

# Companies Act, 2013: Perspective of Small & Medium Practitioners & CA Firms



Committee for Capacity Building of CA Firms and  
Small & Medium Practitioners (CCBCAF&SMP)  
**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
New Delhi

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Edition : July 2014

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Price : ₹ 120/-

ISBN : 978-81-8441-730-2

Published by : The Publication Department on behalf of the Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002.

Printed by : Sahitya Bhawan Publications, Hospital Road, Agra-282 003.

October/2014/500 Copies

## Foreword

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Dear Members,

Changes in the economic and regulatory environment not only bring challenges but at the same time offer many opportunities for professionals. The Institute of Chartered Accountants of India (ICAI) is working relentlessly for continued professional enhancement and knowledge updation of members, and has taken regular initiatives to focus on various issues of importance to the CA profession. The newly enacted Companies Act 2013 is an important development for all professionals including for the Chartered Accountants. The new act introduces significant changes in the provisions related to governance, e-management, compliance and enforcement, disclosure norms, auditors and mergers & acquisitions. It also adds new concepts such as one-person company, small companies, dormant company, corporate social responsibility, reporting of frauds, rotation of auditors, class action suits, and registered valuers, etc.

I am delighted to know that the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of the Institute of Chartered Accountants of India (ICAI) has taken an initiative to publish a book on 'Companies Act, 2013: Perspective of Small & Medium Practitioners & CA Firms'.

With the objective of helping the members of ICAI to get an in-depth understanding of the Companies Act 2013, the Committee has published this book to highlight the latest developments in areas of the Companies Act. This publication brings out the significant changes proposed by the Companies Act 2013 as compared to the Companies Act, 1956, which is highly relevant to the a practicing Chartered Accountant.

I hope that the members will be immensely benefited by the book.

Best Wishes

**CA. K. Raghu**  
*President, ICAI*



## Preface

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In the past 57 years during which the Companies Act, 1956 ("CA 1956") has been in existence, the corporate and business environment has evolved significantly. The Companies Act, 2013 ("CA 2013") was enacted on 29th August 2013 after President's assent. The CA 2013 makes comprehensive provisions to govern all listed and unlisted companies in the country. The CA 2013 was made partially effective w.e.f. 12th September, 2013, by way of implementing 98 Sections and repealing the relevant sections corresponding with CA 1956. The CA 2013 intends to promote self-regulation and has also introduced some progressive concepts like One- Person Company, Small Company, Dormant Company, E-governance, etc. The concept of Corporate Social Responsibility has also been introduced to encourage a socially, environmentally and ethically responsible behavior by companies.

I hope this book on 'Companies Act, 2013: Perspective of Small & Medium Practitioners & CA Firms', published by the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), ICAI will be very useful support material for practitioners.

I place on my record my deep sense of gratitude to CA. Pradeep Kalra and all members of the Working Group on Research & Publications constituted by the Committee for preparing the draft of this publication thereby sharing their relevant experience and expertise amongst members. I appreciate the efforts put in by the members of CCBCAF&SMP & Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP and other officials and staff of the Secretariat includes Ms. Dhanashree Deka, CA. Meenakshi Gupta, CA. Deepika Shah and Mr. Sachin Kumar who have provided necessary support for publishing the aforesaid book.

**CA. Anuj Goyal**

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# Chapter 1

## Overview

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The Companies Act, 2013, enacted on 29 August 2013 on accord of Honorable President's assent, has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle-blowers. The new law will replace the nearly 58-year-old Companies Act, 1956

The Companies Act, 2013 marks a major step forward and appreciates the current economic environment in which companies operate. It goes a long way in protecting the interests of shareholders and removes administrative burden in several areas.

The Companies Act, 2013 is also more outward looking and in several areas attempts to align with international requirements.

The auditors have a dominant role to play in corporate governance. The stakeholders place their faith in the report of auditors and underlying factor for this faith is the independence of auditors. The auditors have come under flak after series of financial and governance scams in India and the World. The role of the auditors has been questioned and it was imperative that changes be made in the Companies Act to strengthen the hands of auditors besides ensuring transparency in their functioning. This objective is sought to be achieved through major changes in the Companies Act.

The Companies Act, 2013 contains a number of provisions which have implications on accounts, audit and auditors. The Companies Act will also mean a transformation of the audit profession in the country, with thousands of listed companies needing to change their audit relationships.

**Chapter IX & X** of the Companies Act, 2013 deals with the '**ACCOUNTS OF COMPANIES**' and '**AUDIT AND AUDITORS**'. The provisions of these chapters will have far reaching implications for the audit profession. In this article, we have tried to cover major provisions of the Act relating to the Audit profession which are the main area of concerns of Practising Chartered Accountants.

## Chapter 2

# Significant Concepts/Provisions Affecting Practising Chartered Accountant

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The Companies Act 2013 has introduced new concepts as well as amended some of the previous ones. Following are some of the key changes brought in by the new Act affecting the Small & Medium Practitioners and CA Firms:

- Financial Year [Section 2(41)]
- Financial Statement [Section 129 & 134]
- Consolidated Financial Statements [Section 129(3)]
- Compliance of Accounting Standards [Section 133]
- Internal Audit [Section 138 ]
- Appointment of Auditor [Section 139 & 141]
- Rotation of Auditors [Section 139(2)]
- Removal and Resignation of Auditors [ Section 140]
- Eligibility of Auditor [Section 141(2)]
- Disqualification of Auditors [Section 141(3)]
- Auditors Report [Section 143(3)]
- Right to Access Books of Account by Auditor [Section 143(1)]
- Restriction on number of Audits [Section 141(3)(g)]
- Fraud Reporting [Section 143(12)]
- Non-Audit Services- Restricted services [Section 144]
- Auditors Liability - Penalty Provisions [Section 147]
- Class Action Suits [Section 245(1)]

## Chapter 3

# Financial Year [Section 2(41)]

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As per the Companies Act, 1956, under *section 2(17)*, “financial year” means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not. Provided that, in relation to an insurance company “financial year” shall mean the calendar year referred to in sub-section 11 of the Insurance Act, 1938.

Thus, it is on the company/body corporate to choose its own financial year.

Whereas, as per *section 2 (41) of The Companies Act, 2013*, “financial year” in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

The Companies Act, 2013 provides that the financial year for all companies and body corporate should end on 31 March. However, exemption at the specific approval may be granted by *National Company Law Tribunal (NCLT)* to the reporting entities where the financial statements of such entities are required for consolidation outside India. Therefore, the Companies opting for this exemption would have no other option but, to wait till the constitution of the NCLT.

A transition period of *two years* has been provided for this change.

*MCA's General Circular no. 08/2014* “in respect of financial years that commenced earlier than April 1, 2014 shall be governed by the relevant provisions/Schedules/rules of the Companies Act, 1956 and that in respect of financial years commencing on or after April 1, 2014 the provisions of the new Act shall apply.”

As a corollary to MCA's General Circular, the provisions of The Companies Act, 2013 would apply only to the financial years commencing on or after 1st April 2014.

## Implication on Practising Chartered Accountants

Accounts of Companies with a financial year ending other than 31 March will have to be re-aligned (except for certain entities where an exemption is granted).

*The Companies Act, 2013 eliminates the current flexibility in having a financial year other than 31 March, as well as in making amendments to the year-end to suit requirements.*

## Chapter 4

# Financial Statements [Section 134]

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As per **Section 2(40)** of the Companies Act 2013 “Financial Statements” in relation to a Company, includes –

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) a cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in Sub-clause (i) to sub-clause (iv)

*Provided* that the financial Statement, with respect to One Person Company, small Company and dormant Company, may not include the Cash Flow Statement.

Section 129(1) of the Companies Act, 2013 requires that the financial statements shall be in the form or forms as may be provided for different class or classes of Companies in Schedule III.

Schedule III to the Companies Act, 2013 provides that the disclosure requirement specified in this schedule are in addition and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2013. Additional disclosures specified in the Accounting Standards shall be made in the note to accounts or by way of additional statements unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirement set out in this schedule.

