

PROVISIONS REGARDING AUDITORS UNDER COMPANIES ACT, 2013

PREAMBLE:

Companies Act, 2013 contains number of provisions which have implications on accounts, audit and auditors. By this note, we strive to present some of the key provisions regarding the appointment, removal, resignation, rotation, scope and liability of the Auditors of the Company. The numerous Changes in various Provisions under the Companies Act, 2013 read with its Rules with respect to Auditors as compared to the old Companies Act, 1956 has cast onerous responsibilities of reporting requirements. The new Act intends to protect the rights of stakeholders without demarcation of type of company whether Public, Private or be it listed or unlisted by making full disclosure with complying with Accounting Standards as prescribed by ICAI and other tools and defined the scope of their work to check along with Powers and finally give true and fair view of the financial statements

TRANSFORMATION OF THE AUDIT PROCEDURE, SELECTION OF AUDITORS AND RELATED MATTERS THEREWITH.....

• **APPOINTMENT OF AUDITORS: SECTION 139**

- Company in its first Annual General Meeting, individual or firm of an auditor
- First auditor of the Company shall be appointed by the Board of Directors within 30 days from the registration of the Company and in case of failure to appoint such auditor the Members in the EGM may appoint First Auditor within 90 days **(30 days + 90 days)**
- Auditor appointed in Annual General Meeting shall hold office from conclusion of the meeting in which such auditor has been appointed till conclusion of sixth meeting, means Auditor once appointed shall hold office for a period of 5 years **with ratification*** every year in the Annual General Meeting from Members

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

Important to note that, the Company has right to remove the Auditor before expiry of 5 years and also, if Auditor may resign before such expiry.....

- Written consent required to be taken from the appointee auditor that the appointment, if made, shall be in accordance with the applicable provisions of the Companies Act, 2013.

Auditor shall have to submit certificate as follows:

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 Accountants Act, 1949 and the rules or regulations made thereunder;*
 - 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, if any, against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.*
- Auditor has to satisfy criteria mentioned under section 141 of the Companies Act, 2013 and has to indicate in the Auditor's Certificate.....

Criteria Mentioned u/s. 141 of the Companies Act, 2013 are:

1. Only a Chartered Accountant and in case of Firm of CA, majority of the partners in the Firm, if qualified for appointment, be appointed from the firm +
- 2.
3. In case of LLP & Partnership firm, only Member of ICAI shall be authorized to sign on behalf of firm
4. Ineligibility for appointment as an auditor
 - ✓ A Body Corporate other than LLP incorporated under LLP Act, 2008
 - ✓ An officer or employee of the company
 - ✓ A person who is a partner, or who is in the employment, of an officer or employee of the company
 - ✓ A person who, or his relative or partner—
 - (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:
Provided that the relative may hold security or interest in the company of face **value not exceeding one Lakh rupees** or such sum as may be prescribed;
 - (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

*By reading the plain text of Section 141 along with sub clause (1) (2) & (3) of Rule 10 of Companies (Audit & Auditors) Rules, 2014 a relative of an auditor may hold securities in the Company of face value not exceeding **Rupees One Lac**; or*

*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; or*

*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 **Rupees one lakh** shall not be eligible for appointment;*

which seems clear contradiction of ineligibility of auditors appointment in provisions of the Act and Rules made there under.

- ✓ A person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding Company or associate company.
 - ✓ A person whose relative is a director or is in the employment of the company as a director or key managerial personnel.
 - ✓ 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 persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than **twenty** companies.
 - ✓ 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
 - ✓ 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.
5. If any Auditor attracts above mentioned disqualifications than in such case such Auditor has to vacate his or her office and such vacancy be considered as casual vacancy.
- In case of such appointment and re-appointment of the Auditor, the Company shall inform to the Auditor regarding such appointment, apart from that the Company also has to intimate to ROC within 15 days from the date of such appointment in **Form No. ADT-1**
- Listed Companies and all unlisted Public Companies having paid-up capital of Rs. 10.00 Crore or More, all Private Limited Companies having paid-up Share Capital of Rs. 20.00 Crore or More and all Companies having public borrowings from financial institutions, banks or public deposits of Rs. 50.00 Crores or More but excluding One Person & Small Companies have to make rotation of the Auditor (Individual) in every Five years **(in case of Firm 10 [Ten] years viz. two terms of 5 [Five] years each)** that means the Company cannot reappoint Auditor after completion of the Five years with cooling period of Five years..... ***Here it is pertinent to note that, if any Auditor Firm having common partners to other audit firm, the firm whose tenure has expired cannot be a Auditor of the Company for a term of Five years (cooling off period)***

This means that Companies other than Listed and Specified Class of Companies may appoint auditor for One or More term of Five years.....

