

Company Auditor Series – Version 2.0

Chapter 5 – Removal & Resignation of Auditors



CA. PRAMOD JAIN
B. COM (H), FCA, FCS, FCMA, LL. B, DISA, MIMA, IP
www.caprmodjain.com

Namaste

In Chapter 5 of this series, we would discuss the removal and resignation of auditors as per the Companies Act 2013.

Once an auditor has been appointed by a company, they can be removed only when:

- He is removed by company suo-moto before his term.
- The auditor himself resigns.
- There is a casual vacancy other than by resignation.
- The term of the auditor is completed and another auditor is to be appointed in place of the retiring auditor.
- Removal by Tribunal.

Removal of Auditors

A Company may Suo-moto remove its auditor from office before the expiry of his term as per the provisions of section 140 of the Companies Act 2013 read with Rule 7 of Companies (Auditor and Auditors) Rules 2014.

As per section 140(1), only by a special resolution of company can an auditor appointed u/s 139 be removed after obtaining previous approval from Central Government (CG) in Form ADT-2 along with fees where:

- The application made in form ADT-2 shall be made to CG within 30 days of resolution passed by the Board.
- The company shall hold a General Meeting within 60 days of approval of CG for passing Special Resolution.

The Power of CG is delegated to Regional Director (RD) for these purposes. The procedure in brief for the removal is as under:

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- Company to pass a Board Resolution for removal of auditor and the Auditor concerned needs to be given a reasonable opportunity of being heard.
- Within 30 days of the above resolution, the company would apply for the approval of the Regional Director (RD) in Form ADT-2 which is to be filed with prescribed fee.
- After due procedure RD may pass an order for removal of auditor.
- After obtaining the approval, the company shall hold an EGM within 60 days of receipt of approval and then pass a Special Resolution for removal of the Auditor therein.
- Company to file MGT-14 within 30 days of passing of the said special resolution.

Resignation of Auditors

An auditor may resign from office before the expiry of his term as per the provisions of Section 140 of the Companies Act 2013 read with rule 8 of Companies (Audit and Auditors) Rules 2014.

If the auditor resigns from the company, as per section 140(2), a statement in prescribed Form i.e., ADT-3 is to be filed with the registrar within 30 days from the date of resignation. However, in case of government companies referred in section 139(5), auditor shall also file the statement with C&AG of India along with reasons and facts for resignation.

The procedure in brief for the resignation is as under:

- Auditor to issue and send a resignation letter to the Company giving the reasons for the resignation.
- Auditors of listed entities and their material subsidiaries have also to comply with SEBI circular No. CIR/CFD/CMD1/114/2019 dated 18th October 2019.
- Auditor to file Form ADT-3 within 30 days of the resignation along with the letter of the resignation communicated to the company with the communication proof.

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In case of failure to file ADT-3 the auditor shall be liable to a penalty of Rs 50000 or amount equal to remuneration, whichever is lower. However, in case of continuous failure, a further penalty of Rs 500/- day subject to maximum Rs 2 lacs shall be levied.

Casual Vacancy

The term Casual Vacancy has not been defined in the Act. Hence, we can understand this as a vacancy in the office of the auditor of the company before his term expires. This vacancy can be due to various reasons, including:

- Resignation
- Death
- Ceasing to be a member in full time practice of ICAI
- Change in the status of auditor i.e., from proprietorship / individual to partnership firm
- Dissolution of firm or conversion from partnership to proprietorship
- Incapacitated to contract
- Contracting disqualifications u/s 141(3)
- Regulators (NFRA) passing orders u/s 132(3)(c)(B)
- Company reaching limits for rotation and term of auditor is completed in mid of his term.
For example, Mr. A is auditor of company since incorporation. He was re-appointed as auditor in the AGM on 30th September 2020 for 5 years i.e., till AGM to be held in, say September 2025. In financial year 2022-2023, the limits for rotation becomes applicable, so there would be casual vacancy, hence the auditor vacates his office on completion of audit for financial year 2022-23.
- Rendering of any service as mentioned in section 144 i.e.
 - Any service other than audit which are though allowed but are not approved by the Board of Directors or the audit committee, as the case may be.
 - Restricted services rendered directly or indirectly being:
 - Accounting and book keeping services
 - Internal audit

