

COMPANY AUDIT

(Audit & Auditors)

Sections:

Imp (139): Appointment of
 → First auditor
 → Subsequent auditor
 → Casual vacancy Auditor

(+)

Rotation of Auditor

140: Auditor's
 → Removal
 → Resignation
 → company
 → Tribunal

Imp (141): Eligibility, Qualification, Disqualification & subsequent disqualification

142: Auditor's Remuneration

143: Rights & Duties of Auditor

144: Prohibited services to
 → company
 → Holding by auditor
 → Subsidiary

145: Duty to sign Auditor's Report

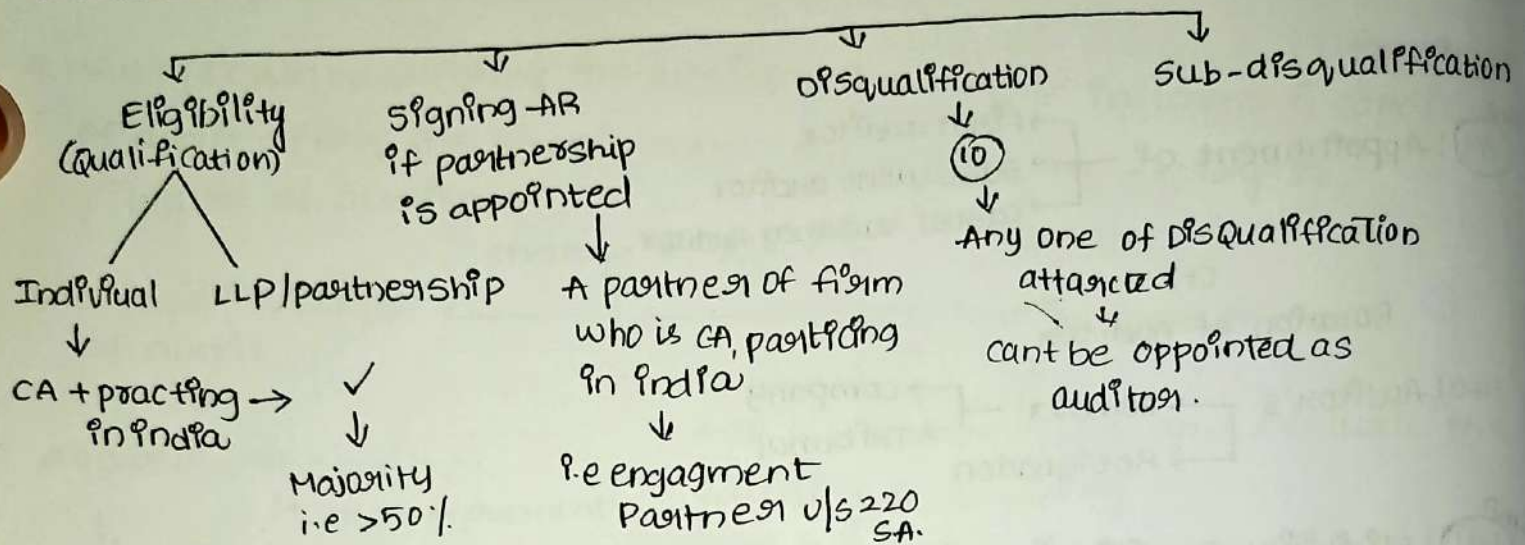
146: Right/Duty to attend GM
 → AGM (Annual GM)
 → EGM (Extraordinary GM)

Self study { 147: Punishments & penalties
 → company
 → Officer
 → Auditor

148: Cost Accounting Records

& Cost Audit Applicability & Procedure

177: Audit committee & its functions

Section 141:

★ 141(3): Disqualification to be company auditor.

1) A body corporate [other than LLP]. [LLP is qualified & Eligible]

* Just the word "& CO" doesn't mean a body corporate.

Eg: ABC & CO CA → Partnership firm
↓
Partners.

2) Any officer or employee of ^{that} company
↓
fulltime (or) parttime

3) Any employee or partner of officer or employee of company.

4) Any person whose relative is either

Director
↓
BOD

(or)

employed as involved in MGMT.

- Director (or)
- KMP (officer).

* Employee's relatives are qualified.

* Officer's relatives are disqualified.

