

Section-Wise Index of Chapter X of Companies Act, 2013 along with Corresponding Rules

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10.1 - Appointment of Auditor

Appointment of Subsequent Auditor

Non-Government Company - Sec. 139(1)

- Appointment will be at First AGM
- till conclusion of 6th AGM; and
- hereafter till conclusion of every 6th AGM
- in prescribed manner (Rule 3).
- Subject to following conditions:

Condition	Details of condition
1. Ratification	Omitted by Companies (Amendment) Act, 2017
2. Written consent	Before appointment company shall obtain (a) Written consent from auditor (b) Certificate from auditor. (Rule 4)
3. Certificate	→ Certificate shall indicate → Whether auditor has satisfied the criteria as provided u/s 141.
4. Intimation to ROC	→ Company shall inform the auditor and ROC about the appointment of auditor within 15 days of appointment. → Rule 4 - Intimation to ROC will be in Form ADT-1

Government, Govt. owned /controlled Companies - Sec. 139(5)

Appointment of Auditor

↓
In respect of a FY
 ↓
will be made by
 ↓
CAG
 ↓
within a period of 180 Days
 ↓
from the commencement of financial year
 ↓
who shall hold the office till the conclusion of next AGM

Appointment of First Auditor

Non-Government Company - Sec. 139(6)

First auditor shall be appointed by
 ↓
Board of Directors
 ↓
within 30 days
 ↓
of registration of company
 ↓
If Board fails, Board shall inform the members
 ↓
Members shall within 90 days
 ↓
at an EGM
 ↓
appoint the first auditor
 ↓
who hold office till conclusion of first AGM

Government, Govt. owned /controlled Companies - Sec. 139(7)

First Auditor shall be appointed by CAG
 ↓
within 60 days of registration of company
 ↓
If CAG does not appoint the auditor
 ↓
BOD will appoint within next 30 days
 ↓
If Board fails, Board shall inform the members
 ↓
Members shall within 60 days
 ↓
at an EGM
 ↓
appoint the first auditor
 ↓
who hold office till conclusion of first AGM

10.2 - Rules 3 & 4 of Companies (Audit & Auditor's) Rules, 2014

Rule 3 - Manner and procedure for selection and Appointment of Auditors

Company is required to constitute Audit Committee u/s 177

Yes

No

Audit Committee shall consider the qualifications and experience of the person considered for appointment as auditor

BOD shall consider the qualifications and experience of the person considered for appointment as auditor

Audit Committee shall recommend the name of person to BOD for their consideration

BOD Agree

Place the matter for considerations by members in AGM.

