

SEBI GRADE A

Companies Act

Audit and Auditors Companies Act 2013



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CHAPTER X: AUDIT AND AUDITORS

In this Chapter of Companies Act, 2013, we shall discuss Articles Number 139 to 148.



CHAPTER 10

1.1 Section 139: Appointment of auditors

Appointment, Removal & Role of an Auditor under Companies Act 2013



- Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office for **6 years**.
- No listed company or a company belonging to such class or classes of companies can appoint or reappoint—
 - a) an individual as auditor for more than **one term of five consecutive years**; and
 - b) an audit firm as auditor for more than **two terms of five consecutive years**:
- Members of a company may resolve to provide that:
 - a) in the audit firm appointed by it, the auditing partner and his team shall be rotated
 - b) the audit shall be conducted by more than one auditor.
- In the case of a **Government company, the Comptroller and Auditor-General of India** shall appoint an auditor, **within a period of 180 days** from the commencement of the financial year.
- The first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within **30 days** from the date of registration of the company
And in the case of failure of the Board to appoint auditor, members of the company will appoint auditor and auditor will hold office till the conclusion of the first annual general meeting.
- In the case of a Government company, the first auditor shall be appointed by the **Comptroller and Auditor-General of India within 60 days** from the date of registration of the company
And in case the Comptroller and Auditor-General of India does not appoint auditor, the **Board of Directors** of the company will appoint auditor within the next **30 days**;
And in the case of failure of the Board to appoint auditor, the **members of the company** will appoint auditor within **sixty days** at an extraordinary general meeting.
- Any casual vacancy in the office of an auditor will be filled by the Board of Directors within 30 days, If such casual vacancy is as a result of the resignation of an auditor, appointment will also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board
- In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, casual vacancy will be filled by the Comptroller and

Auditor General of India within thirty days. If the Comptroller and Auditor-General of India does not fill the vacancy, the Board of Directors shall fill the vacancy within next 30 days.

- A retiring auditor may be re-appointed at an annual general meeting, if—
 - a) he is not disqualified for re-appointment;
 - b) he has not given the company a notice in writing of his unwillingness to be re-appointed;
 - c) a special resolution has not been passed against him.
- If no auditor is appointed or re-appointed, the existing auditor will continue to be the auditor of the company.
- If a company is required to constitute an Audit Committee under **section 177**, all appointments, including the filling of a casual vacancy of an auditor, will be made after taking into account the recommendations of such committee.

1.2 Section 140: Removal, resignation of auditor and giving of special notice



Removal of Auditor - Section 140 (1)

The auditor appointed for the company (government or non-government company) may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in the prescribed manner

Prescribed Manner to Remove the Auditor as per Rules

1. The application to the Central Government for removal of auditor shall be made in **Form ADT-2**
2. The application shall be made to the Central Government **within thirty days** of the resolution passed by the Board.
3. The company shall hold the general meeting within **sixty days** of receipt of approval of the Central Government for passing the special resolution.

Exception: In case of **IFSC Public and IFSC Private Company**, if no decision is communicated by the Central Government to the company within **60 days** of application being made to central government, then it would be taken as approval from central government and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period

Resignation of Auditor- Section 140 (2 and 3)

- **In case of Govt. Companies and Non-Govt. Companies** -> The auditor who has resigned from the company shall file within a period of **thirty days** from the date of resignation, a statement (using **Form ADT-3**) with the company and the Registrar indicating the reasons and other facts related to his resignation
- **In case of Govt. Companies** -> the auditor shall additionally also file a statement within a period of thirty days from the date of resignation with the Comptroller and Auditor-General of India, indicating the reasons and other facts related to his resignation

Penalty for non-compliance by auditor

- If the auditor does not comply with the above provisions, he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less
- In case of continuing failure, an additional penalty of five hundred rupees for each day of violation during which such failure continues, subject to a maximum of 2 lakh rupees

Removal on Orders by Tribunal- Section 140 (5)

- Tribunal on application made to it by any person concerned finds out that auditor of a company has acted in a fraudulent manner then it can direct the company to change its auditors
- Tribunal on receiving application by the Central Government against the auditor finds out that auditor has acted in fraudulent manner and feels that the change of the auditor is required then within fifteen days of receipt of such application it shall make an order that auditor shall not function as an auditor anymore and the Central Government may appoint another auditor in his place
- The auditor, whether individual or firm, against whom final order has been passed by the Tribunal shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order

1.3 Section 141: Eligibility, qualifications and disqualifications of auditors



Eligibility of Auditor

A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

- A firm whereof majority of partners practicing in India are chartered Accountants may be appointed by its firm name to be auditor of a company
- When a firm 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.

