

Company Auditor Series Full Series Compilation



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Namaste

This document is the **compilation of all chapters on Company Auditor Series**. Total 6 chapters of this series were published. I thank everyone for the overwhelming response given to this series and I am sure that this would have helped many professionals in their company audit compliance.

I have received lots of suggestions to compile the whole series in one document, hence, this document is prepared for benefit of all. Few parts of this document have been amended after receiving suggestions from various professional colleagues during this journey. Hope this document would be of use to all.

<i>Series No.</i>	<i>Content</i>	<i>Page No.(s)</i>
1	Types of Audits	1 - 4
2	Qualifications & Disqualifications	4 – 12
3	Appointment of Auditor	13 – 23
4	Power & Duties of Auditors	23 – 26
5	Removal & Resignation of Auditors	26 – 31
6	Penalties on Auditors	31 – 37

Company Auditor Series – Chapter 1 - Types of Audits

In Chapter 1 of these series, we would discuss about the basic provisions of various types of audits under the Act.

Types of Audits

Under the Companies Act, 2013, there are various type of audits, namely:

- Statutory Audit
- Cost Audit
- Secretarial Audit
- Internal Audit

In this series, we would discuss briefly about the provisions related to such audits and its applicability to class of companies.

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Cost Audit

Every company is not required to get the Cost Audit done. The provisions for Cost Audit are contained in section 148 of the Companies Act 2013 read with the Companies (Cost Records and Audit) Rules, 2014.

According to the Rules, companies engaged in production of goods and services [6 regulated sectors and 33 non-regulated sectors (as per rule 3)] having overall turnover of Rs. 35 Crores are required to maintain cost records. These companies are required to get their cost records audited by a Cost Accountant in practice appointed by the board, if it is:

- Covered in Regulated Sector and:
 - Overall turnover from all its products and during the immediately preceding financial year is Rs. 50 crores or more; and
 - Aggregate turnover of the individual product or products or services for which cost records are required to be maintained is Rs. 25 crores or more; or
- Covered in Non-Regulated sector and:
 - Overall turnover from all its products and services specified during the immediately preceding financial year is Rs. 100 crores or more; and
 - Aggregate turnover of the individual product or products or services for which cost records are required to be maintained is Rs. 35 crores or more.

However, even when a company is covered in above criteria, the following companies are not required to get the cost audit done:

- i) Whose revenue from exports, in foreign exchange, exceeds 75% of its total revenue; or
- ii) Which is operating from a Special Economic Zone; or
- iii) Which is engaged in generation of electricity for captive consumption through Captive Generating Plant.

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Secretarial Audit

Every company is not required to get the secretarial audit done. As per section 204 of the Companies Act 2013 read with Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a secretarial audit is to be conducted by a Company Secretary in practice for following companies only:

- Every Listed company
- Every Public company having:
 - Paid up share capital of Rs 50 crores or more; or
 - Turnover of Rs 250 crores or more.
- Every Company having outstanding loans or borrowings from banks or public financial institution of Rs 100 crores or more.

Internal Audit

Every company is not required to get its internal audit done. As per section 138 of the Companies Act 2013 read with Rule 13 of Companies (Accounts) Rules 2014, certain class or classes of companies are required to get an internal audit of the activities and functions of the company by a Chartered Accountant or Cost Accountant whether in practice or not or other professional which may be an individual whether employee or not, or a partnership firm or a company as decided by the board. The class or classes of companies who are required to get the internal audit done are:

- Every Listed Company
- Every Public Company having:
 - Paid up share capital of Rs 50 crores or more; or
 - Turnover of Rs 200 crores or more; or
 - Outstanding loans or borrowings from banks or public financial institution of Rs 100 crores or more anytime during the year; or
 - Outstanding deposits of Rs 25 crores or more anytime during the year.
- Every Private Company having:

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- Turnover of Rs 200 crores or more; or
- Outstanding loans or borrowings from banks or public financial institution of Rs 100 crores or more anytime during the year

Statutory Audit

There is no specific term as 'Statutory Audit' under the Companies Act 2013 or any other law in force. The term "statutory auditor" in generally, refers to an external auditor whose appointment is mandated by law. Hence, Statutory Audit is a type of audit which is mandated by a Law or a Statute to ensure that the books of accounts presented to the regulators and public are true and fair. In other words, audit of financial statements by auditors whose appointment is mandated by law is generally referred as statutory audit.

Every company whether private company or public company or one person company or dormant company is mandatorily required to get its books of accounts audited under the Companies Act 2013. The provisions for the same are contained in sections 139 to 147 of the Companies Act 2013 read with the Companies (Audit and Auditors) Rules, 2014.

In the coming chapters of this series, we would be discussing only regarding Statutory Audit.

Company Auditor Series – Chapter 2 – Qualification & Disqualifications

In Chapter 2 of this series, we would discuss the qualification and disqualifications of an auditor. Unless a person is qualified **and** is not disqualified, he/she/it cannot be an auditor of a company.

Qualification

Basically, there is only one qualification for a person to be appointed as an auditor of a company, which in simple language is that he/she should be a Chartered Accountant in Practice. Section 141(1) of the Act provides that a person shall be eligible for appointment as an auditor of a company only if he is Chartered Accountant.

