

Companies Bill 2012¹ With Respect to Chartered Accountants, Audits and Auditors



The Lok Sabha has passed the much awaited Companies Bill 2012 and the Bill, pending its passage in Rajya Sabha, is just two more steps away to be enacted as an Act of Parliament. There are many improvements in all areas which will be witnessed when the Act comes into force. Provisions related to Chartered Accountants, Audits and Auditors have undergone many changes when compared to the existing Companies Act, 1956. In order to strengthen their powers and make auditors more responsible, the Bill has introduced changes including new provisions, revision of old provisions and removal of redundant provisions. This article attempts to summarise those provisions.



CA. Maragathavalli R

(The author is a member of the Institute. She can be reached at maragathamr@gmail.com)

The Companies Bill 2011 was introduced in Parliament in December 2011 and was referred to the Parliamentary Standing Committee on Finance for its review and suggestions. The Parliamentary Standing Committee headed by Mr. Yashwant Sinha submitted its report in June 2012 and based on its recommendations and suggestions, amendments were made to the Companies Bill 2011. Then it was introduced as Companies Bill 2012 (the Bill) and was passed by the Lok Sabha on 18th December 2012. The Bill has 470 clauses distributed in 29 Chapters and contains 7 Schedules.

¹ As passed by the Lok Sabha on 18th December 2012. The Source document Companies Bill 2012 is sourced from the MCA website. http://www.mca.gov.in/Ministry/pdf/The_Companies_Bill_2012.pdf

Key Amendments: Bill 2011 Vs. Bill 2012

Here are a few key amendments introduced in the Bill 2012, compared to the Companies Bill 2011.

1. Key Managerial Personnel includes Whole time director; [Cl.2(51)(iii)²]
2. Reopening of books of accounts is permitted only on application to an order by a competent court having jurisdiction or by the Tribunal [Cl.130(1)]
3. The provisions regarding the constitution of the National Financial Reporting Authority and its power, authority and responsibilities have undergone a big change. The same has been discussed in detail later in this article.
4. A new proviso has been inserted in Cl.135(5) to mandate companies to give preference to the local areas and the areas around where it operates to spend the funds earmarked for CSR activities. A new explanation is also inserted to clarify that calculation for “average net profits” is to be made in accordance with the provisions of S.198
5. Every company at the first annual general meeting appoint an individual or a firm as an auditor who shall hold the office from the conclusion of the first annual general meeting till the conclusion of the 6th annual general meeting. *But it has to place the matter relating the appointment of auditors for ratification at every annual general meeting.* [New proviso to Cl.139(1)]
6. Existing companies are given one year time to comply with the requirements of the provisions of Cl.149(1) relating to having Board of Directors as specified. [Cl.149(2)]³
7. Another noteworthy point is that Electronic form of book keeping and documentation is now recognised under the Bill 2012. [Proviso to Cl.128]

Constitution of National Financial Reporting Authority

The major changes introduced in the amended Bill 2012 with respect to the NFRA are hereunder:

1. The persons employed full-time with the National Financial Reporting Authority (NFRA) shall not be associated with any audit firm, including related consultancy firms, during the course of their appointment and two years after ceasing to hold such appointment. [3rd proviso to Cl.132(3)]⁴
2. NFRA's power to levy, when professional misconduct is proven, a penalty of ₹100,000 in case of individuals and a penalty of ₹10,00,000 was proposed in the Old Bill 2011. Now the

The key amendments introduced in the Bill 2012, compared to the Companies Bill 2011 include that 'Key Managerial Personnel now includes whole time director,' 'Reopening of books of accounts is permitted only on application to an order by a competent court having jurisdiction or by the Tribunal,' and 'a big change in the provisions regarding the Constitution of the National Financial Reporting Standards Authority and its power, authority and responsibilities'.

provisions are amended to impose and imply penalty of up to 5 times the sum received as fees in case of individuals (minimum ₹ 1 lakh) and upto 10 times the sum received as fees in case of a firm (minimum ₹ 10 lakh) [Cl. 132 4(C)(A)(i) & (ii)]

