

**2**

**COMPANY ACCOUNTS & AUDIT**

Section-wise Brief Overview of this Chapter is emphasised as under:

- 139 •Appointment of Auditor
- 140 •Removal & Resignation
- 141 •Qualifications & Disqualification of Auditor
- 142 •Remuneration of Auditor
- 143 •Powers & Duties of Auditor
- 144 •Auditors not to render certain services
- 145 •Signing Audit Report
- 146 •Attending AGM
- 147 •Penalties
- 148 •Cost Auditor

**SEC 139: APPOINTMENT OF AUDITORS**

- 139(1) APPOINTMENT OF AUDITORS AT AGM (FIRST AGM AND SUBSEQUENT AGMS)
- 139 (1) & (4) ROTATION OF AUDITOR
- 139 (5) APPOINTMENT OF SUBSEQUENT AUDITOR, IN CASE OF GOVERNMENT
- 139 (6) & (7) APPOINTMENT OF FIRST AUDITOR
- 139 (8) CASUAL VACANCY
- 139 (9) & (10) RE-APPOINTMENT OF RETIRED AUDITOR

**SEC 139**  
**APPOINTMENT OF AUDITOR**

**APPOINTMENT OF FIRST AUDITORS [SEC. 139(6), 139 (7)]**

Provision	Sec.139(7)	Sec.139(6)
<b>Type of Company covered</b>	Government Companies, or Any other Company owned or controlled, directly or indirectly, by —  (a) By the Central Government, or  (b) By any State Government or Governments, or  (c) Partly by the Central Government and partly by one of more State Governments.	any other Company
<b>Appointment of First Auditor</b>	<b>Appointment by:</b> C&AG of India.  <b>Time limit:</b> Within 60 days from the date of registration of the Company.	<b>Appointment by:</b> Board of Directors.  <b>Time Limit:</b> Within 30 days from the date of registration of the Company.
<b>In case of failure of above</b>	The <b>Board of Directors</b> shall appoint the First Auditor, within the <b>next 30 days</b> .	<b>See next point below.</b>
<b>In case of BOD failure</b>	BOD shall inform the Members of its failure.  Members shall appoint the Auditor, <b>within 60 days</b> , in an EGM.	BOD shall inform the Members of its failure.  Members shall appoint the Auditor, <b>within 90 days</b> , in an EGM.
<b>Tenure</b>	First Auditor shall hold office till the conclusion of the  <b>First AGM.</b>	First Auditor shall hold office till the conclusion of the  <b>First AGM.</b>
<b>Overriding of</b>	The above provisions override Sec. 139(1) & 139(5).	The above provisions override Sec. 139(1).

**APPOINTMENT OF AUDITORS OF GOVERNMENT COMPANIES [SEC 139(5)]**

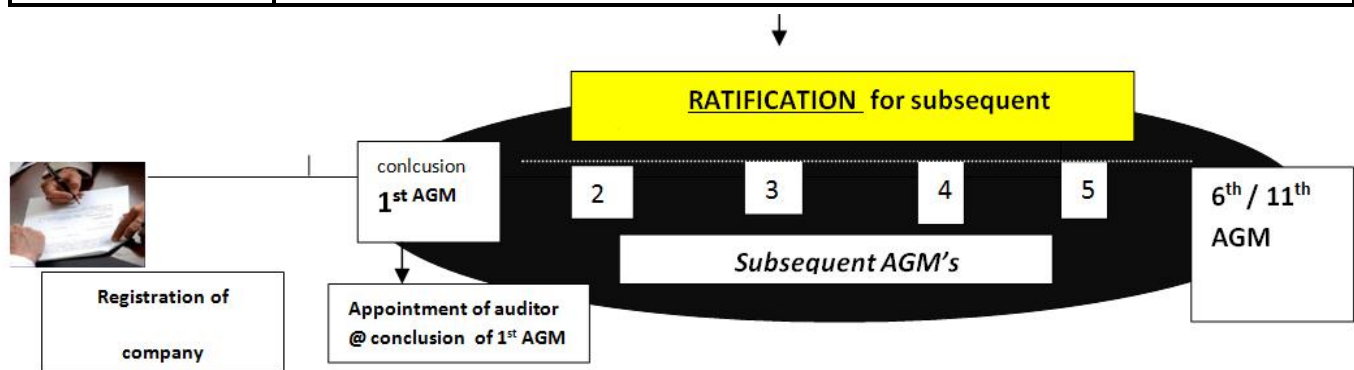
Point	Description
<b>Type of Companies</b>	Government Companies, or Any other Company owned or controlled, directly or indirectly, by —

	<p>(a) By the Central Government, or</p> <p>(b) By any State Government or Governments,</p> <p>(c) Partly by the Central Government and partly by one of more State Governments.</p>
<b>Appointment of Auditors</b>	<p><b>Appointee:</b> Auditor duly qualified to be appointed as Auditor under the Act.</p> <p><b>Appointment by:</b> Comptroller and Auditor General (C&amp;AG) of India.</p> <p><b>Time Limit:</b> Within <b>180 days</b> from the commencement of the financial year.</p> <p><b>Tenure:</b> To hold office till the conclusion of the AGM.</p>

**APPOINTMENT OF AUDITORS AT AGM [SEC. 139(1)]**

Point	Description
<b>Appointment at AGM</b>	<p>Every company shall appoint an Individual or a Firm as Auditor of the Company, at its 1<sup>st</sup> AGM.</p> <p><b>Note:</b></p> <p><b>Appointment</b> includes re-appointment.</p> <p><b>Firm</b> includes a Limited Liability Partnership (LLP) incorporated under the LLP Act, 2008.</p>
<b>Tenure</b>	<p>Auditor shall hold the office from the conclusion of 1<sup>st</sup> AGM to till the conclusion of its 6<sup>th</sup> AGM and thereafter till the conclusion of every 6<sup>th</sup> AGM.</p> <p>For the above purpose, the Meeting wherein such appointment has been made will be counted as the first meeting.</p>
<b>Ratification at every AGM</b>	<p>The Company shall place the matter relating to appointment of Auditors, for <b>ratification</b> by Members, at <b>every AGM</b>, by way of passing an Ordinary Resolution.</p> <p>If the appointment is <b>not ratified</b> by the Members of the Company at the AGM, the <b>Board of Directors</b> shall appoint another Individual / Firm as the Auditor(s), after following the procedure laid down in this behalf under the Act.</p>
<b>Duties of Company</b>	<p>The Company should obtain the <b>written consent</b> of the Auditor, and the prescribed <b>Certificate</b> from the Auditor, <b>before</b> appointing the Auditor. [<b>Note:</b> See next point for <b>Certificate.</b>]</p> <p>The Company should inform the Auditor about his appointment and file a notice with the Registrar, within 15 days of the Meeting in which Auditor was appointed, in Form <b>ADT—1</b>.</p> <p><b>ADT—1 Contents</b> include details as to Auditors’ — (a) Income Tax PAN, (b) Name, (c) Membership Number / Firm Registration Number, (d) Address, with City, State and PIN Code, (e) email id.</p>

<p><b>Contents of Certificate of Auditor</b></p>	<p>The Auditor (Individual/Firm), is eligible for appointment, and is not disqualified for appointment under the Companies Act, the Chartered Accountants Act, 1949 and its related Rules or Regulations,</p> <p>The proposed appointment is as per the term provided under the Act,</p> <p>The proposed appointment is within the limits laid down by or under the authority of the Act,</p> <p>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.</p>
<p><b>Effect of no appointment at AGM</b></p>	<p>If at any AGM, the Auditor is not appointed or re—appointed, the Existing Auditor shall continue to be the Auditor of the Company. <b>[Sec.139(10)]</b></p>



**MANNER & PROCEDURE FOR SELECTION AND APPOINTMENT OF AUDITOR [SEC 139(1) & RULES]**

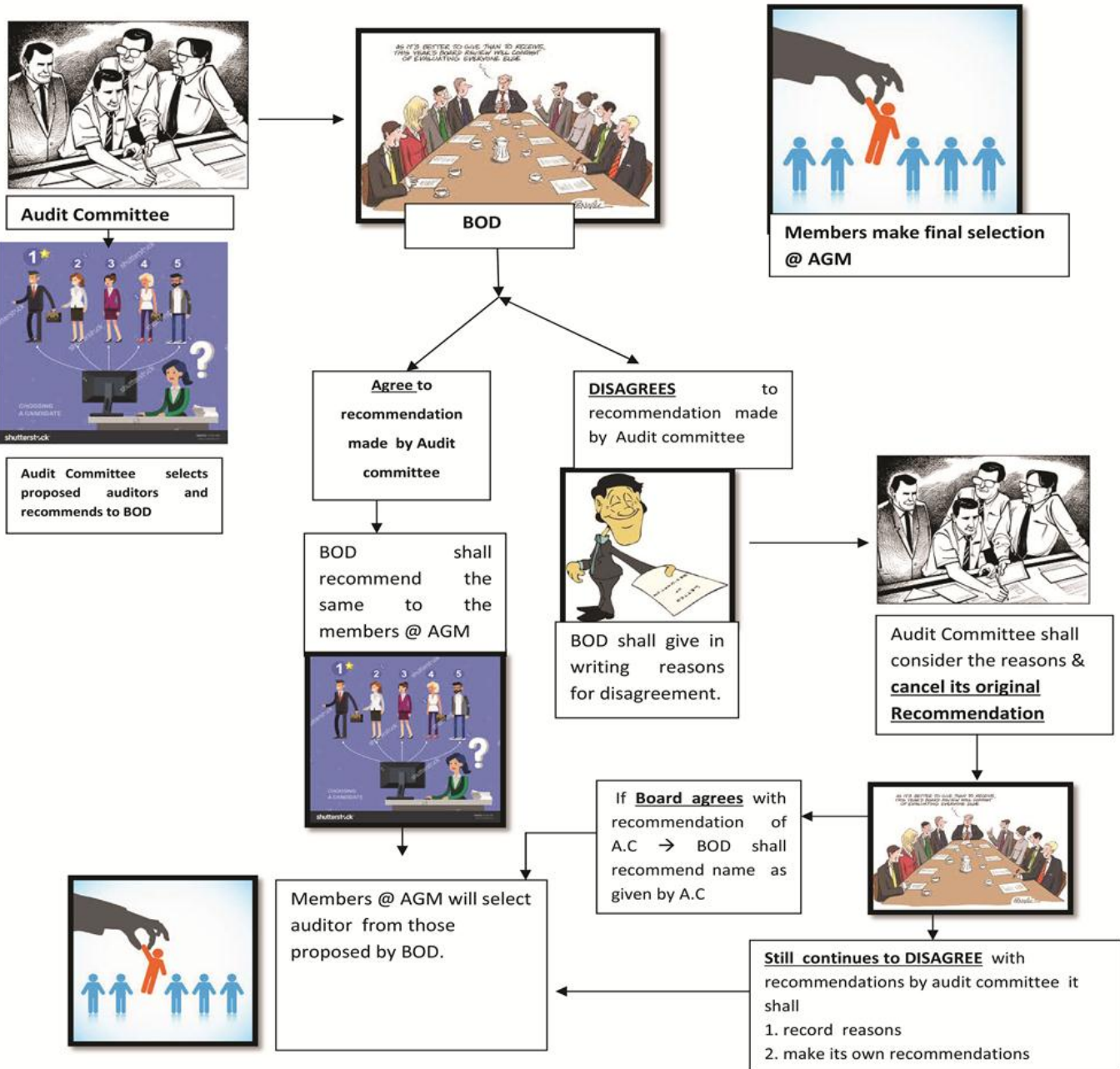
<p><b>Situation “A”</b></p>	<p><b>Where Audit Committee is required to be constituted u/s 177 (i.e. for Listed Companies and other prescribed class(es) of Companies)</b></p>
<p><b>Initial Selection of Auditors by Committee</b></p>	<p>The <b>Audit Committee</b> shall recommend to the <b>BOD</b>, the name of an Individual / Firm as Auditor, after considering the following —</p> <p>Qualifications and Experience of the Individual/Firm.</p> <p>Whether such Qualifications and Experience are commensurate with the size and requirements of the Company.</p> <p>Order or Pending Proceedings against the Individual/Firm relating to professional matter of</p> <p>Any other information which the Committee has called for from the Proposed Auditor.</p>
<p><b>If Audit Committee and BOD agree</b></p>	<p>If the BOD agrees with the recommendation of Audit Committee, the BOD shall —</p> <p><b>further recommend</b> the appointment to the Members,</p> <p><b>place the matter</b> for consideration by Members in the AGM.</p>