### Financial Statement-Section 134 of Companies Act, 2013

- (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is

## Companies Act, 2013: Perspective of SMPs & CA Firms

authorized by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

- (2) The auditors' report shall be attached to every financial statement.
- (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include--
  - (a) the extract of the annual return as provided under sub-section (3) of section 92;
  - (b) number of meetings of the Board;
  - (c) Directors' Responsibility Statement;
  - (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
  - (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
  - (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made--
    - (i) by the auditor in his report; and
    - (ii) by the company secretary in practice in his secretarial audit report;
  - (g) particulars of loans, guarantees or investments under section 186;
  - (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form No. AOC 2;
  - (i) the state of the company's affairs;
  - (j) the amounts, if any, which it proposes to, carry to any reserves;
  - (k) the amount, if any, which it recommends should be paid by way of dividend;
  - (l) material changes and commitments, if any, affecting the financial

position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed <sup>1</sup>
- (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
- (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
- (q) such other matters as may be prescribed<sup>1</sup>

(4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

As per **Section 134(7)**, about a signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of--

- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor's report; and
- (c) the Board's report referred to in sub-section (3).

**Contravention of the provision:**

As per **Section 134(8)**, if a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less

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<sup>1</sup> Rule 8 of Companies (Accounts) Rules, 2014;

than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

## **Rule 8 of the Companies (Accounts) Rules, 2014**

### **Matters to be included in Board's report:**

(1) The Board's Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

(3) The report of the Board shall contain the following information and details, namely:-

#### **(A) Conservation of energy-**

- (i) the steps taken or impact on conservation of energy;
- (ii) the steps taken by the company for utilising alternate sources of energy;
- (iii) the capital investment on energy conservation equipments;

#### **(B) Technology absorption-**

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
  - (a) the details of technology imported;
  - (b) the year of import;
  - (c) whether the technology been fully absorbed;
  - (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and

- (iv) the expenditure incurred on Research and Development.

**(C) Foreign exchange earnings and Outgo-**

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

(4) Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

(5) In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain -

- (i) the financial summary or highlights;
- (ii) the change in the nature of business, if any;
- (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
- (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
- (v) the details relating to deposits, covered under Chapter V of the Act,-
  - (a) accepted during the year;
  - (b) remained unpaid or unclaimed as at the end of the year;
  - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
    - (i) at the beginning of the year;
    - (ii) maximum during the year;
    - (iii) at the end of the year;
- (vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;
- (vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;

- (viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

### **Implication on Practising Chartered Accountants**

The definition of Financial Statement was not available under the Companies Act, 1956. As per the definition under Companies Act 2013, all the companies except One Person Company, Small Company and Dormant Company are required to prepare cash flow statement. Since no format is prescribed in Schedule III to the Companies Act 2013, Cash flow statement shall be prepared in the format prescribed in the AS-3 Cash Flow Statement only.

## Chapter 5

# Consolidated Financial Statements

### [Section 129(3)]

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*Section 129(3)* of the Companies Act 2013 provides that where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statements under sub section (2);

*Provided* that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed<sup>2</sup>;

*Provided* further the Central Government may provide for consolidation of accounts of Companies in such manner as may be prescribed<sup>3</sup>.

An explanation to the sub section provides that for the purpose of this sub-section, the word "subsidiary" shall include an associate company and joint venture.

*Section 129(4)* provides that the provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub- section(3).

### Rule 5 of Companies (Accounts) Rules, 2014

The statement containing the salient features of the financial statement of a Company's subsidiary or subsidiaries ,associate company or companies and joint venture or ventures under the first proviso to subsection (3) of section 129 shall be in **Form AOC-1**.

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<sup>2</sup> Prescribed under Rule 5 and Form No. AOC -1 of Companies (Accounts) Rules, 2014.

<sup>3</sup> Prescribed under Rule 6 of Companies (Accounts) Rules, 2014.

### **Rule 6 of Companies (Accounts) Rules, 2014**

- The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards:
- In case of a company covered under subsection (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with the provisions on consolidated financial statements provided in schedule III of the Act.

### **Implication on Practising Chartered Accountants**

- The existing Indian and international accounting practices do not require preparation of consolidated financial statements if the Company has investments only in associates and joint ventures (no subsidiaries).
- Companies Act 1956 does not require preparation of consolidated financial statements. However, listed entities are required to prepare CFS (as per SEBI regulations). The Companies Act 2013 mandates preparation of CFS for all companies which have one or more subsidiaries.

## Chapter 6

# Compliance of Accounting Standards

### [Section 133]

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The Companies Act, 2013 provides that the Central Government may prescribe the AS for preparation of Financial Statements and other Financial Information, which will be recommended by the ICAI. Transitional provisions have been provided in the **Rule-7** under **Chapter – IX**.

- The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under **section 133** of The Companies Act, 2013.
- Till the National Financial Reporting Authority is constituted under **section 132** of the Act, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the NACAS constituted under **Section 201A** of the Companies Act, 1956.

### Deviation from the above provision

**Section 129(5)** further provides that without prejudice to section 129(1), where the financial statement of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviations and the financial effects, if any arising out of such deviation.

### Applicability of AS for different entities

- **AS issued by MCA**, through Companies (Accounting Standards) Rules 2006 – Applicable to Corporate entities.
- **Ind AS issued by MCA (IFRS Based)** – Applicable to the specified class of corporate entities only from the date of notifications.

### Implication on Practising Chartered Accountants

- Mandatory Certificate by the Auditors regarding compliance of Accounting Standards for every Compromise or arrangement sanctioned by the National Company Law Tribunal under ***section 232(3)*** of the Companies Act, 2013.
- As per ***Section 143(2)*** of the Companies Act, 2013, the auditor shall report whether the Accounting Standards and Auditing Standards have been taken care by the management while preparation of the Financial statement and maintenance of the Accounts of the company.

## Chapter 7

# Internal Audit [Section 138]

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*Section 138* of the Companies Act, 2013, states as follows:

- (1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.
- (2) The Central government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the board.

### Rule 13 of the Companies (Accounts) Rules, 2014

#### *Companies required to appoint internal auditor:-*

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-

- (a) Every **listed company**,
- (b) Every **unlisted public company** having –
  - (i) *paid up share capital of fifty crore rupees or more* during the preceding financial year; or
  - (ii) *turnover of two hundred crore rupees or more* during the preceding financial year; or
  - (iii) *outstanding loans or borrowings* from banks or public financial institutions *exceeding one hundred crore rupees or more* at any point of time during the preceding financial year; or
  - (iv) *outstanding deposits of twenty five crore rupees or more* at any point of time during the preceding financial year; and
- (c) every **private company** having –
  - (i) *turnover of two hundred crore rupees or more* during the preceding financial year; or
  - (ii) *outstanding loans or borrowings* from banks or public financial

institutions exceeding *one hundred crore rupees or more* at any point of time during the preceding financial year.

**Provided** that an existing company covered under any of the above criteria shall comply with the requirements of Section 138 and this rule within six months of commencement of such section.

**Explanation** – For the purposes of this rule –

- (1) The internal auditor may or may not be an employee of the company;
- (2) The term “Chartered Accountant” shall mean a Chartered Accountant whether engaged in practice or not.

*The internal auditor should be either a Chartered Accountant or Cost Accountant or such other professional as may be decided by the Board.*

The new regulations also specifically require, as per **Section 177**, for the Audit Committee to evaluate internal financial controls and risk management systems. **Section 177 (5)** of the Act clearly states as follows:

*“The **Audit Committee** may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.”*

It may also be clarified that under the provisions of the Act, *the Board of Directors and the Audit Committee is solely responsible for establishing an efficient system of internal control*. Internal audit may serve in many capacities, including advisory, testing, training and development, so long as that should not cross the line into a decision-making role.

