

This Module includes:

- 3.1 Definition**
- 3.2 Cost Auditor's Eligibility, Qualifications, Disqualifications, Appointment, Registration, Rotation, Remuneration, Removal, Rights and Duties, Liabilities**
- 3.3 Professional Ethics**
- 3.4 Duties of a Cost Auditor to Report Fraud - Section 143 of the Companies Act 2013**
- 3.5 Punishment for Fraud (Section 447 of the Companies Act, 2013)**
- 3.6 Punishment for False Statement (Section 448 of the Companies Act, 2013)**

Cost Auditor

SLOB Mapped against the Module

To gain in-depth knowledge about the statutory provisions of Companies (Cost Records and Audit) Rules to ensure adherence to the regulations in conducting cost audit. (CMLO 4a, b)

Module Learning Objectives:

This module helps to know about the Professional Behaviour of the cost auditor while meeting his responsibilities to clients, third parties, other members of the cost and management accounting profession, staff, employers and the general public. After studying this module, the students will be able to –

- ▲ Know about the Eligibility, Qualifications, Disqualifications, Appointment, Resignation, Rotation, Remuneration, Removal, Rights and Duties, Liabilities of a Cost Auditor
- ▲ Sustain the Professional Ethics of a Cost Auditor
- ▲ Identify the Duties of a Cost Auditor to Report Fraud
- ▲ Acquaint regarding the provisions associated with Punishment for Fraud and False Statement

Companies (Cost Records and Audit) Rules, 2014 defines Cost Auditor as under :

“Cost auditor” means a Cost Accountant in practice, as defined in clause (b), who is appointed by the Board; This definition is given under Rule 2(c).

“Cost Accountant in practice” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959), who holds a valid certificate of practice under sub-section (1) of section 6 of that Act and who is deemed to be in practice under sub-section (2) of section 2 thereof, and includes a firm or limited liability partnership of cost accountants; [Rule 2(b)]

Each and every member of the profession in practice is required to follow certain professional ethics and code of conduct as prescribed by the Cost and Works Accountants Act, 1959 and Regulations there under.

Section 22 of the Cost and Works Accountants Act, 1959 defines that, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 of the Cost and Works Accountants Act, 1959 to inquire into the conduct of any member of the Institute under any other circumstances.

This definition under section 22 of the Cost and Works Accountants Act, 1959 read with the two schedules to the Act clarifies or indicates that the schedules provide an illustrative list of acts and omissions constituting “professional or other misconduct”.

These are in addition to duty of Cost Auditor to report fraud under Section 143 (12) of the Companies Act 2013.

Cost Auditor's Eligibility, Qualifications, Disqualifications, Appointment, Resignation, Rotation, Remuneration, Removal, Right and Duties, Liabilities

3.2

Sections applicable to Finance Auditors are laid down from Sections 139 to 147.

There are no corresponding defining Sections for Cost Auditor except Section 148 .

Section 148 (5), inter alia provides that qualifications, disqualifications, rights, duties and obligations as applicable to Financial Auditor shall also apply to Cost Auditor, so far as may be applicable.

So Sections applicable to Financial Auditor shall, so far as may be applicable, apply to a cost auditor.

To make these applicable to Cost auditors, these are to be read with the following :

- 1) Companies (Audit and Auditors) Rules, 2014
- 2) Companies (Cost Records and Audit) Rules, 2014
- 3) Cost and Works Accountants Act, 1959

Section 139 to 148 provide for the qualifications, disqualifications, appointment, removal, rights & duties and liabilities of company auditors to be read with Companies (Audit and Auditors) Rules, 2014. Some of the Rules are discussed hereunder. Section 148(5) provides the provisions applicable to statutory auditors will also apply to cost auditors.

Cost Auditor's Eligibility

Eligibility criteria under Section 141 of the Companies Act, 2013 read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 and Section 148 of the Companies Act, 2013. The following persons are not eligible for appointment as a cost auditor:

- (a) A body corporate. However, a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 can be appointed. [Section 141(3)(a)]
- (b) An officer or employee of the Company. [Section 141(3)(b)]
- (c) A person who is a partner, or who is in the employment of an officer or employee of the company. [Section 141(3)(c)]
- (d) A person who, or his relative or partner is holding any security of or interest in the company or any of its subsidiary or of its holding or associate company or a subsidiary company or a subsidiary of such holding company. [Section 141(3)(d)(i)]
- (e) Relatives of any partner of the firm holding any security of or interest in the company of face value exceeding ₹ 1 lakh. [Section 141(3)(d)(i) and Rule 10(1) of Companies (Audit and Auditors) Rules, 2014]

- (f) A person who or whose relative or partner is indebted to the company or its subsidiary, or its holding or associate company or a subsidiary or such holding company, for an amount exceeding ₹ 5 lakhs. [Section 141(3)(d)(ii) and Rule 10(2) of Companies (Audit and Auditors) Rules, 2014]
- (g) A person who or whose relative or partner has given any 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, for an amount exceeding ₹ 1 Lakh. [Section 141(3)(d)(iii) and Rule 10(3) of Companies (Audit and Auditors) Rules, 2014]
- (h) A person or a firm who, whether directly or indirectly, has business relationship with the company or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company. [Section 141(3)(e) and Rule 10(4) of Companies (Audit and Auditors) Rules, 2014]
- (i) A person whose relative is a director or is in the employment of the company as a director or key managerial personnel of the company. [Section 141(3)(f)]
- (j) A person who is in the full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor if such person or persons is at the date of such appointment or reappointment holding appointment as an auditor of more than twenty companies. [Section 141(3)(g)]
- (k) A person who has been convicted by a court for an offence involving fraud and a period of ten years has not elapsed from the date of such conviction. [Section 141(3)(h)]
- (l) Any person whose subsidiary or associate company or any other form of entity, is engaged as on date of appointment in providing specialised services to the company and its subsidiary companies as below:
 - (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
 - (i) Any other kind of services as may be prescribed
 [Section 141(3)(i) and Section 144]

Qualifications

Applicability of Section 141 of the Companies Act, 2013, with respect to the Qualification of Cost Auditor, to be read along with Section 148 of the Companies Act, 2013, Cost and Works Accountants Act, 1959 and Companies (Cost Records and Audit) Rules, 2014

Section 148 (5) of the companies act, 2013, inter alia provides that qualifications as applicable to auditor (financial) is also applicable to cost auditor, so far as may be applicable.