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Chartered Accountant has been defined in section 2 (17) of the Act as under:

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

Further, as per section 2(1)(b) of the Chartered Accountant Act, 1949, ‘Chartered Accountant’ means a person who is a member of the Institute and section 6(1) of the said Act states that no member of the institute shall be entitled to practice whether in India or elsewhere, unless he has obtained from the council a certificate of practice. Hence, it is clear that the word “Chartered Accountant” has been used throughout the Act, unless the context otherwise requires, to mean a Chartered Accountant in practice.

Not only an individual but a firm or LLP may also be appointed as an auditor. However, proviso to section 141(1) clarifies that only such audit firms would be eligible to be appointed as auditor of the company where majority of the partners practicing in India are Chartered Accountants.

Section 141(2) states that where a firm including a Limited Liability Partnership (LLP) is appointed as an auditor of a company, only the partners who are Chartered Accountants shall be authorized to act and sign on behalf of the firm. The provision envisaged the position when Multi-Disciplinary Partnerships (MDPs) is allowed by the regulators i.e., ICAI, ICSI, ICMA, etc., which has already been put in place by ICAI and the Form 18 under ICAI regulations has been amended on approval by MCA on 1st July 2021. ICAI has issued Guidelines for Formation of Multi-disciplinary Partnership (MDP) effective from 8th July 2021. According to it, members of following professional bodies have been permitted to become a partner as on date:

- a) Company Secretary, member, The Institute of Company Secretaries of India.
- b) Cost Accountant, member, The Institute of Cost and Works Accountants of India.
- c) Advocate, member, Bar Council of India (However Bar Council of India, currently does not allow the same).

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- d) Engineer, member, The Institution of Engineers, or Engineering from a University established by law or an institution recognized by law.
- e) Architect, member, The Indian Institute of Architects.
- f) Actuary, member, The Institute of Actuaries of India (who is not in practice as per IAI).

Hence, the following are qualified to be appointed as an auditor of a company as on date:

1. A Chartered Accountant in Practice (Individual or sole proprietor)
2. A Partnership Firm, whereof all of the partners are Chartered Accountants practicing in India.
3. A Partnership Firm being Multi-disciplinary Partnership (MDP), whereof majority of partners are Chartered Accountants practicing in India
4. A Limited Liability Partnership (LLP), whereof all of the partners are Chartered Accountants practicing in India.
5. A Limited Liability Partnership (LLP) being Multi-disciplinary Partnership (MDP), whereof majority of partners are Chartered Accountants practicing in India

However, in a MDP, only the partners who are Chartered Accountants shall be authorized to act and sign on behalf of the firm as auditor.

Disqualifications

A person may be qualified to be appointed as auditor, yet if he/she/it is disqualified due to provisions of section 141(3) of the Act, then he cannot be appointed as an auditor of a company. The said sub-section is to be read along with Rule 10 of Companies (Audit and Auditors) Rules 2014 to understand the disqualifications. For better understanding, these disqualifications may be divided into following categories:

- Absolute disqualification

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- Disqualification based on a relationship
- Disqualification based on conflict of interest
- Disqualification based on services rendered

Absolute Disqualification

A person would be disqualified to be appointed or re-appointed as an auditor irrespective of his relationship or conflict of interest or nature of services rendered, in the following cases:

1. A Body Corporate, other than a Limited Liability Partnership (as LLP is a body corporate) – [S. 141(3)(a)]
2. A person in full-time employment elsewhere [S. 141(3)(g)]. However, Clause (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949 read with relevant regulations and Council decisions requires specific and prior approval of the council for a member in practice to be in full-time or part-time employment. Hence, a member in part-time employment too cannot be appointed as an auditor.
3. An employee or officer of the company [S. 141(3)(b)]. Officer as per section 2(59) of the Act would include any:
 - a. Director
 - b. Manager
 - c. Key Managerial Personnel
 - d. Any person in accordance with whose directions or instructions the director(s) or Board is accustomed to act.
4. A person or a partner of a firm at the date of appointment or reappointment holds appointment as auditor of more than 20 companies [S. 141(3)(g)]. However, in case of appointment in a private company, the following would not be counted in the limit of 20 Companies:

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- a. One Person Companies (OPC)
- b. Dormant Companies
- c. Small Companies
- d. Private Companies having paid-up share capital less than Rs. 100 Crores
- e. Foreign Companies [as they are not Company as per definition given u/s 2(20)]
- f. Branch of a Company (as per Circular No. 21/75(35/3/75-CL.III) dated 24-9-1975)

However, it is pertinent to note that members have to additionally comply with the limit contained in the Chapter VIII of Council General Guidelines issued by ICAI i.e., *30 audit assignments whether in respect of private Companies or other Companies, with the exception of one person Companies and dormant companies.*

5. A person who is convicted by the court for an offence involving fraud and 10 years have not elapsed since the conviction date [S. 141(3)(h)].

