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"Audit restrictions in the new Act and changing systems as per PCAOB guidelines – Is it doing Good in India"

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ABSTRACT

The project aims to analyze the auditing standards of the companies as mentioned in the companies act with the guidelines provided by the PCAOB which is itself an auditing company. It will start by discussing about the audit and auditors and their procedure of appointment etc, in the Companies Act, 2013. Then further it will contain the details about PCAOB (Public Company Accounting oversight Board) and the standards of auditing which have been set by them as it a private organization which helps the other companies by providing them auditors and auditing them.

The next section consists of the changes which have been made in the auditing section of the companies act in accordance with the standards set-up by the PCAOB as the new rules have been set up as per the guidelines of the PCAOB.

Further it discusses about the restriction which has been put in the new Companies Act of 2013 which was not present in the previous Act. The effect of changes in the Companies Act has also been discussed in the project. Considering that the research will analyze the auditing standard and focusing on the changes made in the Companies Act.

INTRODUCTION

The term audit refers to the financial statement audit. It is a kind of an examination as well as assessment of the financial statements of the organization in order to see that the organization is working fairly and the statements are the correct representation of the transactions done by the organization. It is done in order to obtain the certain amount of finance which the organization has dealt

It is not necessary that the audit of the company can be done only by the internal employees but this can also be done by an independent auditor which comes from outside the firm. It is necessary for an organization to conduct an audit as it would help in maintaining the accounts of the organization fairly.

The companies who are not able to inspect their organization internally take help of the external auditors. The Public Company Accounting oversight Board is a private sector corporation which helps the other companies by auditing them. It was created by the Sarbanes-oxley Act of 2002. It was formed in order to protect the interests of the people who

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are investing in the company as well as help the company by creating and preparing the auditing reports in a fair, accurate.

Thus, an audit is necessary in a company so the government made a separate provision for its appointment and removal of auditors, their eligibility, qualification and disqualification, their powers and duties of auditors and auditing standards and auditing restrictions.

a) Appointment of auditor (Section 139 of the Companies Act, 2013)

As per section 139, it is a prime requirement that every company shall at the first annual general meeting appoint an auditor who can either be an individual or a firm. Appointment includes reappointment.

The manner and procedure of selection of auditors by the members of the company will be such as may be prescribed. It is a mandatory condition that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him stating that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.

b) Tenure

Company can appoint an individual as an auditor for more than one term of five consecutive years and an audit firm as an auditor for more than two terms of five consecutive years.

c) Eligibility, Qualifications and Disqualifications of auditors (Section 141 of the Companies Act, 2013)

A person will b qualified to be appointed as an auditor of a company only if he is a chartered accountant. Where a firm is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm. A person will be disqualified if he is falling under the following:

1. an officer or employee of the company;
2. a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009)
3. a person whose relative is a director or is in the employment of the company's a director or key managerial personnel;
4. a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

d) Removal and Change of Auditor (Section 140 of the Companies Act, 2013)

1. Special resolution

The auditor appointed may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

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2. Resignation

The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of Government company with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. In case of non compliance he shall be punishable with fine ranging between INR 50,000 to 5 lakhs.

e) **Duties of an auditor**

Auditors have the general duty of discharging their statutory functions with care and diligence. Many stakeholders would rely on the auditor's reports for accessing the financial picture of the company.

However, there cannot be any specific prescription of negligence keeping in view the expectations of all the stakeholders. However, auditors are required to carry out their work within the discipline of the legal provisions and the standards of accounting/Accounting Standards (where notified). There is a necessity that the work of the auditors should uphold the highest standards of excellence and independence. Non-compliance with such standards should invite stringent penalties. The Committee was of the view that the basic duties of the Auditors and their liability need to be laid down in the law itself instead of in the Rules. Quantification of penalty for Auditors may be prescribed in the Rules.

ABOUT PCAOB

The PCAOB (Public Company Accounting oversight Board) is a nonprofit corporation established by Congress to oversee the audits of public companies in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports. The PCAOB also oversees the audits of brokers and dealers, including compliance reports filed pursuant to federal securities laws, to promote investor protection.

The Sarbanes-oxley Act of 2002, which created the PCAOB, required that auditors of U.S. public companies be subject to external and independent oversight for the first time in history. Previously, the profession was self-regulated.

It consists of five members which includes a Chairman who is appointed by the SEC, after discussion with Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury. The two board members must be certified Public Account. The board members should be practicing CPA for minimum five years before they can be made chairmen. Its head quarter is in Washington and has about 800 people in its staff across in cities.

