

AUDIT AND AUDITORS

Eligibility, Qualifications & Disqualifications of Auditor [Section 141]

- (1) Following persons are eligible for becoming Auditor of a Co.
 - (a) Individual CA having certificate of practice
 - (b) Firm including LLP in which majority of Partners are CAs practicing in India
- (2) Signing on behalf of firm – only partners who are CAs authorised to act and sign on behalf of firm
- (3) If the person incurs any disqualification after appointment,
 - ⇒ He shall vacate his office
 - ⇒ It shall deemed to be causal vacancy

Disqualifications

- (a) Body Corporate (other than LLP)
- (b) Officer or employee of the Co.
- (c) Person who is partner or employee of officer or employee of the Co.
- (d)

<ul style="list-style-type: none"> - Person or - His relative or - His partner 	<ul style="list-style-type: none"> (a) Holding any security in (b) Is indebted exceeding ₹5 lakh to (c) Had given guarantee or security with respect to indebtedness of 3rd person exceeding ₹1 lakh to 	<ul style="list-style-type: none"> Co. or Subsidiary or Holding Or Associate Co. or Subsidiary of Holding Co.
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Note : Relative may hold security in Co. of face value not exceeding ₹ 1 Lakhs

Note : If relative acquires security above ₹1 lakh, then corrective action within 60 days of such acquisition or interest.

- (e) Person or firm who, whether directly or indirectly, has business relationship with CASH or Subsidiary of Holding or subsidiary of Associate Co.

What is business relation?

Any transaction entered into for a commercial purpose, except

 - (a) Transactions in ordinary course of business of Co. at arm's length price
 - (b) Transactions which are in the nature of professional services permitted to be rendered by auditor or audit firm
- (f) Person whose relative is a director or in the employment of Co. as a director or KMP
- (g) A person who is in full time employment elsewhere or a person or partner of firm holding appointment as auditor, holding audit of >20 Cos. at the date of appointment or reappointment

Notes – OPC, small Co. dormant Co. & Pvt. Co. having PUSC < ₹ 100 Crores not counted for limit of 20

⇒ In case of firm, the limit of 20 shall be for each partner who is CA

- (h) Person convicted by court of offence involving fraud and 10 years has not been lapsed from date of such conviction
- (i) Person who, directly or indirectly, render services referred in Section 144 to Co., or holding Co. or subsidiary Co. (Note – Associate Co. is not covered)

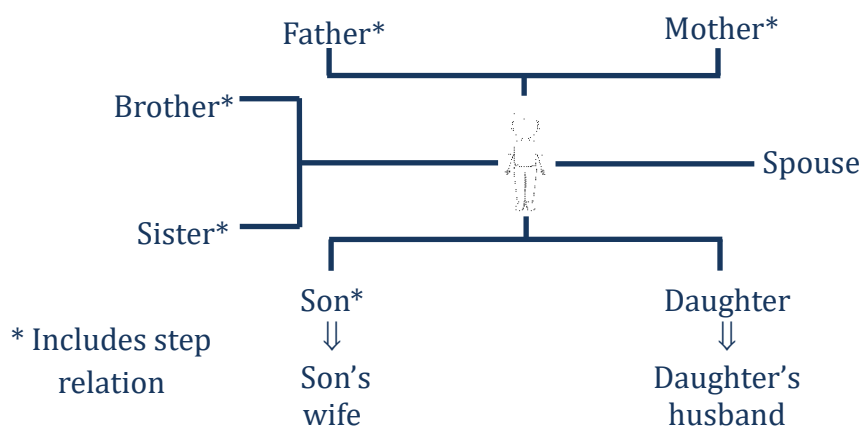
Auditor not to render certain services [Section 144]

- (1) Auditor can provide services to Co. which are approved by Audit committee/BoD
- (2) But such services shall not include following services (directly or indirectly) to C&SH
 - (a) Accounting and book keeping services
 - (b) Internal Audit
 - (c) Design & implementation of any financial info. System
 - (d) Actuarial services
 - (e) Investment advisory & banking services
 - (f) Rendering of outsourced financial services
 - (g) Management services
 - (h) other kind of services as may be prescribed (Not yet prescribed)

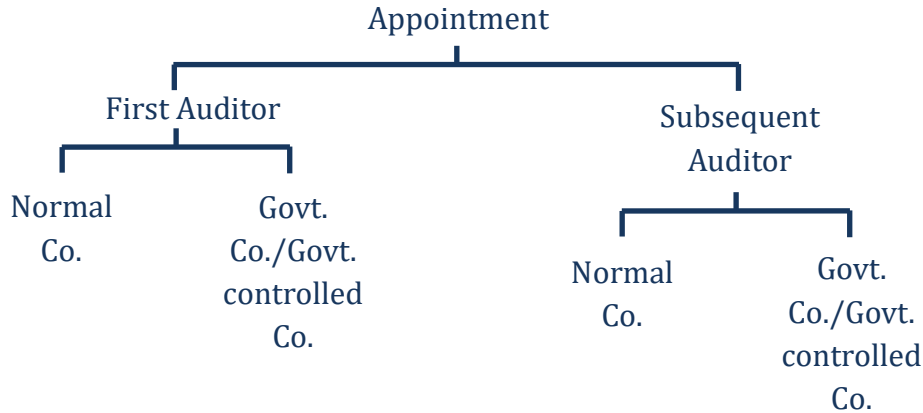
Relative [Section 2(77)]

