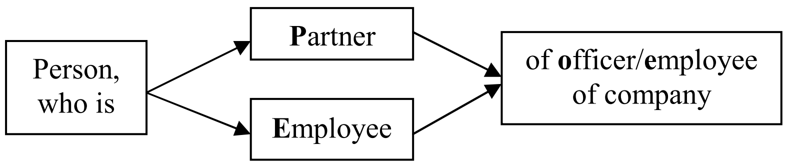
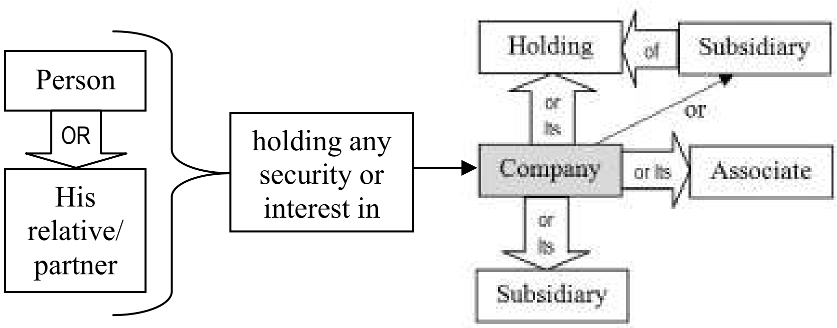
- **Eligibility, Qualifications and Disqualifications of an Auditor (S.141)**
  - → **141(1): Eligible person** for appointment: Chartered Accountant
    Proviso to 141(1): Appointment by **firm** name: When majority of partners practising in India are qualified for appointment as aforesaid (i.e. majority of the practising partners in India are CA)
  - → **141(2):** Firm incl. LLP -> appointed as auditor -> only **CA** partners can **act and sign** on behalf of the firm
  - → **141(3)** r/w Rule 10 of the Companies (Audit and Auditors) Rules, 2014
    Following persons shall not be eligible for appointment:
    - **141(3)(a):** Body corporate other than LLP
    - **141(3)(b):** Officer/employee of the company
    - **141(3)(c):** Person who is a partner, or who is in the employment, of an officer or employee of the company

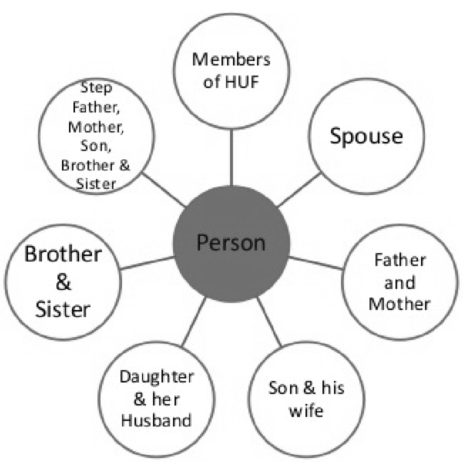


4 relations: PE of OE

- **141(3)(d)(i)**

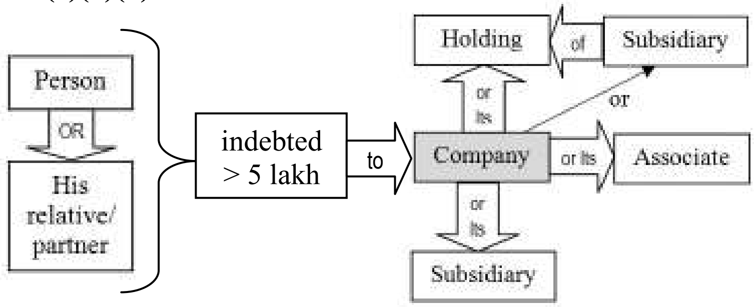


✦ Relaxation only for relative: Proviso to 141(3)(d)(i): May hold security/interest ≤ 1 lakh of face value
✦ When relative crosses threshold, auditor must take corrective action within 60 days to maintain the limit
[When at the time of appointment, limit was within threshold and after appointment it crosses the threshold.]
✦ Relative:

