Chapter 3 . Auditors of a Company

(Section 139-148)

SEC :-139 Appointment of Auditors

- Every Company → Shall → in its 1st AGM → appoint
  - Individual
  - or
  - a firm as an auditor
  - # The Company shall place the matter relating to such appointment for ratification by member → at every AGM
- Period → shall hold office from the conclusion of that meeting → Till the conclusion of its 6th AGM
- The Companies (Audit & Auditors) Rules,2014 Condition for appointment & notice to registrar:- → The auditor appointed under Rule 3 shall submit a cerificate that.
  - Individual or the firm → is not disqualified for appointment
    - → under this Act
    - → Chartered Accountants Act 1949
    - → Rules or Regulations made thereunder
  - Proposed appointment → within the limits laid down → by act
  - Proposed appointment → is as per the term provided under the Act
  - List of proceedings against the auditor or audit firm or ANY partner → PENDING → With respect to professional matter → as disclosed in certificate is true
  - # Company notice
    - → 15 days of the meeting
    - → ROC (E -form ADT- 1)
    - → inform to auditors

Sec 139(2) 2nd chart

No listed company or a Company belonging to such class or classes of companies (excluding opc)& small companies →

- All unlisted public companies → having paid up share capital of Rs 10 cr or more
- All private Limited companies → .having paid up share capital of Rs 20 crore or
- All companies having paid up share capital of below threshold limit mentioned in (a) & (b) above,but having public borrowings from financial institution,banks or public deposit of Rs 50 crore or more

↓

shall appoint or reappoint

↓

- Individual → as auditor for more than 1 term of 5 consecutive years.
- Audit Firm → for more than 2 term of 5 consecutive years

Ineligible :-After $\boxed{\text{COMPLETION}}$ OF TERM OF AUDIT in above cases,shall not be eligible for reappointment as auditor in SAME COMPANY for five years from the completion of his term.

Other Points

- Disqualification → As on the date of appointment → No audit firm having a common partner → to other audit firm → whose tenure → expired → in a company immediately preceding the F.Y shall be appointed → as auditor of the same co. for a period of 5 years
- Every existing company → comply with this sub section → within 3 years from the date of commencement of this act
- Not Affected
  - → Company right to remove auditor
  - → auditor to resign from such office of the company.

Section 139 (3rd Chart)

139(7)
- Auditor in case of Government Company
- 1st Auditor
- appointed by C&AG (within 60 days from the date of registration of the company)
- No
- BOD will appoint the auditor within the next 30 days
- No
- BOD shall inform the members of its failure ,member shall appoint within 60 days ,in an EGM.

First auditor shall hold office till the conclusion of the First AGM.

Sec 139(6)
- Any other Company
- 1st auditor
- Appointment by BOD within 30 days from the date of registration of the company
- No
- BOD shall inform the members of its failure
- Member shall appoint the auditor ,within 90 days in an EGM.

Appointment of Subsequent auditors
- within 180 days from the commencement of the F.Y
- Tenure = to hold office till the conclusion of the AGM

Casual Vacancy Sec 139(8)
- Government company
  - C&AG shall file the casual vacancy
  - within 30 days
  - No
  - BOD shall file the vacancy, within next 30 days
- For all other company
  - BOD shall file the casual vacancy within 30 days
  - Till the conclusion of the next AGM

If the vacancy is caused by resignation, the appointment should also be approved by the company,at a GM conveyed within 3 months of BOD recommendation

Section 139(9) - Re appointmentof Retiring auditor

If

- He is not disqualified for re appointment
- If the retiring auditor has not given the company ,a notice in writing of his unwillingness to be re-appointed
- If a Special Resolution has not been passed at the AGM appointing another auditor instead of the retiring auditor

Sec 140: Removal, resignation of auditor & giving of special notice

1. Auditor appointed u/s 139 → may be remove → before expiry of his term → Form ADT-2 + Fees

(c) S/R + Prior C.G. approval (b)

60 days

30 days

From BOD Resolution (a)
OPH Required.

2 Auditor → Resigned
→ file form ADT-3 with ROC.

In case of govt. co.
→ Auditor → also file with C&AG

Default : 50000 - 5lakhs

Procedure for Removal

Special notice required → appointing an auditor a person (other than retiring auditor) or Retiring auditor is not re-appointed.

