

PROCEDURE FOR APPOINTMENT OF SECRETARIAL AUDITOR

81

{Section 204 of the Act read with Rule 9 of the
Companies (Appointment and Remuneration of Managerial Personnel) 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 117, 141, 173, 177, 179, 204 and 403
The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	Rule 9
The Companies (Meetings of Board and its powers) Rules, 2014	Rule 8
The Companies (Management and Administration) Rules, 2014	Rule 24
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
e-Forms to be filed	MGT-14
To be attached	MR-3 with Board of Directors' report

Significant Relevant Approvals and Requirements

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

81.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the company falls into any of the following class of company as the provisions related to secretarial audit apply on a- <ul style="list-style-type: none"> - listed Company. - public limited company having paid-up share capital of ₹ 50 crores or more. - public limited company having turnover of ₹ 250 crores or more. - every company having outstanding loans or borrowings from banks or public financial institutions of ₹ 100 crores or more <p>Note that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account. {Section 204 of the Act read with Rule 9(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014}.</p> <ul style="list-style-type: none"> • only a member of the Institute of Company Secretaries of India who holds a valid certificate of practice can conduct secretarial audit {Section 204(1) of the Act}. • the company shall give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company {Section 204(2) of the Act}.
2.	In case of companies, where Section 177 is applicable regarding constitution of audit committee, convene a meeting of the audit committee to pass a resolution for recommendation of an individual as a Secretarial Auditor of the company and also recommendation the remuneration of such auditor, subject to approval of Board of the company and it is good practice to get it recommended by audit committee.
3.	Obtain consent and profile of a Company Secretary in Practice who is intended to be appointed as secretarial auditor of the company.
4.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> • Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting. • Send notice of board meeting to all the directors <ul style="list-style-type: none"> - at least 7 days before the date of board meeting or - in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.
5.	Convene board meeting and pass resolution for appointment of secretarial auditor.
6.	<p>Complete formalities regarding minutes of the board meeting as per Section 118 of the Companies Act, 2013 in the following manner:</p> <ul style="list-style-type: none"> • Prepare draft minutes of the board meeting and circulate, within a period of fifteen days from the date of conclusion of that meeting, to all directors, by hand/speed post/registered post/courier/e-mail or by any recognised electronic means, for their comment(s). • All directors shall communicate their comment(s), if any, on the draft circulated minutes within a period of seven days from the date of circulation of the draft minutes.

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+ (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 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 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Forms in electronic in writing, on or before appointment, from the appointed director as Form 208-2 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 Appointment and Qualification of Directors) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe+ (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 \(in 2 vols.\)](#)