

Company Auditor Series – Version 2.0

Chapter 2 - Qualifications & Disqualifications



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP

Namaste

In Chapter 2 of this version 2.0 series, we would discuss the qualification and disqualifications of an auditor. Unless a person is qualified **and** is not disqualified, he/she/it cannot hold the office of 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 a Chartered Accountant.

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 CA 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 envisages 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

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on approval by MCA on 1st July 2021. ICAI has issued Guidelines for Formation of Multi-disciplinary Partnership (MDP) effective from 8th July 2021, which was later amended by Council on 4th September 2023. According to it, members of following professional bodies have been permitted to become a partner under Regulation 53B read with Regulation 190 of the ICAI Regulations as on date:

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

The ICAI is under process to enable MDP registration on its Self Service Portal (SSP).

To summarize, the following are qualified to be appointed as an auditor of a company:

1. An individual being Chartered Accountant in Practice
2. A Sole Proprietorship Firm where the sole proprietor is a Chartered Accountant in Practice
3. A Partnership Firm, whereof all the partners are Chartered Accountants practicing in India.
4. A Limited Liability Partnership (LLP), whereof all the partners are Chartered Accountants practicing in India.
5. A Partnership Firm being Multi-disciplinary Partnership (MDP), whereof majority partners are Chartered Accountants practicing in India

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6. A Limited Liability Partnership (LLP) being Multi-disciplinary Partnership (MDP), whereof majority partners are Chartered Accountants practicing in India

However, in an MDP, only the partners who are Chartered Accountants are authorized to act and sign on behalf of the firm / LLP 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/she/it cannot be appointed as an auditor of a company. The sub-section (3) of section 141 is to be read along with Rule 10 of Companies (Audit and Auditors) Rules 2014. For better understanding, these disqualifications may be divided into following categories:

1. Absolute disqualification.
2. Disqualification based on relationship.
3. Disqualification based on conflict of interest.
4. Disqualification based on nature of services rendered.

1. 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 firm where majority of partners are not practicing in India – [Proviso to S. 141(1)].

For example, a Firm having three partners out of which two partners are practicing outside India would not be qualified to be appointed as an auditor of any company.

2. A Body Corporate, other than a Limited Liability Partnership (as LLP is a body corporate) – [S. 141(3)(a)].

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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

Key Management Personnel (KMP) as per section 2(51) would mean:

- Chief Executive Officer
 - Managing Director
 - Manager
 - Company Secretary
 - Chief Financial Officer
 - Such other Officer, not more than one level below the directors who is in whole time employment, designated as KPM by the Board
- d. Any person in accordance with whose directions or instructions any director(s) or Board is accustomed to act.
4. A person in full-time employment elsewhere - [S. 141(3)(g)].

It may seem that a Chartered Accountant who is not in full time employment is not disqualified to be appointed as an auditor. 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 cannot be appointed as an auditor, unless specific prior approval is obtained from ICAI.

5. 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

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appointment in a private company, the following would not be counted in the limit of 20 Companies:

- e. One Person Companies (OPC)
- f. Dormant Companies
- g. Small Companies
- h. Private Companies having paid-up share capital less than Rs. 100 Crores
- i. Foreign Companies [as they are not Company as per definition given u/s 2(20)]
- j. 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 a member has to additionally comply with the limits 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.*

- 6. 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)].
- 7. Though not disqualified under section 141(3), but chartered accountant or a firm if debarred from being appointed as auditor by National Financial Reporting Authority (NFRA) under section 132(3)(c)(B) of the Act, cannot be appointed as auditor for the period for which he/she/it is debarred by NFRA.
- 8. Further, though not under the Companies Act 2013, but SEBI for listed companies and ICAI for all statutory audit mandates Peer Review in a phased manner. Hence an auditor should have a valid Peer Review certificate to conduct statutory audits post the date mentioned in below table:

Phase	Category of Firms covered for Mandatory Peer Review	Date from which Peer Review is Mandatory
I	Firms which have undertaken Statutory Audit of listed	1st April 2022

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	enterprises	
II	<ul style="list-style-type: none"> • Firms which have undertaken Statutory Audit of unlisted public company having: <ul style="list-style-type: none"> ○ paid-up capital of not less Rs. 500 Crores, or ○ annual turnover of not less than Rs. 1000 crores, or ○ in aggregate, outstanding loans / debentures / deposits of not less than Rs.500crs. as on 31st March of preceding financial year <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Firms having 5 or more partners. 	<p>1st July 2024</p> <p>extended from</p> <p>1st April 2023</p>
III	<ul style="list-style-type: none"> • Firms which have undertaken the Statutory Audit of: <ul style="list-style-type: none"> ○ entities which have raised funds from public / banks / FI over Rs. 50 Crores during period under review, or ○ body corporate including trusts which are covered under public interested entities <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Firms having 4 or more partners. 	<p>1st January 2025</p> <p>extended from</p> <p>1st April 2024</p>
IV	<ul style="list-style-type: none"> • Firms conducting audits of branches of Public Sector banks. <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Firms having 3 or more partners and rendering assurance services 	<p>1st April 2025</p>

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2. Disqualification based on relationship.

