

## 16. AUDIT AND AUDITORS

### ANALYSIS OF PAST EXAM PAPERS OF IPCC AND CA INTER

Q NO.	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)	M-19 (O)	M-19 (N)	N-19 (O)	N-19 (N)	N-20 (O)	N-20 (N)
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### ANALYSIS OF PAST EXAM PAPERS OF IPCC AND CA INTER FOR PRACTICAL QUESTIONS

Q NO.	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)	M-19 (O)	M-19 (N)	N-19 (O)	N-19 (N)	N-20 (O)	N-20 (N)
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## SECTION 1: THEORY FOR CLASSROOM DISCUSSION

*Large business corporations are managed by the directors who represent the members who are the real owners of the company through board. In the absence of any check the directors may mismanage the finances of the organization. Thus, members appoint auditor/auditors to look into the true and fair view of the financial affairs of the company. These auditors are independent from the management of the company. Hence they can express an un-biased opinion on the financials of the company.*

*Audit is mandatory for all the Companies irrespective of size of the organization.*

**Q.No.1. What are the Qualifications to become company auditor?**

**(A) (NEW SM) (N10 – 5M)**

The provisions relating to eligibility, qualifications and disqualifications of an auditor are contained in section 141 of the Companies Act, 2013.

**1) QUALIFICATIONS OF COMPANY AUDITOR [Sec 141(1)]:**

- a) **In case of an Individual:** A person shall be **eligible for appointment** as an auditor only if he is a chartered accountant holding a valid certificate of practice.
- b) **In case of Firm of Chartered Accountants:** A firm<sup>1</sup> can be appointed as auditor if majority of partners in the firm are
  - chartered accountants holding a valid certificate of Practice and
  - practicing in India in the firm name.

**2) SIGNING OF AUDIT REPORT IN CASE OF AUDIT FIRM [Sec 141(2)]:** If firm of auditors is appointed as an auditor of a company, then only the partners who are Chartered Accountants shall be authorised to act and sign on behalf of firm.

**SIMILAR QUESTION:**

1. Any partner of an LLP who is appointed as an auditor of a company can sign the audit report
- A. False – Only the eligible partners (i.e., CA in practice) can sign the auditor's report.

**Q.No.2. What are the Disqualifications of a Company's Auditor?**

**(A) (NEW SM) (M10 – 6M, N10 – 5M, N15 – 4M)**

**DISQUALIFICATIONS OF COMPANY AUDITOR [Sec 141(3)]:** The following persons are not eligible for appointment as an auditor of a company even though they possess qualification:

- 1) A Body Corporate other than Limited Liability Partnership registered under LLP Act, 2008
- 2) AAn Officer or Employee of the company
- 3) A person who is a partner or in employment of an officer or employee of the company
- 4) A person who, or his relative or partner—
  - a) Is holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (Group companies);
  - b) Is indebted to the company or the group companies in excess of Rs 5,00,000; or
  - c) Has given a guarantee or provided any security on behalf of any third person to the Company or the group companies in excess of Rs 1,00,000.

**NOTE:**

- a) The relative of the auditor may hold security or interest in the company for an amount not exceeding a face value of Rs 1,00,000<sup>2</sup>.

1) Partnership Firm or an Limited Liability Partnership

- b) However, if the auditor is holding securities in his name this exception does not apply.
- c) If an auditor purchases goods on credit from the company of a value exceeding Rs. 5,00,000, he shall be indebted to the company, and consequently he shall vacate the office of auditor held by him. It is immaterial that the credit period allowed to the auditor is same as allowed to other customers in the ordinary course of business.
- d) If an auditor recovers fees from the company on a progressive basis, even though the audit has not been completed, he cannot be said to be indebted to the company, and therefore, he need not vacate the office of auditor held by him.
- 5) A person or a firm (including LLP) who or which has business relationship with the Company, or its group companies, whether directly or indirectly

**Exceptions:** The term "Business relationship" includes any transaction entered for commercial purpose **except** the following commercial transactions:

- i) Professional services permitted to be rendered by an auditor or audit firm under the Companies Act, 2013 and the Chartered Accountants Act, 1949.
- ii) Transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.
- 6) A person who's relative is a director or is in the employment of the company as director or key managerial personnel;
- 7) A person who is in full time employment elsewhere
- 8) A person or partner of a firm holding appointment as an auditor of more than 20 companies at the date of such appointment or reappointment.

**NOTE:** The following companies are excluded while computing the ceiling limit (i.e. 20) on number of appointments that an auditor can hold at a time:

- i) One person companies
- ii) Small companies
- iii) Dormant companies
- iv) Private limited companies having paid-up share capital less than Rs. 100 crores.
- 9) 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;

**NOTE:** If such conviction is held by tribunal then prohibition is only for 5 years. [Sec.140 (5)]

- 10) A person who, directly or indirectly, renders any service referred to in Sec 144 to the company or its holding company or its subsidiary company (*as on the date of appointment in providing services as specified in section 144*). (REFER Q.No.3)

#### **VACATION OF OFFICE ON SUBSEQUENT DISQUALIFICATION AFTER APPOINTMENT [Sec 141(4)]:**

- 1) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in section 141(3) after his appointment, then he shall vacate his office immediately
- 2) Such vacation shall be deemed to be a casual vacancy in the office of the auditor.

**EXCEPTION FOR IMMEDIATE VACATION:** If a Relative acquires any security or interest in the company of face value exceeding Rs. 1,00,000, then the auditor need not vacate his office immediately. He is given a time limit of 60 days, from the date of such excess acquisition, to take corrective action so as to maintain the relative's holdings up to 1,00,000.

- 2) The limit of Rs.1 lakh also applicable for the companies not having share capital or other securities. For example, in case of company limited by guarantee, Guarantee given to the company also should not exceed Rs. 1 lakh.

**ADDITIONAL POINTS:**

- a) The above provisions are equally applicable to all types of auditor's i.e. statutory auditors, cost auditors and secretarial auditors.
- b) **Definition of "OFFICER" [sec 2(59)]:** The term 'officer' includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.
- c) **Definition of "RELATIVE": [sec 2(77)]:** 'Relative' with reference to any person, means anyone who is related to another, if
- i) they are members of a Hindu Undivided Family;
  - ii) They are husband and wife;
  - iii) One person is related to the other in such manner as may be prescribed as follows:

As per Rule 4 of Companies (specification of definition details) Rules, 2014, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:

- |                                       |                                    |
|---------------------------------------|------------------------------------|
| 1) Father (including step- father),   | 2) Mother (including step-mother), |
| 3) Brother (including step- brother), | 4) Sister (including step- sister) |
| 5) Son (including step- son),         | 6) Son's wife,                     |
| 7) Daughter,                          | 8) Daughter's husband,             |

**SIMILAR QUESTIONS:**

1. Under sub-section (3) of section 141 of companies Act, 2013 along with rule 10 of the companies rules 2014, state the persons who shall not be eligible for appointment as an auditor of a company.
  - A. Refer above provisions of Disqualifications of an Auditor
2. Mr X, a chartered accountant, has been appointed as an auditor of Mahesh Ltd. in the AGM of the company held in September, 2019 which assignment he accepted. Subsequently in January 2020 he joined Mr Y, another chartered accountant, who is the manager finance of Mahesh Ltd. as partner. Analyse and explain.
  - A. provision, analysis and conclusion.
3. RGS & Co. a firm of Chartered Accountants has three partners, namely, R, G & S. The firm is allotted the audit of BY Ltd. R, partner in the firm subsequently holds 100 shares in BY Ltd. Comment.
  - A. Refer Point d (i) above
 

As per the above provisions RGS & Co will be disqualified to become an auditor of BY Ltd as his partner subsequently held securities (100 shares) in BY Ltd.
4. M/s RM & Co. is an audit firm having partners CA. R and CA. M. The firm has been offered the appointment as an auditor of Enn Ltd. for the Financial Year 2016-17. Mr. Bee, the relative of CA. R, is holding 5,000 shares (face value of Rs. 10 each) in Enn Ltd. having market value of Rs. 1,50,000. One of the shareholder's, complains that the appointment of RM & Co. as an auditor is invalid because it incurred disqualification u/s 141 of the Companies Act, 2013. Analyse and advise.
  - A. Refer Point d (i) above and its corresponding Note: 1
 

As per the above provisions M/s RM & Co. will not be disqualified to be an auditor of Enn Ltd as the face value of shares held by relative of CA. R is less than Rs 1,00,000.
5. M/s. ABC & Co. is an Audit firm, having partners CA. A, CA. B and CA. C. The firm has been offered the appointment as an Auditor of XYZ Ltd. for the Financial Year 2017-18. Mr. D, the relative of CA. A, is holding 25,000 shares (face value of Rs. 10 each) in XYZ Ltd. having market value of Rs. 90,000. Are M/s. ABC & Co. qualified to be appointed as Auditors of XYZ Ltd.?
  - A. Refer Point d (i) above and its corresponding Note: 1
 

As per the above provisions M/s. ABC & Co. will be disqualified to be an auditor of XYZ Ltd as the face value of shares held by relative of CA. A is More than Rs 1,00,000.
6. M/s BC & Co. is an Audit Firm having partners Mr. B and Mr. C, and Mr. A the relative of Mr. C, is holding securities of MWF Ltd. having face value of Rs. 1,01,000. Whether M/s BC & Co. is qualified from being appointed as an auditor of MWF Ltd.?
  - A. Refer Point d (i) above and its corresponding Note: 1
 

As per the above provisions M/s. ABC & Co. will be disqualified to be an auditor of XYZ Ltd as the face value of shares held by relative of CA. A is More than Rs 1,00,000.

7. Mr. Neeraj, a CA in practice is liable (indebted) to Voice Limited (telecommunication company) for a sum of Rs.2,00,000 and a sum of Rs.3,00,000 to Fortis Hospital Limited for the treatments of his parents. Mrs. Nupur (wife of Mr. Neeraj) is also liable (indebted) for a sum of Rs.3,00,000 to Airtel Limited (subsidiary of Voice Limited). Mr. Neeraj is proposed to be appointed as auditor of Voice limited, Fortis Hospital Limited and Airtel Limited for the current financial year 2017-18. Decide under the provisions of Companies Act 2013 whether the proposed appointments are legally valid.  
Hint - Section 141(3) of the Act can be appointed in Voice Limited, Airtel Limited and in Fortis Hospital Limited if at arm's length price. The total due from Neeraj to Company is Rs. 2,00,000 which is not exceeding Rs. 5,00,000.
8. Mr. Kartik, a Chartered Accountant is the financial controller of POP Industries Pvt. Ltd. for the last 5 years. The company now wants to appoint him as the statutory auditor of the company.  
Advise whether the company can appoint him as statutory auditor.  
Hint: disqualified under Section 141(3) of Companies Act 2013]
9. An audit firm, comprising of two partners, holds office as auditor of 41 private companies out of which paid-up capital of 20 companies exceeds Rs. 50 Lakh. Decide whether this is in consonance with the applicable law.  
Hint - Section 141 (3) of Companies Act, 2013)

(IMMEDIATELY REFER PRACTICAL QUESTIONS 1 to 9)

**Q.No.3. State the services which an auditor of a company is prohibited to render to the client being audited as per Sec 144 of the Companies Act 2013? (A) (NEW SM, N15 RTP, N16 – 6M)**

**PROVISIONS OF SECTION 144:**

- 1) **PERMITTED SERVICES:** An auditor appointed under this Act shall provide to the company only such services as are approved by the Board of directors or the audit committee, as the case may be.
- 2) **PROHIBITED SERVICES:** However, the following services shall not be provided by the auditor either directly or indirectly<sup>3</sup> to the company or its holding company or its Subsidiary company
- i) Accounting and book keeping services
  - ii) Design and implementation of any financial information system
  - iii) Rendering of outsourced financial services;
  - iv) Investment advisory services;
  - v) Investment banking services.
  - vi) Actuarial services;
  - vii) Internal audit;
  - viii) Management services; and
  - ix) Any other kind of services as may be prescribed

Therefore, any person engaged in providing any of the above services, then he cannot be appointed as auditor of the same company or any of its Holding (or) Subsidiary Companies.

If at all the proposed auditor withdraws from rendering the above services then he can be appointed as an auditor after such withdrawal.

**SIMILAR QUESTIONS:**

1. CA. NM who is rendering management consultancy services to LA Ltd wants to accept offer letter for appointment as an auditor of LA Ltd for the next financial year Discuss with reference to the provisions of the Companies Act, 2013.

A. Refer above provisions of Sec 144

As per the above provisions, CA. NM can accept appointment as an auditor of LA Ltd in next financial year only.

- 3) The term “directly or indirectly” shall include rendering of services by the auditor,—

- (1) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trademark or brand is used by such individual;
- (2) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trademark or brand is used by the firm or any of its partners.

2. CA. Poshin is providing the services of investment banking to C Ltd. Later on, he was also offered to be appointed as an auditor of the company for the current financial year. Advice.
- A. Refer above provisions of Sec 144
- CA. Poshin cannot accept the appointment as he is providing investment banking services & therefore, disqualified u/s 141(3) read with 144
3. A person shall not be eligible for appointment as an auditor of a company where subsidiary or associate company or any other form of entity is engaged as on the date of appointment in consulting and specialized services as provided in Sec.144. Explain.
- A. Refer above provisions of Sec 144.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 10)

**Q.No.4. Explain the provisions related to of Audit Committee?**

**(B) (NEW SM)**

- 1) **APPLICABILITY:** The Following classes of companies shall constitute an Audit Committee -
- All Listed companies
  - All Unlisted public companies which satisfies any one of the following 3 conditions
    - Having paid-up capital of Rs. 10 crore or more (or)
    - Having turnover of Rs. 100 crore or more (or)
    - Having outstanding loans or borrowings or debentures or deposits in aggregate of Rs. 50 crore or more.