In view of what is stated above, Qualification of Cost Auditor are enumerated as given below:

- 1) A person shall be eligible to for appointment as cost auditor who is a cost accountant. [Section 148 (3)]

- 2) Cost Accountant means a Cost Accountant as defined in clause (b) of sub-section (1) of Section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of Section 6 of the Cost and Works Accountants Act, 1959. {Section 2 (28)}
- 3) “cost accountant” means a person who is a member of the Institute [clause (b) of sub-section (1) of Section 2 of Cost And Works Accountants Act, 1959.
- 4) A person is a member of the Institute if his name appears in the Register of the Institute { Subsection (2) of Section 19 of Cost and Works Act,1959}
- 5) An Individual or Firm, as the case may be is eligible for appointment as cost auditor provided he / it satisfies the criteria as provided in section 141 of the Act {Sub Section (b) of Section (1A) of Rule 6 of Companies (Cost Records and Audit) Rules, 2014
- 6) Proviso to subsection (1) of Section 141 provides that a firm can also be appointed by its firm name as cost auditor of the company if majority of its partners practicing in india are qualified for appointments as cost auditors of the company
- 7) Sub-Section (2) of Section 141 provides that where a firm including a limited liability partnership (LLP) is appointed as Cost Auditor of the company, only the partners who are cost accountants shall be authorized to act and sign on behalf of the firm.

Disqualifications

As per Section 141(3), read with Rule 10 of Company (Audit and Auditor) Rule 2014 and Section 148, the following persons shall not be eligible for appointment as Cost auditor of a company:

- (a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
- (b) an officer or employee of the company;
- (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- (d) a person who, or his relative or partner:
 - (i) 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, of face value not exceeding rupees one lakh;
 - (ii) 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 five lakh;
 - (iii) 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 rupees one lakh;
- (e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

Note: For this purpose, the term ‘business relationship’ shall be construed as any transaction entered into for a commercial purpose, except –

- (a) commercial transaction which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Companies Act, 2013 or the Cost and Works Accountants Act, 1959 and the rules or regulations made under those Acts;
- (b) commercial transactions which are 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.

- (f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
- (g) a person who is in full time employment elsewhere or 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 more than twenty companies;
- (h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- (i) a person who, directly or indirectly, renders any service referred to in Section 144 to the company or its holding company or its subsidiary company.

Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor [Section 141(4)] read with Sub Rule 3A of Rule 6 of Companies (Cost Records and Audit) Rules, 2014.

Appointment

As per Section 148(3) of the Companies Act 2013, cost audit shall be conducted by a Cost Accountant who shall be appointed by the Board. No person appointed under Section 139 as an auditor of the company shall be appointed for conducting the audit of cost records. The auditor so appointed shall comply with the cost auditing standards

As per Rule 6 of the Companies (Cost Records & Audit) Rules 2014 (as amended)

- (1) The category of companies specified in rule 3 and the thresholds limits laid down in rule 4, shall within one hundred and eighty days of the commencement of every financial year, appoint a cost auditor.

Provided that before such appointment is made, the written consent of the cost auditor to such appointment, and a certificate from him or it, as provided in sub-rule (1A), shall be obtained

(1A) The cost auditor appointed under sub-rule (1) 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 Cost and Works Accountants Act, 1959(23 of 1959) and the rules or regulations made thereunder;
 - (b) the individual or the firm, as the case may be, satisfies the criteria provided in section 141 of the Act, so far as may be applicable;
 - (c) the proposed appointment is within the limits laid down by or under the authority of the Act; and
 - (d) the list of proceedings against the cost 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.”
- (2) Every company referred to in sub-rule (1) shall inform the cost auditor concerned of his or its appointment as such and file a notice of such appointment with the Central Government within a period of thirty days of the Board meeting in which such appointment is made or within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier, through electronic mode, in form CRA-2, along with the fee as specified in Companies (Registration Offices and Fees) Rules, 2014.
 - (3) Every cost auditor appointed as such shall continue in such capacity till the expiry of one hundred and eighty days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed.

Provided that the cost auditor appointed under these rules may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing;

Provided further that the Form CRA-2 to be filed with the Central Government for intimating appointment of another cost auditor shall enclose the relevant Board Resolution to the effect;

Provided also that nothing contained in this sub-rule shall prejudice the right of the cost auditor to resign from such office of the company;

- (3A) Any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal, shall be filled by the Board of Directors within thirty days of occurrence of such vacancy and the company shall inform the Central Government in Form CRA-2 within thirty days of such appointment of cost auditor.
- (3B) The cost statements, including other statements to be annexed to the cost audit report, shall be approved by the Board of Directors before they are signed on behalf of the Board by any of the director authorised by the Board, for submission to the cost auditor to report thereon
- (4) Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in form CRA-3.
- (5) Every cost auditor shall forward his duly signed report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report, particularly any reservation or qualification contained therein.
- (6) Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report alongwith full information and explanation on every reservation or qualification contained therein, in Form CRA-4 in Extensible Business Reporting Language format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 alongwith fees specified in the Companies (Registration Offices and Fees) Rules, 2014.”.

