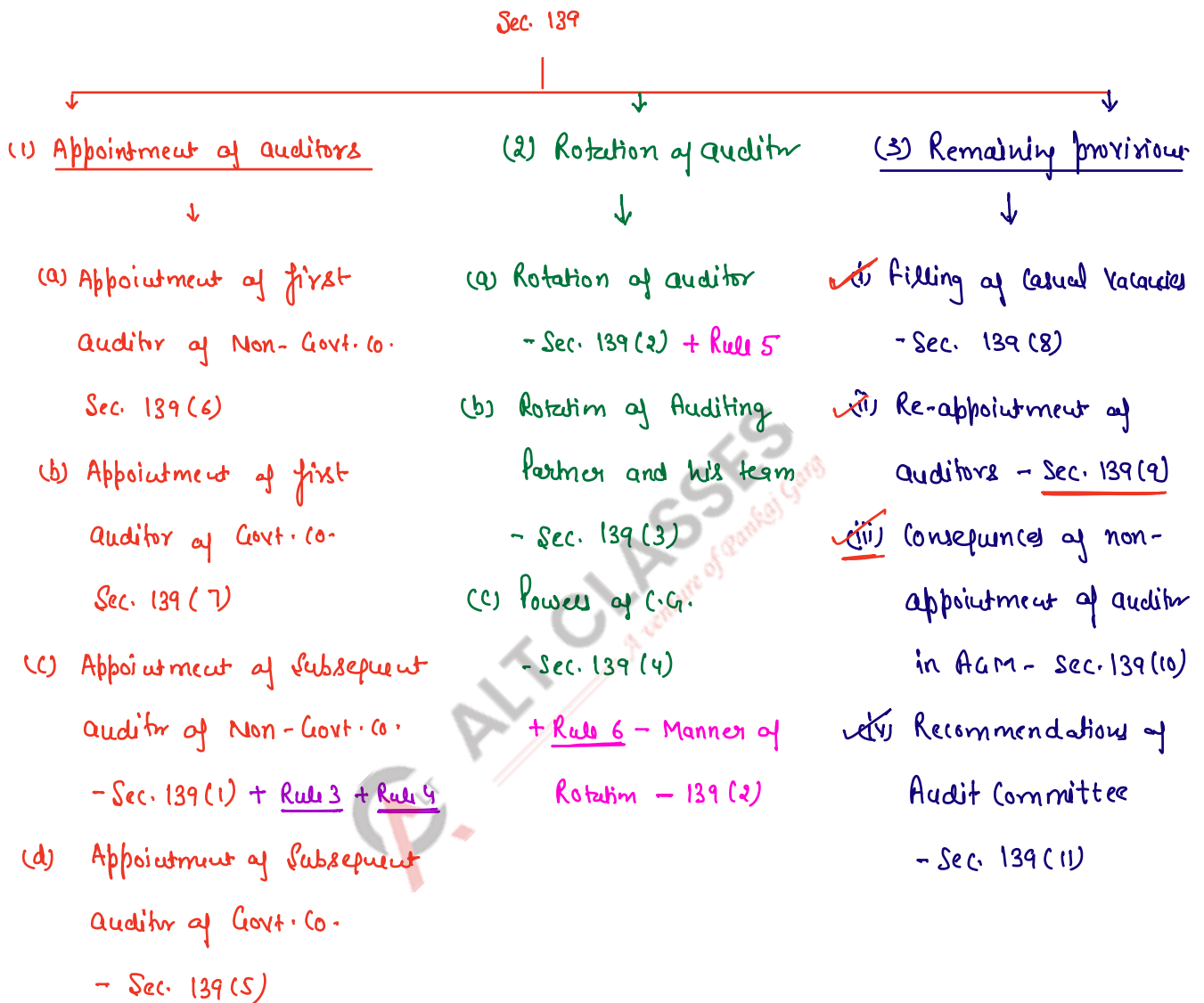
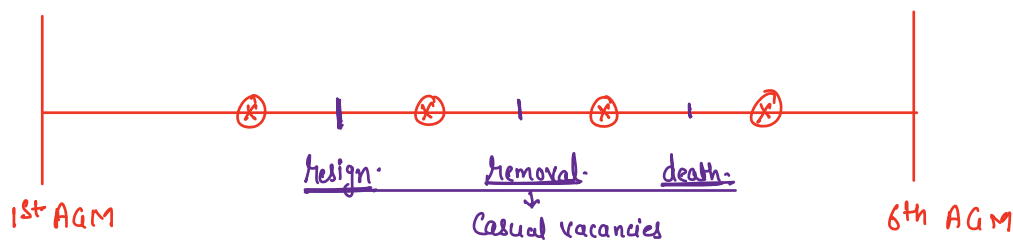


