**AUDITING- BBA N-605**

**UNIT- 3**

**Qualification Or Disqualification Of Company Auditor – Section 141 Of Companies Act 2013**

**QUALIFICATION OF A COMPANY AUDITOR**

An individual shall be eligible for appointment as company auditor only when such individual is a qualified chartered accountant in practice.

If a company has decided to appoint an audit firm as company’s auditor then majority of partners must be practicing chartered accountants in India.

Earlier provision of companies act 1956 required all the partners to be chartered accountant to get appointed as company auditor. This provision has been changed with the new companies act 2013 in which majority partners has to be chartered accountants.

**DISQUALIFICATION OF A COMPANY AUDITOR**

However following persons are not eligible to get appointed as company auditor;

* A body corporate other than a LLP registered under LLP act 2008
* An officer or employee of the company
* A person who is a partner, or who is in the employment, of an officer or employee of the company
* 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 associated company or a subsidiary of such holding company valuing not more than Rs. 1000 (face value):
* Is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 500000; or
* 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 associated company or a subsidiary of such holding company in excess of Rs. 100000;
* 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 associated company of such nature as may be prescribed;
* a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
* 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 person or partner is at the date of such appointment or reappointment holding appointment as auditor for more than 20 companies;
* a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction.
* any person whose subsidiary or associated company or any other form of entity, is engaged as on the date of the appointment in consulting and specialized services such as accounting, book keeping services, internal audit, investment advisory services, investment banking services and such other services prescribed.

**APPOINTMENT OF FIRST AUDITOR**

As per section 139(6) the first auditor of the company shall be appointed *by the Board* within 30 days of Incorporation. In case of *Board’s* *failure*, an *EGM shall be called* within 90 days to appoint the first auditor. The law is silent regarding from when this time limit of 90 days be reckoned, it is better to take a stricter view and interpret that the 90 days limit starts from Incorporation rather than expiry of 30 days(i.e. failure of Board) from it.

Tenure: – Till conclusion of 1st annual general meeting.

Remuneration: – As per proviso to section 142(1) remuneration of the first auditor can be decided by the Board.

***APPOINTMENT OF AUDITOR AT 1ST AGM***

As per section 139(1) every company shall appoint at its 1st annual general meeting an individual or a firm as an auditor of the company who shall hold office 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

**Tenure** **subject to ratification :-**The tenure of 5 consecutive years is subject to ratification by shareholders at every AGM.

**Remuneration**: – As per section 142(1) remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined

***RE-APPOINTMENT OF AUDITOR***

After completion of tenure of 5 consecutive years the auditor may be re-appointed by complying with the provisions of section 139(9) which states that subject to the provisions of sub-section (1) & the rules made there under, a retiring auditor may be re-appointed at an annual general meeting, if-

* He is not disqualified for re-appointment.
* He has not given the company a notice in writing of his unwillingness to be re-appointed
* A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

***CASUAL VACANCY***

As per section 139(8) any casual vacancy, shall be filled by the Board within 30 days. If the vacancy has arisen due to resignation of auditor then such appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board.

**Instances of casual vacancy :-**

* Death
* Resignation
* **Disqualification** – If an existing auditor gets disqualified under Section 141 then he shall inform the company and the situation will be treated as casual vacancy (Section 141(4))
* **Failure of ratification at AGM** – If the ratification resolution fails at the AGM of company then this also tantamount to casual vacancy(explanation to rule 3).

**Tenure**: – Till conclusion of forthcoming annual general meeting.

**REMOVAL OF AUDITOR**

The Companies Act, 2013 permits removal of auditor before completion of his term. The procedure for removal of auditors is given in sub-section (1) of Section 140 of the Act.

If a Company is not satisfied with the services of the statutory auditor the company can start process for removal of auditor as stated the process u/s 140(1).

**Removal of Auditor after expiry of term**

After the expiry of the term of office, an auditor, is usually automatically reappointed. However, if the company decides not to re-appoint the existing auditor, the following procedure has to be followed.

**Procedure for Removal**

1. **Special notice**: The shareholder who intends to remove the auditor, shall give 14 days notice (Special notice) to the company, informing his intention to remove the auditor by passing a resolution in the general meeting.

2. **Communication to the retiring auditor**: The company on receipt of such notice, should send a copy to the retiring auditor.

3. **Representation by retiring auditor**: The retiring auditor can make a written representation, not exceeding a reasonable length, to the company, regarding his proposed removal. He may also request the company to circulate his representation to the members. The company should send a copy of the representation of the auditor to the shareholders, either along with the notice to meeting or subsequently. The company is required to send the representation to the shareholders only if the representation is made by the auditor within a reasonable time.

4. **Representation to be read**: If the representation is not circulated to the shareholders, the auditor may require that his representation be read out in the general meeting.

