**UNIT 3: COMPANY ADMINISTRATION**

**To be covered under this unit:** Auditior**-** Appointment- Powers- Duties and Responsibilities –Audit Committee –CSR Committee

**Auditors:**

**Definition:**

U/s2(17) of Companies Act, 2013, “Chartered Accountant” means a chartered accountant as defined in Sec.2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice U/s6(1) of that Act.

U/s 2(1)(b) of the Chartered Accountants Act, 1949, “chartered accountant” means a person who is a member of the Institute.

**Appointment of an Auditor (Including Re-appointment) U/s139 r/w Companies (Audit and Auditors) Rules, 2014:**

**First Auditor:**

1. In case of Government Company - Appointment of Auditor shall be made by Comptroller & Auditor General within 60 days of registration of Company. In case of failure by C&AG, BOD will appoint in next 30 days. In case of failure by BOD, members of the Company will appoint in next 60 days at an EGM who shall hold office till the conclusion of First AGM.

2. In case of other than Government Company - Appointment of Auditor shall be made by BOD within 30 days of Registration of Company. In case of failure by BOD, members of the company will appoint within 90 days at an EGM who shall hold office till the conclusion of first AGM.

**Subsequent Auditor:**

1. In case of Government Company - Auditor will be appointed by the C&AG within 180 days from the commencement of the Financial Year, who shall hold office till the conclusion of the AGM.

2. In case of other than Government Company –

a. Every other company shall at the first AGM appoint an individual or a firm as an Auditor who shall hold office from the conclusion of that AGM till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting.

b. Even if the auditor is appointed for 5 years, then also members of the Company should ratify such appointment at every AGM.

c. The manner and procedure of the appointment of the Auditor is prescribed by Central Government.

d. Before the appointment of the auditor the written consent of the auditor to such appointment and certificate showing compliance of Section 141 and other conditions as prescribed, should be obtained.

e. Notice of Appointment of Auditor should be filled with the Registrar within 15 days of the meeting in which the auditor is appointed.

**Note:**

a) A retiring auditor may be re-appointed at an AGM, if:

i. He is not disqualified for re-appointment.

ii. He has not given the company a notice in writing of his unwillingness to be re-appointed

iii.A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be appointed.

b) Where at an AGM, if no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the Company.

c) In case of resignation by auditor - Casual Vacancy to be filled by BOD within 30 days but the same should be approved by the members in a general meeting (EGM) to be convened within 3 months of the recommendation of the Board. He shall hold office till the conclusion of next AGM.

d) In case of a company that is required to constitute an Audit Committee under section 177, such committee, and, in cases where such a committee is not required to be constituted, the Board shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

e) For the purpose of constitution of Audit Committee U/s 177 of the Act r/w Companies (Meetings of Board and its Powers) Rules, 2014 provides that, The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee of the Board-

(i) all public companies with a paid up capital of Rs.10 crore or more;

(ii) all public companies having turnover of Rs.100 crore or more;

(iii)all public companies, having in aggregate, outstanding loans or borrowings or debentures ordeposits exceeding Rs.50 crore or more.

**Sub-Note:**The paid up share capital or turnover or outstanding loans, or borrowings ordebentures or deposits, as the case may be, as existing on the date of last audited FinancialStatements shall be taken into account for the purposes of this rule.

f) Before considering the appointment of auditor, the Audit Committee or the Board, as the case maybe, shall consider any pending proceeding relating to professional matters of conduct against theproposed auditor before the ICAI or any competent authority or any Court. Further they may call forsuch other information from the proposed auditor as it may deem fit.

g) Where a company is required to constitute the Audit Committee, the committee shall recommendthe name of an individual or a firm as auditor to the Board for consideration and in other cases, theBoard shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.

h) If the Board agrees with the recommendation of the Audit Committee, it shall further recommend theappointment of auditor to the members in the AGM otherwise, it shall refer back therecommendation to the committee for reconsideration citing reasons for such disagreement.

i) Thereafter if the Audit Committee decides not to reconsider its original recommendation, then Boardshall record reasons for its disagreement with the Audit committee and send its ownrecommendation for consideration of the members in the AGM and if the Board agrees with therecommendations of the Audit Committee, it shall place the matter for consideration by members inthe AGM.

j) Section 141 (1) & (2) of the Act prescribed the following eligibility and qualifications of auditor which are asunder:-

(i) Only a Chartered Accountant (individual) or a firm where majority of partners practicing in India are

Chartered Accountants can be appointed as auditor.

(ii) Where a firm including a limited liability partnership (LLP) 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 thefirm.

**Powers and Duties of an Auditor U/s143:**

**1. Right to access:**Every auditor can access at all times to the books of accounts, vouchers and seek such information and explanation from the company and enquire such matters as he considers necessary. It is the duty of every auditor to make proper enquiry regarding these matters, besides other matters and if he is satisfied, it is not necessary to disclose this fact in his report.Specific enquiries to be made by the auditor are as under–

(a) Loans and Advances made by the Company

(b) Transactions represented by book entries

(c) Sale of investments

(d) Loans and Advances shown as deposits

(e) Charging of Personal expenses to revenue account

(f) Allotment of shares for cash

**2. Auditor’s Report:**The Auditor shall make a report to the members of the company on accounts examined by him on every financial statement and report whether financial statement gives a true and fair view of the state of the company’s affairs at the end of the financial year. He shall also state –

(a)   Whether he has sought and obtained all the necessary information and explanations,

(b)  Whether proper books of account have been kept,

(c)   Whether the report from branch auditor was sent to him and the manner he dealt with it,

(d)  Whether company’s balance sheet and profit and loss account are in agreement with books of accounts and returns

(e)  Whether financial statements comply with accounting standards,

(f)    The observations or comments on financial transactions or matters which have any adverse effect

(g)  Whether any director is disqualified from being appointed as director under section 164

(h)  Any qualification, reservation or adverse remark

(i)    Whether company has effective internal control system and operative effectiveness, and

(j)    Such other matters.