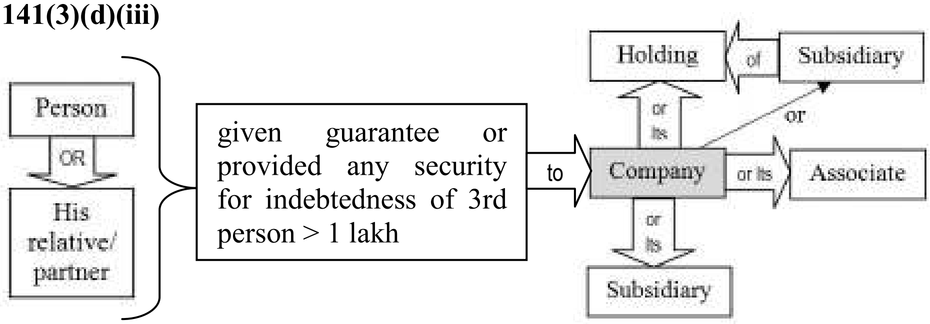


Note:
- Step relation not considered for daughter. For all others: Yes
- Spouse only of children and not of siblings.

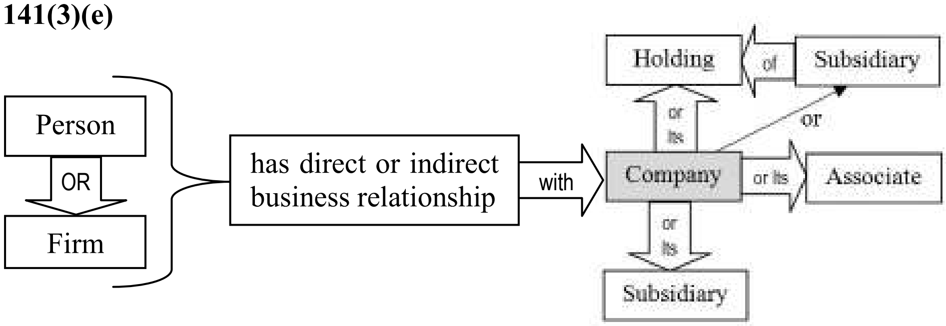
– **141(3)(d)(ii)**



– **141(3)(d)(iii)**



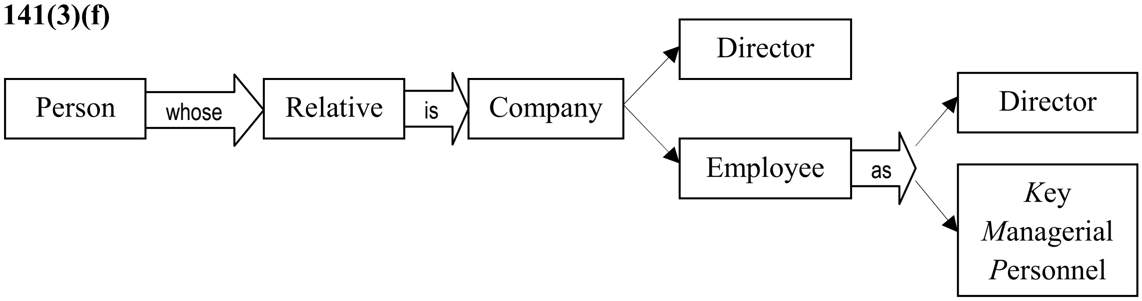
– **141(3)(e)**



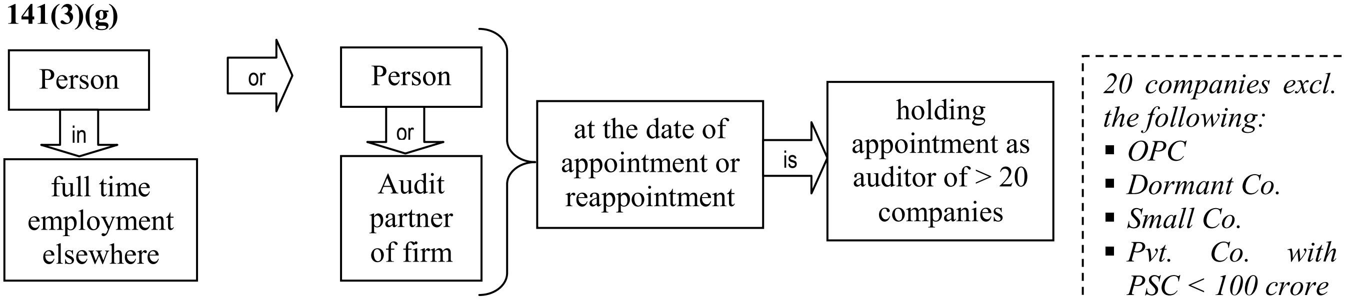
✦ business relationship included any *commercial transaction, EXCEPT:
↳ professional services rendered by an auditor or audit firm permitted under CA'13 and CA Act 1949