Further, **Section 144** of The Companies Act, 2013, which deals with “Auditor not to render certain services” *inter alia* specifically prohibits external auditor to render services of internal audit to the company, whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company. This prohibition justifies that external audit and internal audit should be two separate functions with clear division of responsibility.

### Implication on Practising Chartered Accountants

- While listed companies, as per requirement in **Clause 41 of Listing Agreement**, have already maintained internal audit departments, the Companies Act, 2013 has extended the coverage to unlisted public

companies and private companies meeting the specified criteria. This requirement is intended to ensure that the specified companies have a mechanism in place to regularly review and assess their internal control system and thereby, to identify any weaknesses and develop and implement appropriate measures. The internal audit function plays an important role in the corporate governance framework, and would thereby protect investors and public interest.

Internal auditors should rise to the task and seize the opportunity of establishing high performing internal audit functions as per the new requirements. Further, the above mentioned Rule is applicable from April 1, 2014, which means that by September 30, 2014, companies which are required to appoint internal auditor should comply with the provisions of Section 138 and the corresponding Rules, thereby allowing sufficient time for companies that have not yet done so. The Rules also provide leverage to the companies to keep an employee of the company as internal auditor.

- In order to maximize the independence and objectivity of internal audit function, the Companies Act, 2013, also specifies that the primary reporting line of the internal audit function should be the Audit Committee. The new regulatory requirement very clearly requires that the Audit Committee of the company or the Board shall, in consultation with the internal auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

It is very important for the internal audit function to have the full support of the Board and the Audit Committee, and also equally important for it is to understand their expectations. This direct contact with the Audit Committee will surely help the internal audit to maximize its contribution to good governance and exhibit high quality of professionalism and quality in its work. The objective is to set up an effective internal audit function which would assist the audit committee in discharging its responsibilities in light of its limited time and oversight capacity.

## Chapter 8

# Appointment of Auditors

### [Section 139 & 141]

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**Section 139(1)** of the Companies Act, 2013 states that "Subject to the provisions of this Chapter, every company shall, at the first Annual General Meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed<sup>4</sup>"

**Provided** that the company shall place the matter relating to such appointment for ratification by members at every Annual General Meeting:

**Provided further** that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

**Provided** also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:

**Provided** also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

**Section 177** of the Companies Act, 2013 states that the "Board of Directors of every listed company and such other class of companies, as may be prescribed<sup>5</sup>, shall constitute an *Audit Committee*".

Additionally, as per **section 139(11)** of the Companies Act, 2013 "where a company is required to constitute an Audit Committee under the section 177, all appointments, including the filling of casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee."

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<sup>4</sup> Rule 3 of Companies (Audit & Auditors) Rules ,2014

<sup>5</sup> Rule 6 of the Companies (Meeting of Board and its Powers) Rules, 2014

## Appointment of Auditors [Section 139 & 141]

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**Section 139(4)** states that "The Central Government may, by rules<sup>6</sup>, prescribe the manner in which the companies shall rotate their auditors in pursuance to sub-section (2). (Firm includes LLP)"

**Section 139(5)** provides that "notwithstanding anything contained in sub-section (1), in the case of a Government Company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Government, the Comptroller and Auditor-General of India shall, in respect of financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of 180 days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting."

**Section 139(6)** provides that "Notwithstanding anything contained in sub-section(1), the first auditor of a company, other than a Government Company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first general meeting."

**Section 139(7)** provides that "Notwithstanding anything contained in sub-section(1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Government, the *first auditor* shall be appointed by the Comptroller and Auditor-General of India within 60 days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days; and in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting."

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<sup>6</sup> Rule 6 of the Companies (Audit & Auditors) Rules, 2014

**Section 139(8)** further provides that "any *casual vacancy* in the office of an auditor shall-

- (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the board of directors within 30 days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within 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 the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India within 30 days:

**Provided** that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

**Section 139(9)** provides that "Subject to the provisions of sub-section (1) and the rules made there under, a retiring auditor may be re-appointed at an annual general meeting, if-

- (a) he is not disqualified for re-appointment;
- (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; 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.

**Section 139(10)** provides that where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

### **Rule 3 of the Companies (Audit and Auditors) Rules, 2014**

- (1) In case of a company that is required to constitute an Audit Committee under section 177 (Audit Committee), the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as

### Appointment of Auditors [Section 139 & 141]

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auditor and whether such qualifications and experience are commensurate with the size and requirements of the company:

Provided that while considering the appointment, the Audit Committee or the Board, as the case may be, shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any court.

- (2) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditors as it may deem fit.
- (3) Subject to the provisions of sub-rule (1), where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.
- (4) If the Board disagrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.
- (5) If the Board disagrees with the recommendation of the Audit Committee it shall refer back the recommendation to the Committee for reconsideration citing reasons for disagreement.
- (6) If the Audit Committee, after considering the reasons given by the board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the Committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the annual general meeting.
- (7) The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as first meeting:

*Provided that such appointment shall be subject to **ratification** in every **Annual General Meeting** till the sixth such meeting by way of passing of an **ordinary resolution**.*

**Explanation-** For the purpose of this rule, it is hereby clarified that, if

the appointments is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditors after following the procedure laid down in this behalf under the Act.

## Rule 4 of the Companies (Audit and Auditors) Rules, 2014

Condition for appointment and notice to Registrar-

- (1) The auditor appointed under Rule 3 shall submit a certificate that-
  - (a) 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 Accountant Act, 1949 and the rules or regulations, made there under;
  - (b) The proposed appointment is as per the term provided under the Act;
  - (c) The proposed appointment is within the limits laid down by or under the authority of the Act;
  - (d) The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with the respect to *professional matters of conduct*, as disclosed in the certificate, is true and correct.
- (2) The notice to Registrar about the appointment of auditor under the fourth proviso to sub-section (1) of section 139 shall be in **Form ADT-1**.

## Implication on Practising Chartered Accountants

The new Act brings in major changes relating to the appointment of auditors. The auditors will not seek their reappointment at the Annual General Meeting (AGM) of the company. Instead the appointment of the auditor will be for tenure until the conclusion of sixth Annual General Meeting. The appointment, however, comes with a rider that at every AGM, the appointment of the auditor is to be ratified. This is a change as compared to seeking reappointment at every AGM.

The term "*Professional matters of conduct*" has not been defined under the Companies Act, 2013. The explanations attached to Section 132(4) of the Act, indicates that for the purposes of the section 132(4), the expression

## Appointment of Auditors [Section 139 & 141]

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"professional or other misconduct" shall have the same meaning assigned to it under *section 22 of the Chartered Accountant Act, 1949*.

It is defined as *"For the purpose of this Act, the expression "**professional misconduct**" shall be deemed to include any act or omission specified in any of the schedules, but nothing in this section shall be construed to limit or abridge in*

*any way the power conferred or duty cast on the council under Section 21(1) to inquire into the conduct of any member of the Institute under any other circumstances."*

The word "professional or other misconduct" and "matters of professional or other misconduct" used in the Act convey the same meaning. The word 'conduct' connotes manner or behavior and 'professional misconduct' would, therefore mean to be behavior in relation to a profession. There is, therefore, no perceptible difference in the meaning of the two phrases.

The purpose is to ensure that the audit committee or board should take a decision after being fully aware of the pending proceedings in relation to conduct or misconduct of auditors relating to their profession.

## Chapter 9

# Rotation of Auditors [Section 139(2)]

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As per *section 139(2)* of the Companies Act, 2013; no listed company or company belonging to such class of companies as may be prescribed,<sup>7</sup> shall appoint or re-appoint-

- (a) an individual as auditor for more than *one term of five consecutive years*; and
- (b) an audit firm as auditor, for more than *two terms of five consecutive years*.

**Provided that-**

- (i) An individual auditor who has completed his term under clause (a), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) An audit firm which has completed its term under the clause (b), shall not be eligible for re-appointment 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 an auditor of the same company for a period of five years.