A person would be disqualified to be appointed or re-appointed as an auditor based upon certain specified relationships. He / she/it would be disqualified 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
 - ii. Key Managerial Personnel (KMP)

[S. 141(3)(f)]

Relative as per section 2(77) would mean:

- Members of HUF
- Husband and wife
- Father (including stepfather)
- Mother (including stepmother)
- Son (including stepson)
- Son's wife
- Daughter
- Daughter's husband
- Brother (including stepbrother)

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- Sister (including stepsister)

3. Disqualification 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 (auditor) 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. its associate company, or
 - e. its joint venture company [as per s. 2(6)], or
 - f. subsidiary of such holding company

[S. 141(3)(d)(i)]

2. A person's (auditor's) relative is holding any security or interest in the company of face value exceeding Rs. 1 Lakh - [Proviso to S. 141(3)(d)(i) read with Rule 10(1)].

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 has to be taken by the auditor within 60 days of such acquisition or interest to not be disqualified as an auditor.

3. A person's (auditor's) relative is holding any security of or interest (without any minimum exemption limit) in company's:
 - a. subsidiary, or
 - b. holding company, or
 - c. associate company, or

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- d. joint venture company [as per s. 2(6)], or
- e. subsidiary of such holding company

[S. 141(3)(d)(i)]

4. 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. its associate company, or
- e. its joint venture company [as per s. 2(6)], or
- f. subsidiary of such holding company [S. 141(3)(d)(ii) read with Rule 10(2)]

5. 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. its joint venture company [as per s. 2(6)], or
- f. subsidiary of such holding company

[S. 141(3)(d)(iii) read with Rule 10(3)]

6. A person, or the firm whether directly or indirectly, has business relationship of prescribed nature with:

- a. the company, or
- b. its subsidiary, or

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- c. its holding company, or
- d. its associate company, or
- e. its joint venture company [as per s. 2(6)], or
- f. subsidiary of such holding company, or
- g. subsidiary of such associate company, or
- h. subsidiary of such joint venture company [as per s. 2(6)]

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)]

4. Disqualification based on nature of 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 or

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d. its joint venture company [as per s. 2(6)]

[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
- 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 trademark 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 trademark or brand is used by the firm or any of its partners.

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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.

I hope this document is of use to you. I thank CA. Shreya Jain, Ms. Sakshi and Ms. Riya in assisting me to update this chapter of the series. Your suggestions and comments would be highly appreciated.

Best Regards

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9th April 2024

EARLIER CHAPTER

<i>Chapter No.</i>	<i>Title</i>	<i>Link</i>
1	Types of Audits	https://lunawat.com/Uploaded Files/Attachments/F_18291.pdf

(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)

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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 is qualified as an 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 and post qualification certificate course on Valuation of ICAI.

He is elected as Central Council Member of ICAI for 2 consecutive terms from 2019 to 2025. Apart from being member in more than 25 committees / groups / directorates of ICAI, and other Bodies he is / was:

- Chairman of Accounting Standards Board (ASB) of ICAI for 3 years from 2022 to 2025
- Deputy Convenor of Centre for Audit Quality Directorate (CAQD) for 2024-25
- Convenor - Members & Students (Grievances Handling & e-Sahayata) Directorate for 2023-24
- Chairman of Accounting & Finance Services Sectional Committee SSD-12 under the Services Sector Division Council (SSDC) of Bureau of Indian Standards (BIS) for 2023-24
- Chairman of Expert Advisory Committee (EAC) of ICAI for Year 2022-23
- Co-Chairman of Corporate Affairs Committee of PHDCCI for the year 2022-23
- Chairman of Committee on International Taxation (CITAX) of ICAI for 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) of ICAI for the year 2021-22.
- Member of Quality Review Board (QRB) for 2 terms from 2020 to 2026.
- Member of the SME Implementation Group (SMEIG) of IFRS Foundation, UK for 3 years from 2023 to 2026.
- Chairman of Valuation Standards Board (VSB) of ICAI for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up of ICAI for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) of ICAI for 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) of ICAI for 2 years from 2019 to 2021.
- Vice-Chairman of Committee on International Taxation (CITAX) of ICAI for Year 2019-20.
- Member of ICAI Disciplinary Committee for the year 2020-21.

He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all

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professional queries which has given more than 36000 answers since its launch in mid of year 2018.

He has delivered more than 1700 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 Senior Partner of M/s LUNAWAT & CO., Chartered Accountants. 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 Financial Reporting Review Board (FRRB) and Quality Review Board (QRB) and Peer Reviewer with Peer Review Board (PRB).

He has authored books on “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, *Limited liability Partnership – A Complete Resource Book*, “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, “Importance of LLP after Companies Act, 2013”, “Chartered Accountant’s Documentation and compliance under Companies Act 2013, Peer Review and Quality Review”, “Limited Liability Partnership – Law, Procedures and Taxation”, “Documentation for Chartered Accountants”, “Limited Liability Partnership – Law and Procedures with Ready Reckoner”, “Fringe Benefit Tax & Banking Cash Transaction Tax”, “Documentation for Audits” and “Accounting Standards and CARO”.

He has written various articles on taxation, company law and audit in various journals. He has vast practical experience in income tax, audit, corporate laws and LLP.