**Explanation:** The above limits shall be taken as on **preceding audited balance sheet date**.

**ACADEMIC INTEREST:**

- 1) **COMPOSITION:** The Audit Committee shall consist of minimum of three directors.  
Majority of the members of the audit committee shall be
- The independent directors and
  - Able to read and understand the financial statements (literate persons only).
- 2) **RIGHT OF AUDITOR IN AUDIT COMMITTEE MEETINGS:** The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee, when they considering the auditor's report. But even in such case they shall not have the right to vote.
- 3) **SIGNIFICANCE OF AUDIT COMMITTEE:**
- If a company is required to constitute an Audit Committee u/s 177,
- All appointments, including the filling of a casual vacancy, remuneration & terms of appointment of an auditor under this section shall be made after taking into account the recommendations of such committee.
  - Review & monitor the auditor's independence and performance, and effectiveness of audit process
  - Examination of Financial Statement & Auditor's report thereon
  - All the related party transactions shall require the approval of the Audit Committee.

**SIMILAR QUESTION:**

1. Audit Committee is to be formed by each and every company and the auditor has right to vote in the meeting of such Audit Committee. Comment. (N16 RTP)
- A. Refer "Applicability and Right of auditor in audit committee meetings" in the above answer

**Q.No.5. Explain the manner and procedure for selection of Auditors?**

**(B) (NEW SM)**

- 1) **PROCEDURE BEFORE RECOMMENDATION:** Following is the manner and procedure of selection & appointment of auditors-

- a) If the company is required to constitute an Audit Committee under section 177, then such committee, or if not, the Board of directors, shall consider
  - i) The qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether they are adequate with the size and requirements of the company.
  - ii) Any order or pending proceedings relating to professional matters of conduct against the proposed auditor before the ICAI or any competent authority or any Court.
- b) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit.

## 2) PROCEDURE DURING RECOMMENDATION:

- a) If the audit committee is constituted then they shall select the auditor (Including a case of casual vacancy) on appropriate basis and recommend to the BOD. If no audit committee is constituted then BOD shall select the auditor on an appropriate basis.
- b) The BOD may agree with the proposed auditor recommended by audit committee and shall recommend the same to members at AGM.
- c) If BOD disagrees with the recommendation made by audit committee then it shall refer back to audit committee for the further revision.
- d) If the audit committee after considering the revision appeal made by BOD, decided not to change their recommendation then they can inform the same to the BOD.
- e) Nevertheless, the BOD can finally recommend to the members the proposed auditor selected by them and fact that they disagree with the audit committee's selection and reasons thereof.
- f) Finally, the members may take an appropriate action regarding the appointment of auditor.

### Q.No.6. Explain the procedure for appointment of the first auditor of a company?

(A) NEW SM (M15, 16 RTP, N15 – 2M, N09 – 6M)

**Section 139** of the Companies Act, 2013 contains provisions regarding Appointment of Auditors. The section divides the appointment into two parts:

- 1) Appointment of First Auditors.
- 2) Appointment of Subsequent Auditors.

Further the appointment procedure is different for Government Company and Non-Government Company.

#### APPOINTMENT OF FIRST AUDITOR:

- 1) In the case of a Non-Government Companies [Sec 139(6)]: (N16 RTP)
  - a) The first auditor of a Non-Government company shall be appointed by the BOD within 30 days from the date of registration of the company.
  - b) If the Board fails to appoint the auditor, it shall inform the members of the company and the members of the company shall appoint the auditor within 90 days at an extraordinary general meeting.
  - c) Appointed auditor shall hold office till the conclusion of the first annual general meeting.
- 2) In the case of Government Company [sec 139(7)]: (M15 RTP)
  - a) The first auditor shall be appointed by the Comptroller and Auditor-General of India (CAG) within 60 days from the date of registration of the company.
  - b) If the CAG fails to appoint within 60 days then the BOD shall appoint the first auditor within the next 30 days.
  - c) If the Board fails to appoint the first auditor within next 30 days then it shall inform the members of the company who shall appoint such auditor within 60 days at an EGM.
  - d) The Auditors appointed as above shall hold office till the conclusion of the first annual general meeting.

**SIMILAR QUESTIONS:**

1. Explain how the auditor will be appointed in the following cases:  
A Government Company within the meaning of section 2(45) of the Companies Act, 2013.
- A. Refer above point 'b' in above answer. (RTP - M18(N))
2. UPL Ltd., incorporated on 1st January 2016 as a public limited company wants to appoint its first auditors. Explaining the provisions of Companies in this regard, answer the following:
  - a) The manner in which the company should appoint its first auditors
  - b) What shall be your answer if 60% of the paid up capital is held by Central Government?
  - c) What shall be your answer if managing director of the company wants to appoint his close friend Mr. Yash, who is a CA holding certificate of practice issued by ICAI as the company's first auditor?

(Hint: i-Section 139(6); ii- Section 139(7); iii-can appoint)

**Q.No.7. Write a short note on Appointment of the Subsequent Auditor of a company with reference to Companies act, 2013? (A) (NEW SM) (M16 RTP)**

**APPOINTMENT OF SUBSEQUENT AUDITORS:****1) In case of Non-Government Companies: [Sec. 139(1)]**

- a) Every company shall at the Annual General Meeting appoint an individual or a firm as an auditor and the appointed auditor shall hold office from the conclusion of that AGM till the conclusion of its 6<sup>th</sup> AGM and thereafter till the conclusion of every 6<sup>th</sup> AGM.
- b) The following points need to be noted in this regard-
  - i) Before such appointment is made,
    - The written consent of the auditor to such appointment shall be taken.
    - A certificate indicating that he is eligible and not disqualified shall be obtained.
    - The company shall inform the auditor concerned about his or its appointment.
  - ii) File a notice of such appointment with the ROC within 15 days of the meeting in which the auditor is appointed.

**2. In case of Government Companies: [Sec. 139(5)]**

- a) The Comptroller and Auditor-General of India (CAG) shall appoint a chartered accountant in practice within a period of 180 days from the commencement of the financial year.
- b) The auditor appointed as above shall hold office till the conclusion of the next AGM.

**NOTE:** Where at any AGM, if no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. Practically this case is not possible as appointment and reappointment are ordinary businesses in an AGM.

**SIMILAR QUESTIONS:**

1. Discuss the provisions relating to appointment of subsequent auditors of Suruchi Yarns Pvt. Ltd.
- A. Refer Point No. 1 in the above answer.
2. PKC Ltd. wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificates to be issued in accordance with the Companies (Audit & Auditors Rules, 2014) (M18(N) - 3M)
- A. Refer point 3 in the above answer Mr. Praveen Kumar, the proposed auditor has to give the required certificate to the company before accepting the appointment as the auditor of PKC Ltd.
3. State the procedure for the following, Appointment of First Auditor, when the Board of directors did not appoint the First Auditor within one month from the date of registration of the company. (SM)
- A. Refer above
4. A company includes the following shareholders also:
  - i) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.
  - ii) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.

iii) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013 (MTP2 - M18)(N)

A. In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 11, 12, 13, 14)

**Q.No.8. State the Conditions for obtaining written consent from the auditor before appointment?  
(C) (NEW SM)**

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

- 1) the individual or the firm (as the case may be) is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- 2) the proposed appointment is as per the term provided under the Act;
- 3) the proposed appointment is within the limits laid down by or under the authority of the Act;
- 4) 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.

**NOTE:**

**As per Rule 3 (2) of NFRA Rules:-** Every existing body corporate other than a company governed by NFRA rules, shall inform the National Financial Reporting Authority (NFRA) within 30 days of the commencement of the NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of the NFRA rules.

**According to Rule 3(3) of NFRA Rules:-** Every Body Corporate, other than a company as defined in section 2 (20) of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under section 139(1), inform the NFRA in Form NFRA-1, the particulars of the auditor appointed by such body corporate, provided that a body corporate governed under clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

**Q.No.9. Discuss the procedure for filling of a casual vacancy of company auditor and duties of auditor in case of Resignation.  
(A) (NEW SM) (M17 RTP, N 12 - 5M)**

**CASUAL VACANCY:**

- 1) Vacancy arising in the office of auditor due to any reason except on account of expiry of his term.
- 2) As per **Section 139(8)**, any casual vacancy in the office of an auditor shall-
  - a) **Non-Government Company:**
    - i) **Other than Resignation:** Shall be filled by the BOD, on recommendation of audit committee, within 30 days.
    - ii) **Resignation:** The appointment shall also be approved by the company at a GM convened within 3 months of the recommendation of the Board.
  - b) **Government Company:**
    - i) It shall be filled by the CAG within 30 days.
    - ii) In case if the CAG does not fill the vacancy within 30 days then the Board of Directors shall fill the vacancy within next 30 days.
  - c) **Period of Appointment:** The Auditor appointed under casual vacancy shall hold the office until conclusion of Next AGM.

**DUTY OF AUDITOR IN CASE OF RESIGNATION IN ANY COMPANY:**

- 1) **Filing of Form ADT-3 [Sec.140 (2)]:** The auditor who has resigned from the company shall file a form with the Company and the ROC in ADT- 3 within a period of 30 days from the date of resignation.
- 2) Further in case of Government Company, He shall also inform the same to CAG.
- 3) The statement shall indicate the reasons and other facts as may be relevant with regard to his resignation.
- 4) **Penalties for non-filing ADT-3 [Sec.140(3)]:** If the auditor does not comply with aforesaid provision, he or it shall be liable to
  - a) a penalty of ₹50,000 or an amount equal to the remuneration of the auditor, whichever is less, and
  - b) In case of continuing failure, with a further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 5 lakhs

**SIMILAR QUESTIONS:**

1. At the AGM of ICI (P) Ltd., Mr. X was appointed as the statutory auditor. He, however, resigned after 3 months since he wanted to give up practice and join industry. State, how the new auditor will be appointed by ICI (P) ltd. and the conditions to be complied for.

A. Refer above answer

2. Explain how the auditor will be appointed in the following cases:

The Auditor of the company (other than Government Company) has resigned on 31<sup>st</sup> December, 2016, while the financial year of the company ends on 31st March, 2017.

A. Refer above answer

(MTP2 - M18(N) , RTP - M18(N))

(IMMEDIATELY REFER PRACTICAL QUESTION NO.15 to 18)

**Q.No.10. Explain the provisions relating to Rotation of an Auditor?**

**(A) (NEW SM)**

- 1) **APPLICABILITY OF ROTATION OF AUDITORS: [Sec. 139(2)]**

- a) All Listed companies
- b) All Unlisted Public companies having
  - i) Paid up share capital of Rs. 10 crore or more (or)
  - ii) Borrowings from financial institutions, banks or public deposits of Rs. 50 crores or more.
- c) All Private limited companies having
  - i) Paid up share capital of Rs. 50 crore or more (or)
  - ii) Borrowings from financial institutions, banks or public deposits of Rs. 50 crores or more.

- 2) **NON-APPLICABILITY:** Rotation of Auditors shall not apply to the following companies

- a) One Person Company
- b) Small Company
- c) Other companies which are not satisfying the above prescribed limits.

- 3) **MANNER OF ROTATION OF AUDITORS:**

- a) Every Company to which the concept of rotation applicable, shall not appoint or re-appoint
  - i) An individual as auditor for more than one term of 5 consecutive years; and
  - ii) An audit firm<sup>4</sup> as auditor for more than two terms of 5 consecutive years.
- b) An individual auditor (or) firm who (or) which has completed their terms as above, i.e. one term or two terms of 5 years, shall not be eligible for re-appointment as auditor<sup>5</sup> in the same company for a period of five years from the completion of their respective term.

4)

- *Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.*
- *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.*
- *The word "firm" shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.*

**ADDITIONAL POINTS ON ROTATION:**

- 1) **Transitional period:** Every company, existing on or before the commencement of this Act, which is required to comply with the provisions of this sub-section, shall comply with the requirements of section 139(2) within 3 years from the date of commencement of this Act.
- 2) **Consecutive years:** "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 5 years or more.
- 3) **Effect on Right of Removal or Resignation:** It has also been provided that right of the members to remove an auditor or the right of the auditor to resign from such office of the company shall not be affected by the concept of Rotation.
- 4) **Conditions of Appointment imposed by Members:** Subject to the provisions of this Act, members of a company may resolve to provide that –
  - a) In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
  - b) The audit shall be conducted by more than one auditor.

**Example 1:****(NEW SM)**

- XYZ Ltd. which is a listed company appoints Mr. Raghav as an auditor in its AGM dated 29th September, 2016.
- Mr. Raghav will hold office of Auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2021.
- Now as per sub-section (2), Mr. Raghav shall not be re-appointed as Auditor in XYZ Ltd. for further term of five years i.e. he cannot be appointed as Auditor upto year 2026.