- For compliance of the Section 139, the Ministry has given time period of **3 (Three) years**.
- If it is approved by the Members than the audit firm so appointed have to rotate its partners and teams at such intervals and also the audit shall be conducted by more than one auditor.

➤ For the purpose of the rotation of auditors-

- (i) 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;
- (ii) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

Here it is pertinent to note that the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control and for the purpose of rotation of auditors (a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation; (b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

- In case of Government Companies, Comptroller and Auditor General of India (CAG) shall appoint auditor within 180 days from the commencement of the financial year, who shall hold office till the conclusion of the next Annual General Meeting..... Further, for the First Auditor appointment in the Govt. Companies, CAG shall appoint Auditor within 60 days from the date of registration upon failure by CAG the Board shall appoint Auditor within next 30 days **(60 days + 30 days)** and in case of failure by Board even, then first Auditor shall be appointed by the Members of the Company within next 60 days **(60 days + 30 days + 60 days)**
- In case of casual vacancy (other than Govt. Companies), it will be filled by the BOD within 30 days, but in case if such casual vacancy is due to resignations than in such cases appointment shall be approved by the Members in the General Meeting within 3 (Three) Months from the recommendation of the Board and shall hold office till conclusion of next AGM.
- For Govt. Companies such casual vacancy shall be filled by the CAG within 30 days and on failure, Board shall appoint Auditor within next 30 days **(30 days + 30 days)**
- Retiring auditor may be re-appointed at an AGM only if he is not disqualified and has shown his willingness.
- If Members have passed any Special Resolution for the appointment of the Auditor other than retiring auditor or expressly states that he or she shall not be re-appointed, in such case existing Auditor shall have to vacate his or her office
- In case of having no appointment or re-appointment, existing Auditor shall continue to be an Auditor of the Company

- In case of Companies required to constitute an Audit Committee u/s 177, then in such case all appointment, re-appointment including casual vacancy should be filled after taking into account recommendations of such committee....
 - a. Audit Committee or Board as the case may be shall take in to consideration the qualifications and experience or may call for some other information as it may deem fit
 - b. Audit Committee shall recommend name of Auditor or Audit firm and send recommendation to the Board for consideration.....
- ✓ **If Board Agrees:** Board shall recommend and consider a Auditor or Firm of Auditors to the Members in the AGM for appointment
- ✓ **If Board disagrees:** Board refers back the recommendation to the Committee with Reasons
- ✓ **If Committee disagrees:** If Committee does not agree with the reasons of the Board for referring back the recommendation then, the Board shall record for the disagreement with the Committee and shown its own recommendation for consideration of the members in AGM
- ✓ **If Committee agrees:** After reconsidering the Original Recommendation, if the Board agrees with the Recommendations, then it shall place the matter for approval of members in the AGM.

- **REMOVAL, RESIGNATION OF AUDITORS: SECTION 140**

- Auditor appointed pursuant to Section 139, shall be removed from his or her office after taking prior approval of the Central Govt. and also **approval of Members by way of Special Resolution**

Application to the Central Govt. shall be made within 30 (Thirty) days of passing of Resolution by the Board in **Form No. ADT-2** with prescribed fees as mentioned in Chapter 24-Companies (Registration Offices and Fees) Rules, 2014.

After receipt of approval from the Central Govt. the Company shall hold General Meeting within 60 (Sixty) days of receipt of approval and also have to pass **Special Resolution**

- Reasonable opportunity of being heard should be given to the Auditor
- Auditor who **resigns** from the Company shall have to file with the Company and with the ROC a statement in **Form No. ADT-3** within 30 days from such resignation with reasons
- In case of Govt. Companies, Auditor has to file, in addition to above a statement with the CAG with reasons for such resignation.
- Violation of the provisions of Section 140 (2) attracts penalty of Rs. 50,000/- to Rs. 5,00,000/-
- Special Notice U/s. 115 of the Act is required for resolution to be passed at the AGM for appointment of any other Auditor in place of existing Auditor other than in the case where Auditor have completed term or tenure as Auditor
- Company have to intimate to Auditor regarding such Special Notice