“Provided that the Companies which have got extension of time of holding Annual General Meeting under section 96(1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013”. – Sub Rule 6 of Rule 6 of Companies (Cost Records and Audit) Rules, 2014

- (7) The provisions of sub-section (12) of Section 143 of the Act and the relevant rules made thereunder shall apply mutatis mutandis to a cost auditor during performance of his functions under Section 148 of the Act and these rules.

Sub Rule 7 of Rule 6 of Companies (Cost Records and Audit) Rules, 2014.

Resignation

The auditor who has resigned from the company shall file within a period of 30 days from the date of his resignation, a statement in the prescribed form with the company and the registrar (Section 140 (2)).

Statement in the form ADT-3 is prescribed by Rule 8 of Companies (Audit and Auditors) Rules, 2014

If the auditor does not comply with sub section (2) of section 140, then he shall be punishable with fine not less ₹ 50,000 subject to a maximum of ₹ 2 Lakh.

Rotation

The provisions for maintenance of cost accounting records and cost audit are governed by Section 148 of the Companies Act, 2013. The provisions of Section 148 clearly states that no person appointed under Section 139 as an auditor of the company shall be appointed for conducting audit of cost records of the company. Section 148 also provides that qualifications, disqualifications, rights, duties and obligations applicable to auditors (financial) shall apply to a cost auditor appointed under this section. The eligibility, qualifications and disqualifications are provided in Section 141 of the Act and powers and duties are provided in Section 143. Section 143(14) specifically states that the provisions of Section 143 shall mutatis mutandis apply to a cost auditor appointed under Section 148. There are no other provisions governing the appointment of a cost auditor.

Section 139(3) of the Act read with Rule 6 of Companies (Audit and Auditors) Rules, 2014 deals with the provision of rotation of auditors and these provisions are applicable only to appointment of auditors (financial). The Act does not provide for rotation in case of appointment of cost auditors and the same is not applicable to a cost auditor. It may, however, be noted that though there is no statutory provision for rotation of cost auditors, individual companies may do so as a part of their policy, as is the practice with Public Sector Undertakings.

Remuneration

Rule 14 of the Companies (Audit and Auditors) Rules, 2014 has laid down the procedure of appointment and fixing the remuneration of a cost auditor. It states as follows:

Remuneration of the Cost Auditor:

For the purpose of sub-section (3) of section 148,—

- (a) in the case of companies which are required to constitute an audit committee—
 - (i) the Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;
 - (ii) the remuneration recommended by the Audit Committee under (i) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;
- (b) in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

Removal

The cost auditor may be removed before the term by Board resolution after giving reasonable opportunity of hearing and recording the reasons for removal. [Proviso to Sub Rule (3) of Rule 6 of Companies (Cost Records and Audit) Rules, 2014.

As per Sub Rule (3A) of Rule 6 of the Companies (Cost Records & Audit) Rules 2014 (as amended), any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal to be filled by the Board of Directors within thirty days of occurrence of such vacancy and the company shall inform the Central Government in Form CRA-2 within thirty days of such appointment of cost auditor.

Rights and Duties

Section 148 (5) of the companies act, 2013, inter alia provides that Rights and Duties as applicable to auditor (financial) is also applicable to cost auditor, so far as may be applicable.

Now rights and duties of Financial Auditor has been prescribed under section 143 of the Companies Act, 2013.

Moreover, Subsection 14 of Section 143 states that The provisions of this section 143 shall mutatis mutandis apply to the cost accountant in practice conducting cost audit under section 148

This is to be read with Sub Rule (4) of Rule 6 of the Companies (Cost Records and Audit) Rules 2014 and Rule 13 of Companies (Audit and Auditors) Rules, 2014.

- 1) Company shall provide all assistance and facilities to the cost auditor appointed under section 148 for auditing the cost records of the company. [Section 148 (5)]
- 2) The Auditor conducting cost audit shall comply with the Cost Accounting Standards [Section 148 (3)]
- 3) The Report on the audit of Cost Records shall be submitted by Cost Auditor to the Board of Directors [148 (5)].
- 4) The Cost Auditor's report shall also state the following in his report (in Form CRA-3 as mentioned in Sub Rule (4) of Rule 6 of Companies (Cost Records and Audit) Rules, 2014).
 - (a) Whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of the audit.
 - (b) Whether proper cost records as per Rule 5 of the Companies (Cost Records and Audit) Rules 2014 have been maintained by the company in respect of product / services under reference
 - (c) Whether proper returns adequate for the purpose of the cost audit have been received from branches not visited
 - (d) In my opinion and to the best of my informations, the said books and records give the information required by the Companies Act, 2013 in the manner so required
 - (e) In my opinion, the company does have adequate system of internal audit of cost records which to my opinion is commensurate to its nature and size of its business.
 - (f) In my opinion, information, statements in the annexure to the cost audit report gives a true and fair view of the cost of production of production / rendering of services, cost of sales, margin and other information relating to products / services under reference
 - (g) Detailed unit wise and product wise cost statements and schedules thereto in respect of the product / service under reference of the company duly audited and certified are kept in the company.
- 5) Company shall provide all assistance and facilities to the cost auditor appointed under section 148 for auditing the cost records of the company. [Section 148 (5)]
- 6) The Auditor conducting cost audit shall comply with the Cost Accounting Standards [Section 148 (3)]
- 7) The Report on the audit of Cost Records shall be submitted by Cost Auditor to the Board of Directors [148 (5)].
- 8) The Cost Auditor's report shall also state the following in his report (in Form CRA-3 as mentioned in Sub Rule (4) of Rule 6 of Companies (Cost Records and Audit) Rules, 2014).
 - (h) Whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of the audit.
 - (i) Whether proper cost records as per Rule 5 of the Companies (Cost Records and Audit) Rules 2014 have been maintained by the company in respect of product / services under reference
 - (j) Whether proper returns adequate for the purpose of the cost audit have been received from branches not visited

