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MOST IMPORTANT QUESTIONS FOR CA INTER CORPORATE & OTHER LAWS

CHAPTER 10 -AUDIT AND AUDITORS

Five Star	Four Star	3 Star
<ul style="list-style-type: none"> ✓ Section 139 - Appointment of Auditors ✓ Section 140- Removal, Resignation of Auditor and Giving of Special Notice ✓ Section 141- Eligibility, Qualifications and Disqualifications of Auditors 	<ul style="list-style-type: none"> ✓ Section 144 - Auditor not to Render Certain Services 	<ul style="list-style-type: none"> ✓ Section 142- Remuneration of Auditors ✓ Section 147- Punishment for Contravention

Important sections

- ✓ Section 139 - Appointment of Auditors
- ✓ Section 140- Removal, Resignation of Auditor and Giving of Special Notice
- ✓ Section 141- Eligibility, Qualifications and Disqualifications of Auditors
- ✓ Section 144 - Auditor not to Render Certain Services
- ✓ Section 142- Remuneration of Auditors
- ✓ Section 147- Punishment for Contravention

Appointment of Auditors

Question 1A

Managing Director of ABC Ltd. himself appointed Mr. Aakash, a practicing-chartered accountant as first auditor of the company. Is it a valid appointment? Also explain the provisions of the Companies Act, 2013, in this regard?

Answer

Section 139(6) of the Companies Act, 2013 provides that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company".

In the instant case, the appointment of Mr. Aakash, a practicing Chartered Accountant as first auditor by the Managing Director of ABC Ltd. by himself is in violation of section 139(6) of the Companies Act, 2013, which requires the Board of Directors to appoint the first auditor of the company. In view of the above, the Managing Director of ABC Ltd. cannot appoint the first auditor of the company himself.

Question 1B

State the provisions of the Companies Act, 2013 relating to appointment of First Auditor of a Government Company.

Answer

(1) In the 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, the first auditor shall be

appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within 60 days at an Extra ordinary General Meeting, who shall hold office till the conclusion of the first annual general meeting.

Question 1C

- (i) Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30 -09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.
- (ii) PKC Ltd. wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)?

Answer

(i) Tenure of Auditor: Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

- (1) an **individual** as auditor for **more than one term** of five consecutive years; and
- (2) an **audit firm** as auditor for **more than two terms** of five consecutive years.

Cooling off Period: CS LLM ARJUN CHHABRA

(1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

(ii) As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

(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 there under;

(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.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Question 1D

(i) Board of Directors of A Ltd in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:

(1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?

(2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company?

Answer

(1) As per section 139 read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.

As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021.

(2) Section 139(2) states that as on the date of appointment no audit firm having a common partner or partners of 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 five years.

Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors.

Question 1E

Referring the provisions of the Companies Act, 2013, regarding appointment of auditors, answer the following:

(i) XYZ Ltd. is a newly established company owned by the Central Government. State the provisions regarding appointment of its first auditor.

(ii) Mr. Kamal is the auditor of XYZ Limited, which is a Government company. He has resigned on 31st December, 2020 while the financial year of the company ends on 31st March, 2021. Explain the provisions regarding filling or such vacancy. Would your answer differ if it is other than a Government company?

Answer

(i) First auditor

(1) According to section 139(7) of the Companies Act, 2013, in the 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, the first auditor shall be appointed by the Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company.

(2) In case the CAG does not appoint first auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days.

(3) Further, in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the 60 days at an Extraordinary General Meeting., who shall hold office till the conclusion of the first annual general meeting.

XYZ Ltd. can follow the above provisions for appointment of its first auditor.

(ii) Casual vacancy

According to section 139(8) of the Companies Act, 2013,

(1) In the case of a company whose accounts are subject to audit by an auditor appointed by the CAG, casual vacancy of an auditor shall be filled by the CAG within 30 days.

(2) In case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

XYZ Ltd. can follow the above provisions for filling of its casual vacancy of its auditor.

In case, xyz Ltd. would have been a company other than a government company, the following provisions would be applicable for filling of its casual vacancy

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Question 1F

One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2018 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

Answer

As per the section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company. Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the

auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors. Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

Question 1G

Explain how the auditor will be appointed in the following cases:

- (i) A Government company within the meaning of section 394 of the Companies Act, 2013.
- (ii) A public company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company.

