

APPOINTMENT OF AUDITORS UNDER COMPANIES ACT, 2013

CA NITIN N. B.COM. FCA DISA

SCOPE

- Legal Framework
- Eligibility
- Appointment Procedures
 - First Auditor
 - Subsequent Auditor
 - Auditor appointed in Casual Vacancy
- Penal Provisions
- Summary

LEGAL FRAMEWORK

Section 141 Eligibility, Qualifications and Disqualifications of Auditors

Section 139 Appointment of Auditors

Chapter X The Companies (Audit and Auditors) Rules, 2014

Amendment Notifications as issued from time to time

SECTION 141 - ELIGIBILITY, QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS

Basic Qualification

Individual

- Chartered Accountant

Firm

- Majority of partners practising in India are qualified for appointment

SECTION 141 CONTINUED...

Who are not Eligible?

- Body Corporate [141(3)(a)]
- Officer or employee [141(3)(b)]
- Partner or Employee of Officer or Employee [141(3)(c)]
- a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of > twenty companies [141(3)(g)] *other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees*

SECTION 141 CONTINUED...

Who are not Eligible?

[141(3)(d)(i)] A person who, or his relative or partner

- Holds Security/Interest in Company/Holding/Associate/Fellow Subsidiary
- Relative may hold up to Face Value not exceeding Rupees One Lakh
- Corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest

SECTION 141 CONTINUED...

Analysis of Section 141(3)(d)

- Holding by **all** Relatives exceeding One Lakh?
- 'A' Relative – Singular/Plural?
- Indirect Interest through Holding Company's stake in subsidiary
- Who is a Relative?

RELATIVE AS PER COMPANIES ACT, 2013 – SECTION 2(77)

Members of HUF

Sister (including Step-Sister)

Husband and Wife

Brother (including Step-Brother)

Father (including Step-Father)

Daughter's husband

Mother (including Step-Mother)

Daughter

Son (including Step-Son)

Son's Wife

SECTION 141 CONTINUED...

Who are not Eligible?

[141(3)(d)] A person who, or his relative or partner

- Indebted in excess of rupees five lakh [subclause (ii)] C/H/A/FS
- has given a guarantee or provided any security in connection with the indebtedness of any third person in excess of one lakh rupees [subclause (iii)] C/H/A/FS

SECTION 141 CONTINUED...

Who are not Eligible?

[141(3)(e)] Direct or Indirect Business Relationship except

- professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949
- Arm's Length Transaction by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses

SECTION 141 CONTINUED...

Who are not Eligible?

- [141(3)(h)] convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction
- [141(3)(i)] directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

SECTION 139(6) - APPOINTMENT OF FIRST AUDITORS

- Term of Appointment – Till Conclusion of First AGM
- Manner of Appointment
 - By Board within 30 days of date of Registration
 - If Board fails to appoint, inform members and appoint within 90 days in EGM
- Certificate from Auditor Required?
sub-section (6) is silent!

SECTION 139(I) - APPOINTMENT OF AUDITORS

- Term of Appointment – From Conclusion of First AGM till Conclusion of Sixth AGM
- Manner of Appointment – As per Rule 3
- Consent of Auditor – As per Rule 4
- Company should inform Registrar within 15 days (ADT-1)

RULE 3 - MANNER OF APPOINTMENT

- AUDIT COMMITTEE/BOARD SHALL TAKE INTO CONSIDERATION QUALIFICATIONS AND EXPERIENCE COMMENSURATE WITH SIZE AND REQUIREMENTS OF THE COMPANY
- RECOMMEND TO MEMBERS IN AGM FOR APPOINTMENT
- IF BOARD AND AUDIT COMMITTEE DISAGREE, BOTH MAY SEPARATELY RECOMMEND TO MEMBERS
- RATIFICATION OMITTED W.E.F. 07.05.2018

CERTIFICATE FROM PROPOSED AUDITOR

- (a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (b) the proposed appointment is as per the term provided under the Act;
- (c) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (d) the list of proceedings 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.