**Example 2:****(NEW SM)**

- XYZ Ltd. which is a listed company appoints M/s Raghav & Associates as an audit firm in its AGM dated 29th September, 2016.
- M/s Raghav & Associates will hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2021.
- Now as per sub-section (2), M/s Raghav & Associates can be appointed or re-appointed as auditor for one more term of five years i.e. upto year 2026. It shall not be re-appointed as Audit firm in XYZ Ltd. for further term of five years i.e. upto year 2031.

**SIMILAR QUESTIONS:**

1. "Provisions regarding rotation of auditors affect only specified class of companies" Discuss. (M15, N16 RTP)
- A. Refer "Applicability and Non-Applicability" in the above answer.
2. Rupa Limited, a listed company appointed M/s.VG & ASSOCIATES an audit firm as company's auditor in the Annual General Meeting held on 30-09-2017.Explain the provisions of companies Act,2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor (M18 - 3M)
- A. Refer Point 'C' in the above Answer.

In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., up to the conclusion of the AGM to be held in 2027.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 19)**

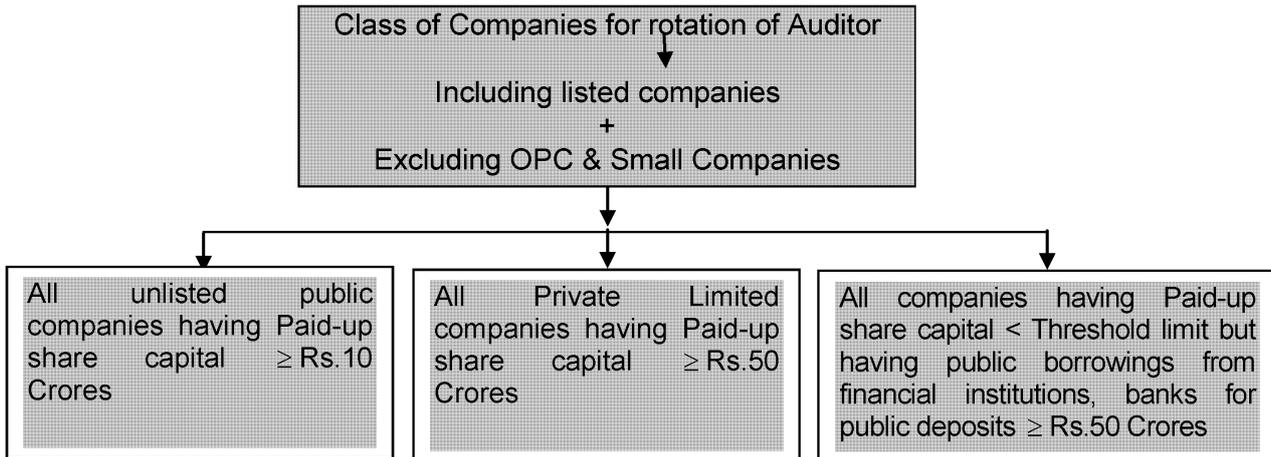
**Q.No.11. State the manner of rotation of auditors by the companies on expiry of their term [Sec 139(2)]. (C) (NEW SM, M15 - 4M, N16)**

**1) RECOMMENDATION OF PROPOSED AUDITOR:**

- a) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the existing auditor whose term is expired. The Board shall consider the recommendation of such committee.

- 5) For the sake of convenience Retiring auditor is referred as outgoing auditor. New auditor is referred as Incoming auditor.

- b) In other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in AGM.



## 2) ADDITIONAL CONDITIONS FOR THE PURPOSE OF ROTATION:

- a) **Firms having common partners:** If there is a common partner(s) in incoming and outgoing auditor's firm, then such incoming auditor is not eligible for appointment under rotation.
- b) **Period of office before commencement of the Act:** In case of an auditor (whether an individual or audit firm), the period for which the individual or firm has held office as auditor, prior to the commencement of the Act, shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.
- c) **Firms working under Same Network:** If the incoming auditor and outgoing auditor belong to "Same Network"<sup>6)</sup>, then also such incoming auditor shall not be eligible for appointment.
- d) **Break in the term of office:** A break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation.
- e) **Retired Auditor joining in another firm:** If a partner who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.
- f) **Manner of rotation in case joint auditors are appointed:** Where a company has appointed joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors do not complete their term in the same year.
- g) **Transitional period:** Every company, existing on or before the commencement of this Act, which is required to comply with the provisions of this sub-section, shall comply with the requirements of section 139(2) within three years from the date of commencement of this Act.

### **Example:**

- *M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam.*
- *Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods i.e. from year 2016 to year 2026.*
- *Now, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it cannot do so because Mr. Shyam was the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto year 2031. After 5 years Golden Smith Ltd. may appoint M/s Kukreja & Associates as its auditors.*

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6) The term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

**Q.No.12. Under what circumstances the retiring Auditor cannot be reappointed?**

**(B) (NEW SM) (N14 RTP, N13 – 6M)**

**1) RETIRING AUDITOR CANNOT BE REAPPOINTED IN THE FOLLOWING CIRCUMSTANCES [SEC. 139(9)]:**

- a) The auditor proposed to be reappointed does not possess the qualification prescribed u/s 141.
- b) The proposed auditor suffers from the disqualifications under section 141(3), 141(4) and 144.
- c) He has given to the company notice in writing of his unwillingness to be reappointed.
- d) A resolution has been passed in AGM appointing somebody else or providing expressly that the retiring auditor shall not be reappointed.
- e) A written certificate has not been obtained from the proposed auditor to the effect that the appointment or reappointment, if made, will be in accordance within the limits specified under section 141(3) (g).

**2) RETIRING AUDITOR CAN BE REAPPOINTED IN THE FOLLOWING CIRCUMSTANCES**

A retiring auditor may be re-appointed at an AGM if—

- a) he is not disqualified for re-appointment;
- b) He has not given a notice in writing to the company of his unwillingness to be re-appointed; and
- c) A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

**3) WHERE AT ANY AGM, NO AUDITOR IS APPOINTED OR RE-APPOINTED [Sec. 139(10)]:** The existing auditor shall continue to be the auditor of the company. *(However, practically this is not possible).*

**Q.No.13. Briefly Explain the provisions relating to Auditor's Remuneration.**

**(C) (NEW SM)**

**AUDITOR'S REMUNERATION: [Sec. 142]**

**1) Determination of Remuneration:**

- a) The remuneration of the auditor of a company shall be fixed in the GM or in such manner as may be determined therein.
- b) However, board may fix remuneration of the first auditor appointed by it.

**2) Components of Remuneration:**

- a) **Inclusions:** The remuneration, in addition to the fee payable to an auditor, include
  - i) The expenses, if any, incurred by the auditor in connection with the audit of the company and
  - ii) Any facility extended to him.
- b) **Exclusions:** It does not include any remuneration paid to him for any other service rendered by him at the request of the company.

**3) Consequences of not fixing the remuneration at the time of re-appointment of retiring auditor:**  
The existing remuneration will continue.

**Q.No.14. Briefly explain the concept of Removal of Auditor before Expiry of Term.**

**(A) (NEW SM) (N 09 - 6M, N10 – 4M, N11 - 5M, N15 – 6M)**

**REMOVAL OF AUDITOR BEFORE THE EXPIRY OF HIS TERM [SEC. 140(1)]:**

- 1) The auditor appointed under section 139 may be removed from his office before the expiry of his term u/s 140(1).
- 2) **Procedure for Removal:**
  - a) A BOD resolution shall be passed to remove the auditor before expiry of term.

- b) An application to the CG for removal of auditor shall be made in Form ADT-2 within 30 days of board resolution.
- c) The company shall hold the general meeting within 60 days upon receipt of approval from the CG for passing the special resolution.
- d) Convene the General Meeting and pass the special resolution removing the auditor.

**NOTE:** An opportunity of being heard shall be given to the auditor before removing him.

**SIMILAR QUESTIONS:**

1. The auditor, CA "Y", appointed under section 139 of the companies act, 2013, was removed from his office before the expiry of his term by an ordinary resolution of the company. Comment explaining clearly the procedure of removal of auditor before expiry of term.
  - A. Refer above answer
2. ABC Company Ltd. removed its first auditor before the expiry of his term without obtaining approval of the Central Government. Comment. (N16 RTP, N 09 - 6M)
  - A. Refer above answer.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 44)**

**Q.No.15. When can the Tribunal order for change of an Auditor ? [Section 140(5)] (C) (NEW SM)**

**1) APPLICATION BY WHOM:**

- a) The Tribunal on its own
- b) The Central Government
- c) Any person concerned

**Application to Whom:** The tribunal

**2) PROCEDURE FOR REMOVAL:**

- a) If the tribunal is satisfied that the auditor of a company has acted in a fraudulent manner or colluded in any fraud with directors or officers of the company then it may direct the company to change its auditors.
- b) If the **application is made by the Central Government** and the Tribunal is satisfied that any change of the auditor is required, it shall make an order that he shall not function as an auditor within 15 days of receipt of such application and the Central Government may appoint another auditor in his place.

- 3) PROHIBITION ON FURTHER APPOINTMENTS:** An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointment as an auditor of any company for a period of **5 years** from the date of passing of the order and the auditor shall also be liable for action under section 447.

**NOTE:** If the conviction is by court then the prohibition shall be 10 years.

**SIMILAR QUESTION:**

1. Mr. Honest, an auditor of MM company ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner. (MTP-N18(N))
  - A. Refer above Answer.

**Q.No.16. Explain Procedure for appointment of auditor other than the Retiring Auditor. (B) (NEW SM) (N16 – 6M)**

**APPOINTMENT OF AUDITOR OTHER THAN THE RETIRING AUDITOR: [Sec. 140(4)]**

**1) REQUIREMENT OF SPECIAL NOTICE:**

- a) **Contents of Notice:** Special notice shall be required for a resolution at AGM for
  - i) Appointing a person as auditor, other than a retiring auditor, or

- ii) Providing expressly that the retiring auditor shall not be re-appointed.
- b) **Received from whom:** Members holding not less than 1% of total voting power or holding shares aggregate sum of not less than Rs. 5,00,000 has been paid up on the date of the notice.
- c) **Timing of receipt of Notice:** Not earlier than 3 months but at least 14 days before the AGM date.
- d) **Non requirement of special notice:** Special notice shall not be required if the retiring auditor has completed consecutive terms of 5 years / 10 years as provided u/s 139(2).
- 2) **INFORMING RETIRING AUDITOR:** On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.
- 3) **RIGHT OF AUDITOR TO MAKE REPRESENTATION:**
- The Retiring auditor is entitled to make representation against his removal.
  - It should be in writing not exceeding a reasonable length and shall be sent to the company
  - He may request the company to circulate the representation to the members.
- 4) **DUTY OF THE COMPANY W.R.T REPRESENTATION:**
- The company shall state the fact that the retiring auditor has made representation against his removal, in any notice of the resolution given to members of the company, and
  - The company shall send a copy of the representation at least 7 days before the date of AGM to every member of the company to whom notice of the meeting is sent, unless the representation is received by the company too late.
  - If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, then
    - The auditor may require that the representation shall be read out at the meeting.
    - A copy of representation shall be filed with the Registrar.
- 5) **ABUSE OF RIGHT OF REPRESENTATION BY AUDITOR:**
- If the Tribunal is satisfied that the right to make representation is being abused by the auditor, then the tribunal may order that the copy of the representation need not be sent to the members and need not be read out at the meeting.
  - The Tribunal makes such an order either on an application made by the company or any other aggrieved person.

**SIMILAR QUESTIONS:**

- Explain the procedure for not re appointing of Retiring Auditor.
  - Same as above
- You, the auditor of A Ltd., have been considered for ratification by the members in the 4th general meeting as the sole auditor, where you were one of the joint auditors for the immediately preceding three years and the said joint auditors are not re-appointed.
  - Same as above.

**Q.No.17. Write about ceiling on number of Audits that can be accepted by an auditor.**

**(A) (NEW SM) (M17 RTP, N 12 - 5M)**

- DISQUALIFICATION AS PER SEC. 141(3)(g):**
  - A person who is in full time employment elsewhere or
  - A person or a partner of firm holding appointment as an auditor of more than 20 companies at the date of such appointment or reappointment"
- THE FOLLOWING POINTS NEED TO BE NOTED IN THIS REGARD:**
  - A Chartered Accountant in practice cannot hold appointments as auditor for more than 20 companies at any time.
  - In the case of a firm of auditors, limit of 20 companies is per partner *who is not in employment elsewhere.*

- c) If a person acting as partner in multiple firms then the limit will be counted only for one partnership and in the name of such partner only.
- 3) **COMPANIES EXCLUDED FROM CEILING:** For the purpose of computation of ceiling limits following companies are excluded -
- One person companies,
  - Dormant companies,
  - Small companies, and
  - Private limited companies having a paid capital less than Rs.100 crores.
- 4) **LIMIT ON TAX AUDIT ASSIGNMENTS:** The specified number of tax audit assignments under section 44AB of Income Tax Act, 1961 that an auditor, as an individual or as a partner of a firm, can accept is 60.

*(IMMEDIATELY REFER PRACTICAL QUESTION NO. 20, 21)*

**Q.No.18. Write about Powers / Rights of an Auditor.**

**(B) (NEW SM)**

1) **RIGHT OF ACCESS TO BOOKS:**

This right of access can be exercised

- The auditor of a company shall have a right of access to the books of account and vouchers of the company at all times, whether kept at the registered office of the company or at any other place including branches.
- Further this right can be exercised during working days and business hours.
- Right to access to other records namely minutes of board meeting, MIS reports and any other books as may require by the auditor.