- In case if Auditor makes representation (in reasonable length) upon receipt of such special notice of such resolution and also request to notify the same to the Members of the Company, the Company has to disclose in the Notice of the resolution that the representation have been made by the Auditor and also have to send copy of representation to the every members to whom such Notice has been sent
- If Company fails to send representation received and in case of representation received is too late from the Auditor in such case, Auditor of the Company may require that the representation shall be read out at the meeting.
- If Copy of representation is not sent with the Notice than in such case the copy of the said representation **shall be filed with the Registrar of Companies**
- If tribunal satisfies upon application made by the Company or any other aggrieved person, that the Auditor is misusing rights conferred u/s 140 (4), then copy of representation need not be required to be sent or read out at the meeting
- The Tribunal either *suo motu* or on an application made by the Central Govt. or any other person concerned finds that the Auditor has acted in fraudulent manner or abetted or colluded in fraud, may direct to the Company to change its Auditor
- Tribunal if upon application by CG satisfies that the Change is required, it shall within 15 (Fifteen) days of receipt of such application may order removal of Auditor and CG may appoint any other Auditor
- Auditor removed by Tribunal u/s 140(5) shall not be appointed as an Auditor of the Company for a period of 5 years from the date of passing such order and liable for action u/s 447 i.e. should be penalized for Imprisonment of minimum of 6 (Six) **months** which may extends to 10 (Ten) **years** + Fine of the Amount involved in fraud but which may extends to three times of amount involved in fraud

Section 447 (Explanation of Fraud)

- (i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

- **REMUNERATION OF AUDITORS: SECTION 142**

- First Auditor's remuneration shall be fixed by the Board
- In other cases the remuneration of the auditor of the Company shall be fixed in General Meeting
- Remuneration includes fees payable to Auditors, expenses carried out for Audit and facilities extended to him **but does not include remuneration paid to him for any other service rendered by him at the request of the Company**

- **POWERS AND DUTIES OF AUDITORS: SECTION 143**

- Every auditor has the right to have all the vouchers and books of accounts of the Company, details, information and explanations from officials at all the time for performance of duty as an auditor of the Company and also for the Enquiry of the following matters:
 - a. Terms & Conditions of the Loans and Advances made and security over these Loans and Advances have been properly created or not
 - b. Reasonableness of transactions represented only by Book entries
 - c. Investments made in Shares, Debentures and others securities (Not being an Investment or Banking Company), if sold at a price less than it purchased
 - d. Where Loans and Advances made by Company shown as deposits
 - e. Personal expenses charged to revenue account
 - f. Shares issued against cash, in such case actual entry of cash in books and in case of non receipt to see that position stated in books of accounts is not misleading
- In case of Auditor of Holding Company, shall have the right to access books of accounts/records of Subsidiary Company for consolidation
- The report of the Auditors along with accounts and Financial statements as required by the Act, of the Company should be placed before the Members in the Annual General Meeting, which should be in compliance of the Provisions of the Companies Act, the Accounting and Auditing Standards
- The Auditor Shall also have to report as follows:
 - a. Auditor has obtained all the documents, information or details as required and necessary for the Audit
 - b. Whether the Company has maintained proper books of accounts or not and also have to examine all the books and records of all the Branches not visited by him and also necessary for his audit
 - c. whether the report on the accounts of any branch office of the company audited under section 143 (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 account 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 transactions 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 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. Any other matter as specified in Companies (Audit and Auditors) Rules, 2014.
- If any adverse remarks or qualifications is there in the Report under section 143 then Auditor have to state reasons for the same.
 - In case of the Govt. Companies and case where the Auditor appointed by the CAG, in such case CAG may direct to the Auditor, the manner in which the accounts of Govt. Companies required to be audited and the Auditor shall have to report the same to the CAG including specific comments on the Audit done upon specific direction and its impact.
 - CAG (by CAG's appointed Authorized person or officer) shall have right to conduct and comment on supplementary audit of the Financial Statement of the Company, within 60 (Sixty) days from the date of receipt of report u/s. 143 (5), further, such report and comment given by CAG shall be sent to each and every person entitled to copies of financial statement u/s. 136 (1)
 - CAG shall conduct Test Audit of the Accounts, if CAG feels necessary
 - Branch Audit can be done by the Auditor of the Company or any other Auditor as appointed u/s. 139 of the Act, further, if the Branch office is situated outside India, in such case the Audit can be done by Auditor of the Company or Accountant or any other competent person duly qualified to act as an Auditor of the Branch office according to law of such foreign country
 - Branch Auditor shall send his report to the Auditor and upon receipt Auditor shall deal with this report as he considers necessary
 - Auditing Standard Compliance for Auditor is mandatory
 - Central Govt. may prescribe Auditing Standards of auditing and addendum thereto, as recommended by ICAI in consultation with the National Financial Reporting Authority (NFRA)