The Companies Act, 2013 also provides that every company, existing on or before the commencement of this Act will have to comply with the above provisions relating to Rotation of Auditors within 3 years from the date of the commencement of this Act. It means the transition period is of three year w.e.f 1st April 2014 to comply with these provisions.

The Central Government has prescribed under **Rule 6 of the Companies (Audit and Auditors) Rule, 2014**, the manner of the rotation of the auditors by the company as under :-

- (i) The audit committees shall recommend to the board, the name of the

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<sup>7</sup> Rule 5 of Companies Audit and Auditors Rule, 2014

## Rotation of Auditors [Section 139(2)]

auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.

- (ii) Where a company is required to constitute the audit committee the board shall consider the recommendation of such committee and in other cases the board shall itself consider the matter of rotation of auditors and makes its recommendation for the appointment of next auditor by the members in Annual General Meeting.

For the purpose of rotation of auditors –

- (a) 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 five consecutive years or ten consecutive years, as the case may be;
- (b) The incoming auditor or audit firm shall not be eligible if such audit or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firm.

For this purpose, the term '*same network*' means the firm operating or initiating hitherto or in future under the same **brand name, trade name or common control**.

### 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 columns I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years

### Companies Act, 2013: Perspective of SMPs & CA Firms

2 years	3 years	5 years
1 years	4 years	5 years

#### Illustration explaining rotation in case of Audit firm:

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 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 columns I and II
I	II	III
10 years (or more than 5 years)	3years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 years	9 years	10 years

#### Note:

1. Audit firm shall include other firms whose name or trademark or brand is used by the firm or any of its partners.
2. Consecutive years shall mean all the preceding financial years for which the firm has been auditor until there has been a break by five years or more.

**Section 139(3)** provides that the members of any company can resolve at any AGM that

- (a) the audit firm appointed by it shall rotate the audit partner and his team at such intervals as may be resolved by members or

(b) the audit shall be conducted by more than one auditor.

*It may be noted that section 139 specifically provides that the term 'Firm' shall include a Limited Liability Partnership (LLP).*

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

### **Rule 5 of the Companies (Audit and Auditors) Rules, 2014**

The Rule provides that the class of companies for the purpose of sub-section (2) of section 139 shall mean the following classes of the companies excluding one person companies and small companies:

- **Unlisted public companies** with a paid up share capital of *Rs. 10 crore or more;*
- **Private limited companies** with a paid up share capital of *Rs. 20 crore or more;* and
- Companies with **public borrowings** from financial institutions, banks or from the public (by way of deposits) of *Rs. 50 crore or more;* will need to rotate their auditors.

## Chapter 10

# Removal and Resignation of Auditors

### [Section 140]

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*Section 140* deals with the removal and resignation of Auditor. The procedure given in this section is more or less similar to the existing procedure in section 225 with the following differences:

- (1) An auditor appointed under section 139 can be removed from his office before the expiry of his term only after obtaining the previous approval of the Central Government and after passing a Special Resolution of the Company.

*Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.*

- (2) If an auditor resigns from his office, he is required to file, within 30 days from the date of resignation, a statement in the prescribed form (ADT-3) with the *company and ROC indicating reasons and other facts regarding his resignation*. In the case of a **Government company**, this form is also required to be filed with **Comptroller & Auditor General**. In this statement the auditor has to give reasons and other facts relevant to his resignation.
- (3) For failure to comply with this requirement, the auditor is punishable with a minimum fine of **Rs. 50,000/-** which may extend **upto Rs. 5 lakhs**.
- (4) As per *section 140(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 providing expressly that a retiring auditor shall not be reappointed, except where the retiring auditor has completed a consecutive tenure of five years or as the case may be, ten years as provided under sub section (2) of section 139.
  - (ii) On receipt of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

### Removal and Resignation of Auditors [Section 140]

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(iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,-

- (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting:

**Provided** that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:

**Provided** further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

- (5) As per **section 140(5)**, Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:

**Provided** that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within *fifteen days* of receipt of such application, make an order that he shall not

function as an auditor and the Central Government may appoint another auditor in his place.

**Provided** further that an auditor or firm, against whom final order has been passed by the tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the orders and the auditor shall be liable for an action u/s 447(Punishment of Fraud).

*(Note: Section 140, second proviso to sub section (4) and sub-section (5) are not yet notified.)*

### **Implication on Practising Chartered Accountants**

The Tribunal's authority to suo-moto change the auditor and consequent ineligibility of such auditor, to act as an auditor for any company is quite punitive and could be disruptive to the audit profession.

## Chapter 11

# Eligibility of Auditor [Section 141(2)]

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Under the Companies Act, 1956, a Chartered Accountant holding a certificate of practice or a firm of Chartered Accountants can be appointed as auditor(s) of a company.

As per *section 2(17)* of the Companies Act, 2013

*“Chartered Accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountant Act, 1949(38 of 1949) who holds a valid certificate of practice under the sub-section(1) of section 6 of that Act.*

The Companies Act, 2013, prescribes that a firm wherein a majority of the partners practising in India are qualified for appointment may be appointed to be an auditor of a company. Where a firm, including a Limited Liability Partnership ('LLP'), is appointed as an auditor of a company, only partners, who are chartered accountants are permitted to act and sign on behalf of the firm.

It may be noted that *section 139* specifically provides that the term 'Firm' shall include a Limited Liability Partnership (LLP).

### Implication on Practising Chartered Accountants

The introduction of the LLP as an auditor and ability to operate with partners who are not Chartered Accountants is a welcome change and in line with international practices. This will also pave the way for multi-disciplinary partnership firms.

## Chapter 12

# Disqualification of Auditors

### [Section 141(3)]

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The Companies Act, 2013 under **section 141(3)** prescribes the following persons who shall not be eligible for appointment as an auditor of a company, namely:

- (a) a body corporate other than an **Limited Liability Partnership** registered under the LLP Act, 2008;
- (b) an officer or employee of the company;
- (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- (d) a person who, or his relative or partner-
  - (i) is *indebted* to the company, its subsidiary, holding or associate company or subsidiary of such holding company, in excess of such amount as may be prescribed<sup>8</sup>;
  - (ii) has *given a guarantee or provided any security* in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed<sup>8</sup>;
  - (iii) Is *holding any security or interest in the company*, its subsidiary, holding or associate company or subsidiary of such holding company. However, the relative may be allowed to hold security or interest in the company with face value not exceeding rupees One thousand or such sum as may be prescribed<sup>8</sup>.
- (e) a person or firm who, whether directly or indirectly, has a 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<sup>8</sup>;

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<sup>8</sup> Prescribed under Rule 10 of the Companies (Audit & Auditors) Rules, 2014

### Disqualification of Auditors [Section 141(3)]

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- (f) a person whose *relative* is a director or is in employment of the company as a director or key managerial personnel;
- (g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as it auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;
- (h) a person who has been *convicted by a court of an offence* involving fraud and a period of ten years has not elapsed from the date of such conviction;
- (i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

### Rule 10 of the Companies (Audit and Auditors) Rules, 2014

- (1) for the proviso to sub-clause (i) of clause (d) of sub-section(3) of section 141, a relative of an auditor may hold *securities* in the company of face value not exceeding **rupees one lakh**:  
Provided that the condition under this sub-rule shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities:  
Provided further that in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest.
- (2) For the purpose of sub-clause (ii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner is *indebted* to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company, in excess of **rupees five lakh** shall not be eligible for appointment.
- (3) For the purpose of sub-clause (iii) of clause (d) of sub-section (3) of section 141, a person who or whose relative or partner has given a *guarantee or provided any security in connection with the indebtedness of any third person* to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees shall not be eligible for appointment.