Relative means any one who is related to another if

- (a) They are members of HUF
- (b) They are husband & wife
- (c) One person is related to other in such manner as may be prescribed (refer chart)



Appointment of Auditors [Section 139]

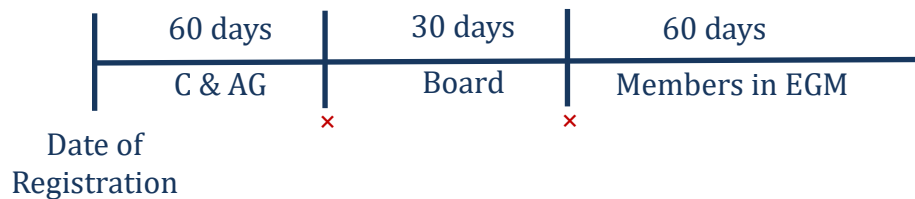


- (2) First Auditor of Co. other than Govt. Co. Govt. owned or Controlled



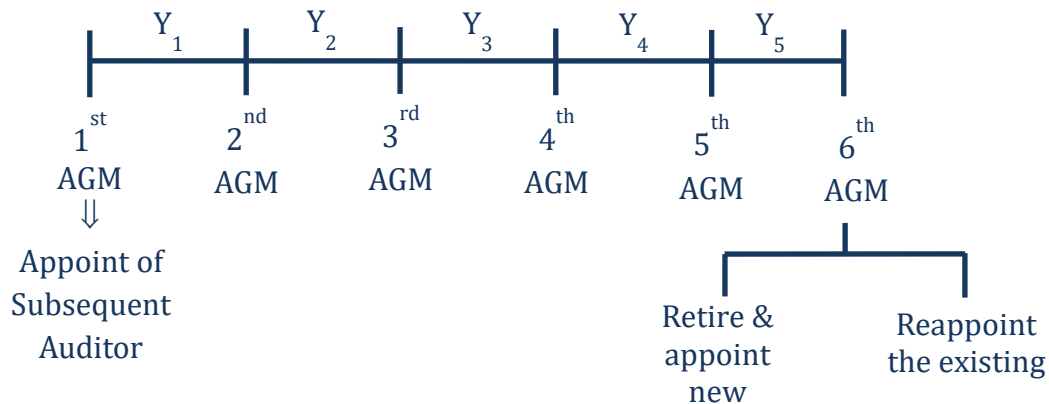
- (1) Appointed by board within 30 days from registration of Co.
- (2) Failure of Board,
 - Board shall inform Members
 - Member shall within 90 days appoint auditor at EGM
- (3) Tenure ⇒ Auditor should hold office till conclusion of first AGM.