Qualification and Disqualification of Auditor

Qualification: Following shall not be appointed as auditors

1. An officer or employee of the company or anyone who is further employee of any officer or employee of company
2. A person who is partner in the company
3. A person or a firm who has business relationship with the company
4. A person who's relative is director or key management personnel in the company
5. A person who in full time employment in some other company
6. IF person or partner of firm is already holding appointment of more than twenty companies (These twenty companies shall not include one person companies, small companies and private companies having paid-up share capital less than **one hundred crore rupee**)

7. A person convicted by court for a fraud or any other offence till **10 years** from date of conviction
8. 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.
9. A person who himself or his relative or partner is (**holding securities of more than 1 lakh**) or (**Indebted/Owes more than 5 lakh to the company**) or (has given a guarantee of **more than 1 lakh** for a third person who owes money to the company or its subsidiary)

Disqualification

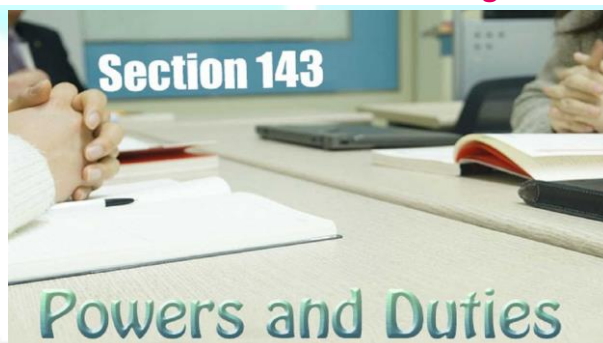
If a person appointed as an auditor of a company incurs any of the disqualifications mentioned above after his appointment, then he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor

1.4 Section 142: Remuneration of auditors



- The remuneration of the auditor of a company shall be fixed in its general meeting. However, the Board may fix remuneration of the first auditor appointed by it.
- The remuneration shall, in addition to the fee payable to an auditor, include the expenses incurred by the auditor in connection with the audit of the company.

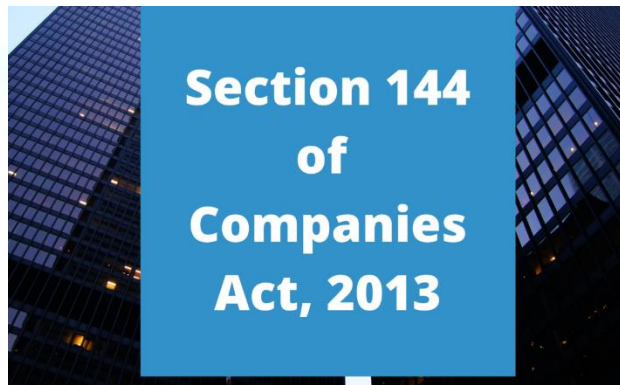
1.5 Section 143: Powers and duties of auditors and auditing standards



- Every auditor of a company shall have a **right of access** at all times to the books of account and vouchers of the company.
- The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements will be laid before the company in general meeting.
- The auditor's report shall also state:
 - whether he has sought and obtained all the information and explanations necessary for the purpose of his audit. And if not, the details thereof and the effect of such information on the financial statements;
 - whether proper books of accounts have been kept by the company and proper returns adequate for the purposes of his audit have been received.