- (4) For the purpose of clause (e) of sub-section (3) of section 141, the term "***business relationship***" shall be construed as any transaction entered into for a commercial purpose, except-
- (i) Commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or regulations made under those Acts;
  - (ii) Commercial transactions which are in the ordinary course of business of the company at arm's length price-like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

Under **Section 2(77)** in the Companies Act, 2013 defines **relative** as "with reference to any person, means anyone who is related to another, if-

- (i) They are members of Hindu Undivided Family;
- (ii) They are husband and wife; or
- (iii) One person is related to the other in such manner as may be prescribed under Rule 4 of the Companies (Specification of Definitions Details) Rules, 2014.

### **Rule 4 of the Companies (Specification of Definitions 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 :  
Provided that the term "Father" includes step-father.
- (2) Mother :  
Provided that the term "Mother" includes the step-mother.
- (3) Son :  
Provided that the term "Son" includes the step-son.
- (4) Son's wife.
- (5) Daughter.

### Disqualification of Auditors [Section 141(3)]

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- (6) Daughter's husband.
- (7) Brother :  
Provided that the term "Brother" includes the step-brother.
- (8) Sister :  
Provided that the term "Sister" includes the step-sister.

### Implication on Practising Chartered Accountants

- The definition of relatives as provided under the Companies Act, 2013 seems to be quite wide. Given the monetary threshold limit and the wide ambit of the term relative, in many cases the auditor may be held ineligible as it may be difficult or rather impractical for him to track the transaction of these small amounts with respect to all individuals included in the term "Relative".
- The cooling off/ transition period has not been defined by the new Act. It is also not clear whether a person/firm that is engaged in providing non-audit services is disqualified to be the auditor of any company or such person/firm is disqualified to be the auditor of only the company to which such non-audit services are rendered.
- The requirement of the relative relationship of an auditor with the company is not one time, to be seen at the time of appointment but the provisions mandate that as and when the auditor incurs any of the disqualifications, he shall vacate his office as auditor. Thus, this provision is to be checked on a continuous basis.

## Chapter 13

# Auditors Report [Section 143(3)]

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As per *section 143(3)* of the Companies Act, 2013, the Auditor's report includes the following matters:

- (a) Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statement;
- (b) Whether, in his opinion, proper books of accounts as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) Whether the report of the accounts of any branch office of the company audited sub-section(8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- (d) Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of accounts and returns;
- (e) Whether, in his opinion, the financial statements comply with the accounting standards;
- (f) The observations or comments of the auditors on financial transaction or matters which have any adverse effect on the functioning of the company;
- (g) Whether any director is disqualified from being appointed as a director under sub-section (2) of the section 164;
- (h) Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- (i) Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

- (j) Such other matters as may be prescribed<sup>9</sup>

**Rule 11 of the Companies (Audit and Auditors) Rules, 2014:**

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 statements;
- (b) Whether the company has made provisions, 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 Investors Education and Protection Fund by the company.

*Section 143(4)* states that where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons there for.

*Section 143(5)* states that in the case of a *Government company*, the *Comptroller and Auditor-General of India* shall appoint the auditor under the sub-section (5) or sub-section(7) of section 139 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 Comptroller and Auditor General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

*Section 143(6)* states that *the Comptroller and Auditor General of India* shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to-

- (a) Conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorize in this behalf

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<sup>9</sup> Refer Rule 11 of the Companies (Audit and Auditors) Rules, 2014).

and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorized, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor General of India may direct; and

- (b) Comment upon or supplement such audit report:

**Provided** that any comments given by C& AG of India upon, or supplemented to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub-section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

Further reporting includes-

- (a) Unlike the present requirement of observations or comments of auditors with any adverse effect on functioning of the company to be given in Bold or Italic, the new Companies Act provide for observation or comments on financial transactions or matters which have any adverse effect on the functioning of the company. Such observations/comments will be read in the AGM and can be inspected by any member.
- (b) The auditor's report will also include whether the company has adequate internal financial control system in place and the operating effectiveness of such controls.
- (c) If the auditor during the course of audit, has reason to believe that an offence involving fraud is being or has been committed against the company by its officers or employees, he is required to immediately report the matter to the Central Government in the manner as prescribed under Rule 13.
- (d) The requirement to maintain confidentiality by the auditors with respect to client's matters, does not apply to reporting matters under any regulation.

### **Implication on Practising Chartered Accountants**

- There seems to be focus to bring in the best global practices in terms of reporting by auditors on the effectiveness of internal control over financial reporting and maintenance of accounting records.

### **Auditors Report [Section 143(3)]**

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- The auditors are subjected to wider and onerous responsibility on internal controls and on operational effectiveness of the conduct of the business, in addition to the true and fair opinion on financial statements.
- Scope of audit inquiries/testing is no longer be restricted to financial information and may include more qualitative operational assessments as well.

## Chapter 14

# Right to Access books of Account by Auditor [Section 143(1)]

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The Companies Act, 2013 under *section 143(1)* provides that:

- Every auditor of a company shall have a right of access at all the books of accounts and vouchers of the Company, whether kept at the registered office of the company or at any other place; and
- Shall be entitled to require from the officers of the Company such information and explanation as he may consider necessary for the performance of his duties as auditor and among other matters inquire into the following matters namely:-
  - (a) Whether loans and advances made by the Company on the basis of Security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the Company or its members;
  - (b) Whether transactions of the Company which are represented merely by book entries are prejudicial to the interests of the company;
  - (c) Where the Company not being an investment company or a banking company ,whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
  - (d) Whether loans and advances made by the company have been shown as deposits;
  - (e) Whether personal expenses have been charged to revenue account;
  - (f) Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and 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.

### **Right to Access books of Account by Auditor [Section 143(1)]**

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Additionally, the Companies Act, 2013 provides that the auditor of a holding company shall also have the right to access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries.

As per **Section 2(13)**, "*Books of Accounts*" includes records maintained in respect of-

- (i) All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) All sales and purchases of goods and services by the company;
- (iii) The assets and liabilities of the company; and
- (iv) The items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

**Section 128(1)** of the Companies Act, 2013 requires every company to prepare and keep at its registered office books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transaction effected both at the registered office and its branches and to keep such books on accrual basis and according to the double entry system of accounting.

### **Rule 12 of the Companies (Audit and Auditors) Rules, 2014**

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

- (1) For the purposes of section 143(8), the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in section 143(1) to (4)
- (2) The Branch auditor shall submit his report to the company's auditor.
- (3) The provisions of section 143(12) read with rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

### **Implication on Practising Chartered Accountants**

In situation, where all the subsidiaries of the company are not audited by the auditor of the holding company, then in those situations, the liberty now given to the holding company's auditor, i.e he has the right to access the records of all its subsidiaries.

## Chapter 15

# Restriction on number of Audits

### [Section 141(3) (g)]

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The *Companies Act, 1956* and the *Institute of Chartered Accountants of India ('ICAI') through Council Guidelines 2008 (Under Chapter VIII)*, restrict the number of companies in which a person/ firm can be appointed as auditor. An individual cannot be appointed as auditor for more than 30 companies.

Further, an individual cannot be appointed as auditor for more than 20 public companies and of which not more than 10 companies should have a paid up share capital of more than Rs 25 lakh. In case of a firm, such ceiling is determined for every partner of the firm.

As per **Section 141(3) (g)** of the Companies Act 2013, "a person who 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**" will be disqualified from being appointed.

The Companies Act, 2013 restricts the number of audits to 20 companies for an individual/ partner. The aforesaid restrictions also cover one person companies, small companies and private companies.

### **Implication on Practising Chartered Accountants:**

The Companies Act, 2013 restricts the person or audit firm to act as an auditor in companies not more than twenty. The limit of 20 Companies is very low and includes one person companies, small companies and private companies. No further detailed clarification is given in this regard.

## Chapter 16

# Fraud Reporting [Section 143(12)]

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Section 143(12) requires that if an auditor of a company, while performing his duties, has reason to believe that an offence involving fraud is being or has been committed against the company he shall immediately report to the Central Government within such time and in such manner as may be prescribed (under Rule 13 and Form ADT 4 of the Companies (Audit and Auditors) Rules, 2014).

