

THE COMPANY AUDIT

- **ELIGIBILITY, QUALIFICATION AND DISQUALIFICATION OF AN AUDITOR.**

Provisions relating to eligibility, qualification and disqualification of an auditor is governed by **Section 141** of Companies Act, 2013.

QUALIFICATIONS OF AN AUDITOR:- [Section 141(1)&(2)]

1. Individual :-- A person shall be eligible for appointment as auditor, only if he is a Chartered Accountant and holding Certificate of Practice.

2. Firm (including LLP):--

- Majority of it's partners should be Chartered Accountants.
- Where firm is appointed as the auditor only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm.

**ELIGIBILITY TO BE
APPOINTED AS AN
AUDITOR**

SEC 141(1)&(2)

INDIVIDUAL

**Any person who is a
Chartered Accountant**

FIRM

**Majority of partners
should be practicing
Chartered
Accountant**

LLP

**Only partners who are
Chartered Accountant
are only authorized to
act and sign audit report
on behalf of firm**

DISQUALIFICATION Section 141 (3) & Rule 10 of the Companies (Audit and Auditors) Rule, 2014 (CAAR)

The following persons shall not be eligible for appointment as an Auditor of Company:

- | | |
|----|---|
| A. | Body Corporate (other than LLP) |
| B. | An officer or employee of the company. |
| C. | A partner or employee of the officer or employee of the company. |
| D. | <p>A person who, or his relative, or partner :</p> <ul style="list-style-type: none">i. Holding any security of/interest in the company /it's subsidiary/it's holding/associate/ any fellow subsidiary<ul style="list-style-type: none">▪ The relative may hold security or interest in the company of face value not exceeding ₹ 100000/-▪ Limit of ₹100000 shall be also applicable in case of a company not having share capital or other securities.▪ Further, in the event of acquiring security or interest by a relative above the threshold limit of ₹ 100000 should come back to the prescribe limits within 60 days of such acquisition of interest.▪ Failing which the auditor will be deemed to have vacate the office.ii. Indebted to the company / its subsidiary/ holding/associate /fellow subsidiary in excess of ₹ 500000/- (The limit is applicable to the person , or his relative or partner).iii. Has given guarantee or provide any security in connection with indebtedness if third party to the company/it's holding/it's subsidiary/associate/fellow subsidiary for more than ₹ 100000/- |

- E. A person or a firm who, whether directly or indirectly has business relationship with company or it's subsidiary or it's holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed. **Business relationship** does not include :-
- a. professional services of a CA firm
 - b. transactions which are in ordinary course of business as a customer.
- F. A person whose relative is
- a. A Director or
 - b. Is in employment of the company as an director or a key managerial person.
- G. A person who is in full time employment elsewhere or who is holding appointment as an Auditor for more than twenty companies.
- H. A person who has been convicted by court of an offence involving fraud AND a period of ten years has not been elapsed since the date of conviction .
- I. Any person whose subsidiary or holding company or any other form of entity is engaged as on the date consulting and specialized services as provided in **section 144**.

SUMMARY
PERSON NOT ELIGIBLE FOR APPOINTMENT
SEC 141(3)

A. Body Corporate other than LLP

B. An Officer or Employee of the company.

C. Any Partner/Employee of officer / employee of company.

D. Person/Relative/Partner

Company/Subsidiary/Holding/Associate/Subsidiary of same Holding company

i. Is holding any security in the company. Relatives can hold up to the face value not exceeding ₹ 1Lakh .

ii. Is indebted > ₹ 5 Lakhs.

iii. Has given guarantee in connection with indebtedness of 3rd person > ₹ 1Lakh

E. Person or firm having business relationship with company/subsidiary/holding/associate/subsidiary of such holding or associate company.
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 holding appointment as an auditor of more than 20 companies. Other than <ol style="list-style-type: none">1. OPC2. Dormant Company3. Small Companies4. Companies having Paid Up Capital < 100 Crore.
H. A person who has been convicted of an offence involving fraud and a period of 10 years has not been elapsed.
I. Any person who directly or indirectly renders any services u/s144 to the company/it's holding company/it's subsidiary company.
4. If an auditor occurs any disqualification mentioned in sec141(3) after his appointment then he shall have to vacate the office and such vacation shall be treated as "CASUAL VACANCY" .