Answer

The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the companies Act, 2013 which are summarized as under.

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(ii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company, it is not a government company. Hence the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows

(1) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

(2) Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor.

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Question 1H

The Auditor of the company (other than government company) has resigned on 31st December, 2020, while the Financial year of the company ends on 31st March, 2021. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.

Answer

The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the Annual General Meeting in case of a company other government company. Under section 139 (8) of the Companies Act, 2013, any

casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Question 1I

The Board of Directors of Moon Light Limited, a listed company appointed Mr. Tel, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Tel was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

- (i) Appointment of Mr. Tel by the Board of Directors.
- (ii) Re-appointment of Mr. Tel at the first AGM in the above situation
- (iii) In case Mr. Tel, Chartered Accountant, was appointed as auditor at the first AGM to hold office from the conclusion of its first AGM till the conclusion of 5th AGM. i.e., 4 years tenure.

Answer

As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

- (i) Appointment of Mr. Tel by the Board of Directors is valid as per the provisions of section 139(6).
- (ii) Appointment of Mr. Tel at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Tel is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

As per law, auditor appointed shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM i.e., for 5 years. Accordingly, here appointment of Mr. Tel, which is for 4 years, is not in compliance with the said legal provision, so his appointment is not valid.

Question 1J

Mr. Yash is a partner and in charge of PQR firm. The firm is appointed as an auditor firm of A. K. Company limited (listed company). Mr. Yash retires from PQR firm and after some time join Gupta & Gupta firm as a partner, on 20/05/21. In the general meeting of the company held on 15/06/21, the company appointed Gupta & Gupta firm as next auditor of the company. Do you think the company has adhered to the provision of appointing Gupta & Gupta as auditor for the company, under the Company Act 2013. Explain?

Answer

According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint (a) an individual as auditor for more than one term of five consecutive years; and (b) an audit firm as auditor for more than two terms of five consecutive years. Provided that

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that 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 five years.

Under Rule 6(3)(ii)(b) of The Companies (Audit and Auditors) Rules, 2014. 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, such other firm shall also be ineligible to be appointed for a period of five years.

Here Mr. Yash has retired from PQR Firm and joined Gupta & Gupta Firm. Mr. Yash was a partner in PQR firm, where he certifies the financial statement of the company, and retires from the said firm and joins Gupta & Gupta firm. Hence Gupta & Gupta Firm will also be ineligible, to be appointed as auditor firm for a period of 5 years.

Removal of Auditor

Question 2

XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act. 2013.

Answer

Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.

The application shall be made to the Central Government within thirty days of the resolution passed by the Board.

The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

Hence, in the instant case, the decision of ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

Disqualifications of Auditor

Question 3A

Mr. Ram brother of CA. Shyam, a practicing-chartered accountant, acquired securities of M/s. Cool Ltd. having market value of Rs. 1,20,000 (face value 95,000). State whether CA. Shyam is qualified to be appointed as a statutory auditor of M/s. Cool Ltd.

Answer

As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ` 1,00,000 (as prescribed under the Company (Audit and Auditors) Rules, 2014).

In the given instance, CA. Shyam is not disqualified to be appointed as a statutory auditor in M/s Cool Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ` 95,000 in the said company, which is within the prescribed limit.

Question 3B

Three chartered accountants, Mr. Robert, Mr. Ram and Mrs. Rohini, formed a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 in the name of 'R & Associates LLP, practicing chartered accountants. SR Ltd. intends to appoint 'R & Associates LLP" as auditors of the company.

Examine the validity of the proposal of SR Ltd. to appoint 'R & Associates LLP, a body corporate, as an auditor of the company as per the provisions of the Companies Act, 2013.

Answer

As per the provisions of Section 141 (3) of the Companies Act, 2013 read with Rule 10 of Companies (Audit and Auditors) Rule 2014, a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be qualified for appointment as auditor of a company.

In the given case, proposal of SR Ltd. to appoint 'R & Associates LLP" as auditors of the company is valid as the restriction marked for appointment as auditor for a body corporate is not applicable to Limited Liability Partnership.

