# Audit and Auditor as per Companies Act, 2013

## Chapter X of the Companies Act, 2013 deals with Audit and Auditors:

### Section: 139 (Appointment of Auditors)

1. Every Company shall at the First Annual General Meeting appoint an Individual or firm

as an Auditor who shall hold office from the conclusion of this meeting until the conclusion of

sixth Annual general Meeting. Provided that Company shall place the matter relating to such

appointment for ratification by members at every Annual General Meeting. Further provided

that before such appointment Company should obtain the written consent from the Auditor

and certificate which shall indicate the criteria as mentioned in Section.141. Company shall

file the said appointment with the Registrar of Companies in eForm ADT1 within 15 days

from the date of appointment.

2. No listed Company or a company belonging to such class or classes of companies as

may be prescribed shall appoint or reappoint:

a. An Individual as an Auditor for more than one term of Five consecutive years. and

b. An Audit firm as auditor for more than two terms of five consecutive years

Provided that an Individual or audit firm who has completed their term as mentioned in Sec.

139(2)(b) shall not be eligible for appointment as auditor in the same Company for five years

from the completion of such term.

Further provided that no audit firm having a common partner/Partners to the other audit firm,

whose tenure has expired in a company immediately preceding the financial year, shall be

appointed as auditor of the same company for a period of five years.

Every Company existing on or before the commencement of this act, which is required to

Comply with this Section shall within three years from the date of commencement of said Act

shall comply the provision of this Act.

3. 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.

b. The audit shall be conducted by more than one auditor.

4. The central government may by rules, prescribe the manner in which the companies shall

rotate their auditors in pursuance of sect. 139(2).

5. Notwithstanding anything contained in Sec. 139(1), the first auditors of the company other

than the Government Company shall be appointed by the Board of Directors from the date of

registration, in case of the Board to perform the said act they should inform to the members

of the Company, who shall within 90 days at an Extra ordinary general meeting appoint such

auditor and such auditor shall hold office till the conclusion of the First Annual General

Meeting.

6. In the case of Government Company as mentioned in Sec.139(5) Comptroller and Auditor

General of India shall within 60days from the date of registration appoint the Auditor, if they

fail to do so, the Board should appoint the Auditor within 30days, if Board is also unable to

perform, then members should appoint the Auditors within 60 days atan ExtraOrdinary

General Meeting who shall hold office till the conclusion of first annual general meeting.

I. In case of the Company other than Company as mentioned in Sec.135(5) be filled by the

Board of Directors within 30days, but if such casual vacancy is as a result of the resignation

of an auditor, such appointment shall be approved by the company at a general meeting

convened within 3 months of the recommendation of the Board and he shall hold the office

till the conclusion of the next Annual general meeting.

II. In case of a Company whose accounts are subject to audit by an Auditor appointed by the

Comptroller and AuditorGeneral of India, be filled by the Comptroller and AuditorGeneral

Of India within 30days.

7. Provide if the Comptroller and Auditor General of India doesn’t not fill the vacancy within

the said period , the Board shall fill the vacancy within the next 30 days.

8. Subject to the provisions of Sec. 139(1) and the rules made there under, a retiring auditor

may be reappointed +at an annual general meeting, if:

I. He is not disqualified for reappointment

II. He has not given the company a notice in writing of his unwillingness to be reappointed;

and

III. A special resolution has not been passed at the meeting appointing some other auditor

or expressly mentioning that he shall not be reappointed.

9. Where at any annual general meeting, no auditor is appointed or reappointed,

The existing auditor shall continue to be the auditor of the Company.

10. Whereas a Company which is required to form an Audit committee as required under

section 177, then all the appointment including appointment of Auditor through Casual

vacancy can be made, after taking into account the recommendation of such committee.

Section.140: Removal, Resignation and giving of special notice

1. The auditor appointed under section.139 may be removed before the expiry of his tenure

only by a special resolution of the company, after obtaining the previous approval of the

Central Government.

Provided before taking action as mentioned, the said Auditor should be given a reasonable

opportunity of being heard.

2. The auditor who has resigned from the Company shall file within a period of 30 days from

the date of resignation in eform ADT3 with the Registrar and in case of the Companies as

mentioned in Sec.135(5), the auditor shall also file such statement with the comptroller and

auditor general of India, indicating the reason and other facts as may be necessary.

3. If the auditor doesn’t comply with the above mentioned Section it will be punishable with

fine which shall not be less than 30,000/but which may extend to 5,00,000/.

4. (i) Special notice shall be required for a resolution at an annual general meeting

appointing as auditor a person other than a retiring auditor or proving that a retiring auditor

shall not be reappointed, except where the retiring auditor has completed a consecutive

tenure of five years or ten years as the case may be, as mentioned in Section.135(2).

(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof

to the retiring auditor.