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- Design and implementation of any financial information system
- Actuarial services
- Investment advisory services
- Investment banking services
- Rendering of outsourced financial services
- Management services

However, in the following cases, there is no casual vacancy caused:

- *Change of partners or reconstitution of firm* – In case of admission or retirement of some partners but firm continues or change in profit loss sharing ratios of the partners amongst themselves.
- *Conversion of Firm into LLP* – As per General circular No. 9/2013 dated 30.4.2013 issued by MCA, if a CA audit firm, being an auditor in a company under the Companies Act, 1956, gets converted into an LLP then, such an LLP, in accordance with the provisions of section 58(4) (b) of the LLP Act, 2008 would be deemed to be the auditor of the said company. The relevant appointee company may take note of such change in status of the auditor through a resolution of the Board.
- *Change in Name of Firm* – Though there is no legal provision which covers such happening to be a casual vacancy or not yet taking a clue from the General circular No. 9/2013 dated 30.4.2013 as discussed above, this seems to not be a casual vacancy and the relevant appointee company may take note of such change in name of the auditor through a resolution of the Board.
- *Merger of Firms* – Though there is no concept of merger of firms under the Partnership Act, yet ICAI regulations provide for merger of firms. Vacancy caused due to such merger can be understood by below chart:

<i>Case</i>	<i>Merger & Situation</i>	<i>Vacancy Caused or Not</i>
1	Firm B merges in Firm A and Auditor already appointed in company is Firm A	No Vacancy

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2	Firm B merges in Firm A and Auditor already appointed in company is Firm B	Vacancy caused
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- *Demerger of Firms* – On the other hand, in case of demerger of firms, vacancy caused due to such demerger can be understood by below chart:

<i>Case</i>	<i>Demerger & Situation</i>	<i>Vacancy Caused or Not</i>
1	Firm A demerges into Firm A and Firm B and Auditor already appointed in company is Firm A	No Vacancy
2	Firm A demerges into Firm A and Firm B and previously the Auditor is Firm A and now Auditor to be appointed in company is Firm B. Then Firm A has to file resignation by filing Form ADT-3.	Vacancy caused by resignation

In case of casual vacancy other than resignation, there is no requirement to file Form ADT-3.

Special Notice for appointing Other than Retiring Auditor

As per section 140(4) of the Act, a special notice is required, when:

- An auditor other than retiring auditor is appointed; or
- Expressively a retiring auditor is not re-appointed,

However, the same is not applicable when retiring auditor has completed a term of 5 years or 10 as per section 139(2) of the Act and is liable to retire by rotation. On receipt of such resolution, the following steps has to be taken:

- On receipt of notice of such a resolution, the company shall send a copy thereof to the retiring auditor.

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- Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so:
 - in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,
- If a copy of the representation is not sent as aforesaid because it was 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 representation shall be read out at the meeting
- However, if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:
- Also, if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

Removal by Tribunal

As per section 140(5), tribunal may direct the company to change its auditors either suo moto or on an application by CG or any concerned person where tribunal is satisfied that directly or indirectly auditor has acted in fraudulent manner or abetted or colluded in any fraud or in relation to company or its directors or officers.

In case where CG has made an application and Tribunal is satisfied that there is a requirement of change of auditor then latter shall pass an order for its change within 15 days of application and CG may appoint another auditor in his place. Such auditor, individual or firm against whom the

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final order is issued, shall not be eligible to be appointed as an auditor for 5 years and liable for action u/s 447.

I hope this document is of use to you. I thank CA. Shreya Jain, Ms. Sakshi and Ms. Riya in assisting me to update this chapter of the series. Your suggestions and comments would be highly appreciated.

