

COMPANIES ACT, 2013

**AUDIT
AND
AUDITORS**



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

AUDIT AND AUDITORS

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:

- (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.

For the purpose of constitution of Audit Committee section 177 of the Act read with Companies (Meetings of Board and its Powers) Rules, 2014 provides that:

The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee of the Board-

- (i) all public companies with a paid up capital of ten crore rupees or more;
- (ii) all public companies having turnover of one hundred crore rupees or more;
- (iii) all public companies, having in aggregate, outstanding

loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Explanation.- The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

- 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.
- 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.

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.

Conditions for appointment and notice to Registrar- Rule 4 of the Companies (Audit and Auditors) Rules, 2014 hereinafter referred in this chapter as Rule

As per second proviso of section 139(1) read with rule 4 stipulated that written consent of the auditor must be taken before appointment. The auditor appointed shall submit a certificate that:

- (a) the individual/firm is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (b) the proposed appointment is as per the term provided under the Act;
- (c) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

Certificate shall also indicate whether the auditor satisfies the criteria provided in section 141 of the Act.

Company shall inform the auditor concerned of his or its appointment and also file a notice of such appointment with the Registrar in Form ADT-1 within 15 days of the meeting in which the auditor is appointed.

2. APPOINTMENT OF AUDITOR IN GOVERNMENT COMPANY- Section 139 (5), 139 (7), 139(8),139 (11)

The appointment of auditor in Government company or

government controlled (directly/indirectly) company shall be held in accordance with the following provisions:

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.

In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days. In case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

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.

3. ELIGIBILITY & QUALIFICATIONS OF AUDITOR

Section 141 (1) & (2) of the Act prescribed the following eligibility and qualifications of auditor which are as under:-

- i. Only a Chartered Accountant (individual) or a firm where majority of partners practicing in India are Chartered Accountants can be appointed as auditor.
- ii. Where a firm including a limited liability partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

4. DISQUALIFICATIONS OF AUDITOR

Section 141 (3) of the Act read with Rule 10 prescribed the following persons shall not be eligible for appointment as an auditor of a company, namely:

- A body corporate, except LLP;

- An officer or employee of the company;
- Any partner/employee of officer or employee of company;
- A person who himself or his relative/partner is holding any security or interest in the company, or any company which is its holding, subsidiary, associate;
- A person whose relative is holding security or interest not exceeding Rs. one Lac face value in companies as mentioned above. Provided that this condition be also applicable in the case of a company not having share capital or other securities, wherever relevant. Provided further that in the event of acquiring any security or interest by a relative, above the threshold limit i.e. Rs. one lac, the corrective action to maintain the limits (Rs. one lac) shall be taken by the auditor within 60 days of such acquisition or interest;
- A person who or whose relative or partner is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh shall not be eligible for appointment;
- A person who or whose relative or partner 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 one lakh rupees shall not be eligible for appointment;
- 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;

The term “business relationship” shall be construed as any transaction entered into for a commercial purpose, except – (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts; (ii) commercial transactions which are in the ordinary course of business of the company at arm’s length price – like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

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

- A person who is in full time employment elsewhere;
- Person who is auditor of more than 20 companies;
- A person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

According to section 141 (4) where a person appointed as an auditor of a company incurs any of the disqualifications mentioned as above 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.

5. TERM OF AUDITOR- Section 139 (2) and Rule 5

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.

No audit firm shall be appointed as auditor of the company for a period of five years, if same firm presently having a common partner(s) to the previous audit firm, whose tenure has expired in a company immediately preceding the financial year.

The right of the company to remove the auditor or the right of the auditor to resign from such office of the company is not affected by this sub-section. Thus, an auditor can resign or be removed by the shareholders before completion of his term as discussed above. The firm shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

6. RE-APPOINTMENT OF RETIRING AUDITOR- Section 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.

7. ROTATION OF AUDITORS- Section 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.

8. ROTATION OF AUDITORS ON EXPIRY OF THEIR TERM- Section 139 (4) and Rule 6

Rotation of auditors on expiry of auditor's term then same procedure will be followed as required for appointment of auditors. The procedure is as under:-

- (1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
- (2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.

For the purpose of rotation, the period for which the auditor is holding office prior to the commencement of this act will also be counted in calculating the period of 5 years or 10 years as the case may be. The incoming auditor/audit firm shall not be eligible if such auditor/audit firm is associated with the outgoing auditor/audit firm under the same network of audit firms i.e. includes the firms operating/functioning under the same brand name, trade name or common control, hitherto or in future. If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Where a company has appointed two or more persons as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

9. CASUAL VACANCY IN THE OFFICE OF AUDITOR- Section 139 (8)

Any casual vacancy in the office of an auditor shall—

- (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment 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;
- (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

It may be noted that that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

10. REMOVAL OF AUDITOR-Section 140 (1) and Rule 7

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.