Special notice required → Received by co. → send to retiring auditor → makes representation(in writing) → Co. will send to member , along with Notice

Co. will send to member , along with Notice → Yes → N.P.

Co. will send to member , along with Notice → no (because, received too late) or Company default. → filled to ROC

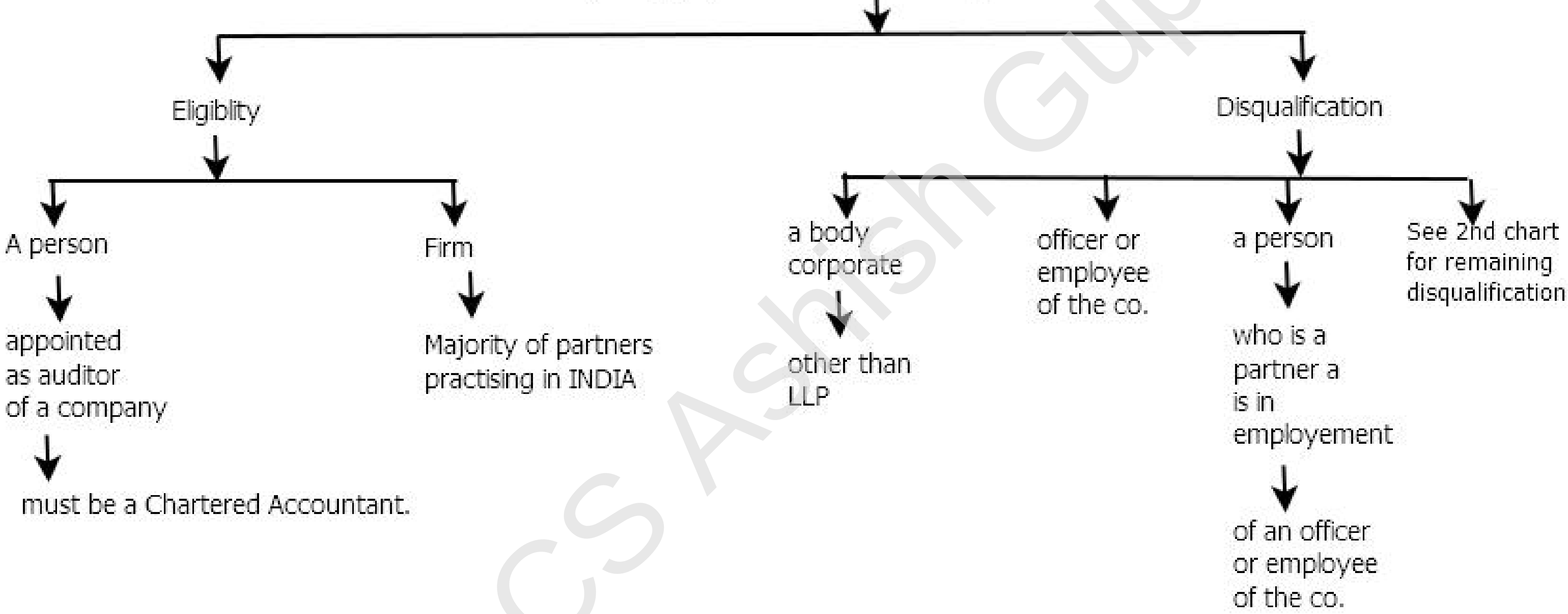
no (because, received too late) or Company default. → Representation → read out at the meeting + auditor heard orally

If tribunal on being satisfied ← application by co. or aggrieved party

If tribunal on being satisfied → needless publicity → Tribunal will order no need to send+ no need to read same

Sec 141 (1st chart)

Eligiblity, Qualification & Disqualification of auditors



Section 141 (2nd chart)

Relative 2(77)
* Member of a HUF
* Husband & Wife
* Specified relationship
  * Father (Step Father)
  * Mother (Step mother)
  * Son (Step Son)
  * Son's Wife
  * Daughter
  * Daughter's Husband
  * Brother (step Brother)
  * Sister (Step Sister)

Same

(d) A person
- Who
- His relative
- His Partner

→ is holding any security in
- the Company
- the Sub. Company
- the Hold. Company
- Associate Company
- a subsidiary of such Holding Company