### Rule 12 of the Companies (Audit and Auditors) Rules, 2014

The provision of subsection (12) of section 143 read with Rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned Branch.

### Rule 13 of the Companies (Audit and Auditors) Rules, 2014

In case the auditor has sufficient reasons 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 procedures 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 **forty – five 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 forty-five 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.

### Rule 13 further provides that

- (1) 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.
- (2) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.
- (3) The report shall be in the form of a statement as specified in **Form ADT-4**.
- (4) The provision of this rule shall also apply, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under **section 148 and section 204** respectively.

### Implication on Practicing Chartered Accountants

- The term "Fraud" as defined under the Companies Act, 2013 is wide enough to encompass all possible acts of omission or commission.
- If the auditor fails to comply with this reporting requirement, without reasonable cause, he shall be punishable with minimum fine of **Rs. 1 lakh which may extend to Rs. 25 lakh**.

## Chapter 17

# Non-Audit Services-Restricted Services

### [Section 144]

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Currently, whether non-audit services can be rendered to an audit client is regulated by the Code of Ethics and the Guidance Note on Independence of Auditors issued by the ICAI.

The Companies Act, 2013 contains specific provisions under *section 144* that prohibit auditors of a company to render non-audit services to an audit client (or its holding company or its subsidiary company).

#### Prohibited non-audit services include

- Accounting and book keeping services;
- Internal audit;
- Design and implementation of any financial information system;
- Actuarial services;
- Investment advisory services;
- Investment banking services;
- Rendering of outsourced financial services; and
- Management services.
- Other restricted services may be further prescribed.

**Provided** that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement

*Thus, the Transition Period of one year is given from the date of enactment of The Companies Act, 2013.*

As per *Notifications No. 1-CA (7)/60/2002*, the 'other work(s)' or 'service(s)' or 'assignment(s)' referred in Clause (ii) of Part II of the Second Schedule to the Chartered Accountant Act, 1949; shall include management consultancy and all other professional services permitted by the council pursuant to

### **Non-Audit Services – Restricted Services [Section 144]**

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section 2(2) (iv) of the Chartered Accountant Act, 1949, but shall not include –

- Audit under any other statute;
- Certification work required to be done by the statutory auditors; and
- Any representation before an authority.

Further **Appendix No.(2) of The CA Act,1949** , point 3 states that “pursuant to Section 2(2)(iv) of the Chartered Accountant Act, 1949, the council hereby reiterates its opinion that a member shall be deemed to be in practice if he, in his professional capacity and neither in his personal capacity nor in his capacity as an employee, acts as liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matters or takes up an appointment made by the Central Government or a State Government or a Court of Law or any other legal authority or acts as a secretary unless his employment is on a salary-cum-full time basis.”

**As per the Guidelines for Practice in Corporate Form** which came into force w.e.f. 1.10.2006, **Management Consultancy & Other Services** means ‘Management Consultancy & Other Services’ permitted by the Council in pursuance to Section 2(2)(iv) of the Chartered Accountant Act, 1949. The definition of the expression “Management Consultancy and Other Services” as stated at pages 8-10 of the code of Ethics, 2005 edition as under:

The expression “Management Consultancy and other Services” shall not include the function of statutory or periodical audit, tax (both direct taxes and indirect taxes) representation or advice concerning tax matters or acting as liquidator, trustee, executor, administrator, arbitrator or receiver, but shall include the following:

- (i) Financial management planning and financial policy determination
- (ii) Capital structure planning and advice regarding raising finance.
- (iii) Working Capital management
- (iv) Preparing project reports and feasibility studies.
- (v) Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds, etc.
- (vi) Budgeting include Capital Budgets and revenue budgets.
- (vii) Inventory management, material handling and storage.

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- (viii) Market research and demand studies.
- (ix) Price-fixation and other management decision making.
- (x) Management accounting systems, cost control and value analysis.
- (xi) Control methods and management information and reporting.
- (xii) Personnel recruitment and selection.
- (xiii) Setting up executive incentive plans, wage incentive plans, etc.
- (xiv) Management and operational audits.
- (xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.
- (xvi) Business policy, corporate planning, organisation development, growth and diversification.
- (xvii) Organisation structure and behavior, development of human resources including design and conduct of training programmes, work study, job description, job evaluation and evaluation of workloads.
- (xviii) Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant in practice and also to carry out any other professional services relating to EDP.
- (xix) Acting as advisor or consultant to an issue, including such matters as :-
  - (a) Drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with stock exchanges, Registrar of companies and SEBI.
  - (b) Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting agreement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material(In doing so, the relevant provisions of the code of Ethics must be kept in mind)

#### Non-Audit Services – Restricted Services [Section 144]

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- (c) Advice regarding selection of various agencies connected with issue, namely Registrars to issue, printers and advertising agencies.
- (d) Advice on the post issue activities, e.g., follow up steps which include listing of instruments and dispatch of certificates and refunds, with the various agencies connected with the work.

**Explanation:** For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted

- (xx) Investment counseling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind)
- (xxi) Acting as registrar to an issue and for transfer of shares/other securities. (In doing so, the relevant provisions of the Code of Ethics must be kept in mind)
- (xxii) Quality Audit
- (xxiii) Environmental Audit
- (xxiv) Energy Audit
- (xxv) Acting as Recovery Consultant in the Banking Sector.
- (xxvi) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage.

## Chapter 18

# Auditors Liability - Penalty Provisions

### [Section 147]

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As per *section 147* of the Companies Act, 2013 -

- (1) If any of the provisions of section 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees 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 with fine which shall not be less than **ten thousand rupees** but which may extend to **one lakh rupees**, or **with both**.
- (2) If an auditor has contravenes any of the provisions of section 139, 143, 144, or 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:  
  
Provided that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its share holders or creditors or tax authorities, he shall be punishable with **imprisonment for a term upto one year and with a fine which shall not be less than one lakh rupees but which may extend upto twenty-five lakh rupees**.
- (3) where an auditor has been convicted under sub-section (2), he shall be liable to-
  - (i) **refund the remuneration** received by him to the company.
  - (ii) **Pay damages** to the company, statutory bodies/authorities or to any other persons for loss arising out of incorrect or misleading statements in his audit report.
- (4) The **Central Government** shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

### Auditors Liability – Penalty Provisions [Section 147]

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- (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 this Act or in any other law for the time being in force, for such act shall be of the partner or partners of the audit firm and of the firm jointly and severally.

**Section 447 of Chapter XXIX** of the Companies Act, 2013 is a new provision that deals with the punishment of fraud. According to this section, without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found guilty of fraud shall also be punishable in the following manner:

- (a) imprisonment for a term *not less than six months and may extent up to ten years*, provided that where the *matter involves public interest, the minimum term will be three years*; and
- (b) fine for an amount ranging from *one to three times the amount involved in the fraud*.

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

As per **section 35(1)** of the Companies Act, 2013 where a person has subscribed for securities of a company on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained loss or damage as a consequence, the company and certain specified person (includes director, promoter and experts) are liable to pay compensation to every person who has sustained loss or damage.

As per **section 35(3)**, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to the above shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

**Section 26(5)** of the Companies Act, 2013 define **expert** as “the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

*Section 2(38)* of the Act further states that “expert” include an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

### **Implication on Practicing Chartered Accountants**

There are huge responsibilities on the Chartered Accountants under the Companies Act, 2013. Therefore, professionals have to be alert and conscious while performing their audit functions.

## Chapter 19

# Class Action Suits [Section 245 (1)]<sup>10</sup>

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The Companies Act, 2013 under *section 245(1)* provides for class action suits, which allow a requisite number of members or depositors with common interest, in a matter, to file an application in the *National Company Law Tribunal ('NCLT')* against the company/its management/its auditors or a section of its shareholders for damages or compensation if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interest of the company, or its members or depositors. The application may seek all or any one of the following orders, namely:-

- (a) To restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- (b) To restrain the company from committing breach of any provisions of the company's memorandum or articles;
- (c) To declare a resolution altering the memorandum or article of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- (d) To restrain the company and its director from acting on such resolution;
- (e) To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- (f) To restrain the company from taking action contrary to any resolution passed by the members;
- (g) To claim damages or compensation or demand any other suitable action from or against-
  - (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

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<sup>10</sup> This section is not yet notified.