- (k) In my opinion and to the best of my informations, the said books and records give the information required by the Companies Act, 2013 in the manner so required
 - (l) In my opinion, the company does have adequate system of internal audit of cost records which to my opinion is commensurate to its nature and size of its business.
 - (m) In my opinion, information, statements in the annexure to the cost audit report gives a true and fair view of the cost of production of production / rendering of services, cost of sales, margin and other information relating to products / services under reference
 - (n) Detailed unit wise and product wise cost statements and schedules thereto in respect of the product / service under reference of the company duly audited and certified are kept in the company.
- 9) Company shall provide all assistance and facilities to the cost auditor appointed under section 148 for auditing the cost records of the company. [Section 148 (5)]
- 10) The Auditor conducting cost audit shall comply with the Cost Accounting Standards [Section 148 (3)]
- 11) The Report on the audit of Cost Records shall be submitted by Cost Auditor to the Board of Directors [148 (5)].
- 12) The Cost Auditor's report shall also state the following in his report (in Form CRA-3 as mentioned in Sub Rule (4) of Rule 6 of Companies (Cost Records and Audit) Rules, 2014).
- (o) Whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of the audit.
 - (p) Whether proper cost records as per Rule 5 of the Companies (Cost Records and Audit) Rules 2014 have been maintained by the company in respect of product / services under reference
 - (q) Whether proper returns adequate for the purpose of the cost audit have been received from branches not visited
 - (r) In my opinion and to the best of my informations, the said books and records give the information required by the Companies Act, 2013 in the manner so required
 - (s) In my opinion, the company does have adequate system of internal audit of cost records which to my opinion is commensurate to its nature and size of its business.
 - (t) In my opinion, information, statements in the annexure to the cost audit report gives a true and fair view of the cost of production of production / rendering of services, cost of sales, margin and other information relating to products / services under reference
 - (u) Detailed unit wise and product wise cost statements and schedules thereto in respect of the product/service under reference of the company duly audited and certified are kept in the company.

Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as prescribed in rule 13 of Companies (Audit and Auditors) Rules, 2014, is being or has been committed in the company by its officers or employees the auditor shall report the matter to the Central Government within such time and in such manner as prescribed in rule 13 of Companies (Audit and Auditors) Rules, 2014.

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as prescribed in rule 13 of Companies (Audit and Auditors) Rules, 2014.

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as prescribed in rule 13 of Companies (Audit and Auditors) Rules, 2014.

Section 143 (13) provides that no duty to which an auditor of a company may be subject shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

Section 143 (14) - The provisions of this section shall mutatis mutandis apply to— (a) the cost accountant in practice conducting cost audit under section 148; or (b) the company secretary in practice conducting secretarial audit under section 204.

- (1) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall –
 - (a) in case of a listed company, be liable to a penalty of five lakh rupees; and
 - (b) in case of any other company, be liable to a penalty of one lakh rupees.

Companies Act, 2013 : Strategic Positions

Cost Accountant as a Key Managerial Person

- ⦿ Section 203 provides for the appointment of Key Managerial Person
 - Managing Director or Chief Executive Officer or manager and in their absence, a whole time director;
 - Company Secretary; and
 - Chief Financial Officer.

By virtue of qualification and experience, a Cost Accountant can become Key Managerial Person in the company.

Cost Accountant as an Independent Director

- ⦿ Section 149 (4) provides that every listed public company shall have at least one third of total number of directors as independent directors.
- ⦿ Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes the qualification of an independent director who shall possess appropriate skills, experience and knowledge in one or more field of finance, law, management, sales, marketing, administration, research, Corporate Governance, technical operations or other disciplines related to the companies business.

The Cost Accountant having expertise in most of the above fields can become independent director as stipulated in the Companies Act, 2013.

- ⦿ **Technical Member of the Tribunal** - As per Section 409 (3) , a Cost Accountant in Practice having at least fifteen years service is eligible to be appointed as a Technical Member of the National Company Law Tribunal.
- ⦿ **Technical Member of the Appellate Tribunal** - As per Section 411(3), a Cost Accountant, either in employment or in practice, who is having experience of more than 25 years in the prescribed areas is eligible to be appointed as Technical Member of the National Company Law Appellate Tribunal.
- ⦿ **Company Liquidator** - Section 275 (2) provides that the provisional liquidator or the Company Liquidator,

as the case may be, shall be appointed from a panel maintained by the Central Government consisting the names of Chartered Accountants, Advocates, Company Secretaries, **Cost Accountants** or firms or bodies corporate having at least 10 years experience in company affairs.

- ⦿ **Administrator** - Section 259 (Chapter XIX dealing with revival of sick companies) of the Companies Act provides for the appointment of administrator. The said section provides that the interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a data bank maintained by the Central Government or any institute or agency authorized by the Central Government in a manner as may be prescribed consisting of the names of Company Secretaries, Chartered Accountants, **Cost Accountants** and such other professionals as may, by notification, be specified by the Central Government.