A person
-
-

→ is indepted in excess of such amount as prescribed (Rs 5 lacs) , to
- the Company
- the Sub. Company
- the Hold. Company
- Associate Company
- a subsidiary of such Holding Company

A person
-
-
-

→ Has given a guarantee or provided any security in connection with the indeptness of any third person , in excess of such amount as prescribed (Rs 1 lacs)
- the Company
- the Sub. Company
- the Holding Company
- Associate Company
- a subsidiary of such Holding Company

A person or a firm → who wheather Directly/ Indirectly, has business relationship

Same

A subsidiary of such associate co.

f) A person whose relative → is a director / or in the employment of a company → as a director OR KMP.

a person is not disqualified, if his relative holds any security facevalue not Exceeding Rs 1 Lacs.

if relative acquire any security exceeds Rs 1 Lacs ,Sale within 60 days (Excess security), then auditor will not disqualify.

g) A person who is in full time employment elsewhere or a person or a partner of a firm holding appointment a its auditor

if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 Companies.

The words "other than OPC, dormant companies, small companies and private companies having paid-up share capital less than Rs 100 crore " shall be inserted after the words "twenty companies"; for private company vide Notification dated 5th June 2015.

(h) a person who has been convicted by a court of an offence involving
- Fraud and
- a period of 10 years has not elapsed from the date of conviction.

(i) any person whose
- Subsidiary
- associate co.
- any other form of entity

→ is engaged as on the date of appointment in consulting & specialised services (Sec 144)

(4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, 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.

Sec 142 :- Remuneration of Auditor

- is fixed in the GM , if auditor is appointed in GM
- If auditor is appointed by BOD,then - fixed by BOD

The remuneration shall in addition to the fees payable include expenses incurred by the auditor.

Sec 144 Auditor not to render certain services

Services to be approved

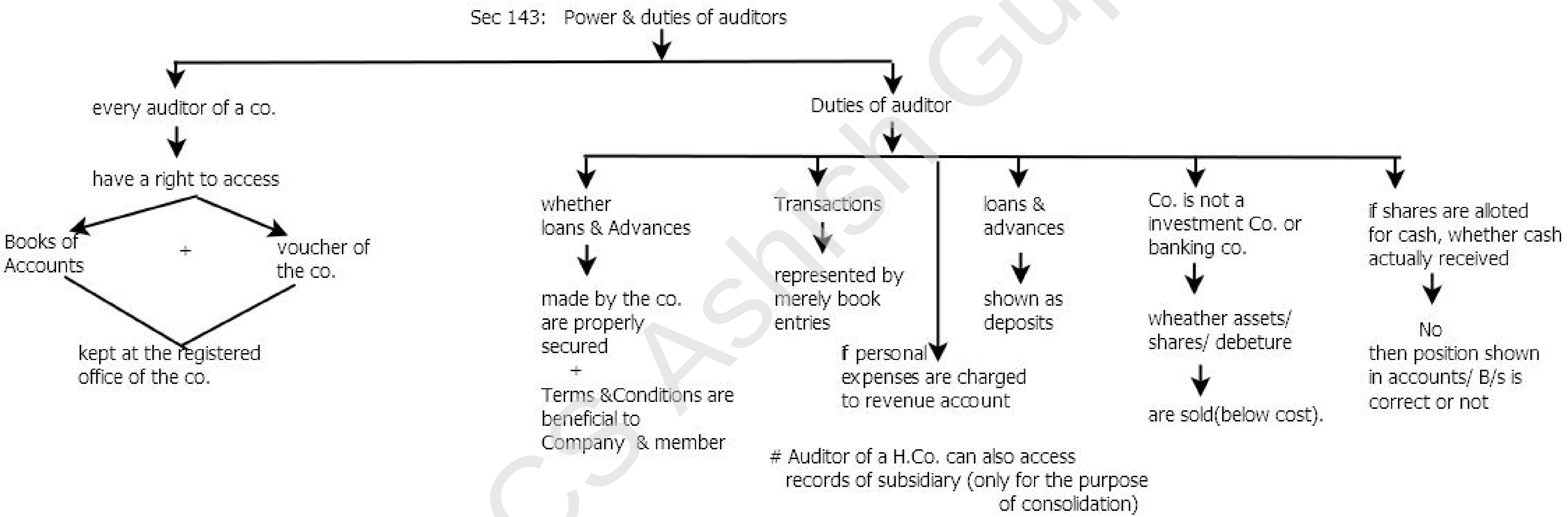
as approved by
- the BOD
- the audit committee