Disqualification based on a Relationship

A person would be disqualified to be appointed or re-appointed as an auditor based upon his relationship in the following cases:

1. A person who is a partner of an officer of the company [S. 141(3)(c)].
2. A person who is a partner of an employee of the company [S. 141(3)(c)].
3. A person who is in the employment of an officer of the company [S. 141(3)(c)].
4. A person who is in the employment of an employee of the company [S. 141(3)(c)].
5. A person who's relative is:
 - a. a director, or
 - b. in the employment of the company as a:
 - i. Director or

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ii. Key Managerial Personnel [S. 141(3)(f)]

Relative as per section 2(77) would mean:

- Members of HUF
- Husband and wife
- Father (including step-father)
- Mother (including step-mother)
- Son (including step-son)
- Son's wife
- Daughter
- Daughter's husband
- Brother (including step-brother)
- Sister (including step-sister)

Disqualification of Auditor based on Conflict of Interest

A person would be disqualified to be appointed or re-appointed as an auditor based upon his conflict of interest in the following cases:

1. A person or his partner is holding any security of or interest (without any minimum exemption limit) in:
 - a. the company, or
 - b. its subsidiary, or
 - c. its holding company, or
 - d. associate company, or
 - e. subsidiary of such holding company [S. 141(3)(d)(i)]

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2. A person's relative is holding any security of or interest in the company of face value exceeding Rs. 1 Lakh. However, in the event of acquiring any security or interest by a relative, above Rs. 1 Lakh, the corrective action to maintain the said limit shall be taken by the auditor within 60 days of such acquisition or interest to not be disqualified as an auditor [Proviso to S. 141(3)(d)(i) read with Rule 10(1)]
3. A person, or his relative or partner is indebted in excess of Rs. 5 Lakhs to:
 - a. the company, or
 - b. its subsidiary, or
 - c. its holding company, or
 - d. associate company, or
 - e. subsidiary of such holding company [S. 141(3)(d)(ii) read with Rule 10(2)]
4. A person, or his relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person in excess of Rs. 1 Lakh to:
 - a. the company, or
 - b. its subsidiary, or
 - c. its holding company, or
 - d. associate company, or
 - e. subsidiary of such holding company [S. 141(3)(d)(iii) read with Rule 10(3)]
5. A person, or the firm whether directly or indirectly, has business relationship with:
 - a. the company, or
 - b. its subsidiary, or
 - c. its holding company, or
 - d. associate company, or
 - e. subsidiary of such holding company

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The term "business relationship" shall be construed as any transaction entered into for a commercial purpose, except those 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
- 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.

[S. 141(3)(e) read with Rule 10(4)]

Disqualification based on Nature of Other Services Rendered

A person would be disqualified to be appointed or re-appointed as an auditor based upon his nature of other services rendered in the following cases:

1. A person who, directly or indirectly, renders any service referred to in section 144 to:
 - a. the company or
 - b. its holding company or
 - c. its subsidiary company [S. 141(3)(i)]

The services referred in section 144 are:

- 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

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h) management services

The term “directly or indirectly” for the purposes of disqualifications shall include rendering of services by the auditor:

- 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
- 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.

Casual Vacancy

There could be a case that at the time of appointment of the auditor, he/she/it is qualified as well as not disqualified. However, later after appointment the auditor is disqualified due to any of the reasons stated above, then, he shall vacate his office and it shall deem to be a casual vacancy in the office of the auditor.

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Company Auditor Series – Chapter 3 – Appointment of Auditor

In Chapter 3 of this series, we would discuss about the appointment, reappointment, it's manner and procedure as per the Companies Act 2013.

Every company is required to appoint an auditor who is qualified and is not disqualified as per section 139 of the Companies Act 2013 read with Companies (Auditor and Auditor) Rules 2014. Even a Dormant Company or One Person Company is required to appoint an auditor. Appointment of an auditor may be due to any of the following:

- First Auditor
- Subsequent Auditor
- Re-appointment
- Casual Vacancy

Appointment of the First Auditor

Every company has to appoint an auditor after the registration of the company with the Registrar.

- For other than government company, section 139(6) provides the regulations for appointment of 1st auditors, according to which:
 - Board of Directors (BoD) have to appoint the 1st auditor within 30 days from the date of registration of the company.
 - In case of BoD fails to do so, then it shall inform the members of the company. The members then at an EGM shall appoint an auditor within 90 days of the information by the BoD to the members.
- In 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 Governments, section 139 (7) provides the regulations for appointment of 1st auditors, according to which:
 - Comptroller and Auditor-General of India (CAG) shall appoint the 1st auditor within 60 days from the date of registration of the company.

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- In case of failure by CAG, the BoD shall appoint the 1st auditor within next 30 days.
- In case of BoD fails to do so, then it shall inform the members of the company. The members then at an EGM shall appoint an auditor within 60 days of the information by the BoD to the members.
- In any of the cases as discussed above, the 1st auditors shall hold the office only till the conclusion of the 1st AGM only.
- Though filing of the Form ADT-1 (notice by the company for appointment of auditor) with Registrar of Companies (ROC) is optional for the appointment of 1st auditor, yet it is advisable to file the Form ADT-1.

Appointment of the Subsequent Auditor

The 1st auditor holds the office till 1st AGM only, thereafter every company has to appoint an auditor for the term specified in the Act in the 1st AGM. For understanding, companies may be classified as:

- Non-Government Companies
 - Other than Rotation cases
 - Rotation of Auditors
- Government Companies

Non-Government Companies – Other than Rotation

As per section 139(1) of the Act, every company (other than a company to which rotation provisions are applicable) has to appoint the auditor at the 1st AGM who shall hold the office from the conclusion of that meeting till the conclusion of its 6th AGM. Hence, appointment of the statutory auditor at the AGM can be made only for a block period of 5 years.