- (3) First Auditor in Govt. Co./Govt. owned or Controlled

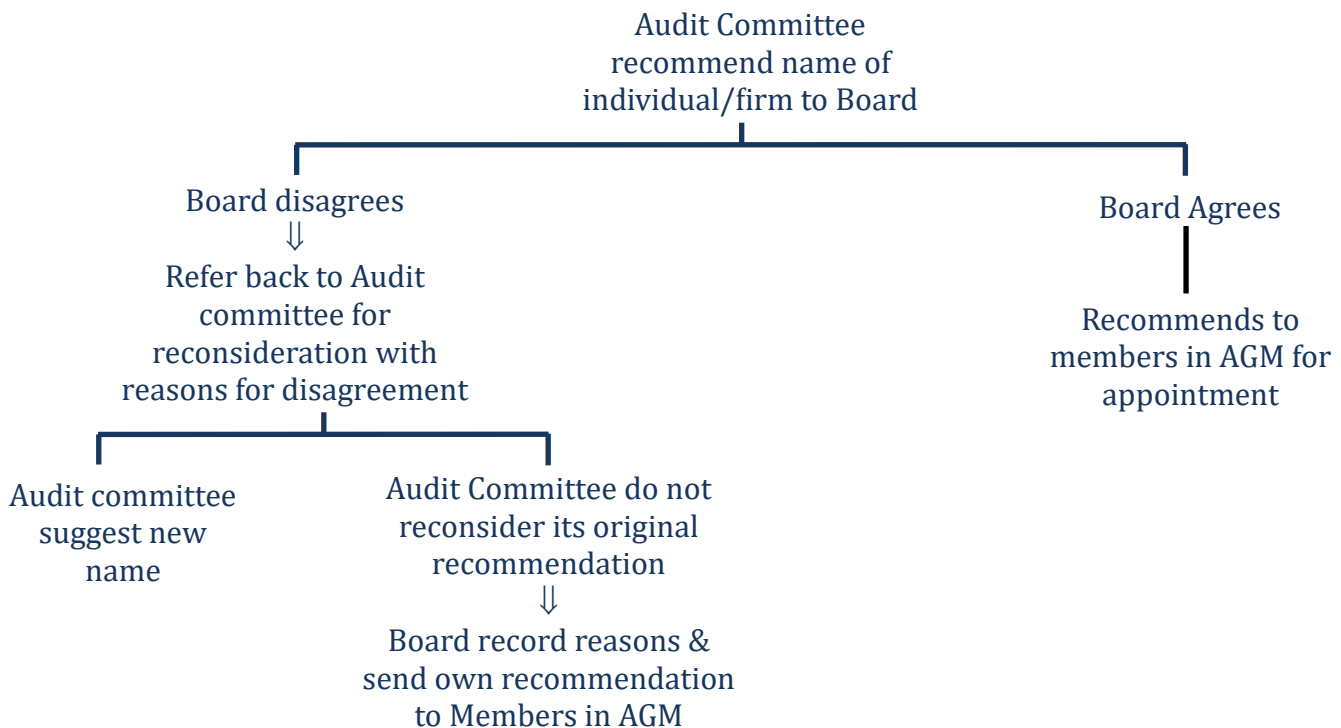


- (a) Appointed by C&AG within 60 days from date or registration of Co.
- (b) Failure of C&AG, Board shall appoint within next 30 days

- (c) Failure of Board, Board shall **inform members, who shall appoint auditor within 60 days at EGM.**
- (d) First Auditor should **hold office till the conclusion of first AGM.**
- (4) Subsequent Auditor of Govt. Co/Govt. Owned or Controlled Co.
- (a) For **every FY, C&AG shall appoint auditor within a period of 180 days from commencement of FY**
- (b) Tenure \Rightarrow Auditor shall hold **office till conclusion of AGM.**
- (5) Subsequent Auditor in case of Co. (other than Govt. Co.)



- (a) Co. shall **appoint auditor at 1st AGM who shall hold office till conclusion of 6th AGM.**
- (b) **Thereafter till conclusion of every 6th AGM**
- (c) Selection procedure if Co. is required to constitute Audit Committee
- Note :-** Audit committee is required to be formed by prescribed Co. u/s 177.



If Co. is not required to constitute Audit committee, then Board shall consider and recommend name of Individual /firm to members in AGM for appointment

- (5) Before appointment of auditor
 - (a) Written consent of Auditor is required
 - (b) Certificate from auditor that individual/firm is
 - (i) Eligible for appointment & not disqualified under CA, 2013, Chartered Accountant Act, 1949
 - (ii) Appointment as per term provided under this Act
 - (iii) Appointment is within the limit under the Act
 - (iv) List of Pending proceedings against auditor/audit firm/ any partner of firm w.r.t. profession misconduct as disclosed in certificate is true & correct.
- (6) After appointment of auditor, the Co. shall
 - (a) Inform Auditor of his appointment
 - (b) File notice (Form ADT-1) of appointment with ROC within 15 days of meeting in which auditor is appointed
- (7) Rotation of Auditors
 - (1) Rotation of Auditors is applicable to below mentioned Co.
 - (a) Listed Co.
 - (b) Unlisted Public Co. – PUSC \geq ₹ 10 Crores
 - (c) Private Cos – PUSC \geq ₹ 50 Crores
 - (d) Any Co. having public borrowing from FI/Banks/Public deposits \geq 50 Crores

Note :- OPC, Small Co. Dormant Co. are exempt from rotation provisions
 - (2) Cooling Period :- Individual who has completed 1 term of 5 consecutive years or firm/llp who has completed 2 terms of 5 consecutive years shall not be eligible for re-appointment as auditor in same company for 5 years
 - (3) No audit firm having a common partner to the other Audit firm whose tenure has expired, shall be appointed as auditor of the same Co. for period of 5 years.
 - (4) Break in term for Continuous 5 years shall be considered as fulfilling requirement of rotation.
 - (5) Partner, who is in charge of Audit Firm & also certifies the FS, retires from said firm & joins any other firm of CAs, other firm shall also be ineligible to be appointed for period of 5 years.
 - (6) Same Network Entity also not allowed to Audit
 - (7) Can retiring auditor take audit of subsidiary/holding Co.?? \Rightarrow Yes
 - (8) Any other Audit (Tax Audit/Internal Audit) or other services in cooling period is allowed. Only statutory Audit is not allowed.

(9) Transition Provisions:-

Firm/LLP			Individual Auditor		
Existing Tenure	Max ^m Tenure after sect 139 (2)	Total Tenure	Existing Tenure	Future Max ^m Tenure after sec. 139 (2)	Total Tenure
10 or More	3	13	5 or more	3	8
9	3	12	4	3	7
8	3	11	3	3	6
7	3	10	2	3	5
6	4	10	1	4	5
5	5	10			
4	6	10			
3	7	10			
2	8	10			
1	9	10			

(10) Members of a Co. may resolve that

(a) Auditing partner & his team shall be rotated at such intervals may be resolved by members

or

(b) Audit shall be conducted by more than one Auditor.