Audit and Auditors

Chapter X of the Companies Bill 2012 deals with Audits and Auditors of the Company. For the purposes of this Chapter, appointment includes reappointment. This Chapter contains Clauses 139 to 148 and covers a wide range of topics such as:

1. Clause 139: Appointment of auditors
2. Clause 140: Removal, resignation and giving of Special notices
3. Clause 141: Eligibility, qualifications and disqualifications of auditors
4. Clause 142: Remuneration of auditors
5. Clause 143: Powers and duties of auditors and auditing standards
6. Clause 144: Auditor not to render certain services
7. Clauses 145 – 148: Auditor to sign audit reports, etc.; auditors to attend general meetings; Punishment for contraventions, etc.

Appointment of Auditors:

Cl.139 of the Bill deals with the appointment of auditors. It enumerates the provisions for appointment of auditors for both

- a. Government or Government controlled Companies and
- b. For every other company.

Provisions related to Government or Government Controlled Companies:

In case of a Government Company, or any other company owned or controlled, whether directly or indirectly, individually or together, by the Central

² Newly inserted in the Bill 2012.

³ New subClause inserted in the amended Bill 2012

⁴ Newly inserted proviso in the amended Bill 2012.

or State Government(s) [Government controlled Company], the auditor shall be appointed by the *Comptroller and Auditor General of India, (C&AG)*.

First Auditor:

The first auditor of a Government or Government controlled Company shall be appointed by the C&AG within 60 days from the date of registration of the company. If the C&AG does not appoint the auditor, the Board of Directors shall appoint the auditor within the next 30 days. And if the Board fails to appoint such auditor(s), it shall inform the members of the company, who shall appoint the auditor within the 60 days at an Extra-Ordinary general meeting.

Regular appointment of Auditors

In respect of any financial year, the C&AG shall appoint the auditor, who is qualified as per the provisions of this Act, within 180 days from the commencement of the financial year and the auditor so appointed shall hold office till the conclusion of the Annual General meeting (AGM).

Filling up of Casual Vacancy

In case of any casual vacancy in the office of an auditor so appointed by the C&AG will be filled in only by the C&AG within 30 days. In case the C&AG does not fill up such casual vacancy within the stipulated time, the Board of Directors shall fill such vacancy within next 30 days.

Provisions related to every other company:

At the first Annual General Meeting (AGM), every company (other than Government or Government controlled Company) shall appoint an individual or a firm as auditors. For the purposes of this Chapter, the word 'Firm' includes a Limited Liability Partnership (LLP). Such auditors shall hold office from the conclusion of the said AGM till the conclusion of the 6th AGM i.e., for a period of 5 consecutive years. The Bill provides for a term of 5 consecutive years without rotation of the individual or firm, as the case may be, as an auditor. The conditions are:

1. At each AGM thereafter, the matter related to such appointment shall be placed for ratification by the members of the company
2. A written consent to such appointment and a certificate that the appointment is in accordance with the prescribed conditions should be obtained from the auditor before such appointment is made.
3. The certificate should state whether the auditor

Chapter X of the Companies Bill 2012 deals with Audits and Auditors of the Company. For the purposes of this Chapter, appointment includes reappointment. This Chapter contains Clauses 139 to 148 and covers a wide range of topics such as 'Clause 139: Appointment of auditors,' 'Clause 140: Removal, resignation and giving of Special notices,' 'Clause 141: Eligibility, qualifications and disqualifications of auditors,' 'Clause 142: Remuneration of auditors,' 'Clause 143: Powers and duties of auditors and auditing standards,' 'Clause 144: Auditor not to render certain services,' 'Clauses 145 – 148: Auditor to sign audit reports, etc.; auditors to attend general meetings; Punishment for contraventions, etc.'

satisfies the criterion set out in Clause 141, which is essentially the eligibility, qualifications and disqualifications of auditors.