CERTIFICATE ISSUED MEANS UDIN IS REQUIRED

- FAQ B.1 – IT IS MANDATORY TO OBTAIN UDIN FOR ALL CERTIFICATES ISSUED WHERE THE FINANCIAL INFORMATION/**RELATED CONTENTS** IS CERTIFIED AS TRUE AND FAIR/TRUE AND CORRECT
- ILLUSTRATION NO. XXX (OTHERS) IN TABLE
- FAQ D.10 – NOT GENERATING UDIN FOR MANDATORY DOCUMENTS MAY ATTRACT DISCIPLINARY PROCEEDINGS AS PER THE SECOND SCHEDULE PART II
- ***KINDLY GENERATE UDIN FOR ELIGIBILITY CERTIFICATE!***

SECTION 139(5) APPOINTMENT OF AUDITORS IN GOVT. COMPANIES

- APPOINTED BY CAG
 - FIRST AUDITOR – WITHIN 60 DAYS OF REGISTRATION. ELSE, BOARD WITHIN NEXT 30 DAYS. IF NOT, MEMBERS WITHIN 60 DAYS IN EGM.
 - SUBSEQUENT AUDITORS – WITHIN 180 DAYS FROM COMMENCEMENT OF FY

SECTION 139(2) – ROTATION OF AUDITORS

- ❖ Listed Companies
- ❖ Unlisted Public Companies having paid up share capital of rupees 10 crore or more
- ❖ Private Ltd Companies having paid up share capital of rupees 50 crore or more
- ❖ All Companies having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more.

SECTION 139(2) – ROTATION OF AUDITORS

MAXIMUM TERM WITHOUT ROTATION, COOLING

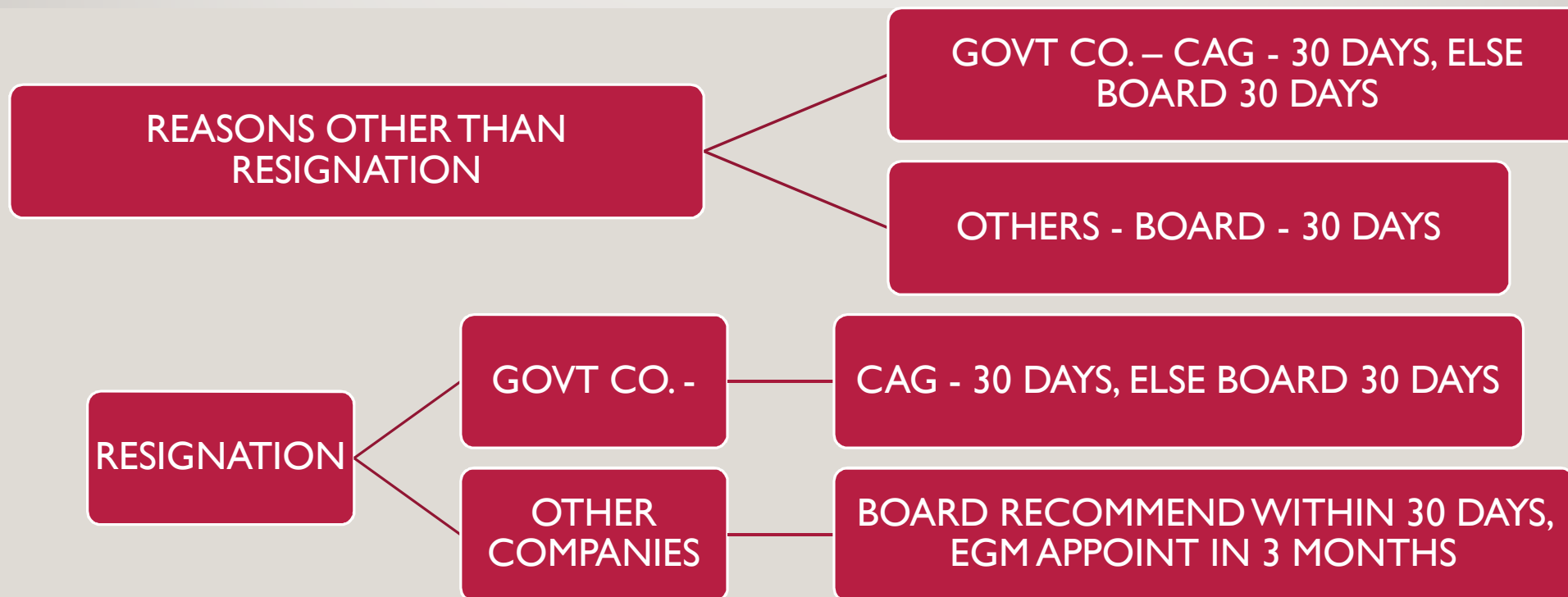
Individual

• 5 CONSECUTIVE YEARS, 5 YEARS COOLING

Firm

• 10 CONSECUTIVE YEARS, 5 YEARS COOLING

SECTION 139(8) – APPOINTMENT DUE TO CASUAL VACANCY (TILL CONCLUSION OF ENSUING AGM)



POINTS FOR DISCUSSION

- If Appointment is made on account of Casual Vacancy,
Is it required to obtain No Objection from previous auditor?