**commercial transactions in the ordinary course of business of the company at arm's length price*

– **141(3)(f)**



– **141(3)(g)**



Note: *Read ceiling limit point as well, later in notes*

- **141(3)(h):** Person convicted (declared guilty) by a Court -> offence involving fraud AND 10 yrs. has not elapsed from date of conviction (judgment date)
- **141(3)(i):** Person directly/indirectly -> renders any **service u/s 144***-> to the company, its holding/subsidiary
  - ↳ directly/indirectly: same meaning as in Explanation to section 144, as below:
  - ✦ Rendering of services directly/indirectly, where *auditor is an individual*:
    - ↳ by himself, or
    - ↳ through his relative, or
    - ↳ through any other person connected with him, or
    - ↳ through any other entity

Individual auditor has significant influence	or	Individual auditor uses its name/trade mark/brand

  - ✦ Rendering of services directly/indirectly, where *auditor is a firm*:
    - ↳ by firm itself, or
    - ↳ through its any partner, or
    - ↳ parent, subsidiary or associate of the firm
    - ↳ through any other entity

Firm or its partner has significant influence	or	Firm or its partner uses its name/trade mark/brand

  - ✦ ***144: Services** not to be rendered **by the auditor**
    - ⇒ Allowed: Services approved by BoD or audit committee
    - ⇒ Following not allowed (even if BoD wants to allow):
      - ↳ 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
      - ↳ any other prescribed service
    - ⇒ If auditor performing any non-audit services before CA'13
      - ↳ Time limit for compliance with S.144: before the closure of 1st FY after CA'13

→ **141(4):** Person appointed as auditor -> incurs **disqualification** u/s 141(3) **after appointment**
- *Action:* Vacate the office as auditor | *Result:* Deemed casual vacancy

> ***Note: For answering case study questions***
> – *1st: Provisions and Explanation (of appointment, disqualification and disqualification after appointment)[as per case]*
> – *2nd: Conclusion: Link case with provision and conclude with end result*

- **Appointment of Auditor (S.139)**

→ **139(6):** Appointment of **First Auditor** for **other than Govt.** Co.
- appointed by **BoD within 30 days** from the date of co. registration
- if **BoD fails** -> BoD shall inform members of co.
- then **members** shall appoint at EGM **within 90 days** from the date of co. registration
- appointed auditor holds **office till** conclusion of **1st AGM**

→ **139(7):** Appointment of **First Auditor** for **Govt.** Co.
- Govt. Co. -> Paid-up share capital ≥ 51% held by CG/SG/CG+SG | Subsidiary Co. also included
- appointed by <u>C</u>omptroller and <u>A</u>uditor-<u>G</u>eneral of India **within 60 days** from the date of co. registration
- if **C&AG doesn't** appoint -> **BoD** shall appoint within **next 30 days** (i.e. 30 days from 61st day)
- if **BoD fails** -> BoD shall inform members of co.
- then **members** shall appoint at EGM **within 60 days** (i.e. 60 days from C&AG 61st day)
- appointed auditor holds **office till** conclusion of **1st AGM**

Note: *If auditor appointment is not valid as per the provisions, use the words 'null and void' in answer conclusion*

- **Appointment of Subsequent Auditor/Reappointment of Auditor**
  → **139(1):** in case of **Non-Govt.** Companies
  - appointment by members at 1st AGM (individual/firm)
  - holds office from conclusion of 1st AGM till conclusion of 6th AGM (5 years term)

Conclusion of AGM		*Term Year*
From	*Till*	
1st	*2nd*	*1*
2nd	*3rd*	*2*
3rd	*4th*	*3*
4th	*5th*	*4*
5th	*6th*	*5*