<b>If Audit Committee and BOD disagree</b>	If the BOD disagrees with Audit Committee’s recommendation, it should <b>refer back</b> to the Audit Committee for its reconsideration, citing the reasons for its disagreement.  If the Audit Committee <b>does not reconsider</b> its recommendation, after taking the reasons given by the BOD, then, the BOD shall —  <b>record the reasons</b> for its disagreement with the Committee.  <b>send its own recommendation</b> for consideration of the Members in the AGM.
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**Note:** If a Company is required to constitute Audit Committee u/s 177, all appointments, including the filling of a casual vacancy of an Auditor should be made after considering that Committee’s recommendations. **[Sec. 139(11)]**

**Situation “B”: When there is no requirement as to Audit Committee**

The **Board of Directors** (BOD) shall recommend to the **Members** in the AGM, the name of an Individual/Firm as Auditor, after considering the factors mentioned in the Table above in Situation A.



**CASUAL VACANCY [SEC. 139(8)]**

Type of Company	For Companies whose accounts are subject to audit by an Auditor appointed by the C&AG	For all other Companies
<b>Filling of Casual Vacancy</b>	<b>C&amp;AG</b> shall fill the Casual Vacancy, <b>within 30 days</b> . If C&AG does not fill the vacancy within 30 days, the <b>BOD</b> shall fill the vacancy, <b>within next 30 days</b> .	<b>Board of Directors</b> shall fill the casual vacancy, <b>within 30 days</b> .  See <b>Notes</b> below.
<b>Tenure</b>	Till the conclusion of the next AGM. [as per <b>Sec.139(5)</b> ]	Till the conclusion of the next AGM [ <b>sec.139(8)</b> ]

**Note:**

- If vacancy is caused by resignation, the appointment should also be approved by the Company at a General Meeting convened within 3 months of BOD recommendation.
- For Companies in which an Audit Committee u/s 177 is required, the recommendations of that Committee shall also be considered for Casual Vacancy.

**RE-APPOINTMENT OF RETIRING AUDITOR [SEC. 139(9)]**

Subject to Sec. 139(1), the Retiring Auditor may be re-appointed at an AGM, if—

1. If the Retiring Auditor is not disqualified for re-appointment,
2. If the Retiring Auditor has not given the Company a notice in writing of his unwillingness to be re-appointed,
3. If a Special Resolution has not been passed at that AGM, appointing another Auditor instead of the Retiring Auditor or providing expressly that the Retiring Auditor shall not be re-appointed.



**ROTATION OF AUDITORS [SEC. 139(2), (3), (4), RULES]**

Rotation	Applicable to
<b>Rotation Principles Applicable to</b> <b>Key Code:</b> <b>LUPA</b> <b>(AMENDMENT)</b>	<b>L</b> isted Companies <b>U</b> nlisted Public Companies having Paid Up Share Capital of ₹ 10 Crores or more, <b>P</b> rivate Limited Companies having Paid Up Share Capital of <del>₹ 20 Crores</del> <b>₹ 50 Crores</b> or more, <b>A</b> ny other Company having Paid Up Share Capital below the above specified limits, but having Public Borrowings from Financial Institutions, Banks or Public Deposits of ₹ 50 Crores or more.  <b>Note:</b> Excluded Companies — (a) One Person Company, and (b) Small Company.
<b>Maximum Tenure of Auditors</b>	above Companies shall not appoint/re-appoint – An Individual as Auditor, for more than 1 term of 5 consecutive years, and An Audit Firm as Auditor, for more than 2 terms of 5 consecutive years.
<b>Auditors Ineligible for appointment – Different Scenarios</b>	<b>Cooling Off Period:</b> Any Individual or Audit Firm shall <b>not</b> be eligible for re-appointment as Auditor in the same Company, for <b>5 years</b> from the completion of their audit term.  <b>Common Partners:</b> Any Audit Firm having <b>common partner(s)</b> on the date of appointment, in the retiring Audit Firm whose tenure has expired immediately preceding the financial year, shall <b>not</b> be appointed as Auditor, for a period of <b>5 years</b> .  <b>Old Certifying Partner in New Firm:</b> If a Partner, who is in charge of an Audit Firm and also certifies the Financial Statements of the Company, <b>retires</b> from the said Firm and joins another Firm of Chartered Accountants, then such Other Firm is also <b>ineligible</b> to be appointed for a period of 5 years.



	<p><b>Same Network Firms:</b> The Incoming Auditor or Audit Firm is not eligible to be appointed, if it is associated with the Outgoing Auditor or Audit Firm under the <b>same network</b> of Audit Firms. [<b>Note:</b> “Same Network” includes the Firms functioning, <b>hitherto or in future</b>, under the same brand name, trade name or common control.]</p> <p>Eg. Mr L is a common partner in Firm JKL as well as Firm LMN.</p> <p><b>s FIRM JKL + FIRM LMN = INELIGIBLE FOR REAPPOINTMENT.</b></p>
<b>3 Year Time Period for Compliance</b>	Every Existing Company which is required to comply with Sec. 139(2), shall comply with the requirement, <b>within 3 years</b> from the date of commencement of this Act.
<b>Additional Conditions [Sec. 139(3)]</b>	<p>Subject to the provisions of the Act, the Members of a Company may resolve to provide that —</p> <p>In the Audit Firm appointed by it, the Auditing Partner and his Team shall be rotated at such intervals, as may be resolved by the Members, or</p> <p>The Audit shall be conducted by more than one Auditor.</p>
<b>Other Points</b>	<p>When there is a Rotation of Auditors on expiry of 5—year term, the Audit Committee or BOD shall follow the Manner and Procedure for Selection and Appointment of Auditors, as specified u/s 139(1) and Rules above, e.g. consideration of qualifications, etc.</p> <p>A <b>break</b> in the term for a continuous period of 5 years is considered as fulfilling the requirement of rotation.</p> <p>Sec. 139(2) shall not affect — (a) the right of the Company to remove an Auditor, or (b) the right of the Auditor to resign his office. <b>Note:</b> This means that the appointment for 5 year period is not irrevocable, and the Auditor may resign, or Company may remove the Auditor before that period.</p>

### ILLUSTRATION ON ROTATION OF AUDITORS [RULES]

**Illustration 1: Illustration explaining Rotation in case of Individual Auditor**

Number of consecutive years for which an Individual Auditor has been functioning as Auditor in the same Company [in the first AGM held after the commencement of provisions of Sec.139(2)]	Maximum number of consecutive years for which he may be appointed in the same Company (including Transitional Period)	Aggregate period which the auditor would complete in the same Company in view of Column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years



1 years	4 years	5 years
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**Notes:**

1. Individual Auditor shall include other Individuals or Firms whose Name or Trademark or Brand is used by such individuals, if any.
2. Consecutive years shall mean all the preceding financial years for which the Individual Auditor has been the Auditor, until there has been a break by five years or more.

**Illustration 2 Illustration explaining rotation in case of Audit Firm**

<b>Number of consecutive years for which an audit Firm has been functioning as Auditor in the same Company [in the first AGM held after the commencement of provisions of Sec.139(2)]</b>	Maximum number of consecutive years for which the Firm may be appointed in the same Company (including Transitional Period)	Aggregate period which the Firm would complete in the same Company in view of Column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years -	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 years -	9 years	10 years

**Notes:**

1. Audit Firm shall include other Firms whose Name or Trademark or Brand is used by the Firm or any of its Partners.
2. Consecutive years shall mean all the preceding financial years for which the Firm has been the Auditor until there has been a break by five years or more.

**SEC 140**  
**REMOVAL OF AUDITOR**

**REMOVAL OF AUDITORS BEFORE EXPIRY OF TERM [SEC. 140(1) AND RULES]**

<p><b>Procedure for Removal before expiry of term</b></p>	<p><b>BOD</b> should pass a <b>Resolution</b> for removal of Auditors.</p> <p>Application should be made to Central Government in <b>Form ADT—2, within 30 days</b> of BOD Resolution.</p> <p><b>Previous Approval</b> of Central Government should be obtained, in response to Form ADT—2.</p> <p>A <b>General Meeting</b> should be held <b>within 60 days</b> of receipt of approval from Central Government.</p> <p><b>Special Resolution</b> should be passed in the above General Meeting, for removal of Auditors.</p> <p>Before taking any action u/s 140(1), the Auditor shall be given a reasonable opportunity of being heard.</p>
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**Note: Contents of Form ADT—2** include the following —

1. Grounds of seeking removal of Auditor,
2. Details of Qualifications in Accounts in past 3 years,
3. Details of Opportunity of being heard given to the Auditor,
4. Details of Civil I Criminal Proceedings pending between Company I Concerned Officers,
5. Special Notice received for Removal of Auditors, if any.
6. Percentage of Capital held by Members who propose removal of Auditors,
7. Whether all due Audit Fees has been paid to the concerned Auditors,
8. Details of Other Services rendered by such Auditors to the Company,
9. Number of years for which audit is pending,
10. Stage of accounts for each financial year, e.g. yet to be approved by Board, or yet to be handed over to Auditors, etc.
11. Dispute with regard to Books of Accounts in the possession of Auditors but not delivered back to the Company,



**REMOVAL OF AUDITORS AT AGM [SEC.140(4) AND RULES]**

This is done by appointing an Auditor other than the Retiring Auditor with the following points —

1. **Special Notice:** Special Notice is required for a resolution at an AGM for —

- (a) appointing as Auditor, a person other than the Retiring Auditor, or
- (b) providing expressly that the Retiring Auditor shall not be re—appointed.

**Note:** If the Retiring Auditor has completed a consecutive tenure of 5 years (for Individual) or 10 years (for Firm), such Special Notice is not required.

2. **Copy to Auditor:** On receipt of above notice, the Company shall send **forthwith** a copy thereof to the Retiring Auditor.

3. **Rights of Retiring Auditor:** The Retiring Auditor has the following rights —

- (a) To make a representation of a reasonable length to the Company,
- (b) To request that such representation be circulated among the members,
- (c) To require that the representations be read out at the AGM, and he be heard orally at the AGM.

4. **Company’s Duties:** Where the Retiring Auditor makes a representation in writing to the Members of the Company, the Company shall —

- (a) state the fact of representations being made, in any notice of the resolution given to Members of the Company, and
- (b) send a copy of representation to every Member of the Company to whom notice of meeting is sent, whether before or after the receipt of representation by the Company.

**Note:** The Auditors’ Representations need not be circulated to Members by the Company, if —

- (a) The representations are received too late by the Company, or
- (b) The Tribunal is satisfied, on the application made by the Company or any other aggrieved person, that the right of representation is being abused by the Auditor.

If the representation is not sent to the Members, a copy thereof should be filed with the ROC.