4. The company has to inform the auditor concerned about the appointment and also notify the Registrar within 15 days of such appointment.
5. Listed or Specified Company or a class of companies cannot re-appoint an individual for more than one term of consecutive 5 years. In case of a firm of auditors, these companies cannot re-appoint them for more than two terms of consecutive 5 years. Also, after completion of the said one term or two terms as the case may be, they are not eligible for re-appointment for five years from the completion of such term(s). That is, in case of auditor being
 - a. Individual – he is not eligible for re-appointment from the 6th to 10th year from completion of one term of five years;
 - b. A Firm – It is not eligible for re-appointment from the 11th to 15th year from completion of two terms of five years, in case it is re-appointed for a second term.
6. The company cannot appoint a firm as auditor, if as on the date of appointment, it has a common partner or partners, whose other audit firm(s) was appointed as an auditor in the company and its tenure had expired in the immediately preceding financial year.
7. In case of casual vacancy (other than by resignation by the auditor), the Board of Directors should fill the vacancy within 30 days. If the vacancy is due to resignation by the auditor, then such appointment should be approved by the company at a general meeting convened at the recommendation of the Board. The auditor so appointed as above shall

hold office till the conclusion of the next AGM.

The Bill gives the existing companies a cooling off period of three years from the date of commencement of the Act, when passed, for implementing the provisions of sub-clause (2) of Cl.139 [points 5 & 6 above].

It also provides that nothing in the sub-clause shall mean to prejudice the Company's right to remove the auditors or the auditor's right to resign from such office.

The members of the company are given a right to resolve to rotate the auditing partner and his team of an audit firm so appointed at such intervals as they deem fit. Also, they can resolve to have the audit done by more than one auditor.

The Central Government may prescribe the manner in which companies can rotate the auditors enumerated as above.

A retiring auditor shall be reappointed at an AGM unless

- He is disqualified for re-appointment
- He has given a notice in writing of his unwillingness to be re-appointed
- A special resolution is passed at that meeting appointing someone else or providing explicitly not to re-appoint the retiring auditor.

If no new auditor has been appointed or reappointed at any AGM, the existing auditor shall continue to be the auditor of the company.

Where a company has constituted an Audit Committee under S. 177 of the Act (to be enacted), all appointments including filling up of casual vacancy should be made after taking into account, the recommendation of such committee.

Removal, Resignation of Auditors and Giving of Special Notices

Removal:

The Auditor appointed under clause 139 may be removed from his office before expiry of his term. For this, the company should

1. Get prior approval of the Central Government on

Sub-clause (9) and (10) provides emphasis on the auditing standards and it mandates that every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendums thereto, it shall consult with and take recommendations of the ICAI and the NFRA. Till such time the Auditing Standards are notified by the Central Government, the auditing standards specified by the ICAI are deemed to be the auditing standards.

that behalf, in the prescribed manner and

2. Pass a Special Resolution.

To safeguard the interest of the auditor, the Bill provides that before taking any action under clause 140(1), the auditor should be given a reasonable opportunity to be heard.

Resignation:

An auditor who resigns from the company shall file a statement in the prescribed form, with the company and the Registrar and in case of Government or government controlled companies, with the C&AG too, indicating the facts, reasons and other relevant information pertaining to his resignation, within 30 days from the date of resignation. If the auditor fails to comply with the above, he shall be punishable with a fine between ₹ 50,000 to ₹ 500,000.

Special Notices

1. Special notice is required for a resolution to appoint another auditor in place of the retiring auditor or to provide expressly that the retiring auditor shall not be re-appointed. This provision is not applicable where the auditor is retiring after completing his tenure of 5 years or 10 years, as the case may be.
2. On receipt of such special notice, the company should send a copy thereof to the retiring auditor.
3. Where such a notice is given about such a resolution and the retiring auditor makes a representation in writing to the company with respect to such notice and requests it to be notified to the members, the company should, unless it is too late to do so,
 - a. in the notice of the resolution, state the fact of the representation being made and
 - b. Send a copy of the representation to the members of the company to whom the notice of such resolution was sent, irrespective of whether the notice was sent before or after the receipt of the representation.
4. If the copy of the representation was not sent as aforesaid, either because it was too late to do so or because of company's fault, the retiring auditor may require the representation to be read out or exercise his right to be heard orally at the meeting.
5. If a copy of the representation is not sent aforesaid, it can be filed with the Registrar.