Further, a company may resolve for:

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- Rotation of auditing partner and its team within the audit firm at intervals as resolved by the members of the company
- Appointing more than one auditor for the audit (Joint Auditors)

Non-Government Companies - Rotation

Though every non-government company, has to appoint the auditor at the 1st AGM who would hold the office from the conclusion of that meeting till the conclusion of its 6th AGM, yet as per section 139(2), certain specified companies shall appoint auditors only for a specific term, which is as under:

- Where auditor is an individual or sole proprietor - one term of 5 consecutive years
- Where auditor is a firm or LLP - two terms of 5 consecutive years

Not all companies, but only certain specified companies, have to comply with the rotation of auditors' provisions. These specified companies are:

1. Listed companies
2. Unlisted public companies having paid up share capital of Rs. 10 crore or more;
3. Private limited companies having paid up share capital of Rs. 50 crore or more
4. Companies not covered in (2) or (3) above, but have public borrowings from financial institutions, banks or public deposits of Rs. 50 crores or more

However, rotation of auditors would not apply to a One Person Company (OPC) or a small company.

Further, certain matters have to be considered for rotation of auditors, which are as hereafter:

- Auditor who is disqualified after holding office of auditor for 2 terms, can be appointed again after a break in the term for a continuous period of 5 years.
- 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.

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- 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, then such other firm shall also be ineligible to be appointed for a period of 5 years.
- As on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of 5 years as per the proviso to section 139(2).
- In case more than one auditor is appointed (i.e., joint auditors), then 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.
- As per the notification issued by the RBI dt 01.09.2016, all NBFCs shall rotate the partner/s of the audit firm every 3 years but shall be eligible for conducting audit after an interval of 3 years if the NBFC so decides. To ensure such compliance, NBFC shall incorporate appropriate terms in the appointment letter of the audit firm.

Government Companies

In case of government company or any other govt controlled or owned company, 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 Governments, CAG shall appoint a duly qualified auditor within 180 days from the commencement of the financial year who shall hold the office till the conclusion of AGM as per section 139(5). Hence, in case of government companies as stated above, the appointment is not for 5 years, but on yearly basis.

Manner and Procedure of Selection & Condition for Appointment of Auditors

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The manner and procedure of selection of auditors and condition for appointment is given as per Rule 3 and Rule 4 of the Companies (Audit and Auditors) Rules 2014.

In case a company is required to have an audit committee u/s 177 of the Act, then all appointments, including the filling of a casual vacancy of an auditor has to be made after taking into account the recommendations of such committee. An Audit Committee is to be constituted by:

- Every listed company
- Public companies with a paid-up capital of Rs.10 Crores or more;
- Public companies having turnover of Rs.100 Crores or more;
- 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 this purpose.

Following has to be taken care of (considered) by Audit Committee (where required) or the Board for appointment of auditor:

- Qualifications and experience of the auditor as per the requirement of the company shall be considered for selection of auditor.
- Whether such qualifications and experience are commensurate with the size and requirements of the company?
- Ascertain whether there are any pending proceedings or orders regarding the professional conduct of the Auditor before the ICAI or any other competent authority or any court.
- May call for any information as they deem fit.
- The Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.
- In case of company constituting an audit committee:

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- The committee shall recommend the name of an individual or a firm as auditor to the Board for consideration.
 - If the Board agrees 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.
 - 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 such disagreement.
 - 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 AGM.
- The Board has to obtain a declaration from the Auditor that he is eligible to issue a certificate under rule 4(1) of the said rules where:
 - Individual or firm is eligible for appointment as per ICAI Act 1949 and rules or regulations.
 - Proposed appointment is as per the term laid down under the Act.
 - Proposed appointment is within the limits laid down under the Act.
 - List of proceedings 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.
 - Form ADT-1 shall be filed by the company with the Registrar to intimate ROC about the appointment after the completion of its first AGM. The form should be filed within 15 days from the date of AGM in which auditor is appointed.

The procedure in brief for appointment where there is no audit committee would be as under:

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Re-appointment of the Auditor

- A retiring auditor may be re-appointed in the AGM as per section 139(9), if:
 - He is not disqualified for re – appointment (including case of rotation on completion of the term)
 - He has not given the company a notice in writing of his unwillingness to be reappointed
 - A special resolution has not been passed appointing some other auditor or providing expressly that he shall not be re-appointed
- Also, if no auditor is appointed or re-appointed in any AGM then the existing auditor shall continue to be the auditor of the company u/s 139(10).

The procedure for re-appointment of Auditor is similar to appointment of the Auditor at the first instance, as both, appointment & re-appointment are governed through provisions of Section 139(1).

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Casual Vacancy

The term Casual Vacancy has not been defined in the Act. Hence, we can understand this as a vacancy in the office of the auditor of the company before his term expires. This vacancy can be due to various reasons, including:

- Death
 - Resignation
 - Contracting disqualifications
 - Ceasing to be a member of ICAI
 - Change in the status of auditor i.e., from proprietorship / individual to partnership firm
 - Dissolution of firm
- As per section 139(8), Board of Directors shall fill the casual vacancy in the office of the auditor within 30 days in a company other than a company whose accounts are audited by CAG.
 - However, if casual vacancy is due to resignation of auditor, appointment shall be approved in general meeting of members within 3 months from recommendation by Board.
 - Hence, other than vacancy caused by resignation, the vacancy is to be filled by the Board.
- However, in the following cases, there is no vacancy caused:
- Change of partners or reconstitution of firm
 - *Conversion of Firm into LLP* – As per General circular No. 9/2013 dated 30.4.2013 issued by MCA, if a CA audit firm, being an auditor in a company under the Companies Act, 1956, gets converted into an LLP then, such an LLP, in accordance with the provisions of section 58(4) (b) of the LLP Act, 2008 would be deemed to be the auditor of the said company. The relevant appointee company may take note of such change in status of the auditor through a resolution of the Board.
 - *Change in Name of Firm* – Though there is no legal provision which covers such happening to be a casual vacancy or not, yet taking a clue from the General circular No. 9/2013 dated 30.4.2013 as discussed above, this seems to not be a casual

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vacancy and the relevant appointee company may take note of such change in name of the auditor through a resolution of the Board.

