

PROCEDURE FOR REMOVAL OF AUDITOR BEFORE THE EXPIRY OF HIS TERM

83

{Section 140(1) of the Act read with Rule 7 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 140, 141, 173 and 403
The Companies (Audit and Auditors) Rules, 2014	Rules 7 and 10
The Companies (Management and Administration) Rules, 2014	Rule 24
The National Company Law Tribunal Rules, 2016	Rules 78 and 88
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 ADT-2 MGT-14 NCLT-1 NCLT-9 INC-28

Significant Relevant Approvals and Requirements

- ❖ Special resolution
- ❖ Grounds for removal of auditor
- ❖ Approval of Central government (delegated to Regional Director)

- ❖ Approval of National Company Law Tribunal, wherever applicable
- ❖ Written consent before appointment of the appointee auditor for appointment
- ❖ Certificate from the appointee auditor

83.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the auditor appointed under section 139 of the Act shall be removed from his office before the expiry of his term {<i>Section 140(1) of the Act</i>}. • the auditor concerned shall be given a reasonable opportunity of being heard before taking any action regarding his removal before expiry of his term {<i>Proviso to section 140(1) of the Act</i>}. • the auditor shall be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government (delegated to Regional Director) {<i>Section 140(1) of the Act read with MCA Notification No. SO 4090(E) dated 19.12.2016</i>}.
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 <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.
3.	<p>Convene board meeting to pass the following resolutions for:</p> <ul style="list-style-type: none"> • considering the reasons for removal of auditor before expiry of his term. • approving of removal of auditor subject to previous approval of Regional Director and subject to members approval by way of special resolution • making an application in e- Form ADT-2 with the jurisdictional Regional Director for removal of auditor. • authorising a director to send a notice to the auditor regarding his removal subject to approval of Regional Director and members by way of special resolution • authorising a person to sign the application and to complete the formalities regarding submitting of the application to the Regional Director. • appointing a professional to appear before the office of the Regional Director and to assist the company in filing the application with such office
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).

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 company provisions of 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.
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.	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 164 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 \(in 2 vols.\)](#)