**NOTE:** Books of accounts definition includes cost records.

2) **RIGHT TO OBTAIN INFORMATION AND EXPLANATIONS:**

- The auditor has right to obtain from the officers of the company such information and explanations as he may think necessary for the performance of his duties as auditor.
- The information and explanation can be obtained from either officers or employees of the company.
- The auditor can also obtain any additional information if needed. The Management of the company has duty to explain the auditor.

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

4) **RIGHT TO RECEIVE NOTICES AND DUTY TO ATTEND GENERAL MEETINGS:**

- All notices of general meeting must be sent to the Auditor of the company whether the financial statements are discussed or not in that GM.
- The auditor shall attend the GM either by himself or through his authorized representative, who shall also be qualified to be an auditor (unless otherwise exempted by the company). It is also the duty of the auditor.
- He shall have right to be heard at such meeting on any part of the business which concerns him as the Auditor.

**NOTE:** This right is in respect of General Meetings only and not in respect of any Board Meetings.

5) **RIGHT OF REPRESENTATION:** When the company decides not to re appoint the retiring auditor, then

- The Retiring auditor is entitled to make representation against his removal.
- It should be in writing not exceeding a reasonable length and shall be sent to the company
- He may request the company to circulate the representation to the members.

*(IMMEDIATELY REFER PRACTICAL QUESTION NO. 22 to 25)*

**Q.No.19. Explain the auditor's duty to make inquiry as per section 143(1). (A) (NEW SM, N16 – 4M)**

- 1) **DUTY TO MAKE INQUIRY:** it is the duty of the Auditor to inquire into the following matters
- a) Whether loans and advances made by the company
    - i) On the basis of security have been properly secured and
    - ii) 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 interest of the company.
  - c) Whether any assets of the company consisting of shares, debentures and other securities have been sold at a price less than its purchase price by the company.

**NOTE:** This provision is not applicable in respect of Banking and Investment Companies

- a) Whether loans and advances made by the company have been shown as deposits;
  - b) Whether personal expenses have been charged to revenue account.
  - c) Where it is stated that any shares have been allotted for cash,
    - i) Whether cash has actually been received in respect of such allotment.
    - ii) If no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.
- 2) **REPORTING REQUIREMENTS U/S 143(1):**
- a) If the auditor is satisfied with explanations to the above inquiries, he has no further duty to report that he is so satisfied.
  - b) Therefore, the auditor should make a report to the members on the above matters only if he finds any qualifications or adverse remarks in the explanations obtained.

**SIMILAR QUESTION:**

1. What are the Duties of Companies auditors as per Sec 143(1) of the Companies Act 2013?
- A. Refer Above Answer.

**Q.No.20. State the matters to be specified in Auditor's Report in terms of provisions of Section 143(3) of the Companies Act, 2013. (B) (NEW SM) (N15 RTP N14 – 6M)**

**DUTY TO REPORT ON CERTAIN MATTERS [SEC 143(3)]:** As per sec 143(3), the company's auditors report shall include a statement on the following matters:

- 1) Whether he has obtained all the information and explanations
  - a) Which to the best of his knowledge and belief were necessary for the purpose of his audit.
  - b) If not, the details thereof and the effect of such information on the financial statements;
- 2) Whether, in his opinion, proper books of account as required by law have been kept by the company and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- 3) Whether the report on the accounts of any branch office of the company audited by a person other than the company's auditor has been sent to him and how he has dealt with it in preparing his report;
- 4) Whether the company's balance sheet and profit and loss account are in agreement with the books of accounts and returns;
- 5) Whether, in his opinion, the financial statements comply with the Accounting Standards.
- 6) The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.
- 7) Whether any director is disqualified from being appointed as a director under section 164 (2).

- 8) Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- 9) Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.
- 10) Such other matters as may be prescribed [Rule 11 of CAAR, 2014]
- Whether the company disclosed the impact of pending litigations on its financial position in its financial statement.
  - Whether the company has made provisions, in accordance with Accounting standards or any other law, for material foreseeable losses on long term contracts including derivative contracts.
  - Whether there is any delay in transferring the amounts to Investor Education Protection Fund, if required to be transferred.
  - Whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8 November 2016 to 30 December 2016 and if so, whether these are in accordance with the books of accounts maintained by the company”

**NOTES:**

- It is mandatory for the auditor to report on the matters specified under section 143(3) irrespective of whether he got clean or adverse observations with respect to those matters.
- If any of the matters required to be included in the audit report is answered in the negative or with a qualification, the report shall state the reasons there for.
- The provisions of internal financial controls shall not apply for the following private limited companies:
  - One Person company.
  - Small company.
  - A Private company satisfying the following conditions-
    - Turnover as per latest financial statements shall not exceed Rs. 50 Crore and
    - Loans and Borrowings from banks and financial institutions shall not exceed Rs. 25 Crore.

**SIMILAR QUESTION:**

- What are the matters to be stated or reported in the Company's auditors report as per Sec 143(3) of the Companies Act 2013?
  - Refer above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 26)

Q.No.21. write short notes on the following:

(B) (NEW SM)

A) Duty to sign the audit report

(MTP - M18(N))

B) Duty to make report

C) Duty to comply with Standards on auditing (SA).

D) Duty to attend General meeting.

**A) DUTY TO SIGN THE AUDIT REPORT (SEC 145):**

- Who can sign the Audit Report:** The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company, in accordance with the provisions of **section 141(2)**.

**NOTE:** In case a firm including LLP, only Chartered Accountants are authorized to act and sign

- The qualifications, observations or comments on 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 general meeting and
  - Open to inspection by any member of the company.

**B) DUTY TO MAKE REPORT: [Sec.143(2)]**

- a) The author shall make a report to the members on
  - i) The Accounts examined by him; and
  - ii) Financial Statements which are required to be laid before the company in general meeting.
- b) The auditor shall state in his report as to whether the accounts examined by him and financial statements give a true and fair view of –
  - i) the statement of the company's affairs as at the end of its financial year;
  - ii) the Profit/Loss for the year; and
  - iii) cash flow statement for the year.
- c) The auditor shall state in his report such other matters as may be prescribed.
- d) The auditor shall prepare his report after taking into account the provisions of this Act and the Accounting and Auditing Standards.

**C) DUTY TO COMPLY WITH STANDARDS ON AUDITING (SA)[Sec. 143(9)]:** As per section 143(9) of the Companies Act, 2013, every auditor shall comply with the auditing standards<sup>7</sup>.**D) DUTY TO ATTEND GENERAL MEETING [Sec 146]:**

- a) All notices of general meeting must be sent to the Auditor of the company whether the financial statements are discussed or not in that General Meeting.
- b) The auditor shall attend the GM either by himself or through his authorized representative, who shall also be qualified to be an auditor (unless otherwise exempted by the company).
- c) The right is only in respect of General Meetings only and not in respect of any Board Meetings.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 27)**

**Q.No.22. Write about the Duties of Companies Auditor to Report on Fraud as per Sec 143(12) of the Companies Act 2013? (A) (NEW SM) (M17 RTP)**

According to section 143(12) and Rule 13 of the Companies (Audit and Auditors) Rules, 2014, the following are the duties of auditor in relation to any fraud identified during the course of his audit.

**1) IF THE AMOUNT OF FRAUD IS RS. 1 CRORE OR MORE**

- a) **Reporting to the Central Government:** If the auditor has reason to believe that an offence of fraud involving an amount of Rs. 1 crore or above, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the CG in the following manner.
- b) **The manner of reporting the matter to the Central Government is as follows: [Rule 13]**
  - i) First, the auditor shall report the matter to the Board or the Audit Committee, as the case may be, within 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days.
  - ii) On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments on such reply or observations to the CG within 15 days from the date of receipt of such reply or observations.
  - iii) In case the auditor fails to get any reply or observations within the stipulated period of 45 days, he shall forward his report to the CG along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

7) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the ICAI, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority (NFRA).

It is further provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

- iv) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
- v) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
- vi) The report shall be in the form of a statement as specified in Form ADT-4.

## 2) IF THE AMOUNT OF FRAUD IS LESS THAN RS. 1 CRORE

- a) **Reporting to the Audit Committee or Board:** If the auditor has reason to believe that an offence of fraud involving an amount of less than Rs.1 Crore, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board within 2 days of knowledge of fraud, specifying the following:
  - i) Nature of Fraud with description;
  - ii) Approximate amount involved; and
  - iii) Parties involved.
- b) **Disclosure in the Board's Report:** The following details of each of the fraud reported to the Audit committee or the Board shall be disclosed in board's report:
  - i) Nature of Fraud with description;
  - ii) Approximate Amount involved;
  - iii) Parties involved, if remedial action not taken; and
  - iv) Remedial actions taken.

## 3) ADDITIONAL POINTS:

- a) Punishment for non-compliance with above provisions:
  - i) Minimum fine: Rs. 1 lakh
  - ii) Maximum fine: Rs. 25 lakh
- b) The provisions of section 143(12) are equally applicable to
  - i) Cost Accountant in practice conducting cost audit under section 148
  - ii) Company Secretary in practice conducting secretarial audit under section 204.

### SIMILAR QUESTION:

1. Discuss the procedure to be followed by the auditor in case he has sufficient reason to believe that an offence involving fraud has been committed against the company by its officers.
- A. Refer Above Answer

*(IMMEDIATELY REFER PRACTICAL QUESTION NO. 28)*

**Q.No.23. Write about Audit of Branch Office Accounts. (Sec 143(8))**

**(B) (NEW SM)**

- 1) **WHO CAN BE APPOINTED AS A BRANCH AUDITOR:** Where a company has a branch office in India, the accounts of that office shall be audited either by
  - a) The auditor appointed for the company or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or
  - b) Where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.
- 2) **WHO CAN APPOINT BRANCH AUDITORS:**
  - a) Usually branch auditors are also appointed by the members at the Annual General Meeting.
  - b) However, the members can delegate such power to BOD to appoint branch auditor.

**3) REPORTING REQUIREMENTS OF BRANCH AUDITORS:**

- a) The branch auditor shall prepare a report on the accounts of the branch examined by him.
- b) The branch auditor shall submit his report to the company's auditor.
- c) The reporting requirements u/s 143(1), (3), (11) and (12) are equally applicable to branch auditors.

**Q.No.24. Briefly discuss the applicable provisions and rules under the companies act 2013 related to "Maintenance of cost records"?** (B)

**MAINTENANCE OF COST RECORDS:****1) CLASSIFICATION OF COMPANIES FOR THE PURPOSE OF APPLICABILITY OF THE RULES:**

The said rule has divided the list of companies into regulated sectors and non-regulated sectors. Some of the companies/ industry/ sector/ product/ service prescribed under the said rule are given below:

**a) Regulated Sectors:**

- i) Telecommunication services regulated by the telecom Regulatory Authority of India (TRAI)
- ii) Generation, transmission, distribution and supply of electricity regulated by the relevant regulatory body or authority under the Electricity Act, 2003, other than for captive generation.
- iii) Petroleum products regulated by the Petroleum and Natural Gas Regulatory Board.
- iv) Drugs and Pharmaceutical.
- v) Sugar and Industrial alcohol.
- vi) Fertilizers.

**b) Non - Regulated Sectors:**

- i) Machinery and mechanical appliances used in defense, space and atomic energy sectors excluding any ancillary item or items.
- ii) Turbo jets and turbo propellers.
- iii) Tyres and Tubes.
- iv) Steel; Cement.
- v) Production, import and supply or trading of following medical devices, such as heart valves; orthopedic implants; pacemaker (temporary and permanent), etc. The rule excludes the foreign companies having only liaison offices.

**2) APPLICABILITY:** Rule 3 of the Companies (Cost Records and Audit) Rules, 2014 provides that the following conditions for companies (including foreign companies) which are required to maintain cost records,

- a) Company must be engaged in the production of goods or providing services, and
- b) It must be having an overall turnover from all its products and services of Rs.35 crore or more during the immediately preceding financial year.

**EXCEPTIONS:** Companies classified as a Micro enterprise or a Small enterprise under Micro, Small and Medium Enterprises Development Act, 2006 not required maintaining cost records even it satisfies the above limits.

**3) PRESCRIBED FORM FOR MAINTENANCE OF COST RECORDS:**

- a) As per Rule 5 of the companies (Cost Records and Audit) Rules, 2014, cost records shall be maintained in Form CRA – 1.
- b) The cost records shall be maintained on regular basis in such manner as to facilitate calculation of per unit cost of production or cost of operations, cost of sales and margin for each of its products and activities for every financial year on monthly or quarterly or half-yearly or annual basis.

**4) REQUIREMENT AS PER CARO, 2016:** As per clause (vi) to Paragraph of the CARO, 2016, where maintenance of cost records has been specified by the Government under section 148(1) of the Companies Act, 2013, the auditor has to report whether such accounts and records have been made and maintained.

**Q.No.25. Briefly discuss the applicable provisions and rules under the companies act 2013 related to “applicability of cost audit”. (A) (NEW SM)**

- 1) **APPLICABILITY OF COST AUDIT:** Rule 4 of the companies (Cost Records and Audit) Rules, 2014 states the provisions related to the applicability of the cost audit.

The applicability of Cost Audit to a company depends upon certain Turnover criteria as follows

**a) For Companies specified under “Regulated Sectors”:**

- i) The overall annual turnover of the company from all its products and services during the immediately preceding financial year is Rs.50 crore or more and
- ii) The aggregate turnover of the individual product(s) or service(s) for which cost records are required to be maintained under rule 3 is Rs.25 crore or more.