Best Regards

CA. PRAMOD JAIN
pramodjain@lunawat.com
www.capramodjain.com
9811073867

1st May 2024

EARLIER CHAPTERS

Chapter No.	Title	Link
1	Types of Audits	https://lunawat.com/Uploaded_Files/Attachments/F_18291.pdf
2	Qualifications & Disqualifications	https://lunawat.com/Uploaded_Files/Attachments/F_18293.pdf
3	Appointment of Auditor	https://lunawat.com/Uploaded_Files/Attachments/F_18299.pdf
4	Power & Duties of Auditors	https://lunawat.com/Uploaded_Files/Attachments/F_18301.pdf

(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omissions)

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ABOUT CA. PRAMOD JAIN

He is a commerce graduate [B. Com (H)] from Shri Ram College of Commerce (SRCC). He is a fellow member of the Institute of Chartered Accountants of India (FCA). He is a fellow member of the Institute of Companies Secretaries of India (FCS). He is a fellow member of the Institute of Cost Accountants of India (FCMA). He is a Bachelor of Law (LL. B). He is qualified as an Information System Auditor [DISA (ICAI)]. He is also a member of All India Management Association (MIMA). He is also an Insolvency Professional (IP). He has also passed the Certificate Course on CSR of ICAI. He has also passed the Proficiency Self-Assessment Test for Independent Director's Databank. He has passed certification course NCFM of National Stock Exchange of India (NSE). He has also done certification course CAAT and post qualification certificate course on Valuation of ICAI.

He is elected as Central Council Member of ICAI for 2 consecutive terms from 2019 to 2025. Apart from being member in more than 25 committees / groups / directorates of ICAI, and other Bodies he is / was:

- Chairman of Accounting Standards Board (ASB) of ICAI for 3 years from 2022 to 2025
- Deputy Convenor of Centre for Audit Quality Directorate (CAQD) for 2024-25
- Convenor - Members & Students (Grievances Handling & e-Sahayata) Directorate for 2023-24
- Chairman of Accounting & Finance Services Sectional Committee SSD-12 under the Services Sector Division Council (SSDC) of Bureau of Indian Standards (BIS) for 2023-24
- Chairman of Expert Advisory Committee (EAC) of ICAI for Year 2022-23
- Co-Chairman of Corporate Affairs Committee of PHDCCI for the year 2022-23
- Chairman of Committee on International Taxation (CITAX) of ICAI for 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) of ICAI for the year 2021-22.
- Member of Quality Review Board (QRB) for 2 terms from 2020 to 2026.
- Member of the SME Implementation Group (SMEIG) of IFRS Foundation, UK for 3 years from 2023 to 2026.
- Chairman of Valuation Standards Board (VSB) of ICAI for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up of ICAI for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) of ICAI for 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) of ICAI for 2 years from 2019 to 2021.
- Vice-Chairman of Committee on International Taxation (CITAX) of ICAI for Year 2019-20.
- Member of ICAI Disciplinary Committee for the year 2020-21.

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He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all professional queries which has given more than 36000 answers since its launch in mid of year 2018.

He has delivered more than 1700 lectures and articles on various topics of Income Tax, Corporate Laws, LLP, Audits, Peer Review, Quality Review, etc. at more than 200 forums throughout the country. Most of his presentations and articles since 2013 are available for free download from www.lunawat.com and from 2018 at www.expertspanel.in also.

He is Senior Partner of M/s LUNAWAT & CO., Chartered Accountants. He is president, founder convener and member of various Boards, Directorate, Committees, Study Circles, etc. of ICAI, ICSI and other prestigious bodies and associations. He has been a Technical Reviewer with Financial Reporting Review Board (FRRB) and Quality Review Board (QRB) and Peer Reviewer with Peer Review Board (PRB).

He has authored books on “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, *Limited liability Partnership – A Complete Resource Book*, “Chartered Accountant’s Documentation and Compliance for Audits and Reviews”, “Importance of LLP after Companies Act, 2013”, “Chartered Accountant’s Documentation and compliance under Companies Act 2013, Peer Review and Quality Review”, “Limited Liability Partnership – Law, Procedures and Taxation”, “Documentation for Chartered Accountants”, “Limited Liability Partnership – Law and Procedures with Ready Reckoner”, “Fringe Benefit Tax & Banking Cash Transaction Tax”, “Documentation for Audits” and “Accounting Standards and CARO”.

He has written various articles on taxation, company law and audit in various journals. He has vast practical experience in income tax, audit, corporate laws and LLP.