5. **Right to attend the meeting**: The auditor who is proposed to be removed has an inherent right to attend the general meeting. He can also make an oral statement at the meeting as to his proposed removal.

6. **Not to abuse the right**: The above privileges are extended to the auditor to protect his independence and to prevent his unjust removal. However, if the Company Law Board is satisfied that his right to make a representation is likely to be abused by him by way of seeking unwarranted publicity for a defamatory matter, the CLB may order that the representation may not be read out or circulated to the shareholders. In this regard, the company or any other aggrieved party may apply to Company Law Board seeking the direction of the Company Law Board.

**Removal of Auditor before the expiry of term**

**Removal of first auditors**

We know that the first auditors are appointed by the Board of Directors. To remove the first auditors, an ordinary resolution is to be passed at the shareholders meeting. If another person is proposed to be appointed in his place, at least 14 days notice is required.

**Removal of other Statutory auditors**

The auditors can be removed, before the expiry of their term, by the company in a general meeting only with the prior approval of the Central Government. This provision prevents unjust removal of auditors.

**Powers or Rights of a company Auditor**

* Rights to access
* Auditor to sign audit reports
* Auditor in general meeting
* Right to remuneration
* Power to inspect branch accounts

**Duties**

 The duties of a company auditor under Companies Act 2013 may be discussed under the following:

* Make Report
* Auditing Standards
* Fraud Reporting
* **Other Duties**: - Besides the above duties, there are other duties of an auditor to be performed in course of his audit. These are:

 a) The auditor should give all possible assistance to the inspectors in case of an investigation of the affairs of the company.

b) In case an existing company issues prospectus, it should contain a statement of profit & losses for the last 5 years showing the rate of dividends paid each classes of shares for each year and a statement of assets & liabilities of the company. It is the duty of auditor to certify all these statements.

**Liabilities of an Auditor**



**Auditor's report**

An auditor's report provides an opinion on the validity and reliability of a company’s financial statements.

When financial statements are finalised, they usually must contain an evaluation – an auditor's report - from a licensed accountant or auditor. This report provides an overview of the evaluation of the validity and reliability of a company or organization’s financial statements.

**Four types of reports**

You may have seen mention of a particular type of audit report. The three main types are:

* The ***clean* or *unqualified opinion***. This report indicates the auditor’s opinion that all documents provided for the evaluation indicate that the company’s financial activities and records are correct and acceptable.

This report shows that a business has followed the necessary practices and adhered to conditions set about by the UK GAAP. This is the best type of report a company can receive.

* The ***qualified opinion***. This report is generally positive because it indicates that the auditor has found nothing wrong in the financial documentation. However, a qualified opinion means that the company audited has not adhered to the standards set by UK GAAP.

This report will include an extra section addressing why it could not be considered an unqualified opinion.

* The ***adverse opinion***. Hopefully never a report you will have to face as it is the worst type to receive following an audit. An adverse opinion means that the company has not adhered to the standards set by the UK GAAP and that auditor has discovered discrepancies in the company’s financial statements.

While this can result from a mistake in the auditing process, it can also be an indication of fraud within the company. An adverse opinion means the company must go through their documentation before being audited a second time.

* ***Disclaimer of Opinion*** : A Disclaimer of Opinion is to be issued by an auditor in cases where the auditor concludes that he / she is not able to obtain sufficient and appropriate evidences. In such scenario, the auditor is not able to form an opinion and thus, disclaims form providing an opinion on the financial statements. The impact of material misstatements and degree of the same is high enough.

**Contents of an Audit Report**

The basic structure of an audit report as prescribed by the Standards on Auditing is as follows:

|  |  |
| --- | --- |
| **Heading** | **Brief of contents** |
| Title | Title should mention that it is an ‘Independent Auditor’s Report’. |
| Addressee | Should mention clearly as to whom the report is being given to. |
| Management’s Responsibility for Financial Statements |  |
| Auditor’s Responsibility | Responsibility of the Auditor is to express an unbiased opinion on the financial statements & issue an audit report. |
| Opinion | Should mention the overall impression obtained from the audit of financial statements.For example Modified Opinion, Unmodified Opinion |
| Basis of the Opinion | State the basis on which the opinion as reported has been achieved. Facts of the basis should be mentioned. |
| Other Reporting Responsibility | If any other reporting responsibility exists, the same should be mentioned.For example Report on Legal or Regulatory requirements |
| Signature of the Auditor | The engagement partner (auditor) shall sign the audit report. |
| Place of Signature | The city in which audit report is signed. |
| Date of Audit Report | Date on which the audit report is signed. |

**FORMAT OF AUDIT REPORT**



**Audit certificate**

A term used in the context of clinical trials for a document which certifies that an audit has taken place- e.g., at an investigative site, clinical research  organisation, or clinical research department of a pharmaceutical company.