

PROCEDURE FOR APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR

{Section 140(4) and 115 of the Act}

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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 115, 139, 140, 141, 142, 144, 145, 146, 173, 177 and 403
The Companies (Audit and Auditors) Rules, 2014	Rules 3, 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	MGT-14 ADT-1

Significant Relevant Approvals and Requirements

- ❖ Special resolution
- ❖ Special notice received from those members who are holding not less than 1% of total voting power or holding shares of sum not less than ₹ 5 lakhs, individually or collectively.
- ❖ Proof of sending the notice to the auditor
- ❖ Newspaper advertisement of such notice, in case it is not possible to send such notice to the members of the company
- ❖ Written consent before appointment of the appointee auditor for appointment
- ❖ Certificate from the appointee auditor

82.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the special notice for resolution at an annual general meeting appointing a new auditor other than the retiring auditor or intimating that the retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of 5/10 years as the case may be as provided under section 139(2) of the Act, is received from those members duly signed, either individually or collectively, who are holding not less than 1% (one percent) of total voting power or holding shares on which an aggregate sum of not less than ₹ 5 (five) lakhs have been paid up on the date of the notice. {Section 140(4)(i) and section 115 of the Act read with Rule 23 (1) of the Companies (Management and Administration) Rules, 2014}. • the notice referred above shall be sent by members to the company not earlier than 3 (three) months but at least 14 (fourteen) days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting {Rule 23 (2) of the Companies (Management and Administration) Rules, 2014}.
2.	<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 in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1 on shorter notice.
3.	<p>Convene board meeting and pass resolution for-</p> <ul style="list-style-type: none"> • considering the notice received from the eligible members for appointing a person as an auditor of the company in place of retiring auditor • authorising a director to send such notice to the members of the company and the retiring auditor of the company • deciding the mode of sending the notice and if required, to publish the notice in the newspapers as per requirement of the Act • authorising board to complete the formalities regarding appointment of auditor as proposed by the eligible members through their notice
4.	<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-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 jointly incorporated companies, 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.
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 Directors 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 \(in 2 vols.\)](#)