Cost Accountant as an Expert

- ⦿ Section 2(38) defines the term 'expert' which includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a **Cost Accountant** and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
- ⦿ Section 211 (2) provides that the **Serious Fraud Investigation Officer** shall be headed by a Director and consists of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in-
 - banking;
 - corporate affairs;
 - taxation;
 - forensic audit;
 - capital market;
 - information technology;
 - law; or
 - such other fields as may be prescribed.
- ⦿ **Cost Accountant by virtue of definition in Section 2(38) and having much experience in the above said field may be appointed as an expert.**

Registered Valuers

- ⦿ Section 247 deals with registered valuers.
- ⦿ Section 247(1) provides that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer and being a member of an organization recognized, in such manner, on such terms as may be prescribed, and appointed by the audit committee or in its absence by the Board of Directors of that company.
- ⦿ **Appearance before Tribunals** - The new Act replaces the Company Law Board and to establish National Company Law Tribunal and National Company Law Appellate Tribunal. Section 432 of the Act enables the Practicing Cost Accountant to appear before the Tribunal as well as before the Appellate Tribunal. The Tribunal to be established will take over the functions of the High Court in the matter of merger, amalgamations, winding up, revival of sick companies, etc. By this, the practicing area is going to be wide enough for the Cost Accountant in practice.

- ⊙ **Mediation and Conciliation** - Section 442 provides that the Central Government shall maintain a panel of experts to be called as Mediation and Conciliation panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act. **Rules for this purpose are yet to be notified.** However we may have hope that the role of Cost Accountants will be there.

Liabilities

The duties of a company auditor have been specified in various provisions of the Act. Accordingly, if a company auditor fails to discharge his specified duties, he will be legally held liable. Moreover, there are a number of occasions where an auditor may be held liable to his appointing authority, the Government or any other persons.

The liabilities of an auditor may be discussed as follows:

A. Statutory Liabilities

I. Under Companies Act, 2013

- ⊙ **Civil Liabilities:** The civil liabilities as per Companies Act, 2013 are stated below:
 - (a) **For Misstatement in the Prospectus:** As per Section 35, where a person has subscribed for securities of a company acting on any statement included in the prospectus, or on the inclusion or omission of any matter in the prospectus which is misleading and thereby has sustained any loss or damage and where the auditor as an expert has either made such statement or has given written consent to the issue of the prospectus, he shall be held liable.
 - (b) **Liability for Misfeasance:** Misfeasance implies breach of trust or negligence in the performance of duties. As per Section 340, a company auditor may be charged with misfeasance only at the time of liquidation of the company, if it is found that he -
 - (i) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or
 - (ii) has been guilty of any misfeasance or breach of trust in relation to the company.
- ⊙ **Criminal Liability:** The criminal liabilities of an auditor under the Companies Act, 2013 are as follows:
 - (a) **Criminal Liability for Misstatement in the Prospectus:** As per Section 34, where the auditor has authorised the issue of any prospectus which includes any statement which is untrue or misleading or where the prospectus has included or omitted any matter which may mislead, the auditor shall be held liable under Section 447.

Accordingly (i.e., as per Section 447), for any fraud, involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower, the auditor shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Moreover, where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

However, where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

- (b) Punishment for Non-compliance with Sections 139, 144 and 145 of the Act:** As per Section 147 -
- (i) If an auditor contravenes the provisions of Section 139, 144 or 145, he shall be punishable with fine which shall not be less than ₹25,000 but which may extend to ₹5,00,000 or four times the remuneration of the auditor, whichever is less.
 - (ii) If an auditor has contravened the above provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹50,000 but which may extend to ₹25,00,000 or eight times the remuneration of the auditor, whichever is less.
 - (iii) Convicted auditor shall be liable to refund the remuneration received by him from the company and pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report.
 - (iv) In case where the audit of a company is being conducted by an audit firm, if 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, the company or its directors or officers, the partner or partners concerned of the audit firm as well as the firm itself shall be liable for fine jointly and severally. However, for criminal liability other than fine, only the partner or partners will be liable.
- (c) Punishment for Refusal or Failure to Produce Documents:** As per Section 217, if any auditor fails without reasonable cause or refuses to produce to an inspector or any person authorised by him in this behalf any book or paper, to furnish any information, to appear before the inspector personally when required, to answer any question which is put to him by the inspector, or to sign the notes of any examination referred to in sub-section (7) of Section 217, he shall be punishable with imprisonment for a term which may extend to six months and with fine ranging from twenty-five thousand rupees to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.
- (d) Fraud in Relation to a Company in Winding-up:** As per Section 336, if any auditor is engaged in any fraudulent activities in relation to any company in winding up, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
- (e) Punishment for False Statement:** As per Section 448, if any auditor deliberately makes any false statement in any return, report, certificate, financial statement, prospectus, statement or other document required by the act or deliberately omits any material fact, he shall be liable under Section 447 and shall be subject to the punishment as stated earlier in point (a).
- (f) Punishment for False Evidence:** As per Section 449, if the auditor intentionally gives false evidence upon any examination on oath or solemn affirmation or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company or about any matter under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

II. Under Other Acts

- ⦿ **Liabilities under Income Tax Act, 1961:** As per Section 278 of the Act, if any auditor abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which the auditor either knows or does not believe to be true, the auditor shall be punished.
- ⦿ **Liabilities under Cost Accountants Act, 1959:** Schedule I and II of the Act contains a list of instances where a Cost Accountant shall be held guilty of professional misconduct.
- ⦿ **Liabilities under Life Insurance Act, 1956:** As per Section 104 of the Act, if an auditor makes any false statement in any return, report or other such forms to be issued under this Act, he shall be sentenced to imprisonment or fine or both.
- ⦿ **Liabilities under Banking Regulation Act, 1949:** As per Section 46 of the Act, if an auditor in any return, balance sheet, or other document wilfully makes a statement, which is false in any material particulars, knowing it to be false, or wilfully omits to make a material statement, he shall be held liable.

