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Corporate Update

Appointment and Powers of Auditors under Companies Act, 1913

If you have questions or would like additional information on the material covered in this Newsletter, please contact the authors:

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Appointment and Powers of Auditors

The recently enacted Companies Act, 1913 (yet to be notified) has imposed new requirements with regard to appointment of auditors and exercise of powers and compliances by the auditors. Some of the new requirements include:

- Tenure of appointment: 5 (five) years, subject to ratification at every annual general meeting.

- Existing auditors to continue tenure if no auditor appointment in annual general meeting.

- The Audit Committee, if any, of the company will make recommendations for appointment of auditors.

- In all companies (except one person companies and small companies) individual auditors need to be rotated after 1 (one) term of 5 (five) years and audit firm rotated after 2 (two) terms of 5 (five) years, and in each case, a cooling off period of 5 (five) years from the date of conclusion of the total allowed term(s) would apply for re-appointment.

  It appears that there is no bar in appointing the rotated auditor as auditor of holding company/subsidiary/associate company of the company in question during the cooling off period.

- Removal of auditors before expiry of the term of appointment, can now be done only by way of a special resolution, subject to approval of the Central Government and after providing the auditors an opportunity of being heard.

- Auditors are now required to strictly comply with auditing standards.

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Recommended by:

- Auditors of a holding company now have a right of access to records of all the subsidiary companies.

- Auditor's report is now required to additionally contain remarks, reservations and qualifications relating to maintenance of accounts; and also a statement as to whether the company has adequate internal financial control systems in place.

- Auditor by himself, or through authorized representative, is now mandatorily required to attend every general meeting (unless exempted by the company).

- Auditors are now required to report all matters to the Central Government if they have reason to believe that a fraud (which is likely to 'materially' affect the company) is being or has been committed by employees and/or officers of the company, within 30 (thirty) days of becoming aware, failing which, the auditors will be liable to prescribed fines which shall not be less than Rs. 1 Lac and may extend to Rs. 25 Lacs.

  'Material' would mean a recurring and frequent fraud, and/or where the amount involved or likely to be involved is not less than 5% (five percent) of net profits or 2% (two percent) of turnover of the company for the preceding financial year.

- In all other kinds of fraud, the auditors are required to send a report to the Audit Committee and/or the board of directors of the company, as the case may be, and in case of inaction by the Audit Committee/board, to the Central Government. No duty of confidentiality to which an auditor is may be subject to shall be regarded as having being contravened by reason of his reporting the matter as above if it is done in good faith.

The obligation to report fraud to the appropriate regulatory authorities and personal accountability of the auditors in case of non-compliance is intended to ensure transparency in the financial management of the company, better corporate governance and accountability and minimize the menace of fudging of accounts of the company to the detriment of the shareholders of the company.

Feedback

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