  - thereafter till the conclusion of every sixth meeting

Note: *After the 1st term of 5 years, 139(1) will be applied again. Auditor will hold office till conclusion of 11th AGM. Don't mix it up with 6+6=12th AGM because the meeting in which the subsequent auditor is appointed/reappointed is considered as his first AGM and 5 years term complete on conclusion of 6th AGM. That's why thereafter till the conclusion of every sixth meeting. [More clarity: Read Rule 3 of CAAR, later]*

  - **Before appointment**, obtain from Auditor:
    - **Written consent** and **Certificate** -> that if appointed, it will be in accordance with prescribed conditions
    - Certificate shall also mention: whether auditor **satisfies criteria u/s 141** (as above)
    - Company shall **inform auditor** of its appointment and **file notice** of appointment with the Registrar **within 15 days** of meeting in which appointment is made

  → **139(5):** in case of **Govt.** Companies
  - appointed by **C**omptroller and **A**uditor-**G**eneral of India
  - appointed **for a FY |** duly qualified auditor
  - **within 180 days** from the commencement of FY
  - holds **office till** the conclusion of **AGM**

  → **Other important provisions:** A retiring auditor may be **re-appointed** at AGM, **IF**
  - he is not disqualified for re-appointment
  - he has not given the company a notice in writing of his unwillingness to be re-appointed
  - special resolution has not been passed at AGM appointing some other auditor or he shall not be re-appointed
  - where at any AGM, no auditor is appointed/re-appointed, existing auditor shall continue

- **Filling of a Casual Vacancy [S.139(8)]**
  [CV: Auditor validly appointed -> before completion of full term, Auditor's office came to an end]

Company whose accounts are ***not subject*** to audit by an auditor appointed by C&AG [Non-Govt. Co.]	Company whose accounts ***are subject*** to audit by an auditor appointed by C&AG [Govt. Co.]
139(8)(i)	*139(8)(ii)*
✓ to be filled by BoD within 30 days ✓ CV due to auditors resignation (*Note-1) – GM within 3 months of BoDs recommendation – appointed also to be approved by co. at GM	✓ to be filled by C&AG within 30 days ✓ if C&AG doesn't, BoD shall fill within next 30 days
--- All cases: holds office till conclusion of next AGM ---	

Note-1:
- **S. 140(2) -> Resigned auditor** -> shall file **within 30 days** from resignation date -> Form **ADT–3** [Rule 8 of the Companies (Audit and Auditors) Rules] -> with co. and registrar + with C&AG in case of govt. co. u/s 139(5)
- Auditor shall indicate -> reasons and other relevant facts of resignation
- If auditor fails to file -> **Penalty u/s 140(3)**
  1. Lower of Rs. 50,000 or auditor's remuneration
  2. If failure continues -> 1+ Rs. 500 for each day after 1st day till such failure continues [max. 5 lakh]

Note: *If nothing given about continuing failure, then write the penalty as lower of 1 but which may extend upto 5 lakh*

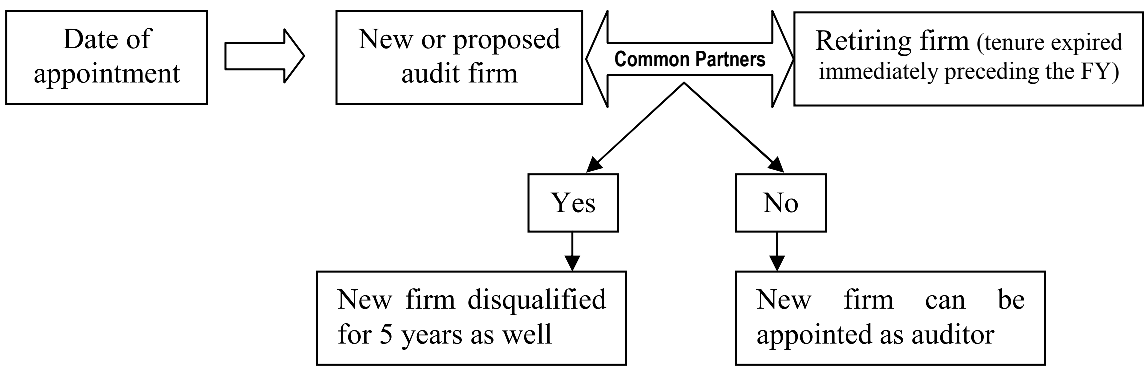
- **Rotation of Auditor [S.139(2)]:**
  → Class to companies to which RoA applies:
    – applicable to **listed** public **companies without** any **criteria**
    – applicable to **others** as below:
      ➢ **unlisted** public companies having **paid up** share capital ≥ **10 crore**
      ➢ **private** limited companies having **paid up** share capital ≥ **50 crore**
      ➢ if **PSC** is **below** threshold (as above), but **public borrowings** from FI/banks/public deposits ≥ **50 crore**
    – **not applicable** to **OPC** and **small** companies at all