**b) For Companies specified under “Non-Regulated Sectors”:**

- i) The overall annual turnover of the company from all its products and services during the immediately preceding financial year is Rs.100 crore or more and
- ii) The aggregate turnover of the individual product(s) or service(s) for which cost records are required to be maintained under rule 3 is Rs.35 crore or more.

- 2) **NOT - APPLICABILITY OF COST AUDIT:** Rule 4(3) provides that the requirement for cost audit under these rules shall not be applicable to a company which is covered under Rule 3, and,

- a) Whose revenue from exports, in foreign exchange, exceeds 75% of its total revenue (Or)
- b) Which is operating from a special economic zone (or)
- c) A company which is engaged in generation of electricity for captive consumption.

**Q.No.26. Explain the provisions with respect to appointment and removal of cost auditors. (B) (NEW SM)**

- 1) **APPOINTMENT OF COST AUDITOR: SEC 148:**

- a) **Qualification, disqualification, rights, duties and obligations of Cost Auditor:** Similar to the company auditor appointed under section 139.

**b) Who can be appointed as a cost auditor:**

- i) The Cost audit shall be conducted by a Cost Accountant.
- ii) Person appointed under section 139 as an auditor of the company shall not be appointed as its cost auditor.
- iii) The qualifications, disqualifications, rights, duties and obligations applicable to auditors (i.e. applicable to company auditor) shall, so far as may be applicable, apply to a cost auditor appointed under section 148 and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company.

- c) **Cost auditor to comply with cost auditing standards:** The auditor conducting the cost audit shall comply with the cost auditing standards.

Here, the expression “cost auditing standards” mean such standards as are issued by the Institute of Cost and Works Accountants of India (ICWA), constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

An audit conducted under section 148 shall be in addition to the audit conducted under section 143.

**d) Who will appoint Cost Auditor [Rule 14 of the Companies (Audit and Auditors) Rules, 2014]**

- Board of directors.
- However, if there is Audit committee in the company, then the appointment can be made after considering the recommendation of audit committee.

- e) **Remuneration to Cost Auditor:** The remuneration recommended by the Audit Committee (if applicable) shall be considered and approved by the B.O.D and ratified subsequently by the shareholders;

- f) **Time limit for appointment:** within 180 days of the commencement of every financial year.
- g) **Communication with CG:** Company<sup>8</sup> shall file a notice of such appointment with the central Government within a period of 30 days of the Board meeting in which such appointment is made or within a period of 180 days of the commencement of the financial year, whichever is earlier, through electronic mode, in Form CRA-2.
- h) **Tenure of Cost Auditor:** The cost auditor appointed as such shall continue in such capacity till the expiry of 180 days from the closure of the financial year, or till he submits the cost audit report, for the financial year for which he has been appointed
- i) **Casual vacancy in the office of Cost Auditor:** Any casual vacancy in the office of a cost Auditor, whether due to resignation, death or removal, shall be filled by the Board of Directors within 30 days of occurrence of such vacancy and the company shall inform the CG in Form CRA-2 within 30 days of such appointment of cost auditor.
- 2) **REMOVAL OF COST AUDITOR:** The cost Auditor may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the cost auditor and recording the reasons for such removal in writing.
- 3) **PENALTY FOR DEFAULT:**

**Contravention:** If any default is made in complying with the provisions of section 148—

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

The provisions of section 143 shall mutatis mutandis apply to the cost accountant conducting cost audit under section 148.

**Q.No.27. Write about submission of cost Audit Report.**

**(B) (NEW SM)**

**PROCEDURE FOR SUBMISSION OF COST AUDIT REPORT:**

- 1) **COST AUDITOR TO BOD:** The cost auditor shall submit the cost audit report along with his reservations or qualifications, if any, in Form CRA-3 to the BOD within a period of 180 days from the closure of the financial year.
- 2) **BOD to CG:**
- a) The company shall within 30 days from the dated of receipt of a copy of the cost audit report prepared furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein in Form CRA-4.
- b) If after considering the cost audit report and the information and explanation furnished by the company as above, the central Government may call for any further information or explanation as is necessary,
- 3) **DUTY TO REPORT ON FRAUD:** The provisions of section 143(12) and the relevant rules on duty to report on fraud shall apply mutatis mutandis to a cost auditor during performance of his functions under section 148 of the Act and these rules.

**Q.No.28. State the consequences for non-compliance of Chapter X-Audit and Auditors? (A) (NEW SM)**

**CONSEQUENCES FOR NON-COMPLIANCE OF CHAPTER X-AUDIT AND AUDITORS**

- 1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened,
- a) **Penalty on company [Section 147(1)]:** The Company shall be punishable with fine of ₹ 25,000 to ₹ 5 lakhs.

8) To whom Sec. 148 is applicable

- b) **Penalty on officers [Section 147(1)]:** Every officer of the company who is in default shall be punishable with
- imprisonment up to 1 year or
  - Fine of ₹10,000 to ₹1 lakh; or
  - both with imprisonment and fine.

2) **PENALTY ON AUDITOR [SECTION 147(2)]:**

- a) If an auditor of a company contravenes any of the provisions of section 139, 143, 144 or 145 then the auditor is liable for the following consequences:
- In case of unintentional default, he shall be punishable with:-  
Minimum fine: ₹ 25,000  
Maximum: ₹ 5 lacs or four times the remuneration of the auditor, whichever is less.
  - In case default made with an intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with-
    - Imprisonment up to 1 year and
    - Fine  
Minimum: Rs. 50,000  
Maximum: Rs. 25,00,000 or eight times the remuneration of the auditor, whichever is less.

3) **FURTHER, WHERE AN AUDITOR HAS BEEN CONVICTED AS ABOVE, HE SHALL BE LIABLE TO— 147(3)**

- refund the remuneration received by him to the company; and
- pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.

4) **APPOINTMENT OF AUTHORITY FOR RECOVERY OF DAMAGES AND PENALTY. (147(4)):**

- For the recovery of the damages CG have power to appoint any authority or officer.
- The officer in such case will ensure the recovery of the penalty and the damages as assessed.
- After recovery of such damages the authority or officer will report the same to the CG.

**Q.No.29. State the consequences if auditor acted in a fraudulent manner or abetted or colluded in any fraud? (B) (NEW SM)**

**LIABILITY OF AUDIT FIRM [SECTION 147(5)]:** Where, in case of audit of a company being conducted by an audit firm, 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, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

**Q.No.30. Audit of Government Companies [Section 143(5), (6), (7)] (B) (NEW SM)**

1) **APPOINTMENT OF AUDITORS U/S 139:**

- In the case of a Government company or any other company owned or controlled, directly or indirectly, by the CG, or by any State Government or Governments, or partly by the CG and partly by one or more State Governments, Comptroller and Auditor-General (CAG) of India shall –
  - Appoint the auditor under section 139(5) or 139(7) and

- Direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the CAG of India.
- b) The audit report among other things, include the following:
- i) The directions, if any, issued by the CAG of India,
  - ii) The action taken thereon and its impact on the accounts and financial statement of the company.
- 2) **SUPPLEMENT THE STATUTORY AUDIT U/S 143(6):** The CAG of India shall within 60 days of receipt of the audit report have a right to:
- a) Conduct a Supplementary Audit of the financial statement of the company by any persons authorized by him. And he can ask for any additional information for the purposes of such audit from such person appointed.
  - b) CAG can comment on supplement audit report and It any comments given by the CAG upon, or supplement to, the audit report shall be
    - i) Sent by the company to every person entitled to copies of audited financial statements under sub-section (1) of section 136 i.e.,
      - Every member of the company,
      - To every trustee for the debenture-holder of any debentures issued by the company, and
      - To all persons other than such member or trustee, being the person so entitled and
    - ii) Placed before the annual general meeting of the company at the same time and in the same manner as the audit report.
- NOTE:** Supplementary audit is not a separate audit but an extension to original audit carried under Sec.139 of the act.
- 3) **TEST AUDIT [SEC. 143(7)]:** If CAG considers necessary, it may order test audit to be conducted on the accounts of the Government Company.
- a) The provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.
  - b) It is done by the CAG himself.
- Thus, it is seen that there is a two-layer audit of a Government company, by the statutory auditors, being qualified chartered accountants, and by the C&AG.

## SECTION 2: THEORY FOR ACADEMIC INTEREST FOR STUDENTS SELF STUDY

**Q.No.1. Why Central Government permission is required, when the auditors are to be removed before expiry of their term, but the same is not needed when the auditors are changed after expiry of their term? (C) (NEW SM)**

### **PERMISSION OF CENTRAL GOVERNMENT FOR REMOVAL OF AUDITOR UNDER SECTION 140(1) OF THE COMPANIES ACT, 2013:**

- 1) Removal of auditor before expiry of his term i.e. before he has submitted his report is a serious matter and may adversely affect his independence.
- 2) Further, in case of conflict of interest the shareholders may remove the auditors in their own interest.
- 3) Therefore, law has provided this safeguard so that Central Government may know the reasons for such an action and if not satisfied, they may not give approval.
- 4) On the other hand if auditor has completed his term i.e. he has submitted his report and thereafter he is not reappointed then the matter is not serious enough for CG to call for its intervention.

**CONCLUSION:** Therefore, in view of the above, the permission of the Central Government is required when auditors are removed before expiry of their term and the same is not needed when they are not reappointed after expiry of their term.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 29)**

**Q.No.2. Illustration explaining rotation in case of individual auditor?**

**(C) (NEW SM)**

**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 section 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
5Years (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 year	4 years	5 years

**Q.No.3. Illustration explaining rotation in case of audit firm?**

**(C) (NEW SM)**

**Illustration explaining rotation in case of audit firm<sup>9</sup>**

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 section 139(2)]	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
10 years (or more than 10 years)	3Years	13 Years or more
9 years	3Years	12 Years
8 years	3Years	11 Years
7 years	3Years	10Years
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

9) (a) Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.

(b) 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.

(c) The word "firm" shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

**Q.No.4. As per NFRA Rules, Explain the Provisions relating to Monitoring and enforcing compliance with Auditing Standards. (C) (NEW SM)**

Monitoring and enforcing compliance with auditing standards -

- 1) For the purpose of monitoring and enforcing compliance with auditing standards (SA) under the Act by a company or a body corporate governed under rule 3, the NFRA may:
  - a) review working papers (including audit plan and other audit documents) and communications related to the audit;
  - b) evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and
  - c) Perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.
- 2) The NFRA may require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.
- 3) The NFRA may seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.
- 4) The NFRA shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.
- 5) The NFRA shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.
- 6) The NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.
- 7) The NFRA may send a separate report containing proprietary or confidential information to the Central Government for its information.
- 8) Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

**Overseeing the quality of service and suggesting measures for improvement (As per NFRA Rules)**

- 1) On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
- 2) It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.
- 3) The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.
- 4) The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.
- 5) The NFRA may take the assistance of experts for its oversight and monitoring activities.

**SECTION 3: PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION**

**Q.No.1.** DON Limited appointed an individual firm, Nat & Company, Chartered Accountants, as Auditors of the Company at the Annual General Meeting held on 30th September, 2019. Mrs. Kat, wife of Mr. Nat, invested in the equity shares face value of Rs. 1 lakh of DON Limited on 15th October, 2019. But Nat & Company continues to function as statutory auditors of the Company. **(MTP-N18 (N)), RTP-N(20)(N), M-20(N)**

**PROVISION:** According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

**ANALYSIS AND CONCLUSION:** In the case Mr. Nat, Chartered Accountants, did not hold any such security. But Mrs. Kat, his wife held equity shares of DON Limited of face value Rs. 1 lakh, which is within the specified limit.

Hence, Nat & Company can continue to function as auditors of the Company even after 15th October 2017 i.e. after the investment made by his wife in the equity shares of DON Limited.

**Q.No.2.** A, a Chartered Accountant has been appointed as auditor of Laxman Ltd. In the Annual General Meeting of the company held in September, 2015, which assignment he accepted. Subsequently in January, 2016 he joined B, another chartered accountant, who is the manager finance of Laxman Ltd as partner. **(M16 RTP)**

**PROVISION:** As per section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Section 141(4) provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in Section 141(3), he shall be deemed to have vacated his office as an auditor.

**ANALYSIS:** In the present case, A, an auditor of M/s Laxman Ltd., joined as partner with B, who is Manager Finance of M/s Laxman Limited, has attracted section 141(3)(c)

**CONCLUSION:** Therefore, he shall be deemed to have vacated office of the auditor of M/s Laxman Limited.

**Q.No.3.** "Mr. V", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." Having face value of Rs.900/-. Whether Mr. V is qualified for appointment as an auditor of "XYZ Ltd."? **(NEW SM)**

Mr. Vivek, a practicing Chartered Accountant, is holding securities of Date Ltd. having face value of Rs 1,000/-. Whether Mr. Vivek is qualified for appointment as an Auditor of Date Ltd? **(MTP J-20)**

**PROVISION:** As per section 141 (3)(d)(i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner 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 provision 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.

