

THE COMPANIES BILL, 2008

AUDIT AND AUDITORS

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The provision for cost audit is provided under clause 131 of the bill. The sub – clause (4) and (5) produced below and as contained in clause 131 necessitates proper understanding of provisions contained in clauses 123 to 130 which deal with audit and auditors.

“(4) An audit conducted under this section shall be in addition to the audit conducted under section 126.

(5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company:”

| Clause | Provision | Remarks: as may be applicable for Cost Auditor |
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| 123 | <p>(1) Subject to the provisions of this Chapter, every company shall, at each annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of the next annual general meeting: Provided that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, will be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:</p> <p>Provided further that the company shall inform the auditor concerned of his appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.</p> | <p>written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, will be in accordance with the conditions as may be prescribed, shall be obtained from the auditor</p> <p>the company shall inform the auditor concerned of his appointment,</p> |

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| | <p>Explanation.—For the purposes of this Chapter, “appointment” includes reappointment.</p> | <p>Explanation.—For the purposes of this Chapter, “appointment” includes reappointment.</p> |
| | <p>(2) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned and controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the adoption of accounts of that financial year.</p> | |
| | <p>(3) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall at an extraordinary general meeting appoint such auditor. The said auditor shall hold office till the conclusion of the first annual general meeting.</p> | |
| | <p>(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), in the case of a Government Company, the first auditor shall be appointed by the Comptroller and Auditor-General of India within thirty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within next thirty days. In the</p> | |

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| | <p>case of failure of the Board to appoint such auditor within next thirty days, it shall inform the Central Government or the State Government concerned and the Central Government or the State Government concerned, as the case may be, shall appoint such auditor, who shall hold office till the appointment of an auditor under sub-section (2).</p> | |
| | <p>(5) Any casual vacancy in the office of an auditor shall,— (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the approval of the Board; (ii) in case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled within thirty days, failing which by the Board.</p> | |
| | <p>(6) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if— (a) he is not disqualified for re-appointment; (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.</p> | |
| | <p>(7) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.</p> | |
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| | (8) Where the company constitutes an Audit Committee as required under section 158, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee. | |
| | (9) The auditor appointed under this section may be removed from his office before the expiry of his term only by a special resolution of the company: Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard. | |
| | (10) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal, if it is satisfied that the auditor of a company has acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors. | |
| 124. | (1) A person shall be eligible for appointment as an auditor of a company only if he is a Chartered Accountant in practice. | |
| | (2) Where a firm is appointed as an auditor of a company, only the partners who are Chartered Accountants in practice shall be authorised by the firm to act and sign on behalf of the firm. | In view of separation of firm from the word 'person' the sub-clause may be relevant in cases of multi-disciplinary partnerships |
| | (3) None of the following persons shall be eligible for appointment as an auditor of a company, namely:— (a) a body corporate; (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— | (3) None of the following persons shall be eligible for appointment as an auditor of a company, namely:— (a) a body corporate; (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— |

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| | <p>(i) is holding any security of the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, of value in terms of such percentage as may be prescribed;</p> <p>(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company; or</p> <p>(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, for such amount as may be prescribed;</p> <p>(e) a person or a firm who 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;</p> <p>(f) a person whose relative is in the employment of the company as a director or key managerial personnel;</p> <p>(g) a person who is in employment elsewhere or a person or firm who holds appointment as an auditor in companies exceeding such number as may be prescribed on the date of his appointment.</p> | <p>(i) is holding any security of the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, of value in terms of such percentage as may be prescribed;</p> <p>(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company; or</p> <p>(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, for such amount as may be prescribed;</p> <p>(e) a person or a firm who 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;</p> <p>(f) a person whose relative is in the employment of the company as a director or key managerial personnel;</p> <p>(g) a person who is in employment elsewhere or a person or firm who holds appointment as an auditor in companies exceeding such number as may be prescribed on the date of his appointment.</p> |
| | <p>(4) 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.</p> | <p>(4) 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.</p> |
| 125 | <p>(1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.</p> | |
| | <p>(2) The “remuneration” under sub-section (1) in addition to the fee payable to an auditor, include the expenses, if any, incurred by the</p> | |

