

PROCEDURE FOR APPOINTMENT OF INTERNAL AUDITOR

{Section 138 of the Act read with Rule 13 of the Companies (Accounts) 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 138, 173, 179 and 403
The Companies (Accounts) Rules, 2014	Rule 13
The Companies (Audit and Auditors) Rules, 2014	Rule 3
The Companies (Management and Administration) Rules, 2014	Rule 24
The Companies (Meetings of Board and its Powers) Rules, 2014	Rule 8
The Companies (Registration of offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	MGT-14

Significant Relevant Approvals and Requirements

- ❖ Audit Committee recommendation
- ❖ Board resolution
- ❖ Written consent before appointment of the appointee auditor for appointment
- ❖ Non-disqualification certificate from the appointee auditor

79.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that— <ul style="list-style-type: none"> • if the company¹ falls under the following class of companies, it shall be required to appoint an internal auditor, who shall either be a chartered

1 In case of Specified IFSC Unlisted Public Company and private Company, the provisions of section 138 shall apply if the articles of such company provide for the same {Notification No. GSR 8(E) and 9(E) dated 4th January 2017}.

S. No.	Particulars
	<p>accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company:</p> <p>(a) listed company;</p> <p>(b) unlisted public company having-</p> <ul style="list-style-type: none"> - paid-up share capital¹ of ₹ 50 (fifty) crores or more during the preceding financial year; or - turnover² of ₹ 200 (two hundred) crores or more during the preceding financial year; or - outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 (one hundred) crores or more at any point of time during the preceding financial year; or - outstanding deposits of ₹ 25 (twenty-five) crores or more at any point of time during the preceding financial year; and <p>(c) private company having-</p> <ul style="list-style-type: none"> - turnover of ₹ 200 (two hundred) crores or more during the preceding financial year; or - outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 (one hundred) crores or more at any point of time during the preceding financial year. <p>{Section 138 of the Act read with Rule 13 of the Companies (Accounts) Rules, 2014}.</p> <ul style="list-style-type: none"> • the appointment of Internal Auditor shall be done in the financial year succeeding the financial year in which the above criteria is attained by the company.
2.	<p>Note that—</p> <ul style="list-style-type: none"> • the internal auditor may be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company {Section 138(1) of the Act}. • the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not’ {Explanation (ii) of the Rule 13(1) of the Companies (Accounts) Rules, 2014}. • the internal auditor may or may not be an employee of the company {Explanation (i) of the Rule 13(1) of the Companies (Accounts) Rules, 2014}.

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- 1 Paid-up share capital or share capital paid-up means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company but does not include any other amount received in respect of such shares, by whatever name called {Section 2(64) of the Act}.
- 2 Turnover means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year {Section 2(91) of the Act}.

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 provisions 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 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 Incorporation and Qualification of Directors Rules, 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 17 of the Companies Incorporation and Qualification of <u>Directors</u> Rules, 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 \(in 2 vols.\)](#)