**ANALYSIS:** In the present case, Mr. V. is holding security of Rs 900 in the XYZ Ltd,

**CONCLUSION:** Therefore he is not eligible for appointment as an Auditor of "XYZ Ltd".

**Q.No.4** EF Limited re-appointed Suresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2016. Mrs. Kamala wife of one of the partners of Suresh & Company, invested Rs. 1 lakh in the equity shares of EF Limited on 15th October, 2016. But Suresh & Company continues to function as statutory auditors of the company.

**PROVISION AND ANALYSIS:** According to section 141 of the Companies Act, 2013, a person who holds any security of the company, which carries voting rights, cannot be appointed as auditor of the company. In the case of a firm of chartered accountants, all the partners should not hold any such security. Further Section 141 provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. However section 141 is not applicable if the security is held in the name of wife or other relative.

**CONCLUSION:** Hence Suresh and Company can continue to function as auditors of the Company even after 15th October 2016 i.e. after the investment made by wife of a partner in the equity shares of EF Limited.

**Q.No.5.** 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 holds 100 equity shares of Shiva Ltd., a Subsidiary company of Krishna Ltd. Comment

**PROVISION:** As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner 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 provision 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.

Also Section 141(4) of the Companies Act, 2013, where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sec 141(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

**ANALYSIS:** 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.

**CONCLUSION:** Therefore, the firm, M/s Ram and Hanuman Associates would be disqualified to be appointed as statutory auditor of Krishna Ltd., which is the holding company of Shiva Ltd., because one of the partners Mr. Hanuman is holding equity shares of its subsidiary.

**Q.No.6.** An auditor purchased goods worth Rs 5,00,001 on credit from a company being audited by him. The company allowed him one month's credit, which it normally allowed to all known customers. (M15, 16 RTP)

**PROVISION:** As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company, or a subsidiary of its holding company, for an amount exceeding Rs. 5,00,000, then he is not qualified for appointment as an auditor of a company.

Where an auditor purchases goods or services from a company audited by him on credit, he is definitely indebted to the company and if the amount outstanding exceeds Rs. five lakh, he is disqualified for appointment as an auditor of the company.

**ANALYSIS:** It will not make any difference if the company allows him the same period of credit as it allows to other customers on the normal terms and conditions of the business.

**CONCLUSION:** The auditor cannot argue that he is enjoying only the normal credit period allowed to other customers. In fact, in such a case he has become indebted to the company and consequently he has deemed to have vacated his office.

**Q.No.7.** 'B' owes Rs 5,01,000 to 'C' Ltd., of which he is an auditor. Is his appointment valid? Will it make any difference, if the advance is taken for meeting-out travelling expenses?

**PROVISION:** same as Practical Question no.6

**ANALYSIS:** Even if the advance was taken for meeting out travelling expenses particularly before commencement of audit work, his appointment is not valid because in such a case also the auditor shall be indebted to the company.

**CONCLUSION:**

- a) The auditor is entitled to recover fees on a progressive basis only.
- b) No, even if the advance is taken for meeting-out travelling expenses it do not make any difference.

**Q.No.8.** Mr. Amar, a Chartered Accountant, bought a car financed at Rs. 7,00,000 by Chandra 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 to even after taking the loan.

Or

Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for rupees 6 lakh. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.

**PROVISION:** same as Practical Question no.6

**ANALYSIS:** 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 Chandra Finance Ltd. for more than Rs 5,00,000 Also according to Section 141 (3)(d) (ii) he cannot act as an auditor of any subsidiary of Chandra Finance Ltd. i.e. he is also disqualified to work in Charan Ltd. & Das Ltd.

**CONCLUSION:** He has to vacate his office in Das Ltd. Even though it is a subsidiary of Chandra Finance Ltd.

Hence audit work performed by Mr. Amar as an auditor is invalid, he should vacate his office immediately and Das Ltd must have to appoint any other CA as an auditor of the company.

**Q.No.9.** B is appointed as an auditor of PQR Ltd., at a total remuneration of Rs.10,00,000, classified as under: (i) for unit X of the company Rs.6,00,000; (ii) for unit Y of the company Rs.2,00,000 and (iii) for Head office Rs. 2,00,000. As per terms of appointment, B can collect his fees on progressive basis, on completion of audits of unit X and /or Y. B completed the audit of unit Y and recovered Rs.6,00,000 on account of the audit fees though the entire audit is not completed. Explain whether B is indebted to the company for an amount exceeding Rs.5,00,000 and therefore disqualified. (or) Will an auditor who received the audit fees from the Co on progressive basis, is called Indebted.

**PROVISION:** Auditor cannot be said to be indebted to the Company at any stage if he recovers his fees on a progressive basis. As and when a part of the work is done, he can recover his fees in accordance with the terms of his engagement with the client, without waiting for the completion of the whole job.

**ANALYSIS:** In the given case, Mr. B a Chartered Accountant taking his remuneration in accordance with terms of engagement and there is no indebtedness attracted to him.

**CONCLUSION:** Hence, B is not indebted to the Company and is qualified to act as its Statutory Auditor.

**Q.No.10** The Board of Directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

**PROVISION:** According to section 144 of the Companies Act, 2013, 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 such services shall not include designing and implementation of any financial information system.

**ANALYSIS AND CONCLUSION:** In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

**Q.No.11.** Managing director of PQR Ltd. himself wants to appoint Shri Ganapati, a Practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the managing director.

**(NEW SM)**

**PROVISION:** Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company".

**ANALYSIS:** In the instant case, the appointment of Shri Ganapati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which authorizes the Board of Directors to appoint the first auditor of the company.

**CONCLUSION:** In view of the above, the Managing Director of PQR Ltd should be advised not to appoint the first auditor of the company.

**Q.No.12.** White Star Ltd. was incorporated on 01.08.2015 and Mr. T, who is a relative to the chairman & Managing Director (CMD) of the company, appointed as auditor by the Board of directors in their meeting on 04.09.2015. Comment.

**PROVISION:** There are two issues arising out of this situation, viz.,

- a) Appointment of first auditor by the Board of Directors; and
- b) Relation of such an auditor with the Chairman of the company.

Regarding the first issue relating to appointment of auditor, particularly, in this case relating to appointment of first auditors, it may be noted as per the provisions of Section 139(6) of the Companies Act, 2013, the first auditor of a company shall be appointed by the BOD within 30 days from the date of registration of the company.

If the Board fails to appoint the first auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting has to make the appointment.

**ANALYSIS:** As per the facts given in the case, the Board has failed to appoint the first auditor within 30 days from the registration of company because the date of incorporation of White Star Ltd. is 01-08-2015 and the date of appointment of auditors by the Board of Directors is 04-09-2015.

Accordingly if the Board fails to appoint the first auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting has to make the appointment.

**CONCLUSION:** Thus the appointment of Mr. T is not valid. Under the circumstances, the second issue relating to relationship of auditor with the Chairman & Managing Director (CMD) becomes redundant.

**Q.No.13** One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2018 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

**PROVISION AND ANALYSIS:** As per the Section 45 of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

**CONCLUSION:** Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

**Q.No.14.** Nickson 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. Nickson Ltd appointed Mr. P as statutory auditor for the year.

**PROVISION:** Section 139 of the Companies Act, 2013 provides that The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

**ANALYSIS:** In the given case Ajanta Ltd is a Government Company as its 20% shares have been held by CG, 25% by Uttar Pradesh SG and 10% by Madhya Pradesh SG. Total 55% shares have been held by CG and SG. Therefore, it is a Government company.

Nickson Ltd. is a subsidiary company of Ajanta Ltd. Hence Nickson Ltd. covers in the definition of a Government Company. Hence the Auditor of Nicksons Ltd. can be appointed only by C & AG.

**CONCLUSION:** Therefore, appointment of 'P' is invalid and 'P' should not give acceptance to the Directors of Nicksons Ltd.

**Q.No.15.** Managing Director of PQR Ltd. himself wants to appoint Shri Ganapati, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.

**PROVISIONS AND EXPLANATION:** Section 139(6) of the Companies Act, 2013 lays down that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". In the instant case, the appointment of Shri Ganapati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which authorizes the Board of Directors to appoint the first auditor of the company.

**CONCLUSION:** In view of the above, the Managing Director of PQR Ltd should be advised not to appoint the first auditor of the company.

**Q.No.16.** Prakash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2019. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2019 for personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Albert as auditor. **(NEW SM)**

**PROVISIONS AND EXPLANATION:**

**FILLING OF CASUAL VACANCY [Sec 139(8)]:**

- 1) **In case of Non-Government Company:** In the case of company whose accounts are not subject to audit by an auditor appointed by the CAG,
  - a) It has to be filled by the BOD within 30 days.
  - b) If such casual vacancy is the result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.
- 2) **In case of Government company:** In the case of company whose accounts are subject to audit by an auditor appointed by the CAG
  - a) It has to be filled by the CAG within 30 days.
  - b) If CAG fail to do so, then the BOD shall fill the vacancy within next 30 days.
- 3) **Tenure of auditor appointed in both the cases:** Till the conclusion of the next AGM.

**ANALYSIS AND CONCLUSION:** In the present case, as the auditor has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Albert. However, the appointment of Mr. Albert must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board. Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting.

**Q.No.17.** Mr. A was appointed auditor of AAS Ltd. by board to fill the casual vacancy that arose due to death of the auditor originally appointed in AGM. Subsequently, Mr. A also resigned on health grounds during the tenure of appointment. The board filled this vacancy by appointing you through duly passed board resolution. Comment.

**PROVISION:** As per **Section 139(8)**, any casual vacancy due to resignation in the office of an auditor in non-government company shall be filled by the Board of Directors, on recommendation of audit committee, within 30 days. The appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

**ANALYSIS AND CONCLUSION:** In the present case, the auditor Mr. A resigned and the vacancy had been filled in by Board. But, the vacancy caused by resignation cannot be filled by Board itself, such appointment shall also be approved by the company at general meeting.

The fact that the Mr. A was appointed by Board originally is a matter irrelevant in this situation. If the cause of vacancy is resignation, then the power of appointment shall vest with the general meeting only. As such, the appointment made by Board is invalid.

**Q.No.18.** M/s Young & co., a Chartered accountant firm, and Statutory auditors of OLD Ltd, is dissolved on 1.4.2014 due to differences of opinion among the partners. The board of directors of OLD Ltd. In its meeting on 6.4.2014 appointed another firm M/s Sharp & co. as their new auditors for one year.

**PROVISION:** As per **Section 139(8)**, any casual vacancy other than resignation in the office of an auditor in non-government company shall be filled by the Board of Directors, on recommendation of audit committee, within 30 days.

**ANALYSIS:** The expression "casual vacancy" has not been defined in that Act. Talking its natural meaning it may arise due to a variety of reasons which include death, resignation, disqualification, dissolution of the firm etc. Furthermore Section 139(8) stipulates that any auditor appointed in a casual vacancy shall hold office until the conclusion of the next AGM.

**CONCLUSION:** In the instant case the action of the board of directors in appointing M/s Sharp & Co. to fill up the casual vacancy due to dissolution of M/s Young & Co., is correct. However, the board of directors are not correct in giving them appointment for one year. M/s Sharp & Co. can hold office until the conclusion of next AGM only.

**Q.No.19.** The balance sheet of XYZ Ltd., an Unlisted Public Company, shows paid up share capital of Rs.5 crore and Public deposits of Rs.100 crore. The company appointed CA Ananya as the statutory auditor in its annual general meeting held at the end of September, 2015 for 6 years.

Comment upon the facts of the case with respect to applicability of provisions related to rotation of auditors and cooling off period as per the section 139(2) of the companies act, 2013.

**PROVISION:** As per Sec 139(2), rotation of auditor will be applicable to all Unlisted Public Limited Companies:

- a) With paid up share capital of rupees 10 crore or more.
- b) With borrowings from PFI's or Banks or Public Deposits of 50 crore or more.

**ANALYSIS:** In the given case, XYZ Ltd. is an unlisted public company having paid up share capital of Rs.5 crore and public deposits of Rs. 100 crore. The company appointed CA. Ananya as the statutory auditor in its AGM held at the end of September, 2015 for 6 years.

The provisions relating to rotation of auditor will be applicable as the public deposit exceeds Rs. 50 crore. Therefore, XYZ Ltd. can appoint CA. Ananya as an auditor of the company for not more than one term of five consecutive years and CA. Ananya will hold office of auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2020. As a result, the appointment of CA. Ananya made by XYZ Ltd. for 6 years is void.

**COOLING-OFF PERIOD:** As per the proviso to section 139(2) of the Companies Act, 2013 an individual auditor who has completed his respective term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term.

**CONCLUSION:** Therefore, CA. Ananya shall not be re-appointed as auditor in XYZ Ltd. for further term of five years i.e. she cannot be appointed as auditor upto year 2025.

**Q.No.20.** "ABC & Co." is an audit firm having partners "Mr. A", "Mr. B" and "Mr. C", chartered accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as an auditor in 4, 6 and 10 companies respectively.

- A) Provide the maximum number of audits remaining in the name of "ABC & Co."
- B) Provide the maximum number of audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.

(NEW SM)

**PROVISION:** As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹ 100 crores

As per section 141 (3)(g), this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be  $3 \times 20 = 60$  companies audit. Sometimes, a Chartered Accountant may be a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.

**CONCLUSION:** Therefore, ABC & Co. can hold appointment as an auditor of 40 more companies:

Mr. A can hold:  $20 - 4 = 16$  more audits

Mr. B can hold  $20 - 6 = 14$  more audits and

Mr. C can hold  $20 - 10 = 10$  more audits.