RELATIVE

Section [2(77)] of the Companies Act ,2013

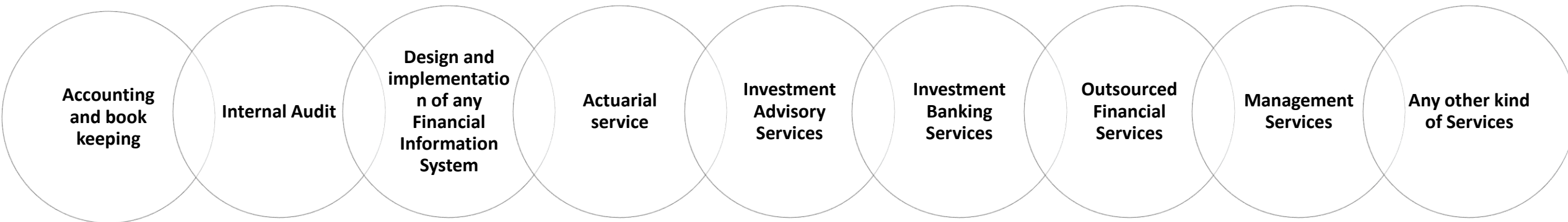
- I. Member of HUF
- II. Husband and wife
- III. One person is related to another in following manner:
 - a) *Father (including step father)*
 - b) *Mother (including step mother)*
 - c) *Son (including step son)*
 - d) *Son's wife*
 - e) *Daughter*
 - f) *Daughter's husband*
 - g) *Brother (including step brother)*
 - h) *Sister (including step sister)*