BOD disagree

BOD shall refer back the matter to audit committee for reconsideration

Audit Committee agree for reconsideration

Audit committee decides not to reconsider

BOD will record the reasons for disagreement

BOD make its own recommendations

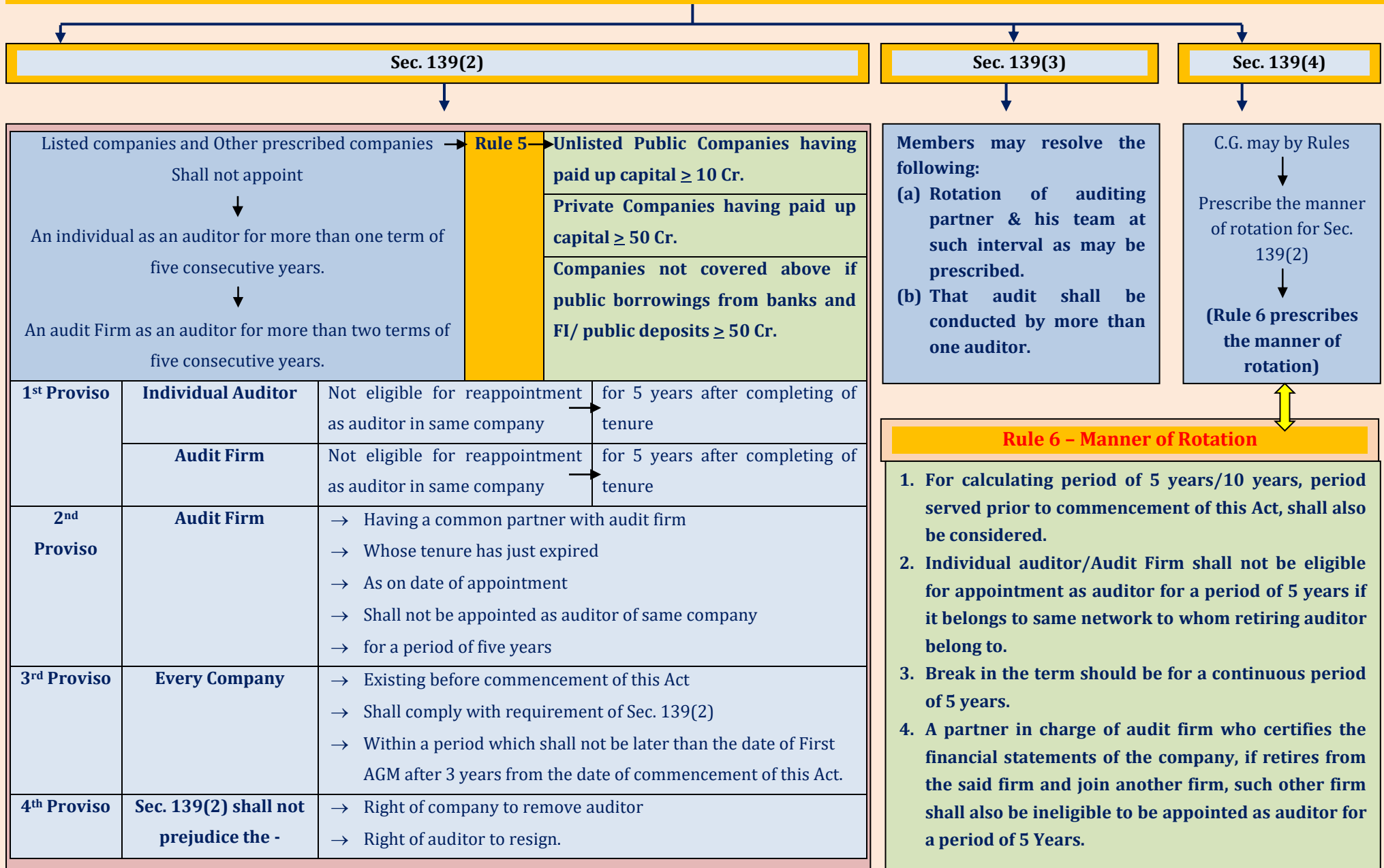
Place the matter for considerations by members in AGM.

Rule 4 - Conditions for Appointment and Notice to Registrar

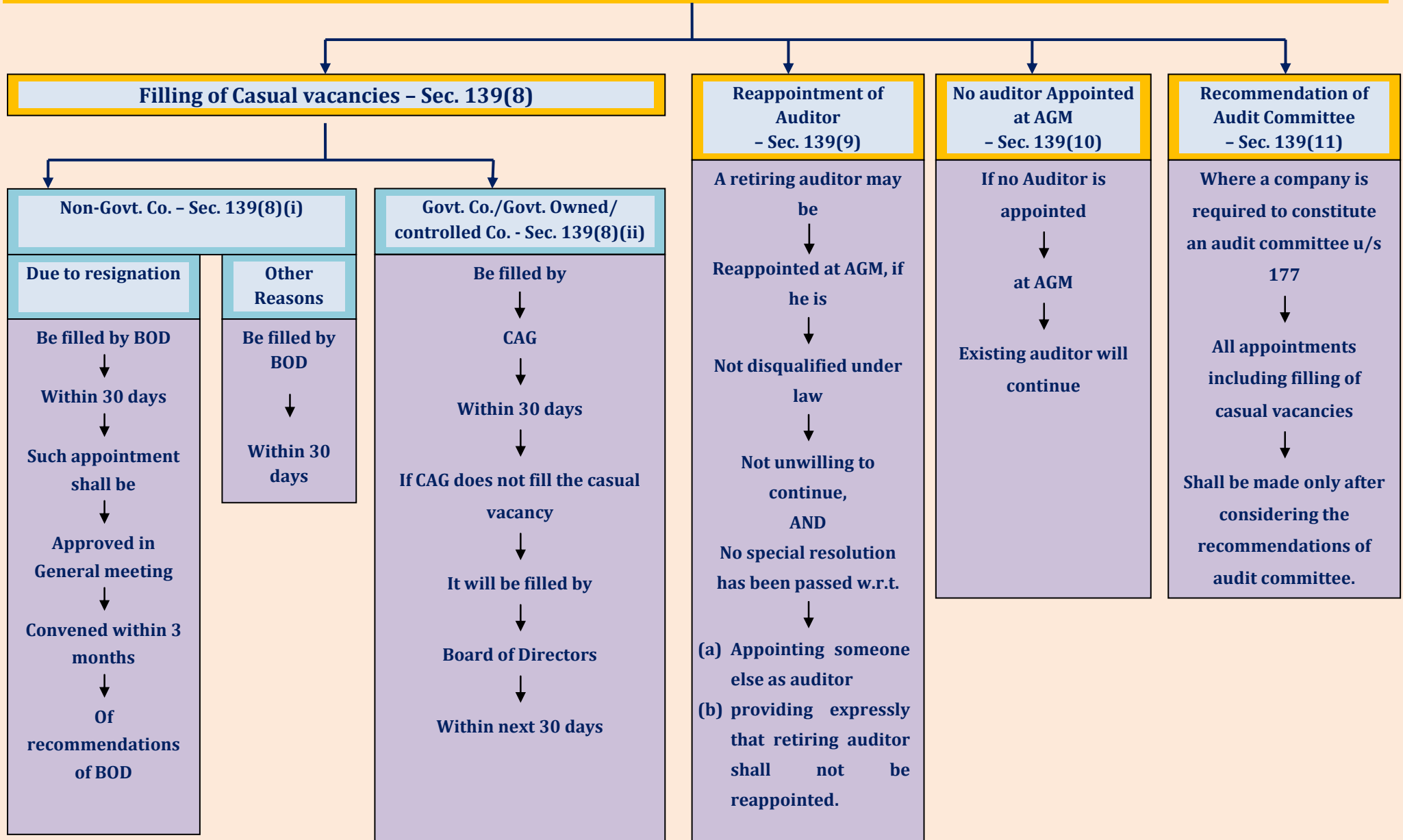
Certificate obtained from the auditor shall contain the following:

- (a) That the individual or the audit firm, as the case may be, is eligible for appointment as per the provisions of this Act and Chartered Accountants Act, 1949.
- (b) That proposed appointment is as per the terms provided in the Act.
- (c) That proposed appointment is within the limits prescribed by the Act.
- (d) That list of proceedings against the auditor or the audit firm or any partner of the firm w.r.t. disciplinary matters as disclosed in the Certificate, is true and correct.

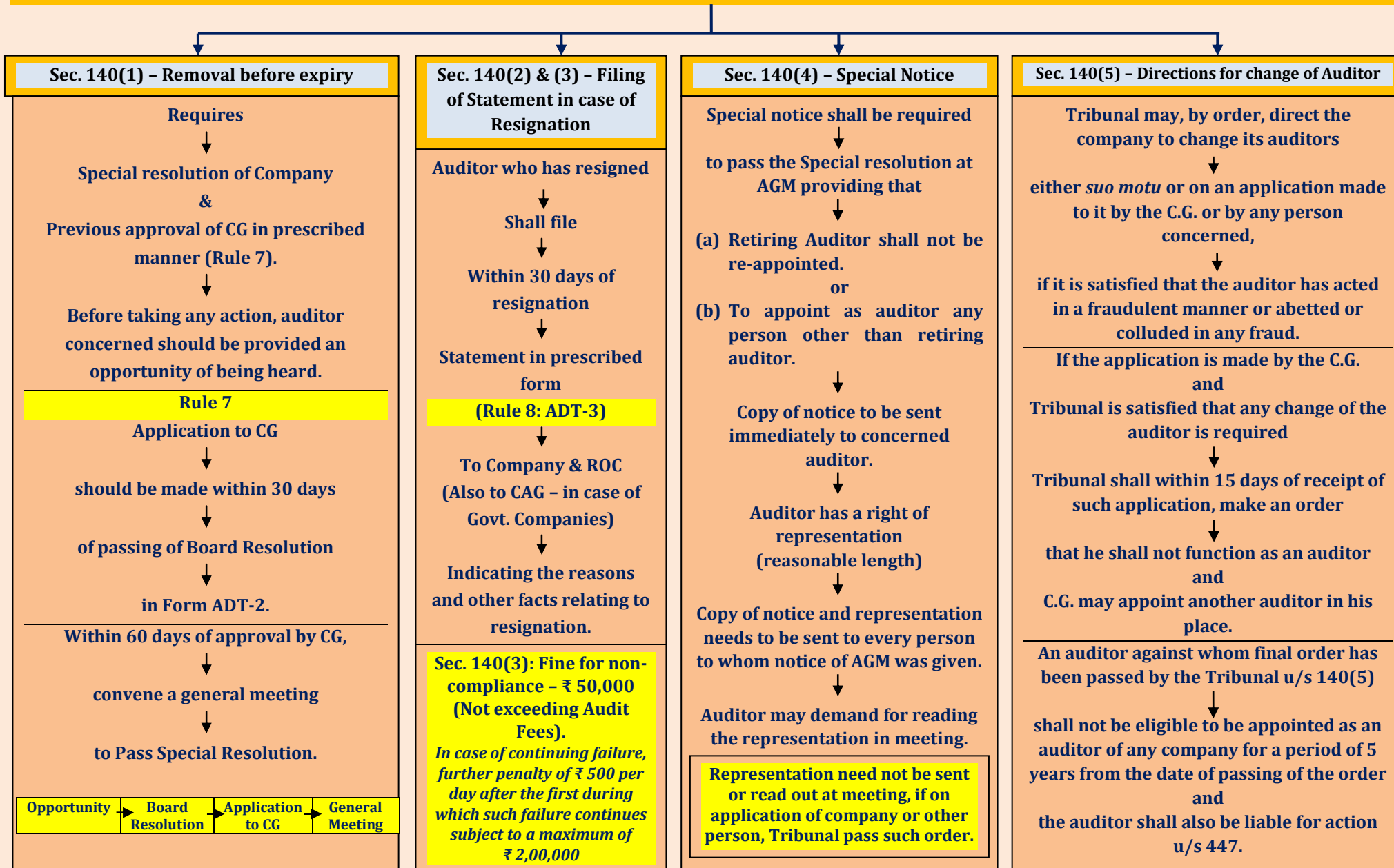
10.3 - Rotation of Auditor



10.4 - Other Provisions of Sec. 139



10.5 - Sec. 140 (Removal, Resignation of Auditor and giving of Special Notice)



10.6 - Sec. 141 (Eligibility, Qualifications and Disqualifications of Auditor)

Sec. 141 (1) & 141 (2) - Eligibility to be appointed as Auditor

**A person shall be eligible
 for appointment as an auditor
 only if he is a CA.
 A Firm whereof Majority of Partners
 Practicing in India
 are Qualified
 may be appointed
 by its firm name as auditor.
 A Firm including LLP
 If appointed as Auditor
 Only partners who are CA
 Shall be authorized to
 Act and sign on behalf of firm.**

Sec. 141(3) - Persons not eligible for appointment & Rule 10

(a)	Body Corporate other than LLP		
(b)	Officer or Employee of the company		
(c)	Partner/Employee of Officer/Employee of the company		
(d)		person/ relative/ partner	is holding any security * or interest in the is indebted > 5 Lacs in the has given a guarantee in connection with indebtedness of 3 rd person > 1 Lac in the
	(ii)		Company/ subsidiary/ holding/ associate, or subsidiary of same holding.
	(iii)		
	* no disqualification if relative holds any security in the company of face value upto 1 Lac.		
(e)	Person or firm having business relationship with Company/Subsidiary/Holding/Associate/Subsidiary of Such Holding or Associate Company.		
(f)	A Person whose relative is a director or is in employment of the company as a Director or KMP.		
(g)	A person who is in full time employment elsewhere <p style="text-align: center;">Or</p> <i>A person holding appointment as auditor or more than 20 companies other than OPC, dormant companies, Small Companies and private companies having paid up capital < 100Cr.</i>		
(h)	A person who has been convicted of an offence involving fraud and a period of 10 years has not elapsed.		
(i)	Any person who directly or indirectly renders any service referred to in Sec. 144 to company or its holding company or its subsidiary company.		