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| | <p>auditor in connection with the audit of the company and anything given to him otherwise than in cash, but does not include any remuneration paid to him for any other service rendered by him at the request of the company.</p> | |
| 126 | <p>(1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place in India, and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and shall inquire into such matters as may be prescribed: Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries.</p> | <p>(1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place in India, and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and shall inquire into such matters as may be prescribed: Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statement with that of its subsidiaries.</p> |
| | <p>(2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement or other document which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statement or other document give a true and fair view of the state of the company's affairs as at the end of its financial year and such other matters as may be prescribed.</p> | |
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| <p>(3) The auditor's report shall also state—</p> <p>(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 his audit;</p> <p>(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;</p> <p>(c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;</p> <p>(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;</p> <p>(e) whether, in his opinion, the financial statements comply with the accounting standards and the auditing standards;</p> <p>(f) the observations or comments of the auditors which have any adverse effect on the functioning of the company;</p> <p>(g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 145;</p> <p>(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;</p> <p>(i) in case of listed companies, whether the company has complied with the internal financial controls and directions issued by the Board; and</p> <p>(j) such other matters as may be prescribed.</p> | <p>(3) The auditor's report shall also state—</p> <p>(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 his audit;</p> <p>(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;</p> <p>(c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;</p> <p>(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;</p> <p>(e) whether, in his opinion, the financial statements comply with the accounting standards and the auditing standards;</p> <p>(f) the observations or comments of the auditors which have any adverse effect on the functioning of the company;</p> <p>(g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 145;</p> <p>(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;</p> <p>(i) in case of listed companies, whether the company has complied with the internal financial controls and directions issued by the Board; and</p> <p>(j) such other matters as may be prescribed.</p> <p><u>Note: Please read this with the words 'so far as may be applicable'.</u></p> |
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| | <p>(4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefore.</p> | |
| | <p>(5) In the case of a Government company, the auditor appointed by the Comptroller and Auditor-General of India under sub-section (2) of section 123 shall submit a copy of his audit report to the Comptroller and Auditor-General of India which shall, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India in respect of the accounting standards, the variance, if any, from the accounting standards notified by the Government, the action taken on such directions and the impact thereof on the company's accounts.</p> | |
| | <p>(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to—</p> <p>(a) comment upon or supplement such audit report, and</p> <p>(b) conduct any supplementary audit of the company's accounts by himself or by such person or persons as he may authorise in this behalf and such person or persons shall have the same rights and obligations as the auditor who has submitted the report:</p> <p>Provided that any comments given by the Comptroller and Auditor-General on the report of the supplementary audit conducted by him shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.</p> | |
| | <p>(7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (2) of section 123,</p> | |

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| | <p>if he so deems necessary, by an order, cause test audit to be conducted of the accounts of such company. The provisions of section 19A of the Comptroller and Auditor-General's 56 of 1971. (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.</p> | |
| | <p>(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (hereinafter in this section referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 123, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed: Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.</p> | |
| | <p>(9) Every auditor shall comply with the auditing standards.</p> | |
| | <p>(10) The Central Government may, after consultation with the National Advisory Committee on Accounting and Auditing Standards, by notification, lay down auditing standards: Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered</p> | |

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| | Accountants of India shall be deemed to be the auditing standards. | |
| | (11) The Central Government may, after consultation with the Advisory Committee, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein. | |
| 127 | An auditor appointed under this Act shall provide the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services, namely:— (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; and (h) management services. | An auditor appointed under this Act shall provide the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services, namely:— (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; and (h) management services |
| 128 | Only the person appointed as an auditor of the company shall sign the auditor's sign audit report or sign or certify any other document of the company, and the auditor's report shall reports, etc. be read before the company in general meeting and shall be open to inspection by any member of the company. | |
| 129 | All notices of, and other communications relating to, any general meeting shall attend general be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted meeting. by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor. | |

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| 130 | <p>(1) Where any of the provisions of sections 123 to 129 is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and any officer who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.</p> | |
| | <p>(2) Where an auditor of a company contravenes any of the provisions of section 126 or section 127 or section 128 he shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees:</p> <p>Provided that where it is proved that an auditor has knowingly or wilfully contravened any of the provisions of the aforesaid sections, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees, or with both.</p> | |
| | <p>(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—</p> <p>(i) refund the remuneration received by him to the company; and</p> <p>(ii) pay for damages to the company or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.</p> | |