(iii) Where notice is given of such a resolution and the retiring auditor makes representation

in writing to the company (within the reasonable time) and request the Company to forward

the same to the members unless the representation is received too late:

a. Any notice of the resolution given to members of the Company, state the fact of the

representation made by the Auditor.

b. Send a copy of the representation to every member to whom notice has been sent.

If the copy of the representation is not sent because it has been received too late or on

behalf of the Company’s default then the same thing has to be read at the ensuing

meeting.

If the copy of representation is not sent, then the same has to be filed with the registrar.

If the tribunal is satisfied on an application by the Company or an auditor that the rights

conferred by the auditor has been abused then copy of the representation need not be

sent and need not be read out at the meeting.

5. The tribunal either suo motu or an application made to it by Central Government or by any

person concerned , if it is satisfied that auditor has acted in fraudulent manner, it may by

order , direct the company to change the same and within 15 days direct the Company to

appoint another Auditor.

### Section.141: Eligibility, qualification and disqualification of auditors:

1. A person shall be appointed as an auditor of a Company only if he is a Chartered

Accountant.

A firm whereof majority of partners practising in India are qualified for appointment as

aforesaid may be appointed by the firm name.

2. Where a firm including a limited Liability Partnership is appointed as an auditor of a

company, only the partners who are qualified Chartered Accountants shall be authorised to

act and sign on behalf of the firm.

a. A body corporate other than a LLP

b. An officer or employee of the company.

c. A person who is a partner or who is in the employment, of an officer or employee of the

Company.

d. A person who is relative or partner:

I. Is holding any security of or interest in the Company or its subsidiary or its holding or

associate company or a subsidiary of such holding company, further provided that the

relative may hold security or interest in the company of face value not exceeding 1000 or

such sum as may be prescribed.

II. Is indebted to the company or its subsidiary or its holding or associate company or a

subsidiary of such holding company, in excess of such amount as may be prescribed.

III. Has given guarantee or provided any security in connection with the indebtness to its

holding, subsidiary and associate Company of such amount as may be prescribed.

e. a person or a firm who, whether directly or indirectly has business relationship with the

company or its subsidiary or its holding or associate company or subsidiary of such holding

company or associate company of such nature as may be prescribed.

4. Where a person appointed as an auditor of a company incurs any of the disqualification

mentioned in Section.141(3) after his appointment, he shall vacate his office as such auditor

and such vacation shall be deemed to be a casual vacancy.

### Section.142 (Remuneration of auditors)

1. The remuneration of the auditor of a company shall be fixed in the general meeting or in

such manner as may be determined therein. Provided the Board may fix the remuneration of

first auditor appointed by it.

2. The remuneration under subsection(

1) shall be in addition to the fee payable to an

auditor, including the expenses, if any, incurred by the auditor in connection with the audit of

the company and any facility extended to him by he Company.

### Section. 142 (Remuneration of Auditor)

1. The Remuneration of Auditor may be fixed in the general meeting or in such manner as

may be determined. Although the Board can fix the remuneration of First Auditor.

2. The Expenses which is paid to the auditor is in addition to the audit we he carries out in

the Company.

### Section.143 (Power and duties of auditors and auditing standards)

1. Every auditor of a company shall have a right of access at all times to the books of

accounts and vouchers of the company, whether kept at the registered office of the Company

or at any other place and he shall be entitled to require from the officer such information as

may be required.

2. The Auditor shall make a report to the members of the company on the accounts

examined by him and on every financial statements which are required by or under this act ,

to be laid before the company in general meeting and the report shall after taking into

account auditing standard and matters which is required shall be included in the audit report.

3. The auditor report shall state:

a. Whether he has obtained all the information and explanations which to the best of his

knowledge and belief were necessary for the purpose of audit. In case proper information

are not received then the details thereof and effect of such information on the financial

statement should be stated in the auditor’s report

b. Whether proper books of accounts as required by law is maintained or not and whether

proper returns adequate for the purpose of audit have been received from the branches not

visited by him or not.

c. Whether the report in respect of a branch which is audited by the auditor other than

company auditor has been sent to him

d. Whether the company balance sheet and profit and loss account are in agreement with

the books of accounts and returns

e. Whether financial statement comply with the accounting standards

f. The observations and comments of the auditor on the financial transactions or matters

which have adverse effect on the company

g. Whether any director is disqualified to be appointed as a director

h. Any qualifications , reservations or adverse remarks in respect of the maintenance of the

books of accounts or other matters connected herewith

i. Whether the company has adequate internal financial control system in place and

operative effectiveness of such control.

j. Whether the company has disclosed the impact of any pending litigation if any in the

financial statement

k. Whether the company has made provision in respect of any material foreseeable losses

as required by law or accounting standards including the derivative contracts

l. Whether the company has made delay in transferring the amount required to be

transferred to the Investor Education and Protection Fund by the company.