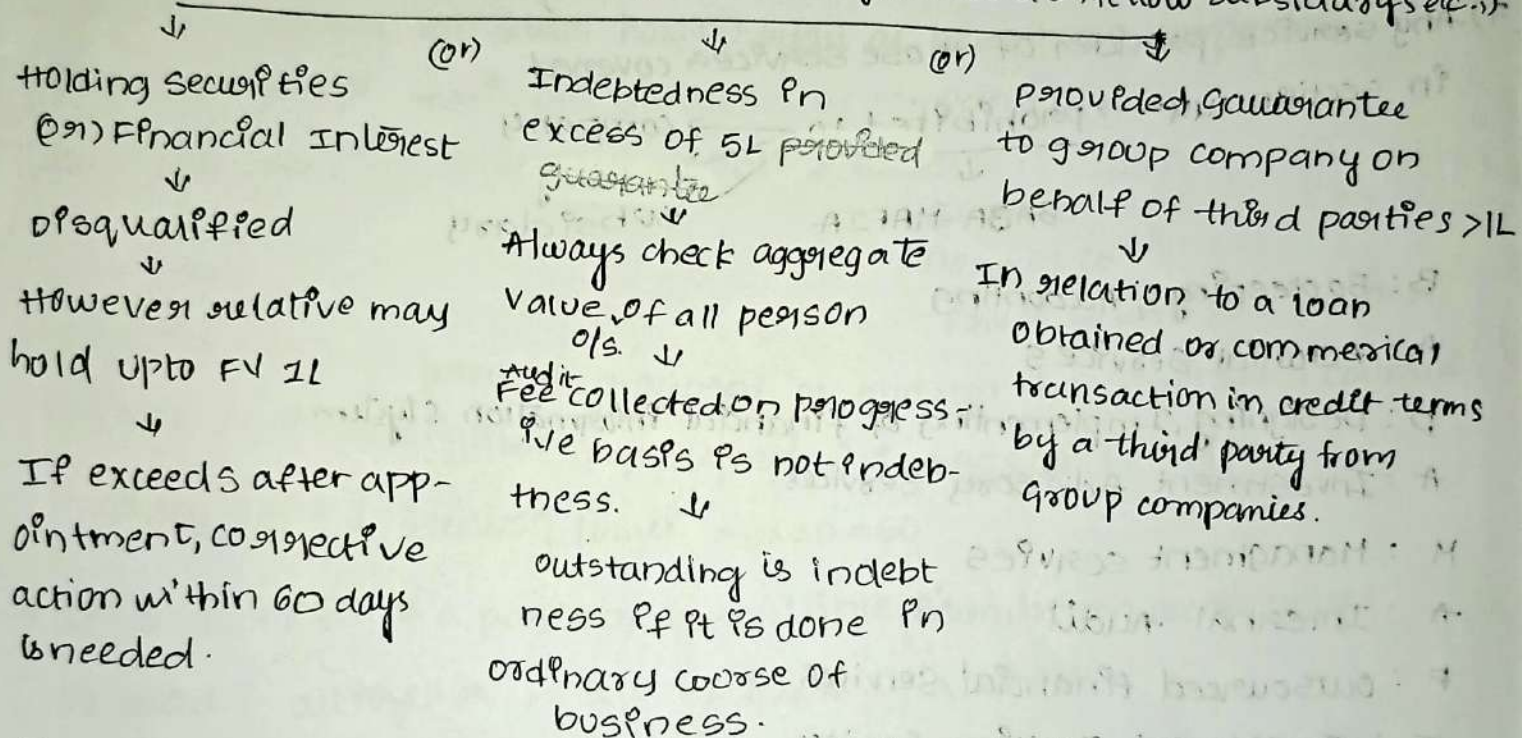
Relative ① Members of HUF

② Husband and wife

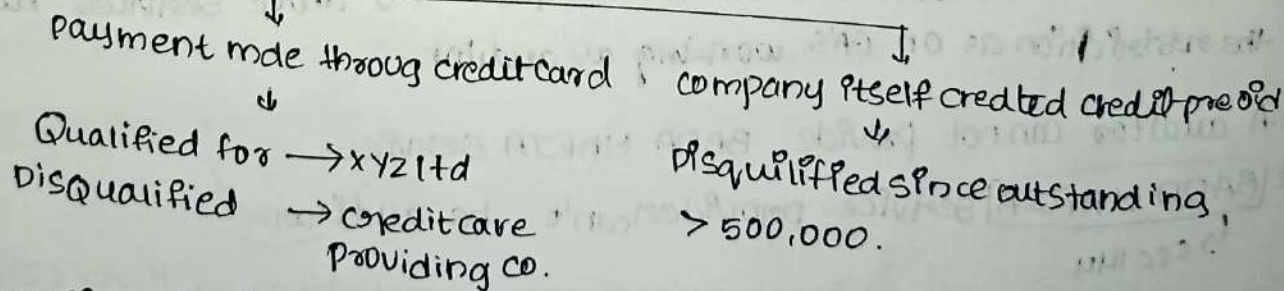
③ A person is related to other as father, mother, brother & sister (including step), son, daughter (including step son not daughter), son's wife, daughter's husband.

- ③. - Father & Mother (Inc. step)
 - Brother & sister (Inc. step)
 - son (Inc. step)
 - daughter (Not including step)
 - son's wife
 - daughter's husband.

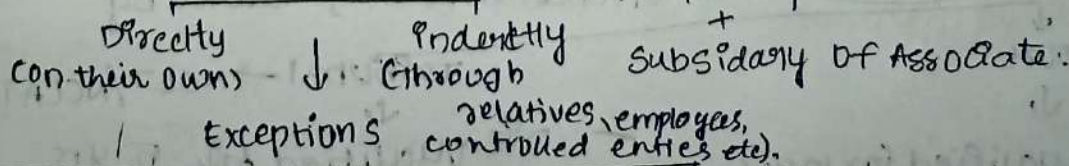
5) Any person or partner or relative has financial relation by way of with group companies (Holding, subsidiary, Associate, fellow subsidiary etc.)



Example: Mr. A purchased goods from XYZ Ltd for worth of 6Lac on a credit term of 3 months.



6) Person or firm business relationship → Group companies



Auditors point of view

Clients prospective

clients prospective: Transactions that are in the ordinary course of business of group company and executed at armslength price. 27-04-16

Auditors point of view: Any services that are permitted to be provided by auditor, i.e any services not covered in section 144 of companies Act.
[eg: CSR expenditure certification, limited Review, Network certificate etc.]

7) Any service provider of those services covered in section 144 → prohibited to → company, holding subsidiary
↓
BADA-MAFIA

B: Bookkeeping & Accounting

A: Actual Services

D: Designing, Implementing of financial information system.

A: Investment Advisory Services.

M: Management services

A: Internal Audit

F: Outsourced financial services

I: Investment Banking Services

A: Any other services as may be prescribed.

* There is no restrictions on CA's in providing above services but the restriction as on CA's working as auditor.

* A auditor can not provide BADA MAFIA services

* BADA MAFIA service provider can't be auditor.
→ section 144

8) Any person convicted ^{proven case} for an offence involving fraud by
↓
court
↓
disqualified for 10 yrs from date of conviction
Tribunal → NCLT/NCLAT
↓
disqualified for 5 yrs from date of conviction

↓
In any company

↓
In any company

* If tribunals order is challenged in court & even court ordered for conviction, disqualification will be ten years from tribunals conviction date.

a) Any person who is a full time employee elsewhere.