Auditor not to render certain services

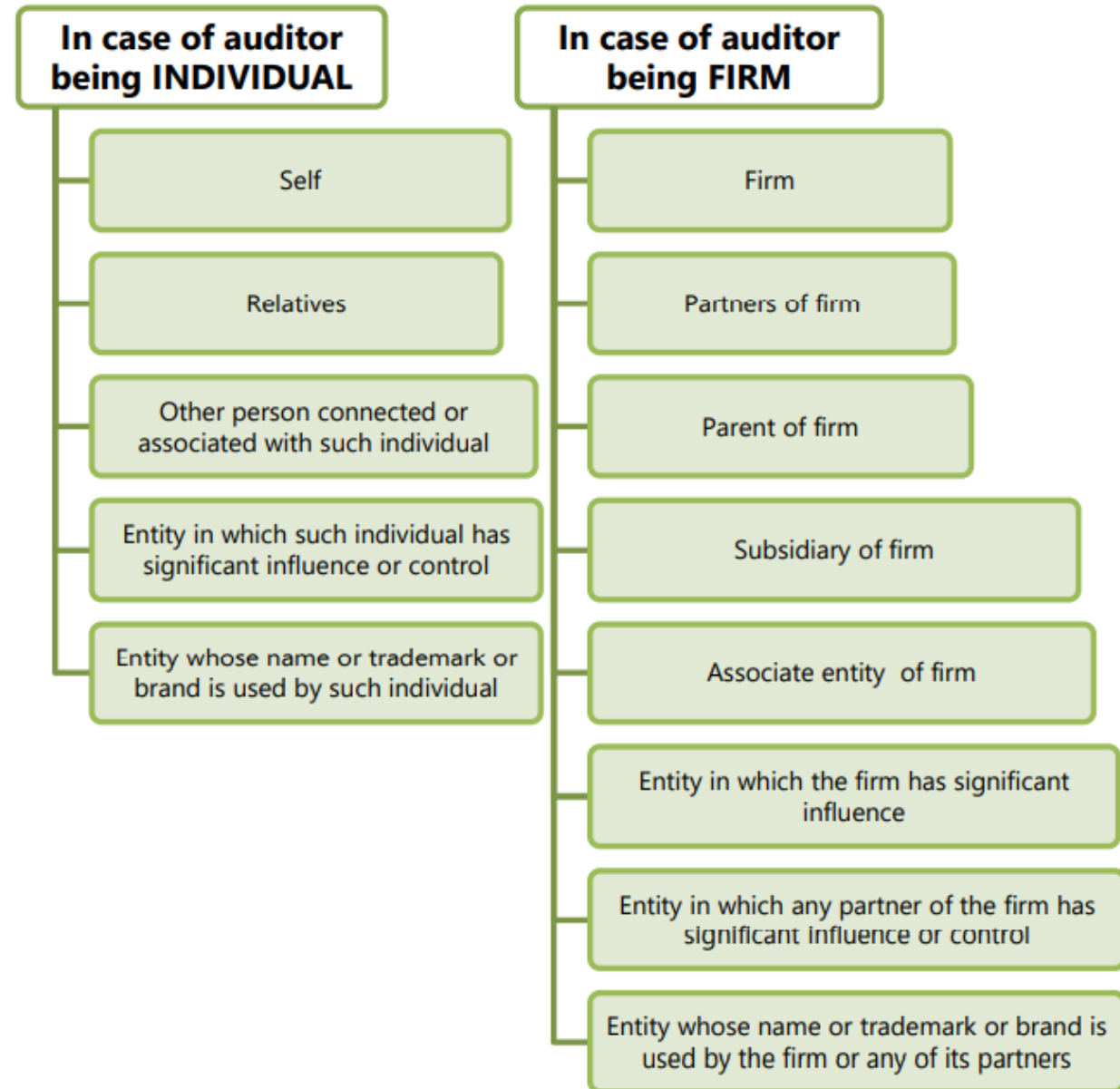
Section 144

- An auditor appointed shall provide to the company only such other services as are approved by the Board of Directors or the Audit Committee.
- But services that cannot be rendered **directly or indirectly** to company, holding company or subsidiary company.

PROHIBITED SERVICES



Rendering of Services 'Directly or Indirectly'



Students may note that for the purpose of clause (e) above, 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 Accountants Act, 1949 and the rules or the 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.

APPOINTMENT OF AUDITOR

Section 139 of The Companies Act, 2013

Appointment of First Auditor

Other than
Government
Company
Section 139(6)

Government
Company
Section 139(7)

Appointment of Subsequent Auditor

Other than
Government
Company
Section 139(1)

Government
Company
Section 139(5)

APPOINTMENT OF FIRST AUDITOR FOR OTHER THAN A GOVERNMENT COMPANY

SECTION 139(6)

- The first auditor of a company other than a government company shall be appointed by:-
 - *Board of Directors* → Within **30 days** of registration or in case of failure
 - *Members* → Within **90 days** at extra ordinary general meeting
- Board shall inform to member on their of appointment of auditor
- Term :- Auditor shall hold the office till the conclusion of First Annual General Meeting

APPOINTMENT OF FIRST AUDITOR IN CASE OF GOVERNMENT COMPANY SECTION 139(7)