**CHANGE OF AUDITORS BASED ON TRIBUNAL’S DIRECTION [SEC.140(5)]**

<b>Situation</b>	<p>bunational is satisfied that the Auditor of a Company has, directly or indirectly, —</p> <p>acted in a <b>fraudulent manner</b>, or</p> <p><b>abetted or colluded</b> in any <b>fraud</b> by, or in relation to, the Company or its Directors or Officers.</p>
<b>Basis for Tribunal’s findings</b>	<p>suo-motu by Tribunal, or</p> <p>Application made to Tribunal by Central Government, or</p> <p>Application made to Tribunal by any person concerned.</p>
<b>Order of Tribunal</b>	<p>The Tribunal can order the Company to change its Auditors, on the above cited grounds.</p> <p>In case of Application by Central Government, the Tribunal shall make an order <b>within 15 days</b> of receipt of application, that the person shall not function as an Auditor. The Central Government may appoint another Auditor in his place.</p>

<b>Effect of Tribunal's Final Order</b>	<p>The Individual/Firm against whom a Final Order u/s 140 is passed by Tribunal, is not eligible to be appointed as Auditor of <b>any Company</b> for a period of 5 years from the date of the order.</p> <p>If the order is against any Firm, the liability shall be of the Firm <b>and</b> of every Partner(s) who have acted in a fraudulent manner, or abetted or colluded in the fraud.</p> <p>The erring Auditors are also liable for action u/s 447.</p> <p>In case of <b>criminal liability</b> of any Audit Firm, the <b>liability other than fine</b> shall devolve only on the concerned Partner(s) who acted in a fraudulent manner, or abetted or colluded in the fraud.</p>
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### RESIGNATION OF AUDITORS (SEC.140(2), (3) AND RULES]

<b>Procedure</b>	<p>An Auditor has the right to resign from the Company, before the expiry of his term.</p> <p>The Resigning Auditor should file <b>Form ADT-3, within 30 days</b> of date of resignation.</p>
<b>Form ADT-3 Time Limit</b>	<p>Form ADT—3 shall be filed with —</p> <p>the Company,</p> <p>the ROC, and also</p> <p>the C&amp;AG in case of Sec. 139(5) Companies.</p>
<b>Form ADT-3 Contents</b>	<p>Form ADT—3 requires details to be furnished in respect of — (a) reasons for resignation, and (b) any other facts as may be relevant with regard to the resignation.</p>
<b>Non-Compliance</b>	<p>If the Auditor fails to furnish Form ADT—3 as above, he is punishable with Fine of Minimum ₹ 50,000 to Maximum ₹ 5,00,000.</p>

### **SEC 141**

### **ELIGIBILITY, QUALIFICATIONS & DISQUALIFICATIONS OF AUDITOR**

#### QUALIFICATIONS OF AUDITORS [SEC. 141(1), (2)]

1. A person shall be eligible for appointment as an Auditor of a Company only if he is a Chartered Accountant.
2. A Firm whereof **majority** of the Partners **practising in India** are qualified for appointment, as aforesaid, may be appointed by its Firm Name to be the Auditors of a Company.
3. Where a Firm (including a LLP) is appointed as Auditor of the Company, only the **Partners who are Chartered Accountants** are authorised to act and sign on behalf of the firm.



## **DISQUALIFICATIONS OF AUDITORS [SEC. 141(3), (4) AND RULES]**

1. **Disqualifications [Sec. 141(3)]:** The following persons are not eligible for appointment as an Auditor of a Company –



- (a) a **Body Corporate** other than a Limited Liability Partnership,
- (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 is Subsidiary, Holding or Associate Company or a Subsidiary of such Holding Company. (**Note:** A Relative may hold security or interest in the Company of Face Value not exceeding Rs. 1,00,000).
  - (ii) is indebted to the Company or its Subsidiary, Holding or Associate Company or a Subsidiary of such Holding Company, in excess of Rs. 5,00,000 or
  - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its Subsidiary, Holding or Associate Company or a Subsidiary of such Holding Company, in excess of Rs. 1,00,000.
- (e) a Person or a Firm, who, whether directly or indirectly, has **business relationship** with the Company, or its Subsidiary, Holding or Associate Company or Subsidiary of such Holding Company or Associate Company,
- (f) a Person whose **Relative is a Director** or is in the employment of the Company as a Director or Key Managerial Personnel,
- (g) a Person who is in full time employment elsewhere or a person or a Partner of a Firm **holding audits of more than 20 Companies (excluding One Person Company, Dormant Company, Small Company and a Private Company having PUJC < Rs. 100 Crore)** on the date of appointment or re-appointment as Auditor.
- (h) a Person who has been **convicted** by a Court, of an offence involving **fraud**, and a period of 10 years has not elapsed from the date of such conviction,
- (i) any Person whose Subsidiary or Associate Company or any other form of Entity, is engaged as on the date of appointment, in **consulting and specialised services** as provided in Sec.144.

**Note:** For, the purposes of Point (e) above, Business Relationship all be construed as any transaction entered into for a **commercial purpose**, except -

- (a) Commercial Transactions, which, are in the nature of **Professional Services** permitted to be rendered by an Auditor or Audit Firm under the Companies Act or CA Act and Rule/ Regulations thereunder.
- (b) Commercial Transactions 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.

2. **Subsequent Disqualification = Casual Vacancy:** If an Auditor, after his appointment, becomes subject to any of the above disqualifications, he shall be deemed to have automatically vacated his office and that vacancy shall be considered to be a Casual Vacancy. [Sec.141(4)]

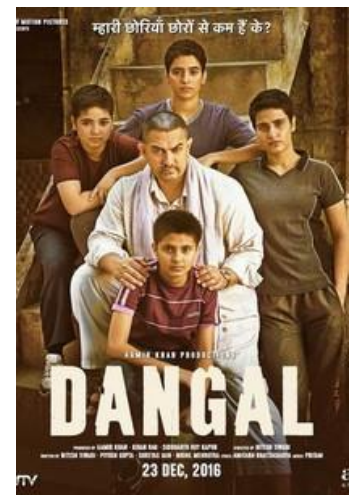
**SEC 144**  
**AUDITOR NOT TO RENDER CERTAIN SERVICES**

1. **Only Approved Services:** An Auditor of the Company can provide only those Other Services as approved by the Board of Directors or the Audit Committee.
2. **Prohibited Services:** The following services shall not be provided by an Auditor directly or indirectly to the Company or its Holding Company or Subsidiary Company —



KEY CODE → **AAMI<sup>3</sup>R** in **Dangal**

- (a) **A**ccounting and Book Keeping Services,
  - (b) **A**ctuarial Services,
  - (c) **M**anagement Services,
  - (d) **I**nvestment Advisory Services,
  - (e) **I**nvestment Banking Services,
  - (f) **I**nternal Audit,
  - (g) **R**endering of Outsourced Financial Services,
  - (h) **D**esign and Implementation of any Financial Information System,
  - (i) Any other kind of Services as may be prescribed.
3. **1 Year Timeframe:** An Existing Auditor which renders any of the non-audit services, shall comply with Sec. 144 before the closure of the first financial year after the date of commencement of this Act.
4. **Meanings:** The term “**directly or indirectly**” includes rendering of services by the Auditor —



In case of Auditor being an Individual	In case of Auditor being an Audit Firm
either himself, or	either itself, or
through his Relative, or	through any of its Partners, or
any other person connected or associated with such Individual, or	through its Parent, Subsidiary or Associate Entity, or
through any other entity, in which such Individual has significant influence or control, or whose	through any other Entity, in which the Firm or any Partner of the Firm has significant influence or

Name or Trademark of Brand is used by such Individual,

control, or whose Name or Trademark or Brand is used by the Firm or any of its Partners.

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**SEC 142**  
**REMUNERATION OF AUDITOR**

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1. The Remuneration of the Auditor shall be fixed by the Members — (a) in its General Meeting, or (b) in such manner as may be determined at the Meeting.
2. Remuneration of the First Auditor may be fixed by the Board of Directors.
3. Remuneration **includes** —
  - (a) Fees Payable to the Auditor,
  - (b) Expenses if any, incurred by the Auditor in connection with the audit and any facility extended to the Auditor.
4. However, Remuneration **does not include** amount paid for any other service rendered by the Auditor at the request of the Company.



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**SEC 143: RIGHTS AND DUTIES OF AUDITOR**  
**PART A: RIGHTS**

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**RIGHT OF ACCESS TO BOOKS AND VOUCHERS [SEC. 143(1)(a)]:**

- (a) The Company Auditor 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 elsewhere.
- (b) The Auditor of a Holding Company shall also have the right of access to the records of all its Subsidiaries in so far as it relates to the consolidation of its Financial Statements



**RIGHT TO OBTAIN INFORMATION AND EXPLANATIONS [SEC. 143(1)(b)]:**

The Company Auditor is entitled to require from the Officers of the Company, such information and explanations as the Auditor may think necessary for the performance of his duties.

**RIGHT TO LIEN [SEC. 143(1)(e)]**

In terms of the general principles of law, any person having the lawful possession of somebody else's property, on which he has worked, may retain the property for non-payment of his dues on account of the work done on the property. On this premise, auditor can exercise lien on books and documents placed at his possession by the client for non-payment of fees, for work done on the books and documents.

Under section 128 of the Act, books of account of a company must be kept at the registered office. These provisions ordinarily make it impracticable for the auditor to have possession of the books and documents. The company provides reasonable facility to auditor for inspection of the books of account by directors and others authorised to



inspect under the Act. Taking an overall view of the matter, it seems that though legally, auditor may exercise right of lien in cases of companies, it is mostly impracticable for legal and practicable constraints. His working papers being his own property, the question of lien, on them does not arise.

SA 230 issued by ICAI on Audit Documentation (explanatory text, A- 25), “Standard on Quality Control (SQC) 1, “Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements”, issued by the Institute, provides that, unless otherwise specified by law or regulation, audit documentation is the property of the auditor. He may at his discretion, make portions of, or extracts from, audit documentation available to clients, provided such disclosure does not undermine the validity of the work performed, or, in the case of assurance engagements, the independence of the auditor or of his personnel.”

### **RIGHT TO HAVE QUALIFICATIONS, ETC. READ OUT AT GENERAL MEETING [SEC. 145]:**

Qualifications, Observations or Comments on the Financial Transactions or matters, which have any adverse effect on the functioning of the Company mentioned in the Auditor’s Report, shall be —

- (a) read before the Company in its General Meeting.
- (b) open for inspection by any Member of the Company.

### **RIGHT TO RECEIVE NOTICES AND TO ATTEND GENERAL MEETINGS [SEC 146]:**

- (a) All Notices of and other communications relating to, any General Meeting of a Company should be forwarded to the Auditors of a Company.
- (b) The Auditor shall be entitled to attend any General Meeting and to be heard at any General Meeting, which concerns him as Auditor.
- (c) Unless otherwise exempted by the Company, the Auditor shall attend the General Meeting —
  - either by himself, or
  - through his Authorised Representative, who shall also be qualified to be an Auditor.

**Note:** Thus, it is also the **duty** of the Auditor to attend the General Meeting.

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## **SEC 143: RIGHTS AND DUTIES OF AUDITOR**

### **PART B: DUTIES**

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### **INQUIRY INTO SPECIFIED AREAS [SEC. 143(1)]:**

The Company Auditor shall inquire into the following aspects —

- (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 is not an Investment Company or Banking Company, whether Assets of the Company consisting 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 any Shares have been allotted for cash, whether cash has actually been received, and if no cash has been received, whether the position as stated in the account books and the Balance Sheet is correct, regular and not misleading.