Lecture No. 3 of Chapter - 10 "Audit and Auditors"



(3) Remaining provisions of Sec. 139:

(i) Filling of casual vacancy: Sec. 139(8)



- Casual Vacancy is not defined anywhere in company law.
- It may be considered as any vacancy created after valid appointment, but before completion of tenure.
- It may arise due to resignation, removal, death, ineligibility etc. of the auditor.

Filling of Casual Vacancy - Sec. 139(2)

(a) Non-Govt. Co.

Due to reason other than Resignation

Casual vacancy shall be filled by BOD within 30 days

Tenure: till conclusion of next AGM.

Due to resignation

Casual vacancy shall be filled by BOD within 30 days

with a condition that appointment made by the BOD shall be approved by Members in General meeting to be convened within 3 months from the date of recommendation.

(b) Govt. Co.

Casual vacancy shall be filled by CAG within

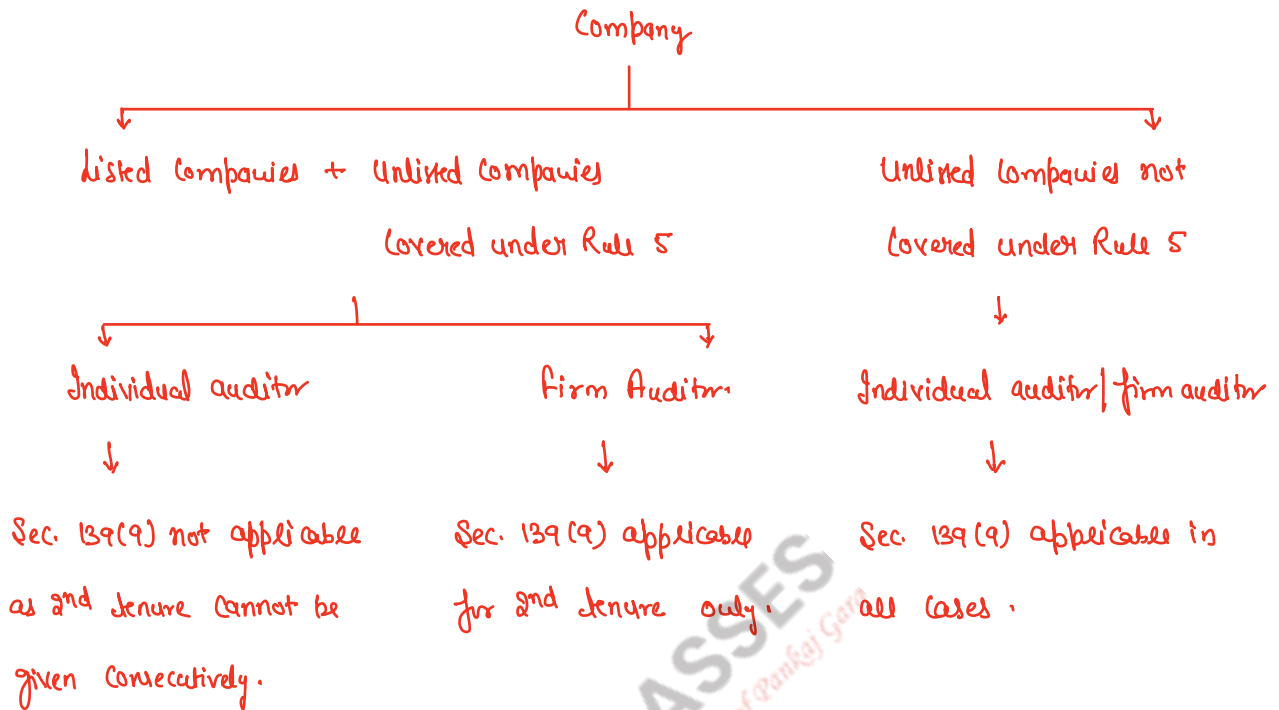
30 days

If CAG does not fill the vacancy

BOD shall fill the vacancy within next 30 days.

Tenure: till conclusion of next AGM.

(ii) Re-appointment of auditors: Sec. 139(9)



As per Sec. 139(9) of Companies Act, 2013, retiring auditor may be re-appointed, if:

- (a) he is not disqualified (i.e. qualified)
- (b) he is not unwilling (i.e. willing)
- (c) no special resolution was passed by the company w.r.t.
 - (i) appointing someone else as auditor;

OR

- (ii) providing expressly that retiring auditor shall not be re-appointed.

- ① First auditor appointed by BOD, reappointed as subsequent auditor in first AGM — OR
- ② Subsequent auditor appointed in first AGM, reappointed in 6th AGM — OR
- ③ New auditor appointed in AGM in place of retiring auditor — unwilling to continue — OR
- ④ New auditor appointed in AGM in place of retiring auditor, who was eligible, willing to continue and rotation provision not applicable. — SR

(iii) No auditor appointed/reappointed in AGM - Sec. 139(10)