B. Contractual Liabilities

The scope of any audit work is determined by the written contract entered into between the auditor and the client. Thus, if any of the terms of the said contract is contravened, the auditor may be held liable under the Indian Contract Act, 1872.

In case of absence of any written contract between the auditor and the appointing authority, the auditor is expected to conduct complete audit. Hence, if in such a circumstance, he conducts only partial audit and any error or fraud is discovered later on, he shall be held liable.

Moreover, an auditor shall also be held liable if he discloses any secret information of the client to any third party. In the case *Wilde and Others vs. Cape and Dalgeish* (1897) also, it was held that if the client suffers any loss due to the auditor not complying with the contract, the auditor will have to compensate the client for such loss.

Code of Professional Ethics

As professionals in the field of Cost and Management Accounting, the members of our Institute are bound by a code of professional ethics. This code stipulates and binds them to the highest level of care, duty and responsibility to their employers and clients, the public and their fellow professionals.

The objectives of the accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement. These objectives require four basic needs to be met:

- (a) Credibility in information and information systems;
- (b) Professionalism identified by employers, clients and other interested parties;
- (c) Quality of service carried out to the highest standards of performance; and
- (d) Confidence that there is a framework of professional ethics to govern the provision of services.

In order to achieve the objectives of the accountancy profession, cost accountants have to observe fundamental principles, which are:

(a) Integrity

A cost accountant should be straightforward and honest in performing his services.

(b) Objectivity

A cost accountant should be fair and should not allow prejudice or bias or the influence of others to override objectivity.

(c) Competence

A cost accountant must refrain from performing any service which he is not competent to carry out unless proper advice and assistance is obtained to ensure that the service is performed to the satisfaction.

(d) Confidentiality

A cost accountant must not disclose information acquired during the course of his engagement and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose.

(e) Professional Behaviour

A cost accountant should act in a manner consistent with the good reputation of the profession.

In addition to the fundamental principles above a cost accountant in practice, should be and appear to be free of any interest which might be regarded, whatever its actual effect, as being incompatible with integrity, objectivity and independence.

Duties of a Cost Auditor to Report Fraud – Section 143 of the Companies Act, 2013

3.4

- (i) According to Section 143(12) of the Companies Act 2013, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.
- (ii) Sub-Section 13 specifies that no duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.
- (iii) Sub-Section 14 makes it clear that the provisions of this section shall *mutatis mutandis* apply to the cost accountant in practice conducting cost audit under section 148.
- (iv) According to Sub-Section 15 if any auditor, **cost accountant** or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.
- (v) Matter are required to be reported immediately but not later than 2 days of his knowledge specifying:
 - (a) Nature of Fraud with description;
 - (b) Approximate amount involved; and
 - (c) Parties involved.
- (vi) Following disclosures are required to be made in Board's Report:
 - (a) Nature of Fraud with description;
 - (b) Approximate Amount involved;
 - (c) Parties involved, if remedial action not taken; and
 - (d) Remedial actions taken.

Punishment for Fraud (Section 447 of the Companies Act, 2013)

3.5

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

- (i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

Punishment for False Statement (Section 448 of The Companies Act, 2013)

3.6

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

PROFESSIONAL AND OTHER MISCONDUCTS

THE COST AND WORKS ACCOUNTANTS ACT, 1959

It is an Act for the regulation of the profession of Cost Accountants. The regulation is exercised through the Institute. For the management of the affairs and for discharging the functions assigned to it by the Cost and Works Accountants Act, there is a Council of the Institute. The Council has been empowered to institute any enquiry into cases where it is prima facie of the opinion that a member is guilty of professional or other misconduct.

SCHEDULES TO THE ACT

THE FIRST SCHEDULE

PART I

PROFESSIONAL MISCONDUCT IN RELATION TO COST ACCOUNTANTS IN PRACTICE

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he:-

- (1) allows any person to practise in his name as a cost accountant unless such person is also a cost accountant in practice and is in partnership with or employed by himself;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner.

Explanation: In this item, “partner” includes a person residing outside India with whom a cost accountant in practice has entered into partnership which is not in contravention of item (4) of this part;

- (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share, commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part;

- (4) enters into partnership, in or outside India, with any person other than a cost accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (iv) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;
- (5) secures, either through the services of a person who is not an employee of such cost accountant or who is not his partner or by means which are not open to a cost accountant, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

- (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting-

- (i) any cost accountant from applying or requesting for or inviting or securing professional work from another cost accountant in practice;
- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;
- (7) advertises his professional attainments or services, or uses any designation or expressions other than cost accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the [Institute of Cost Accountants of India] or of any other institution that has been recognised by the Central Government or may be recognised by the Council :

Provided that a member in practice may advertise through a write up, setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

PART II

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE IN SERVICE

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person—

- (1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;
- (2) accepts or agrees to accept any part of fees, profit or gains from a lawyer, a cost accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

- (1) not being a fellow of the Institute acts as a fellow of the Institute;
- (2) does not supply the information called for, or does not comply with the requirements asked for by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;
- (3) while inviting professional work from another cost accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

OTHER MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY

A member of the institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if—

- (1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;
- (2) in the opinion of the Council he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

THE SECOND SCHEDULE

[See sections 21(3), 21B(3) and 22]

PART I

PROFESSIONAL MISCONDUCT IN RELATION TO COST ACCOUNTANTS IN PRACTICE

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he:—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of cost accounting and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another cost accountant in practice;
- (3) permits his name or the name of his firm to be used in connection with an estimate of cost or earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on cost or pricing statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest;

- (5) fails to disclose a material fact known to him in a cost or pricing statement, which is not disclosed in a cost or pricing statement but disclosure of which is necessary in making such statement where he is concerned with such statement in a professional capacity;
- (6) fails to report a material mis-statement known to him to appear in a cost or pricing statement with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure of costing and pricing applicable to the circumstances;
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

- (1) contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council;
- (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;
- (3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART III

OTHER MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.]