  → Above class of companies **shall not** appoint/re-appoint auditor
    – Individual: for more than 1 term of 5 consecutive years
    – Audit Firm: for more than 2 term of 5 consecutive years

      ➢ *2 term allowed but not mandatory*
      ➢ *Appointment will be made for 1 term & then for 1 more term [2 terms appointment cannot be done in 1 AGM]*

    – ***Proviso to 139(2)*** *[Crux: Cooling period of 5 years after completion of term]*
      ➢ Individual who has completed 1 term of 5 years -> not eligible for re-appointment in same company for 5 years from completion of the term
      ➢ Audit Firm which has completed 2 term of 5 years -> not eligible for re-appointment in same company for 5 years from completion of the term

    – **Other points**
      ➢



      ➢ Company exist before CA'13: 139(2) compliance within -> 1st AGM to be held after 3 yrs of CA'13 (Note below)
      ➢ Right of company to remove an auditor or right of auditor to resign, shall not be prejudiced (biased)
      ➢ Subject to the provisions, members may:
        ↳ rotate auditing partner and his team, in the appointed firm
        ↳ conduct audit by more than one auditor

  → **Manner of Rotation of Auditors by the Companies on Expiry of their Term**
  [**Rule 6** of the Companies (Audit and Auditors) Rules, 2014]
    – Audit committee (AC) recommend to board -> name of individual auditor/audit firm -> who may replace the incumbent (currently holding office) auditor on expiry of the term
    – Where co. is not required to constitute AC -> board itself considers rotation matter -> recommends in AGM
    – For calculating period of 5/10 years -> period for which auditor has held office before CA'13 shall be taken into account as well
    – Incoming auditor/firm -> associated with outgoing auditor/firm under same network of audit firm -> Not Eligible
      ➢ *Same network: firms operating under same brand/trade name or common control*
      ➢ *Eg: S.R. Batliboi & Associates LLP & S.V. Ghatalia & Associates LLP under EY Network*
    – Break in term -> continuous period of 5 years -> rotation requirement fulfilled [cooling period]
    –

    – Co. appoints 2/more Ind./Firm/Combination as joint auditors -> then follow rotation of auditors in such a manner that both or all joint auditors do not complete their term in the same year.

***Note: Individual** auditor **aggregate period** with transition period:*
-> before CA'13, in office for 5/>5 consecutive years: 5 + 3 = 8 consecutive years
-> if after including transition period of 3 years, agg. period is < 5, then till 5 consecutive years
-> individual auditor incl. other ind./firms whose name/brand/trademark is used by such individual (same network)

***Note:** Similar system for **firms** as well*
-> before CA'13, in office for 10/>10 consecutive years: 10 + 3 = 13 consecutive years
-> if after including transition period of 3 years, agg. period is < 10, then till 10 consecutive years
-> firm incl. other firms whose name/brand/trademark is used by such firm/its partner (same network)

- **Audit Committee**
  - → S.177: Constitution of Audit Committee
    - – When co is required to constitute AC -> all appointments of auditor (incl. casual vacancy) -> made after taking into account AC recommendations
    - – Class of companies **who shall constitute** AC:
      - ➢ applicable to **listed public companies** without any criteria
      - ➢ applicable to **unlisted public companies** as below: (Any 1 of 3)
        - ↳ paid up share capital ≥ 10 crore
        - ↳ turnover ≥ 100 crore
        - ↳ agg. of outstanding loans/borrowings/debentures/deposits ≥ 50 crore

