

# COMPANY AUDITOR

# QUALIFICATIONS OF AN AUDITOR

- ◉ The provisions relating to eligibility, qualifications and disqualifications of an auditor are governed by section 141 of the Companies Act, 2013
- ◉ A person shall be eligible for appointment as an auditor of a company only if he is a Chartered Accountant holding certificate of practice as per the Chartered Accountant Act 1949. **Section 141 (1)**
- ◉ It may be noted that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company. Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm. **Section 141 (2)**

# DISQUALIFICATIONS OF AN AUDITOR

- ◉ Under sub-section (3) of section 141 along with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 (hereinafter referred as CAAR), the following persons shall not be eligible for appointment as an auditor of a company, namely-
  - ◉ (a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008

# DISQUALIFICATIONS OF AN AUDITOR

- ◉ (b) an officer or employee of the company
- ◉ (c) a person who is a partner, or who is in the employment, of an officer or employee of the company
- ◉ (d) a person who, or his relative or partner
  - (i) 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;

It may be noted that the relative may hold security or interest in the company of face value not exceeding ` 1,00,000.

# DISQUALIFICATIONS OF AN AUDITOR

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 5,00,000

(iii) 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, in excess of ` 1,00,000

# DISQUALIFICATIONS OF AN AUDITOR

- ⦿ (e) a person or a firm who, whether directly or indirectly has business relationship with the Company, or its Subsidiary, or its Holding or Associate Company or Subsidiary of such holding company or associate company, of such nature as may be prescribed.
- ⦿ (f) a person whose relative is a Director or is in the employment of the Company as a director or key Managerial Personnel.



# DISQUALIFICATIONS OF AN AUDITOR

- ◉ (g) 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 person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ` 100 crore.

# DISQUALIFICATIONS OF AN AUDITOR

- ◉ (h) 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.
- ◉ (i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.



# DISQUALIFICATIONS OF AN AUDITOR

*a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.*

*It may be noted that, for the purposes of this clause, the term "directly or indirectly" shall have the same meaning as assigned to it in the Explanation to section 144, i.e.*

*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, shall be termed as rendering of services directly or indirectly by the auditor; and*

*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, shall be termed as rendering of services directly or indirectly by the auditor.*

# DISQUALIFICATIONS OF AN AUDITOR

- ◉ Section 144 of the Companies Act, 2013 prescribes certain services not to be rendered by the auditor:
- ◉ (i) accounting and book keeping services;
- ◉ (ii) internal audit;
- ◉ (iii) design and implementation of any financial information system;
- ◉ (iv) actuarial services;
- ◉ (v) investment advisory services;
- ◉ (vi) investment banking services;
- ◉ (vii) rendering of outsourced financial services;
- ◉ (viii) management services; and
- ◉ (ix) any other kind of services as may be prescribed

# DISQUALIFICATIONS OF AN AUDITOR

- (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.

# APPOINTMENT OF AUDITOR SECTION 139 (NON GOVT CO)

## **1. APPOINTING AUTHORITY FOR AUDITORS IN COMPANY**

In term of section 139(1) of the Companies Act, 2013 read with rule 3 of Companies (Audit and Auditors) Rules, 2014 every company shall at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting (AGM) and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as prescribed under:

# APPOINTMENT OF AUDITOR

## SECTION 139 (NON GOVT CO)

- (1) In case of a company that is required to constitute an Audit Committee under section 177, such committee, and, in cases where such a committee is not required to be constituted, the Board shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.
- Before considering the appointment of auditor, the Audit Committee or the Board, as the case may be, shall consider any pending proceeding relating to professional matters of conduct against the proposed auditor before the ICAI or any competent authority or any Court. Further they may call for such other information from the proposed auditor as it may deem fit.
- Where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.
- If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of auditor to the members in the AGM otherwise, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

# APPOINTMENT OF AUDITOR

## SECTION 139 (NON GOVT CO)

- Thereafter if the Audit Committee decides not to reconsider its original recommendation, then Board shall record reasons for its disagreement with the Audit committee and send its own recommendation for consideration of the members in the AGM and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the AGM.
- The auditor appointed in the AGM meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting.
- Such appointment shall be subject to ratification in every AGM till the sixth AGM by way of passing of an ordinary resolution. If the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

# APPOINTMENT OF FIRST AUDITOR OF A NON-GOVT COMPANY

Section 139(6) of the Act stipulated that first Auditor of the Company other than Government Company, shall be appointed by the Board within 30 days of its date of registration and in case of failure to do so by Board of Directors, the members shall be informed and they shall appoint the same within 90 days from incorporation, who shall hold office till conclusion of first annual general meeting.