CONSTITUTION OF DISCIPLINARY DIRECTORATE, BOARD OF DISCIPLINE AND DISCIPLINARY COMMITTEE

Section 21 (1) of the Cost and Works Accountants Act, 1959 provides for constitution of the Disciplinary Directorate, Board of Discipline and Disciplinary Committee. For purposes of provisions of this Act Disciplinary Directorate, Board of Discipline and Disciplinary Committee, and Director (Discipline) shall have same powers as are vested in a civil court under the Code of Civil Procedure.

PENALTIES UNDER THE ACT

Section 24 of the Cost and Works Accountants Act, 1959: Penalty for falsely claiming to be a member, etc.

Any person who,-

- (i) not being a member of the Institute-
 - (a) represents that he is a member of the Institute; or
 - (b) uses the designation cost accountant; or
- (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a cost accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Section 25 of the Cost and Works Accountants Act, 1959: Penalty for using name of the Council, awarding degrees of cost accountancy, etc.

- (1) Save as otherwise provided in this Act, no person shall,-
 - (i) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;
 - (ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence in cost accountancy similar to that of a member of the Institute; or
 - (iii) seek to regulate in any manner whatsoever the profession of [cost accountants.]
- (2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.
- (3) Omitted w.e.f. 8/8/2006
- (4) If the Central Government is satisfied that any diploma or certificate or any designation granted or conferred by any person other than the Institute, which purports to be a qualification in cost accountancy but which, in the opinion of the Central Government, falls short of the standard of qualifications prescribed for cost accountants and does not in fact indicate or purport to indicate the position or attainment of any qualification or competence in cost accountancy similar to that of a member of the Institute, it may, by notification in the Official Gazette and subject to such conditions as it may think fit to impose, declare that this section shall not apply to such diploma or certificate or designation.

Section 26 of the Cost and Works Accountants Act, 1959: Companies not to engage in cost accountancy.

- (1) No company, whether incorporated in India or elsewhere, shall practice as cost accountants.
- (2) Any contravention of the provisions of sub-section (1) shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction to five thousand rupees.

[Explanation: For the removal of doubts, it is hereby declared that the “company” shall include any limited liability partnership which has company as its partner for the purposes of this section.]

Section 27 of the Cost and Works Accountants Act, 1959: Unqualified persons not to sign documents.

- (1) No person other than a member of the Institute shall sign any document on behalf of a cost accountant in practice or a firm of such cost accountants in his or its professional capacity.
- [(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees or with both.]

Section 28 of the Cost and Works Accountants Act, 1959: Offences by companies.

- ⦿ If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- ⦿ **Explanation:** For the purposes of this section,- (a) “company”, with respect to an offence under section 24, section 25 or section 27, means any body corporate and includes a firm or other association of individuals; and with respect to an offence under section 26 means a body corporate; and (b) “director”, in relation to a firm, means a partner in the firm.

Section 29 of the Cost and Works Accountants Act, 1959: Sanction to prosecute.

- ⦿ No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government.

Solved Case

ABC a public limited company manufacturing product comes under Non-Regulated Sector and classified products under CTA. The total Turnover of the Company for the financial year 2022-23 is ₹159.00 Crores as per details below.

Sr. No.	CTA Heading	Additional Details	Turnover (₹/Crores)
1.	7401	Waste & Scrap	46
2.	7405	PRODUCT(s) Manufactured	57
3.	7406	By Product	56
TOTAL			159

The company seeks your opinion whether the provisions of maintenance of cost records and audit there of applicable particularly in view of turnover of all the product group individually is below the ₹ 100.00 crores.

Solution:

To
The Managing Director
M/s ABC Limited

Dear Sir

This has reference to query vide your letter dated ———— seeking opinion on applicability of the provisions of maintenance of cost records and audit thereof.

My opinion on your query is as follows.

As the turnover of the main product manufactured by company is more than ₹ 35.00 crores and the total turnover of the company is above ₹100.00 crores, the provisions of maintenance of cost records and audit thereof is applicable to the company as per the provisions of The Companies (Cost Records and Audit) Rules, 2014 (as amended). However, the same is applicable of the main product only i.e CTA code 7405.

Further Waste and scrap are generated out of a manufacturing process. For payment of duty, it gets classified under a CTA Code. It is not a product and hence cost audit of scrap is meaningless and not applicable. Therefore, the Cost Audit is not applicable to the Waste and scrap are generated.

Same is the case with By-Product. It is not a product by itself but comes out of a manufacturing process. In case the By-Product is sold as such without any further processing, the realisable value is usually credited to cost of production of the main product. In such a case, preparation of a separate cost statement does not arise.

However, where there is further processing of the By-product before being sold, then there would be a separate cost statement to arrive at a profit/loss arising on such By-product. Such cost statement would form part of the cost audit report.

Hope you will find the above in order.