11. RESIGNATION OF AUDITOR- Section 140 (2), 140 (3) and Rule 8

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.

12. REMUNERATION OF AUDITOR

Section 142 of the Act prescribed that the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. Board may fix remuneration of the first auditor appointed by it. The remuneration will be in addition to the out of pocket expenses incurred by the auditor in connection with the audit of the company and any remuneration paid to him for any other service rendered by him at the request of the company.

13. AUDITOR'S RIGHT TO ATTEND GENERAL MEETING- Section 146

All notices of any general meeting shall be forwarded to the auditor of the company and he must attend any general meeting either by

himself or through his authorised representative (qualified to be an auditor) and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

14. POWERS AND DUTIES OF AUDITORS

Section 143(1) provided that Every auditor can access at all times to the books of accounts, vouchers and seek such information and explanation from the company and enquire such matters as he considers necessary, including the matters specified in sub-Clauses (a) to (f). It is the duty of every auditor to make proper enquiry regarding these matters, besides other matters and if he is satisfied, it is not necessary to disclose this fact in his report. However, on enquiry, if he finds some adverse features, it is his duty to report the same. Specific enquiries to be made by the auditor under this sub-Section are as under—

a) *Loans and Advances made by the Company*

Auditor shall inquire into “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 not prejudicial to the interest of the company or its members.” It is applicable to all loans and advances made on the basis of security. The auditor should verify that the security held against the loans and advances made by the company are legally enforceable and also ascertain the valuation of securities to see whether the loan is fully secured or partly secured.

b) *Transactions represented by book entries*

Auditor is required to inquire “whether the transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company”. He should verify the all book entry transactions and determine whether such transactions have actually taken place and are not prejudicial to the interest of the company.

c) *Sale of investments*

Auditor should inquire, “whether so much of the assets of the company (except an investment company or a banking company) as consists of shares, debentures and other securities, have been sold at a price less than that at which they were purchased by the company”. Auditor must verify the cases where securities are sold at a price less than their cost of acquisition and if he finds that such sale is bona fide

and the price realised is considered to be reasonable, having regards to the circumstances of each case, no further reporting is required.

d) *Loans and Advances shown as deposits*

Auditor must verify “whether loans and advances made by the company have been shown as deposits”. The auditor must inquire in respect of all the deposits shown by the company and satisfy himself that the loans and advances have not been shown as deposits.

e) *Charging of Personal expenses to revenue account*

Auditor should inquire as to “whether personal expenses have been charged to revenue account”. Auditor must ensure that no personal expenses of directors and officers of the company have been charged to revenue account.

f) *Allotment of shares for cash*

Auditor should inquire as to “whether cash has actually been received in respect of shares stated to have been allotted for cash and if no cash has actually been so received, whether the position as stated in the account books and balance sheet is correct, regular and not misleading”. In this connection, auditor must ensure in respect of shares allotted in cash by the company that cash has actually been received in respect of such allotment by the company.

He should verify and report the cases where cash was not received and that the position, as stated in books of accounts and balance sheet, is correct, regular and not misleading.

Auditor will have access to books of accounts and vouchers, not only to those kept at registered office of the company but also to those kept at any other place. Such access shall be available at all times. Also, auditor of a holding company shall have access to the books of all of its subsidiary companies for the purpose of consolidation of financial statements of holding company and its subsidiaries.

15. AUDIT REPORT

Section 143 (2) prescribed that auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which is required to be laid in the general meeting of the company. The Audit report should take into consideration the provisions of this Act, the Accounting and Auditing standards and

matters which are required under this Act or rules made thereunder or under any order made u/s 143(11).

The Audit report should state that to the best of his information and knowledge, the said accounts and financial statements give a true and fair view of the state of the company's affair as at the end of the financial year and the profit or loss and the cash flow for the year and such other matters as may be prescribed.

Section 143 (3) laid down that auditor's report shall also state other details which are as under:

- (a) whether he has sought and obtained all the information and explanations which were necessary 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 and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) whether the branch audit report prepared by a person other than the company's auditor has been sent to him;
- (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;
- (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 section 164 (2);
- (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 system in place and the operating effectiveness of such controls;
- (j) Rule 11 prescribed that 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.