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- (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent ,unlawful or wrongful act or conduct; or
- (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- (h) To seek any other remedy as the Tribunal may deem fit.

## ANNEXURES



Annexure 1

## Chapter IX of Companies Act, 2013: Companies (Accounts) Rules, 2014

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Relevant section no.	Section description	Rule no	Rule description	Form no.	Form description
128(1), 2 <sup>nd</sup> Proviso	Books of accounts, etc to be kept by Company	3	Manner of Books of Accounts to be kept in Electronic Form		
128(3)	Books of Accounts, etc. to be kept by company	4	Conditions regarding maintenance and inspection of certain financial information by directors		
129(3), 1 <sup>st</sup> Proviso	Financial Statement	5	Form of Statement containing salient features of financial statement of subsidiaries	AOC-1	Statement Containing salient features of the financial statement of subsidiaries/as sociate companies/ Joint venture
129(3), II <sup>nd</sup> Proviso	Financial Statement	6	Manner of consolidation of account		
133	Central Government to	7	Transitional provisions		

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	prescribe Accounting Standards		with respect to Accounting Standards		
134(3)	Financial Statement, Board's Report, etc.	8	Matters to be included in Board's report	AOC-2	Form for disclosure of particulars of contracts /arrangements entered into by the Company with related parties referred to in sub-section (1) of section 188 of the Companies Act,2013 including certain arms length transactions under third proviso thereto
135	Corporate Social Responsibility	9	Disclosures about CSR Policy		
136(1), 1 <sup>st</sup> Proviso	Right of members to copies of audited financial statement.	10	Statement containing salient features of financial statements	AOC-3	Statement containing salient features of Balance Sheet and Profit and Loss Account
136(1), 2 <sup>nd</sup> Proviso	Right of members to copies of audited financial statement.	11	Manner of circulation of financial statements in certain cases		

**Companies (Accounts) Rules, 2014**

137	Copy of financial statement to be filed with Registrar	12	Filing of financial statements and fees to be paid thereon	AOC-4	Form for filing Financial statements and other documents with the Registrar.
138	Internal Audit	13	Companies required to appoint internal auditor		

Annexure 2

## Chapter X of Companies Act, 2013: Companies (Audit and Auditors) Rules, 2014

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Relevant Section no.	Section description	Rule no	Rule description	Form no.	Form description
139(1)	Appointment of Auditors	3	Manner and procedure of selection and appointment of auditors		
139(1), 2 <sup>nd</sup> and 4 <sup>th</sup> Proviso	Appointment of Auditors	4	Conditions for appointment and notice to Registrar	ADT-1	Notice of appointment of auditor by the company
139(2)	Appointment of Auditors	5	Class of Companies		
139(4)	Appointment of Auditors	6	Manner of rotation of auditors by the companies on expiry of their term		
140(1)	Removal, resignation of auditors and giving of special notice	7	Removal of the auditor before expiry of his term	ADT-2	Application for removal of auditor(s) from his/their office before expiry of term
140(2)	Removal, resignation of auditors and giving of special notice	8	Resignation of auditor	ADT-3	Notice of Resignation by the Auditor

**Companies (Audit and Auditors) Rules, 2014**

141(3) (d)(i),(ii), (vii)/(e)	Eligibility, qualifications and disqualifications of auditors	10	Disqualification of auditor		
143(3)(j)	Power and duties of auditor and auditing standards	11	Other matters to be included in auditor's report		
143(8)	Power and duties of auditor and auditing standards	12	Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor		
143(12)	Power and duties of auditor and auditing standards	13	Reporting of frauds by auditor	ADT-4	Report to the Central Government
147(5)	Punishment for Contravention	9	Liability to devolve on concerned partners only		
148(3)	Central Government to specify audit of items of costs in respect of certain companies	14	Remuneration of the Cost Auditor		

### Annexure 3

## Date of Enforcement of Sections of Companies Act, 2013 Affecting Practising Chartered Accountants

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Section of Companies Act, 2013	Section description	Date of enforcement
2(40)	Financial Statements	12.09.2013
2(41)	Financial Year	01.04.2014
128	Books of accounts etc., to be kept by Company	01.04.2014
129	Financial Statements	01.04.2014
133	Central Government to prescribe accounting standards	12.09.2013
134	Financial Statements, Board's Report, etc.	01.04.2014
136	Right of member to copies of audited financial Statements	01.04.2014
137	Copy of financial Statement to be filed with Registrar	01.04.2014
138	Internal Audit	01.04.2014
139	Appointment of Auditors	01.04.2014
140 (Except Second proviso to sub-section (4) and sub-section (5))	Removal, resignation of auditor and giving of special notice	01.04.2014
141	Eligibility, qualification and disqualification of auditors	01.04.2014
142	Remuneration of auditors	01.04.2014

**Date of Enforcement of Relevant Sections of Companies Act, 2013**

143	Power and duties of auditors and auditing standards	01.04.2014
144	Auditor not to render certain services	01.04.2014
145	Auditor to sign audit reports, etc.	01.04.2014
146	Auditor to attend general meeting	01.04.2014
147	Punishment for contravention	01.04.2014
148	Central Government to specify audit of items of cost in respect of certain companies	01.04.2014
177	Audit Committee	01.04.2014

Annexure 4

## List of Section of Companies Act, 2013 Not Yet Enforced

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Sections of Companies Act, 2013	Description of sections of Companies Act, 2013
2(23)	Company liquidator
2(29)(iv)	Court
2(67)(ix)	Previous company law
2(87) proviso	Subsidiary company or subsidiary
7(7)	Incorporation of company
8(9)	Formation of Companies with charitable objects, etc.
14, Second proviso to sub-section (1) & sub-section (2)	Alteration of articles
48	Variation of shareholder's rights
55(3)	Issue and redemption of preference shares
61, proviso to sub-section (1) (b)	Power of limited company to alter its share
62(4) to (6)	Further issue of share capital
66	Reduction of share capital
71(9) to (11)	Debenture
74(2) & (3)	Repayment of deposits, etc, accepted before commencement of this Act
75	Damages for fraud
97	Power to Tribunal to call annual general meeting
98	Power of Tribunal to call meetings of members, etc.
99	Punishment for default in complying with provisions of sections 96-98
119(4)	Inspection of minute books of general meeting
124	Unpaid Dividend Account

**List of Section of Companies Act 2013 Not Yet Enforced**

125	Investor Education and Protection Fund
130	Re-opening of accounts on court's or Tribunal's order
131	Voluntary revision of financial statements or Board's report
132	Constitution of National Financial Reporting Authority
140, Second proviso to sub-section (4) & sub-section (5)	Removal, resignation of auditor and giving of special notice
169(4)	Removal of directors
212, certain references in sub-sections (6) & (8) to (10)	Investigation into affairs of the company by Serious Fraud Investigation Office
213	Investigation into company's affairs in other cases
216(2)	Investigation of ownership of company
218	Protection of employees during investigation
221	Freezing of assets of company on inquiry and investigation
222	Imposition of restrictions upon securities
224(2) & (5)	Action to be taken
226	Voluntary winding up of company, etc., not to stop investigation proceedings
227	Legal advisers and bankers not to disclose certain information
230	Power to compromise or make arrangements with creditors and members
231	Power of Tribunal to enforce compromise and arrangement
232	Merger and amalgamation of companies
233	Merger or amalgamation of certain companies
234	Merger or amalgamation of company with foreign company
235	Power to acquire share of shareholder dissenting from scheme or contract approved by majority