**REPORTING AS TO TRUE AND FAIR [SEC. 143(2)]:**

<b>Items reported on</b>	Auditor shall make a Report to the Members of the Company — Items on the accounts examined by him, and on every Financial Statements which are required by or under this Act to be laid before the Company in General Meeting.
<b>Reporting Considerations</b>	Report shall be made after taking into account, the following — the provisions of the Act, the accounting and auditing Standards, matters which are required to be included in the Audit Report under the provisions of the Act / Rules / Order u/s 143(11) best of his information and knowledge.
<b>Essence of Report</b>	In addition to other reporting matters, the Audit Report shall state whether the said Accounts, Financial Statements, give a true and fair view of — the state of the Company’s affairs as at the end of the financial year, Profit or Loss, Cash Flow for the year.

**REPORTING REQUIREMENTS [SEC. 143(3)]:**

The Auditor’s Report shall also state —

- (a) Whether he has sought and obtained all **information and explanations** to the best of his knowledge and belief that are necessary for the purpose of his audit. If the required information is not obtained, details and effect in Financial Statements should be mentioned.
- (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** audited by a person other than the Company Auditor has been forwarded to him and how he has dealt with the same in preparing the Auditor’s 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,

- (e) Whether, in his opinion, 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,
- (f) Whether any Director is disqualified from being appointed as a Director u/s 164(2),
- (g) any **Qualification, Reservation or Adverse Remark** relating to the maintenance of accounts and other matters connected therewith,
- (h) Whether the Company has adequate **Internal Financial Controls** system in place and the operating effectiveness of such controls,
- (i) Other matters as may be prescribed —
- (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.

**REASONS FOR NEGATIVE QUALIFICATION [SEC. 143(4)]:**

- (a) In case of Negative Remark or Qualification in any of the reporting matters u/s 143, the Audit Report shall state the reasons therefor.
- (b) Qualifications, Observations or Comments on the Financial Transactions or 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 its General Meeting.
  - open for inspection by any Member of the Company. [Sec. 145]

**DUTIES W.R.T. AUDIT OF GOVERNMENT COMPANIES [SEC. 143(5), (6), (7)]:**

<b>Directions by C&amp; AG</b>	The C & AG of India can issue directions to the Statutory Auditors on the <b>manner</b> in which the by C&AG accounts are required to be audited, in case of Auditor s appointed by C&AG u/s 139(5) or 139(7).
<b>Audit Report</b>	The Auditor shall submit a copy of the Audit Report to C&AG. In addition to the matters u/s 143, the report shall include the following additional points —  <b>Directions</b> issued by C&AG, <b>Actions</b> taken thereon, and Its <b>impact</b> on the Accounts and Financial Statement of the Company.
<b>Supplementary Audit</b>	Within 60 days from the receipt of above Audit Report the C&AG have right to —  Conduct a <b>Supplementary Audit</b> of the accounts with the help of authorized persons. C&AG shall also direct persons to provide additional information and other details for conducting supplementary audit.

	<b>Comment</b> upon or <b>supplement</b> the Audit Report.
<b>Comments of C&amp;AG</b>	<p>The comments or supplement given by C&amp;AG on the Audit Report shall be sent to the Company.</p> <p>The Company shall forward the same to every person entitled to copies of Financial Statements u/s 136(1).</p> <p>The comments/supplement shall also be placed in the AGM similar to that of the Audit Report.</p>
<b>Test Audit</b>	<p>The C&amp;AG, if it deems fit, may order for conduct of Test Audit in case of a Company covered u/s 139(5) or 139(7).</p> <p>The provisions of Sec.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.</p>

**COMPLIANCE WITH AUDITING STANDARDS [SEC.143(9), (10)]**

- (a) Every Auditor shall comply with the Auditing Standards.
- (b) The Central Government may prescribe the Standards of Auditing, as recommended by the ICAI, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- (c) Till such Auditing Standards are notified, Standards of Auditing specified by the ICAI shall be deemed to be the Auditing Standards.

**ADDITIONAL MATTERS REPORTING PER NAFRA [SEC. 143(11)]:**

In consultation with the National Financial Reporting Authority (NAFRA), the Central Government may order for the inclusion of a Statement on specified matters in the Auditor’s Report for specified class or description of Companies.

**REPORTING OF FRAUDS [SEC. 143(12), (13), (15)]:**

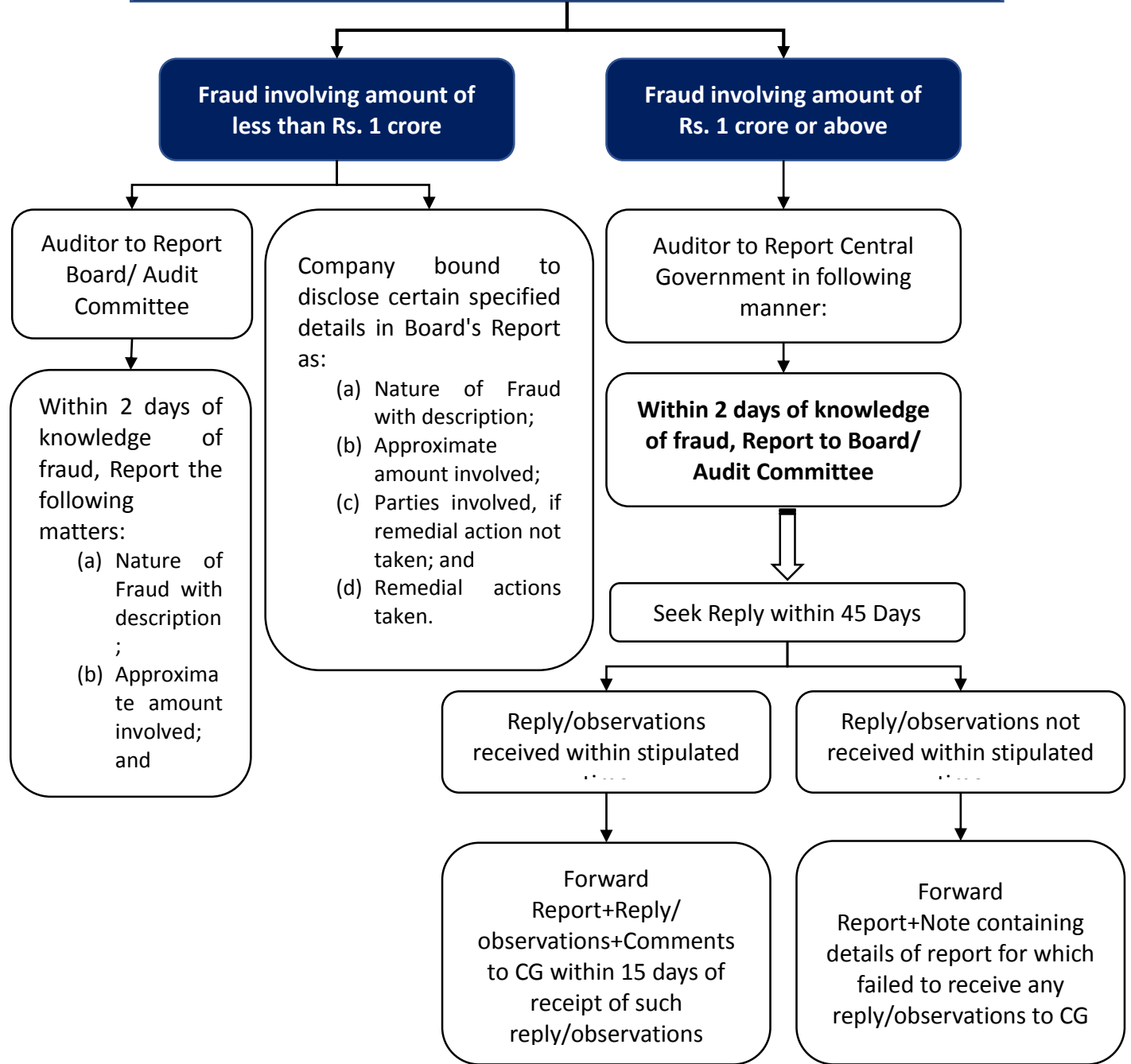
<b>Situation</b>	If the Company Auditor, in the course of performance of his duties, has <b>reason to believe</b> that an offence involving fraud is being or has been committed against the Company, by Officers or Employees of the Company.
<b>Auditors’ Duties</b>	<p>Sub-section (12) of section 143 of the Companies Act, 2013 furthermore prescribes that the companies, whose auditors have reported frauds under this sub - section (12) to the audit committee or the Board, but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.</p> <p>In this regard, sub-rule (4) of Rule 13 of the Companies (Audit and Auditors) Rules, 2014 states that the company is required to disclose in the Board’s Report the following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year:</p> <p>Nature of Fraud with description;                      Approximate Amount involved;                      Parties involved, if remedial action not taken; and                      Remedial actions taken.</p>

<b>Report Requirements</b>	<p><b>Sent to:</b> The Secretary, Ministry of Corporate Affairs, in a sealed cover.</p> <p><b>Mode:</b> Registered Post with Acknowledgement Due, or by Speed post, followed by an e-mail in confirmation thereof.</p> <p><b>Stationery:</b> Report shall be in Auditors' Letterhead, containing his Membership Number, Postal Address, Email Address and Contact Number. It shall be signed and sealed by Auditor.</p> <p><b>Format:</b> Report shall be in Form <b>ADT—4</b>.</p>
<b>ADT-4 Contents</b>	<p>Full details of suspected offence involving fraud (with documents in support),</p> <p>Particulars of Officers/Employees who are suspected to be involved in the offence,</p> <p>Basis on which fraud is suspected,</p> <p>Period during which the suspected fraud has occurred,</p> <p>Date of sending report to BOD/Audit Committee, and Date of reply, if any, received,</p> <p>Whether Auditor is satisfied with the reply/observations of BOD/Audit Committee,</p> <p>Estimated amount involved in the suspected fraud,</p> <p>Steps taken by the Company, if any, in this regard, with full details of references.</p>
<b>Good faith</b> <b>[Sec. 143(13)]</b>	<p>No duty to which the Company Auditor may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred u/s 143(12), if it is done in good faith.</p>
<b>Contravention</b>	<p><b>Persons:</b> Auditor/cost Accountant I Company Secretary, who do not comply with Sec. 143(12)</p> <p><b>Punishment:</b> Fine of Minimum ₹ 1,00,000 Maximum ₹ 25,00,000.</p>

**Note: Cost Audit/Secretarial Audit [Sec.143(14)]:** Sec.143 (in entirety) shall be applicable for—

- (a) A Cost Accountant in Practice, conducting Cost Audit u/s 148, and
- (b) A Company Secretary in Practice, conducting Secretarial Audit u/s 204.

**FRAUD REPORTING**  
[SECTION 143(12) OF COMPANIES ACT, 2013 & RULE 13 OF CAAR, 2014]



**SEC 145**  
**SIGNING AUDIT REPORT**

- (a) The person appointed as Auditor of the Company shall — (i) sign the Auditor’s Report, and (ii) sign or certify any other document of the Company as per Sec. 141(2).
- (b) If a Firm is appointed as Auditor of the Company, signing or certification shall be done only by the Chartered Accountants who are Partners and are authorised to act and sign on behalf of the Firm.