Prohibited services to the company or its Holding company or its subsidiary company by auditor directly or indirectly

- Accounting and book keeping services
- Internal audit
- Design & Implementation of any financial information system
- Actuarial services
- Investment advisory services
- Investment banking services
- Rendering of outsourced financial services
- management services

Auditor appointed as a individual
- either by himself or through his relatives or other connected person or other entity

Auditor appointed as a Firm
- Either itself or any of its partner or through its parent,subsidiary or associate entity or any other entity in which firm has a significant influence or name or trade mark is used by the firm


Sec 143: Power & duties of auditors
every auditor of a co.
have a right to access
Books of Accounts
+
voucher of the co.
kept at the registered office of the co.
Duties of auditor
whether loans & Advances
made by the co. are properly secured
+
Terms &Conditions are beneficial to Company & member
Transactions
represented by merely book entries
if personal expenses are charged to revenue account
loans & advances
shown as deposits
Co. is not a investment Co. or banking co.
wheather assets/ shares/ debeture
are sold(below cost).
if shares are alloted for cash, whether cash actually received
No
then position shown in accounts/ B/s is correct or not
Auditor of a H.Co. can also access records of subsidiary (only for the purpose of consolidation)

Sec 143 (2nd chart)

Auditor report contains wheather

- Auditor has obtained all information
- Proper books of A/Cs are kept → as required by law
- Accounts of branches → sent to company auditor
- Company B/S & P&L → shown same position in books of Account + return
- Financial Statement comply with Accounting Standard
- any director is disqualified
- any objection → made by auditor
- Co. has sufficient internal control

- Auditor of Govt.company → C&AG → appoint → submit → a copy of audit report to the C&AG
  - C&AG auditor → & give direction the manner in which the accounts of Govt. co. are required to be audited.
- Supplementary audit → C&AG within 60 days → conduct supp. audit of the F.S. by such person + comments by C&AG → sent to al person, entitled to copies of Financial Statement + place of AGM.
- Test audit by C&AG
- Branch Audit → company has a branch office
  - → audit is done by co. auditor or other person u/s139
  - → o/s India → by co. auditor or auditor of that country
- Comply with Accounting Standard.
- ICAI + NFRA → C.G will notify standards of auditing(S.A) → as recomended by ICAI + NFRA
  - ICAI SA= notified SA
- Fraud by offices & emloyees → auditor wil immediately report to C.G.
- Default → by auditor → 1 lakhs → 25 lakhs

1. (1) These rules may be called the Companies (Audit and Auditors) Amendment Rules, 2015.

(i) For rule 13, the following rule shall be substituted, namely:-

"13. Reporting of frauds by auditor and other matters:

1. If an **auditor of a company, in the course of the performance of his duties** as statutory auditor, has **reason to believe** that an offence of fraud, which involves or is expected to involve individually an amount of rupees **one crore or above**, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

2. The auditor shall report the matter to the Central Government as under:-

a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately **but not later than two days** of his knowledge of the fraud, seeking their reply or observations **within forty-five days**;

b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) **to the Central Government within fifteen days from the date of receipt** of such reply or observations;

c) in case the **auditor fails to get any reply or observations from the Board** or the Audit Committee within the stipulated period of **forty-five days**, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

d) the report shall be sent to the Secretary, MCA in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

e) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and

f) The report shall be in the form of a statement as specified in **Form ADT-4.**

3. In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-

(a) Nature of Fraud with description;

(b) Approximate amount involved; and

(c) Parties involved.

4. The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:-

   (a) Nature of Fraud with description;

   (b) Approximate Amount involved;

   (c) Parties involved, if remedial action not taken; and

   (d) Remedial actions taken.

