AUDITOR RESIGNATION - PRESCRIPTIONS AND RESPONSIBILITIES

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INTRODUCTION

Auditing is the core area of competence of a Chartered Accountant. Audit of financial statements of public interest entities such as listed companies, government companies, banks and insurance companies is an exclusive domain area entrusted to our profession. The underlying trust in assigning this responsibility to the members and firms (referred to as "auditor" henceforth in this article) registered with the Institute of Chartered Accountants of India (ICAI) needs to be preserved by diligent discharge of our duties associated with such a responsibility. Audit of a public interest entity should be accepted not merely as a professional opportunity but with a sense of pride in safeguarding the stakeholder's interest by authenticating the financial statements audited. Viewed from this perspective, it is a matter of concern that during the year 2018 numerous mid-term resignations by statutory auditors of listed companies (hereinafter referred to as "auditor") were reported. No doubt, an auditor is legally entitled to resign as per law under certain circumstances. However, the large number of resignations occurring in recent times has become a cause of concern among the stakeholders. In this article, all aspects relating to an auditor's resignation are dealt with for assimilation of the readers of the journal of the BCAS.

CHALLENGING ENVIRONMENT

With the passage of time, business practices are getting complicated and the environment is quite challenging. New laws envisaging stringent compliance mechanisms are demanding more time, attention and cost for enforcing compliance. The business methodologies and practices are becoming vulnerable to manipulation and the individual value system is degenerating due to greed, on account of which many frauds and scams are occurring. Cases of mismanagement and flouting of governance norms are getting reported in the corporate world, where it is least expected. This also leads to widening the gap between expectations of the stakeholders as against performance by an auditor. Beginning with the Satyam case and followed by many other scams including Nirav Modi's case associated with Punjab National Bank and till the current on-going investigation in the IL&FS group cases, the accountability of the auditor who has attested the financial statements in those cases has been the subject matter of scrutiny. In the Satyam case, the auditor was banned by SEBI from auditing listed entities for two years. The Companies Act, 2013 and the Chartered Accountants Act, 1949 provide for stringent consequences if an auditor is found guilty in discharging his onerous task. The Companies Act, 2013 has vested the right of class action suits in favour of the shareholders posing a threat not only to management but to the auditor as well. Hitherto, only a signing partner was liable for any consequence for misdeed, but now, even the firm can suffer the consequences for lapses in the discharge of the audit function—Section147(5).

LEGISLATIVE AND REGULATORY PRESCRIPTIONS

The provisions of section 139 of the Companies Act, 2013 deal with the appointment of auditors. Rotation of every individual auditor after a 5-year term and audit firms after two consecutive terms of 5 years each is stipulated. The law lays down a procedure not only for removal but also for resignation of an Auditor. But, either of this can be done only by adhering to the procedure laid down in The Companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014. According to sub-section (2) of section 140 of the Companies Act, 2013 the auditor who has resigned from a company shall file within a period of 30 days from the date of resignation a statement in Form ADT-3 with the company and the Registrar of Companies. In the case of a government company or any other company owned or controlled by any of the governments, the auditor shall also file such a statement with the Comptroller and Auditor-General of India. The said form, apart from seeking the basic details about the company and the auditors, requires reasons for resignation and any other facts relevant to the resignation. Failure to submit

such a statement attracts a levy of penalty of Rs. 50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of Rs. 500 per each day after the first during which the failure continues, subject to a maximum of Rs. 5 lakh.

Based on the recommendations of the Kotak Committee on Corporate Governance many changes have been made to the Listing Obligations and Disclosure Requirements (LODR) and these have been made effective in a phased manner from 2018 onwards. The changes encompass matters that relate to disclosure of auditor credentials, audit fee, reasons for resignation of auditors as indicated below:

"The notice being sent to shareholders for an annual general meeting, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice:

(a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material changes in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change
(b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.

In case of resignation of the auditor of the listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty-four hours of receipt of such reasons from the auditor."