**PUNISHMENT FOR CONTRAVENTION [SEC. 147]**

Sec.	Nature of Act/Omission	Person punishable	Punishment
147 (1)	Contravention of Sec. 139 to Sec. 146	Company	Find of Minimum Rs. 25,000 Maximum Rs. 5,00,000
		Every Officer in Default	Imprisonment of Maximum 1 Year, or Find of Minimum Rs. 10,000 Maximum ₹ 1,00,000, or Both of the above.
147(2)	Contravention of Sec. 139, 143, 144, 145	itor	<p><b>Normal:</b> Find of Minimum Rs. 25,000 Maximum Rs. 5,00,000.</p> <p><b>If done knowingly or willfully,</b> with intention to deceive the Company or its Shareholders or Creditors or Tax Authorities:</p> <p>Imprisonment of Maximum 1 Year, or Find of Minimum Rs. 1,00,000 Maximum Rs. 25,00,000, or Both of the above</p>

**Notes: Additional Liability of Auditor [Sec. 147(3), (4)]**

1. If the Auditor is convicted u/s 147(2), he shall be liable to —
  - (a) **refund the remuneration** received by him to the Company, and
  - (b) **pay for damages** to the Company, Statutory Bodies or Authorities or to any other persons for loss arising out of incorrect or misleading statements made in his Audit Report.
2. The Central Government can notify any Statutory Body/Authority/Officer, to ensure prompt payment of damages to the Company or other entitled parties, and to file a report for compliance.

**Joint and Several Liability in case of Audit by Firm [Sec. 147(5)]**

<b>Situation</b>	Where it is proved that the Partner or Partners of the Audit Firm has or have — acted in a fraudulent manner, or abetted or colluded in any fraud by, or in relation to or by, the Company or its Directors or Officers
<b>Liability</b>	The civil or criminal liability, as provided in this Act or in any other law, for such act shall be of the Partner or Partners concerned of the Audit Firm and of the Firm <b>jointly and severally</b> .



**AUDIT OF BRANCHES [SEC. 143(8), RULES]**

1. **Qualifications:** The following persons are eligible for appointment as Branch Auditors –

In case of Local Branches	In case of Foreign Branches
The Company’s Auditor appointed u/s 139, or  A person qualified for appointment as an Auditor u/s 139.	The Company’s Auditor appointed u/s 139, or  An Accountant or other person duly qualified to act as an Auditor in accordance with the laws of that foreign country.

2. **Audit Report of Branch:**

- (a) The Branch Auditor shall prepare a Report on the accounts of the Branch Office examined by him.
- (b) The Branch Auditor shall submit his report to the Company’s Auditor, who shall deal with it in the manner required to finalise his Audit Report.

3. **Duties and Powers of Company and Branch Auditor:** 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 Sec. 143(1) to 143(4).

4. **Frauds at Branch:** Sec.143(12) along with Rules, relating to reporting extend to Branch Auditor, to the extent it relates to the concerned Branch.

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***Cost Audit [Sec.148]***

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**MAINTENANCE OF COST ACCOUNTS/RECORDS [SEC. 148(1)]:**

- (a) The central Government can order for maintenance of cost Accounts / Records.
- (b) Cost Accounts / Records shall comprise particulars relating to — (i) utilisation of material or labour, or (ii) other items of cost as may be prescribed.
- (c) Such order may be for specified class of Companies, engaged in — (i) production of specified goods, or (ii) providing prescribed services.
- (d) For such Companies, the books of account shall include these Cost Accounts / Records.
- (e) In case of Companies regulated under a Special Act, the Central Government shall consult that Regulatory Body established under that Act, before ordering maintenance of Cost Records.

**COST AUDIT [SEC. 148(2)]:**

- (a) The Central Government may, if it feels necessary, direct by an order that an audit of the Cost Records kept by a Company shall be conducted in the prescribed manner.
- (b) Such order relating to Cost Audit shall be given in case of Companies —
  - which are covered u/s 148(1), i.e. maintenance of Cost Records / Accounts, and,
  - which have a Net Worth or Turnover of prescribed amounts.

**COST AUDITOR [SEC. 148(3)]:**

- (a) Cost Audit shall be conducted by a Cost Accountant in practice (either Individual or Firm)
- (b) A Statutory Auditor of the Company u/s 139 cannot be a Cost Auditor of the Company.
- (c) Cost Auditor shall comply with the Cost Auditing Standards issued by the Institute of Cost and Works Accountants of India, with the approval of the Central Government.
- (d) The appointment and remuneration of Cost Accountant is as under —

Situation	If Audit Committee is required u/s 177	No Requirement as to Audit Committee
<b>Appointment</b>	By Board, on the recommendations of the Audit Committee.	By Board, on its own.
<b>Remuneration</b>	Recommended by Audit Committee, Approved by Board of Directors, and Ratified by Shareholders.	Fixed by Board of Directors, and Ratified by Shareholders.

- (e) Cost Audit shall be in addition to the audit conducted u/s 143.

**RIGHTS, ETC. OF COST AUDITOR [SEC. 148(5)]:**

- (a) The Qualifications, Disqualifications, Rights, Duties and Obligations applicable to Auditors under Chapter X, are applicable to Cost Auditor also.
- (b) The Company is duty bound to give all assistance and facilities to the Cost Auditor for auditing the Cost Records.

**COST AUDIT REPORT [SEC. 148(5), (6), (7)]:**

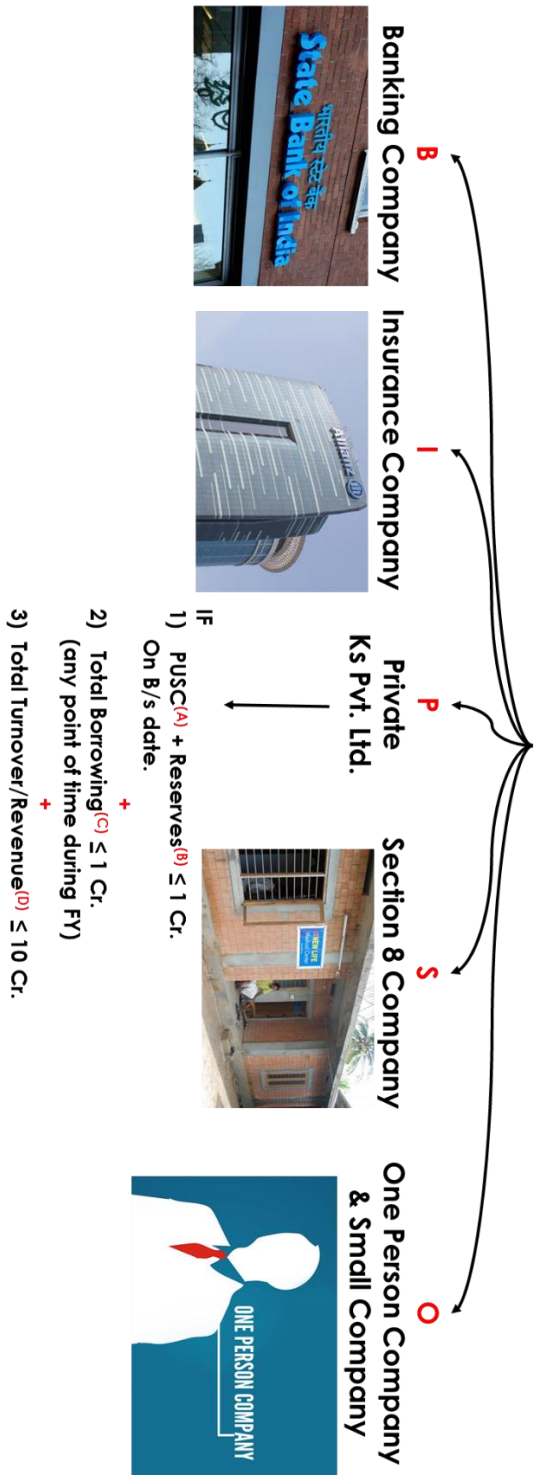
- (a) The Cost Auditor shall submit his report to the Board of Directors of the Company.
- (b) Within 30 days from the receipt of Cost Audit Report, the Company shall furnish full information and explanation on every reservation or qualification contained in the Cost Audit Report, to the Central Government.
- (c) If Central Government calls for further information and explanations, the Company should furnish the same within the timeframe specified by Central Government.

**NON-COMPLIANCE [SEC. 148(8)]:**

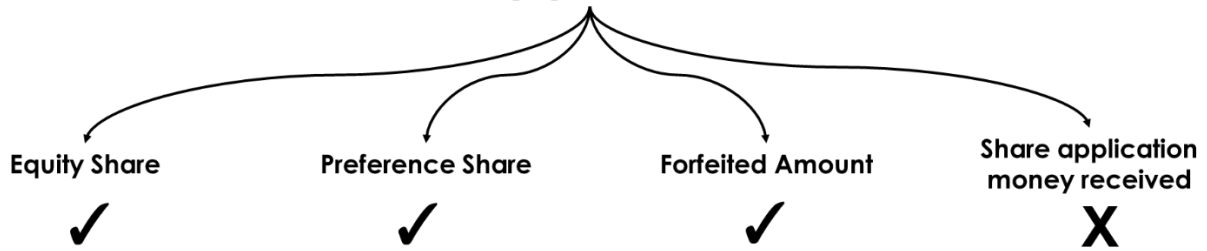
- (a) The Company / Officer in Default is punishable in the manner provided in Sec. 147(1).
- (b) The Cost Auditor is punishable in the manner provided in Sec. 147(2) to (4).

**CARO**

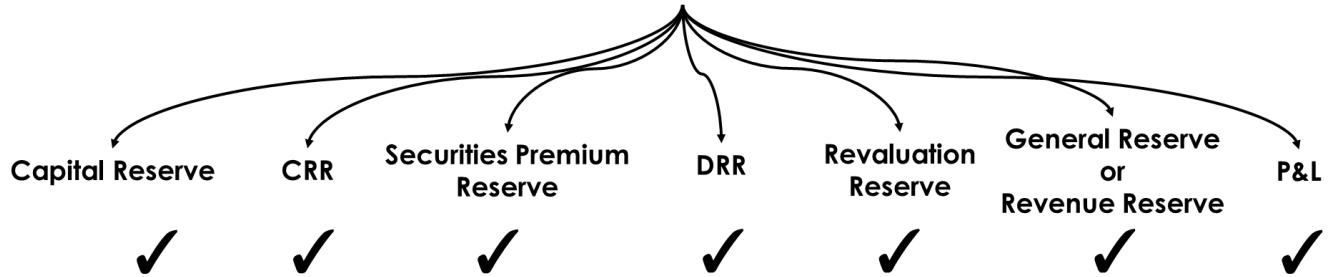
**CARO 2016**  
**APPLICABLE ON ALL COMPANIES EXCEPT [BIPSO]**



**(A) PUSC**

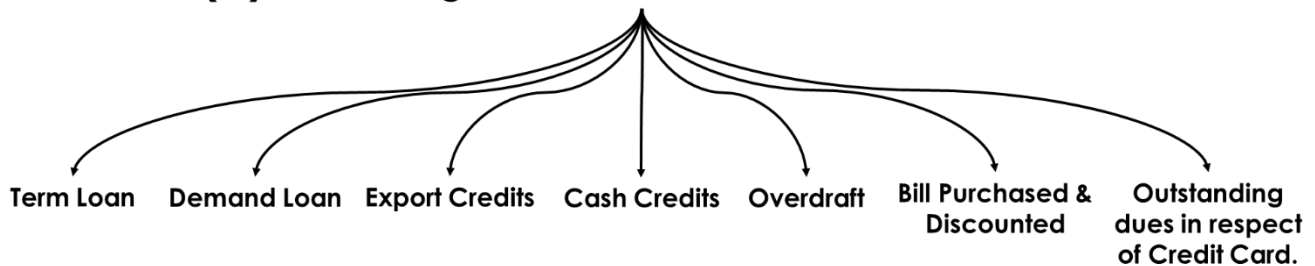


**(B) Reserves & Surplus**



Note: Debit Balance of P&L A/c should be reduced from the figure of Revenue Reserve

**(C) Borrowing from Bank & Financial Institution**



**(D) REVENUE / TURNOVER**

Sales of Goods	XXX	Service Rendered	XXX
(-) Recoverable Duties (ED, ST, VAT etc.)	(XX)		(XX)
(-) Trade Discount	(XX)		(XX)
(-) Sales Return (Related to any year)	(XX)		
	XXX	+	XXX
	TO		

**CLAUSE 3(i): FIXED ASSETS**

Following matters shall be included in the auditor’s report relating the Fixed assets of the company:

**PROPER RECORDS:**

Whether the company is maintaining proper records showing full particulars including quantitative details and situation of fixed assets.