The auditor is required to provide the reasons, where any of the matters required to be included in the Audit Report under this Clause is answered in negative or with a qualification. {Section 143 (4)}

16. POWERS OF COMPTROLLER AND AUDITOR-GENERAL OF INDIA IN CASE GOVERNMENT COMPANY- Section 143 (5) to 143 (7)

In case of Government Company, the Audit Report among other things, shall include the directions, if any, issued by the Comptroller and Auditor –General of India (CAG), the action taken and the impact thereof on the Company’s accounts and financial statement.

The CAG shall have a right to the conduct a supplementary audit of financial statement of the company and comment upon or supplement such audit report within 60 days from the date of receipt of the audit report u/s 143 (5).

Provided that any comments given by the CAG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements u/s 136 (1) and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

The CAG may, by an order, cause test audit to be conducted of the accounts of company covered u/s 139 (5) or 139 (7) and the provisions of section 19A of the Comptroller and Auditor-General’s (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

17. BRANCH AUDIT- SECTION 143 (8) AND RULE 12

Branch Auditor: Accounts of branch office can be audited by –

- 1. The company’s auditor; or
- 2. Any other person, qualified to be and appointed as an

auditor as per the provisions of the Act as branch auditor;
or

3. In case of foreign branch, by the company's auditor or by an accountant or a competent person appointed in accordance with the prevailing laws of the foreign country.

The branch auditor shall prepare a report on the accounts of the branch examined by him and the company's auditor shall deal with such report in his audit report in a manner as he considers necessary.

Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor.-

- (1) The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143 i.e. right of access to books of accounts, ensure about the mandatory books of accounts maintained, prepare auditors' report and state the reasons of qualification in report, if any etc .
- (2) The branch auditor shall submit his report to the company's auditor.
- (3) The provisions of sub-section (12) of section 143 read with rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

18. AUDITING STANDARDS - SECTION 143 (9) & (10)

Every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendums thereto, it shall consult with and take recommendations of the Institute of Chartered Accountants of India (ICAI) and the National Financial Reporting Authority (NFRA). Till such time the Auditing Standards are notified by the Central Government, the auditing standards specified by the ICAI are deemed to be the auditing standards.

19. REPORTING OF FRAUDS BY AUDITOR- Section 143(12) to 143 (15) & Rule 13

Section 143 (12) and Rule 13 provides that if the auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been

committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than 60 days of his knowledge and after following the procedure indicated herein below:

- (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within 45 days;
- (ii) 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 alongwith his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days of receipt of such reply or observations;
- (iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

The report shall be in the form of a statement as specified in Form ADT-4 on the letter-head of the auditor containing postal address, e-mail address, contact number, Membership Number and be signed & sealed by the auditor and same shall be sent through Registered Post with AD/speed post followed by an e-mail in confirmation to the Secretary, MCA of the same .

The provision of section 143 applies mutatis-mutandis to Cost Accountants in practice conducting Cost Audit under section 148 or the Company Secretary in practice conducting secretarial audit under section 204. If any auditor, cost accountant or company secretary in practice fails to comply with the provisions of section 143 (12) for reporting of an offence involving fraud, they will be punished with a fine of minimum Rs. 1 lakh and upto Rs. 25 lakhs but they will not be punished if Auditor done such reporting in good faith.

20. AUDITOR NOT TO RENDER CERTAIN SERVICES (PROHIBITED SERVICES)- Section 144

An auditor shall provide to the company only such other services as are approved by the Board of Directors/ the audit committee, but

which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:-

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed.

21. APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR BY SPECIAL NOTICE- Section 140 (4)

Special notice shall be required from members proposing to move a resolution at the next annual general meeting to appoint a person other than the retiring auditor or to provide that the retiring auditor shall not be re-appointed.

Such special notice shall not be required in case where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.

Following points are relevant for the purpose of special notice:

- i. Company, on receipt of such special notice for removing auditor, should forthwith send a copy of the same to the retiring auditor.
- ii. If the auditor makes a representation in writing to the company and requests for its notification to the members, the company shall
 - (a) state the fact of representation in any notice of resolution, and
 - (b) send copy of representation to members to whom notice of meeting is sent, whether before or after the receipt of representation by the company.
 - (c) if the copy of representation is not so sent, copy thereof should be filed with the Registrar.

- iii. such representation should be of a reasonable length and not too long.
- iv. For circulation to members, it should not be received by the company too late.
- v. Auditor may require the company to read out the representation in the meeting if it is not so notified to members because it was too late or because of company's default.