As per Sec. 139(10) of Companies Act, 2013, if no auditor appointed/re-appointed in AGM, existing auditor shall continue.

Note: Sec. 139(10) can be applied, provided:

- (a) existing auditor is willing to continue.
- (b) existing auditor is not disqualified u/s 141.
- (c) existing auditor is not under cooling period.



(iv) Recommendations of Audit Committee - Sec. 139(11):

If a company is required to constitute audit committee u/s 177 of the Companies Act, 2013, all appointments of auditor including filling of casual vacancies, shall be made after considering the recommendations of audit committee.

④ Removal, Resignation and Requirement of special notice (Sec. 140):

(a) Removal before expiry of tenure [Sec. 140(U)]:

Auditor may be removed before expiry of tenure by :

(i) passing special resolution in general meeting

and

(ii) obtaining prior approval of C.G. in prescribed manner. (Rule 7)

✓ However, before taking any action, concerned auditor shall be given an opportunity of being heard.

Rule 7: Application to C.G. shall be made within 30 days of passing Board Resolution, in Form ADT-2.

Within 60 days of approval of C.G., Special Resolution to be passed in general meeting of the company.

Step-1 : Opportunity of being heard

↓

Step-2 : Board Resolution to be passed

↓ 30 days

Step-3 : Application to C.G. (ADT-02)

↓

C.G. approval

↓ 60 days

Step-4 : Convene General meeting to pass SR

(b) Resignation of Auditor:

Sec. 140 (2): Auditor who has resigned shall file a statement of resignation in prescribed form to (a) company, (b) Roc and (c) CAG - in case of Govt. Co.



within 30 days of resignation



stating the reasons and other facts relating to resignation.

* Rule 8 - prescribes form → Form ADT-3

Sec. 140 (3): Penalty for contravention of Sec. 140(2):

Minimum = ₹ 50,000 or Audit fees → whichever is lower.