Yes

If resignation is not intimated with RoC, can incoming auditor accept appointment?

Yes, provided Resignation Letter is available and accepted by the company

SECTION 139(10) – STOP-GAP PROVISION

- Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.
- Does it override Section 139(2)?

SECTION 147 – PUNISHMENT FOR CONTRAVENTION

- COMPANY – Rs. 25,000 – Rs. 5 Lakhs
- EVERY OFFICER IN DEFAULT – Imprisonment up to 1 year and/or Rs. 10,000 – Rs. 1 Lakh
- AUDITOR – IF NOT WILFUL DEFAULT - Rs. 25,000 – Rs. 5 Lakhs OR 4 TIMES REMUNERATION WHICHEVER IS LOWER. Else, Imprisonment up to 1 year and/or Rs. 50,000 – Rs. 25 Lakhs OR 8 TIMES REMUNERATION WHICHEVER IS LOWER

FORM ADT-I

- WHETHER REQUIRED FOR FIRST AUDITOR?
- CIN
- EMAIL
- WHETHER ROTATION APPLICABLE?
- NATURE OF APPOINTMENT
- JOINT AUDIT OR NOT
- AUDITORS DETAILS
- PREVIOUS TENURE IF ANY
- DETAILS OF CASUAL VACANCY, IF ANY
- BOARD RESOLUTION DETAILS
- ATTACHMENTS
 - WRITTEN CONSENT
 - RESOLUTION
 - APPT. LETTER (OPTIONAL)

TABLE OF FILING FEE

Nominal Share Capital

Less than 1,00,000

1,00,000 to 4,99,999

5,00,000 to 24,99,999

25,00,000 to 99,99,999

1,00,00,000 or more

Fee applicable

Rupees 200 per document

Rupees 300 per document

Rupees 400 per document

Rupees 500 per document

Rupees 600 per document

TABLE SHOWING ADDITIONAL FEE FOR ADT-I

Period of delays

Up to 15 days (sections 93, 139 and 157)

More than 15 days and up to 30 days

More than 30 days and up to 60 days

More than 60 days and up to 90 days

More than 90 days and up to 180 days

More than 180 days and up to 270 days

Additional Fee

One Time

2 times of normal fees

4 times of normal fees

6 times of normal fees

10 times of normal fees

12 times of normal fees

MCQ'S

MR A, RELATIVE OF CA X, HOLDS SHARES WORTH RS. 50,000 ISSUED AT 50% PREMIUM OF RS. 5/SHARE IN Y LTD., A SUBSIDIARY OF Z LTD. COMMENT WHICH IS TRUE.

- A. CA X CAN BE APPOINTED AS AUDITOR OF BOTH Y LTD AND Z LTD.
- B. CA X CAN BE APPOINTED AS AUDITOR OF Y LTD ONLY.
- C. CA X CAN BE APPOINTED AS AUDITOR OF Z LTD ONLY.
- D. CA X CANNOT BE APPOINTED AS AUDITOR OF BOTH Y LTD AND Z LTD.

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BASIS FOR CONCLUSION

- Proviso to Section 141(3)(d)(i) states as under:
- *Provided that the relative may hold security or interest in the company of face value not exceeding as may be prescribed*
- The proviso does not apply to shareholding in subsidiary and we need to read the sub-clause (i) to Section 141(3)(d) to interpret that a relative holding even one share in subsidiary would disqualify the auditor for appointment in Holding Company but the said shareholding being less than Face Value Rupees 1 Lakh, the appointment in the subsidiary company would remain valid!!!

CA SALIM HOLDS 1,000 EQUITY SHARES OF A LTD WHERE HIS SON HOLDS 9,000 SHARES @ RS. 10 PER SHARE. COMMENT WHICH IS FALSE.