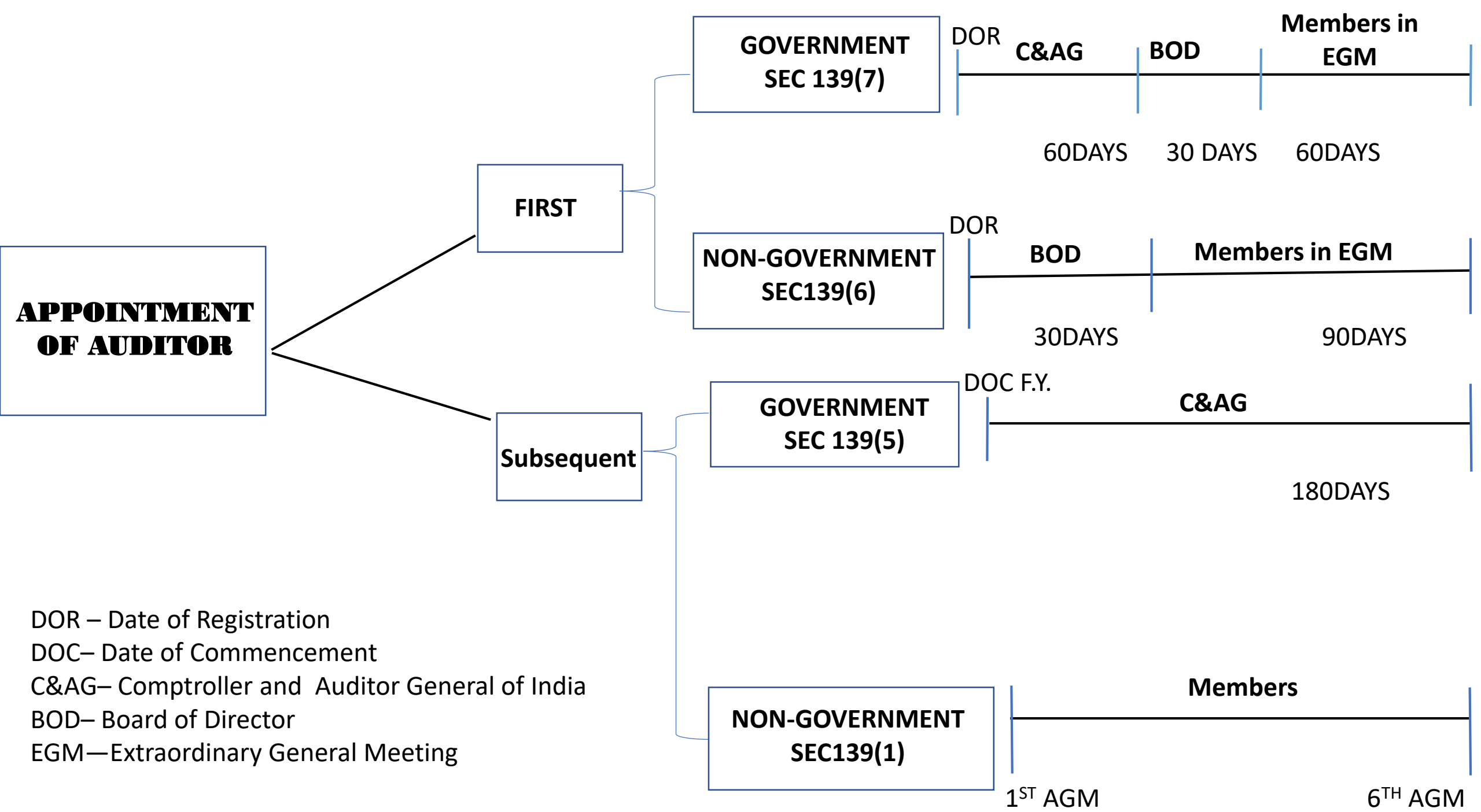
- Government Company:-
 - Is a company
 - In which not less than 51% of the paid up capital is held by the
 - Central Government/State Government/partly by Central Government & State Government includes a company which is a subsidiary company of such a Government Company
- The first auditor of a Government Company shall be appointed by :-
- By *Comptroller & Auditor General Of India* —————> within **60 days** of registration of company or in case of failure
- By *Board of Directors* —————> within next **30 days** or in case of failure
- *Members* shall appoint —————> within next **60 days** at Extra Ordinary General Meeting
- Term: - Till the conclusion of first Annual General Meeting.

APPOINTMENT OF SUBSEQUENT AUDITOR IN CASE OF NON GOVERNMENT COMPANY SEC 139(1)

- Every company shall at first annual general meeting appoint an individual or firm as an auditor.
- Auditor shall hold the office till the conclusion of sixth annual general meeting and thereafter audit shall be appointed in every sixth meeting.
- Prior to the appointment , company shall obtain written consent and a certificate stating that
 - a. Auditor is eligible for appointment and is not disqualified for appointment.
 - b. Proposed appointment is as per the Act.
 - c. Proposed appointment is within the limits prescribed.
 - d. Disclosure of any case with respect to professional matters against the auditor/audit firm/partner of audit firm in certificate is true and correct.
- Company shall inform the auditor and ROC within 15 days of appointment in Form ADT-1

APPOINTMENT OF SUBSEQUENT AUDITOR IN CASE OF GOVERNMENT COMPANY SECTION 139(5)

- Comptroller & Auditor General Of India shall appoint within 180 days from the commencement of Financial year .
- Term : Till the conclusion of Annual General Meeting.



PROVISION TO SECTION 139(1)

- **PROVISO 2** : Before appointment company shall obtain written consent and a certificate from the Auditor -- Rule 14 of CAAR, 2014.
- **PROVISO 3** : Certificate shall indicate whether auditor has satisfied the criteria as provided u/s 141.
- **PROVISO 4** : Company shall inform the auditor and ROC within 15 days of appointment in ADT- 1.