↓
including group companies

* part time employee is qualified.

(or)

10) A person ~~what~~ (or) individual holding audit of more than 20 companies.

[a CA can accept maximum 20 audits of company]

however → ceiling limit not applicable to - OPC

- Small CO

- Dormant CO

- Private CO with PSC < 100 Cr.

* If a partnership firm is proposed as auditor the limit shall counted for each partner eligible & qualified i.e. ABC & CO PF with
3 CAs + P + I ceiling limit = $3 \times 20 = 60$

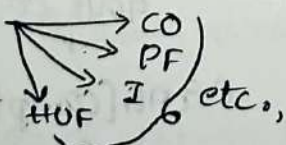
* If a CAs + P + I is a partner in multiple firm, he can accept only 20 audits all together in all the firms as a whole

Eg: ABC & CO → ~~40~~

DEF & CO → ~~40~~

20 ✓

* A tax auditor can accept maximum 60 tax auditor of any person



* Limit of 20 shall be counted even for branch / limit audit separately.

Eg: ABC HUF 20. has 30 branches of which 20 are audited by A and 10 are by B.

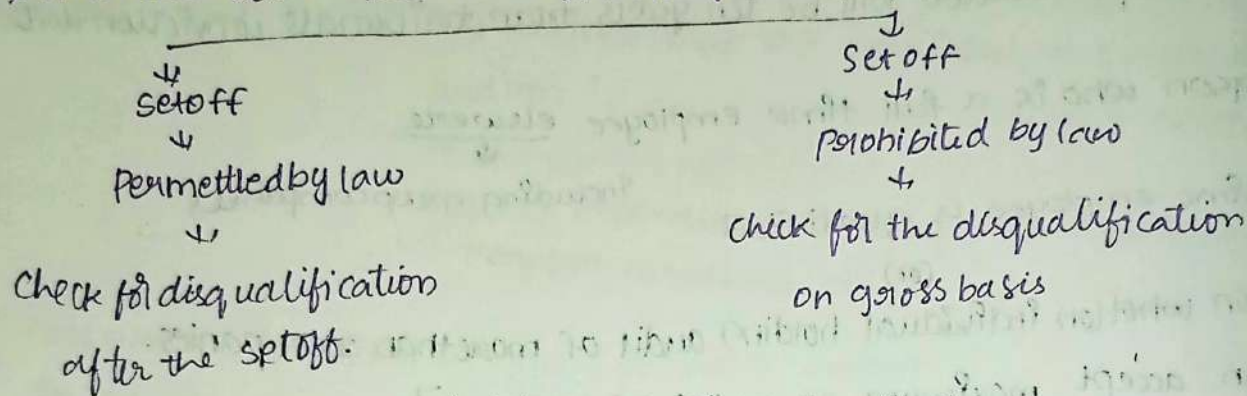
ceiling limit of A left over = $20 - 1$

B = $20 - 1 = 19$

* Count above shall be based on not the no. of branch but on no. of auditors appointed.

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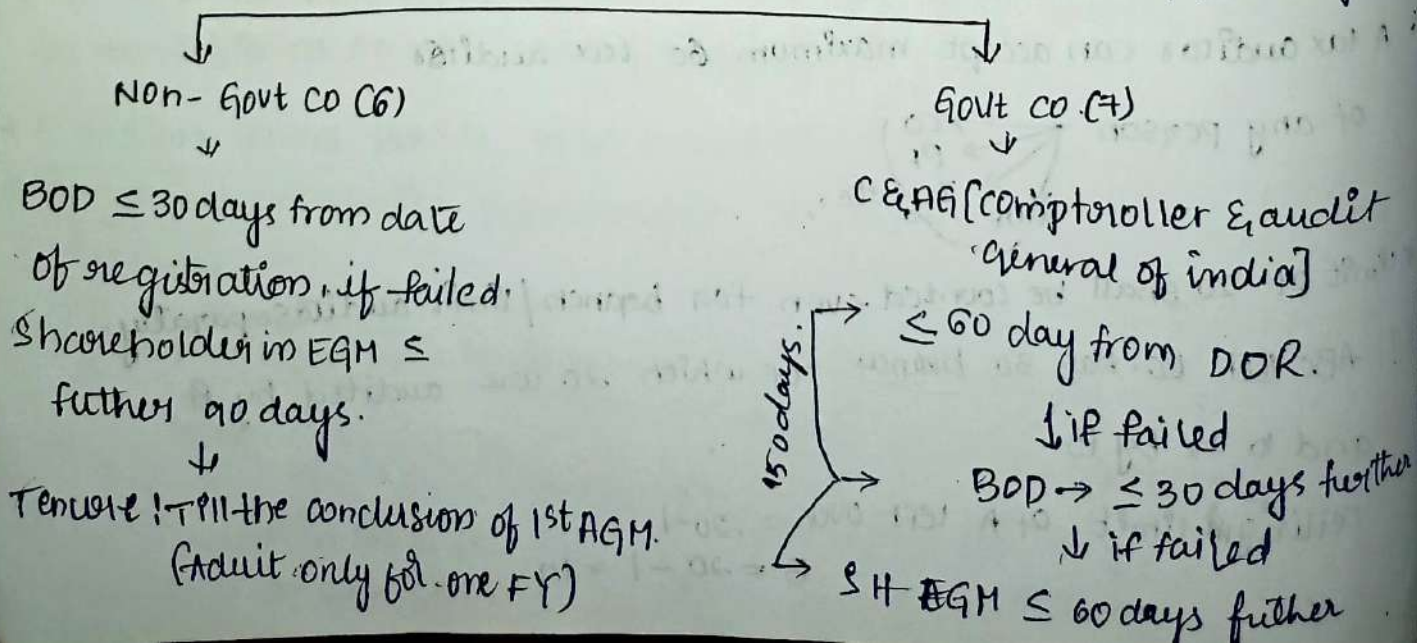
* A CA has both receivable and payable



141(4): A auditor after his appointment but before the expiry ~~of 10 years~~ of tenure either attracts - Irregularity (or) - disqualification

we say deemed to vacate the office of auditor immediately except relative $FR > 1,00,000$
 ↓
 Treated as "casual vacancy". 60 days time
 ↓
 Appointment of new auditor refer sec. 139(8).