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AUDITING STANDARDS BY PCAOB

The auditing standards which are set up by the PCAOB includes-

1. General Principles and Responsibilities of an Auditor.
2. General Concepts dealing with the Audit.
3. General Activities done by the Auditor.
4. Auditor Communication with Audit Committees.
5. Audit procedures
6. Audit planning and Risk Assessment for performing an audit.
7. Auditing internal control over financial reporting of the financial statements.
8. Auditing Procedure in Response to Risks – Nature, Timing and Extent of the process.
9. Audit Procedures for specific aspects of the Audit in case of illegal acts.
10. Auditor's Responsibilities Regarding Supplemental and other Information
11. Concluding Audit Procedures
12. Post-Audit Matters after the due date.

These are the certain standards/guidelines which are setup by the PCAOB across the world to follow by the companies. It is up to their discretion to follow the guidelines set up by PCAOB. These guidelines help in organizing better auditor in the company.

But in the Companies Act, 2013-

"Auditing Standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (*10)* o*f section 143;*

In Act of 2013, Auditing Standards are now recognized and have an authoritative value. National Financial Reporting Authority to be constituted under Section 132 of the Act to advise Central Government regarding Accounting Standards. Auditor has to adhere to the norms as prescribed in the Auditing Standards The auditing standards are prescribed by the Central Government as recommended by the Institute of Chartered Accountants of India which are as follows-

1. General Principles and Responsibilities of the Auditor,
2. Risk Assessment and Response to Assessed Risks for planning and identifying of financial statements,
3. Audit Evidence
4. Using Work of others
5. Audit Conclusions and Reporting
6. Specialized Areas
7. Standards on Review Engagements (SREs)

The government expects to end relationships that companies shared with their auditors thus far with these new rules and bring more objectivity to the audit process and reduce instances of accounting frauds. Essentially, it hopes to prevent another Satyam-like fraud, where

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promoters siphoned out large sums of money from the company as their auditors looked the other way.

CHANGES IN THE NEW ACT AS PER PCAOB GUIDELINES

Before the Company's Act of 2013, there was not any provision which dealt with the-

1. **Rotations of Statutory Auditors**

This clause was added in the new act which said that the companies cannot appoint or re-appoint their auditor for two terms of consecutive five years if the auditor is a firm and if it is an individual then he cannot be appointed for a term of one years for more than five consecutive years.

This rule has been added in the accordance with the guideline of the PCAOB which says that the there should be rotation of auditor for every five years. This should be done in order to increase the independence between the auditors and the clients When the lead auditor adjustments, they must "begin from scratch" with their consumer, which means that no longstanding courting is unbroken. In addition, the audit company will have to spend much less time on the audit than if it have been a wholly new business enterprise, which saves huge quantities of time, and most significantly, money.

2. **Duties of auditor to report fraud to Central government**

Now, the auditor is bound to tell about the frauds done by the company or inside the company to the Central Government irrespective of anything. The Audit Rules tells that if an auditor has sufficient cause to believe that an offence related to fraud, is being or has been devoted towards the organization by way of officials or employees of the enterprise, the auditor will file the problem to the Central Government right away however not later than sixty days of his knowledge.

In the PCAOB guidelines, it is mentioned that it is auditor's responsibility to plan and perform audit in order to obtain that the statements are free from fraud or any misrepresentation. It is their duty to tell the government about the frauds conducted by the company to the government.

3. **Recommendation of Auditing Committee for appointment of auditors (u/s 139 (11) of Companies Act, 2013)**

This clause was added in the Act for the appointment of the statutory auditors when there is a vacancy which shall be fulfilled after consulting Auditing committee. The appointment is provided in the rules which were changed in 2013. Before this, there was no provision for the appointment from the recommendation from the Auditing committee and there has to be reason given incase the recommended one is not appointed and the committee proposes its own nominee.

The PCAOB guideline say that the auditor need to talk with the audit committee any important problems that the auditor mentioned with control in reference to the appointment 0r retenti0n of the auditor, consisting of tremendous discussions concerning the software of accounting principles and auditing standards.

4. Auditor's duty when they resign (u/s 140 (2) / (3) of Companies Act, 2013)

The previous act there was no such provision to file a statement with the RoC as well as company within 30 days of resignation telling about the reasons and circumstances which led to his resignation.

The same is as per the guideline of the PCAOB which says that there should be reason given by the Auditor if he resigns from the post.

5. Auditor not to render certain services (u/s 144 of Companies Act, 2013)

Under the 2013 Act, an auditor is allowed to provide only such non-audit services to the company as are approved by its board or audit committee. However, the auditor is not allowed to render the following services either directly or indirectly to the company, its holding or subsidiary company:

- Accounting and book keeping services
- Internal audit
- Design and implementation of any financial information system
- Actuarial services
- Investment advisory services
- Investment banking services
- Rendering of outsourced financial services
- Management services

From an audit company's perspective, the time period 'directly or indirectly' consists of rendering of offerings by way of the company itself or thru any of its partners or through its figure, subsidiary or partner entity or via some other entity wherein the firm or any accomplice of the firm has importance impact or control, or whose call or exchange mark or brand is utilized by the firm or any of its partners Any other kind of services as may be prescribed.
These were added in the new Act of 2013 because these were the basic requirements and Standard set up by the PCAOB guidelines.

