

**APPOINTMENT BY SHAREHOLDER:**

Sec. 224(1) provides the followings:

- Every company shall, at each annual general meeting, appoint an auditor or auditors.
- The auditor so appointed shall hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- The company shall, within seven days of the appointment, give intimation thereof to every auditor so appointed.
- Before any appointment or re-appointment of auditor or auditors by the company at any AGM, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or reappointment, if made, will be in accordance with the limits specified in sub-section (1B).

Sec. 224 (1A) provides that every auditor appointed u/s 224(1) shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept the appointment.

**RE-APPOINTMENT OF AUDITOR:**

Sec. 224(2) provides that subject to the provisions of sub-section (1B) and section 224A, at any AGM, a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless -

- he is not qualified for re-appointment;
- he has given the company notice in writing of his unwillingness to be re-appointed;
- a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or
- where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with.

**Points to remember:**

- A specific resolution is required to re-appoint the auditors. The retiring auditors cannot be deemed to be re-appointed automatically at the AGM. It is not correct to say that in the absence of a resolution to the effect that the retiring auditor shall not be re-appointed, the retiring auditors shall stand re-appointed as auditors of the company.

**APPOINTMENT BY CENTRAL GOVERNMENT:**

- (a) Sec. 224(3) provides that where at an AGM no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.
- (b) Sec. 224(4) provides that the company shall, within seven days of the Central Government's power under sub-section (3), becoming exercisable, give notice of that fact to that Government;
- (c) If a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

**APPOINTMENT OF FIRST AUDITOR**

Sec. 224 (5) provides the followings:

- The first auditor or auditors of a company shall be appointed by the **Board of directors** within **one month** of the date of registration of the company;
- The first auditor or auditors shall hold office until conclusion of the first annual general meeting.
- The company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 14 days before the date of the meeting.
- If the Board fails to exercise its powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.

**Points to remember:**

- A person cannot be appointed as first auditor simply because his name has been stated in the Articles of Association.
- The first auditor need not be sent intimation by the company of their appointment.
- The first auditors are not requires to inform the ROC about their acceptance or refusal.
- Provisions of subsection (2) and (3) of Sec. 225 shall apply for removal of first auditor.

## FILLING OF A CASUAL VACANCY

Sec. 224 (6) provides the followings:

- The Board may fill any casual vacancy in the office of an auditor; but while may such vacancy continues, the remaining auditor or auditors, if any, may act.
- Where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.
- Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Points to remember:

- **Meaning of casual vacancy:** not defined in the Act. It may stands for a vacancy created by the auditor ceasing to act after he was validly appointed and the appointment was accepted. This may arise due to death, resignation, dissolution of firm of auditors etc.
- **Auditor appointed in AGM fails to accept appointment:** does not amount to casual vacancy and hence Board of directors cannot fill this. The appointment of auditor is complete and effective only on the acceptance of the office by the auditor. On his refusal, it can be deemed that no auditor has been appointed by the company at its AGM. Hence, the provisions of Sec. 224(3) will be invoked and vacancy will be filled by Central Government.

## REMOVAL OF AUDITOR BEFORE EXPIRY OF TERM:

Sec. 224(7) provides that any auditor appointed under this section other than first auditor may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Points to remember:

- Provisions of subsection (2) and (3) of Sec. 225 shall apply for removal of auditor.

## REMUNERATION OF AUDITORS

Sec. 224 (8) provides that the remuneration of the auditors of a company -

- in case the auditor is appointed by the Board or the Central Government, may be fixed by the Board or the Central Government.
- in case auditor is appointed u/s 619 by CAG, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
- In other cases, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.
- For the purposes of this sub-section, any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

Points to remember:

- Act does not require that the remuneration shall be fixed at the same meeting of the company at which the appointment is made. It therefore, may be fixed at a subsequent date.
- Where a retiring auditor is re-appointed, his remuneration, in the absence of any resolution fixing a different remuneration, is considered to be the amount already fixed.
- As per requirement of Schedule VI part II of the Act, the notes should contain detailed information with regard to amount paid to auditor, whether as fees, expenses or otherwise for services rendered. These payments should be classified into payments received by the auditor as,
  - (a) Auditor;
  - (b) Advisor, or in any other capacity, in respect of
    - Taxation matters
    - Company law matters
    - Management services, and
  - (c) In any other manner.