CIRCUMSTANCES WHEN A RESIGNATION IS WARRANTED

Before accepting an engagement as auditor to an entity, the auditor is expected to evaluate diligently about the entity, the scope of the mandate, the resources (time, manpower and competence) available to execute the audit and then take a conscious call to accept or not to accept the engagement. After accepting an audit engagement, it is generally perceived that the auditor would carry out the mandate adhering to the Standards and Ethical framework governing the profession and issue an audit report with or without modification. Resigning or withdrawing from an engagement to perform audit of financial statements without issuing an audit report is an exceptional situation and therefore needs to be backed by justifiable reasons and should not be based on flimsy grounds.

An auditor entrusted with the engagement to perform audit is required to comply with the requirements of SQC 1 in performing audits, reviews of historical financial information and for other assurance and related services engagements. As part of this responsibility, an auditor should establish policies and procedures designed to provide reasonable assurance that independence can be maintained. The auditor needs to evaluate circumstances and relationships that pose threats to independence and to take appropriate action to eliminate those threats or, reduce them to an acceptable level by applying safeguards or if considered appropriate, to withdraw from the engagement (Paras 18 & 22). Where the auditor obtains information that would have caused to decline an engagement if that information would have been available earlier: In such a situation, the auditor may examine if withdrawal from the engagement or both from the engagement and the client relationship is appropriate (Paras 34 & 35).

The overall objectives of the independent auditor and the conduct of an audit in accordance with Standards on Auditing are dealt with in SA 200. In case reasonable assurance cannot be obtained and a qualified opinion in the auditor's report is insufficient in the circumstances for the purposes of reporting to the intended users of the financial statements, the SAs require to disclaim an opinion or withdraw from the engagement, where withdrawal is legally permitted (Para 12). If an objective in a relevant SA cannot be achieved, the auditor shall evaluate whether it prevents him from achieving the overall objective of the audit and then decide either to modify the auditor's opinion or to withdraw from the engagement (Para 24).

According to SA 210, agreeing to the Terms of Audit Engagements, if the auditor is unable to agree to a change in the terms of the audit engagement and is not permitted by the management to continue the original audit engagement, the auditor shall withdraw from the audit engagement where permissible as per law or regulation (Para 17). SA 220 on Quality Control for an Audit of Financial Statements provides that if the engagement partner is unable to resolve the threat to independence with reference to the policies and procedures that apply to the audit engagement, if considered appropriate, the auditor can withdraw from the audit engagement (Para

11 and A6). Where the applicable law or regulation does not permit withdrawal of the auditor from the engagement, disclosure shall be made through a public report of circumstances that have arisen that would have otherwise led to the auditor to withdraw (Para A7).

If, as a result of a misstatement resulting from fraud or suspected fraud, the auditor encounters exceptional circumstances that bring into question the auditor's ability to the perform the audit, the Standard suggests the withdrawal from the engagement as one of the options, subject to following certain procedures and measures — SA 240, the Auditor's Responsibilities relating to Fraud in an Audit of Financial Statements (Paras 38, A53, to A56). Again, when management or those charged with governance do not take the remedial action that the auditor considers appropriate in the circumstances, even when the non-compliance is not material to the financial statements, the auditor can consider withdrawal from the engagement if necessary. If such withdrawal is prohibited, the auditor may consider alternative actions, including describing the non-compliance in the "Other Matters" paragraph in the auditor's report — SA 250, Consideration of Laws and Regulations in an Audit of Financial Statements (Para A18). In a situation where the two-way communication between the auditor and those charged with governance is not adequate and the situation cannot be resolved, one of the options available to the auditor is to withdraw from the engagement, if not prohibited under the applicable law or regulation — SA 260 (Revised), Communication with those charged with Governance (Para A53).

SA 705, dealing with "Modifications to the Opinion in the Independent Auditor's Report", establishes requirements and provides guidance in determining whether there is a need for the auditor to consider a qualification or disclaimer of opinion or, as may be required in some cases, to withdraw from the engagement where it is legally permissible – SA 315, Identifying and Assessing the Risks of Material Misstatements Through Understanding the Entity and its Environment (Para A108). Concerns about the competence, integrity, ethical values or diligence of management, or about its commitment to or enforcement of these, may cause the auditor to conclude that the risk of management misrepresentation in the financial statements is such that an audit cannot be conducted. In such a case, the auditor may consider, where possible, withdrawing from the engagement, unless those charged with governance put in place appropriate corrective measures — SA 580, Written Representations (Para A24). If the auditor is unable to obtain sufficient appropriate audit evidence, then the auditor is expected to determine the implications thereof to decide whether to qualify the opinion or to resign. If the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive and a qualification of the opinion would be inadequate to communicate the gravity of the situation, the auditor shall resign if not prohibited by law or regulation. In the event of resignation not being practicable or possible, the auditor shall disclaim an opinion on the financial statements — SA 705, Modifications to the Opinion in the Independent Auditor's Report (Paras 13, 14, A13 to A15).