(11) Casual vacancy

Reasons for casual vacancy (CV)

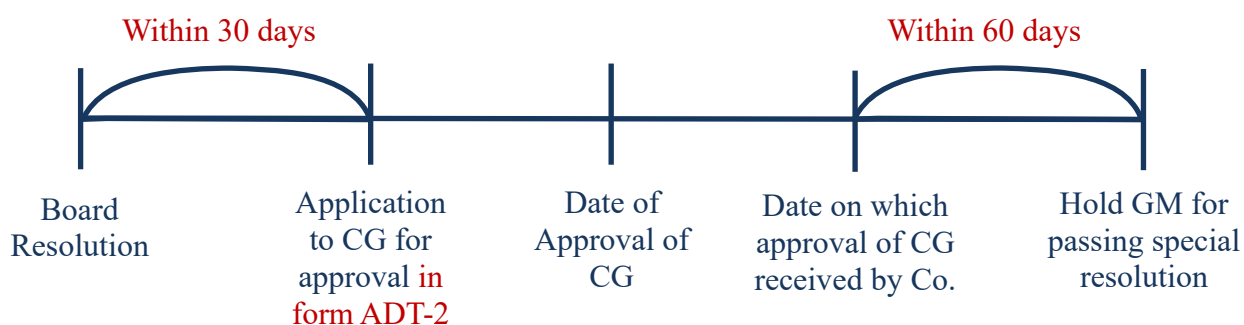
- Disqualification
- Resignation
- Death/Unsound mind/Insolvent
- Removal

Filling of CV

(a) Other than Govt. Co./Govt. Controlled Co.	By BOD – within 30 days of CV If resignation: - App. to be approved (OR) at GM within 3M of BOD recommendation ⇒ Hold office Till Conclusion of Next AGM
(b) Govt. Co/Govt. Controlled Co.	⇒ By C&AG within 30 days ⇒ If C&AG fails ⇒ BoD to fill within next 30 days ⇒ Hold office till conclusion of Next AGM.

- (12) Retiring Auditor may be re-appointed at AGM, if
- He is **not disqualified** for re-appointment
 - He has **not given a notice of unwillingness** to be appointed in writing
 - SR has not been passed** at meeting
 - to appoint some other auditor
 - or
 - providing expressly that **he shall not be re-appointed**
- (13) Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the Co.
- (14) Where a Co. is required to constitute Audit Committee then then all appointment of auditor including filling of casual vacancy shall be made after taking recommendations of Audit Committee.

Removal of Auditor [Section 140(1)]



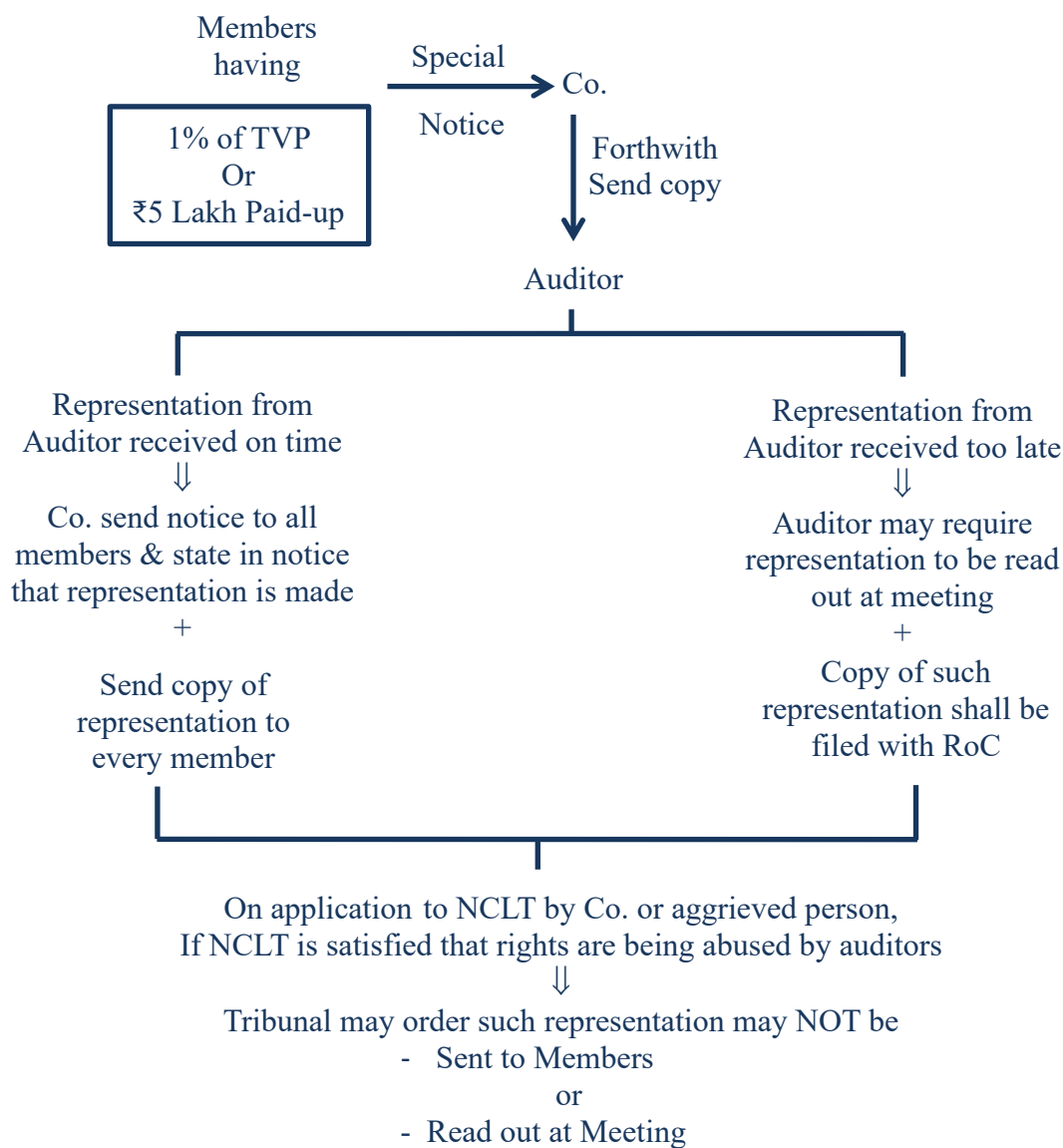
- Before Removal, Auditor shall be given reasonable opportunity of being heard
- On removal of Auditor before expiry of his term, casual vacancy will be created & filled as per section 139