Powers of the Tribunal with respect to Removal, etc.

The Company Law Tribunal (the Tribunal) has the following powers:

1. If the Tribunal is satisfied that the auditor is abusing his powers under Clause 140(4) [points 1-5 under the heading Special Notices], then the representation need not be sent or read out at the meeting.
2. If it is satisfied that the auditor has acted in a fraudulent manner or abetted or colluded in any fraud by or in relation to the company, its directors or officers, whether directly or indirectly, then it can, by order, direct the company to change its auditors.
3. It can exercise the aforesaid power either *suo motu* or on application by the Central Government or any concerned person.
4. If the Central Government applies for and satisfies the Tribunal that the auditor needs to be changed, then the Tribunal shall make an order within 15 days of such application that he shall not function as auditor and the Central Government shall appoint the auditor in his place.
5. If a final order is passed against an auditor, individual or firm, by the Tribunal under this Clause 140, then that person is not eligible to be appointed as an auditor of any company. He is liable for action under Cl.447 [Punishment for fraud]

Eligibility, Qualifications and Disqualifications and Remuneration

Clause 141 of the Bill deals with the eligibility, qualifications and disqualifications of the auditors. Clause 142 deals with the remuneration to them.

1. Only a Chartered Accountant (as defined in S.2(1) (b) of the Chartered Accountants Act, 1949 and holding a valid certificate of practice thereunder S.6(1)) can be appointed as an auditor of the Company.
2. A firm of Chartered Accountants can be named as auditor by its firm name if the majority of the partners practicing in India are qualified for such appointment.
3. If a firm (including a LLP) is appointed as aforesaid, only the partners, who are Chartered Accountants, are authorised to act and sign on behalf of the Firm
4. The following persons are not eligible for appointment as auditors:
 - a. A body corporate other than a LLP registered under LLP Act 2008;
 - b. An officer / employee of the company
 - c. A person who is a partner or an employee of an officer or employee of the company

————— ■ —————

A member in practice is prohibited by the ICAI to write or offer book-keeping services, where he is appointed as an auditor of the client. The ICAI, through various notifications has prohibited rendering of certain services while accepting appointment as an auditor, failing which the member shall be deemed to be guilty of professional misconduct, to ensure independence of auditors. (Compendium of Guidance Notes, 2012). Now the Companies Bill 2012 tries to incorporate these in the Act itself, to strengthen the independence of Auditors.

————— ■ —————

- d. A person (or his relative or a partner) who,
 - i. Is holding any security of interest in any of the following namely, [the entities for the limited purpose of this point (d)]
 1. The Company;
 2. Its Holding;
 3. Its subsidiary or associate;
 4. Its Holding's subsidiary

(The relative can hold interest in the company for face value not exceeding ₹1,000 or a sum as prescribed)
 - ii. Is indebted to any of the above entities, in excess of prescribed limit
 - iii. Has given a guarantee or provided any security for indebtedness of any third person to any of the entities, for such amount as may be prescribed
- e. A person or a firm who is having a business relationship with the entities or an associate of the holding company (whether directly or indirectly)
- f. A person whose relative is a director or is in employment with the company as a director or key managerial personnel
- g. A person who is in full time employment elsewhere
- h. A person or a partner of a firm who holds appointment as an auditor of more than 20 Companies
- i. A person convicted by a court of an offence involving fraud and a period of 10 years has not lapsed from the date of conviction
- j. Any person whose subsidiary or associate entity is engaged in consulting and specialised services provided in Cl.144 [services like book keeping, internal audit, implementation of information systems, management services, actuarial services, investment advisory or

investment banking services etc.].

5. If, after being appointed an auditor, an auditor incurs any of the disqualifications detailed under point 4 above, he should vacate his office as an auditor and such vacation will be a casual vacation in the office of an auditor.
 6. The remuneration to the auditors of a company can be fixed in its general meeting or in a manner as determined in such meeting. The remuneration of the first auditor may be fixed by the Board of Directors.
 7. Remuneration includes fees payable to the auditor, any expenses incurred by him in relation to the audit; any facility extended to him. But it does not include any remuneration paid to him for any other services provided by him at the request of the company.
- f. Where it is stated in books and documents of the company that any shares have been allotted for cash, whether cash has actually been received. If not received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.
 4. The auditor of a holding company has access to the books of all of its subsidiaries for the purposes of consolidation of financial statements with that of the subsidiaries.