## APPOINTMENT OF AUDITOR BY SPECIAL RESOLUTION

Sec. 224A (1) provides that in the case of a company in which not less than **25%** of the **subscribed share capital** is held, whether singly or in any combination, by -

- (a) a public financial institution or a Government company or Central Government or any State Government, or
- (b) any financial or other institution established by any State Act in which a State Government holds not less than 51% of the subscribed share capital, or
- (c) a nationalised bank or an insurance company carrying on general insurance business, the appointment or re-appointment at each AGM of an auditor or auditors shall be made by a **special resolution**.

Sec. 224A(2) provides that if such company omits or fails to pass at its AGM the special resolution for appointment of auditor, it shall be deemed that no auditor had been appointed by the company at its AGM, and thereupon the provisions of Sec. 224 (3) shall become applicable.

Points to remember:

- The material date to determine whether the Sec. 224A is attracted, is the date of AGM. If shareholding of specified institutions is less than 25% of subscribed share capital as on date of despatch of notice of AGM, but the shareholding exceeds to 25% or more as on date of AGM, special resolution need to be passed.

### APPOINTMENT OF AUDITOR OF GOVERNMENT COMPANY

Sec. 617 defines Government company as any company in which not less than **51% of the paid-up share capital** is held 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 and includes a company which is a subsidiary of a Government company.

Sec. 619 (2) provides that the auditor of a Government company shall be appointed or re-appointed by the Central Government on the advice of the Comptroller and Auditor-General of India and the limits specified in sub-sections (1B) and (1C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor u/s 619.

Sec. 619B provides that the provisions of sec. 619 shall apply to a company in which not less than 51% of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely:-

- (a) the Central Government and one or more Government companies;
- (b) any State Government or Governments and one or more Government companies;
- (c) the Central Government, one or more State Govt. and one or more Government companies;
- (d) the Central Govt. and one or more corporations owned or controlled by the Central Govt.;
- (e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government;
- (f) one or more corporations owned or controlled by the Central Govt. or the State Government;
- (g) more than one Government company.

### REMOVAL OF AUDITOR AFTER EXPIRY OF TERM

Sec. 225 lays down the procedure for removal of auditor after expiry of term.

- (1) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that retiring auditor shall not be re-appointed.
- (2) On receipt of notice of such a resolution, the company shall send a copy thereof to the retiring auditor.
- (3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so, -
  - (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
  - (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company;

If a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

However, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Company Law Board is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter.

The Central Government may order that company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

**Previous Years Questions**

*Q. No. 1: You have been appointed the sole statutory auditor of a company where you were one of the joint auditors for the immediately preceding year. The concerned joint auditor has not been reappointed. What are the various steps you would take to ascertain the compliance of the requirements of the Companies Act, 1956 before accepting the audit. [May 05 (5 Marks)]*

*Answer: **Appointment of Sole Auditor:** When one of the joint auditors of the previous year is appointed as the sole auditor for the next year, it is similar to non re-appointment of one of the retiring joint auditors. Accordingly, provisions of the Companies Act, 1956 to be complied with are as under:*

- 1. Ascertain that special notice u/s 225(1) of the Companies Act, 1957 was received by the company from a member at least 14 days before the AGM date.*
- 2. Check whether the said notice has been sent to all the members at least 7 days before the date of the AGM.*
- 3. Verify that the notice contains an express intention of a member for proposing the resolution for appointing a sole auditor in place of both the joint auditors who retire at the meeting but are eligible for re-appointment.*
- 4. The notice is also sent to the retiring auditor as per section 225(2) of the Companies Act, 1956.*
- 5. Verify whether any representation, received from the retiring auditor was sent to the members of the company.*
- 6. Verify from the minutes book whether the representation received from the retiring joint auditor was considered at the AGM.*

*Q. No. 2: Write short note on: Remuneration of Statutory auditors under the Companies Act, 1956.*

*[May 06 (4 Marks)]*

*Answer: Refer Sec. 224 (8)*

*Q. No. 3: What are the steps to be taken by a firm of Chartered Accountant to ensure that its appointment as Statutory Auditor of a Company is valid? [May 08 (6 Marks)]*

*Answer: To ensure the validity of appointment, the incoming auditor should take the following steps before accepting his appointment:*

- 1. **Ceiling limit:** Ensure that a certificate u/s 224 of the Companies Act has been issued to the company, stating thereby that the total number of company audits held by the firm (including the new appointment) will not exceed the specified number as prescribed u/s 224 (1B).*
- 2. **Resolution at AGM:** Verify that a proper resolution has been passed at the AGM of the Company.*
- 3. **Compliance with law:** Ensure that legal requirements for removal of existing auditor as prescribed in Sec. 224 and 225 of the Companies Act has been complied with.*
- 4. **Communication with previous auditor:** Ensure that communication with the previous auditor, if any, has been made to ascertain whether there exists any professional reasons for not accepting the appointment.*