Resignation of Auditor [Section 140(2)]

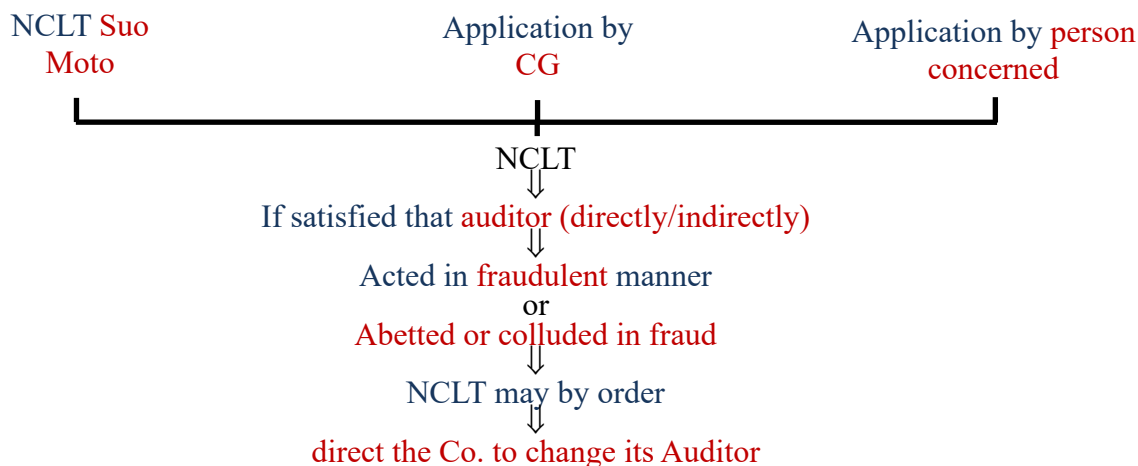
- Auditor who resigned shall file statement in form ADT-3 within 30 days from date of resignation with – Co.
 - RoC
 - C&AG (only in case of Govt. Co.)
- ADT-3 contains reasons and other facts relevant to resignation
- Penalty on Auditor– Lower of ₹ 50000 or amount equal to remuneration Further Penalty in case of continuing failure ⇒ ₹ 500/ day after the first maximum ₹ 2 Lakhs

Special Notice [Section 140(4)]

- (1) **Special Notice** shall be required for resolution at AGM for
 - (i) **appointing a person other than retiring auditor**
or
 - (ii) providing expressly **that retiring auditor shall not be re-appointed**, except where retiring auditor has completed tenure of 5/10 years.
- (2) Procedure of special Notice is given in Section 115
- (3) On receipt of special Notice by Co., it shall immediately send copy of notice to retiring auditor
- (4)



Tribunal may order to change auditor [Section 140(5)]



Note:- Removed auditor *not eligible to be appointed as auditor of any Co. for 5 years & liable under sec. 447*

- If application is made by CG & NCLT is satisfied that auditor change is required, then within 15 days of receipt of application, NCLT shall make an order that :
He shall not function as auditor & CG may appoint another auditor in his place.