Question 3C

Shekhar Limited appointed an individual firm, Suresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2019. Mrs. Kamala, wife of Mr. Suresh, invested in the equity shares having face value of Rs. 1 lakh of Shekhar Limited on 15th October, 2019. But Suresh & Company continues to function as statutory auditors of the company. Advice.

Answer

Disqualification of auditor:

According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In this case, Mr. Suresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of Shekhar Limited of face value 7 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Suresh & Company can continue to function as auditors of the Company even after 15th October, 2019 i.e. after the investment made by his wife in the equity shares of Shekhar Limited.

Question 3D

Mr. R brother of CA. Sana, a practicing-chartered accountant, acquired securities of Hot Ltd. having market value of 1,20,000 (face value 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd.

Answer

As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding 1,00,000 [as prescribed under the Company (Audit and Auditors) Rules, 2014].

In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of Rs. 95,000 in the said company, which is within the prescribed limit.

Question 3E

Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

(i) Mr. Ray is a practicing Chartered Accountant indebted to ABC Ltd. for rupees 6 lakh. Directors of ABC Ltd. want to appoint Mr. Ray as an auditor of the company. Can ABC Ltd. do so?

(ii) Mrs. Kavita spouse of Mr. Kumar, a Chartered Accountant, is the store- keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company.

Answer

(i) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Mr. Ray will be disqualified to be appointed as an auditor of ABC Ltd. as he indebted to ABC Ltd. for rupees 6 lacs.

(ii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel. In the instant case, since Mrs. Kavita, spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or Key Managerial Personnel) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said Company.

Question 3F

EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2019. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of 1 lakh of EF Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice

Answer

Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2019 i.e. after the investment made by his wife in the equity shares of EF Limited.

Question 3G

Mr X a director of M/s KP private ltd, is also a director of another company viz, M/S GP Private ltd, which has not filed the financial statement and annual return for last three years 2010- 11 to 2012-13. Mr. X is of the opinion that is not disqualified u/s 164 (2) of the companies Act, 2013, and auditor should not mention disqualification remark in his audit report.

Answer

Disqualification of a director under section 164(2) of the companies act, 2013;

Section 164(3)(g) of the companies act, 2013 imposes a specific duty on the auditor to report whether any director is disqualified from being appointed as director under section 164(2) of the companies of section 164(2). If a director is already holding a directorship of a company which has not filed the financial statement or annual return for any continuous period of three financial year shall not be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

In this case, Mr X is a director of M/S KP Private ltd , And M/s GP Private ltd , has not filed the

financial statement and annual return for last three years. Hence the provision of section 164(2) is applicable to him and as such he is disqualified from directorship of both the company.

Therefore, the auditor shall report about the disqualification under section 143(3)(g) of the companies act, 2013.

Question 3H

P Limited appointed "XYZ & Co.", an audit firm, as Auditor of the company at the Annual General Meeting held on 30th September, 2021. Mr. X, Y and Z are partners in XYZ & Co. With reference to the Companies Act, 2013, examine, the validity of appointment of the XYZ & Co. in each of the following cases separately:

- (i) Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of 1 lakh.
- (ii) Mrs. Q, wife of Mr. X has given guarantee in relation to a loan taken by G from P Limited of an amount worth ` 1,50,000.
- (iii) Mrs. Q, wife of Mr. X is indebted to Z Limited for ` 10,00,000 (P Limited holds one fourth of the paid-up Equity Share Capital of Z Ltd.)

Answer

- (i) As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, such person cannot be appointed as auditor of the company. However, the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under Rule 10 of the Company (Audit and Auditors) Rules, 2014. Here, in the given case, Mrs. Q, wife of Mr. X has invested in the equity shares of P Limited having face value of ` 1 lakh which is within the prescribed limit. Therefore XYZ & Co. can be appointed as an auditor for P Limited.
- (ii) As per Section 141(3)(d)(iii) of the Companies Act, 2013, a person who, or his relative or partner who has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 1 Lakh. such person cannot be appointed as auditor of the company. In the said case, Mrs. Q, wife of Mr. X, has given guarantee in relation to a loan taken by G from P Limited which is in excess of ` 1 Lakh i.e. of an amount worth ` 1,50,000. Therefore, XYZ & Co. cannot be appointed as an auditor for P Limited.
- (iii) As per Section 141(3)(d)(ii) of the Companies Act, 2013, a person who, or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ` 5 Lakh, shall not be appointed as an auditor. Here in this case, Mrs. Q, wife of Mr. X is indebted to Z Limited for ` 10,00,000. Whereas P Limited holds one fourth of the paid up equity share capital of Z Ltd. Being an associate company to P Limited, and indebted in excess of ` 5 Lakh, therefore XYZ & Co. cannot be appointed as an auditor for P Limited.