5. The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.

Section 147 - Punishment for Contravention

Punishment for contravention of Sec 139 to 146

Punishment

- for company
  - Minimum - Rs 25000
  - Maximum - Rs 5 lacs
- officer in default
  - Minimum - Rs 10000
  - Maximum - Rs 1lacs
  - Imprisonment - 1 year

Punishment for the auditor for contraventionof Sec 139,143,144 or 145.

Minimum Rs 25000
Maximum Rs 5 lacs

if the contravention is committed knowingly or willfully with the intension to deceive the company or shareholder

Maximum Imprisonment = 1year
Minimum = Rs 1lacs
Maximum = Rs 25lacs

Consequences of conviction of auditor for contravention of Sec 139,143,144,145

(a)Refund of remuneration by auditor
(b)Payment of damages by the auditor
- to the company/statutory bodies or authorities/any other person
- for loss arising out of incorrect or misleading statements

Jointly & several liability of partners

In case of auditors being an audit firm, the liability shall be of the partners concerned

Section 148:- Maintenance of Cost Records.

- Maintenance of cost records is mandatory only
  - if such an order is made by the C.G
    - Issued to
      - Co. Engaged in in the production of such goods.
      - Providing such services.
        - Net Worth or turnover
- Cost audit
  - CWA(P) only
    - apportioned by the BOD.
- Section 139 Auditor
  - Not as Cost Auditor.
- Compliance with cost auditing standards.
- Disqualified/ Rights /duties of cost auditor
  - Same as sec. 141 & 143.

Nature of cost record

- The utilisation of Material
- Labour
- Other item of cost

Before issuing such order

- C.G. shall consult the regulatory body
  - Constituted under this Act.

- Cost Auditor
  - Submit his report report to BOD.(co.)
    - 30 days to C.G.
- Appointment & fixation of Remuneration of the cost auditor (Rule - 14).
  - (I) Company having audit committee
    - BOD appoint cost auditor on the recommendation of the audit Committee.
    - Audit Committee. → Recommend the Remuneration of cost auditor.
    - Approved by BOD & ratified by members.
  - (II) No Audit Committee
    - Board shall appoint the cost auditor.

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Auditors – (139 to 148)

Q.1 State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013:

i. **Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company.**
ii. **Removal of Statutory Auditor (appointed in last Annual General Meeting) before the expiry of his term.**

Hint –

i. Refer Sec 139(6)
ii. Sec 140

Q.2.Explain how the auditor will be appointed in the following cases:

i. **A Government Company within the meaning of section 394 of the Companies Act, 2013.**
ii. **The Auditor of the company (other than government company) has resigned on 31st December, 2013, while the Financial year of the company ends on 31st March, 2014.**
iii. **A company, whose shareholders include the following:**
   a) **Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.**
   b) **National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.**
   c) **Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.**

Ans -The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(ii) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

(iii) The Companies Act, 2013 categorizes companies into government companies and non Government Companies and lists down the provisions

Auditors – (139 to 148)

relating to appointment, of auditors as per this classification. Hence, in the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company also not a deemed Government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

Q.3 What is the liability of an auditor for failure to point out in his report that dividend is paid out of capital?(CA May, 2003)

Answer : An auditor who is party to such payment of improper dividend is liable to proceedings by action. In case of winding up, he is liable to misfeasance. As per Section 147 of Companies Act, 2013, for non-complying duty, auditor is liable for punishment with fine of not less than Rs. 25,000 and not more than Rs. 5 Lakhs. If auditor has contravened any provisions with knowledge or to deceive shareholders or creditors or tax authorities, he is punishable with imprisonment upto 1 year and fine which is not less than Rs. 1,00,000 but not more than Rs. 25 Lakhs.

In addition, auditor is liable to:

- Refund the remuneration received from company and
- Pay for damages to company or authorities or other person because of incorrect or misleading statement in his audit report.

Q.4 Can an auditor be disqualified for indebtedness in the following cases?

(a) Where he is recovering his fees on a progressive basis even though the job is not complete.