Section 139(6&7): Appointment of first auditor → Auditor appointed for 1st financial year.



Tenure for Govt co: Till the conclusion of 1st AGM.

01-05 19

Section 139 (1 & 5): Appointment of subsequent auditor

Non Govt co

Govt co

↓

↓

27th of Sep.

Auditor shall be appointed in 1st AGM

↓

shall hold the office till the conclusion of 6th AGM & thereafter every 6th AGM.

C&AG shall appoint ≤ 180 days from start of the FY.

↓

Tenure: Till the conclusion of next AGM conducted in the subsequent FY.

↓

whether to reappoint the outgoing auditor or to appoint a new auditor is in the hands of C&AG.

Audit shall be conducted for 5 financial years.

↓

the right of removal & Resignation shall be covered Section 140.

139(8): Appointment of casual vacancy Auditor;

↓

Any vacancy in office of auditor after the appoint before of tenure reasons like

- Ineligibility
- Disqualification, Removal, Resignation
- Death of Ind. Auditor
- Dissolution of Partnership firm.

Non Govt co

Govt co

↓

↓

OD ≤ 30 days of date of casual vacancy

C&AG $\rightarrow \leq 30$ days from CV

↓ if failed

Tenure: Till conclusion of Next AGM

BOA ≤ 30 days for the

Special permission for resignation

↓

conduct AGM or EGM for ratification of appointment within 3 months from date of Recommendation

If not approved
void ab initio

Tenure: Till the conclusion of Next AGM conduct in the FY.

whether to appoint the

- * Appointment of auditor is an ordinary business matter, if not concluded about appointment in any AGM. It shall be adjourned to next week same day, same time.
- * Form 'ADT-1' shall be filled to ROC by co with in 15 days informing appointment of auditor.

139(1): Procedure for appointing auditors:

- ① Audit committee constituted u/s 177 of CA, 2013 shall recommend the same ~~for~~ name of auditor to BOD after considering, the following:
 - Nature & size of business
 - Competence & capabilities of Auditor
 - Professional and legal litigations on audit, if any
 - Applicable law.

- ② If BOD disagree with audit committee recommendation, they shall refer back the case for reconsideration of audit committee



Further recommendation are accepted by BOA



Obtain a certificate of consent to be auditor from the proposed CA or the firm.



Recommend the same to shareholder to appoint in AGM.

Still the difference in opinion continues



139(2). Rotation applicable



Send the audit committee recommendation to shareholder along with the reason of disagreement by BOD.

139(2) Rotation not applicable



Send the BOD's own recommendation to shareholder along with the reasons of disagreement with audit committee recommendation



ultimate right to appointing auditor is with share holder in General Meeting

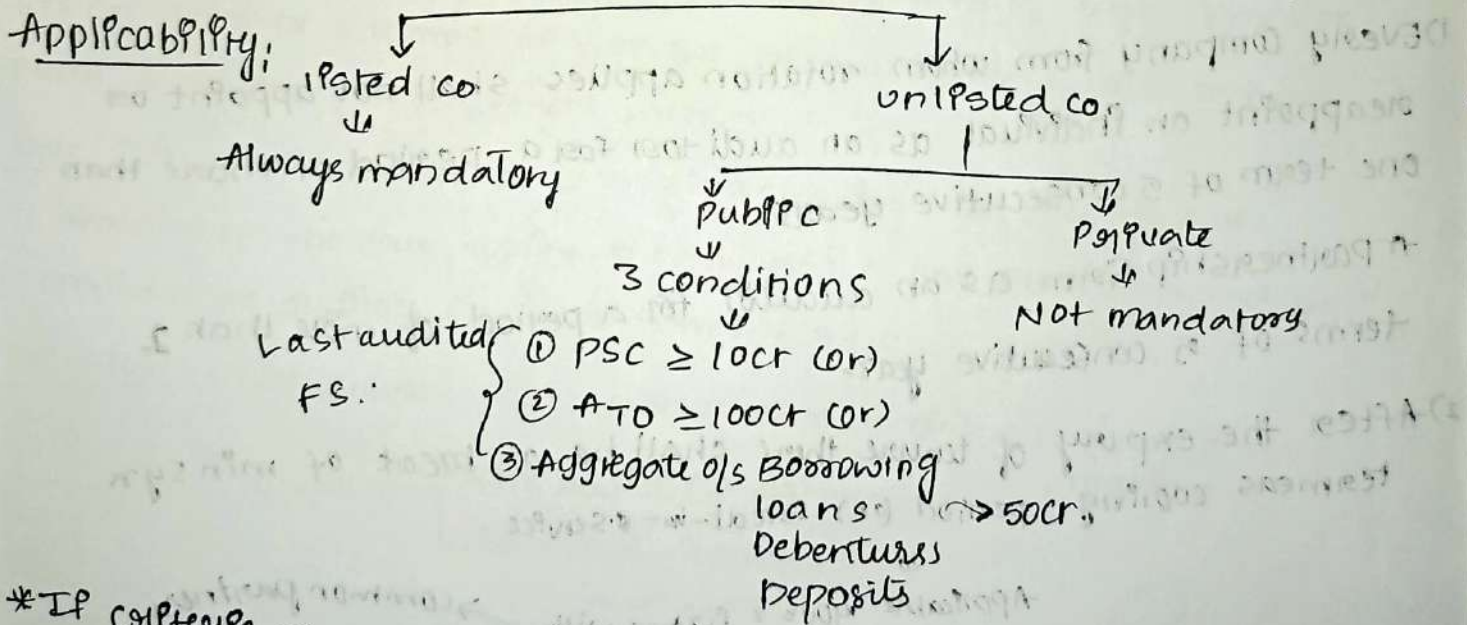
contents of auditor's certificate of consent:

- 1) consent to get appointed as auditor.
- 2) He is eligible and qualified to auditor.
- 3) Appointment is as per the provisions of Act.
- 4) Appointment is within the ceiling limit specified.
- 5) List of pending proceeding $\rightarrow$ Professional provided is true & correct.
 $\rightarrow$ legal

Section. 177; Audit committee:

Composition: Minimum three members $\rightarrow$ 2/3rd shall be independent directors or more
 $\rightarrow$ 1/3rd can be other directors or less.