Question 3I

Mr. Raman, a Chartered Accountant, was appointed as an auditor of Surya Distributors Ltd., in the AGM of the company held in August, 2020, in which he accepted the assignment. Later on, in November, 2020, he joined as a partner in the Consultancy firm where Mr. Som is also a partner. Mr. Som is also working as a Finance executive of Surya Distributors Ltd. Explaining the provisions of the Companies Act, 2013, decide whether Mr. Raman is required to vacate the office as an auditor.

Answer

Section 141(3)(c) of the Companies Act, 2013, prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of section 141, he shall be deemed to have vacated his office as an auditor. In the present case, Mr. Raman, an auditor of Surya Distributors Ltd., joined as partner with consultancy firm where Mr. Som is also a partner and Mr. Som is also the Finance executive of Surya Distributors Ltd. Hence, Mr. Raman has attracted clause (3)(c) of section 141 and, therefore, he shall be deemed to have vacated office of the auditor of Surya Distributors Ltd.

Question 3J

Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021- 22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:

- (1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.
- (2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh.

Answer

(1) As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company. Hence, Priyansh is disqualified to be appointed as an auditor in Gizmo Limited.

(2) As per section 141(3)(d) (ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.

Auditor not to Render Certain Services

Question 4A

The "Mr. Prakash". requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

Answer

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Question 4B

SSR & Co. (Statutory Auditors) while conducting audit for financial year 2021-22, find out some manipulative entries in books of accounts of ASR Ltd. Auditors told the MD that internal control system of company is not reliable. The Board of Directors of ASR Ltd. asked them to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. The Company offered them a fee of ₹10 lakh plus taxes for this assignment for betterment of company. But Statutory Auditor refused to take the assignment. What are the consequences if they accept this assignment?

Answer

According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the Audit Committee, as the case may be. But such services shall not include designing and implementation of any financial information system. In the said instance, the Board of directors of ASR Ltd. requested its Statutory Auditors, SSR & Co. to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited. In case the Statutory Auditors accept the assignment, following penal provisions as specified in section 147 of the Companies Act, 2013 will be levied:

Consequences as regards to Audit firm Liability of Audit firm [Section 147(5)]

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners 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, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Remuneration of Auditor

Question 5

HD Software Private Limited is engaged in the business of providing software services. The company appointed its statutory auditors. The engagement letter was signed with a clause that fee to be mutually decided. However, the remuneration was not finalized. Directors of the company seeks your advice for, provisions related to remuneration of directors as per the provisions of the Companies Act, 2013.

Answer

Section 142 of the Companies Act, 2013, provides for remuneration of auditors. According to this section the remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

As per the facts of the question and stated provision, remuneration of the appointed statutory

auditors of a company shall be fixed by the HD Software Private Limited in general meeting or in such manner as the company in general meeting may determine.

Fraudulent Audit

Question 6A

ABC & Co., Chartered Accountants, are statutory auditors of Moon Exports Limited. In an inquiry, it is proved that 'A', one of the partners of the firm has acted in fraudulent manner and colluded in fraud to its partners. Explain the consequences of such act under the provisions of the Companies Act, 2013.

Answer

According to section 147(5) of the Companies Act, 2013, where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners 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, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

Here, 'A' the partner of ABC & Co. on inquiry was found that he acted in a fraudulent manner or colluded in fraud to its partners.

Accordingly, 'A' the partner, partners concerned and the firm 'ABC & Co.' jointly and severally liable for the fine.

With respect to criminal liability of the firm 'ABC & Co.', the concerned partner or partners, who acted in a fraudulent manner or colluded in any fraud, shall only be liable.