### Sec 143(4)

Where any of the matters required to be included in the audit report under this section is

answered in negative or with a qualification then in that case auditor is required to state the

reasons of such reservations and negative remark

### Sec 143(5)

In case of Govt company the C&AG will appoint the auditor to conduct the audit of the

company. The C&AG will also give the directions and the manner in which the accounts of

the govt company are required to be audited by the auditor. The auditor then after

completing the audit will issue an audit report to the C&AG which will include all the matters

which are stated above. In additions to these matters the auditor of the govt company shall

state in his audit report the direction issued by C&AG , the actions taken there upon and its

impact on the accounts and financial statement of the company.

### SEC 143(6)

On receipt of audit report of the govt company the C&AG can carry out supplementary audit

with 60 days from the date of receipt of such audit report. He may also comment upon the

audit report. The audit report should be sent to every person to whom copies of audited

financial statement are sent and the copy of such audit report shall also be place at the AGM

### SEC 143(7)

In case of Govt Company the C&AG may require that the test audit of the company should

be conducted.

### SEC 143(8)

Branch is in India The audit of such branch can be done by the Company auditor or by any

other person qualified to be appointed as an auditor as per Sec 139 Branch is in some other countries The audit of such branch shall be conducted by an accountant or by any such person qualified to be appointed as an auditor as per the laws of that country.

The branch auditor should prepare a report on the books of accounts of the branch audited

by him and send a copy of such audit report to the company auditor.

### Sec 143(9)

The auditor shall comply with the accounting standards.

### Sec 143(10)

The Central Government may prescribe the standards of auditing, as prescribed by ICAI..

### SEC 143(11)

The Central Govt may in consultation with the National Financial Reporting Authority direct

that the audit report in case of specific class of companies shall include a statement on such

matters as may be specified therein.

### SEC 143(12)

If an auditor of the company in the course of performance of his duties as auditor has reason

to believe that an offence involving fraud is being or has been committed against the

company by an officer or the employee of the company then the auditor should immediately

report the matter to the central govt within such time and in such manner as may be

prescribed.

The auditor should forward his report to the board or the audit committee as the case may be

immediately after he comes to know about the fraud seeking their reply or observations

within 45 days.

On receipt on such reply or observations of the board or the audit committee the auditor

should forward his report along with the reply or observations of the board or the audit

committee and his comments on such reply or observations to the central govt within 15

days.

In case no reply or observations has been received by the auditor from the board or the audit

committee then in that case the auditor should send the audit report along with a note

containing the details of his report that was earlier forwarded to the board or the committee

for which he has failed to receive any comments or observations

### Sec 143(14)

The provision of this section shall apply to the cost auditor conducting cost audit and the

company secretary doing secretarial audit

### Sec 143(15)

If the Chartered accountant , company secretary or the cost auditor do not comply with any

of the provisions of this act then he will be punishable with a fine which shall not be less than

Rs. 1 lakh but which can be extend to Rs. 25 lakh.

### Sec 144 (Auditor not to render certain services)

Any auditor appointed by the Company should provide only those services which will be

approved by the Board of Directors or Audit committee, as the case may be, but which may

not include the below mentioned services:

a. Accounting and book keeping services.

b. Internal audit

c. Design and implementation of any financial information system.

d. Actuarial services.

e. Investment advisory services.

f. Investment banking services.

g. Rendering of outsourced financial services.

h. Management services.

i. Any other kind of services as may be prescribed.

### Sec 145 (Auditor to sign audit reports)

The person appointed as an auditor of the Company can sign the Auditor’s report or sign or

certify any other document of the Company and present the same before the general

meeting and shall be open for member’s inspection.

### Sec 146 (Auditors to attend general meeting)

All the notices and other communications relating to the general meeting shall be forwarded

to auditor and he can attend either by himself or through his authorised representative and

has the right to be heard at such meeting.

### Sec 147 (Punishment for contravention)

If any of the provisions of Sec 139 to 146 is contravened, the Company shall be punishable

with Fine which shall not be less than 25,000/but which may extend to 5,00,000/and

every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to one year or fine of not less than 10,000/which may extend to

1,00,000/or with both.

### COMPANIES (AUDIT AND AUDITORS) RULES, 2014

Subsection (2) of section 139 of the Companies Act, 2013 (the Act) has introduced a novel

concept for the rotation of auditors in listed companies and in such class or classes of

companies as may be prescribed. In exercise of the powers conferred on the Central

Government, the Central Government in the Ministry of Corporate Affairs has prescribed in

rule 5 of the Companies (Audit and Auditors) Rules, 2014 (Audit Rules) that this concept of

rotation of auditors would also apply to the following classes of companies excluding one

person companies and small companies :

a. All unlisted public companies having paidup share capital of Rs.10 crore or more

b. All private limited companies having paidup share capital of Rs.20 crore or more

c. All public and private limited companies having a paidup share capital of less than the

threshold limit set out above but having public borrowings from financial institutions,

banks or public deposits of Rs. 50 crore or more.