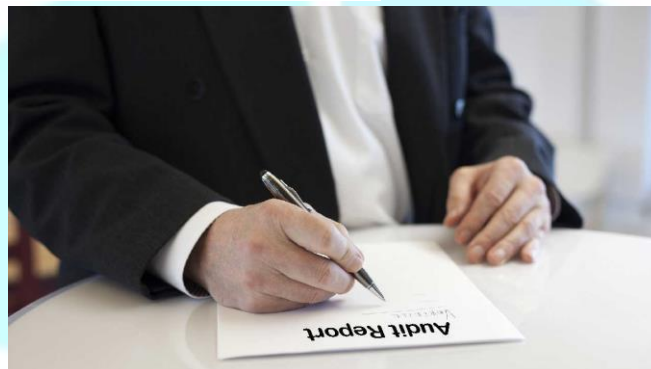
- whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- whether the financial statements comply with the accounting standards; the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- whether any director is disqualified from being appointed as a director
- any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters;
- whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;
- If any of the matters required to be included in the audit report is disqualified, the report shall state the reasons for it.
- In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor and direct auditor the manner in which the accounts of the Government company are required to be audited.
- And the auditor shall submit a copy of the audit report to the Comptroller and Auditor-General of India which include the directions issued by the Comptroller and Auditor-General of India, the action taken and its impact on the accounts and financial statement of the company.
- The **Comptroller and Auditor-General of India shall within 60 days** from the date of receipt of the audit report have a right to
 - a) conduct a supplementary audit of the financial statement of the company
 - b) comment upon or supplement such audit report
- The Comptroller and Auditor-General of India may conduct test audit of the accounts of company.
- Every auditor shall comply with the auditing standards.
- The Central Government may prescribe the standards of auditing as recommended by the **Institute of Chartered Accountants** of India, in consultation with the **National Financial Reporting Authority**.
- If no standards are specified by Central government for Financial audit, then standards of auditing specified by the **Institute of Chartered Accountants** of India shall be deemed to be the auditing standards
- The Central Government may in consultation with the National Financial Reporting Authority, direct that the auditor's report shall also include a statement on such matters as may be specified therein.
- If an auditor of a company has reason to believe that an offence involving fraud is being committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government.
- The provisions of this section shall apply to:
 - a) the **cost accountant** in practice conducting cost audit under **section 148**; or
 - b) the **company secretary** in practice conducting secretarial audit under **section 204**.
- If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall,—
 - (a) in case of a listed company, be liable to a penalty of five lakh rupees; and
 - (b) in case of any other company, be liable to a penalty of one lakh rupees.

1.6 Section 144: Auditor not to render certain services



1. Auditor shall provide services as are approved by the Board of Directors or the audit committee
2. Auditors shall not provide the following services directly or indirectly to the company or its holding company or subsidiary company
 - I. accounting and bookkeeping services
 - II. internal audit;
 - III. design and implementation of any financial information system;
 - IV. actuarial services;
 - V. investment advisory services, investment banking services and Financial services;
 - VI. Management service

1.7 Section 145: Auditor to sign audit reports, etc



1. The person appointed as an auditor of the company shall sign the auditor's report
2. Observations or comments on financial transactions 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

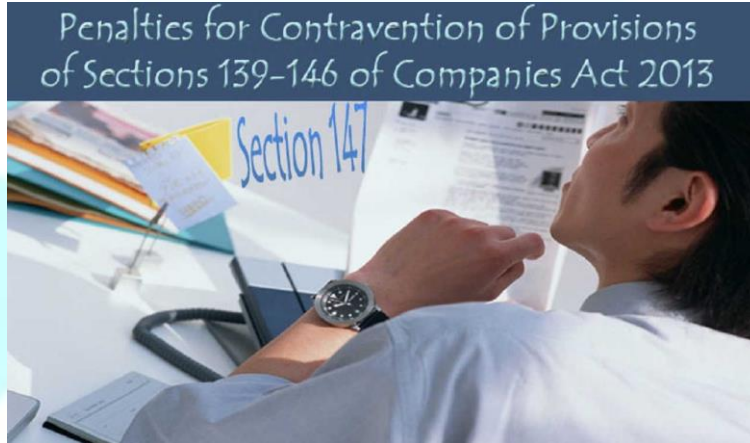
1.8 Section 146. Auditors to attend general meeting



1. All notices of related to any general meeting shall be forwarded to the auditor of the company

2. The auditor shall (unless otherwise exempted by the company) attend all general meeting. If auditor is not able to attend the meeting, then he shall send his authorized representative and that authorized representative shall also be qualified to be an auditor.
3. In general meeting auditor shall have right to be heard or put across his view on any part of the business which concerns him as the auditor

1.9 Section 147: Punishment for contravention



Punishment can be for Violation by Companies or by Auditors

Punishment to Companies

1. The company shall be punishable with fine of **minimum of twenty-five thousand rupees**, but which may be extended to **five lakh rupees**
2. Every officer of the company who is in default shall be punishable with Fine which shall not be less than ten thousand rupees, but which may extend to **one lakh rupees**
3. If the directors of the company have acted in a fraudulent manner or colluded in any fraud, then the criminal or civil liability in such a case shall be of both the firm and the directors

Punishment to Auditors FOR:

Violation of any of provision of the following sections by auditor

- **Section 139** - Appointment of Auditors
 - **Section 144** – Auditor not to render certain services
 - **Section 145** – Auditor to Sign Audit Reports, etc.
- A. If the violation is just due to lax attitude but is not intended to willfully deceive the company and its shareholders, then auditor shall be punishable with fine
 1. Minimum - **twenty-five thousand rupees**
 2. Maximum - **Five lakh rupees or four times** the remuneration of the auditor, whichever is less
 - B. If the violation is intended to willfully deceive the company and its shareholders, then auditor shall be punishable with
 1. **Imprisonment for a term up to one year**
 2. **Fine**
 - I. Minimum - **Fifty thousand rupees**
 - II. Maximum - **Twenty-five lakh rupees or eight times** the remuneration of the auditor, whichever is less
 - C. If the auditor has been punished either due to lax attitude or for willfully deceiving the company and its shareholders, then additionally he is liable to do the following also

1. He shall refund the remuneration received by him to the company
2. Pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements made in his audit report.

- D. If the auditors of the company have acted in a fraudulent manner or colluded in any fraud, then
1. The **civil liability** in such a case shall be of both the audit firm and the partners of the audit firm
 2. **The criminal liability**
 - I. related to fine in such a case shall be of both the audit firm and the partners of the audit firm
 - II. related to any other punishment apart from fine in such a case shall be of the audit firm and only the partners who colluded in fraud

1.10 Section 148: Central Government to specify audit of items of cost in respect of certain companies



The Central Government may direct companies (**having an overall turnover \geq 35 crore** from all its products and services the immediately preceding financial year) that Cost data for specific items related to the utilization of material or labor shall also be included in the books of account.

Criteria for Cost Audit

The central government can also direct for cost audit of companies meeting below requirements shall be conducted

Specific Items for which cost data needs to be maintained

1. **Category A** -> Regulated Sectors such as Telecom, Pharma, Petroleum, Fertilizers, sugar
2. **Category B** -> Non-Regulated Sectors such as Machinery, Turbo jets, Steel, Coffee, Tea, Minerals, Rubber, Roads and Railways, Radars, Tanks, Arms and Ammunitions, Paper, Tyres, Milk Power, Glass etc.

1. For the items under **Category A** need to conduct cost audit if
 - I. The overall annual turnover of the company from all its products and services during the immediately preceding financial year **is \geq 50 crore** And
 - II. The aggregate turnover of the individual product or products or services for which cost records are required to be maintained **is \geq 25 crore.**
2. For the items under **category B**, need to conduct cost audit if
 - I. The overall annual turnover of the company from all its products and services during the immediately preceding financial year is **\geq 100 crore** And
 - II. The aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained is **\geq 35 crore.**

Who Shall Conduct Cost Audit

The audit shall be conducted by a Cost Accountant. The cost accountant shall be appointed in the following manner

1. In the case of companies which are required to constitute an audit committee
 - I. The Board shall appoint an individual who is a cost accountant or a firm of cost accountants as cost auditor on the recommendations of the Audit committee
 - II. The Audit committee shall also recommend the remuneration of the cost auditor and same shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders

2. In the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant or a firm of cost accountants as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently
 - No Person appointed as Financial Auditor of the company shall be appointed for conducting the audit of cost records.
 - Auditor conducting the cost audit shall comply with the cost auditing standards which are specified by Institute of Cost Accountants of India

Submission of Cost Audit to Central Government

- The cost auditor shall prepare a report submit to the Board of Directors of the company
- Company shall within thirty days from the date of receipt of a copy of the cost audit report should send the report to Central Government Central Government feels some additional information is required then it can ask the company to provide the same within such time as may be specified by that Government

2 Concept Check

1. In case of government company the _____ of India shall appoint an auditor within a period of _____ days from the commencement of the financial year and he shall hold office till the conclusion of next _____
 - A. CAG, 90, AGM
 - B. CAG, 180, EGM
 - C. CAG, 90, EGM
 - D. CAG,180, AGM

Ans: Option D

2. The auditor who has resigned from the company shall file a statement within a period of _____ days from the date of resignation with the company using form _____
 - A. 60, ADT-2
 - B. 30, ADT-2
 - C. 60,ADT-3
 - D. 30, ADT-3

Ans: Option D

3. If no standards are specified by Central government for Financial audit, then standards of auditing specified by the _____ of India shall be deemed to be the auditing standards
- A. Institute of Cost Accountants
 - B. Institute of Chartered Accountants
 - C. Institute of Company Secretary
 - D. Any of the above

Ans: Option B

4. If auditor has willfully deceived the company then what is maximum fine which can be imposed on him given his remuneration is 1 lakh
- A. 25 lakh
 - B. 33 Lakh
 - C. 8 lakh
 - D. 50 lakh

Ans: Option C

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