Thanking You

Exercise

A. Theoretical Questions

⊙ Multiple Choice Questions

1. The appointment of Cost Auditor is defined under section _____ of the Companies Act, 2013.
 - (a) Section 148(2)
 - (b) Section 148(3)
 - (c) Section 144(3)
 - (d) Section 139
2. A cost accountant who fails comply with the provisions of sub-section (12) of Sec. 143 of the Companies Act, 2013, shall be punishable with fine of maximum ₹ _____.
 - (a) ₹ 5.00 lakhs
 - (b) ₹ 25.00 lakhs
 - (c) ₹ 1.00 lakhs
 - (d) ₹ 10.00 lakhs
3. Cost auditor to report fraud under section _____ of Companies Act, 2013.
 - (a) Section 140(12)
 - (b) Section 148(2)
 - (c) Section 144(10)
 - (d) Section 143(12)
4. Cost Auditor is to be appointed within _____ days from the start of the F.Y.
 - a) 50
 - b) 100
 - c) 180
 - d) 200
5. Cost Audit Report is to be filed on MCA Portal within _____ days from the end of FY to which The Cost Audit pertains
 - a) 100
 - b) 180
 - c) 200
 - d) 250

6. Section _____ provides that an officer or employee of the Company shall not be eligible for appointment as Cost Auditor of the Company
- 100
 - 125
 - 137
 - 141
7. Section _____ of the Companies Act,2013 states the Cost Auditor shall have the same powers As auditors of the company has u/s 143 of the Companies Act, 2013
- 100
 - 121
 - 148
 - 175
8. Which Audit covers Efficiency, Performance, Propriety?
- Financial Audit
 - Internal Audit
 - Secretary Audit
 - Cost Audit
9. Notification of the Companies (Cost Records and Audit) Rules, 2014 has resulted in superseding of :
- Companies (Cost Accounting Records) Rules, 2009
 - Companies (Cost Accounting Records) Rules, 2010
 - Companies (Cost Accounting Records) Rules, 2011
 - Companies (Cost Accounting Records) Rules, 2012
10. Section 148 of the Companies Act,2013 deals with the provisions relating to :
- Financial Audit
 - Internal Audit
 - Secretarial Audit
 - Cost Audit
11. Write when the Cost Auditor of the Company shall be appointed for F.Y.2023-24
- Before 31.03.2023
 - Before 31.03.2024
 - Within 60 days from the start of FY – i.e. 30.05.2023
 - Within 180 days from te start of F.Y.-i.e. 27.09.2023

12. _____ is absolutely necessary for efficient resource utilisation.
- Financial Audit
 - Internal Audit
 - Tax Audit
 - Cost Audit
13. A person shall not be eligible to be appointed as Cost Auditor of the Company if he has been convicted of an offence involving fraud and a period of _____ years has not elapsed from the date of such conviction
- 1 year
 - 5 years
 - 7 years
 - 10 years

⊙ **State True or False**

- Cost audit shall be conducted by a Cost Accountant who shall be appointed by the Board of the company under section 139 of the Companies Act, 2013.
- A company can rotate a Cost Auditor as per the provisions of section 139(3) of the Companies Act, 2013.
- Mr. A who was a cost auditor of a company was convicted by a court for an offence involving fraud and a period of 5 years have elapsed from the date of such conviction can be re-appointed as cost auditor of a company.
- A cost auditor appointed by a company may be removed from his office before the expiry of his term, by Audit committee of the company after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons.
- The remuneration recommended by the Audit Committee shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders.

⊙ **Fill in the Blanks**

- Rights and Duties of a Cost auditor is defined under section _____ of the Companies Act, 2013.
- A Company is prohibited under section _____ of the Cost and Works Accountants Act, 1959 to practice as Cost Accountants.
- A Cost Auditor found guilty of deliberately providing false report and certificate will be liable for punishment under section _____ the Companies Act, 2013.
- Relatives of any partner of the firm holding any security of or interest in the company of face value exceeding ₹ _____ lakh can not be appointed as the Cost Auditor of that company.
- The casual vacancy caused due to death of cost auditor to filled within _____ days.

⊙ **Short Essay Type Questions**

1. Write in brief about the procedure for appointment of Cost Auditor.
2. Write a short note on Code of Professional Ethics which need to be followed in the field of Cost and Management Accounting.
3. Discuss about the fundamental principles to be observed by the Cost Accountants.

Answer:

Multiple Choice Questions

1.	(b) Section 148(3)
2.	(b) ₹ 25.00 lakhs.
3.	(d) Section 143(12)
4.	(c) 180
5.	(b) 180
6.	(d) 141
7.	(c) 148
8.	(d) Cost Audit
9.	(c) Company (Cost Accounting Records) Rules, 2011
10.	(d) Cost Audit
11.	(d) Within 180 days from the start of F.Y.2023-24 i.e. 27.09.2023
12.	(d) Cost Audit
13.	(d) 10 years

State True or False

1.	False-Cost audit shall be conducted by a Cost Accountant who shall be appointed by the Board of the company under section 148(3) of the Companies Act 2013.
2.	False- As per the Companies act, 2013, there is no such statutory provision for rotation of cost auditors however the individual companies may do so as a part of their policy.
3.	False - As per the Companies act, 2013, A person who has been convicted by a court for an offence involving fraud and a period of ten years has elapsed from the date of such conviction than only can be re-appointed as cost auditor of a company.
4.	False - A cost auditor appointed can be removed from his office before the expiry of his term, only by Board through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons.
5.	True.

Fill in the Blanks

1.	Section 143
2.	Section 26
3.	Section 447
4.	1 (one)
5.	30