If the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting. {This para is yet to be notified}

22. POWERS OF TRIBUNAL- Section 140 (5)

A National Company Law Tribunal (NCLT) can either –

- (i) *suo moto* or
- (ii) on an application from Central Government, or
- (iii) on an application from person concerned,

can direct the company to change the auditor if it is satisfied that the Auditor of a Company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers.

In the case of application being made by the Central Government and the NCLT being satisfied that change of auditor is required, it shall within 15 days of the receipt of such application, make an order that the Auditor shall not function as an auditor of the company and the Central Government may appoint another auditor in his place. This will happen only when an application is made by the Central Government and not by any other person.

Where the auditor, whether individual or firm, against whom the final order as aforementioned is passed by the NCLT under this section, he shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of such order. Further, the auditor shall also be liable for action under Section 447 which provides for punishments for frauds. {This para is yet to be notified}

It has been clarified by way of explanation that in case a firm is

appointed as auditor of the company, the liability shall be of the firm and every partner or partners who acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers shall be liable and not be eligible to be appointed as auditor of any company for a period of 5 years.

23. SIGNING OF AUDIT REPORTS - Section 145

Auditor shall sign the auditor's report of the company. Any qualifications, observations or comments on financial transactions matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

24. PUNISHMENT FOR CONTRAVENTION – Section 147

For the Company

1. If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5,00,000 and every officer in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1,00,000 or with both.

For the Auditor

2. If an auditor of a company contravenes any of the provisions of section 139 section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than Rs. 25,000 but which may extent to Rs. 5,00,000. if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company/ shareholders/creditors/authorities, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than Rs. 1,00,000 which may extend to Rs. 25,00,000.
3. Where an auditor has been convicted under sub-section (2), he shall be liable to refund the remuneration received by him to the company; and pay for damages to the company/ statutory bodies/authorities/to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

4. The Central Government shall specify any statutory body/ authority/an officer for ensuring prompt payment of damages to the company/ statutory bodies/authorities/any other persons by issuing notification and such body shall after payment of damages to such company/persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the notification.
5. Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner(s) of audit firm have acted in a fraudulent manner/abetted/ colluded in any fraud by, or in relation to or by, the company/its directors/officers, the civil/criminal liability as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

25. COST RECORDS & AUDIT– Section 148

Applicability for Cost Records:

Section 148 (1) read with Rule 3(1) of draft Companies (Cost Records and Cost Audit) Rules, 2013 provides the Central Government may direct, by an order to the prescribed class of companies (engaged in the production of prescribed goods or providing prescribed services) to maintain the cost records.

Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

Applicability for Cost Audit:

Section 148 (2) read with Rule 3(2) of draft Companies (Cost Records and Cost Audit) Rules, 2013 provide the Central Government, by order, may direct for the audit of cost records of class of companies, as mentioned in Rule 3 (1) of draft Companies (Cost Records and Cost Audit) Rules, 2013 and which have a net worth/turnover of such amount as may be prescribed shall be conducted in the manner specified in the order.

Section 148(3) read with Rule 14 prescribed that the cost audit shall be conducted by a Cost Accountant in practice who shall be appointed by the Board but Remuneration of Cost Auditor will be determined by the members as under:-

- (a) in the case of companies which are required to constitute an audit committee-
 - (i) the Board shall appoint an individual/firm (cost accountant(s) in practice) as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;
 - (ii) the remuneration recommended by the Audit Committee under (i) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;
- (b) in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual/firm (cost accountant(s) in practice) as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

According to proviso of section 148 (3) of the Act, a person appointed under Section 139 as an auditor of the company (financial auditor) shall not be appointed for conducting the audit of the cost accounts of a company (cost auditor of the same company). Cost auditor shall comply with the cost auditing standards which are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

Cost audit conducted under section 148 shall be in addition to the audit conducted under section 143. The qualifications, disqualifications, rights, duties and obligations applicable to financial auditors shall, so far as may be applicable, apply to a cost auditor and it shall be the duty of the company to give all assistance and facilities to the cost auditor for auditing the cost records of the company.

Rule 5 of draft Companies (Cost Records and Cost Audit) Rules, 2013 [Draft Rule] provided that every company covered under rule 3(2) of Draft Rule shall within 180 days of the commencement of every financial year appoint a cost auditor.

Every cost auditor, who conducts an audit of the cost records of the company, shall submit the cost audit report alongwith his or its reservations or qualifications or observations to the Board of Directors of the company within 180 from the close of the company's financial year to which the report relates.

A company shall furnish the cost audit report to Central

Government along with full information and explanation on every reservation or qualification contained therein within thirty days from the date of receipt of a copy of the cost audit report.

If Central Government is of the opinion that any further information/explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

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

- (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;
- (b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