- Till notification of the Auditing Standards, Standards specified by ICAI shall be deemed to be Auditing Standard...
- The CG, in consultation with the NFRA, by General or Specific order, direct, such class of companies specified in order, to include in Auditor's report, Statements on such matters as specified in the order
- The Auditor have to report immediately to the Central Govt. with respect to any material fraud is being or has been committed against the Company by any of its employees or officers
 - a. Auditors shall have to report to the Central Govt. within **60 (Sixty) days** of his knowledge and after complying with following procedures
 - 1. 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 **45 (Forty-Five) days**
 - 2. 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 alongwith his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 (Fifteen) days of receipt of such reply or observations;
 - 3. 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 alongwith 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.
- The Report shall be sent to the Secretary, Ministry of Corporate Affairs in sealed cover in Speed Post or Registered Post followed by an E-mail in confirmation of the same
- Report shall be on Letter Head of Auditor containing, Postal Address, e-mail Address and Contact Number, Sign & Seal, Membership Number
- The report shall be in the form of a Statement as specified in **Form No. ADT-4**
- **The provisions of this section and rules (Rule 13) made there under also applies mutatis mutandis to Cost Accountant in practice conducting cost audit u/s. 148 and to Company Secretary in Practice conducting Secretarial Audit u/s. 204.**
- Penalty: If auditor, CS or Cost Accountant in practice contravenes the provisions of Section 143 (12), shall be punishable with the minimum fine of **Rs. 1,00,000/- which may extends to Rs. 25,00,000/-**
- **PROHIBITION ON OTHER SERVICES BY AUDITOR: SECTION 144**

- An Auditor of the Company can only provide other services as approved by the Board of Directors except following (**Prohibited: Directly or Indirectly* to Company or Subsidiary or Holding Company**):
 - a. Accounting and book keeping services
 - b. Internal audit
 - c. Design and implementation of any financial information system
 - d. Actuarial services
 - e. Investment advisory services
 - f. Investment banking services
 - g. Rendering of outsourced financial services
 - h. Management services and
 - i. Any other kind of services as may be prescribed (**No other kind of services has been defined under rules**)

Any auditor providing any non-audit services have to comply before closure of the First Financial Year after the date of commencement i.e. **Before 31st March, 2015**

*** Directly or Indirectly Means:**

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

• **SIGNING OF AUDIT REPORT: SECTION 145**

- Auditor's report should be signed by the Auditor (if Individual) and in Case of Firm or LLP by any partner who shall be Member of ICAI
- Here it is pertinent to note that if there is any adverse remark or qualification, which have any adverse effect on the functioning of the Company, shall be read out at the AGM and be kept open for Members to Inspect the same.

• **AUDITOR TO ATTEND AGM: SECTION 146**

- Copy of Notice of Annual General Meeting shall be forwarded to the Auditor of the Company.

- Auditor himself or either by its representative have to attend the AGM unless otherwise exempted by the Company
- If the Auditor of the Company is having any concerns over the points as the Auditor shall be heard at the AGM

- **PUNISHMENT: SECTION 147**

- Violation of the any of the Provisions (Section 139 to 146):

Penalty:

Company: Minimum Rs. 25,000/- which may extend to 5,00,000/-

Officer in Default: Imprisonment (up to 1 year) OR Fine (Min. Rs. 10,000/- which may extends to Rs. 1,00,000/-) OR with both

- For Contravention of Provisions by auditor (Section 139 to 143, 144, 145)

Penalty:

Minimum Rs. 25,000/- but which may extends to Rs. 5,00,000/-

If Auditor's Intentions if proved for deceiving the Company or Members or Creditors or tax authorities then in such case

Imprisonment (up to 1 year) & Fine (Minimum Rs. 1.00 Lacs which may extends to Rs. 25.00 Lacs

In Addition:

Auditors have to refund Remuneration received from the Company & Pay for Damages due to loss arises out of his incorrect or misleading statement made in his audit report, if he is convicted under sub section (2) of Section 147 of the Act.

