

Company Auditor Series – Version 2.0

Chapter 3 – Appointment of Auditor



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Namaste

In Chapter 3 of this series, we would discuss about the appointment, reappointment, its manner and procedure as per the Companies Act 2013.

According to section 139 of the Companies Act 2013 read with Companies (Auditor and Auditor) Rules 2014 every company is required to appoint an auditor who is qualified and is not disqualified (discussed the qualifications and disqualifications in chapter 2 of this series). Even a Dormant Company or One Person Company is required to appoint an auditor. Appointment of an auditor may be as:

- First Auditor
- Subsequent Auditor
- Re-appointment
- Casual Vacancy

Appointment of the First Auditor

Every company has to appoint an auditor after the registration of the company with the Registrar.

- For other than government company, section 139(6) provides the regulations for appointment of 1st auditors, according to which:
 - The Board of Directors (BoD) have to appoint the 1st auditor within 30 days from the date of registration of the company.
 - In case of BoD fails to do so, then it shall inform the members of the company. The members then at an EGM shall appoint an auditor within 90 days of the information by the BoD to the members.
- In case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, section 139 (7) provides the regulations for appointment of 1st auditors, according to which:

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- Comptroller and Auditor-General of India (CAG) shall appoint the 1st auditor within 60 days from the date of registration of the company.
- In case of failure by CAG, the BoD shall appoint the 1st auditor within next 30 days.
- In case of BoD fails to do so, then it shall inform the members of the company. The members then at an EGM shall appoint an auditor within 60 days of the information by the BoD to the members.
- In any of the cases as discussed above, the 1st auditors shall hold the office only till the conclusion of the 1st AGM only.
- Though filing of the Form ADT-1 (notice by the company for appointment of auditor) with Registrar of Companies (ROC) is optional for the appointment of 1st auditor, yet it is advisable to file the Form ADT-1.

Appointment of the Subsequent Auditor

The 1st auditor holds the office till 1st AGM only, thereafter every company has to appoint an auditor for the term specified in the Act in the 1st AGM. For understanding, companies may be classified as:

- Non-Government Companies
 - Other than Rotation cases
 - Rotation of Auditors
- Government Companies

Non-Government Companies – Other than Rotation

As per section 139(1) of the Act, every company (other than a company to which rotation provisions are applicable) has to appoint an auditor at the 1st AGM who shall hold the office from the conclusion of that meeting till the conclusion of its 6th AGM. Hence,

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appointment of the statutory auditor at the AGM can be made only for a block period of 5 years. Appointment cannot be made for a shorter period than 5 years.

Further, a company may resolve for:

- Rotation of auditing partner and its team within the audit firm at intervals as resolved by the members of the company
- Appointing more than one auditor for the audit (Joint Auditors)

Non-Government Companies - Rotation

Though every non-government company, has to appoint the auditor at the 1st AGM who would hold the office from the conclusion of that meeting till the conclusion of its 6th AGM, yet as per section 139(2), certain specified companies shall appoint auditors only for a specific term, which is as under:

- Where auditor is an individual - one term of 5 consecutive years
- Where auditor is a sole proprietorship firm - one term of 5 consecutive years
- Where auditor is a partnership firm or LLP - two terms of 5 consecutive years

A question has arisen that whether appointment of auditor in the 1st Board meeting would be counted in the period of audit term for the purposes of rotation or not. For example, a company which is covered in the auditor rotation criteria, appoints Mr. A in its 1st Board meeting held on 15th June 2023 to hold the office till its 1st AGM, say to be held on 30th September 2024. In AGM to be held on 30th September 2024, would Mr. A, the auditor be appointed for a term of 5 years or 4 years (counting the period 15th June 2023 to 31st March 2024 as 1st year out of 5 years).