The restrictions which were added in the new act was regarding the restriction on the number of audits which can be conducted by an auditor which is specified under Section 141 (3) (g) of the Companies Act, 2013.

The provision of Section 141 (3) (g) is read as follows-

"a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies"

This means to say that an auditor cannot audit in the more than twenty companies after the commencement of the new act. The companies which are excluded from the new audit restreiction are the one Person Company, Dormant Company, Small Companies and Private Limited Companies which have paid up capital less than 100 crores.

Earlier, prior to the year 2000, Companies Act 1956 had similar provision relating to cap of number of companies including audit of private limited companies. In Companies (Amendment) Act, 2000 this restriction relating inclusion of private limited companies in the company audit ceiling limit was specifically deleted. Due to this reason, under old Companies Act 1956, there was no restriction on number of private limited company's audit on auditors.

EFFECTS OF CHANGES IN THE ACT IN INDIA

The transition from Companies Act, 1956 to Companies Act, 2013 has been an eventful one as numerous bills and committees have deliberated at the effect of worldwide corporate regulation jurisprudence on Indian company homes. The new Companies Act has integrated tips from across jurisdictions which includes america, Australia, UK and the European Commission. In terms of global competitiveness, the brand new Companies Act has important provisions which are precise to India. The Act implemented many new sections and repealed the relevant corresponding sections of the Companies Act 1956. This is landmark legislation with far-reaching consequences on all companies incorporated in India.

Business and (PCAOB) traders have at times expressed their concerns about the realistic aspects of making use of the Companies Act. However, they've also shown confidence in the device due to induction of a number of the arena magnificence exceptional practices and have welcomed the adjustments as an try and repair the attraction of Indian business and doing business in India. Regulatory checks, responsibility and governance standards in India have acquired a extreme enhance with the advent of latest standards. However, the consequences and consequences of the provisions of the younger Companies Act are but to be encountered by India Inc.

The new rules also forbid organizations from appointing a brand new auditor who may additionally have a few associations with the outgoing auditor. That is to say, audit cannot be handed over from one firm of a network to another firm of the same network. For example, an enterprise that had Deloitte, Haskins and Sells as its auditor cannot employ SB Billimoria as its incoming auditor while the previous's term ends. This is due to the fact each those firms are part of the Deloitte community of corporations in India.

Many large companies have a couple of set of auditors - and they will be those that face extra difficulty with the new rules of rotation coupled with bar on appointing firms of identical network for successive phases.

If organizations hoped to keep their associations with an audit associate with the aid of engineering his circulate from the present company to every other that too will not be feasible. Rules notified with the aid of the ministry of corporate affairs lately says a company that any such accomplice joins or units up cannot be appointed because the auditor of the agency for a duration of 5 years.

The new regulations apply to hundreds of agencies, no longer just all listed groups but additionally many small ones. As in step with regulation, all unlisted public groups with percentage capital of Rs.10 crore or extra, non-public restrained corporations with percentage capital of Rs 20 crore or greater as well as agencies which have public borrowings from economic institutions, banks and public too are required to rotate their auditors.

CONCLUSION

The new Indian Companies Act, 2013 is a high quality and welcoming step closer to modernizing India’s agency regulation and locations India on par with company rules someplace else within the globe. The Act is a progressive and ahead searching which guarantees stepped forward corporate governance norms, stronger disclosures and transparency, facilitation of responsible entrepreneurship, accelerated accountability of agency managements and auditors and strict enforcement processes. It is going a long manner in defensive the interests of shareholders and gets rid of administrative burden in several areas.

Seeking extra transparency and company duty and making auditors extra-impartial, the modifications introduced out within the form of The Companies Act, 2013 will show extra, efficient and powerful.

As the regulation stands nowadays, an auditor can't receive audit of greater than 20 corporations excluding private limited corporations with less than Rs one hundred crore paid up capital, dormant, small corporations and one Person Companies.

Hence, the employer's objective of audit is to pursue and acquire its numerous corporate targets. Company need to observe audit gadget. There are various paperwork wished in Business techniques to facilitate supervision and tracking, prevent and detect abnormal transactions, measure ongoing overall performance, keep good enough enterprise records and to sell operational productivity. It also allows in addition research by using management if its miles warranted beneath the circumstance.