**Q.No.21.** KBC & Co. a firm of chartered accountants has three partners, K, B & C; K is also in whole time employment elsewhere and Mr. B & Mr. C do not hold any audit in their personal capacity or as a partners of other firms. The firm is offered the audit of ABC Ltd. and is already holding audit of 40 companies.

**PROVISION:** As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ` 100 crores

As per section 141 (3)(g), this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be  $3 \times 20 = 60$  Companies audit. Sometimes, a Chartered Accountant may be a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits only on his account.

**ANALYSIS:** In the firm of KBC & Co., K is in whole-time employment elsewhere, therefore, he will be excluded in determining the number of company audits that the firm can hold. If B and C do not hold any audits in their personal capacity or as partners of other firms, the total number of company audits that can be accepted by KBC & Co., is forty, and in the given case company is already holding forty audits,

**CONCLUSION:** therefore, KBC & Co. can't accept the offer for audit of ABC Ltd.

**Q.No.22.** While conducting the audit of a limited company for the year ended 31st march, 2016, the auditor wanted to refer to the minute books. The board of directors refused to show the minute books to the auditor.

**PROVISION:** The auditor of a company shall have a right of access to the books of account and vouchers of the company at all times, whether kept at the registered office of the company or at any other place including branches.

**ANALYSIS:** It is, therefore, essential for the auditor to refer to the Minute Books. In the absence of the Minute Books, the auditor may not be able to vouch/verify certain transactions of the company.

**CONCLUSION:** In case the directors have refused to produce the Minute Books, the auditor may consider extending the audit procedure as also consider qualifying his report in any appropriate manner.

**Q.No.23.** M/s Seeman & Co. had been the company auditor for Amudhan Company limited for the year 2015-16. The company had three branches located at Chennai, Delhi and Mumbai. The audits of branches-Chennai, Delhi were looked after by the company auditors themselves. The audit of Mumbai branch had been done by another auditor M/s Vasan & co., a local auditor situated at Mumbai. The branch auditor had completed the audit and had given his report too. After this, but before finalization, the company auditor wanted to visit the Mumbai branch and have access to the inventory records maintained at the branch. The management objects to this on the grounds of the company auditor is transgressing the scope of audit areas agreed. Comment.

**PROVISION:** The audit of the branch of a company is dealt with in Section 143(8) of the Companies Act, 2013. According to this section, the audits of the branches can be done by the company auditor himself or by another auditor. Even where, the branch accounts are audited, the company auditor has right to visit the branch if he deems it necessary to do so for the performance of his duties as auditor.

He has also right of access at all times to the books and accounts and vouchers of the company maintained at the branch office. He can appropriately deal with the report of the branch auditor in framing his main report. He will disclose how he had dealt with the branch audit report.

**ANALYSIS:** In this case, the audits of two branches were done by the company auditor and one branch was done by a separate branch auditor.

Applying the above provisions, to the instant case, management's objection that the company auditor is transgressing the scope of audit areas agreed, is absolutely, wrong. The right of company auditor in visiting and accessing the records of branch cannot be forfeited.

**CONCLUSION:** Even where the branch accounts are audited by another local auditor, the company auditor has right to visit the branch and can have access to the books and vouchers of the company maintained at the branch office.

**Q.No.24.** The members of C. Ltd. preferred a complaint against the auditor stating that he has failed to send the Audit report to them.

**PROVISION:** Section 143 of the Companies Act, 2013 lays down the powers and duties of auditor. As per provisions of the law, it is no part of the auditor's duty to send a copy of his report to members of the company. The auditor's duty concludes once he forwards his report to the company. It is the responsibility of company to send the report to every member of the company.

**CONCLUSION:** Hence in the given case, the auditor cannot be held liable for the failure to send the report to the shareholders.

**Q.No.25.** Mr. B, Statutory auditor of Secret Ltd. was not permitted by the Board of directors to give notice of attend general meeting of the company on the ground that his right to receive notice of general meetings is restricted only to those meetings at which the accounts audited by him are to be presented and discussed.

**PROVISION:** Section 146 - The auditors of a company are entitled to attend any general meeting of the company (the right is not restricted to those at which the accounts audited by them are to be discussed); also to receive all the notices to the general meetings, which members are entitled to receive

**ANALYSIS:** In the instant case, the board of directors of Secret Ltd., have no right to restrict Mr. B from attending the general meeting and Mr. B has every right to attend such meeting as conferred by Section 146.

**CONCLUSION:** Thus, the action of the board of directors is contrary to the provisions of law and curtails the right of the auditor.

**Q.No.26.** Assume yourself as Chartered Accountant In practice and Company auditor of Rama Ltd. which is having its annual general meeting scheduled on 17th August, 2018 at its registered office in Mumbai. On 16th August, 2018 you have a business meeting fixed at Kochi and return flight to Mumbai in the evening of 16th August, 2018. But due to bad weather conditions all flights departing from Kochi are declared cancelled. Discuss the alternatives available to you with regard to the annual general meeting of Rama Ltd. Discuss the alternative available to you with regard to the annual general meeting of Rama Ltd.

**PROVISION AND ANALYSIS:** The Company Auditor, unless exempted by the company shall, either by himself or through his authorized representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Company Auditor.

The authorized representative who attends the General Meeting of the company shall also be qualified to be a Company Auditor

**CONCLUSION:**

**Alternatives available are as under:**

Apply to the Company for granting exemption from attending the AGM on grounds of bad weather conditions.

Find some other way of transport if possible so as to reach the venue on time.

Appoint authorized representative at Kochi who is qualified to be a Company auditor.

**Q.No.27.** Mr. X, a director of M/S KP Private Ltd, is also a director of another company viz., M/s GP Private Ltd., which has not filed the financial statements and annual return for last three years 2013-14 to 2015-16. Mr. X is of the opinion that he is not disqualified u/s 164(2) of the companies act, 2013, and auditor should not mention disqualification remark in his audit report. **(M16- 6M, MTP1& 2-M16)**

**PROVISION:**

**Disqualification of a Director Under Section 164(2) of the Companies Act, 2013:** Section 143(3)(g) of the Companies Act, 2013 imposes a specific duty on the auditor to report whether any director is disqualified from being appointed as director under section 164(2) of the Companies Act, 2013.

As per provisions of Section 164(2), if a director is already holding a directorship of a company which has not filed the financial statements or annual returns for any continuous period of three financial years shall not be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

**ANALYSIS:** In this case, Mr.X is a director of M/s KP Private Ltd. as well as of M/s GP Private Ltd., and, M/s GP Private Ltd., has not filed the financial statements and annual return for last three years. Hence the provisions of section 164(2) are applicable to him and as such he is disqualified from directorship of both the companies.

**CONCLUSION:** Therefore, the auditor shall report about the disqualification under section 143(3)(g) of the Companies Act, 2013.

**Q.No.28.** Mr. Rajendra, a fellow member of the Institute of Chartered Accountants of India, working as Manager of Shrivastav and Co., a Chartered accountant firm, signed the audit report of OM Ltd on behalf of Shrivastav & co.

**PROVISION:** As per section 145 of the Companies Act, 2013, the person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company, in accordance with the provisions of section 141(2)

**ANALYSIS:** Therefore, Mr. Rajendra, a fellow member of the Institute and a manager of M/s Shrivastav & Co., Chartered Accountants, cannot sign on behalf of the firm in view of the specific requirements of the Companies Act, 2013.

**CONCLUSION:** The act of Rajendra is not valid.

**Q.No.29.** "NSH Ltd is engaged in the business of retail and is listed on National stock exchange. The company recently acquired a business undertaking to expand its business. During the year, certain transactions amounting to thousands of rupees were carried out by the employees/ directors of the company which the management found suspicious and appointed a forensic consultant to carry out their review. Pursuant to this review process, certain suspect transactions were identified by the management and the management reported these transactions to the appropriate authorities. During the course of statutory audit, such transactions were also made known to the statutory auditors. How should the auditor deal with such matter? **(NEW SM)**

The auditors need to report about this matter appropriately in their CARO report.

**PROVISION:** As per Section 143(12) of the Companies Act, 2013, the auditor is required to report to the Audit Committee or to the Board of Directors and, where applicable, to the Central Government an offence of fraud in the company by its officers or employees only if he is the first person to identify/note such instance in the course of performance of his duties as an auditor.

**ANALYSIS AND CONCLUSION:** In this case, the suspicious transactions have been identified by the management first and information about the same has been given by the management to the auditor. Accordingly, the auditor should report about this matter to the Audit Committee/ Board of Directors but the auditor would not be required to report the same to Central Government.

**Q.No.30.** Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Ramesh as Auditor in his place. **(NEW SM) (MTP-N18 (N))**

**PROVISION:**

**REMOVAL OF AUDITOR BEFORE THE EXPIRY OF HIS TERM [SEC. 140(1)]:**

- 1) **Authority for Removal:** According to Section 140 (1), the auditor appointed under section 139 may be removed from his office before the expiry of his term.
- 2) **Procedure for Removal:** The following is the procedure prescribed in Rule 7 of CAAR, 2014 for Removal of auditor before the expiry of his term:
  - a) First the BOD should pass a board resolution at a board meeting to remove the Auditor.
  - b) Later, the application shall be made to the CG in form ADT-2 within 30 days of the resolution passed by the Board to get its approval.
  - c) The company shall hold the general meeting within 60 days of receipt of approval of the CG for passing the special resolution.
- 3) **Opportunity of being heard:** It is important to note that before taking any action for removal, before expiry of the term, concerned auditor shall be given a reasonable opportunity of being heard.

**ANALYSIS AND CONCLUSION:** In this case, the first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

## SECTION 4: PRACTICAL QUESTIONS STUDENTS SELF STUDY

**Q.No.1.** Devi, a member of the ICAI, does not hold a certificate of practice. Is her appointment as an auditor is valid?

**PROVISION:** As per section 141(1) of Companies Act, 2013, A person shall be qualified for appointment as an auditor of a company, only if one is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949. Under the Chartered Accountants Act, 1949, only a Chartered Accountant holding the certificate of practice can engage in public practice.

**ANALYSIS:** Devi does not hold a certificate of practice and

**CONCLUSION:** Hence Devi cannot be appointed as an auditor of a company.

**Q.No.2.** Can a director of the company is appointed as an auditor?

**PROVISION:** There is no express prohibition that a director cannot be appointed as an auditor. But the below given two provisions of the companies Act prohibits a director to be appointed as an auditor:

- a) Sec.141 enumerates that an officer of the company cannot be appointed as an auditor.
- b) Sec.2 (59) of Companies Act, which defines the officer to include the director.

**CONCLUSION:** Hence, director cannot be appointed as an auditor.

**Q.No.3.**“MNO Ltd. is a listed company engaged in the business of trading of various products. The company also plans to start manufacturing of certain products which are currently traded. During the course of its audit, the auditors completed all the procedures related to audit of financial statements. However, the auditor got stuck on one procedure because of which audit has not got concluded. Auditors are waiting for certain additional information – Directors report and Management Discussion and Analysis (MD&A) for their review. However, the management is not ready with this information and wants the auditors to complete their work without review of this information. Please advise as per the legal requirements. **(NEW SM)**

**PROVISION:** In the given case, the requirement of the auditors regarding additional information i.e. Directors report and MD&A without which they have not been able to conclude the audit doesn't look valid. The auditor is required to audit the financial statements and express an opinion on the same. The auditor does not audit these additional information.

**CONCLUSION:** Hence the auditor should conclude the work without delaying because of this additional information.

**Q.No.4.**“Mr. P” is a practicing Chartered Accountant and “Mr. Q”, the relative of “Mr. P”, is holding securities of “ABC Ltd.” Having face value of ₹ 90,000/-. Whether “Mr. P” is qualified for being appointed as an auditor of “ABC Ltd.”? **(NEW SM)**

(OR)

“Mr. S” is a practicing chartered accountant and “Mrs. S”, is holding securities of “ABC Ltd.” Having face value of Rs. 90,000/-. Whether “Mr. S” is qualified from being appointed as an auditor of “ABC Ltd.”?

**PROVISION:** As per section 141 (3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner 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 ₹1,00,000.

**ANALYSIS AND CONCLUSION:** In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ₹90,000 face value in ABC Ltd, which is as per requirement of proviso to section 141 (3)(d)(i). Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

**Q.No.5.** “BC & CO.” is an audit firm having partners “MR. B” AND “MR. C”, and “MR.A” the relative of “MR. C”, is holding securities of “MWF LTD.” having face value of Rs 1,01,000/-. Whether “BC & CO.” is qualified from being appointed as an auditor of “MWF LTD.”? **(NEW SM)**

**PROVISION:** According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

**ANALYSIS:** The relative of Mr. C i.e. partner of BC & Co., is holding the securities in MWF Ltd which is exceeding the limit mentioned in proviso to section 141(3)(d)(i)

**CONCLUSION:** In the instant case BC & Co, will be disqualified for appointment as an auditor of MWF Ltd

**Q.No.6.** FLP Ltd, engaged in the business of real estate and energy, defaulted on its borrowings which amounted to thousands of crores. During the year ended 31st March 2019, a fraud was uncovered in respect of various transactions of the company and it was observed by the Central Government that the auditors of the company were involved in such fraud. Please suggest what can be the course of action in this case. **(NEW SM)**

The Central Government may apply to the Tribunal in respect of such matter highlighting that the auditors miserably failed to fulfil their duties as auditors of the company. If the Tribunal is satisfied that the auditors were involved in the fraud with the company, the Tribunal may direct the company to change its auditors and those auditors shall not be eligible to be appointed as auditor of any company for 5 years and also liable for action under section 447 of the Companies Act 2013.

