

# PROCEDURE FOR APPOINTMENT OF FIRST AUDITOR IN A COMPANY INCLUDING GOVERNMENT COMPANY

# 75

{Section 139 of the Act read with Rule 4 of the Companies (Audit and Auditors) 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 118, 139, 141, 142, 144, 147, 173, 179 and 403
The Companies (Audit and Auditors) Rules, 2014	Rules 4 and 10
The Companies (Registration offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	ADT-1

## Significant Relevant Approvals and Requirements

- ❖ In case of Companies other than Government Companies
  - Board resolution, if appointed by board within 30 days of incorporation
  - Ordinary resolution, if board fails to appoint within 30 days of incorporation
  - Written consent before appointment of the appointee auditor for appointment
  - Non-disqualification certificate from the appointee auditor
- ❖ In case of Government Companies
  - Board resolution (i) to take note of appointment, if appointed by Comptroller and Auditor-General of India within 60 days of incorporation (ii) to appoint where Comptroller and Auditor-General of India fails to appoint within 60 days of incorporation
  - Ordinary resolution, if Comptroller and Auditor General of India fails to appoint within 60 days of incorporation and further board fails to appoint within 30 days from the expiry of 60 days

- Written consent before appointment of the appointee auditor for appointment
- Non-disqualification certificate from the appointee auditor
- Appointment letter of Comptroller and Auditor-General of India

### **75.1 PROCEDURE WITH CHECK POINTS**

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> <li>• in case of an individual, the person who shall be appointed as an auditor shall be a chartered accountant where chartered accountant” means a person who is a member of the Institute of Chartered Accountants of India and who holds a valid certificate of practice {Section 2(17) and 141(1) of the Act read with section 2(i)(b) of the Chartered Accountants Act, 1949 }.</li> <li>• in case of a firm of chartered accountants including the LLP, the firm shall be appointed as the auditors by its name whereof majority of partners practising in India are qualified for appointment and only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm. {Section 141(1) and (2) of the Act}.</li> <li>• the following persons shall not be eligible for appointment as an auditor of the company— <ul style="list-style-type: none"> <li>(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;</li> <li>(b) an officer or employee of the company;</li> <li>(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;</li> <li>(d) a person who, or his relative or partner— <ul style="list-style-type: none"> <li>(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: Provided that the relative may hold security or interest in the company of face value not exceeding ₹ 1 lakh;</li> <li>(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 lakhs or</li> <li>(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 lakh</li> </ul> </li> <li>(e) a person or a firm who, whether directly or indirectly, has <i>business relationship</i><sup>1</sup> with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company;</li> </ul> </li> </ul>

- 1** *Business relationship shall be construed as any transaction entered into for a commercial purpose, except—*
- (i) *commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;*
  - (ii) *commercial transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.*

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"> <li>• 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).</li> <li>• 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).</li> <li>• 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 companies provisions a government company and regulations in COA 2012 about COA 2012).</li> <li>• 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"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant <b>companies</b>.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
2.	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).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form <b>DIR-2</b> (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	Forms an certificate in writing, on or before appointment, from the appointed director as Form <b>DIR-3</b> 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 17 of the Companies Incorporation and Qualification of <b>Directors</b> Rules, 2014).
5.	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](http://www.bharatlaws.com)

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