It should be noted that the limit of Rs.50 crore on public borrowings would apply to the

aggregate borrowing from financial institutions, banks and public deposits and not to

borrowings of Rs.50 crore prescribed, individually from each of the categories listed.

### CONCEPT OF ROTATION OF AUDITORS IN LISTED COMPANIES

Subsection (2) of section 139 of the Act reads as under :

a. No listed company or a company belonging to such class or classes of companies as

may be prescribed, shall appoint or reappoint –

b. an individual as auditor for more than one term of five consecutive years; and

c. an audit firm as auditor for more than two terms of five consecutive years:

Provided that –

a. an individual auditor who has completed his term under clause (a ) shall not be eligible

for reappointment

as auditor in the same company for five years from the completion

of his term;

b. an audit firm which has completed its term under clause (b ), shall not be eligible for reappointment as auditor in the same company for five years from the completion of such

term:

Provided further that 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 auditor of the same company for a period

of five years:

Provided also that every company, existing on or before the commencement of this Act

which is required to comply with provisions of this subsection, shall comply with the

requirements of this subsection within three years from the date of commencement of this

Act.

Provided also that, nothing contained in this subsection shall prejudice the right of the

company to remove an auditor or the right of the auditor to resign from such office of the

company.”

### Rule: 7 (Removal of the auditor before expiry of his term)

(1) The application to the Central Government for removal of auditor shall be made in Form

ADT2 and shall be accompanied with fees as provided for this purpose under the

Companies (Registration Offices and Fees) Rules, 2014.

(2) The application shall be made to the Central Government within thirty days of the

resolution passed by the Board.

(3) The company shall hold the general meeting within sixty days of receipt of approval of the

Central Government for passing the special resolution.

### Rule: 8 (Resignation of Auditor)

For the purposes of subsection (2) of section 140, when an auditor has resigned from the

company, he shall file a statement in Form ADT3.

### Rule: 11 (Other Matters to be included in the Audit Report)

The auditor’s report shall also include their views and comments on the following matters,

namely:

(a) Whether the company has disclosed the impact, if any, of pending litigations on its

financial position in its financial statement;

(b) Whether the company has made provision, as required under any law or accounting

standards, for material foreseeable losses, if any, on long term contracts including derivative

contracts;

(c) Whether there has been any delay in transferring amounts, required to be transferred, to

the Investor Education and Protection Fund by the company.

### Rule: 13 (Reporting of Fraud by Auditor)

(1) For the purpose of subsection (12) of section 143, in case the auditor has sufficient

reason to believe that an offence involving fraud, is being or has been committed against the

company by officers or employees of the company, he shall report the matter to the Central

Government immediately but not later than sixty days of his knowledge and after following

the procedure indicated herein below:

(i) Auditor shall forward his report to the Board or the Audit Committee, as the case may be,

immediately after he comes to knowledge of the fraud, seeking their reply or observations

within fortyfive 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 of the Board or the Audit Committee) to the Central Government within

fifteen days of receipt of such reply or observations;

(iii) In case the auditor fails to get any reply or observations from the Board or the Audit

Committee within the stipulated period of fortyfive days, he shall forward his report to the

Central Government along with a note containing the details of his report that was earlier

forwarded to the Board or the Audit Committee for which he failed to receive any reply or

observations within the stipulated time.

(2) 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 email

in confirmation of the same.

(3) The report shall be on the letterhead of the auditor containing postal address, email

address and contact number and be signed by the auditor with his seal and shall indicate his

Membership Number.

(4) The report shall be in the form of a statement as specified in Form ADT4.

### Conclusion:

Third proviso to subsection (2) of section 139 allows of companies to comply with its

requirements for appointment of auditors within three years from the commencement of the

Act, i.e., from 1st April, 2017. If this is the intention of the Legislature, it is not

comprehendible as to how a portion of the requirement has to be given retrospective effect.

It would have been ideal if an Explanation has been appended to subsection (2) of section

139 similar to the Explanation to subsection (11) of section 149. This lapse on the part of the

draftsman cannot be construed that in regard to rotation of auditors, the Legislature had

intended to give retrospective effect. In view of what has been stated, second proviso of subsection (2) of section 139 should be given effect prospectively and not retrospectively. In this view of the matter the change in the office of an auditor or audit firm appointed in the annual general meeting held after 1st April, 2017 is mandatorily required to be made only in the annual general meeting held in the year 2022 or 2027, respectively, as the case may be, and

not earlier. This, however, does not preclude an auditor or audit firm the right resigning

before that period or a company removing an auditor or an audit firm before the expiry of the

tenure of appointment.

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