In a rare circumstance where the auditor is unable to withdraw from an engagement even though the possible effect of an inability to obtain sufficient audit evidence due to limitation on the scope of the audit is pervasive, the auditor may consider it necessary to include in "other matter paragraph" in the auditor's report a statement to explain why it is not possible for the auditor to withdraw from the engagement — SA 706, Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report (Para A10). Similarly, if the auditor concludes that a material misstatement exists in other information obtained prior to the date of the auditor's report and the other information is not corrected after communicating with those charged with governance, the auditor shall take appropriate action. One option in such a situation is withdrawing from the engagement, especially when the circumstances surrounding the refusal to correct the material misstatement of the other information casts such doubt on the integrity of the management and those charged with governance as to call into question the reliability of representations obtained from them during the audit. In case of certain entities, such as Central or State governments and related government entities, withdrawal from the engagement may not be possible. In such cases, the auditor may issue a report to the legislature providing details of the matter or may take other appropriate actions.

The Code of Ethics requires an auditor to consider resigning/withdrawing from an engagement when the auditor is able to conclude that the expectation or requirement envisaged by the Code of Ethics cannot be fulfilled and there is no other option but to resign. It is also possible that an auditor expresses inability to continue as statutory auditor due to overdue past audit fees and

disagreement on fees for future services. In case the auditor cannot legally continue as auditor, then withdrawal becomes inevitable. There could also be an unavoidable circumstance beyond the control of the auditor due to which continuing the engagement is ruled out.

TIMING OF RESIGNATION

As the resignation of an auditor from an audit engagement is not a matter of routine and since it is not a recurring act, it is difficult to suggest as to when is the appropriate time for resignation. But considering the immense faith that the various stakeholders including the regulators and shareholders have reposed on the profession, an auditor must be abundantly cautious not to exercise this right in a casual manner and that, too, when the audit is almost complete. Unless the situation is grave and the circumstances adequately justify it, the resignation option should be avoided. Instead, a disclaimer of opinion and adequate disclosures on the circumstances that have resulted in such a disclaimer can be reported.

The ICAI has issued "Implementation Guide on Resignation/Withdrawal" wherein the following guidance is given in this regard:

"16. The auditor is therefore advised, particularly in case of listed entities, to comply as below:

(a) In case an auditor has signed all the quarters (either limited review or audit) of a financial year, except the last quarter, then the auditor has to finalise the audit report for the said financial year before resignation.
(b) In other cases, the auditor should resign after issuing limited review/audit report for the previous quarter with respect to the date of resignation.
(c) To the extent information is not provided to the auditor or the management imposes a scope limitation, the auditor should provide an appropriate disclaimer in the audit report."

DISCIPLINARY/REGULATORY PROCEEDINGS AGAINST AN AUDITOR

Even when called in for questioning in a later proceeding, the auditor should be able to defend with the proper documentation done and with the audit evidence gathered and maintained prior to issuing the audit report. It is possible that an auditor is called in the disciplinary proceedings of the ICAI or in an appropriate proceeding by a regulator such as SEBI or RBI. The auditor is required to respond and submit in a systematic manner all the working papers that would explain the execution of the audit engagement stage by stage, strictly adhering to the SQC 1, SAs and Code of Ethics. An auditor must demonstrate that in a given situation how a professional judgement was made based on proper reasoning and prudence and that any other auditor in the same set of facts and circumstances could not have reached a different conclusion. In my experience as Chairman of the Disciplinary Committee of ICAI and subsequently as a member of the Appellate authority, I have come across cases with simple charges wherein the auditor was held guilty for want of proper working papers and documentation. On the other hand, there have been complex cases with serious charges levelled but finally the auditor was acquitted on the strength of the working papers, audit evidence and proper documentation which demonstrated that the standard auditing procedure was meticulously followed and professional scepticism and judgement were duly exercised.