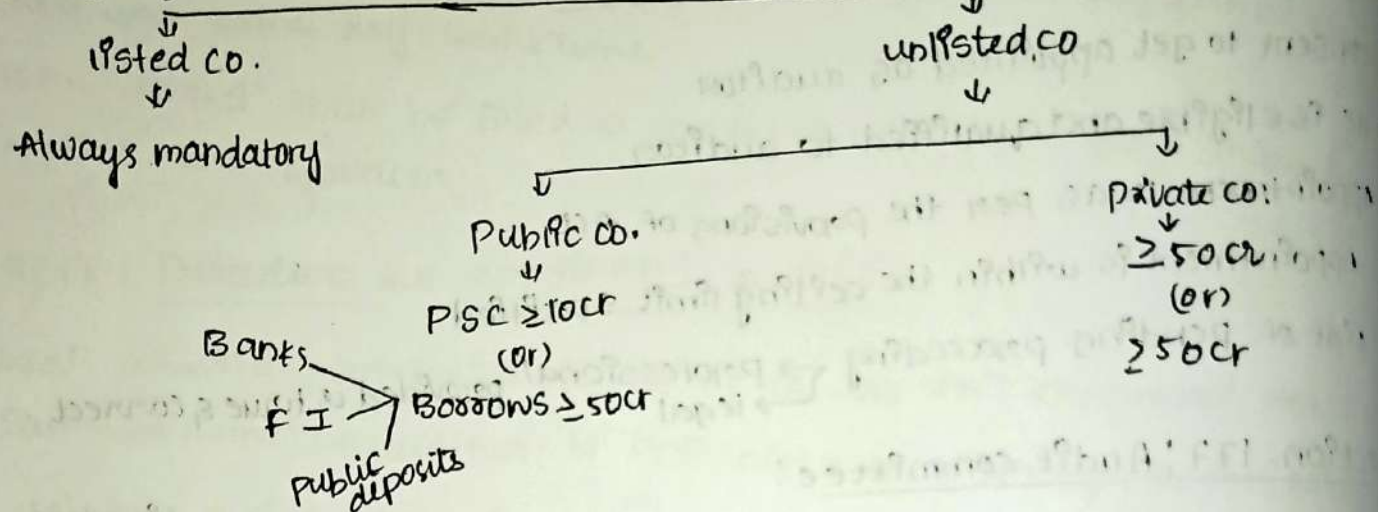
Functions of Audit Committee: Refer topic No. 22 in materia - 3.19 page.



*If criteria of applicability is not met for the 3 consecutive years, Audit company is not mandatory and can be removed on share holders choice.

Section 139(2): Rotation of Auditor!

Applicability:



* OPC, small co., govt co. → Rotation not applicable

Rotation:

1) Every company from whom rotation applies shall not appoint or reappoint an individual as an auditor for a period of more than one term of 5 consecutive years.

* Partnership firm as an auditor for a period of more than 2 terms of 5 consecutive years.

2) After the expiry of tenure there shall be a break of min 5 yrs term as cooling period (or) Break-in-service.

Applicable to 2 firms with common partners (or) common network (same brand name, trade name, common control)

* Rotation applies only to auditor appointed u/s 139(1) i.e. Subsequent auditor of NQC.

↓

FA & CVA → shall not come under rotation
 ↓ ↓ ↓
 139(6) 139(8) i.e., FA & CVA can be reappointed
 as SA for a next term of
 5 CY and 5+5 CY

Example:

M/A had completed a tenure of 5 years in PQR Hd. PQR is proposing to appoint ABC & Co. for a next term of 5 years can the appointment be valid.

Individual can be appointed maximum tenure 5 years partnership firm can be appointed maximum tenure 5+5=10 yrs common partner applies both the outgoing firm and even firm with the common partner

Given case even though M/A attracts cooling period of 5 yrs, still ABC & Co. still ABC & Co can be appointed for a further term of 5 yrs since a PF has an option of 2 terms of 5 CY. But SH may state resolve to have other than M/A as engagement partner.

Note: Plain reading of section conveys a meaning that once M/A is attaching CP, the same applies to even ABC & Co and ABC & Co shall not be appointed as auditor for next terms of 5 yrs.

Sec 139(3): (1) SH can/may pass a resolution to appoint more than one multiple

auditor —→ Joint Audit (SA 299)
 → Branch Audit (SA 600)
 ↳ Sec 143(8).

(2) SH can/may resolve to rotate the Engagement team (or) Engagement partner with in the same term & firm during the Engagement period.

Sec 139(4): Govt shall have power to prescribe rules in relation to rotation of auditor.

Sec 139(9): Where a retiring auditor can't be reappointed.

- (1) Ineligible (or) disqualified u/s 141
- (2) Attracting cooling period u/s 139(2), if applies
- (3) ceiling limit exceeds 20 company audits
- (4) Auditor did not issue a certificate as required u/s 139(1).
- (5) Retiring auditor expressing his unwillingness to be reappointed
- (6) SH expressly resolving to either
 - Not to appoint Retiring auditor
 - (or)
 - To appoint any other auditor

Sec 139(10): If in any AGM, an auditor is not appointed, the existing auditor shall continue his tenure.