All three threshold figures as on the date of last audited FS

- **Manner and procedure of selection and appointment of auditors** [Rule 3 of CAAR, 2014]
  - → AC required u/s 177 : Such AC
  - → AC not required u/s 177 : the Board

to consider qualification and experience of proposed auditor & *whether they are commensurate with the requirements of co.*

  - → Recommendation of name of auditor for consideration:
    - – AC required u/s 177 : Such AC to Board
    - – AC not required u/s 177 : the Board to members in AGM for appointment
  - → AC/Board shall be aware of any order or pending proceeding of professional conduct against the proposed auditor
  - → AC/Board may call for other information from the proposed auditor
  - → Board agrees with AC recommendation -> further recommends the appointment to members in AGM
  - → Board disagrees with AC recommendation -> refers back the recommendation for reconsideration, citing reasons
  - → After considering boards reasons -> AC does not reconsider original recommendation

Board disagrees with it	*Board agrees with it*
record reasons of its disagreement with AC	place the matter for consideration by members in AGM
send its own recommendation to members in AGM	

  - → Auditor appointed in AGM -> holds office from conclusion of that AGM till conclusion of 6th AGM
    [AGM in which appointment is made is considered as 1st AGM]

- **Auditor's Remuneration: S.142**
  - → fixed in GM or in such manner as determined in GM
  - → 1st auditor appointed by board: board may fix
  - → *includes:* expenses incurred by the auditor in connection with audit, any facility extended to auditor
  - → *excludes:* remuneration for other services rendered by him at company's request

- **Removal of Auditors:**
  - → 140(1): auditor appointed u/s 139 -> may be **removed before his term expiry** -> only by **special resolution** -> after obtaining prior approval from CG as per Rule 7 of CAAR, 2014
  - → Application to CG -> in Form **ADT-2** -> with fees as per Companies (Registration Offices and Fees) Rules, 2014
  - → Application to CG -> within 30 days of resolution passed by board
  - → Approval received from CG -> GM within 60 days of it -> for passing special resolution
  - → Before removal -> reasonable opportunity to auditor of being heard
  - → 140(5): Direction by tribunal in case auditor acted in fraudulent manner (directly/indirectly)
    - – Suo motu or on application by CG/concerned person
    - – tribunal satisfied -> passed order -> directs company to change auditor
    - – when application made by CG -> tribunal satisfied -> auditor change order within 15 days of CG's application -> CG may appoint another auditor

- Final order passed by tribunal against auditor -> not eligible to be appointed as auditor of any co. for 5 years from date of order -> and liable for action u/s 447
- Liability in case of firm -> firm and every partner who acted in fraudulent manner
- *Fraud includes:*
  - *abetment: helping or encouraging someone to do something wrong or illegal*
  - *collusion* with company/its directors/its officers (*secret or illegal cooperation)*

- **Appointment of auditor other than retiring auditor** (i.e. removal upon completion of term)
  - → procedure given u/s **140(4)**
  - → **special notice** required for resolution at AGM, for

    Notice of AGM: Co. to Members
    Special Notice: Members to Co.

    - ↳ appointing of auditor other than retiring auditor, or
      - *individual auditor completed 1 term of 5 years, retires and another one shall be appointed*
    - ↳ providing expressly that retiring auditor shall not be re-appointed
      - *firm completing 1 term of 5 years, shall not be reappointed for another term of 5 years*
      - *if individual/firm completes term of 5/10 years, then this cannot be provided*
  - → on receipt of notice (i.e. SN) of such a resolution -> company shall forthwith send a **copy to retiring auditor**
  - → notice given to auditor and if he makes **written representation** and **request**s its notification to members
    - ↳ in any notice of the resolution given to members of co., state the fact of representation been made, and
    - ↳ send a copy of representation to every member of the company to whom notice of meeting is sent
    - ↳ if **copy** of representation **not sent**, because received too late or default of co.
      - representation shall be read out at meeting (without prejudice to auditor right to be heard orally)
      - and copy of representation shall be filed with registrar
  - → **curtailing right of auditor** regarding circulation of copy of representation
    - ↳ tribunal satisfied -> on application by either co./other aggrieved person
    - ↳ that **rights** conferred u/s 140(4) are being **abused by auditor**
    - ↳ then -> copy of representation may not be sent and it need not be read out at meeting