Even those who sit in judgment on the professional conduct of an auditor must not judge the conduct based on subsequent developments pertaining to the entity that have taken place post signing of the audit report. They must evaluate the case based on the circumstances, facts and records as were available to the auditor at the time of signing the audit report and by verifying whether the applicable SAs and Ethical framework were followed and due professional judgement was exercised. It is easy to hold anyone guilty in hindsight but that would defeat the very purpose of fairness and justice while reaching a conclusion on the performance of a professional. It must also be appreciated that audit is not an investigation and an audit cannot unearth all kinds of frauds that have been perpetrated upon an entity. At the same time, an auditor cannot claim protection on this general premise in all cases of fraud because, if proper audit process is planned and executed with professional scepticism it is possible to find out certain types of misstatements arising out of frauds. If a fraud, which could have been unearthed by following standard audit procedures and exercise of professional scepticism, was not detected on account of gross negligence or dereliction of duty, then an auditor cannot defend on the generic ground that audit is not an investigation. On the other hand, if there are instances of fraud which could not have been detected even after proper conduct of audit procedure and best practices then the auditor cannot be held guilty in such a case and needs to be exonerated.

COMMUNICATION AND DOCUMENTATION

When circumstances compel an auditor to contemplate

resignation from an audit engagement, he must communicate with the appropriate level of management and, where appropriate, with those charged with the governance, and, where considered necessary, inform the circumstances, evaluation on the implications thereof and the conclusions drawn. The auditor may even seek time from the Audit Committee Chairman and explain to him the circumstances and seek his intervention either directly or through the Audit Committee. Once a communication is so given by the auditor, the management and, where appropriate, those charged with the governance should respond to the said communication within a reasonable period of time. Management and those charged with the governance that are put on notice should also take necessary steps to remedy the situation and communicate the same to the auditor. The auditor should evaluate the response received and then review his earlier conclusions impacting the decision of resignation. Thereafter, either he may drop the decision to resign and continue with the engagement in accordance with the Standards and Ethical Code or he may persist with his earlier decision to resign, in which case he must comply with the procedure prescribed by filing the relevant Form ADT 3 as indicated above.

The Implementation Guide issued by ICAI further delineates the effective mode of communication of the resignation and the relevant portion is given herein below:

"19 Further, the auditor is also advised to include the following in the letter of resignation, as applicable:

(a) If the withdrawal or resignation results from an inability to obtain sufficient appropriate audit evidence, the reasons for that inability;
(b) The possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive;
(c) If the matter is related to a material misstatement of the financial statements that relates to specific amounts in the financial statements (including quantitative disclosures), the auditor should include a description and qualification of the financial effects of the misstatement, unless impracticable
(d) If the withdrawal or resignation results from the inability of the auditor/the firm to complete the engagement due to *bona fide* reasons;
(e) The fact that the circumstances leading to withdrawal or resignation from the engagement were communicated to an appropriate level of management and, where appropriate, to those charged with governance;
(f) The response from the management or those charged with governance on the written communication made by the auditor. If response is not received, state the fact
(g) Prior to resignation, the last audit/limited review report issued by the auditor."

According to the Code of Ethics, any auditor newly appointed by an entity, prior to accepting the position as auditor, is required to communicate with the previous auditor (clause 8 of Part I of the First Schedule to the Chartered Accountants, Act, 1949).The objective behind such a pre-requisite is that the incoming auditor will have an opportunity to know from his predecessor the circumstances that resulted in the change so that he can take necessary steps to protect his independence and professional dignity, besides adopting caution in safeguarding the interest of the stakeholders. In view of this, the auditor who has resigned should respond to the communication received from the new auditor promptly, furnishing the reasons that caused his resignation. The auditor should share a copy of the resignation letter stating the reasons as submitted to the Registrar of Companies.