The Central Govt. shall by Notification appoint any Authority or Officer or Statutory Body, ensuring the prompt payment of the Damages and after that report the same to the CG.

INTERNAL AUDIT

As per section 138 of Indian Companies Act 2013 read with Rule 13 Of Companies (Accounts) Rules, 2014, certain class of companies are required to appoint Internal Auditors. An extract of Rule 13 of Companies (Accounts) Rules, 2014 is as follows-

Extract of Rule 13 of Companies (Accounts) Rules, 2014

“13. Companies required to appoint internal auditor.-

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

(a) every listed company; Always applicable

(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(income)** 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 – The internal auditor may or may not be an employee of the company; 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. However, the rule specifies that an internal auditor may or may not be an employee of the company. The Internal auditor may be a CA/CWA or any other professional. And also neither the rules nor the Act, has specified the duties and responsibilities. So even if the rules and act made the appointment of Internal Auditor mandatory, the same rules and Act provides option to companies to appoint any person as internal auditors. And also any one who has the knowledge can become an Internal Auditor, because the rules did not define the word “any other professional”

AUDIT COMMITTEE

Section 177 of the Companies Act, 2013 and **Rule 6 and 7** of Companies (Meetings of Board and its Powers) Rules, 2014 deals with the Audit Committee.

Applicability of Audit Committee:

The Board of directors of **every listed companies** and the following classes of companies, as prescribed under Rule 6 of Companies (Meetings of Board and its powers) Rules, 2014 shall constitute an Audit Committee.

- (i) All public companies with a **paid up capital of Rs.10 Crores or more;**
- (ii) All public companies having **turnover of Rs.100 Crores or more;**
- (iii) All public companies, having in aggregate, **outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more.**

The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

Composition:

The Audit Committee shall consist of **a minimum of 3 directors** with **independent directors forming a majority.**

The majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

The Board's report under section 134(3) shall disclose the composition of an Audit committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons there for.

Reconstitution:

Every Audit Committee of a company existing immediately before the commencement of this Act shall be **reconstituted within one year of such commencement.(i.e., on or before 31st March 2015)**

Functions of Audit Committee:

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,

- (i) **the recommendation** for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) **review and monitor** the auditor's independence and performance, and effectiveness of audit process;
- (iii) **examination** of the financial statement and the auditors' report thereon;
- (iv) **approval** or any subsequent modification of transactions of the company with related parties;
- (v) **scrutiny** of inter-corporate loans and investments;
- (vi) **valuation** of undertakings or assets of the company, wherever it is necessary;
- (vii) **evaluation** of internal financial controls and risk management systems;
- (viii) **monitoring** the end use of funds raised through public offers and related matters.

Powers of Audit Committee:

The Audit committee shall have the authority –

- To 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
- To discuss any related issues with the internal and statutory auditors and the management of the company.
- To investigate into any matter in relation to the items or referred to it by the Board
- To obtain professional advice from external sources
- To have full access to information contained in the records of the company.

The auditors of a company and the KMP shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

Establishment of Vigil Mechanism:

Every listed company and the companies belonging to the following class or classes, as prescribed under Rule 7 of Companies (Meetings of Board and its powers) Rules, 2014 shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-

- Companies which accept **deposits from the public**
- Companies which have **borrowed money from Banks and PFI in excess of Rs.50 Crores.**

The existence of the mechanism may be appropriately communicated within the organization. The details of establishment of Vigil mechanism shall be disclosed by the **company in the website**, if any, and in the **Board's Report**.

Safeguard to employees & Directors:

The vigil mechanism shall provide adequate safeguards against victimization of employees **and directors** who avail of the Vigil mechanism and also provide for direct access to the **chairperson** of the Audit committee or the **director nominated** to play the role of audit committee, as the case may be, in exceptional cases.

Action against Frivolous complaints:

In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

Penalty:- Fine of Rs. 1,00,000 which may extend upto Rs. 5,00,000. For officer in default Imprisonment upto 1 year or fine of Rs. 25,000 upto Rs. 1,00,000