- **Ceiling on Number of Audits:**
  - → before appointment -> co. must obtain certificate from auditor -> appointment, if made, will not result in excess holding of company audit
  - → **141(3)(g)**: covered earlier under disqualifications -> so **ceiling limit per person is ≤ 20** (for not getting disqualified)
  - → ceiling limit for **firm**: limit is **per partner**, who is not in full time employment elsewhere (i.e. 20 x No. of partners)
  - → if CA is proprietor as well as partner in 1/>1 firm: limit still remains ≤ 20 (all firms together)
    - ↳ how the 20 audits are allocated between all the firms is their personal affair
  - → **No ceiling** limit for **companies** mentioned as **exclusions** (i.e. OPC, Dormant, Small, Pvt. Co. with PSC < 100 crore)
  - → If CA in practice hold appointment as auditor of more than specified number u/s 143(3)(g)
    - ↳ such CA is deemed to be guilty of professional misconduct [Council General Guidelines, 2008 (Chapter VIII)]
  - → No. of partners in a firm: on the date of acceptance of audit assignment
  - → record of the audit assignments accepted shall be maintained

- **Ceiling on Tax Audit Assignments: 60 per auditor** (as individual/partner)
  - → CA in practice accepts > 60 tax audits in a FY **u/s 44AB ->** deemed to be guilty of professional misconduct

- **Powers/Rights of Auditors while conducting an audit:**
  - → **Right of access to #books of account and vouchers**
    - 143(1): such right -> at all times
    - Kept at reg. office or any other place
    - incl. branch records, if considered necessary by auditor u/s 143(8) [even if branch audited by another auditor]
    - Entitled to require from *officers of the co. as he may consider necessary for the performance of his duties

    # not only financial, incl. statutory/statistical/memoranda books *rough book for daily transaction (bahi)*
    ** as per 2(59) incl. any director, manager or KMP or any person on whose directions BoD/director act*

  - → **Right to obtain information and explanation from officers**
    - wide and important power
    - if power absent -> auditor will not be unable to
      - ✓ obtain details of amount collected by directors, etc. from any other co., firm or person
      - ✓ benefits in kind derived by directors from the company
    - which information and explanations -> decided by auditor
    - if right to books and information rights denied -> report to the members

→ **Right to receive notices and to attend general meeting (S.146)**
- notice incl. other communications related to GM
- GM can be ANY (not just GM where audited a/c's are discussed)
- should be heard at any GM in any part of the business which concerns them as auditors
- attend GM himself or through authorised representative qualified auditor unless otherwise exempted

→ **Right to report to the members of the company on the accounts examined by him**
- FS required under this act to be laid before the co. in GM
- reports after taking into a/c -> CA'13, AS, SA, to the best of his information and knowledge
- a/c, FS -> give a true and fair view of the state of company's affairs as at FY end

→ **Right to Lien**

on which he has worked

- general principles of law:
  - ✓ any person -> having lawful possession of somebody else's property -> may retain the property -> for non-payment of his dues -> for work done on the property
- based on this principle:
  - ✓ auditor can exercise lien on books and documents -> placed at his possession by client -> for non payment of fees -> for work done on the books and documents
- similar view of ICAE&W with following conditions:
  - ✓ documents retained must belong to client who owes the money
  - ✓ documents must have come into possession of auditor on the authority of client (No illegal means)
  - ✓ auditor can retain the documents only if he has done work on the documents assigned to him
  - ✓ such documents can be retained which are connected with the work on which fees have not been paid
- S.128: BoA must be kept at registered office of co.
  - ✓ this section makes it impractical for auditor to have possession of books and documents
- auditors working papers are his own property -> question of lien does not arise on them
  - ✓ audit documentation are the property of auditor (SA 230 and SQC-1)

• **Duties of Auditors (S.143)**

→ Duty of Auditor **to inquire on certain matters**

Matter	***Whether***
Loans and advances	▪ properly secured ▪ terms are prejudicial to the interests of company/its members ▪ L & A made -> shown as deposits
Transactions	mere book entries are prejudicial to the interests of company
Assets of company *(for other than investment or banking company)*	▪ assets, consisting: shares, debentures and other securities ▪ sales price < purchase price
Personal expenses	Charged to revenue a/c
Disclosure is BoA for allotment of share in cash	▪ if stated, then: ➢ cash actually received ➢ if cash not actually received: – position stated in BoA and BS is correct, regular and not misleading