Sec. 141(4) - Vacation of office

**If after appointment
 An auditor
 Incurs any disqualification
 Mentioned in Sec. 141(3)
 He shall vacate the office
 And such vacation shall be
 treated as casual vacancy**

**Specified Number as per ICAI
 Notification**

**30 audit assignments
 whether in respect of
 private Companies or other
 Companies, with the
 exception of
 OPC and
 dormant companies.**

10.7 - Powers/Rights & Duties of Company Auditor (Sec. 143)

RIGHTS OF AUDITOR		DUTIES of AUDITOR		
1	Right of Access <ul style="list-style-type: none"> Every auditor 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. 	<div style="background-color: #FFD700; text-align: center; padding: 5px;"> Inquire into Propriety Matters - Sec. 143(1) </div> <ol style="list-style-type: none"> 1. Loans and advances are properly secured and terms are prejudicial. 2. Book entries are prejudicial. 3. Shares, debentures and other securities are sold at a price less than acquisition cost in case of non-banking and non-investment company. 4. Loans and advances made are shown as deposits. 5. Personal expenses charged to revenue account. 6. Cash has actually been received on shares allotted for cash, if not received, correct position shown in books and balance sheet. 	<div style="background-color: #FFD700; text-align: center; padding: 5px;"> Reporting u/s 143(3) </div> <ol style="list-style-type: none"> 1. Whether auditor has obtained all necessary information for the audit. 2. Whether proper books of account have been maintained. 3. Whether branch audit report has been received & manner of dealing with it. 4. Whether Balance Sheet and P & L Account agree with the books of account. 5. Whether Financial statements comply with AS. 6. Comments on financial transactions or matter having any adverse effect on functioning of the company. 7. Whether any director is disqualified u/s 164(2). 8. Qualification or adverse remarks w.r.t. maintenance of accounts. 9. Whether IFC with reference to F.S. are in place and effectively operated. 10. Other matters as prescribed. (Rule 11) 	
2	Right to Obtain Info. <p>Every Auditor shall be entitled to require from the officers such information and explanation as he may consider necessary for the performance of his duties as auditor.</p>		<div style="background-color: #FFD700; text-align: center; padding: 5px;"> Reporting over Accounts & F.S. - Sec. 143(2) </div> <p>That to the best of auditor information & knowledge, the accounts & financial statements give a true and fair view of the state of the company affairs as at the end of its financial year & profit & loss and cash flow for the year.</p>	<div style="background-color: #FFFF00; padding: 5px;"> Rule 11 </div> <ol style="list-style-type: none"> 1. Whether impact of pending litigations on financial position is disclosed. 2. Whether provisions for material Foreseeable losses on long term contracts made. 3. Whether there is any delay in transferring amounts to IEPF. 4. <i>Whether mngt. represented that no funds have been advanced/invested to or in any other entity with understanding, that it shall, lend/invest in other entities identified in any manner by or on behalf of the company or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries.</i> 5. <i>Whether mngt. represented that no funds have been received from any entity with understanding that it shall lend/invest in other entities identified in any manner by or on behalf of the Funding Party or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries.</i> 6. <i>Auditor consideration that mngt. representations made under this Rule does not contain any material mis-statement.</i> 7. <i>Whether dividend declared or paid during the year is in compliance with section 123 of the Companies Act, 2013.</i> 8. <i>Whether company has used accounting software which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and it has been preserved for record retention.</i>
3	Right of Lien <p>An auditor may exercise right of lien subject to the following conditions:</p> <ul style="list-style-type: none"> Documents must belong to the client who owes the money, These documents must have come to the possession of the auditor on the client's authority, Auditor can retain such documents, only if he has done work on such documents, on which fees have not been paid. <p>Note: ESB of ICAI held that a CA cannot exercise lien over client documents/ records for non-payment of his fees.</p>			<div style="background-color: #FFD700; text-align: center; padding: 5px;"> Reasons for reservations - Sec. 143(4) </div> <p>For every matter reported with a qualification, auditor shall state the reasons thereof</p>
4	Right of auditor of Holding Company- Proviso to Sec. 143(1) <p>Auditor of a holding company shall have right of access to the records of all its subsidiaries and associate companies insofar as it relates to the consolidation of its F.S. with that of its subsidiaries and associate companies.</p>			

10.8 - Powers/Rights & Duties of Company Auditor (Sec. 143)

Provisions relating to Govt. Companies		
Duties of Auditor of Govt. Cos. - Sec. 143(5)	Supplementary Audit - Sec. 143(6)	Test Audit - Sec. 143(7)
CAG - direct the auditor the manners in which accounts are to be audited.	Within 60 days of days of receipt of Audit Report	CAG may If considers necessary
Auditor report shall include:	↓	↓
<ul style="list-style-type: none"> Directions issued by CAG. Action taken thereon. Its impact on Accounts and F.S. 	CAG have a Right	by an order
	↓	↓
	To order for supplementary audit of F.S.	cause test audit
	↓	↓
	By such persons as authorized by him	of accounts of Govt. companies