Sec 140(2) & (3): duty of resigning Auditor
 ↓ ↓
 duty penalty

company
 ROC
 C&AG
 ↓
 For govt

[The resigning auditor shall present a form "ADT-3" along with reasons for resignation within 3 days of such resignation decision]

Penalty for Breach of Responsibility:

Minimum 50000
 (or)
 Sec. 142 ← { Auditor
 Remuneration

on 31st day.

(+)
 500 per day for every additional day after the 31st day.
 Maximum → 200,000.

who can determine → Subsequent Auditor → determine by SH or GM
 → First/CV Auditor
 ↓
 BOB
 Fixed Amt (or) Criteria to determine

* Audit committee can give recommendation.

What is Remuneration?

- (1) Any fee payable to auditor in relation to audit also includes
- (2) Any express incurred by Entity in relation to audit [facilities provided to auditor]
- (3) Any expenses incurred by auditor in relation to audit and reimbursed by Entity.

* Any professional fee payable for other permitted services is not treated as Audit Remuneration.

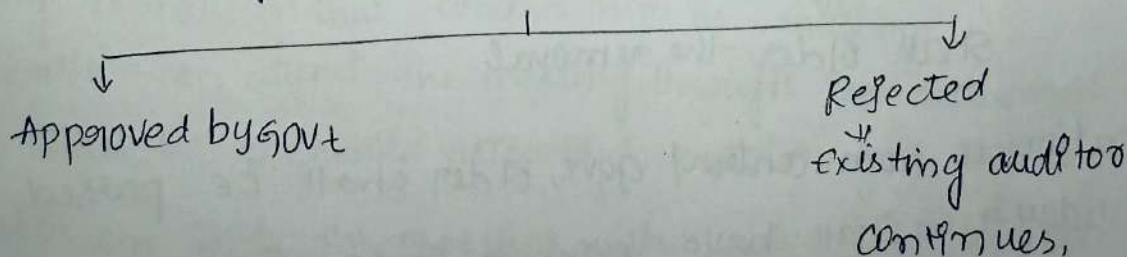
Sec 140(1) & (4): Special notice for removal & procedure for removal of auditor.

1) A Special Notice shall be received from SH for removing the auditor or appointing other auditor before the expiry of term of existing auditor
 → Any notice from SH with → $\geq 1\%$ voting power (or) $\geq 5\%$ Paid up Share capital.

2) BOA shall pass a board resolution proposing the removal of auditor and send copy of special notice to auditor.

BOA shall file "ADT-2" to the central Govt ≈ 30 days
 ↓
 Special: Special record for Resonable info

3) The Govt shall have option either accepting the proposal or to quash
 (≤ 60 days for IFSC company) (if not deemed approved)



Approved by Govt

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- ⑤ The Auditor shall have a right on sending a letter of explanation to the company as to why he shall ^{not} be removed.
 - ⑥ The company on receipt of such exp shall attach the to notice of GM conducted to remove auditor & sent to SH.
 - ⑦ If the response of AG would not be sent to SH through notice for whatever the reason, he ~~is~~ file it with ROC & the same shall be read at ~~GM~~ GM conducted.
 - ⑧ If auditor make abuse to power, the tribunal satisfied, on application, it may order not send the ~~audience~~ auditor's explanation to SH & even not read he same at gain.
- Sec 140(5); Removal of Auditor by Tribunal

- ① Either central Government or any person concerned can apply to tribunal can be take it on quo-moto (on its own).

↓

Application received by Tribunal.

- ② Tribunal shall be satisfied that the auditor either involved or colluded or obetted in fraud

↓

shall order the removal.

- ③ If application is from central govt, order shall be passed within 15 days & CG shall have power of appointing

Some other auditor

06-05-24 | 27

④ In all other cases BOD or CAG shall have power since removal create casual vacancy.

⑤ The auditor removed shall be disqualified in all companies from 5 from date of conviction.

Section 145: Duty to sign AR:

* The auditor appointed shall sign the audit report & all the documents of entity that is required by law.

Ex: FS, capital expenditure, CSR Expenses, etc.,

* Signature shall be in the name of firm & signing partner along with firm registration number & membership number

* signing partner can be only CA + P + I $\rightarrow$ 14(2)

* If auditor express a modified opinion, he shall read out all the reason for such MO in the GM where FS are adopted.

* SH shall have a right of inspection ~~for~~ inspection of document evidence ~~decide the case~~ in relation to reason for MO.

Section 146: Right/Duty to receive the notice of GM & Attend the same.

* Auditor shall have right to receive notice of every GM conducted

whether FS are discussed in such GM or not

AGM EGM

* This right is respect of only general meeting but not in meeting of Audit committee or BOD.

* Auditor shall have a right & duty to attend any general meeting conducted during his tenure and shall have a right of participating in matters that concern him as auditor.

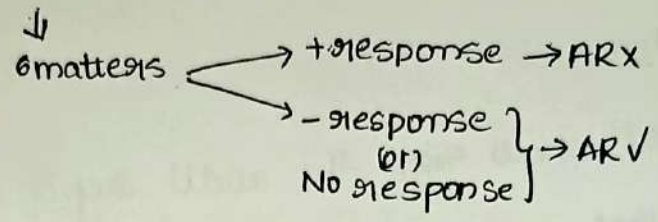
* The auditor can attend the meeting through his authorized representative, who shall be a chartered accountant practising in India

* Auditor can skip the meeting with prior info to BOD about

his reasons for non-availability at time for ~~and~~
attending general meeting

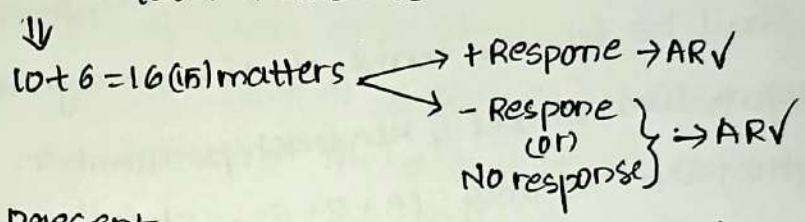
Section 143: Right & duties of auditors

143(1): Duty to inquire on certain matters

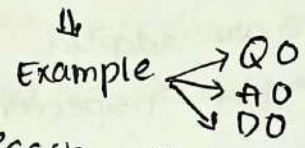


143(2): Duty/Right to report to members.

