

AUDIT AND AUDITORS

IMPLICATIONS UNDER THE COMPANIES (AMENDMENT) ACT, 2017

SECTION 139 – APPOINTMENT OF AUDITORS

The provision with respect to the placing of the appointment of an individual or a firm as an auditor for ratification by members at every annual general meeting has been omitted.

SECTION 140(3) – REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE

Where the resigning auditor of the company does not file Form ADT 3 within a period of thirty days from the date of resignation, he or it shall be punishable with fine which shall not be less than fifty thousand rupees or the remuneration of the auditor, whichever is less, but which may extend to five lakh rupees.

Earlier the penalty for non-filing of Form ADT 3 was fifty thousand rupees but extendable to five lakh rupees.

SECTION 143(1) – POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS

The auditor of a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

Earlier the records of associate companies were not accessible by the auditors.

SECTION 143(3)(i) – POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS

The auditor's report shall state whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls.

The words “with reference to financial statements” has been added.

In order to reduce the difficulties faced by the auditors in certifying the internal financial controls followed by the company, and with the fiduciary responsibilities bestowed on the Directors under the Act, the internal financial controls have been restricted to the financial statements only. Hence, now the companies shall not find it difficult to ensure the compliance.

SECTION 143(14)(a) – POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS

The provisions of section 143 shall mutatis mutandis apply to the cost accountant instead of cost accountant in practice, conducting cost audit under section 148.

SECTION 147(2) – PUNISHMENT FOR CONTRAVENTION

Where an auditor of a company contravenes with the provisions of the Act, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees or four times the remuneration of the auditor, whichever is less.

It is to be noted that if an auditor has contravened the provisions knowingly or willfully 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 one year and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.

The quantum of the fine has been amended for the contravention of the provisions of the Act.

SECTION 147(3)(ii) – PUNISHMENT FOR CONTRAVENTION

Where an auditor has been convicted, he shall be liable to refund the remuneration received by him to 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.

In addition to company, statutory bodies and authorities, the members and creditors of the company shall also receive the damages from the auditors.

SECTION 147(5) – PUNISHMENT FOR CONTRAVENTION

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

In case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable. This proviso has been newly inserted.

SECTION 148(3) – COST AUDITOR

The audit shall be conducted by a Cost Accountant instead of cost accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed.

The expression “cost auditing standards” mean such standards as are issued by the Institute of Cost Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

SECTION 148(5) – COST AUDITOR

The report on the audit of cost records shall be submitted by the cost accountant instead of cost accountant in practice to the Board of Directors of the company.

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