- *Merger of Firms* – Though there is no concept of merger of firms under the Partnership Act, yet ICAI regulations provides for merger of firms. Vacancy caused due to such merger can be understood by below chart:

<i>Case</i>	<i>Merger & Situation</i>	<i>Vacancy Caused or Not</i>
1	Firm B merges in Firm A and Auditor already appointed in company is Firm A	No Vacancy
2	Firm B merges in Firm A and Auditor already appointed in company is Firm B	Vacancy caused

- In case the auditor resigns, then the resigning auditor has to file Form ADT-3 within 30 days from the date of resignation and in case the appointment is for a government company, etc. u/s 139(5), then it has to also inform CAG.
- In case of company whose accounts are audited by CAG, then within 30 days the causal vacancy shall be filled by the CAG. In case of failure, BOD shall fill the vacancy in next 30 days.
- An auditor appointed in casual vacancy hold the office only till next AGM. In the said AGM he may be appointed as per s. 139(1) as discussed earlier in this chapter.

Form ADT-1

As per 4th Proviso to s. 139(1) the company has to inform the auditor of his appointment / re-appointment, and also file a notice of such appointment / re-appointment with the Registrar in Form ADT-1 within 15 days of the meeting in which the auditor is appointed. The drop-down box at Para 3(b) of Form ADT-1 requires, the following to be chosen for nature of appointment:

- First auditor by Board of directors/members/C&AG
- Appointment / Re-appointment in AGM
- Auditor appointed in case of casual vacancy

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- Auditor appointed in case of non-re-appointment / removal of the previous auditor
- Auditor appointed by the Tribunal
- Others

Certain important Paras of Form ADT-1, which may need attention are:

- Para 5 is to be filled if appointment is done in AGM
- Para 7 is to be filled if appointment is done due to causal vacancy. In such a case SRN of approved ADT-1 (through which the erstwhile auditor was appointed) is to be filled in Para 7(b).

While filling of Form ADT-1 by the company, it should keep the following documents / information ready:

- **Mandatory Attachments:**
 - Consent letter given by the Auditor received before board meeting where the appointment is proposed to be approved in General meeting of members.
 - Copy of resolution passed by the board/company in case Nature of appointment is other than 'Auditor appointed by the Tribunal' or 'Others'
 - Copy of the order of the Tribunal in case Nature of appointment is Auditor appointed by the Tribunal
- Certified copy of AGM notice regarding auditor's appointment.
- Appointment letter of Auditor – Letter that company has sent to auditors for their appointment.
- Category of Auditor i.e., individual or firm
- PAN No. of Auditor (in case of individual) or Auditor's Firm (in case of firm or LLP)
- Membership no. of the Auditor or Registration no. of auditor firm with ICAI
- Complete address of Auditor

It is pertinent to note that Para 10 of Form AOC- 4 also requires auditor / auditors' firm details. Para 10(d) requires SRN of Form ADT-1. If intimation of appointment of auditor is not required

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for 1st auditors or for government Companies i.e., u/ss 139(5)/ (6)/ (7) of the Act, then SRN 'Z99999999' may be entered in such a case.

Company Auditor Series – Chapter 4 – Power & Duties of Auditors

In Chapter 4 of this series, we would discuss about the power / rights and duties of auditors as per the Companies Act 2013.

Powers / Rights of an Auditor

Section 143 of the Companies Act 2013 contains various powers and duties of an auditor. An Auditor must exercise such powers to make a report on financial statements and give a true and fair view of the state of the company's affairs of the company. The powers of an auditor include:

- Right of access to the books of accounts at all times whether kept at registered office or other place.
- Enquire from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor
- An auditor of a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.
- Right to receive all notices of, and other communications relating to, any general meeting (AGM/EGM).
- Right to attend either by himself or through his authorised representative (who shall also be qualified to be an auditor) any general meeting (AGM/EGM).
- Right to be heard at AGM/EGM on any part of the business which concerns him as the auditor.

Duties of an Auditor

Every auditor of the company must comply with such duties to give a true and fair view of the state of the company's affairs in which he is appointed. The duties of an auditor include:

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- To sign auditor's report or sign/certify any other document of the company as per s. 145.
- To comply with the Standards on Auditing
- To attend either by himself or through his authorised representative (who shall also be qualified to be an auditor) any general meeting (AGM/EGM) unless otherwise exempted by the company.
- To seek information and report, if required on 6 matters stated in s. 143(1) namely:
 - 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?
 - Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company?
 - 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?
 - Whether loans and advances made by the company have been shown as deposits?
 - Whether personal expenses have been charged to revenue account?
 - 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, & 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?
- To make a report on the accounts examined by him of the company as per the provisions of the act, accounting and auditing standards and any rules made thereunder to give a true and fair view of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as prescribed in section 143(2).
- To state in his audit report:
 - Whether he has sought & obtained all the information & explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, details thereof and the effect of such information on the financial statements?