Remuneration of Auditor [Section 142]

- (1) Remuneration to be fixed at GM or in manner as may be determined in GM.
- (2) Board may fix remuneration of first auditor appointed by Board.
- (3) In addition to fees, remuneration include
 - expenses incurred by auditor in connection with such audit (i.e. Out of Pocket expenses)
 - and
 - any facility extended to him but does not include any remuneration paid to him for any other service rendered at request of Co.

Note :- Engagement Letter is valid even if it is signed without stating remuneration and it has clause that the fee to be mutually decided

Auditor to sign Audit report etc. [Section 145]

Auditor shall sign

- Auditor's report
- or
- Sign/certify any other doc. of Co.
- in accordance of section 141 (2)
- &

Qualification/observation/comments mentioned in Auditor Report on financial transaction/ Matters which have adverse effect on functioning of Co. shall be read before GM & Shall be open to inspection by any Member of Co.

Note :- Entire audit report is not required to be read in GM

Auditors to attend General Meeting [Section 146]

- (1) **Notice** or other communication related to any **GM** shall be forwarded to Auditor
- (2) Unless exempted by Co., **Auditor shall attend GM**
 - by himself
 - or
 - through Authorised representative (qualified to be auditor)
- (3) Auditor shall **have right to be heard on such business which concerns him as auditor.**

Punishment for Contravention [Section 147]

- (1) Contravention u/s 139 to 146 (both inclusive)

Liabe	Minimum (in Rs.)	Maximum (in Rs.)
Company	25,000	5,00,000
Every officer of the company who is in default	10,000	1,00,000

- (2) Contravention by Auditor u/s 139, 144, 145

Liabe	Minimum (in Rs.)	Maximum (in Rs.)
Auditor	25,000	Lower of (i) 5,00,000 or (ii) 4 times the remuneration

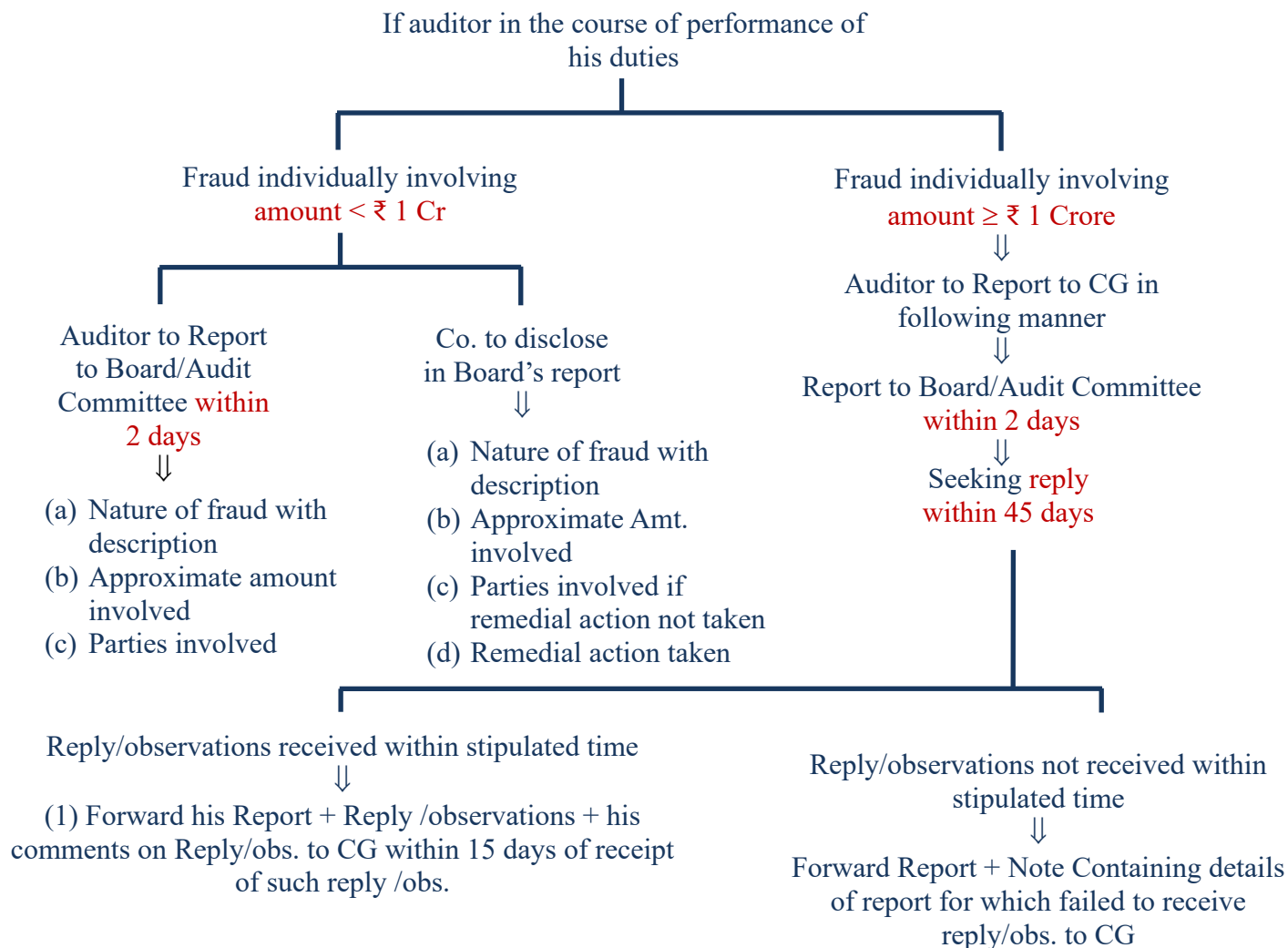
Liabe	Liabe for	Minimum	Maximum
Auditor	Knowing or willful contravenes any of the provisions of section 139, 144 or 145,	Rs. 25,000	Lower of Rs. 5,00,000 Or 8 times the remuneration
		AND	
		Imprisonment for a term which may extend to 1 year	