143(3): Duty to report on certain matters



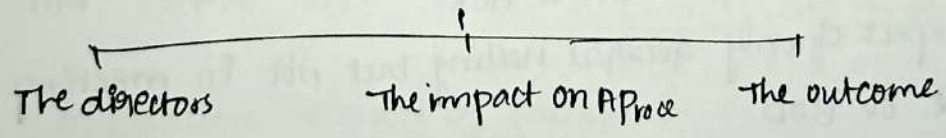
143(4): Auditor shall present reasons for modification in the auditors report for any negative comments.



143(5): C&AG power to issue directions to govt CO auditors.

① C&AG shall have a right of giving direction to GC auditor in relation to nature, timing & extent of audit procedure

② If directed, GC auditor shall present in his audit report



③ A copy of AR shall be presented to C&AG.

143(6): Right of C&AG for conducting supplementary audit

① Within 60 days from receipt of AR, C&AG may authorize any person to conduct the supplementary audit of audited FS of that year.

② Supplementary auditor's report shall also be

presented at AGM & shall also be sent to every person authorised to receive the audited FS of the entity.

143(7): C&AG's right for conducting test Audit:

① C&AG has power to conduct the test audit of FS of GC if it expects a possibility of fraud or intenses of reported fraud.

② Test audit need not be restricted to a single FY, can be for any period for which BOA are retained.

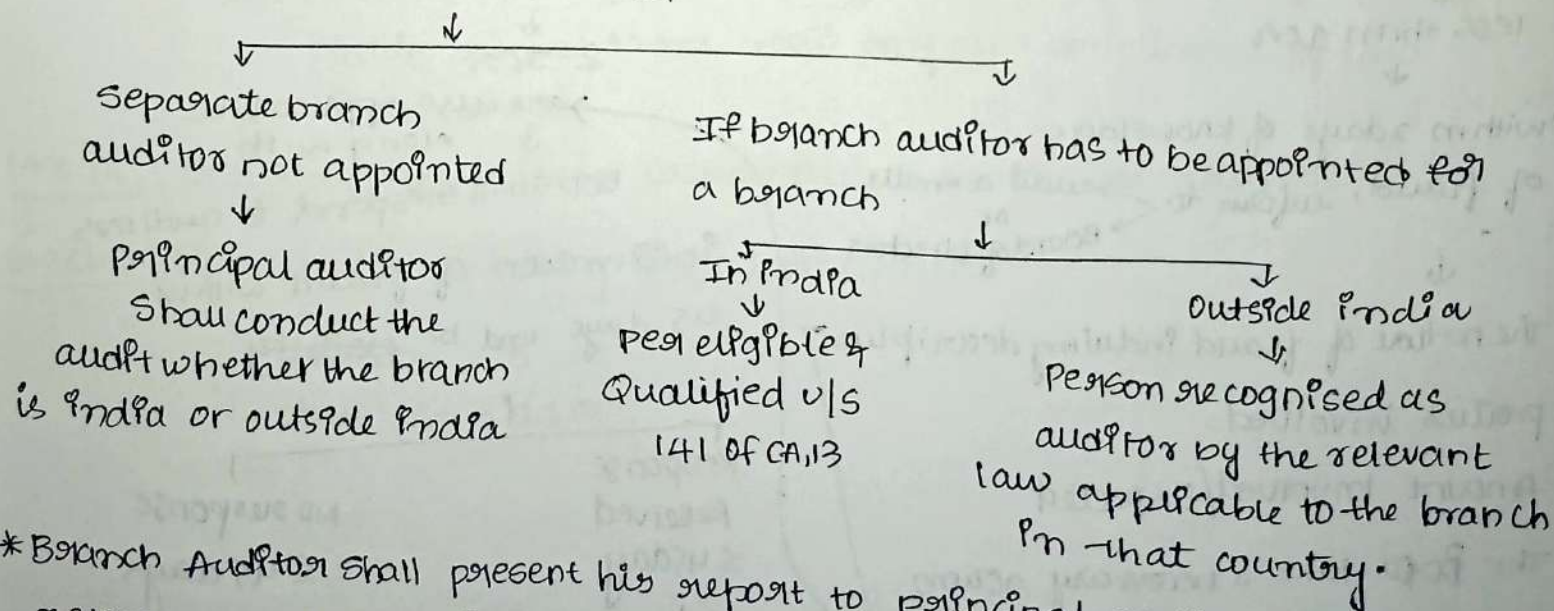
③ Test audit is a complement to 'Audit' of FS but not a substitute.

143(8): Appointment of Branch Auditor.

① The share holders are at discretion for appointing branch auditor, If not appointed, principal auditor shall continue as even branch auditor.

② The power of appointment can be delegated to BOD by SH.