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- Whether, in his opinion, proper books of account 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?
- Whether the report on the accounts of any branch office of the company audited u/s 143(8) by a person other than company's auditor has been sent to him and the manner in which he has dealt with it in preparing his report?
- 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?
- Whether, in his opinion, financial statements comply with the accounting standards?
- The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company
- Whether any director is disqualified from being appointed as a director u/s 164(2)?
- Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- Whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls (to be reported in cases other than of an OPC, small company or a private company which has turnover less than Rs. 50 Crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than Rs. 25 crores)?
- Other matters as per Rule 11 of the Companies (Audit and Auditors) Rules 2014.
- Where any of the matters required to be included in the audit report is answered in the negative or with a qualification, the report has to state the reasons therefor.
- In case of government company and other companies where CAG has appointed the auditor, the auditor shall submit the report to CAG which, among other things, should include the directions, if any, issued by the CAG, the action taken thereon and its impact on the accounts and financial statement of the company.

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- To report if he has the reason to believe that an offence of fraud of Rs 1 crore or more is being committed or has been committed by the company's officers or employees in the course of performing audit, to the CG within 15 days from the receipt of reply or observations from the Board or Audit Committee. In case there is no reply from the Board or Audit Committee then auditor shall forward his report to CG which shall be sent to the secretary of MCA. The report shall be in the form ADT-4.
- In case the fraud is involving less than Rs 1 crore, the auditor shall report to Audit Committee u/s 177 or to the Board within 2 days of knowledge of fraud specifying the parties involved, nature of fraud and approximate amount involved.
- The Branch auditor shall have same duties as that of the company auditor regarding:
 - Same contained in sub-sections (1) to (4) of section 143.
 - To submit his report to the company's auditor.
 - 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.
- Though not expressly mentioned, yet he should inform of any disqualification arisen after being appointed which creates a casual vacancy in the office of the auditor.

Company Auditor Series – Chapter 5 – Removal & Resignation of Auditors

In Chapter 5 of this series, we would discuss about the removal and resignation of auditors as per the Companies Act 2013.

Once an auditor has been appointed by a company, they can be removed only when:

- He is removed by company suo-moto before his term.
- The auditor himself resigns.
- There is a casual vacancy other than by resignation.

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- The term of the auditor is completed and another auditor is to be appointed in place of the retiring auditor.
- Removal by Tribunal.

Removal of Auditors

A Company may Suo-moto remove its auditor from office before the expiry of his term as per the provisions of section 140 of the Companies Act 2013 read with Rule 7 of Companies (Auditor and Auditors) Rules 2014.

As per section 140(1), only by a special resolution of company can an auditor appointed u/s 139 be removed after obtaining previous approval from CG in form ADT-2 along with fees where:

- The application made in form ADT-2 shall be made to CG within 30 days of resolution passed by the board
- The company shall hold GM within 60 days of approval of CG for passing SR.

The procedure in brief for the removal is as under:

- Company to pass a Board Resolution for removal and the Auditor concerned needs to be given a reasonable opportunity of being heard.
- Within 30 days of the above resolution, the company would apply for the approval of the Regional Director (RD) in Form ADT-2 which is to be filed with prescribed fee.
- After due procedure RD may pass an order for removal of auditor.
- After obtaining the approval, company shall hold an EGM within 60 days of receipt of approval and then pass a Special Resolution for removal of the Auditor therein.
- Company to file MGT-14 within 30 days of passing of the said special resolution.

Resignation of Auditors

An auditor may resign from office before the expiry of his term as per the provisions of Section 140 of the Companies Act 2013 read with rule 8 of Companies (Audit and Auditors) Rules 2014.

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If the auditor resigns from the company, as per section 140(2), a statement in prescribed form i.e. ADT-3 is to be filed with the registrar within 30 days from the date of resignation. However, in case of government companies referred in section 139(5), auditor shall also file the statement with CAG of India along with reasons and facts for resignation.

The procedure in brief for the resignation is as under:

- Auditor to issue a resignation letter to the Company giving the reasons for the resignation.
- Auditors of listed entities and their material subsidiaries, have also to comply with SEBI circular No. CIR/CFD/CMD1/114/2019 dated 18th October 2019.
- Auditor to file Form ADT-3 within 30 days of the resignation along with the letter of the resignation communicated to the company with the communication proof.

In case of failure to file ADT-3 the auditor shall be liable to penalty of Rs 50000 or equal to remuneration, whichever is lower. However, in case of continuous failure, further penalty of Rs 500/- day subject to maximum Rs 2 lacs.

Casual Vacancy

The term Casual Vacancy has not been defined in the Act. Hence, we can understand this as a vacancy in the office of the auditor of the company before his term expires. This vacancy can be due to various reasons, including:

- Resignation
- Death
- Ceasing to be a member in full time practice of ICAI
- Change in the status of auditor i.e., from proprietorship / individual to partnership firm
- Dissolution of firm
- Incapacitated to contract
- Contracting disqualifications u/s 141(3)

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- Rendering of any service as mentioned in section 144 i.e.
 - Any service other than audit which are though allowed but are not approved by the Board of Directors or the audit committee, as the case may be.
 - Restricted services rendered directly or indirectly being:
 - 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
 - Management services
- However, in the following cases, there is no vacancy caused:
 - Change of partners or reconstitution of firm
 - *Conversion of Firm into LLP* – As per General circular No. 9/2013 dated 30.4.2013 issued by MCA, if a CA audit firm, being an auditor in a company under the Companies Act, 1956, gets converted into an LLP then, such an LLP, in accordance with the provisions of section 58(4) (b) of the LLP Act, 2008 would be deemed to be the auditor of the said company. The relevant appointee company may take note of such change in status of the auditor through a resolution of the Board.
 - *Change in Name of Firm* – Though there is no legal provision which covers such happening to be a casual vacancy or not, yet taking a clue from the General circular No. 9/2013 dated 30.4.2013 as discussed above, this seems to not be a casual vacancy and the relevant appointee company may take note of such change in name of the auditor through a resolution of the Board.
 - *Merger of Firms* – Though there is no concept of merger of firms under the Partnership Act, yet ICAI regulations provides for merger of firms. Vacancy caused due to such merger can be understood by below chart:

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<i>Case</i>	<i>Merger & Situation</i>	<i>Vacancy Caused or Not</i>
1	Firm B merges in Firm A and Auditor already appointed in company is Firm A	No Vacancy
2	Firm B merges in Firm A and Auditor already appointed in company is Firm B	Vacancy caused

In case of casual vacancy other than resignation, there is no requirement to file Form ADT-3.

Special Notice for appointing Other than Retiring Auditor

As per section 140(4) of the Act, a special notice is required, when:

- An auditor other than retiring auditor is appointed; or
- Expressively a retiring auditor is not re-appointed,

However, the same is not applicable when retiring auditor has completed a term of 5 years or 10 as per section 139(2) of the Act and is liable to retire by rotation. On receipt of such resolution, the following steps has to be taken:

- On receipt of notice of such a resolution, the company shall send a copy thereof to the retiring auditor.
- 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:
 - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - 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,

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- 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
- However, if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:
- Also, if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred 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.

Removal by Tribunal

As per section 140(5), tribunal may direct the company to change its auditors either suo moto or on an application by CG or any concerned person where tribunal is satisfied that directly or indirectly auditor has acted in fraudulent manner or abetted or colluded in any fraud or in relation to company or its directors or officers.

In case where CG has made an application and Tribunal is satisfied that there is a requirement of change of auditor then latter shall pass an order for its change within 15 days of application and CG may appoint another auditor in his place. Such auditor, individual or firm against whom the final order is issued, shall not be eligible to be appointed as an auditor for 5 years and liable for action u/s 447.

Company Auditor Series – Chapter 6 – Penalties on Auditors

In Chapter 6 of this series (the concluding part), we would know about the penalties on auditors as per the Companies Act 2013.

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Penalties on Auditor

An auditor of a company can be levied penalty or fine based on certain specified non-compliances under the Companies Act, 2013. The existing Penal Provisions are tabulated in a chart below.

S. No.	Provision	Non-Compliance	Penalty / Fine (Amount in Rs.)		
			Nature	Minimum	Maximum
1	140(3)	Non-Filing of Resignation Letter with Company and Registrar in ADT 3 within 30 days from resigning.	Penalty	50000/- or audit fee whichever is less Rs. 500/- per day for Continuing default	2 lacs
2	140(5)	Acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers.	Tribunal may direct the company to change the auditor	In case final order is passed by Tribunal he shall not be eligible to be appointed as auditor of any company for 5 years and also be liable for action under section 447. In case of a firm, the liability shall be of firm and of every partner(s) who acted in a fraudulent manner or abetted or colluded in any fraud	In case final order is passed by Tribunal he shall not be eligible to be appointed as auditor of any company for 5 years and also be liable for action under section 447. In case of a firm, the liability shall be of firm and of every partner(s) who acted in a fraudulent manner or abetted or colluded in any fraud
3	143(15)	Non - compliance of provisions of 143(12) Non-Reporting of fraud by officers or employees of company on the company to CG in Form ADT 4 in the course of his audit. The Companies (Amendment) Act, 2015 has substituted	Penalty	Listed Company – 5 Lacs Other Company 1 Lac	Listed Company – 5 Lacs Other Company 1 Lac

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S. No.	Provision	Non-Compliance	Penalty / Fine (Amount in Rs.)		
			Nature	Minimum	Maximum
		section 143(12) to prescribe limit of Rs. 1 Crore beyond which reporting is to be made to Central Government. Below the prescribed limit of Rs. 1 Crore the reporting is to be made to the Board/Audit Committee.			
4	147(2)	Contravention of section 139 – Appointment of auditor against provisions of s. 139	Fine	25000	5 lacs or 4 times the audit remuneration whichever is less)
5	147(2)	Contravention of s. 144 – <ul style="list-style-type: none"> Providing services which are prohibited to be provided by an auditors Providing services not approved by Board of Directors or Audit Committee 	Fine	25000	5 lacs or 4 times the audit remuneration whichever is less
6	147(2)	Contravention of s. 145 – Not signing the auditor report	Fine	25000	5 lacs or 4 times the audit remuneration whichever is less
7	Proviso to 147(2)	Knowingly or wilfully contravenes provisions of s. 139, 144 or 145 with the	Imprisonment and Fine	Imprisonment Upto 1 yr Fine - 50000/-	Imprisonment - 1 yr Fine - 25 lacs or 8 times the audit fee whichever is less