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236	Purchase of minority shareholding
237	Power to Central Government to provide for amalgamation of companies in public interest
238	Registration of offer of schemes involving transfer of shares
239	Preservation of books and papers of amalgamated companies
240	Liability of officers in respect of offences committed prior to merger, amalgamation, etc.
241	Application to Tribunal for relief in cases of oppression, etc.
242	Powers of Tribunal
243	Consequence of termination or modification of certain agreements
244	Right to apply under section 241
245	Class action
246	Application of certain provisions to proceedings under section 241 or section 245
247	Valuation by registered valuer
248	Power of Registrar to remove name of company from register of companies
249	Restrictions on making application under section 248 in certain situation
250	Effect of company notified as dissolved
251	Fraudulent application of removal of name
252	Appeal to Tribunal
253	Determination of sickness
254	Application of revival and rehabilitation
255	Exclusion of certain time in computing period of limitation
256	Appointment of interim administrator
257	Committee of creditors
258	Order of Tribunal
259	Appointment of administrator
260	Powers and duties of company administrator

### List of Section of Companies Act 2013 Not Yet Enforced

261	Scheme of revival and rehabilitation
262	Sanction of scheme
263	Scheme to be binding
264	Implementation of scheme
265	Winding up of company on report of company administrator
266	Power of Tribunal to assess damages against delinquent directors, etc.
267	Punishment of certain offences
268	Bar of jurisdiction
269	Rehabilitation and Insolvency Fund
270	Modes of winding up
271	Circumstances in which a company may be wound up by Tribunal
272	Petition of winding-up
273	Powers of Tribunal
274	Directions of filing statement of affairs
275	Company Liquidators and their appointment
276	Removal and replacements of liquidator
277	Intimation to company liquidator, provisional liquidator and Registrar
278	Effect of winding up order
279	Stay of suits, etc., on winding up order
280	Jurisdiction of Tribunal
281	Submission of report by Company Liquidator
282	Directions of Tribunal on report of Company Liquidator
283	Custody of company's properties
284	Promoters, directors, etc., to co-operate with Company Liquidator
285	Settlement of list of contributories and application of assets
286	Obligations of directors and managers
287	Advisory Committee

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288	Submission of periodical reports to Tribunal
289	Power of Tribunal on application for stay of winding up
290	Powers and duties of Company Liquidator
291	Provision for professional assistance to Company Liquidator
292	Exercise and control of Company Liquidator's powers
293	Books to be kept by Company Liquidator
294	Audit of Company Liquidator's accounts
295	Payment of debts by contributory and extent of set off
296	Power of Tribunal to make calls
297	Adjustments of rights of contributories
298	Power to order costs
299	Power to summon persons suspected of having property of company, etc.
300	Power to order examination of promoters, directors, etc
301	Arrest of person trying to leave India or abscond
302	Dissolution of company by Tribunal
303	Appeals from orders made before commencement of Act
304	Circumstances in which company may be wound up voluntarily
305	Declaration of solvency in case of proposal to wind up voluntarily
306	Meeting of Creditors
307	Publication of resolution to wind up voluntarily
308	Commencement of voluntary winding up
309	Effect of voluntary winding up
310	Appointment of Company Liquidator
311	Power to remove and fill vacancy of Company Liquidator
312	Notice of appointment of Company Liquidator to

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	be given to Registrar
313	Cesser of Board's powers on appointment of Company Liquidator
314	Powers and duties of Company Liquidator in voluntary winding up
315	Appointment of Committees
316	Company Liquidator to submit report on progress of winding up
317	Report of Company Liquidator to Tribunal for examination of persons
318	Final meeting and dissolution of company
319	Power of Company Liquidator to accept shares, etc., as consideration for sale of property of company
320	Distribution of property of Company
321	Arrangement when binding on company and creditors
322	Power to apply to Tribunal to have questions determined, etc.
323	Cost of voluntary winding up
324	Debts of all descriptions to be admitted to proof
325	Application of insolvency rules in winding up of insolvent companies
326	Overriding preferential payments
327	Preferential payments
328	Fraudulent preference
329	Transfers not in good faith to be void
330	Certain transfer to be void
331	Liabilities and rights of certain persons fraudulently preferred
332	Effect of floating charge
333	Disclaimer of onerous property
334	Transfer, etc., after commencement of winding up to be void
335	Certain attachments, executions, etc., in winding

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	up by Tribunal to be void
336	Offences by officers of companies in liquidation
337	Penalty for frauds by officers
338	Liability where proper accounts not kept
339	Liability for fraudulent conduct of business
340	Power of Tribunal to assess damages against delinquent directors, etc
341	Liability under section 339 and 340 to extend to partners or directors
342	Prosecution of delinquent officers and members of company
343	Company Liquidator to exercise certain powers subject to sanction
344	Statement that a company is in liquidation
345	Books and papers of company to be evidence
346	Inspection of books and papers by creditors and contributories
347	Disposal of books and papers of company
348	Information as to pending liquidation
349	Official Liquidator to make payments into public account of India
350	Liquidator not to deposit monies into Scheduled Bank
351	Liquidator not to deposit monies into private banking account
352	Company Liquidation Dividend and Undistributed Assets Account
353	Liquidator to make returns, etc.
354	Meeting to ascertain wishes of creditors or contributories
355	Court, Tribunal or person, etc., before whom affidavit may be sworn
356	Powers of Tribunal to declare dissolution of company void
357	Commencement of winding up by Tribunal

### List of Section of Companies Act 2013 Not Yet Enforced

358	Exclusion of certain time in computing period of limitation
359	Appointment of Official Liquidator
360	Powers and functions of Official Liquidator
361	Summary procedure for liquidation
362	Sale of assets and recovery of debts due to company
363	Settlement of claims of creditors by Official Liquidator
364	Appeal by creditor
365	Order of dissolution of company
370, proviso	Continuation of pending legal proceedings
372	Power of Court to stay or restrain proceedings
373	Suits stayed on winding up order
375	Winding up of unregistered companies
376	Power to wind up foreign companies, although dissolved
377	Provisions of Chapter cumulative
378	Saving and construction of enactments conferring power to wind up partnership firm, association or company, etc., in certain cases
386(b) & (c)	Interpretation
391(2)	Application of section 34 to 36 and chapter XX
399, reference to Tribunal in sub-section(2)	Inspection, production and evidence of documents kept by registrar
415	Acting president and chairperson of Tribunal or Appellate Tribunal
416	Resignation of members
417	Removal of members
418	Staff of Tribunal and Appellate Tribunal
419	Benches of Tribunal
420	Orders of Tribunal
421	Appeal from orders of Tribunal
422	Expeditious disposal by Tribunal and Appellate

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	Tribunal
423	Appeal to Supreme Court
424	Procedure before Tribunal and Appellate Tribunal
425	Power to punish for contempt
426	Delegation of powers
427	President , Members, officers, etc., to be public servant
428	Protection of action taken in good faith
429	Power to seek assistance of Chief Metropolitan Magistrate, etc.
430	Civil court not to have jurisdiction
431	Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings
432	Right to legal representation
433	Limitation
434	Transfer of certain pending proceedings
435	Establishment of Special Courts
436	Offences triable by Special Courts
437	Appeal and revision
438	Application of Code to proceedings before a Special Court
440	Transitional provisions
441	Compounding of certain offences
465	Repeal of certain enactments and savings
466	Dissolution of Company Law Board and consequential provisions

Feedback page

This is the first edition of the handbook by the Committee. As such, there is scope for its improvement. We intend to make it as useful as possible in its present format. The committee, therefore, hopes to keep updating this Handbook on a regular basis to make it functional.

We solicit comments and suggestions from practitioners and other to improve the usefulness of the Handbook. In particular, we welcome the views of the practitioners on enhancement of their knowledge base.

Your valuable inputs may be sent to [ccbcaf@icai.org](mailto:ccbcaf@icai.org).

We are thankful to CA. Pradeep Kalra for preparing the draft of this book on Companies Act, 2013: Perspective of Small & Medium Practitioners & CA Firms.

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