In my view as per section 139(2) read with section 139(1) an auditor can be appointed in an AGM only. In the AGM an auditor can be appointed only for a term of 5 years (except initially for transitional period on commencement of Companies Act 2013). If appointed by Board or in EGM an auditor can hold office only till the concluding AGM. Such period

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should not be counted in the term of 5 years. Hence, Mr. A would be appointed as auditor for a term of 5 years in AGM to be held on 30th September 2024.

It is pertinent to note that all companies are not required to rotate auditors. Only certain specified companies have to comply with the rotation of auditors' provisions. These specified companies are:

1. Listed companies.
2. Unlisted public companies having paid up share capital of Rs. 10 crore or more;
3. Private limited companies having paid up share capital of Rs. 50 crore or more
4. Companies not covered in (2) or (3) above, but have public borrowings from financial institutions, banks or public deposits of Rs. 50 crores or more

However, rotation of auditors would not apply to a One Person Company (OPC) or a small company. Hence, an OPC may have a paid-up capital of 100 Crores, yet would not be required to rotate its auditor. Similarly, a small company though having paid up capital of Rs. 1 Cr., but if have borrowings from banks and financial institutions of Rs. 50 crores or more, would not be required to rotate its auditor.

Further, certain matters must be considered for rotation of auditors, which are as hereafter:

- Auditor who is disqualified after holding office of auditor for 2 terms, can be appointed again after a break in the term for a continuous period of 5 years.
- As on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of 5 years as per the proviso to section 139(2).
- The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.
- If a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of

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Chartered Accountants, then such other firm shall also be ineligible to be appointed for a period of 5 years.

- In case more than one auditor is appointed (i.e., joint auditors), then the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.
- As per the notification issued by the RBI dt 01.09.2016, all NBFCs shall rotate the partner/s of the audit firm every 3 years but shall be eligible for conducting audit after an interval of 3 years if the NBFC so decides. To ensure such compliance, NBFC shall incorporate appropriate terms in the appointment letter of the audit firm.

Government Companies

In case of government company or any other govt controlled or owned company, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, CAG shall appoint a duly qualified auditor within 180 days from the commencement of the financial year who shall hold the office till the conclusion of AGM as per section 139(5).

Hence, in the case of government companies as stated above, the appointment is not for 5 years, but on an annual basis.

Manner and Procedure of Selection & Condition for Appointment

The manner and procedure of selection of auditors and condition for appointment of auditors is given as per Rule 3 and Rule 4 of the Companies (Audit and Auditors) Rules 2014.

In case a company is required to have an audit committee u/s 177 of the Act, then all appointments, including the filling of a casual vacancy of an auditor has to be made after

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taking into account the recommendations of such committee. An Audit Committee is to be constituted by:

- Every listed company
- Public companies with a paid-up capital of Rs.10 Crores or more;
- Public companies having turnover of Rs.100 Crores or more;
- Public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more.

The paid-up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for this purpose.

Following has to be taken care of (considered) by Audit Committee (where required) or the Board for appointment of auditor:

- Consideration of qualifications and experience of the auditor as per the requirement of the company for selection of auditor.
- Whether such qualifications and experience are commensurate with the size and requirements of the company?
- Ascertain whether there are any pending proceedings or orders regarding the professional conduct of the Auditor before the ICAI or any other competent authority (NFRA) or any court.
- May call for any information as they deem fit.
- The Board shall consider and recommend an individual or a firm / LLP as auditor to the members in the AGM for appointment.
- In case of company constituting an audit committee:
 - The committee shall recommend the name of an individual or a firm / LLP as auditor to the Board for consideration.

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- If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.
 - If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.
 - If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the AGM.
- The Board has to obtain a certificate from the auditor under rule 4(1) that:
 - Individual or firm or LLP is eligible for appointment and is not disqualified for appointment as per ICAI Act 1949 and rules or regulations made thereunder.
 - The proposed appointment is as per the term provided under the Act.
 - The proposed appointment is within the limits laid down under the Act.
 - List of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
 - Form ADT-1 shall be filed by the company with the Registrar to intimate ROC about the appointment after the completion of its first AGM. The Form should be filed within 15 days from the date of AGM in which auditor is appointed.