**PHYSICAL VERIFICATION:**

- Whether these fixed assets have been physically verified by the management at reasonable intervals.
- Whether any material discrepancies were noticed on such verification and if so whether the same have been properly dealt with in the books of accounts.

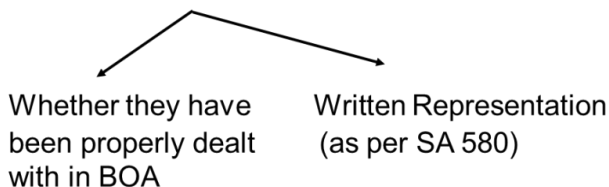
**TITLE DEED:**

Whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof

**# (i) 1) Fixed Assets:**

**Whether Co. is maintaining proper records with full particulars Physically verified by Mgmt. at reasonable intervals**

**Material Discrepancies**



**CLAUSE 3(ii): INVENTORY**

Following matters shall be included in the auditor’s report relating the Inventory of the company:

**PHYSICAL VERIFICATION:**

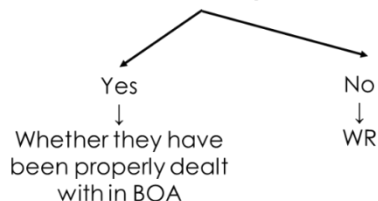
Whether physical verification of inventory has been conducted at reasonable intervals by the management;

Whether any **material discrepancies** were noticed on such verification and if so, whether the same have been properly **dealt with in the books of accounts**.

**# (ii) 2) Inventories:**

**Physical verification by mgmt. at reasonable intervals**

**Material Discrepancies**



**CLAUSE 3(iii): LOANS GIVEN BY THE COMPANY**

Whether the company has granted any loans, secured or unsecured to companies firms, Limited Liability Partnerships (LLP) or other parties covered in the register maintained under section 189 of the Companies Act, 2013. If so,

**TERMS AND CONDITIONS:**

Whether the terms and conditions of the grant of such loans are not prejudicial to the company’s interest

**REGULAR RECOVERY:**

- Whether the schedule of repayment of principal and payment of interest has been stipulated and
- Whether the repayments or receipts are regular

**STEPS FOR RECOVERY:**

- Whether the schedule of repayment of principal and payment of interest has been stipulated and
- Whether reasonable steps have been taken by the company for recovery of the principal and interest

**# (iii) 3) Loan to Sec-189 (i.e. Loan to Substantial Int. Parties)**

- Terms & conditions not prejudicial to companies Interest.
- Schd. of Repayment on Receipt are regular
- If the amt. Is overdue more than 90 DAYS

Whether reasonable Steps have been taken by the Co. for recovery of Amt. (P + I)

**CLAUSE 3(iv): LOAN TO DIRECTORS AND INVESTMENT BY COMPANY**

In respect of loans, investments, guarantees and security whether provision of section 185 and 186 of the Companies Act, 2013 have been complied with. If so, provide the details thereof.

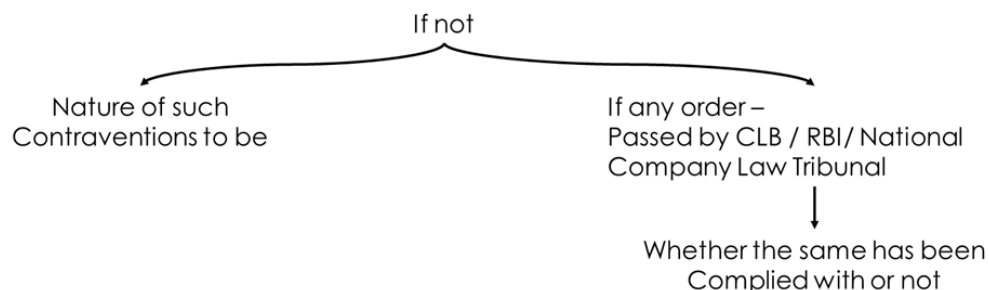
**CLAUSE 3(v): DEPOSITS**

In case, the company has accepted deposits, whether the following has been complied with:

- ✓ Directives issued by the Reserve Bank of India ( RBI ) ;
- ✓ The provisions of sections 73 to 76 or any other relevant provisions of the Companies Act , 2013 and the rules framed there-under; and
- ✓ If an order has been passed by Company Law Board (CLB) or National Company Law Tribunal (NCLT) or Reserve Bank of India (RBI) or any court or any other tribunal.

However, if any of the above not complied with the nature of contraventions should be stated.

**# (v) 5) Deposit from Public**



**CLAUSE 3(vi): COST RECORDS**

If the Central Government has specified maintenance of cost records under section 148 of the Companies Act, 2013 whether such accounts and records have been and maintained.

**# (vi) 6) Cost Records**

→ Specified by C.G. u/s 148

→ Whether such accounts & records have been so made & maintained.

**CLAUSE 3(vii): STATUTORY DUES**

Following matters shall be reported for statutory dues and disputes for tax and duties.

**a) Statutory Dues for more than 6 Months:**

Whether the company is regular in depositing undisputed statutory dues with the appropriate authorities including:

**a. Provident fund**

- Employees state insurance
- Income – tax
- Sales – tax
- Service tax
- Duty of customs
- Duty of excise
- Value Added Tax (VAT) ;
- Cess ; and
- Any other statutory due

If the company is not regular in depositing such statutory dues, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they become payable, shall be indicated by the auditor.

**b) Dispute for Tax and Duty:**

In case dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned.

**# (vii) 7) Statutory Records**

Whether the CO. is regular in depositing Stat. dues. (Eg. PF, I-Tax, Sales-Tax, Duties, etc.)

Disputed Amount

Amt. Involved in dispute & the forum where dispute is pending shall be mentioned

If not, the extent of the arrears of dues as on the last day of F.Y.

→ (6 months have to be passed for it being stat. dues incl. any int. on such dues.

→ Only disputed dues have to be reported

Undisputed Dues → If not paid, need to be reported

If not paid → Qualified Opinion



### **CLAUSE 3(viii): REPAYMENT OF LOANS**

Following matters shall be reported for statutory

- ✓ Whether the company has defaulted in repayment of loans or borrowing to a financial institution bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported.
- ✓ Note that in case of defaults to banks financial institutions and Government lender wise details to be provided.

#### **# (viii) 8) Repayment of Dues:**

→ Whether the Co. has defaulted in repayment of loans or borrowings

↓  
If Yes

↓  
The period & the amt. of default to be reported.

### **CLAUSE 3(ix): UTILIZATION OF IPO AND FURTHER PUBLIC OFFER**

Following matters shall be reported for statutory

- ✓ Whether moneys raised by way of Initial Public Offer (IPO) or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised.
- ✓ If not, the details together with delays or default and subsequent rectifications, if any as may be applicable be reported.

#### **# (ix) 9) End use of Money's Raised: ( e.g. IPO, FPO, etc.)**

↓  
Whether money's raised by way of Initial Public Offer, Debt Instruments, Term Loans.

↓  
Were applied for the purpose for which those are raised

↓  
If not, the details together with delays or default or subsequent rectifications, if any, as may be applicable may be reported.

### **CLAUSE 3(x): REPORTING OF FRAUD**

Whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year, If yes the nature and the amount involved is to be indicated

### **CLAUSE 3(xi): APPROVAL OF MANGERIAL REMUNERATION**

- ✓ Whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with the Schedule V to the Companies Act 2013?
- ✓ If not state the amount involved and steps taken by the company for securing refund of the same.

**# (xi) 11) Managerial Remuneration:**

As per Sec - 197 read with Std. V of the Co's Act,



If Not



State the amt. involved & steps taken by the Co. for security refund of the same

**CLAUSE 3(xii): NIDHI COMPANY**

- ✓ Whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1 : 20 to meet out the liability and
- ✓ Whether the Nidhi Company is maintaining 10% unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability.

**# (xii) 12) Nidhi Company**



Net owned fund to deposit in the ratio of [1:20] to meet out the liability & whether the Nidhi-company is maintaining 10% unencumbered term deposits as specified in the Nidhi Rules 2014 to meet out the Liab. (10% of the deposit o/s.)

Net Owned Funds:   PUSS (Equity)  
                          + Free Reserve  
                          (-) Accumulated Loss  
                          (-) Intangible Assets

→ Auditors should ask the mgmt to provide computation of deposit liability & Net Worth Owned funds.

**CLAUSE 3(xiii): RELATED PARTY TRANSACTIONS**

- ✓ Whether all transactions with the related parties are in compliance with sections 177 and 188 of Companies Act, 2013 where applicable and
- ✓ The details have been disclosed in the Financial Statements etc, as required by the applicable accounting standards.

**# (xiii) 13) Related Party Transactions:**

- As per Sec 177 & 188
- Details have to be disclosed in the financial statement etc. as reqd. by applicable Accounting Standards.  
(Also mention AS -18, SA 550)

**CLAUSE 3(xiv): PRIVATE PLACEMENT OR PREFERENTIAL ISSUES**

- ✓ Whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review
- ✓ and if so as to whether the requirement of section 42 of the Companies Act ,2013 have been complied with and
- ✓ the amount raised have been used for the purposes for which the funds were raised. If not provide the details in respect of the amount involved and nature of non – compliance.

**# (xiv) 14) Preferential Allotment**

Whether the requirement of Sec -42 of Co's Act have been complied with & the amt. raised have been used for the purpose for which the funds were raised

↓  
If Not  
↓

Provide details in respect of the amt. involved & nature of on-compliance.

**CLAUSE 3(xv): NON – CASH TRANSACTION**

Whether the company has enter into any non – cash transactions with directors or persons connected with him and if so whether provisions of section 192 of Companies Act , 2013 have been completed with ;

**# (xv) 15) Non-Cash Transactions:**

With directors or persons connected with him.

↓

Whether provision of Sec -192 of Co's Act have been complied with.

**CLAUSE 3(xvi): REGISTER UNDER RBI ACT 1934**

Whether the company is required to be registered under section 45 – IA of the Reserve Bank of India Act , 1934 and if so, whether the registration has been obtained.

**# (xvi) 16) Registration with RBI**

↓

Whether the company is reqd. to be registered u/s 45IA of the RBI Act, 1934.

AND

If so, whether the registration has been obtained.

## **REASONS TO BE STATED FOR UNFAVOURABLE OR QUALIFIED ANSWERS**

### **1) UNFAVOURABLE OR QUALIFIED ANSWER:**

Where in the auditor's report the answer to any of the questions referred to in paragraph 3 is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified answer, as the case may be.

### **2) UNABLE TO EXPRESS OPINION**

Where the auditor is unable to express any opinion in answer to a particular question his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.

Hence, as per paragraph 4 of CARO – 2016, the auditor must give the reasons for unfavourable or qualified answers to the above 16 clauses referred in paragraph 3 of CARO – 2016.