## CEILING ON NUMBER OF AUDITS

Sec. 224 (1B) provides the followings:

- No company or its Board of directors shall appoint or reappoint any person who is in full-time employment elsewhere or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies.
- In the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in fulltime employment elsewhere.
- Where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number, in the aggregate :
- Where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate.
- These provisions are not applicable to a private company. Therefore, only audit of public companies would be taken into consideration while computing number of audits for the purpose of this section.
- Explanation I to Sec. 224 (1C) provides the meaning of specified number. Accordingly:
  - (a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies;
  - (b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.
- Explanation II to Sec. 224 (1C) provides that in computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.

### Points to remember:

- While computing 'specified number' following audits shall not be included: Audit of Private company, foreign company, guarantee company having no share capital, internal audit, Tax audit, special audit, branch audits, audit of cooperative societies, trusts and corporations.
- While computing 'specified number' following audits shall be included: Joint audit, audit of company licensed u/s 25.
- The council of ICAI specifies that a member of institute in practice shall be deemed to be guilty of professional misconduct, if he holds ay any time appointment of more than the specified number of audit assignments. For this purpose, the specified number of audit assignments means:
  - (a) In the case of a chartered accountant in practice or a proprietary firm of chartered accountant – 30 Audit assignments whether in respect of private companies or other companies.
  - (b) In the case of firm of chartered accountants in practice – 30 audit assignments per partner in the firm whether in respect of private companies or other companies.
- The followings should be kept in mind while computing specified number of audit assignments:
  - (a) the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other chartered accountant in practice or firm of such chartered accountants, shall be taken into account.
  - (b) The audit of head office and branch offices of a company by one chartered accountant or firm shall be regarded as one audit assignment.
  - (c) The audit of one or more branches of the same company by one chartered accountant on practice of firm shall be construed as on e audit assignment.
  - (d) The number of partners on the date of acceptance of audit assignment shall be taken into account.
  - (e) The number of partners in full time employment elsewhere shall not be taken into account.

## QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS

Section 226 (1) provides that a person shall not be qualified for appointment as auditor of a company unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949.

Provided that a firm whereof all the partners practicing in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company, in which case any partner so practicing may act in the name of the firm.

Section 226 (3) provides that none of the following persons shall be qualified for appointment as auditor of a company -

- (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 is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;

(e) a person holding any security of that company.

Section 226(4) provides that a person is not qualified for appointment as auditor of a company if he is disqualified for appointment as auditor of that company's subsidiary or holding company or a subsidiary of that company's holding company.

Sec. 226(5) provides that if an auditor after his appointment becomes subject to any of the disqualifications specified in sub-sections (3) and (4), he shall be deemed to have vacated his office as such.

Points to remember:

- Only a person holding a certificate of practice issued by ICAI is qualified for appointment as auditor.
- A firm would also be disqualified to be appointed as an auditor even if one partner is holding any security of the company.
- Security means an instrument which carries voting rights.
- A person is not disqualified for appointment as auditor of a company if his relatives or employees act as a director, secretary or otherwise as an officer of the company. But the Central Government's permission may have to be obtained u/s 314 of the Act.
- When the person appointed as an auditor is relative of person having substantial interest in the company, he should disclose his interest while making the report, otherwise it would amount to 'misconduct' under Chartered Accountant Act, 1949.
- An auditor of the company may also be engaged in the capacity of a consultant.
- If the auditor recovers fees from the company on a progressive basis, even though the audit has not been completed he cannot be said to be indebted to the company, and therefore he shall not vacate the office as auditor held by him.

**Previous Years Questions**

*Q. No. 4: As a Statutory Auditor, how would you deal with the following: Mr. Rajesh is appointed as the auditor of NOIDA Travels Ltd. with audit fees of Rs. 35,000. He purchased air ticket from Delhi to Kolkata and back for Rs. 18,000 from the client for his personal work and the amount remains unpaid at the end of the year as it is a general practice of the client to give credit to all. Mr. Rajesh claims that he does not incur any disqualification as contained in Section 226(3)(d) of the Companies Act. [Nov. 06 (5 Marks)\*]*

*Answer: As per guidance note on "Independence of Auditors" issued by the ICAI a question of indebtedness may also be raised where an auditor of a company purchases goods or services from the company audited by him. Hence provisions concerning disqualifications of auditor as contained in Sec. 226 (3)(d) will be attracted.*

**SINGLA**