Duties of the Auditor:

5. The auditor has to make a report to the members of the company on the accounts examined by him and on every financial statement which is required to be laid in the general meeting.
6. The Audit report should take into consideration the provisions of this Act, the Accounting and Auditing standards and matters which are required under this Act or rules made thereunder.
7. The Audit report should state that to the best of his (auditor's) *information and knowledge*⁶, the said accounts and financial statements give a true and fair view of the state of the company's affair as at the end of the financial year and the profit or loss and the cash flow for the year and such other matters as may be prescribed⁷.
8. The auditor's report shall also state other details such as, whether he has sought⁸ and obtained all information and explanations necessary to do his job etc. This sub-clause (3) of Clause 143 is almost the same as to the subsection (3) of Section 227 of the Companies Act, 1956. Only wherever Balance sheet and Profit and Loss account are referred to in the Act, 1956, is now referred to as Financial Statements in the Bill, 2012. Also, where the Act, 1956 requires the Qualification of Adverse remarks in thick bold type and italics, the Bill, 2012 does not require such qualifications to be set differently from other contents. Also, the auditor has to state whether the company has adequate internal financial control systems in place and the operating effect thereof and such other matters as may be prescribed. It is interesting to note that the words "whether in his opinion" are missing to state whether the company has adequate internal financial control system in place.

Powers and Duties of Auditors and Auditing Standards⁵

Clause 143 covers the powers and duties of the auditors and the Auditing Standards. This clause contains almost the same provisions of the Companies Act, 1956.

Powers of Auditor

1. Every auditor of a company has rights to access to the books of account and vouchers of the company at all times whether they are kept at the Registered Office or at any other place.
2. He is entitled to inquire from the officers of the company information and explanations as he thinks necessary to perform his duties as auditor.
3. He shall inquire into the following matters:
 - a. Whether Loans and Advances made by the company are properly secured and not detrimental to the interests of the company or its members
 - b. Whether book entry transactions are prejudicial to the interests of the company
 - c. Where assets consist of shares, debentures or other securities, whether they are sold at lesser than the purchase price. [This is not applicable to an investment company or a banking company]
 - d. Whether loans and advances made by the company are shown as deposits
 - e. Whether personal expenses are charged to revenue account

⁵ Auditing Standards is given reference in the heading itself of the new Bill 2012.

⁶ As against 'in his opinion and to the best of his knowledge'

⁷ Only Balance sheet and Profit and Loss account are covered in the Companies Act, 1956

⁸ It is a newly added word in the Bill 2012, compared to the Companies Act 1956.

Clause 146 of the Bill 2012 mandates that the auditor should attend general meetings. All notices of and communication related to any general meeting shall be forwarded to the auditor of the company and the auditor shall, unless specifically exempted by the company, attend such meetings either by himself or through his authorised representative.

9. In case of government companies, the C&AG shall appoint the auditor under sub-clauses (5) or (7) under clause 139 and direct him as to the manner in which the books are to be audited. Then the auditor shall submit a copy of his report to the C&AG which includes, *inter-alia*, the directions by the C&AG, the actions taken thereon and its impact on the accounts and financial statement of the company.
10. The C&AG, within 60 days upon receipt of the audit report aforementioned, shall order a supplementary audit to be conducted by person or persons authorised in this behalf.
11. The C&AG has a right to direct to furnish such information/additional information to such authorised person(s). He has a right to comment upon or supplement such audit report. Such comments shall be sent to every person entitled to copies of audited financial statements under Cl.139(1). The comments should also be placed before the AGM at the same time and same manner as the audit report.
12. The C&AG, for companies covered under Cl.139 (5) or (7), may order for test audits for such companies, if he deems fit. The provisions of S. 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 shall apply to such test audit reports.