✓ However, if the auditor is not able to express his opinion the fact and reason for the same should be indicated in the report

### **MEMORY TECHNIQUE FOR CARO**

**FILL D Cost Records Duly & Repayment Records Publicly, Fill Rum Glass with NaRiyal PaNi RBI**

1. **F** → Fixed Assets
2. **I** → Inventory
3. **L** → Loan to Related Party
4. **L** → Loans / Guarantees / Securities / Investments
5. **D** → Deposits
6. **Cost Records** → **Cost Records** as per section 148
7. **Duly** → Statutory **Dues**
8. **Repayment** Records → **Repayment** of Loans
9. **Publicly** → **Public** Offer - IPO
10. **Fill** → Reporting of **Fraud**
11. **Rum Glass with** → **Remuneration**
12. **Nidhi** Company
13. **Related Party** Transaction
14. **Private Placement** or Preferential Allotment
15. **Non-Cash** Transactions
16. **RBI** → Register under **RBI** Act, 1934



**Q1) M/s. PQR has been appointed the sole statutory auditor of a large company for 2015-16, where till last year M/s. LMN was also one of the joint auditors along with M/s. PQR. Mention the steps that should be taken by M/s. PQR before commencing the audit.**

**Answer: Steps before Commencing the Audit Work:**

When one of the joint auditors of the previous year is considered for ratification by the members as the sole auditor for the next year, it is similar to non re-appointment of one of the retiring joint auditors. The provisions of section 140 of the Companies Act, 2013 (hereinafter referred as the Act) relating to non-reappointment of the retiring auditor need to be considered. As per sub-section 4 of section 140 of the Act, special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re - appointed, except 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 of the Act.

The following steps should be taken care of by M/s. PQR before commencing the audit:

- i. Ascertain that special notice under Section 140(4) of the Act was duly received by the company, from such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice, not earlier than three months but at least 14 days before the AGM date as per Section 115 of the Act read with the Companies (Management and Administration) Rules, 2014.
- ii. Check whether the said notice has been sent to all the members at least 7 days before the date of the AGM as per Section 115 of the Act.
- iii. Verify the notice contains an express intention of a member for proposing the resolution for appointing a sole auditor in place of both the joint auditors who retire at the meeting but are eligible for re-appointment.
- iv. Verify that the said notice is also sent to the retiring auditor as per Section 140(4)(ii) of the Act.
- v. Verify whether any representation received from the retiring auditor was sent to the members of the company to whom notice of the meeting was sent as per Section 140(4)(iii) of the Act.
- vi. Verify from the minutes book whether the representation received from the retiring joint auditor was considered at the AGM.
- vii. Examine that proposed resolution was properly passed.

Further, Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts a position as auditor previously held by another chartered accountant without first communicating with him in writing. Moreover, Clause (9) of Part I of the same Schedule, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Sections 224 and 225 of the Companies Act, 1956 (now Section 139 and 140 read with section 141 of the Companies Act, 2013), in respect of such appointment have been duly complied with. Therefore, M/s PQR is required to comply with all the above mentioned provisions provided under Companies Act and Chartered Accountant Act before commencing the audit.

**Q2) Mr. Ram, a relative of a Director was appointed as an auditor of the company. Comment.**

**Answer: Appointment of the Auditor:**

Section 141 of the Companies Act 2013 (herein after referred as the Act) deals with the eligibility, qualifications and disqualifications of Auditors. Sub-section (3)(f) of the Section 141 of the Act, explicitly disqualifies a person from being appointed as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel.

In the instant case, Mr. Ram is the relative of a Director of the company, therefore, he should not accept the appointment as an auditor of that company. If he accepts such appointment, he would be guilty of professional misconduct and would also be liable for punishment for contravention of the provisions of the Companies Act.

**Q3) While doing the audit, X, the Statutory Auditor of ABC Ltd. observes that certain loans and advances were made without proper securities, certain trade receivables and trade payables were adjusted inter se, and personal expenses were charged to revenue. Comment.**

**Answer:**

The Company Auditor shall inquire into the following aspects —

- (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 is not an Investment Company or Banking Company, whether Assets of the Company consisting 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 any Shares have been allotted for cash, whether cash has actually been received, and if no cash has been received, whether the position as stated in the account books and the Balance Sheet is correct, regular and not misleading.

In the instant case, Mr. X, the statutory auditor of ABC Ltd., needs to enquire in light of above provisions, as a result of the enquiries if he is satisfied then there is no further duty to report on these matters.

**Q4) X Ltd. did not follow the applicable Accounting Standard for disclosing Earnings Per Share (EPS) in the financial statements. The fact of such non-disclosure was however, mentioned in the notes forming part of accounts. As the statutory auditor of X Ltd., how would you report in the above case?**

**Answer:**

As per Section 133 of Companies Act, 2013; Companies should prepare Financial Statements in accordance with AS issued by ICAI and notified by CG.

AS 20 “Earning Per Share” is also one of the AS notified by CG.

If the disclosures required by AS 20 are not made, it is the duty of the auditor to qualify in his report “Whether Accounting Standards under the clause as notified u/s 129(1) have been followed?” Mere disclosure by company in notes does not absolve him of his duty.

The same is, however, not a qualification to affect the “True & Fair” position of financial results of the company.

**Q5) X Ltd. paid Rs. 25 lakhs as advance to Y Ltd. towards the purchase of a printing machinery on 15.1.16 with delivery instructions to deliver the same in the last week of June, 16. Further on 2.2.16 X Ltd. purchased two diesel generator sets from Y Ltd. for Rs. 30 lakhs on 90 days Credit term. In the accounts for 2015-16, X Ltd. intends to adjust the advance paid against Credit purchase and show the net amount of Rs. 5 lakhs as due from them. As the statutory auditor, how would you deal with this?**

**Answer: Adjustment of Advances:**

Since X Ltd. has paid advance amount to the supplier of machinery to be used in the project, such advance amount should be grouped under the head 'Capital Work in Progress'. This is as per requirement of Schedule III to the Companies Act, 2013 and the existing accounting practice.

If the advance is for purchase of other machinery, it should be grouped under a separate head – say 'Advance Payment for Capital Expenditure' and should be disclosed as next item to Fixed Assets in the Balance Sheet. In view of the above, the proposal of X Ltd., to show the net balance in the personal account of Y Ltd., is not correct. Such proposal will conceal the two material items in the balance sheet – one, expenditure towards capital asset and the other current liability for purchase of the generator set.

Hence, the auditor should advise X Ltd. to show these two items separately. If X Ltd. does not accept the advice, the auditor should qualify his report with suitable quantification of amount involved.

**Q6) As a Statutory Auditor, how would you deal with the following:**

**While adopting the accounts for the year, the Board of Directors of Sunrise Ltd. decided to consider the Interim Dividend declared @15% as final dividend and did not consider transfer of Profit to reserves.**

**Answer:**

**Declaration of Interim Dividend:** The first proviso to 123(1) of the Companies Act, 2013 provides that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, under the Companies Act, 2013 the amount transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its board of Directors. Therefore, the company is free to transfer any part of its profits to reserves as it deems fit.

**Q7) What are the steps to be taken by a firm of Chartered Accountant to ensure that its appointment as Statutory Auditor of a Company is valid?**

**Answer: Validity of Appointment as a Statutory Auditor:**

To ensure that the appointment is valid, the incoming auditor should take the following steps before accepting his appointment:

**(i) Ceiling limit:** Ensure that a certificate has been issued under section 139 of the Companies Act, 2013 so that the total number of company audits held by the firm (including the new appointment) will not exceed the specified number.

**(ii) Resolution at AGM:** Verify that at AGM of the Company, a proper resolution is passed. Inspect general meeting minutes book to see that the appointment is duly recorded.

**(iii) Compliance with law:** Satisfy that the legal procedure contemplated in section 139 and 140 of the said Act, dealing with the appointment and removal of existing auditor, have been followed. Also check whether section 139(5) and 139(7) (in case of a government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments- appointment by the Comptroller and Auditor General of India) are attracted and complied with.

**(iv) Code of conduct:** Communicate with the previous auditor, if any, in writing, to ascertain if there are any professional reasons for not accepting the appointment.

**Q8) In the audit of ABC Private Limited, auditor came across cases of payments to Directors, whereby, expenses of a personal nature were reimbursed. As an auditor, how would you deal with the same?**

**Answer:**

The Company Auditor shall inquire into the following aspects —



- (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 is not an Investment Company or Banking Company, whether Assets of the Company consisting 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 any Shares have been allotted for cash, whether cash has actually been received, and if no cash has been received, whether the position as stated in the account books and the Balance Sheet is correct, regular and not misleading.

In the instant case the auditor has to ensure that the above is complied with, without which, if such expenses are paid, he has to disclose the fact in his report, as also in the accounts. In this regard attention is invited to section 143(1)(e) of the Companies Act, 2013 wherein auditor has to inquire into whether personal expenses have been charged to revenue.

**Q9) Apex Ltd., a well reputed manufacturing public limited company has made a contribution of ` 2.5 lacs during the financial year ended 31.3.16 to a political party for running a school, situated in the village, where most of the workers of the company reside. It is admitted that the benefit of the school is mostly for the children of the workers of the company. The company has not made any profits in the last four years.**

**Answer: Restrictions Regarding Political Contribution:** Section 182 of the Companies Act, 2013 deals with prohibitions and restrictions regarding political contributions. According to this section, a government company or any other company which has been in existence for less than three financial years cannot contribute any amount directly or indirectly to any political party. In other cases, contribution in any financial year should not exceed 7½ % of average net profits during the three immediately preceding financial years. The company in question has not made any profit in last four years and contributed ` 2.5 lacs during the year to a political party for running a school. This is violation of the provisions of Section 182 of the said Act although the children of its workers are benefited. The auditor would have to qualify his report stating the contravention of the provisions of the Companies Act.

**Q10) As a Statutory Auditor, how would you deal with the following**

**P Ltd. of whom you are the Statutory Auditor appoints M/s XYZ as Branch Auditors for one of its branches. M/s XYZ conducted the audit of the branch without visiting the branch and instead getting the books at the H.O. M/s XYZ has submitted their Branch Audit Report to you.**

**Answer:**

**As per Section 143(8),**

- (a) The Branch Auditor shall prepare a Report on the accounts of the Branch Office examined by him.
- (b) The Branch Auditor shall submit his report to the Company's Auditor, who shall deal with it in the manner required to finalise his Audit Report.

In any case, the principal auditor i.e. the statutory auditor of Head Office P Ltd. is entitled to rely on the work of branch auditor unless there are special circumstances to make it essential for him to visit the branch and examine the books of account and voucher records. As per basic principles governing an audit, the principal auditor is entitled to rely upon the work performed by others provided he exercises adequate skill and care and is not aware



of any reason to believe that he should not have so relied. As per SA 600, "Using the work of another auditor", the principal auditor is not required to evaluate professional competence because branch auditor happens to be member of ICAI. The statutory auditor is also required to deal with the Branch Auditor's report in the manner, he considers necessary. Therefore, the statutory auditor is required to deal with M/s XYZ's report in the manner it considers fit under the circumstances.

**Q11) Miranda Spinning Mills Ltd. is a sick company and has accumulated losses of Rs. 10 crores. The company has Rs. 12 crores in its share Premium Account. The Management desires to adjust the accumulated losses against the share premium balance. Advise the company giving your reasons.**

**Answer:**

Application of Securities Premium Account [Sec 52(2)]

- 1) Issue of fully paid up bonus shares.
- 2) To write off preliminary expenses of the Company.
- 3) To write off issue related expenses (E.g. Commission, brokerage, etc.)
- 4) Buyback u/s 68.
- 5) For providing for premium on redemption.

In view of these provisions of the Companies Act, 2013, it is not permitted to adjust its accumulated losses against the securities premium account.