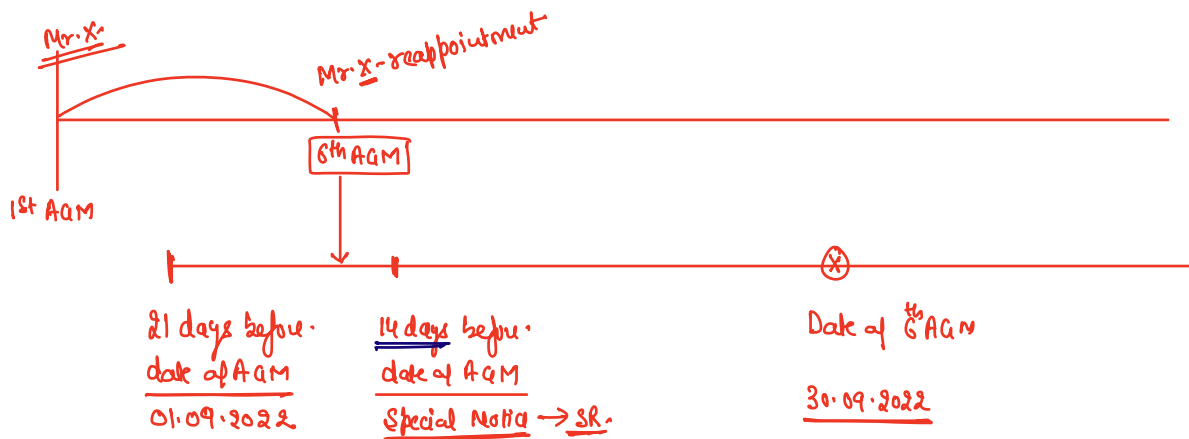
Additional = ₹ 500 per day of default after the first for the period for which such default continues

Maximum = ₹ 2,00,000

Ex. Auditor resigns on 19.10.2022. Statement of resignation filed with Roc on (i) 12.11.2022 (ii) 15.12.2022 (iii) 04.02.2023 (iv) 10.01.2028
Audit fees was ₹ 55,000 in (i) and (ii); ₹ 46,000 in (iii) and (iv)

Ans.: (i) Nil. (ii) $\underline{50000} + [\underline{500} \times \underline{26}]$ (iii) $46000 + (500 \times 77)$ (iv) $46000 + (500 \times 782)$
= 63,000 = 84500 = 2,00,000

(c) Requirement of Special Notice: Sec. 139(4)



- Special notice is required to pass SR for (a) appointing someone else as auditor

OR

(b) not to reappoint retiring auditor

↓
- Special notice shall be received by the company at least 14 days before date of AGM.

↓
- Company shall forward the notice immediately to retiring auditor

↓
- Auditor has a right to give representation of reasonable length.

↓
- Representation received should be sent to members along with a copy of special notice received from members.

↓
- However, if representation is received late, auditor may request the company to read out the representation in general meeting.

(In this case, copy of representation shall also be filed with ROC).

Note: If company or other person is of the opinion that auditor is using his right to secure needless publicity, a request may be made to Tribunal to pass an order for not sending the representation and not to read out the representation in general meeting.

v. Imp.
(d) Tribunal's direction for change of auditors: Sec. 140(5)

⊖ Tribunal may either suo motu, or on application of C.G. or other concerned person, by order, direct the company to change its auditors

↓

if Tribunal is of the opinion that auditor of the company is directly or indirectly, acted in a fraudulent manner.

⊖ Appointment of auditor by C.G.: If on an application of C.G., Tribunal is of the opinion that change of auditor is required, Tribunal shall within 15 days of application direct that:

- he or it shall not function as auditor; and
- C.G. may appoint the auditor.

⊖ Consequences: Any individual or audit firm against whom any order has been passed by Tribunal u/s 140(5), will be disqualified to be appointed as auditor of any company for a period of 5 years; and - liable to be punished u/s 447 of Companies Act, 2013.