Provisions related to Branch Audit, SAs and CARO	
Sec. 143(8)	Audit of Branch Accounts (will be discussed separately in Chart 6.11)
Sec. 143(9)	Every Auditor shall comply with Auditing Standards
Sec. 143(10)	CG may prescribe the SA in consultation with NFRA
Sec. 143(11)	CG may direct that auditor's report shall include a statement on such matters as specified in order issued by it. (CARO, 2016/CARO 2020)

Reporting of Fraud	
Reporting u/s 143(12)	Manner of Reporting of Fraud - Rule 13
<p>Fraud involving prescribed amount</p> <p style="text-align: center;">↓</p> <p>Committed by officers or employees</p> <p style="text-align: center;">↓</p> <p>Should be report to CG in prescribed manner (Rule 13)</p> <hr/> <p>Frauds below prescribed amount</p> <p style="text-align: center;">↓</p> <p>Should be reported to Audit Committee or BOD</p> <p style="text-align: center;">↓</p> <p>Details of Such Frauds need to be disclosed in Board's report.</p>	<p style="text-align: center;">Fraud ≥ 1Cr.</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Reported to Audit Committee/BOD within 2 days</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Seeking their reply within 45 days</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">If reply received, forward his report, reply and comments on reply to CG within 15 days</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">If reply not recd., forward his report to CG along with a note that reply not recd.</p> <hr/> <ul style="list-style-type: none"> Report shall be sent to the Secretary, MCA in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same. Report shall be on letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number. Report shall be in the form of statement (Form ADT-4). Fraud reported to AC/BOD shall be disclosed in Board's Report.
Rule 13	
<ul style="list-style-type: none"> Nature of Fraud with description Approx. amount involved Parties involves if remedial action not taken Remedial action taken 	

Penalty for non-compliance - Sec. 143(15)	If any auditor, cost accountant or company secretary in practice do not comply with the provisions of Sec. 143(12), he shall, <ul style="list-style-type: none"> (a) in case of a listed company, be liable to a penalty of ₹ 5 lakh; and (b) in case of any other company, be liable to a penalty of ₹ 1 lakh.
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10.9 - Other Provisions (Secs. 142, 144, 145, 146 & 147)

Sec. 142 – Remuneration of Auditors

Authority to Fix remuneration

- Shall be General meeting or in such manner as may be determined therein.
- May be BOD in case of first auditor if appointed by BOD.

Elements of remuneration

- Shall include all expenses incurred in connection with audit and any facility extended to auditor.
- Does not include remuneration paid for any other service.

Sec. 144 – Auditor not to render certain services

Other Services that may be rendered

- As approved by the BOD or Audit Committee.

Services that cannot be rendered directly or indirectly to Co, Holding or Subsidiary

- Accounting & Book Keeping.
- Internal Audit.
- Design & Implementation of Financial Information System.
- Actuarial Services.
- Investment advisory.
- Investment Banking.
- Outsourced Financial.
- Management Services.
- Other Prescribed.

Sec. 145 – Signing of Audit Reports

Shall be in accordance with Sec. 141(2)

Sec. 146 – Attending of General meetings

- All Notice & other communication of general meetings shall be forwarded to Auditor.
- Unless exempted auditor shall attend either himself or through his authorized representative any general meeting,
- Auditor shall have right to be heard at such meeting on part of business which concerns him as auditor.

Sec. 147 – Punishment for Contravention

Over the Company & Officer in default – 147(1)

- Violation of Sec. 139-146
- Company – Fine from ₹ 25,000 to ₹ 5 Lacs.
- Officer in default- fine from ₹ 10,000 to ₹ 1 Lac.

Over the Auditor – 147(2)

- Violation of Secs. 139, 144, 145.
- Fine from ₹25,000 to (₹5 Lacs or 4 times the remuneration, whichever is less).
- In case of Wilful default – Imprisonment upto 1 year and fine from ₹50,000 to (₹25 Lacs or 8 times the remuneration, whichever is less).

If auditor convicted u/s 147(2)

↓
he shall be liable to
↓
Refund the remuneration
and
Pay for damages

10.10 - Cost Records and Cost Audit [Sec. 148 of Companies Act, 2013 & Companies (CRA) Rules, 2014]