The procedure in brief for appointment where there is no audit committee would be as under:

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Re-appointment of the Auditor

- A retiring auditor may be re-appointed in the AGM as per section 139(9), if:
 - He is not disqualified for re – appointment (including case of rotation on completion of the term)
 - He has not given the company a notice in writing of his unwillingness to be reappointed
 - A special resolution has not been passed appointing some other auditor or providing expressly that he shall not be re-appointed
- Also, if no auditor is appointed or re-appointed in any AGM then the existing auditor shall continue to be the auditor of the company u/s 139(10).

The procedure for re-appointment of Auditor is similar to appointment of the Auditor at the first instance, as both appointment & re-appointment are governed through provisions of Section 139(1).

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Casual Vacancy

The term Casual Vacancy has not been defined in the Act. Hence, we can understand this as a vacancy in the office of the auditor of the company before his term expires. This vacancy can be due to various reasons, including:

- Death
 - Resignation
 - Contracting disqualifications
 - Ceasing to be a member of ICAI
 - Regulators (NFRA) passing orders u/s 132(3)(c)(B)
 - Change in the status of auditor i.e., from proprietorship / individual to partnership firm
 - Dissolution of firm
- As per section 139(8), Board of Directors shall fill the casual vacancy in the office of the auditor within 30 days in a company other than a company whose accounts are audited by CAG.
 - However, if casual vacancy is due to resignation of auditor, appointment shall be approved in general meeting of members within 3 months from recommendation by Board.
 - Hence, other than vacancy caused by resignation, the vacancy is to be filled by the Board.
- However, in the following cases, there is no vacancy caused:
- Change of partners or reconstitution of firm
 - *Conversion of Firm into LLP* – As per General circular No. 9/2013 dated 30.4.2013 issued by MCA, if a CA audit firm, being an auditor in a company under the Companies Act, 1956, gets converted into an LLP then, such an LLP, in accordance with the provisions of section 58(4) (b) of the LLP Act, 2008 would be deemed to be the auditor of the said company. The relevant appointee company may take note of such change in status of the auditor through a resolution of the Board.

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- *Change in Name of Firm* – Though there is no legal provision which covers such happening to be a casual vacancy or not yet taking a clue from the General circular No. 9/2013 dated 30.4.2013 as discussed above, this seems to not be a casual vacancy and the relevant appointee company may take note of such change in name of the auditor through a resolution of the Board.
- *Merger of Firms* – Though there is no concept of merger of firms under the Partnership Act, yet ICAI regulations provides for merger of firms. Vacancy caused due to such merger can be understood by below chart:

<i>Case</i>	<i>Merger & Situation</i>	<i>Vacancy Caused or Not</i>
1	Firm B merges in Firm A and Auditor already appointed in company is Firm A	No Vacancy
2	Firm B merges in Firm A and Auditor already appointed in company is Firm B	Vacancy caused

- *Demerger of Firms* – On the other hand, in case of demerger of firms, vacancy caused due to such demerger can be understood by below chart:

<i>Case</i>	<i>Demerger & Situation</i>	<i>Vacancy Caused or Not</i>
1	Firm A demerges into Firm A and Firm B and Auditor already appointed in company is Firm A	No Vacancy
2	Firm A demerges into Firm A and Firm B and previously the Auditor is Firm A and now Auditor to be appointed in company is Firm B. Then Firm A has to file resignation by filing Form ADT-3.	Vacancy caused by resignation