(b) Where the auditor's firm has purchased goods from the auditee company and not paid for them for over six months.(CA MAY 2003)

Answer

a) The Auditor cannot be said to be indebted as per Section 141 of Companies Act, 2013 when he is receiving his fees on progressive basis even though the job is not complete. Moreover person who is proposed to be appointed as auditor can be indebted to company or its subsidiary or holding company or its associate company for not more than Rs 5 Lakh
b) In this case the auditor of the company is said to be indebted, if the amount outstanding from him regarding goods and services purchase from the company audited by him exceeds Rs. 5 Lakh- irrespective of the nature of purchase or period of credit allowed to other customer upto Rs. 5 Lakh indebtnes is allowed

Q.5 How would you deal with the following situation in the matter of appointment of Auditors?

The shareholding of L.I. C. and U. T.I. increased from 23 per cent to 27 per cent of the subscribed share capital of the company after issue of notice of the Annual General Meeting, but before the date of the Annual General Meeting.(CA November, 2003)

Answer

As per Section 139 of Companies Act, 2013, auditor of company other than Non-government Company is appointed by passing ordinary resolution by members at annual general meeting for one term of maximum period of 5 years. Appointment of auditor is required to be ratified at every annual general meeting by passing ordinary resolution.

Shareholding of LIC & UTI increased from 23 to 27 does not impact in any way on method of appointment of auditor in company. Fresh notice of

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the meeting is not required and auditor can be appointed by passing ordinary resolution.

Q.6 Ram & Company was appointed as auditor of ABC Ltd. at the Annual General Meeting held on 30th September, 2014. Can Ram & Co. continue as auditor of the company in case the next annual general meeting has not been held in time? What would be the position in case the next annual general meeting was held on 30"' September, 2014, but adjourned without considering the business of appointment or re-appointment of auditor?(CA November 2006 Modified) Or

Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013:

Dalauda Cement Limited appointed CA Naresh as statutory auditor of the company at the Annual General Meeting held on 30"'September, 2014. The next Annual General Meeting was held on 30th September, 2014 but it was adjourned to 30tl'November, 2014 for consideration of the financial statements for the year ended 31st March, 2014. CA Naresh continued to function as statutory auditor of the company. Decide (CA November 2012 Modified)

Answer : Auditor is appointed at the annual general meeting to the conclusion of the 6th annual general meeting subject to ratification at every annual general meeting. It means auditor can be appointed by members for maximum one term of 5 years at time. In the given question, it is not clarified that whether auditor is appointed by members at annual general meeting is for 5 years or less number of years. Therefore, the tenure of office of the auditor does not expire on the last date on which the annual general meeting was due to be held in terms of Section 139 of Companies Act, 2013. Hence Ram & Co. can continue as auditor even if the AGM for the year 2014 has not been held in time.

In case AGM for 2014 was held on 30th September, 2014 that adjourned without considering the business of appointment or reappointment of auditor, the tenure of Ram & Co. will continue as auditor.

Q.7 An allegation was levelled against PQR Ltd. that the funds of the company are misused. Mr. Z, one of the Directors of the company wants to inspect the books of account of the company in order to ascertain whether the allegation was true. But since Mr. Zdoes not have the knowledge of accounting, he appoints Mr. A, his friend and a practicing Chartered Accountant to go through the books of account of the company on his behalf. The company seeks your advice as to whether Mr. A may be allowed to inspect the books of account of the company on behalf of Mr. Z. You are required to give your advice to the company on behalf of Mr. Z. You are required to give your advice to the company keeping in view the provisions of the Companies Act, 2013. What would be your advice if Mr. Z would, have been a shareholder only and not a Director of the company? (CA May 2007 Modified)

Answer : Summarised returns of the books of account of the company kept and maintained outside India shall be sent to registered office at quarterly intervals. It should be kept at registered office and kept open to directors for inspection.

If any other financial information is maintained outside the country, director can furnish request to company setting out full details of financial information sought and period for which such information is sought in writing. Company should provide financial information within 15 days.

Financial information should be demanded by director himself and not by his power of attorney holder or agent or representative. In view of above provisions, Mr. A director who can be refused right of inspection through agent.

In case Mr. Z is a member of the company, he shall be able to inspect the books of account only if he is given such a right by ordinary resolution of the members or if authorized by the board. Here Mr. Z would have to exercise the right personally and not through a proxy i.e. he can himself inspect the books but cannot ask Mr A to inspect the books on his behalf .