Filling of Casual Vacancy

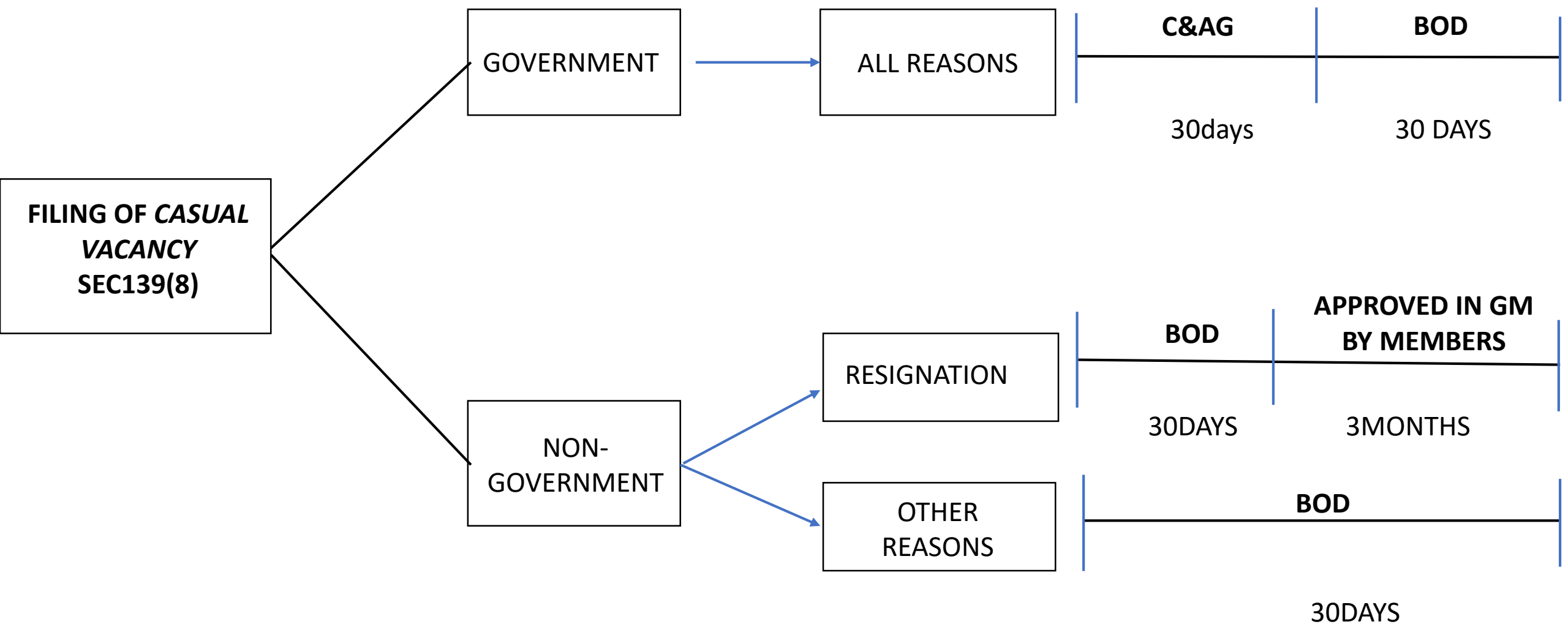
Section 139(8)

Other Companies

- To be filled by BOD within 30 days.
- In case of resignation appointment by BOD should be approved by company at General Meeting convened within 3 months.
- Auditor shall hold the office till the conclusion of next Annual Meeting.