Audit of Branches of Company:

The provisions related to audit of branches of a company that was dealt with in a separate section (S.228) in lengths and breadths under the Companies Act, 1956 had been trimmed and the redundancies and out-dated provisions had been replaced with a single new sub-clause (8) of Clause 143. Accordingly, a branch can be audited by

1. The company's auditor; or
2. Any other person, qualified to be and appointed as an auditor as per the provisions of the Act (to be enacted) as branch auditor; or



3. In case of foreign branch, by the company's auditor or a competent person appointed in accordance with the prevailing laws of the foreign country.

The branch auditor shall prepare a report on the accounts of the branch examined by him and the company's auditor shall deal with such report in his audit report in a manner as he considers necessary. The duties and powers of the company's auditor and the branch auditor shall be such as may be prescribed.

Emphasis on Auditing Standards

Sub-clause (9) and (10) of Clause 143 provides emphasis on the auditing standards and it mandates that every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendums thereto, it shall consult with and take recommendations of the ICAI and the NFRA. Till such time the Auditing Standards are notified by the Central Government, the auditing standards specified by the ICAI are deemed to be the auditing standards.

Other matters to be set therein..

The Central Government may, in consultation with the NFRA, direct that the auditor's report shall also include a statement on such matters with respect to certain class or description of companies, as may be specified in the direction.

Interesting addition to the duties of the auditor is that, if an auditor, during the course of the performance of his duties as an auditor to the company, has reasons to believe that an offence involving fraud is being or has been committed against the company by its officers or employees of the company, he should immediately report the matter to the Central Government within such time and in such manner as may be prescribed. Protection is given to the auditor by providing that the aforementioned reporting shall not be considered as a breach of duty, if it is done in good faith. The provisions of Clause 143 applies *mutatis-mutandis* to Cost Accountants in practice conducting Cost Audit under Clause 148 or the Company secretary in

practice conducting secretarial audit under clause 204. If any auditor, cost accountant or company secretary in practice fails to comply with the provisions of Cl.143(12) [reporting of an offence involving fraud], they will be punished with a fine of minimum ₹ 100,000 and up to ₹ 25,00,000.

Prohibition for Auditor to render certain Services:

The new addendum to the Act is that the auditors are explicitly prohibited to carry out certain services, while being appointed as an auditor of the company.

Already a member in practice is prohibited by the ICAI to write or offer book-keeping services, where he is appointed as an auditor of the client. The ICAI, through various notifications has prohibited rendering of certain services while accepting appointment as an auditor, failing which the member shall be deemed to be guilty of professional misconduct, to ensure independence of auditors. (Compendium of Guidance Notes, 2012)

Now the Companies Bill 2012 tries to incorporate these in the Act itself, to strengthen the independence of Auditors. Some of such services, whether rendered *directly or indirectly* to the company or its holding company or its subsidiary, listed are

- Accounting and book keeping services;
- Internal audit;
- Design and implementation of any financial information system;
- Actuarial services;
- Investment advisory or investment banking services;
- Outsourced financial services;
- Management services, etc;

As the members of the ICAI may be aware, most of the services are already prohibited by the Institute under its Act or Rules, Regulations made thereunder for a practicing chartered accountant to ensure

— —

If the auditor of the company contravenes any provisions of Cl.139 [appointment / reappointment] or Cl.143 [powers and duties] or Cl.144 [restriction on rendering of other services] or Cl.145 [signing of audit reports, documents etc] the auditor shall be punishable with a fine of not less than ₹ 25,000 and up to ₹ 5 lakh. But if the auditor contravenes the provisions willfully or knowingly with the intention to deceive the company or its shareholders or the creditors or tax authorities, he shall be punishable with imprisonment up to one year and a fine ranging between ₹ 1 lakh and ₹ 25 lakh.

— —



independence as auditor.

The Bill 2012 provides for a cooling off period stating that an auditor or a firm, if performing a non-audit service on or before the commencement of the Act (to be enacted) shall comply with the provisions under this Clause 144, before the closure of first financial year from the date of such commencement.

