

PROCEDURE TO FILL THE CASUAL VACANCY CAUSED BY RESIGNATION OF AN AUDITOR

78

*{Section 139(8) of the Act read with
rules 3, 4 and 10 of the Companies (Audit and Auditors) rules, 2014}.*

Synopsis

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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 139, 141, 142, 143, 144, 145, 146, 147, 173 and 403
The Companies (Audit and Auditors) Rules, 2014	Rules 3, 4 and 8
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 Companies¹
 - Audit Committee recommendation
 - Board resolution
 - Ordinary resolution
 - 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 30 days of casual vacancy (ii) to appoint where Comptroller and Auditor-General of India fails to appoint within 30 days of casual vacancy

1 *Government company means company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India.*

- 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

78.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • in case of casual vacancy caused by the resignation of an Auditor, it will be filled by the board of directors within 30 (thirty) days and shall be approved by the shareholders within 3 (three) months of the recommendation of the board and the auditor so appointed in casual vacancy shall hold office upto the conclusion of the next annual general meeting. {Section 139(8)(i) of the Act}. • 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 }. • 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}. • the following persons shall not be eligible for appointment as an auditor of the company— <ul style="list-style-type: none"> (a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008; (b) an officer or employee of the company; (c) a person who is a partner, or who is in the employment, of an officer or employee of the company; (d) a person who, or his relative or partner- <ul style="list-style-type: none"> (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; (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 (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.

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 companies prescribed a 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 companies.
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 DIR-2 (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 DIR-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 17 of the Companies Incorporation and Qualification of Directors 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

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