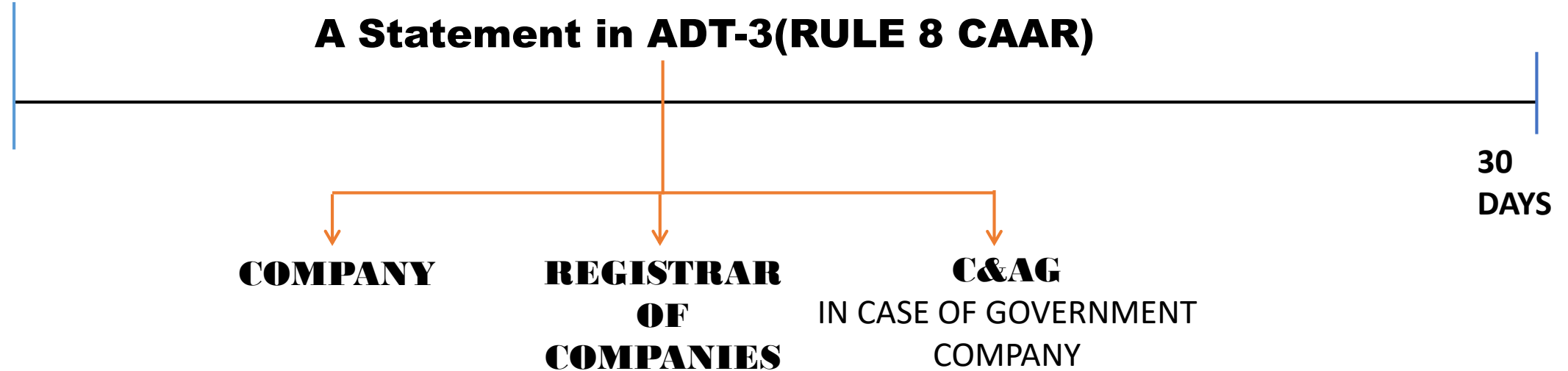
Government Companies

- To be filled by C&AG within 30 days.
- In case of failure BOD shall fill within 30 days.



CASUAL VACANCY BY RESIGNATION

- Filling of statement in case of resignation section 140(2)
- Date of resignation Auditor to file



Note :

- I. Government company auditor shall also file statement to Comptroller & Auditor General Of India.
- II. In statement the auditor shall indicate the reasons and other facts as may be relevant with regards to his resignation.

PENALTY FOR NON COMPLIANCE

SECTION 140(3)

- Normal —————> lower of :
 - a. ₹ 50000 or
 - b. His remuneration
- Continuing default
 - a. Minimum —————> ₹500/day
 - b. Maximum —————> ₹200000

Other provisions regarding Appointment Of Auditors

1. At any annual general meeting , a retiring auditor ma 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.
2. Where no auditor is appointed at Annual General Meeting, existing auditor shall continue Sec 139(11)

ROTATION OF AUDITORS

Applicability Of Rotation Of Auditors

Class Of Companies For Rotation Of Auditors

Listed and Other Prescribed Companies

Unlisted public company

Paid up capital 10 crore or more

Private company

Paid up capital 50 crore or more

If companies having paid up share capital of below threshold limit mentioned But Public borrowings/public deposits of 50 crore or more

NOTE : **Excluding**

1. OPC
2. Small company

Term of Auditors

Individual	One term of 5 years	Cooling period 5 years
Audit firm	Two term of five years	Cooling period 5 years

Provision of section 139(2)

- An individual or firm of auditors are not eligible to be re-appointed as auditors of same company, unless 5 years have lapsed from completion of their tenure.
- It shall not be eligible to appoint any audit firm
 - Having a common partner with audit firm
 - Whose tenure has just expired
 - As on date of appointment shall not be appointed as auditor of same company
 - For a period of five years
- Every company
 - Existing before commencement of this act
 - Shall comply with requirements of section 139(2)
 - Till the first AGM, held after 3 years from the date of commencement of this act.
- Right of company to remove auditor and Right of auditor to resign shall not be prejudiced

MANNER OF ROTATION OF AUDITORS BY THE COMPANIES ON EXPIRY OF THEIR TERM
RULE 6 OF COMPANIES (AUDIT & AUDITORS) RULES 2014

- Audit committee shall recommend to the board
 - The name of auditor/audit firm
 - Who may replace the incumbent auditor
- Where a company is required to constitute audit committee all matter of rotation is done by committee. Otherwise board shall itself consider the matter of rotation.
- Period for which office as auditor is held prior to commencement of this act should also be considered for rotation and cooling period.
- The incoming auditor/firm should not be in same network of audit firms as the outgoing auditor
 - Same network :- firm operating or functioning under the same
 - Brand name
 - Trade name
 - Common control

- If a signing partner resigns from the firm which is appointed as auditor of a company and joins another firm, then such other firm is ineligible for appointment as auditor for 5 years.

- **JOINT AUDITOR:-**

Two or more firms/individuals are to be appointed in such a way that both or all the joint auditors do not complete their term in the same year.