Opinion of Research Committee of the ICAI:
- Auditor **not required to report** on above matters, **unless** there is any **special comment** on any item
- After inquiry -> if auditor is satisfied -> no duty to report such satisfaction
- Report to members -> if answer is found adverse on any of the matters

→ Duty to **sign the audit report**
- 145: person appointed as auditor shall sign the audit report/other document as per 141(2)
- 141(2): firm incl. LLP -> appointed as auditor -> only **CA** partners can **act and sign** on behalf of the firm
- Qualifications, observations/comments -> on financial transactions/matters -> having adverse effect on functioning of co. -> mentioned in auditor's report -> read before the co. in GM

→ Duty to **comply with SA**
- 143(9): every auditor shall comply with SA
- 143(10): CG may prescribe SA as recommended by ICAI and after consultation with NAFRA (National Financial Reporting Authority)

→ Duty **to report:** 143(3) -> auditor's report shall also state

	Whether
Information and explanations	▪ all sought and obtained which to the best of his knowledge and belief were necessary for the purpose of audit ▪ *if not* -> details and effect of such info. on FS
Proper BoA	▪ as req. by law -> kept by co. -> so far as appears from his examination ▪ for branches not visited -> proper returns adequate for the purpose of audit have been received from branch
Branch Office of Co.	▪ a/c report of branch audited u/s 143(8) by other auditor ▪ sent to the company auditor [proviso to 143(8)] ▪ manner in which such report is dealt by company auditor in his report
BS and PL	BS, PL dealt with in report are in agreement with BoA and returns
AS Compliance	in his opinion, FS comply with AS
Observations or comments	▪ on financial transactions or matters ▪ which have any adverse effect on functioning of the co.
Director disqualification	from being appointed as a director u/s 164(2) [if any]
Any qualification, reservation or adverse remark	on maintenance of BoA and other connected matters
Internal financial controls	▪ adequate with ref. to FS ▪ and operating effectiveness of such controls ***N.A. for Pvt. Co., which is:*** – *OPC or Small Co. or* – *where Turnover < 50 crore (as per latest audited FS) AND agg. borrowings from bank/FI/Body Corporate at any time during the FY < 25 crore*
Other prescribed matters	Rule 11 of the Companies (Audit and Auditors) Rules, 2014 – *Pending litigations:* impact on financial position in FS – *Provision:* under any law/AS for material foreseeable losses – *Investor Education & Protection Fund:* any delay in trf. the req. amount

→ Duty **to report on frauds**

A. **Reporting to CG:** 143(12) r/w Rule 13 of the Companies (Audit and Auditors) Rules, 2014

When	*What*	*By*	*Amount*	*Reporting*
In the course of performance of duties as auditor	believe that an offence of fraud is being or has been committed	officers/employees of company	1 crore/above	to CG within prescribed time and manner

B. **Reporting to Audit Committee or Board**
   - Fraud amount < 1 crore, within prescribed time and manner

C. **Disclosure in the Board's Report**
   - Fraud reported by auditor u/s 143(12) to AC/Board but not to CG
   - Disclose such fraud in BR in prescribed manner

➡ 143(13): Safeguards the act of fraud reporting by auditor if done in good faith
➡ Fraud reporting also applies cost auditor (148) and secretarial auditor (204) -> mutatis mutandis
➡ CA/CS/CMA in practice doesn't comply with 143(12) -> Fine: Min – 1 lakh || Max – 25 lakh

→ Duty **to report** on **any other matter** specified by **CG**
- CG in consultation with NFRA -> by general/special order -> specify class/description of co. for this
- Notification dt. 29.03.2016 -> till NFRA is constituted
  - ➢ CG may consult committee* chaired by an officer (Joint Secretary or equivalent in MCA)
    *representatives from ICAI and Industry Chambers | special invitees from National Advisory Committee on Accounting Standards (NACAS) and office of C&AG

→ Duties and powers of company auditor with ref. to **audit of branch and branch auditor** [separate discussion]

→ Duty to state the **reason for qualification** or negative report
- 143(4): any matter req. to be incl. in AR -> answered in negative/with qualification -> state reasons