Q.8 Parkash Carriers Limited appointed Mr. Roman as its auditor in the Annual General Meeting held on 30th September, 2014. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2014 for personal reasons. The Board of Directors seeks your advice for filling up the vacancy by appointment of Mr. Albert as auditor. Advise. Also suggest the procedure to be adopted in case Mr. Albert is proposed to be removed from his office before the expiry of his term. (CA November 2009 Modified) Or

A is the Auditor of B & Co. Ltd. Board of Directors decided to remove A on certain grounds. Please indicate what procedure is to be followed to remove A? Advise the Board. (CA November 2010 Modified)

Answer

Casual vacancies in office of auditor of non-government company is filled by board of directors within 30 days. But if such vacancy is created by resignation of auditor, appointment should be made at general meeting within period of 3 months on recommendation of board. - Section 139(8).

Thus, in the present case, the company may convene an Extraordinary General Meeting to appoint Mr. Albert as its auditor consequent upon the resignation by Mr. Raman.

Removal of Mr. Albert before expiry of his term:

Auditor of government and non-government company can be removed before expiry of his term by passing special resolution and prior approval of Central Government. Auditor sought to be removed should be given reasonable opportunity of being heard.

Company is required to following procedure for removal:

- Board resolution should be passed.
- Application to Central Government is made in Form ADT-2 within 30 days of passing of board resolution.
- Hold general meeting within 60 days of receipt of approval of Central Government.

Q.9 Examine the validity of the following with reference to the provisions of the Companies Act, 2013:

Mr. Prakash, a Chartered Accountant in full time practice was appointed as the auditor of ABC Ltd, a company which is a subsidiary of DGH Ltd. And DGH Ltd. has another subsidiary called PKM Ltd. Mr. Prakash had taken a loan of Rs.25,000 from PKM Ltd. and the loan is outstanding as on the date of his appointment as auditor of ABC Ltd.(CA June 2009 Modified)

Answer : As per section 141 of Companies Act, 2013, if person is holding any security of or interest in company or its subsidiary or holding or associate company or subsidiary of holding company is not eligible for appointment of auditor of company.

But person himself or his relative or partner who is indebted to company or its subsidiary or holding company or its associate company for more

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than Rs 5 Lakh is not disqualified to be appointed as auditor of company - Section 141 of Companies Act 2013,

Applying above provisions to given situation, since ABC Ltd is a subsidiary of DGH Ltd; which is the holding company of PKM Ltd. to whom Mr. Prakash is indebted for a sum within limit of Rs. 5 Lakhs hence his appointment as the auditor of ABC Ltd. is in order.

Q .10 As required under the provisions of the Companies Act, 2013, a company incorporated under the Act has to include in the Report of Board of Directors a 'Directors Responsibility Statement. Directors of the company seek your advise about the matters to be included in the statement. Advise. (CA November 2010 Modified)

Answer : To know about which matters should be included under Directors responsibility statement

Q 11 Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013: Yashodharman Granites Limited reappointed Suresh & Company, a firm of Chartered Accountants, as auditors of the company at the Annual General Meeting held on 30thSeptember, 2013. The wife of one of the partners of Suresh & Company acquired large number of equity shares in Yashodharman Granites Limited on 5th October, 2013. But Suresh & Company continue to function as statutory auditors of the company. (CA November 2012 Modified)

Answer : As per Section 141 of Companies Act, 2013 a person who himself holding any security or interest in the company or its subsidiary company or holding company or associate company is not eligible for appointment of auditor of company. However relative of the person proposed to be appointed as auditor may hold security in company of face value not exceeding Rs. 1 Lakh. Wife of partner of audit firm is covered within meaning of relative.

In the given question, it is not clearly mentioned about face value of securities held by wife of Mr. Suresh. Assuming that she is not holding or not acquired shares of more than Rs. 1 Lakh face value, it can be said that Suresh & Co. can continue to act as statutory auditor of company even after 5th October, 2013.

Q .12 The paid up capital of Western Zone Insurance Limited is Rs. 7 crore. Point out whether the said company is required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2013-14 by using the XBRL taxonomy under the Companies Act, 2013? (CA November 2012 Modified)

Answer Following companies are required to file its financial statement in the XBRL taxonomy from the year 2010-11 onwards:

- ❑ Indian listed company and its Indian subsidiary company
- ❑ Company having paid up capital of Rs 5 crore or more
- ❑ Company having turnover of Rs. 100 crore or more.