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- In case the auditor resigns, then the resigning auditor has to file Form ADT-3 within 30 days from the date of resignation and in case the appointment is for a government company, etc. u/s 139(5), then it has to also inform CAG.
- In case of company whose accounts are audited by CAG, then within 30 days the casual vacancy shall be filled by the CAG. In case of failure, BOD shall fill the vacancy in next 30 days.
- An auditor appointed in casual vacancy hold the office only till next AGM. In the said AGM he may be appointed as per s. 139(1) as discussed earlier in this chapter.
- Also, in the case of casual vacancy caused, where the company is covered under auditor rotation criteria, the period of filling the casual vacancy till the next AGM should not be counted. For example, a company which is covered in the auditor rotation criteria, Mr. A, the auditor resigns on 15th May 2024 creating a casual vacancy. Mr. B is appointed as statutory auditor to fill the casual vacancy on 15th June 2024 to hold the office till its next AGM, say to be held on 30th September 2024 and to conduct audit for financial year 2023-24. In AGM to be held on 30th September 2024, would Mr. A, the auditor be appointed for a term of 5 years.

Form ADT-1

As per 4th Proviso to s. 139(1) the company has to inform the auditor of his appointment / re-appointment, and also file a notice of such appointment / re-appointment with the Registrar in Form ADT-1 within 15 days of the meeting in which the auditor is appointed. The drop-down box at Para 3(b) of Form ADT-1 requires, the following to be chosen for nature of appointment:

- First auditor by Board of directors/members/C&AG
- Appointment / Re-appointment in AGM
- Auditor appointed in case of casual vacancy
- Auditor appointed in case of non-re-appointment / removal of the previous auditor
- Auditor appointed by the Tribunal
- Others

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Certain important Paras of Form ADT-1, which may need attention are:

- Para 5 is to be filled if appointment is done in AGM
- Para 7 is to be filled if appointment is done due to causal vacancy. In such a case SRN of approved ADT-1 (through which the erstwhile auditor was appointed) is to be filled in Para 7(b).

While filling of Form ADT-1 by the company, it should keep the following documents / information ready:

- **Mandatory Attachments:**
 - Consent letter given by the Auditor received before board meeting where the appointment is proposed to be approved in General meeting of members.
 - Copy of resolution passed by the board/company in case Nature of appointment is other than ‘Auditor appointed by the Tribunal’ or ‘Others’
 - Copy of the order of the Tribunal in case Nature of appointment is Auditor appointed by the Tribunal
- Certified copy of AGM notice regarding auditor’s appointment.
- Appointment letter of Auditor – Letter that company has sent to auditors for their appointment.
- Category of Auditor i.e., individual or firm
- PAN No. of Auditor (in case of individual) or Auditor’s Firm (in case of firm or LLP)
- Membership no. of the Auditor or Registration no. of auditor firm with ICAI
- Complete address of Auditor

It is pertinent to note that Para 10 of Form AOC- 4 also requires auditor / auditors’ firm details. Para 10(d) requires SRN of Form ADT-1. If intimation of appointment of auditor is not required for 1st auditors or for government Companies or casual vacancy i.e., u/ss 139(5) / (6) / (7) of the Act, then SRN ‘Z99999999’ may be entered in such a case.

I hope this document is of use to you. I thank CA. Shreya Jain, Ms. Sakshi and Ms. Riya in

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assisting me to update this chapter of the series. Your suggestions and comments would be highly appreciated.

Best Regards

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9811073867
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EARLIER CHAPTER

<i>Chapter No.</i>	<i>Title</i>	<i>Link</i>
1	Types of Audits	https://lunawat.com/Uploaded_Files/Attachments/F_18291.pdf
2	Qualifications and Disqualifications	https://lunawat.com/Uploaded_Files/Attachments/F_18293.pdf

(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omissions)

ABOUT CA. PRAMOD JAIN

He is a commerce graduate [B. Com (H)] from Shri Ram College of Commerce (SRCC). He is a fellow member of the Institute of Chartered Accountants of India (FCA). He is a fellow member of the Institute of Companies Secretaries of India (FCS). He is a fellow member of the Institute of Cost Accountants of India (FCMA). He is a Bachelor of Law (LL. B). He is qualified as an Information System Auditor [DISA (ICAI)]. He is also a member of All India Management Association (MIMA). He is also an Insolvency Professional (IP). He has also passed the Certificate Course on CSR of ICAI. He has also passed the Proficiency Self-Assessment Test for Independent Director's Databank. He has passed certification course NCFM of National Stock Exchange of India (NSE). He has also done certification course CAAT and post qualification certificate course on Valuation of ICAI.

