



AUDITORSDESK

APPOINTMENT OF FIRST AUDITORS AND SUBSEQUENT AUDITORS IN A COMPANY

(Ref: Section 139 and 141 of the Companies, Act, 2013)



INTRODUCTION

As per chapter X of Companies Act, 2013, which is dealing in Audit and Auditors, an auditor can be an individual who shall be a qualified Chartered Accountant as per CA Act, 1949 or a company having its majority members as a qualified CA. The auditor is an individual who is trained to review and verify that the accounting data provided by a person wither natural or artificial, voluntarily, or mandatorily as prescribed by the laws accurately corresponds to the activities that have been partaken by them. Institute of Chartered Accountancy of India gives a Chartered Accountant sole right to be appointed as an Auditor of a company. Section 139 of Companies Act 2013, contains provisions regarding Appointment of Auditors.

Appointment of Auditor (Sec. 139)

First Auditor

Other than Government Company Sec 139(6)

Appointment by Board of Directors within 30 days from Date of Registration

In case of failure: Members in EGM in 90 days.

Hold the office till the conclusion of the First AGM.

Government Company Sec 139(7)

Appointment by C&AG within 60 days from date of Registration

in case of failure: by BOD in 30 days

in case of failure: Members in EGM within 60 days.

Hold the office till the conclusion of the First AGM.

Subsequent Auditor

Other than Government Company Sec 139(1)

Appointment by Members in General Meeting

Hold the office from 1st AGM to 6th AGM subject to fulfillment of certain conditions.

Government Company Sec 139(5)

Appointment by C&AG within 180 days from the commencement of the year

Hold the office till the conclusion of AGM.

NOT QUALIFIED TO BE THE AUDITOR –

Section 141(3) read with Rule 10 of Company Audit & Auditors Rules, 2014, following persons shall not be qualified as an Auditor:

- a)** A Body Corporate other than LLP (Limited Liability Partnership) registered under LLP Act, 2008;
- b)** An officer or employee of company;
- c)** A person who is partner or who is in employment, of an officer or employee of the company;
- d)** A person, who or his relative or partner:
 - Holding a subsidiary or part of subsidiary
 - Is indebted to company or subsidiary for amount more than 5 Lakhs
 - Has given any guarantee with respect to the indebtedness of any third person for amount exceeding 1 Lakhs.
- e)** A person having any business relationship with the company, its associate or subsidiary

SERVICES NOT TO BE PERFORMED BY THE COMPANY'S AUDITOR–

Besides the Qualifications and Disqualifications as specified above, ICAI also expresses about

certain services which cannot be rendered by an auditor. This is clearly described under Section 144 of Companies Act, 2013, as follows:

- a) accounting and bookkeeping services;
- b) internal audit;
- c) design and implementation of any financial information system;
- d) actuarial services;
- e) investment advisory services;
- f) investment banking services;
- g) rendering of outsourced financial services;
- h) management services; and
- i) any other kind of services as may be prescribed:

When a newly commenced company (either Government or Non-Government) is incorporated, it has to appoint an auditor which shall be termed as its First Auditor.

APPOINTMENT OF AUDITOR IN NON – GOVERNMENT COMPANY

In case of Non-Government Company, as stated in Sec 139(6), the Board of Directors of the company shall appoint its first auditor within 30 days of its date of registration, if any failure, members of the company shall appoint within 90 days after the

expiry of the 30 days tenure. An Extraordinary General Meeting (EGM) is called upon by the members for hiring an auditor.

The first auditor is appointed till the first Annual General Meeting (AGM) and then subsequent auditor is appointed at the first AGM for 5 years tenure. As per section 142(1), remuneration of the first auditor can be decided by the Board of Directors.

APPOINTMENT OF AUDITOR IN GOVERNMENT COMPANY

In case of Government Company as specified under Section 139(7), first auditor shall be appointed within 60 days by the Comptroller and Auditor General of India (C&AG), from the date of registration of the company. In case of failure, then the Board of Directors shall appoint within next 30 days after the expiry of 60 days. Furthermore, if BODs also are unable to make the appointment, then the members of the company shall appoint within next 60 days through an Extraordinary General Meeting (EGM). The first auditor shall hold his office till then end of the first AGM.



E FORM ADT 1

Every company whether public limited or private limited or Listed company or unlisted company file Form **ADT-1** within 15 days from being recognized as an auditor in the AGM, only after the company has commenced with the tenure of 1 year.

In case of appointment of First Auditors, it is not mandatory to file ADT-1 form with ROC since the Companies Act, 2013 is silent on this. However, as a good corporate governance practice, it is advisable to file the form in order to intimate the ROC about the appointment of First Auditors.

PENALTIES IN CASE OF NON-FILING OF FORM ADT 1

An additional penalty shall be levied to the company in case of non- filing or delay in filing of the electronic form ADT 1.

Period of delay	Additional Fee
Upto 30 days	2 times of normal fees
More than 30 days and upto 30 days	4 times of normal fees
More than 60 days and upto 90 days	6 times of normal fees
More than 90 days and upto 180 days	10 times of normal fees
More than 180 days	12 times of normal fees

ATTACHMENTS WITH FORM

1. Copy of consent given by auditor.
2. Copy of resolution passed by the company related to appointment of auditor.
3. VOLUNTARY DOCUMENT - Copy of intimation letter sent to auditor intimating about his appointment.

IS E FORM ADT 1 FOR LIMITED LIABILITY PARTNERSHIPS (LLP)?

ADT-1 is not applicable on limited liabilities companies (LLP). Thus, Limited Liability Partnership Act doesn't require filing of any form informing about appointment of auditor.

WHAT IF VACANCY OCCURS?

1. CASUAL VACANCY

At certain stages, a company can faces Casual Vacancy, i.e., vacancy caused in the office of an auditor by his death, disqualification, resignation, etc. Procedure for re-appointment of the auditor shall be as same as that done in the appointment of first and subsequent auditor in cases of both, Government and Non-Government Companies, is described clearly in the Chart 1 above.

2. REMOVAL OF AUDITOR

An auditor can also be removed prior to the fulfillment of the tenure by passing a Special Resolution. Auditor shall be given reasonable opportunity to be heard before such an action.

3. REISGNATION BY AUDITOR

An Auditor can himself also resign from the company before the course of tenure, but then he has to submit e-form ADT 3 within a period of 30 days with the ROC. In case of Government Company, the auditor has to file a statement to C&AG, specifying the reasons and facts.

NOC is required by the fresh auditor from the previous auditor in order to cope up with the facts stated in the Audited Financial Statements and to confirm that the Statements were made and audited in True and Fair View.

