



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

Corporate Laws & Corporate Governance Committee The Institute of Chartered Accountants of India

15th April, 2021

ANNOUNCEMENT

Sub: Clarification with regard to applicability of the provisions of Section 139 of the Companies Act 2013 read with Rule 5 and 6 of the Companies (Audit and Auditors) Rules, 2014

Query:

Whether a Proprietary firm (having FRN) or individual CA who is practicing either in his own name or trade name can be appointed for two terms as per Section 139 of Companies Act, 2013?

Reply:

Section 139 of the Companies Act, 2013 provides that subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years:

As per Rule 5 and 6 of Companies (Audit and Auditor) Rules, 2014, the Class of Companies who are required to comply with the provisions of Section 139 are as follows:

For the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:-

- (a) all unlisted public companies having paid up share capital of rupees ten crore or more;
- (b) all private limited companies having paid up share capital of rupees fifty crore or more;
- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

Manner of rotation of auditors by the companies on expiry of their term.-

As per Explanation I to Rule 6 of Companies (Audit and Auditor) Rules, 2014, the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

Further, as per the said Rules, Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.

Accordingly, it is stated that a Proprietary firm (having FRN) or individual CA who is practicing either in his own name or trade name can be appointed as auditor only for one term as per Section 139 of Companies Act, 2013.

¹This is to mention here that above-mentioned clarification is not applicable to the companies, entities where the provisions of Rotation of Auditors are not applicable as per Section 139 of the Companies Act, 2013 and Rules thereunder.

Sincerely Yours,

Chairman and Vice Chairman
Corporate Laws & Corporate Governance Committee
The Institute of Chartered Accountants of India

¹ Modified as on 19th April, 2021 to give clarification of the clause