③ Who can be a branch auditor



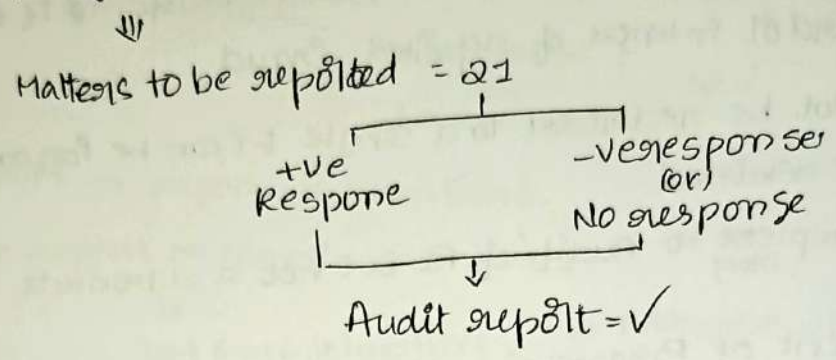
* Branch Auditor shall present his report to principal auditor and shall report on all requirement of Statute & SAs that are applicable to auditor

↓
Responsibility is confined only to his branch being audited.

143(10): Auditor of a company shall comply with all the relevant standard on auditing that are notified u/s 143(10). 10-05-30

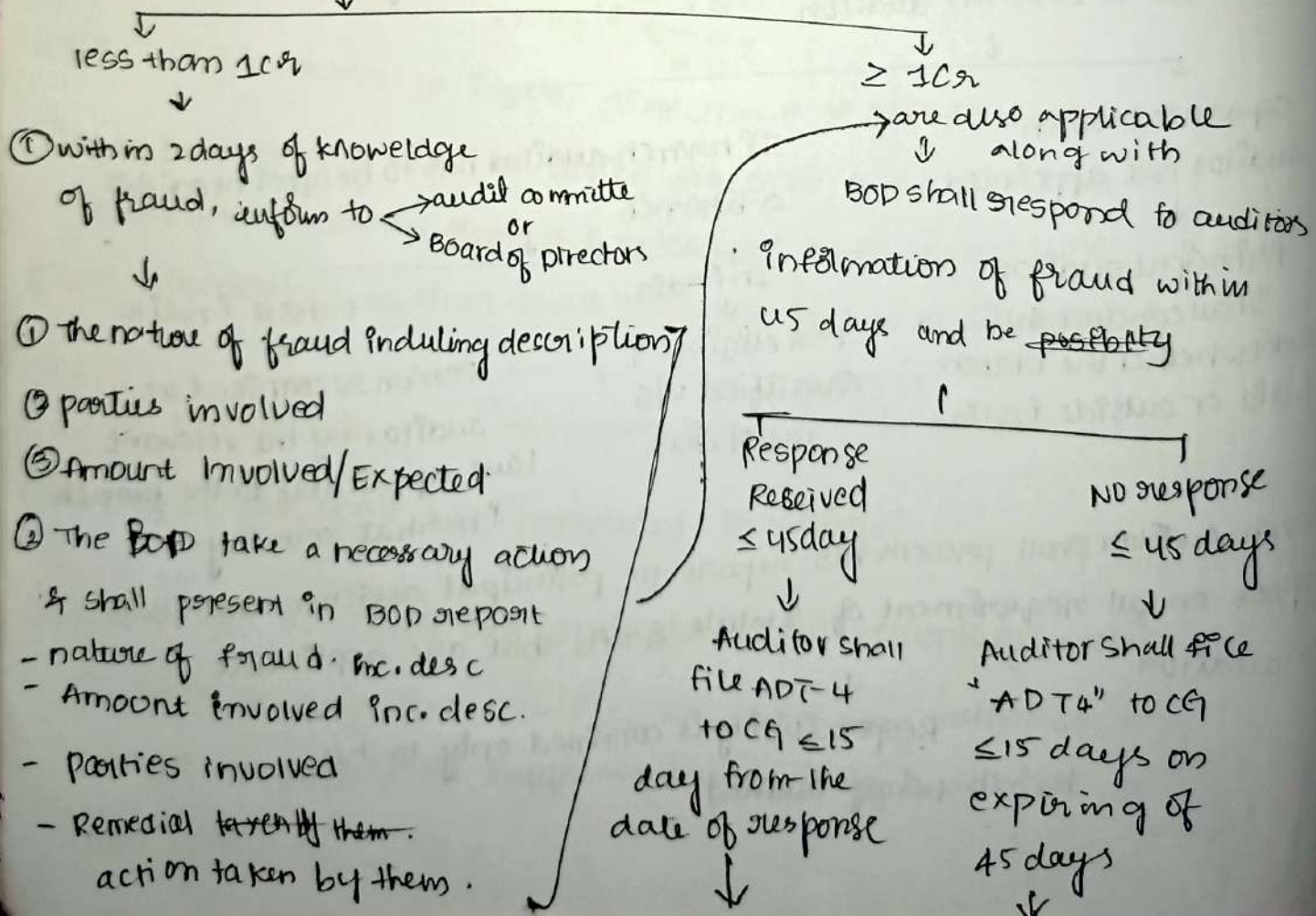
143(11): ~~CARO~~ Duty of auditor to report on matters specified by CA in CARO-2020

↓
company auditor's report under order



143(12): Duty of auditor to report on frauds

Auditor while conducting audit noticed/suspects a fraud involved or expected to involved the officers or employees against the company. And amount is ↓



- ① Nature of fraud ①, ②, ③, are same
 ② parties ④ fact that there is no response
 ③ Amount involved along with proof of notice sent.
 ④ Reply of BOD.

ADT-4: Format:

shall on the format of letter head of auditor containing:

- 1) Firm name & engagement partners name with registration numbers
- 2) postal Address
- 3) Email Id.
- 4) Mobile telephone Number.
- 5) signature & seal of auditor.

143(13): Reporting of fraud under 143(12) ^{deemed to, not} ~~don't create~~ create any violation of requirements of the statute & applicable standards. Since its done for a good cause (Bonafide faith) ~~for~~

↓
 Eg: even though fraud reporting is resulting in breif of confidentiality deemed to not create any non compliance of law or standards.

143(14): 143(12) applies to even cost auditor & secretarial auditor.

143(15): Penalty for violating 143(12) on auditors

- Listed co = 5 lac
- other co = 1 lac.