But the above rule is not applicable to following companies:

- ❑ Banking company
- ❑ Insurance company
- ❑ Power company
- ❑ Non-banking finance company (NBFC)

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In the above given case, Western Zone Insurance Ltd is Insurance company and hence it is not required to file financial statement in XBRL for the year 2013-14.

Q.13 The paid up capital of AJD Ltd. is Rs. 10 crores consisting of 70 lakh equity shares of Rs. 10 each fully paid up 30 lakh preference shares of Rs. 10 each, fully paid up. Nationalized bank, LIC and IDBI hold among themselves 30 lakh equity shares and 25 lakh preference shares. With reference to the provisions of the Companies Act, 2013, examine whether AID Ltd. is a government company. Explain the manner in which you would proceed in the matter of appointment of auditors for the said company.(CA May 1998) Or

The aggregate shareholding of nationalized Banks, LIC and IDBI exceeded 55 of the paid up share capital of the company. How will the auditors of the company be appointed?(CA November 1994)

Answer

If Central Government or State Government or both hold at least 51 of shares of company, it is Government Company. Share capital includes equity and preference shares.

In the given case, no share is held by Central or State Government. Therefore company is not Government Company. Therefore, appointment of auditors will be made by the shareholders at annual general meeting for one term of maximum five years subject to ratification at every annual general meeting.

Q.14 CRE Ltd., a Government Company wants to appoint Parasnath & Co. as its auditors for the period 2014-15. State with reference to the provisions applicable to Government Companies, the procedure to appoint the auditors.CA November 2009 Modified) Or

Mr. Rao & Rao, a firm of Chartered Accountants have to be appointed as the auditors of M/s. ABC Co. Ltd., a Government company. Explain the steps to be taken regarding the appointment and payment of remuneration to the auditors (CA November 2001)

Answer : Comptroller and Auditor General is required to appoint auditor within period of 60 days from registration of Government Company. If CAG fails to appoint within 60 days of registration, board of directors shall appoint auditor within 30 days. If board fails to appoint auditor in 30 days, it shall inform members who shall appoint auditor within 60 days at EGM.

Subsequent appointment (ie. appointment or re-appointment) of auditor in Government Company should be made by CAG within 180 days from the commencement of financial year.

Q.15 Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-

(i) EF Limited appointed a individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2014. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15th October, 2014. But Naresh & Company continues to function as statutory auditors of the company.

(ii) Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General

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Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place.

Answer

(i) Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company.

Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies(Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, chartered accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2014 i.e. after the investment made by his wife in the equity shares of EF Limited.

(ii) Removal of first auditor: Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

Q.16 An audit firm, comprising of two partners, holds office as auditor of 40 private companies out of which paid-up capital of 20 companies exceeds 50 Lakhs. Such audit firm wants to be appointed as an auditor in XYZ Pvt. Ltd. Decide whether this is in consonance with the applicable law.

Answer - As per section 141(3)(g) of the Companies Act, 2013, private companies shall also been included in the provisions with respect to ceiling on number of audits with the restriction that the private companies having paid up share capital less than 100 crore rupees shall not be included for calculation of specified number of audits. As per the provision, a person shall not be eligible for appointment as an auditor of a company if such person or partner is at the date of such appointment or reappointment holding appointment as an auditor of more than twenty companies. Therefore, such firm cannot be appointed as an auditor of XYZ Pvt. Ltd as it will exceed the ceiling prescribed for number of audits. There is no relevance of paid up share capital of 20 companies in the above case.

[Note: As per the Notification G.S.R. 464(E), dated 5th June 2015, section 141(3)(g) shall apply on the private companies with the modification that private company with paid up share capital less than one hundred crore

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rupees shall be excluded while calculating ceiling on the number of audits]

Q.16 Explain the concept of 'CSR' (Corporate Social Responsibility) as introduced by the Companies Act, 2013. Examining the provisions of the Act, answer the following:

(i) Which companies are required to constitute CSR Committee?

(ii) Which companies are excluded from the requirements of the provisions of the Act in relation to CSR committee?

(iii) What is the minimum contribution the companies are required to make towards CSR?

Ans – Refer sec 135