# APPOINTMENT OF AUDITOR -GOVT COMPANY 139 (5), 139 (7), 139 (8), 139 (11)

The First auditor shall be appointed by the Comptroller and Auditor General 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 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.

The Act also provides that in case the Company has an Audit Committee, then all appointments of Auditor including filling of casual vacancy, shall be made after taking into account the recommendations of the Committee.



# TERM OF THE AUDITOR 139 (2)

Listed company or all unlisted public companies having paid up share capital of Rs. 10 crore or more, all private limited companies having paid up share capital of Rs. 20 crore or more, all companies having public borrowings from financial institutions, banks or public deposits of Rs. 50 fifty crores or more shall not appoint or re-appoint an individual as auditor for more than one term of 5 consecutive Years; and an audit firm as auditor for more than two terms of 5 consecutive years. These auditor (either individual/audit firm) can be re-appointed after cooling off period of 5 years. Three years transition period will be given to comply this requirement.

# RE-APPOINTMENT OF THE RETIRING AUDITOR 139 (9)

At any annual general meeting, a retiring auditor shall be reappointed as auditor of the company except under the following circumstances:

- (a) he is not qualified for re-appointment.
- (b) he has given the company a notice in writing of his unwillingness to be re-appointed.
- (c) a special resolution has been passed at that meeting appointing somebody else instead of him or providing expressly that retiring auditor shall not be re-appointed.

Section 139 (10) lays that where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

# ROTATION OF THE AUDITORS

## 139(3)

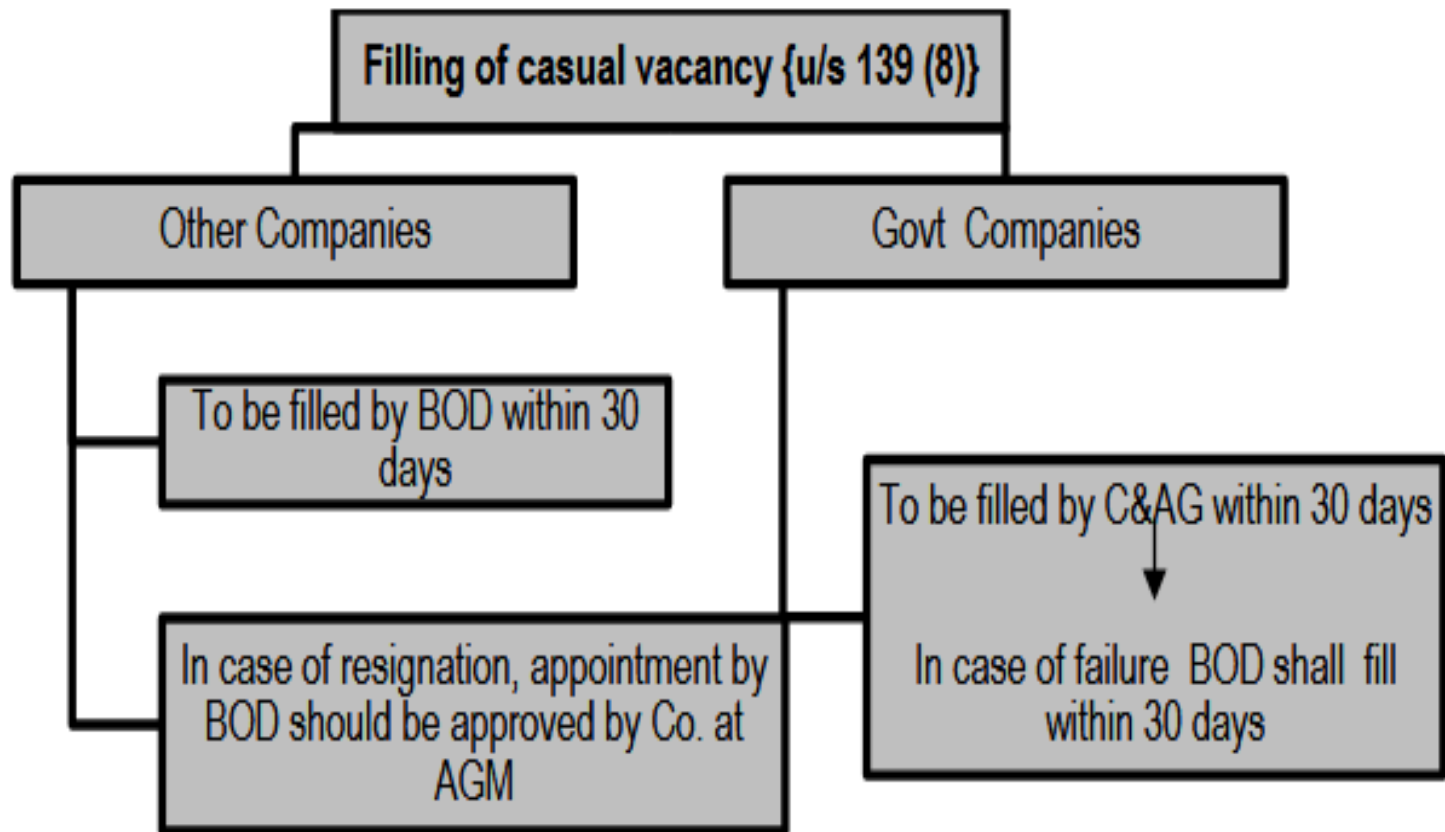
Members of a company can provide for following by passing a resolution:

- (a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
- (b) The audit shall be conducted by more than one auditor.

A transition period of 3 years from the commencement of the Act has been prescribed for the company existing on or before the commencement of the Act, to comply with the provisions of the rotation of auditor.

# CASUAL VACANCY

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# REMOVAL OF AUDITOR 140 (1)

The auditor appointed under section 139 may be removed from his office before the expiry of the term only by –

- (i) Obtaining the prior approval of the Central Government by filling an application in form ADT-2 within 30 days of resolution passed by the Board
- (ii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
- (iii) The auditor concerned shall be given a reasonable opportunity of being heard.

# RESIGNATION OF THE AUDITOR 140

## (2) & 140 (3)

The auditor who has resigned from the company shall file a statement in Form ADT-3 indicating the reasons and other facts as may be relevant with regard to his resignation as follows:

- (i) In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.
- (ii) In case of Government Company or government controlled company, auditor shall within 30 days from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

The onus to file such statement containing relevant facts and reasons for resignation is on the resigning auditor and any contravention of sub clause (2) is punishable with monetary fine which could be minimum Rs. 50,000 and maximum Rs. 5 lakh.

# POWERS OF THE AUDITOR 143 (1)

## **Access to books of account and vouchers**

Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.

## **Entitled to have necessary information and explanation**

He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

## **Access to record of all its subsidiaries**

The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

# DUTIES OF THE AUDITOR 143 (1)

## **Matters of inquiry [Sub-section 1]**

The auditor shall inquire into the following matters, namely

- a.** 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;
- b.** Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- c.** 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;
- d.** Whether loans and advances made by the company have been shown as deposits;
- e.** Whether personal expenses have been charged to revenue account;
- f.** 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
- g.** account books and the balance sheet is correct, regular and not misleading.



# DUTIES OF THE AUDITOR 143 (2) & 143 (3)

## Report to members [Sub-section 2 and 3]

The auditor shall make a report to the members of the company on the following;

- a. On the accounts examined by him; and
- b. On every financial statements which are required by or under this Act to be laid before the company in general meeting; and

# DUTIES OF THE AUDITOR SEC 143 (3)

Further, sub-section 3 requires, the auditors' report shall also state:

- a.** 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;
- b.** 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;
- c.** 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;
- d.** 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;

# DUTIES OF THE AUDITOR 143 (3)

- e. Whether, in his opinion, the financial statements comply with the accounting standards;
- f. The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- g. Whether any director is disqualified from being appointed as a director under sub section (2) of section 164;
- h. Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- i. Whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;
- j. Such other matters as **may be prescribed**.

# DUTIES OF THE AUDITOR 143 (3)

In context of clause j stated above, Rule 11 of the Companies (Audit & Auditors) Rules, 2014 i.e. Other Matters to be Included in Auditors Report requires the auditor's report shall also include their views and comments on the following matters, namely:

- (i) Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- (ii) Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- (iii) Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.
- (iv) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been;
  - 1. Advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary

# DUTIES OF THE AUDITOR 143(3)

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shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

2. Received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and
  3. Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) [i.e. pt 1] and (ii) [i.e. pt 2] contain any material mis-statement.
- (v) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.
  - (vi) Whether the company, in respect of financial years commencing on or after the 1st April, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

# SOURCES

- ◉ ICAI new syllabus CA Intermediate study material- Corporate Law
- ◉ ICSI Study material- Companies Act ,2013 'Audit and Auditors'.
- ◉ Companies Act, 2013- Taxmann Publications