**Q12) R and M is an audit firm having partners CA. R, CA. M and CA. G. Mr. S is the relative of CA. R holding shares of STP Ltd. having a face value of Rs. 1,51,000. Whether CA. R and CA. M are qualified to be appointed as auditors of STP Ltd.?**

**Answer: Holding of Shares by Relative of Partner:**

As per section 141(3)(d)(i) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company, who, or his relative or partner 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. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of Rs. 1,00,000.

In the instant case, R and M is an audit firm having partners CA. R, CA. M and CA. G. Mr. S is a relative of CA. R and he is holding shares of STP Ltd. of face value of Rs. 1,51,000. Therefore, R and M, audit firm along with its partners CA. R, CA. M and CA. G will be disqualified for appointment as an auditor as the relative of CA. R is holding the securities in STP Ltd. which is exceeding the limit mentioned in proviso to section 141(3)(d)(i). Thus, CA. R and CA. M will be disqualified to be appointed as auditors of STP Ltd.

**Q13) As an auditor, how would you deal with the following situations:**

(a) Ram and Hanuman Associates, Chartered Accountants in practice have been appointed as Statutory Auditor of Krishna Ltd. for the accounting year 2015-2016. Mr. Hanuman, a partner of the Ram and Hanuman Associates, holds 100 equity shares of Shiva Ltd., a subsidiary company of Krishna Ltd.

(b) Nick Ltd. is a subsidiary of Ajanta Ltd., whose 20% shares have been held by Central Government, 25% by Uttar Pradesh Government and 10% by Madhya Pradesh Government. Nick Ltd. appointed Mr. Prem as statutory auditor for the year.

(c) Contravene Ltd. appointed CA Innocent as an auditor for the company for the current financial year. Further the company offered him the services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors.

(d) Mr. Amar, a Chartered Accountant, bought a car financed at ` 7,00,000 by Chaudhary Finance Ltd., which is a holding company of Charan Ltd. and Das Ltd. He has been the statutory auditor of Das Ltd. and continues to be even after taking the loan.

**Answer:**

**(a) Auditor Holding Securities of a Company:** As per sub-section (3)(d)(i) of Section 141 of the Companies Act, 2013 along with Rule 10 of the Companies (Audit and Auditors) Rule, 2014, a person shall not be eligible for appointment as an auditor of a company, who, or his relative or partner 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. Provided that the relative may hold security or interest in the company of face value not exceeding rupees one lakh.

Also, as per sub-section (4) of Section 141 of the Companies Act, 2013, where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in subsection (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.

In the present case, Mr. Hanuman, Chartered Accountant, a partner of M/s Ram and Hanuman Associates, holds 100 equity shares of Shiva Ltd. which is a subsidiary of Krishna Ltd. Therefore, the firm, M/s Ram and Hanuman Associates would be disqualified to be appointed as statutory auditor of Krishna Ltd. as per section 141(3)(d)(i), which is the holding company of Shiva Ltd., because Mr. Hanuman one of the partner is holding equity shares of its subsidiary.

**(b)** According to Section 139(7) of the Companies Act, 2013, the auditors of a government company shall be appointed or re-appointed by the Comptroller and Auditor General of India. As per section 2(45), a Government company is defined as any company in which not less than 51% of the paid-up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government Company as thus defined”.

In the given case Ajanta Ltd is a government company as its 20% shares have been held by Central Government, 25% by U.P. State Government and 10% by M.P. State Government. Total 55% shares have been held by Central and State governments. Therefore, it is a Government company. Nick Ltd. is a subsidiary company of Ajanta Ltd. Hence Nick Ltd. is covered in the definition of a government company. Therefore, the Auditor of Nick Ltd. can be appointed only by C & AG. Consequently, appointment of Mr. Prem is invalid and he should not give acceptance to the Directors of Nick Ltd.

**(c) Services not to be Rendered by the Auditor:** Section 144 of the Companies Act, 2013 prescribes certain services not to be rendered by the auditor. An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, 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:

- (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.

Further section 141(3)(i) of the Companies Act, 2013 also disqualify a person for appointment as an auditor of a company who is engaged as on the date of appointment in consulting and specialized services as provided in section 144. In the given case, CA Innocent was appointed as an auditor of Contravene Ltd. He was offered additional

services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. The auditor is advised not to accept the services as these services are specifically notified in the services not to be rendered by him as an auditor as per section 144 of the Act.

**(d)** According to Section 141(3)(d)(ii) of the Companies Act, 2013, a person is not eligible for appointment as auditor of any company, if he 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. In the given case Mr. Amar is disqualified to act as an auditor under section 141(3)(d)(ii) as he is indebted to M/s Chaudhary Finance Ltd. for more than ` 5,00,000. Also, according to section 141(3)(d)(ii) he cannot act as an auditor of any subsidiary of Chaudhary Finance Ltd. i.e. he is also disqualified to work in Charan Ltd. & Das Ltd. Therefore he has to vacate his office in Das Ltd. Even though it is a subsidiary of Chaudhary Finance Ltd. Hence audit work performed by Mr. Amar as an auditor is invalid, he should vacate his office immediately and Das Ltd should appoint another auditor for the company.

**Q14)**

**(a)** Orange Ltd. is an unlisted public company. Its balance sheet shows paid up share capital of ` 5 crore and public deposits of Rs. 100 crore. The company appointed M/s Santra & Co., a chartered accountant firm, as the statutory auditor in its annual general meeting held at the end of September, 2016 for 11 years. You are required to state the provisions related to - rotation of auditor and cooling off period as per the section 139(2) of the Companies Act, 2013 in case of an individual auditor or an audit firm, both, and comment upon the facts of the case provided above with respect to aforesaid provisions.

**(b)** MSY & Co. is an Audit Firm having partners CA Mukti, CA Shakti and CA Yukti. CA Mukti, CA Shakti and CA Yukti are holding appointment as an Auditor in 4, 6 and 10 companies respectively.

**(i)** Provide the maximum number of audits remaining in the name of MSY & Co.

**(ii)** Provide the maximum number of audits remaining in the name of individual partner i.e. CA Mukti, CA Shakti, CA Yukti.

**(iii)** Can MSY & Co. accept the appointment as an auditor in 60 private companies having paid-up share capital less than Rs. 100 crore, 2 small companies and 1 dormant company?

**(iv)** Would your answer be different, if out of those 60 private companies, 45 companies are having paid-up share capital of Rs. 110 crore each?

**Answer:**

**(a) Rotation of Auditor & Cooling Off Period Provisions:** As per Section 139(2) of the Companies Act, 2013; Rotation Principles are applicable to the following companies:

1. Listed Companies
2. Unlisted Public Companies having Paid Up Share Capital of Rs. 10 Crores or more,
3. Private Limited Companies having Paid Up Share Capital of ~~Rs. 20 Crores~~ **Rs. 50 Crores** or more,
4. Any other Company having Paid Up Share Capital below the above specified limits, but having Public Borrowings from Financial Institutions, Banks or Public Deposits of Rs. 50 Crores or more.

**Note:** Excluded Companies — (a) One Person Company, and (b) Small Company.

The above Companies shall not appoint/re-appoint –

1. An Individual as Auditor, for more than 1 term of 5 consecutive years, and
2. An Audit Firm as Auditor, for more than 2 terms of 5 consecutive years.

In the given case, Orange Ltd. is an unlisted public company having paid up share capital of Rs. 5 crore and public deposits of Rs. 100 crore. The company has appointed M/s Santra & Co., a chartered accountant firm, as the statutory auditor in its AGM held at the end of September, 2016 for 11 years.

The provisions relating to rotation of auditor will be applicable as the public deposits exceeds Rs. 50 crore. Therefore, Orange Ltd. can appoint M/s Santra & Co. as an auditor of the company for not more than one term of five consecutive years twice i.e. M/ s Santra & Co. shall hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2021 and thereafter can be re-appointed as auditor for one more term of five years i.e. upto year 2026. The appointment shall be subject to ratification by members at every annual general meeting of the company. As a result, the appointment of M/s Santra & Co. made by Orange Ltd. for 11 years is void.

**(b)** As per Section 141(3), the following person is not eligible for appointment as an Auditor of a Company –

A Person who is in full time employment elsewhere or a person or a Partner of a Firm **holding audits of more than 20 Companies (excluding One Person Company, Dormant Company, Small Company and a Private Company having PUSC < Rs. 100 Crore)** on the date of appointment or re-appointment as Auditor.

In the given case, CA Mukti is holding appointment in 4 companies, whereas CA Shakti is having appointment in 6 Companies and CA Yukti is having appointment in 10 Companies. In aggregate all three partners are having 20 audits.

(i) Therefore, MSY & Co. can hold appointment as an auditor of 40 more companies:

Total Number of Audits available to the Firm =  $20 \times 3 = 60$

Number of Audits already taken by all the partners in their individual capacity =  $4+6+10 = 20$

Remaining number of Audits available to the Firm = 40

(ii) With reference to above provisions an auditor can hold more appointment as auditor = ceiling limit as per section 141(3)(g) - already holding appointments as an auditor. Hence (1) CA Mukti can hold:  $20 - 4 = 16$  more audits. (2) CA Shakti can hold  $20-6 = 14$  more audits and (3) CA Yukti can hold  $20-10 = 10$  more audits.

(iii) In view of above discussed provisions MSY & Co. can hold appointment as an auditor in all the 60 private companies having paid-up share capital less than Rs. 100 crore, 2 small companies and 1 dormant company as these are excluded from the ceiling limit of company audits given under section 141(3)(g) of the Companies Act, 2013.

(iv) As per fact of the case, MSY & Co. is already having 20 company audits and they can also accept 40 more company audits. In addition, they can also conduct the audit of one person companies, small companies, dormant companies and private companies having paid up share capital less than rupees 100 crores. In the given case, out of the 60 private companies, MSY & Co. is offered 45 companies having paid-up share capital of Rs. 110 crore each.

Therefore, MSY & Co. can also accept the appointment as an auditor for 2 small companies, 1 dormant company, 15 private companies having paid-up share capital less than Rs. 100 crore and 40 private companies having paid-up share capital of Rs. 110 crore each in addition to above 20 company audits already holding.

**Q15) The Board of Directors of ACP Ltd. has recommended the dividend of 15% on paid up share capital of ` 450 crore for the year ended 31st March, 2016, at their meeting held on 1st of May, 2016 when the accounts for the financial year 2015-16 were approved. The Board of Directors when they met on 7th July, 2016 for the review of first quarter accounts, they realized that results were negative for the first quarter. Therefore, the Board has decided to rescind their decision to recommend dividend.**

The notice for AGM to be held on 14.8.2016 was sent on 15th July, 2016 without any recommendation for dividend. At the AGM, the members asked the management how they can rescind the declaration of dividend once recommended. Comment.

**Answer: Decision to rescind the Recommended Dividend:**

Dividend is firstly recommended by the Board. Thereafter, the members in the Annual General Meeting (AGM) may declare the dividend by passing ordinary resolution. The members may reduce the rate or amount recommended by the Board, but they cannot increase it. Section 123 of the Companies Act, 2013, provides that the dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in prescribed manner. Further, as per section 127 of the Act, dividends once declared become the liability of the company and must be paid within 30 days from the date of declaration. Any failure to do so attract a penalty for the various persons associated with the management. Here in the instant case, Board of Directors of ACP Ltd. has recommended the dividend in their meeting. Such dividend is not declared in AGM. Further, Board has decided to rescind the decision before the date of Annual General Meeting. Thus, the dividend which is only recommended and not declared does not attract penal provisions. Therefore, Board of Directors may rescind their decision to recommend dividend.