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S. No.	Provision	Non-Compliance	Penalty / Fine (Amount in Rs.)		
			Nature	Minimum	Maximum
		intention to deceive the: <ul style="list-style-type: none"> company or its shareholders or creditors or tax authorities 			
8	147(3)	Auditor is convicted under section 147(2)	Class Suit Action	<ul style="list-style-type: none"> refund the remuneration received by him; and pay for damages to the company, statutory bodies or authorities or to members or creditors of company for loss arising out of incorrect or misleading statements of particulars made in his audit report. 	<ul style="list-style-type: none"> refund the remuneration received by him; and pay for damages to the company, statutory bodies or authorities or to members or creditors of company for loss arising out of incorrect or misleading statements of particulars made in his audit report.
9	147(5)	Partner(s) 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	Extent of liability	Joint and several civil liability of the partner or partners concerned of the audit firm and of the firm. Criminal Liability restricted to the partner who acted.	Joint and several civil liability of the partner or partners concerned of the audit firm and of the firm. Criminal Liability restricted to the partner who acted.
10	245(2)	Misleading statements in audit report resulting in loss to depositors or	Class Action Suit	Damages as sought by depositors or members on firm as well as partner who	Damages as sought by depositors or members on firm as well as partner who

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S. No.	Provision	Non-Compliance	Penalty / Fine (Amount in Rs.)		
			Nature	Minimum	Maximum
		members		was involved in making any improper or misleading statement in audit report or who acted in a fraudulent, unlawful or wrongful manner	was involved in making any improper or misleading statement in audit report or who acted in a fraudulent, unlawful or wrongful manner
11	132 (4) (c)	Penalties by National Financial Reporting Authority (NFRA) if professional or other misconduct proved	Penalty	<ul style="list-style-type: none"> If auditor is individual – 1 Lac If auditor is firm – 5 Lacs 	<ul style="list-style-type: none"> If auditor is individual – 5 times of fee received If auditor is firm – 10 times of fee received
12	132 (4) (c)	Debarment by National Financial Reporting Authority (NFRA) if professional or other misconduct proved	Debarring the member or the firm to being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or performing any valuation as provided under section	6 Months	10 Years

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S. No.	Provision	Non-Compliance	Penalty / Fine (Amount in Rs.)		
			Nature	Minimum	Maximum
			247		
13	448	Punishment for false statement, or omission of any material fact in audit report	Punishment - Liable for action u/s 447 (Fraud)	Imprisonment – 6 months, however in case co. has public interest – 3 years and Fine - not less than amount involved in fraud If amount involved in fraud is less than 10 Lacs or 1% or turnover and does not involve public interest - Nil	Imprisonment – 10 years and Fine - three times the amount involved in fraud. If amount involved in fraud is less than 10 Lacs or 1% or turnover and does not involve public interest - Imprisonment 5 years or fine 50 Lacs or both
14	36	Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into any agreement for, or with a view to obtaining credit facilities from any bank or financial institution.	Punishment - Liable for action u/s 447 (Fraud)	Imprisonment – 6 months, however in case co. has public interest – 3 years and Fine - not less than amount involved in fraud. If amount involved in fraud is less than 10 Lacs or 1% or turnover and does not involve public interest- Nil	Imprisonment – 10 years and Fine - three times the amount involved in fraud. If amount involved in fraud is less than 10 Lacs or 1% or turnover and does not involve public interest - Imprisonment 5 years or fine 25 Lacs or both

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I hope the series is of use to you. I thank *CA. Shreya Jain and CA. Himani Gupta* in assisting me to compile various parts of the series. Your suggestions and comments would be highly appreciated.

Best Regards

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27th September 2021

(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omissions)

ABOUT CA. PRAMOD JAIN

He is a commerce graduate [B. Com (H)] from Shri Ram College of Commerce (SRCC). He is a fellow member of the Institute of Chartered Accountants of India (FCA). He is a fellow member of the Institute of Companies Secretaries of India (FCS). He is a fellow member of the Institute of Cost Accountants of India (FCMA). He is a Bachelor of Law (LL.B). He has qualified Information System Auditor [DISA (ICAI)]. He is also a member of All India Management Association (MIMA). He is also an Insolvency Professional (IP). He has also passed the Certificate Course on CSR of ICAI. He has also passed the Proficiency Self-Assessment Test for Independent Director's Databank. He has passed certification course NCFM of National Stock Exchange of India (NSE). He has also done certification course CAAT of ICAI. He has also done post qualification certificate course on Valuation of ICAI.

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He has been elected as Central Council Member of ICAI for the period 2019 – 2022. Apart from being member in more than 25 committees / groups / directorates of ICAI, he is / was:

- Chairman of Committee on International Taxation (CITAX) for Year 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) for the year 2021-22.
- Chairman of Valuation Standards Board (VSB) for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) for 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) for year 2019-20 and 2020-21.
- Vice-Chairman of Committee on International Taxation (CITAX) for Year 2019-20.
- Member of ICAI Disciplinary Committee Bench 1 for year 2020-21.
- Nominated as Member of Quality Review Board (QRB) for 3 years from 2020 to 2022.

He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all professional queries which has given more than 30000 answers since its launch in mid of year 2018.

He is delivered more than 1400 lectures and articles on various topics of Income Tax, Corporate Laws, LLP, Audits, Peer Review, Quality Review, etc. at more than 200 forums throughout the country. Most of his presentations and articles since 2013 are available for free download from www.lunawat.com and from 2018 at www.expertspanel.in also.

He is president, founder convener and member of various Boards, Directorate, Committees, Study Circles, etc. of ICAI, ICSI and other prestigious bodies and associations. He has been a Technical Reviewer with FFRB and Quality Review Board and Peer Reviewer with Peer Review Board. He has authored 13 books including “*Chartered Accountant’s Documentation and Compliance for Audits and Reviews*”, *Limited liability Partnership – A Complete Resource Book*”, and “*Accounting Standards and CARO*”.