditor has to Vacate his office.

"Those 5"

- Company
- Its holding company
- Its Subsidiary Company
- Associate Company
- Subsidiary of its Holding Company.