- A. CA SALIM CAN BE APPOINTED AS AUDITOR OF A LTD ONLY IF HIS SON WITHDRAWS SHARES WITHIN 60 DAYS.
- B. CA SALIM CAN BE APPOINTED AS AUDITOR OF A LTD IF HE WITHDRAWS SHARES.
- C. CA SALIM CANNOT BE APPOINTED AS AUDITOR OF A LTD EVEN IF HIS SON WITHDRAWS SHARES WITHIN 60 DAYS.

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- C. CA SALIM CANNOT BE APPOINTED AS AUDITOR OF A LTD EVEN IF HIS SON WITHDRAWS SHARES WITHIN 60 DAYS.

BASIS FOR CONCLUSION

As per proviso to Section 141(3)(d)(i), relatives are permitted to hold securities up to prescribed limit of Rupees One Lakh but the same does not apply to Auditor's Shareholding in the company. Hence, a person cannot be appointed as Auditor of a Company if he holds any security or interest in the company.

CA NITIN PERFORMS BOOK KEEPING SERVICES FOR C LTD WHICH HOLDS 26% STAKE IN S LTD. COMMENT WHICH IS TRUE.

- A. CA NITIN CAN BE APPOINTED AS AUDITOR OF S LTD.
- B. CA NITIN CAN BE APPOINTED AS AUDITOR OF S LTD ONLY IF HE RELINQUISHES THE ASSIGNMENT WITH C LTD.
- C. CA NITIN CAN BE APPOINTED AS AUDITOR OF S LTD SINCE C LTD IS AN ASSOCIATE OF S LTD.
- D. CA NITIN CANNOT BE APPOINTED AS AUDITOR OF S LTD SINCE S LTD IS AN ASSOCIATE OF C LTD.

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BASIS FOR CONCLUSION

- Both Sections 143(3)(i) and 144 do not mention anything about services provided to the Associate Companies and hence there is nothing that prohibits a person from being appointed as Auditor of a company if he/she renders services as mentioned in Section 144 to the Associate Companies.
- *However, the Auditor shall take into consideration the possible Conflict of Interest, Compromise on Independence etc, before accepting the engagement.*

CA SUNDAR IS APPOINTED AS AUDITOR OF Z LTD ON 01ST MAY 2019 BASED UPON RECOMMENDATION BY BOARD ON 1ST APRIL 2019. LATE FEE FOR FORM ADT-1 APPLIES FROM WHICH DATE?

- A. 17th May 2019
- B. 15th May 2019
- C. 16th May 2019
- D. 16th April 2019

CA SUNDAR IS APPOINTED AS AUDITOR OF Z LTD ON 01ST MAY 2019 BASED UPON RECOMMENDATION BY BOARD ON 1ST APRIL 2019. LATE FEE FOR FORM ADT-1 APPLIES FROM WHICH DATE?

- A. 17th May 2019
- B. 15th May 2019
- C. 16th May 2019
- D. 16th April 2019

BASIS FOR CONCLUSION

Late Fee applies from the end of 15 Days from the date of AGM/EGM and the date of GM should also be included in calculating the number of days.

AZ ASSOCIATES LLP HAS 3 PARTNERS IN INDIA WITH FULL-TIME COP, 3 NON-CA PARTNERS AND 7 PARTNERS IN UAE. STATE WHICH IS TRUE.

- A. THE FIRM CAN BE APPOINTED AS AUDITOR UNDER COMPANIES ACT, 2013
- B. THE FIRM CANNOT BE APPOINTED AS AUDITOR UNDER COMPANIES ACT, 2013 SINCE MAJORITY PARTNERS ARE OUTSIDE INDIA
- C. THE FIRM CANNOT BE APPOINTED AS AUDITOR UNDER COMPANIES ACT, 2013 SINCE IT IS A MULTI-DISCIPLINARY FIRM
- D. THE FIRM CANNOT BE APPOINTED AS AUDITOR UNDER COMPANIES ACT, 2013 SINCE MAJORITY PARTNERS IN INDIA ARE NOT ELIGIBLE FOR APPOINTMENT

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BASIS FOR CONCLUSION

- Proviso to Section 141(I) reads as under:
- *Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.*
- Since it requires minimum 4 CA partners to get the majority, in the aforesaid situation, the firm cannot be appointed as Auditors of a Company.

QUESTIONS?

THANK YOU