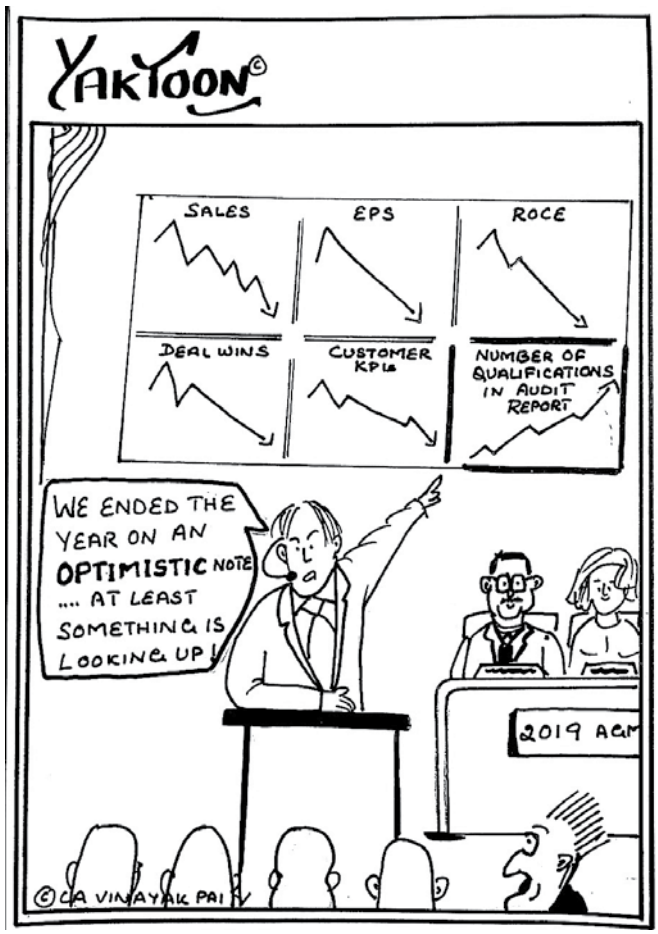
The auditor who has resigned should maintain the relevant documentation in order to demonstrate compliance with the requirements of the Implementation Guide issued by ICAI, SAs, SQC 1 and the Code of Ethics for a period of 7 years from the date of resignation.

CONCLUSION

No doubt, the present business environment is transforming into a VUCA world, implying that there is Volatility, Uncertainty, Complexity and Ambiguity (VUCA)! In such an environment, it is truly a challenge for an auditor to discharge the duties associated with assurance and to function by upholding standards and values as the risk matrix is escalating. Nevertheless, we must believe that challenges are given only to those who have the ability to handle them. We must also remember that if one auditor resigns without signing a financial statement, such financial statement will be ultimately signed by another auditor, of course, after taking necessary measures and steps to complete the audit engagement in accordance with the Standards and Ethical Framework. Therefore, before exercising the right to resign, an auditor should explore the possibility of due discussion/ communication with the management and those charged with governance so as to secure their support and co-operation for the smooth conduct of the audit without compromising on independence. An auditor should also

examine the possibility of giving a modified report with a qualified opinion or adverse opinion or disclaimer of opinion instead of resigning.

As discussed above the right to resign by following proper procedures, is vested with the auditor under the law. At the same time, an auditor's resignation should not give an impression to the society that there is an abdication of the duties attached to an audit responsibility. Needless to say, audit should not be perceived as just an opportunity but it should be viewed as a challenging responsibility and handled with due care and caution. A profession like ours owes it to society to possess the courage of conviction to perform our role as an auditor in the best interest of the stakeholders in order to establish an unblemished track record for posterity to inherit. ■



BCAS CLINICS

TOPICS	DAY, DATE & TIME	ADVISORY PANEL	CLINIC COORDINATOR
Charitable Trust Clinic	Friday, 5th April 2019 & 5 pm to 7 pm.	CA. Gautam N. Shah, CA. Tushar K. Doctor	Ms. Navina Vishwanathan, 6137 7613
Right to Information Clinic	Saturday 9th, 16th , 23rd & 30th March,2019 and 11 am to 1 pm.	Hema D. Sampat	Ms. Navina Vishwanathan, 6137 7613

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