

**CONSTITUTION OF AUDIT
COMMITTEE/NOMINATION AND
REMUNERATION COMMITTEE AND
STAKEHOLDERS RELATIONSHIP
COMMITTEE AND THEIR WORKINGS**

116

{Section 177 and 178 of the Act read with Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 read with Rules 6 and 7 of the Companies (Meetings of Board and its Powers) Rules, 2014}

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 173, 177 and 178
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	Section 4
The Companies (Meetings of Board and its Powers) Rules, 2014	Rule 6
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rule 4
Secretarial Standard-1	Clauses 3, 4, 5, 6, 7 and 8

116.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Note that prescribed class of companies are required to constitute different committees mandatorily under the Companies Act, 2013 and the Rules made thereunder.

S. No.	Particulars
AUDIT COMMITTEE¹	
2.	<p>Following Companies shall be required to constitute an audit committee as per section 177(1) of the Act read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 further read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014</p> <ul style="list-style-type: none"> • listed public company, or • public company having paid-up share capital ₹10 crores or more, or • public company having turnover of ₹100 crore or more, or • public company having in aggregate outstanding loans, debentures or deposits, exceeding ₹50 crores as on last date of latest audited financial statement.
2A.	The audit committee shall be constituted consisting of a minimum of 3 (three) directors with independent directors forming a majority ²
2B.	<p>Ensure that the companies, if covered u/s 149 of the Companies Act, 2013, have requisite number of independent directors and if such companies have no independent director, first appoint independent directors on the board of these companies, however, the following classes of unlisted public company shall not be required to appoint independent directors:</p> <ul style="list-style-type: none"> (a) a joint-venture; (b) a wholly-owned subsidiary; and (c) a dormant company as defined under section 455 of the Act.
2C.	<p>Note that—</p> <ul style="list-style-type: none"> • the majority of members of audit committee including its chairperson shall be persons with ability to read and understand, the financial statement. • the audit committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the board and may also discuss any related issues with the internal and statutory auditors and the management of the company {Section 177(5) of the Act}. • the audit committee shall have authority to investigate into any matter in relation to the items specified in section 177(4) of the Act or referred to it by the board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company. {Section 177(6) of the Act}.
2D.	Note that every audit committee as per Section 177(4) of the Act shall act in accordance with the terms of reference specified in writing by the Board which shall, <i>inter alia</i> , include—

¹ Shall not be applicable in case of Specified IFSC unlisted public company {Notification No GSR 8(E) dated 04.01.2017}

² Independent director forming majority shall not be applicable in section 8 (non-profit) body {Notification No. GSR 466(E) dated 05.06.2015}

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
3.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 164 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)