The report shall state the reason for answers in negative and with qualification.

**Company Secretary**

**Meaning:** Secretary means one entrusted with secrets.

**Definition:**U/s 2(24) “company secretary” or “secretary” means a company secretary as defined in clause U/s 2(1)(c)of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

U/s 2 (1) (c)of the Company Secretaries Act, 1980, "Company Secretary" means a person who is a member of the Institute.

In India, every company with a paid up share capital of Rs.5 [crores](http://en.wikipedia.org/wiki/Crore) or more is required to appoint a qualified person as Company Secretary. A company with not less than Rs.10 [lakhs](http://en.wikipedia.org/wiki/Lakh) paid up capital is not required to appoint a full-time company Secretary shall file a compliance certificate issued by a practicing Company Secretary with the Registrar of Companies.

**Types of Secretaries:**

1. Private Secretaries

2. Secretary of an association or club

3. Secretary of a government department

4. Secretary of a co-operative society

5. Secretary of a local body

6. Company Secretary

**Qualification of the Company Secretary:**

Refer Definition

**Other Qualifications:**

a) Sound education

b) Proficiency in language

c) Knowledge of the office organisation & business methods

d) Knowledge of accountancy and taxation

e) Knowledge of economics, banking & finance

f) Knowledge of Mercantile law/Business law

g) Impressive personality

**Appointment of the Company Secretary:**

The secretary is appointed through the following procedure-

1) A resolution must be passed at the board meeting, appointing the secretary & approving the terms and conditions of the appointment.

2) Any director interested in the appointment of secretary must disclose his interest & must not take part in the discussion & vote on the resolution.

3) A service agreement must be executed.

4) The particulars of his appointment must be filed to ROC in duplicate within 30 days of appointment.

5) If the person appointed as secretary is a secretary of any other company, he has to notify the other company within 30 days & give up the appointment there.

6) If a director or his relative is appointed as a company secretary, a special resolution at the general meeting is required.

7) Central government permission is required, if a director is appointed as company secretary.

**Rights and powers of a Company Secretary:**

1) He has the right to superintend,direct and control the various departments under him.

2) He has right to sign every instrument to which the common seal is affixed.

3) Right to rank as preferential creditors during winding up of the company.

4) Right to be present in all general or board meetings.

5) Rights regarding allotment & transfer of share.

6) Right to receive notice of dismissal.

7) Right to do all such acts as authorised by the directors.

**Duties of the Company Secretary:**

**1) Statutory duties:**

a) Maintainance of books & registers of the company.

b) Filing of necessary returns with the respective authorities.

c) Supervising the issue,allotment, transfer &forfeiture of shares & debentures.

d) Attendingcompany meeting & recording proceedings thereon.

e) Allowing inspection of books, documents,etc.

f) Safe and proper use of common seal of company.

**2) Duties towards directors:**

Company secretary shall look after the correspondence with the directors, convey meetings, prepare minutes of such meeting and execute the orders.

**3) Duties towards shareholders:**

He is a mediator between company and shareholders. Secretary has to safeguard the shareholder’s interest, should attend to their enquiries regarding the payment of dividend, issue of shares, forfeiture, transfer, notice/circulars to them for meeting and arrangingfor the same.

**4)Dutiestowards organisation and office:**

Secretary is recognised as the lead of the office of the company, and control all the departments. He has to ensure that the office works with maximum efficiency.

**5) Duties towards public:**

He acts as a liaison officer between the board of director and public, which consists of debenture holders, bankers, solicitors,creditors,prospective investors, etc.

**6) other duties:**

It includes-

a) He must not act without proper authority.

b) He must not disclose confidential information.

c) He must act very cautiously during emergency.

d) He must act as adviser& guide to board.

e) He must perform his duties honestly &deligently.

**Liabilities of the Company Secretary:**

1. **Statutory liabilities:**He may be held liable for –

a) Failure to hold statutory meetings and filling and circulating statutory repot.

b) Default in holding AGM.

c) Failure to submit to ROC, copies of annual returns and annual accounts.

d) Failure to give notice of meeting.

e) Failure to record minutes of the meeting.

f) Failure to file copies of resolution and agreements.

g) Default in maintainance and allowing for inspection or furnishing copies of minutes books of member.

h) Failure to maintain register of member and debenture holders, if required.

i) Failure to maintain director’s register, register of directors share holding, etc.

j) Non-compliance of provisions of the act with respect to appointment of auditor, audit of account and auditor’s report, etc.

1. **Contractual liabilities:**

(Same as other duties)

**Termination/ removal of the Company Secretary:**

Secretary is an employee of the company and can be removed by the board of directors under the powers especially given in AOA/service agreement/any common law. In following situation services of a secretary can be terminated:

1. Upon expiry of the term of appointment.
2. Upon issue of notice of dismissal.
3. When he makes secret profit.
4. When he misconducts himself.
5. For any breach of contract, moral turpitude, negligence, disobedience, incompliance of permanent disability.