- (3) If auditor is convicted above, the he shall be liable to
 - (a) **refund remuneration** received by him to Co.
 - (b) **pay damages** to Co./ Statutory bodies or authorities /members/creditors for loss arising out of incorrect or misleading statements made in his audit report
- (4) In case of audit firm, it is proved that partners or partners of such firm
 - (a) acted in fraudulent manner
 - or

- (b) abetted or colluded in any fraud against Co. the liability (Civil or Criminal) as per this Act/other law, for such act shall be of partners concerned of the audit firm and of firm – Jointly & Severally & shall be liable under section 447.

In case of criminal liability, **punishable with only imprisonment – Only concerned partners liable.**

Fraud Reporting [Section 143 (12)]



- (1) Report shall be **in ADT-4**
- (2) Report shall be sent to **Secretary, MCA** in a sealed cover by RPAD or speed post followed by an **e-mail in confirmation** of the same
- (3) Report shall be **on the letterhead of auditor** containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number

- (4) This section shall mutatis mutandis apply to-
- Cost Accountant conducting Cost Audit
 - Co. secretary conducting secretarial Audit
- (5) If auditor/Cost Accountant/Co. Secretary in practice do not comply with provisions of section 143 (12), he shall
- In case of Listed Co. - ₹ 5 Lakh
- In case of Other Co. – ₹ 1 Lakh

Powers and duties of Auditors [Section 143]

- (1) Power of Auditors: -
- Right to **access BOA and vouchers** of Co. at all times
 - Entitle to** require from officers such **information & explanation** as may be necessary for performance of his duties.
 - Right to **access records of all its subsidiary or associate Cos.** in so far it **relates to consolidation.**
- (2) Inquiries by Auditors
- Whether **loans & advances** have been properly secured
 - Whether **terms of loans & advances** are prejudicial to interest of Co./members
 - Whether **loans & advances** by Co. have been shown as deposits
 - Whether **transaction represented merely by book entries** are prejudicial to interest of Co.
 - Whether **personal expenses** has been charged to revenue A/c
 - In books, if shares have been allotted for cash
 - ☐ Whether **cash is actually received**
 - ☐ If **no cash received**, whether **BoA & B/S** is correct, regular and not misleading.
 - Where the Co. not being an investment Co. or a banking Co., 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 Co.;**
- (3) Auditor Report :- Auditor shall make **report to members**

Report on	After taking into A/C	Express opinion
(1) A/Cs examined (2) Every FS laid before Co. in GM	<input type="checkbox"/> Provision of Act <input type="checkbox"/> AS and SAs <input type="checkbox"/> Matters to be included in Auditor's Report	⇒ To the best of his information & knowledge ⇒ A/Cs & FS give True & Fair view of state of Cos.

- (4) Matters to be stated in AUDITOR REPORT - Whether
- A – Any Qualification/Reservation/adverse remark relating to maintenance of A/Cs and other matters connected therewith
 - U – Unpaid Dividend or other amount not transfer to IEPF within time limit prescribed by law
 - D – Director is disqualified from being appointed as Director u/s 164 (2)
 - I – Internal Financial controls with reference to financial statements are adequate & in place & operating effectiveness of such controls
 - T – The Financial statement comply with AS
 - O – Observations or comments of auditors on financial transaction or matters which have any adverse effect on the functioning of Co.
 - R – Reserves or provisions required under any law or accounting standard has made for foreseeable losses, if any, on long term contracts including derivative contracts
 - R – Reports on the accounts of any branch office audited by person other than company's auditor, has been sent to him and the manner in which he has dealt with it preparing his audit report
 - E – Extra (Other) Matters as may be prescribed
 - P – Proper BoA as per law has been kept by Co. in auditor's opinion so far as appears from his examination of those books and proper returns adequate for audit have been received from branches not visited by him
 - O – Obtained all the info and explanations which to the best of his knowledge and belief were necessary for the purpose of the audit and if not, the details thereof & effect of such information on the financial statements
 - R – Regardless BS & P&L are in agreement with BoA & Return
 - T – Trail feature in the accounting software used by the Co. & the same has been operated throughout the year for all transactions recorded in the software & audit trail feature has not been tampered with & the audit trail has been preserved by the Co. as per statutory requirement
- (5) Where any matter included in audit report is answered in negative or with a qualification, the report shall state the reasons thereof
- (6) Audit of Govt. Co./Govt. Controlled Co.
- (a) C&AG to appoint auditor of Govt. Co. or Govt. Controlled Co. and direct the manner in which A/Cs are to be audited & Auditor to submit copy of Audit report to C&AG which will include
 - Directions issued by C&AG
 - Action taken thereon
 - Impact on accounts & FS of Co.
 - (b) Supplementary Audit