He is elected as Central Council Member of ICAI for 2 consecutive terms from 2019 to 2025. Apart from being member in more than 25 committees / groups / directorates of ICAI, and other

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Bodies he is / was:

- Chairman of Accounting Standards Board (ASB) of ICAI for 3 years from 2022 to 2025
- Deputy Convenor of Centre for Audit Quality Directorate (CAQD) for 2024-25
- Convenor - Members & Students (Grievances Handling & e-Sahayata) Directorate for 2023-24
- Chairman of Accounting & Finance Services Sectional Committee SSD-12 under the Services Sector Division Council (SSDC) of Bureau of Indian Standards (BIS) for 2023-24
- Chairman of Expert Advisory Committee (EAC) of ICAI for Year 2022-23
- Co-Chairman of Corporate Affairs Committee of PHDCCI for the year 2022-23
- Chairman of Committee on International Taxation (CITAX) of ICAI for 2021-22
- Chairman of Taxation Audit Quality Review Board (TAQRB) of ICAI for the year 2021-22.
- Member of Quality Review Board (QRB) for 2 terms from 2020 to 2026.
- Member of the SME Implementation Group (SMEIG) of IFRS Foundation, UK for 3 years from 2023 to 2026.
- Chairman of Valuation Standards Board (VSB) of ICAI for the year 2020-21.
- Chairman of CSR Committee of ICAI for year 2020-21.
- Vice-Chairman of Committee on MSME & Start-up of ICAI for the year 2021-22.
- Vice-Chairman of Women Members Empowerment Committee (WMEC) of ICAI for 2021-22.
- Vice-Chairman of Direct Tax Committee (DTC) of ICAI for 2 years from 2019 to 2021.
- Vice-Chairman of Committee on International Taxation (CITAX) of ICAI for Year 2019-20.
- Member of ICAI Disciplinary Committee for the year 2020-21.

He is the conceptualizer of the portal www.expertspanel.in which is a one stop solution for all professional queries which has given more than 36000 answers since its launch in mid of year 2018.

He has delivered more than 1700 lectures and articles on various topics of Income Tax, Corporate Laws, LLP, Audits, Peer Review, Quality Review, etc. at more than 200 forums throughout the country. Most of his presentations and articles since 2013 are available for free download from www.lunawat.com and from 2018 at www.expertspanel.in also.

He is Senior Partner of M/s LUNAWAT & CO., Chartered Accountants. He is president, founder convenor and member of various Boards, Directorate, Committees, Study Circles, etc. of ICAI, ICSI and other prestigious bodies and associations. He has been a Technical Reviewer with Financial Reporting Review Board (FRRB) and Quality Review Board (QRB) and Peer Reviewer with Peer Review Board (PRB).

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He has authored books on “*Chartered Accountant’s Documentation and Compliance for Audits and Reviews*”, “*Limited liability Partnership – A Complete Resource Book*”, “*Chartered Accountant’s Documentation and Compliance for Audits and Reviews*”, “*Importance of LLP after Companies Act, 2013*”, “*Chartered Accountant’s Documentation and compliance under Companies Act 2013, Peer Review and Quality Review*”, “*Limited Liability Partnership – Law, Procedures and Taxation*”, “*Documentation for Chartered Accountants*”, “*Limited Liability Partnership – Law and Procedures with Ready Reckoner*”, “*Fringe Benefit Tax & Banking Cash Transaction Tax*”, “*Documentation for Audits*” and “*Accounting Standards and CARO*”.

He has written various articles on taxation, company law and audit in various journals. He has vast practical experience in income tax, audit, corporate laws and LLP.