**Q.No.7.** M/s RST & co., A firm of chartered accountants, has three partners, namely, Mr. R, Mr. S & Mr. T. The firm is allotted the audit of Ashiana Ltd. Mr. T subsequently holds 200 shares in Ashiana Ltd. Comment.

**PROVISIONS OF LAW:** same as Practical Question no.4

**ANALYSIS:** here one of the partners acquires securities in the company after appointment.

**CONCLUSION:** Therefore M/s RST & co should vacate office and it shall be deemed to be a casual vacancy.

**Q.No.8.** Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of Rs 75000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been Rs150000/- (market value Rs 95000/-)? **(RTP - N18(N))**

As per Section 141(3)(d)(i) of the Companies Act, 2013, a person 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, shall not be appointed as an auditor of the company.

However, Rule 10 of the *Companies (Audit and Auditors) Rules, 2014*, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh.

In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of Rs 1 lakh, such a transaction is valid.

Yes, the answer will be different in case where the face value of acquired shares is Rs 1,50,000. Then in that case:

- a) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or
- b) Auditor has to vacate his office & such vacancy shall be casual vacancy

**Q.No.9.** Mr. Aditya, a Practicing Chartered accountant is appointed as a "Tax consultant" of ABC Ltd., in which his father Mr. Singhvi is the managing director.

**PROVISION:** A chartered accountant appointed as an auditor of a company, should ensure the independence in respect of his appointment as an auditor, else it would amount to "misconduct" under the Chartered Accountants Act, 1949, read with Guidance Note on Independence of Auditors.

**CONCLUSION:** In this case, Mr. Aditya is a "Tax Consultant" and not a "Statutory Auditor" or "Tax Auditor" of ABC Ltd., hence he is not subject to the above requirements.

**Q.No.10.** During the year 2015-16, it was decided for the first time that the accounts of the branch office of AAS limited be audited by qualified chartered accountants other than the company auditor. Accordingly, the board had appointed branch auditors for the ensuing year. One of the shareholders complained to the central government that the appointments was not valid as the board of directors do not have power to appoint auditors, be they company auditor or branch auditors?

**PROVISION:** Refer Q.No.22 in Class room discussion

**ANALYSIS:** The shareholders in general meeting, instead of appointing branch auditor, may authorize the board of directors to appoint branch auditors.

In the present case, the board has appointed branch auditors without obtaining authorization from the shareholders in general meeting. The board had appointed the auditor where it did not have authority to do so.

**CONCLUSION:** As such, the appointment is invalid. The shareholder's complaint is right. The branch auditor should ascertain before accepting the audit whether his appointment is valid.

**Q. No.11.** Sri & company, a firm of Chartered accountants was appointed as statutory auditors of Aaradhana Company Ltd. Aaradhana Company Ltd. holds 51% shares in Sarang Company Ltd. Mr. Sri, one of the partners of Sri & company, owed Rs. 1,500 as on the date of appointment to Sarang Company. Ltd for goods purchased in normal course of business. Comment. **(N15, N16 RTP)**

**PROVISION:** As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company, or a subsidiary of its holding company, for an amount exceeding Rs. 5,00,000, then he is not qualified for appointment as an auditor of a company.

Where an auditor purchases goods or services from a company audited by him on credit, he is definitely indebted to the company and if the amount outstanding exceeds Rs. five lakh, he is disqualified for appointment as an auditor of the company.

**ANALYSIS:** In the given case, Sri & Company, a firm of Chartered Accountants was appointed as statutory auditors of Aaradhana Company Ltd. where the company holds 51% shares in Sarang Company Ltd. Mr. Sri, one of the partners of Sri & Company owed Rs. 1,500 as on the date of appointment to Sarang Company Ltd. for goods purchased.

**CONCLUSION:** Accordingly, the partner Mr. Sri is not disqualified to be appointed as auditor of the company as he is indebted to the company for an amount not exceeding Rs. 5,00,000.

Due to this, Sri & Company, is not disqualified to be appointed as an auditor of Aaradhana Company Ltd.

**Q.No.12.** Mr. Y was appointed as an auditor of PQR Ltd. For the year ended 31.3.2016 at the annual general meeting held on 16.08.2015. Mr. Y has been indebted to the company for sum of Rs 5,10,000 as on 01.04.2015, the opening date of accounting year which has been subject to his audit. However, Mr. Y having come to know that he might be appointed as auditor, he repaid the amount on 10.8.2015. One of the shareholders complains that the appointment of Mr. Y as an auditor was invalid because he incurred disqualification u/s 141 of the companies act, 2013. Comment.

**PROVISION:** As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary or its holding or associate company, or a subsidiary of its holding company, for an amount exceeding Rs. 5,00,000, then he is not qualified for appointment as an auditor of a company.

Where an auditor purchases goods or services from a company audited by him on credit, he is definitely indebted to the company and if the amount outstanding exceeds Rs. five lakh, he is disqualified for appointment as an auditor of the company.

**ANALYSIS:** However, where the person has liquidated his debt before the appointment date, there is no disqualification to be construed for such appointment.

In the given case, Mr. Y was appointment as an auditor of PQR Ltd. for the year ended 31.03.2016 at the Annual General Meeting held on 16.08.2015. He repaid the loan amount fully to the company on 10.8.2015 i.e. before the date of his appointment.

**CONCLUSION:** Hence, the appointment of Mr. Y as an auditor is valid and the shareholder's complaint is not acceptable.

**Q.No.13.** Whether the following persons can be appointed as the auditor of a company?

- a) Prasad, a person who is a chartered accountant of the Canadian Institute of Chartered Accountants but is not a member of the Institute of Chartered Accountants of India.
- b) Mrs. P is a member of the Institute of chartered accountants of India. The directors of a limited company say that she being a lady cannot be appointed as an auditor of the company.
- c) Mr. Krishna owes Rs.10,00,000 to a ltd. To which he is an auditor.
- d) Mr. Ramu, a member of the ICAI, does not hold a Certificate of Practice.
- e) Mr. Nani, who was a member of the ICAI, is of unsound mind.
- f) Mr. Hrithik, who was a member of the ICAI, is of insolvent/bankrupt.
- g) ABI Consultants ltd is a registered company with A, B and I as its directors. All the three directors are chartered accountants. Can the Company be appointed as auditor of another company?

- h) A, a partner in the firm of M/s Balaji & co., Chartered accountants, is the secretary of C Ltd. Can A or Balaji & co., be appointed as the company auditor?
- i) B, chartered accountant, is the partner of N, who is a director in P Ltd. Can B be appointed as statutory auditor?
- a) He cannot be appointed an auditor of a limited company in India. He must be a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949.
- b) Mrs. P can be appointed as an auditor of the company. There is no bar on a lady.
- c) Mr. Krishna is disqualified. He will be disqualified if he owes an amount in excess of Rs.5,00,000
- d) Ramu does not hold a COP and hence cannot be appointed as an auditor of a company.
- e) Mr. Nani, being of unsound mind, cannot continue himself to be a member of this Institute. Therefore, he cannot be appointed as the auditor of any company.
- f) Mr. Hrithik, being insolvent, cannot continue himself to be a member of this Institute. Therefore, he cannot be appointed as the auditor of any company.
- g) A Body Corporate cannot be appointed as Statutory Auditor of a Company. In the above case, the Company cannot be appointed as Statutory Auditor of another Company.
- h) A, being an Officer of the Company is disqualified. Also, M/s Balaji & Co., is not qualified to be appointed as auditor as one of its partners is an employee of the Company.
- i) B is not qualified to be appointed as auditor, as u/s 141, a person who is a partner of an officer of a Company cannot be appointed as its auditor.

**Q.No.14.** The first auditor of M/s Healthy Wealthy Ltd., a Government company, was appointed by the Board of directors. **(RTP - M18(N))**

Or

Chairman and Managing director (CMD) of BHEL, a Government company, appointed its auditors on the authority of board of directors given to him. Comment

**PROVISION:** Section 139 of the Companies Act, 2013 provides that The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

**ANALYSIS:** Hence in the case of M/s Healthy Wealthy Ltd., being a government company, the first auditors shall be appointed by the Comptroller and Auditor General of India.

**CONCLUSION:** Thus, the appointment of first auditors made by the Board of Directors of M/s Healthy Wealthy Ltd is null and void.

**Q.No.15.** A vacancy arose in the office of an auditor of XYZ Ltd due to death of the Auditor Mr Z and the managing director of the company filled that vacancy. Comment **(M15 RTP, N16 RTP)**

**PROVISION:** As per **Section 139(8)**, any casual vacancy other than resignation in the office of an auditor in non-government company shall be filled by the Board of Directors, on recommendation of audit committee, within 30 days.

**CONCLUSION:** Appointment made by the Managing Director of the Company is not valid.

**Q.No.16.** Comment on the following:

Due to the resignation of the existing auditor(s), the Board of directors of X Ltd appointed Mr. Hari as the auditor. Is the appointment of Hari as auditor valid? **(M16 RTP)**

**PROVISION:** As per **Section 139(8)**, any casual vacancy due to resignation in the office of an auditor in non-government company shall be filled by the Board of Directors, on recommendation of audit committee, within 30 days. The appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

**ANALYSIS:** In the given case, the Board of directors of X Ltd. has appointed Mr. Hari as the auditor due to resignation of the existing auditor(s). The appointment made by the Board is correct, however, such appointment should be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and newly appointed auditor shall hold office till the conclusion of the next annual general meeting.

**CONCLUSION:** Appointment is valid if then board have obtained the approval of members as said in the section 139(8).

**Q.No.17.** A is appointed as the auditor of X Ltd. On 26<sup>th</sup> July, 2014. He informs the company that he will visit its head office on August 15, 2014 (a holiday for the company) and examine the cash book. The accountant argues that he should come after March 31, 2015 when the accounts are closed. Moreover, he should not come on Sunday as the office is closed on that day. Is the position taken by the accountant legally correct?

**PROVISION:** The auditor of a company shall have a right of access to the books of account and vouchers of the company at all times, whether kept at the registered office of the company or at any other place including branches.

**ANALYSIS:** This implies that he can examine them at any time after assuming his office as the auditor and he need not to wait for the closing of the accounts i.e. March 31<sup>st</sup>, 2015.

However, the expression "at all times" refers to only the normal business hours on any working day.

**CONCLUSION:** A cannot examine the books on a holiday.

**Q.No.18.** The Company had also appointed a cost auditor and therefore, the management had requested you not to review the cost records. Comment.

**PROVISION:** The auditor of a company shall have a right of access to the books of account and vouchers of the company at all times, whether kept at the registered office of the company or at any other place including branches.

**CONCLUSION:** Accordingly, the auditors cannot be requested not to review the cost records as a cost auditor has been appointed by the company. The statutory auditor's duties cannot be limited in any way either by the Articles or by the Directors or members. *This is confirmed by the judgement given in Newton vs. Birmingham small arms co. case*

**Q.No.19.** Mr. Y is the auditor of X Pvt Ltd in which there are four shareholders only, who are also the directors of the company. On account of bad trade and for reducing the expenses in all directions, the directors asked Mr. Y to accept a reduced fee and for that he has been offered not to carry out such full audit as he has done in the past. Y accepted the suggestions of the directors.

**ANALYSIS:** Y may agree to temporary reduction in audit fees, if he so wishes, in view of the suggestions made by the directors (perhaps in accordance with the decision of the company taken in general meeting). But his duties as a company auditor are laid down by law and no restriction of any kind can restrict the scope of his work either by the director or even by the entire body shareholders.

Since the scope is determined by relevant Act, but remuneration is purely a matter of personal contract between auditor and client.

**CONCLUSION:** Under the circumstances, Y is violating the provisions of the Companies Act, 2013.

**Q.No.20.** Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.

CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013:

a) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?

- b) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?
- c) Can Dew & Company; be appointed as a statutory auditor of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?
- d) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period? **(RTP - N18(N))**

According to Section 139 (2) of the Companies Act, 2013,

- a) Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.
- b) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.
- c) Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.
- d) For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

- a) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.
- b) The cooling- off period shall be of 5 years.
- c) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.
- d) However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.

As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as maybe decided by the Board to conduct internal audit of the functions and activities of the company.

Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

**Q.No.21.** A group of shareholders approaches you for advice regarding the affairs of Fashion Apparels Ltd. According to the shareholders, the management of the company is not exercising its powers properly and that the statutory audit is being carried out in a routine manner, They want that a special audit should be conducted so that the real nature of transactions carried out by the management will come to light Advise, with reference to the provisions of the Companies Act 2013, as to when a special audit can be directed and by whom.

**PROVISION:** According to the Provisions of Companies Act 2013, the Central Government has the power to direct special audit in certain circumstances. They are:

- If the Government is of the opinion that the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices; or

- that the company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains or
- that the financial position of the company is such as to endanger its solvency.

**ANALYSIS AND CONCLUSION:** Thus the group of shareholders can make a complaint about the affairs of Fashion Apparels Ltd., to the Central Government. If the Government is satisfied, it may order a special audit to be carried out either by the statutory auditors of the company or by any Chartered Accountant. The special auditor appointed under this section will have the same powers as an auditor of the company has under Section 143 of the Act.

**THE END**

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