Within 60 days of receipt of audit report, C&AG shall have right to

 - Conduct supplementary audit of FS by person as he may authorise in this behalf.
 - Comment upon or supplement such audit report. Any such comment by C&AG shall be sent by Co. to every person entitled to FS u/s 136 & placed before AGM along with audit report.
 - (c) Test Audit

If C&AG consider necessary, C&AG may by order cause test audit to be conducted of BoA of Govt. Co./Govt. Controlled Co.

(7) Branch Audit

(a)

Branch in India	Branch Outside India
Audit by - Co's auditor appointed u/s 139 or - Any other person qualified for auditor & appt. as such for branch audit	Audit by - Co's Auditor or - Accountant or any other person duly qualified to act as auditor as per law of that country

- (b) Duties and power of Co.'s Auditor w.r.t. branch audit shall be as per Section 143(1) to 143(4)
- (c) Branch auditor to prepare report on BoA of branch & send it to Co.'s Auditor
- (d) Co.'s auditor shall deal with such report in his report in manner as he consider necessary
- (e) Provisions regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.
- (8) Every auditor shall comply with auditing standard prescribed by CG in consultation with NFRA.
- (9) For prescribed Co., auditor also need to do reporting of CARO.

Cost Records & Cost Audit [Section 148]

(1) Cost Records

- Co including foreign Co. engaged in production of specified goods or providing specified services (Regulated /Non-regulated), whose OVERALL Turnover is \geq Rs. 35 Crores shall maintain cost records
- Not applicable to Micro or small Enterprise

(2) Cost Audit

Preceding FY	Regulated Sector	Non-Regulated Sector
Overall Turnover	\geq Rs. 50 Crores	\geq Rs. 100 Crores
	AND	AND
Aggregate Turnover of Specified goods & Services	\geq Rs. 25 Crores	\geq Rs. 35 Crores

Cost audit not applies to Co. :-

- Whose forex revenue from exports 75% of total revenue or
- Which is operating in SEZ or
- Which is generating electricity for captive consumption

(3) Appointment and Remuneration of Cost Auditor

Co. required to constitute Audit Committee	Co. not required to constitute Audit Committee
(1) On recommendation of Audit Committee, BoD to appoint Cost Accountant in practice or firm of Cost Accountant in practice. (2) Remuneration recommended by Audit committee considered & approved by BoD & ratified by Shareholders	(1) BoD to appoint Cost Accountant in practice or firm of Cost Accountant in practice. (2) Remuneration considered and approved by BoD and ratified by shareholder subsequently

- (4) Cost Auditor shall comply with cost Auditing standards issued by Institute of Cost Accountant of India.
- (5) Cost Audit is in addition to statutory Audit.
- (6) Qualification, disqualification, rights, duties and obligations applicable to auditors under this chapter shall as for as applicable apply to cost Auditor.
- (7) Cost Auditor to **submit his cost audit report to BoD of Co.**
- (8) **Within 30 days of receipt of Cost Audit report, Co. shall furnish CG with Cost Audit Report + Full information & Explanation on every reservation or qualification contained therein**
- (9) On receipt, if CG is of the opinion that further information & explanation is required it may call for such information & explanation & Co. shall furnish the same within time specified by CG
- (10) **Statutory auditor can't be appointed as cost auditor**
- (11) BoD. Shall **appoint a cost auditor within 180 days** of the commencement of every FY
- (12) Co. shall inform the cost auditor of appointment and **shall file CRA-2 with CG within 30 days of the Board meeting** in which such appointment is made **or within 180 days of the commencement of the FY, whichever is earlier**
- (13) Tenure – Cost auditor shall **continue till the expiry of 180 days** from the closure of the financial year **or till he submits the cost audit report**, whichever is earlier
- (14) **Cost Auditor can be removed through board resolution** after giving reasonable OOBH & **intimate to CG in form CRA-2**
- (15) Fill casual vacancy within 30 days by Board & inform CG in form CRA-2 within 30 days of appointment
- (16) Default under this section
Co. & OID – Punishment u/s 147(1)
Cost Auditor – Punishable u/s 147 (2) & (4)
- (17)

Form	Purpose
CRA-1	The manner in which cost records to be maintained
CRA-2	For intimation of appointment of cost auditor by company to the Central Government
CRA-3	Cost Audit Report
CRA-4	Filing of the cost audit report with the Central Government