The term "*directly or indirectly*" is explained to include rendering of services by an auditor –

- In case of an individual: either himself or through his relative or any other person connected or associated with such individual or through any other entity, in which such individual has significant influence or control or whose name or trade mark or brand is used by such individual.
- In case of a firm: either itself or through any of its partners or through its parent or subsidiary or associate entity or through any other entity, in which the firm or any partner has significant influence or control or whose name or trademark or brand is used by such firm or any of its partners.

This Clause 144 tries to bring absolute independence on the part of an auditor, thereby strengthening and enabling the auditor to be more focused and integrated while discharging his duties as an auditor.

Auditor to Sign Reports, etc.

Clause 145 provides that the auditor shall [in accordance with Clause as 141(2)],

- sign the audit report and
- sign or certify any other document.

Any qualification, observations or comments on financial transactions and matters, which has an adverse effect on the functioning of the company, mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

A person who is or has been an employee or a proprietor or a partner of an audit firm, which had been appointed as auditors of the company or its holding, subsidiary or associate in any of the preceding three years cannot be appointed as an independent director. [Cl.149(6)(e)(iii)]

Auditor to Attend General Meeting

Clause 146 of the Bill 2012 mandates that the auditor should attend general meetings. All notices of and communication related to any general meeting shall be forwarded to the auditor of the company and the auditor shall, unless specifically exempted by the company, attend such meetings either by himself or through his authorised representative. The authorised representative should be qualified to be an auditor. He has a right to be heard at such meeting on any part of the business which concerns him as the auditor.

Punishment for Contraventions

Clause 147 provides for a detailed punishment for non-compliance or contravening of Clauses 139 to 146 for both the company and the auditor, unlike the shorter version - Sections 232 and 233 – of the Companies Act, 1956. The Bill 2012, provides that if any of the provisions of Cl. 139 to Cl. 146 (both clauses inclusive) is contravened

- the Company shall be punishable with a fine of minimum ₹25,000 and up to ₹5 lakh
- Every officer of the company who is in default shall be punishable with imprisonment for a term of not less than one year or a fine of about ₹10,000 up to ₹1 Lakh or both

If the auditor of the company contravenes any provisions of Cl.139 [appointment / reappointment] or Cl.143 [powers and duties] or Cl.144 [restriction on rendering of other services] or Cl.145 [signing of audit reports, documents etc] the auditor shall be punishable with a fine of not less than ₹25,000 and up to ₹5 lakh.

But if the auditor contravenes the provisions willfully or knowingly with the intention to deceive the company or its shareholders or the creditors or tax authorities, he shall be punishable with imprisonment up to one year and a fine ranging between ₹1 Lakh and ₹25 lakh.

If the auditor is convicted under Cl.147(2), then he shall be liable to

- Refund the remuneration received by him, to the company AND



- Pay for the damages to the company or statutory bodies, or authorities or to any other person for any losses arising out of incorrect or misleading statements of particulars made in his audit report.

The Central Government shall by notification specify any statutory body, or authority or an officer for ensuring prompt payment of damages to the company or the aggrieved persons mentioned above. Such notified person who ensures that the damages are duly paid shall file a report with the Central Government in respect thereof in the prescribed manner.

Where it is proved that, in case of audit of a company by a firm, the partner or partners 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, whether civil or criminal, as provided in this Act (to be enacted) or under any other law for the time being in force, shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

In short, no matter what, if proved guilty in relation to the audit of a company, BOTH the concerned partner(s) of the audit firm and the firm are liable for action for any such fraudulent actions detailed under this Act (to be enacted) or any other Act for the time being in force.

Other Related Provision

A person who is or has been an employee or a proprietor or a partner of an audit firm, which had been appointed as auditors of the company or its holding, subsidiary or associate in any of the preceding three years cannot be appointed as an independent director. [Cl.149(6)(e)(ii)]

Bibliography

(2012). Compendium of Guidance Notes. In Handbook of Auditing Pronouncements-II (9th ed., Vol. II, pp. 18-22). The Publication department on behalf of the ICAI.

ICAI Ethical Standard Board. (n.d.). Retrieved from The Institute of Chartered Accountants of India: http://www.icai.org/new_post.html?post_id=7846. ■