Sec. 140 – Removal, Resignation of Auditor and giving of Special Notice

Sec. 140(1) – Removal before expiry

Requires
- Special resolution of Company &
Previous approval of CG in prescribed manner (Rule 7).
Before taking any action, auditor concerned should be provided an opportunity of being heard.

Rule 7
Application to CG
should be made within 30 days
of passing of Board Resolution
in Form ADT-2.
Within 60 days of approval by CG,
convene a general meeting
to Pass Special Resolution.

Sec. 140(2) & (3) – Filing of Statement in case of Resignation

Auditor who has resigned shall file the Special resolution at AGM providing that
- Within 30 days of resignation
- Statement in prescribed form
(Rule 8 : ADT-3)
- To Company & ROC (Also to CAG – in case of Govt. Companies)
- Indicating the reasons and other facts relating to resignation.

Sec. 140(3): Fine for non-compliance, Ranging from Rs. 50,000 – Rs. 5,00,000

Sec. 140(4) – Special Notice

Special notice shall be required to pass the Special resolution at AGM providing that
- (a) Retiring Auditor shall not be re-appointed.
- or
- (b) To appoint as auditor any person other than retiring auditor.

Copy of notice to be sent immediately to concerned auditor.
Auditor has a right of representation (reasonable length)
Copy of notice and representation needs to be sent to every person to whom notice of AGM was given.
Auditor may demand for reading the representation in meeting.
Representation need not be sent or read out at meeting, if on application of company or other person, Tribunal pass such order.

Sec. 140(5) – Directions for change of Auditor

Tribunal may, by order, direct the company to change its auditors
either suo motu or on an application made to it by the C.G. or by any person concerned,
if it is satisfied that the auditor has acted in a fraudulent manner or abetted or colluded in any fraud.

If the application is made by the C.G. and Tribunal is satisfied that any change of the auditor is required
Tribunal shall within 15 days of receipt of such application, make an order
that he shall not function as an auditor and C.G. may appoint another auditor in his place.
An auditor against whom final order has been passed by the Tribunal u/s 140(5)
shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of the order and the auditor shall also be liable for action u/s 447.