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# Audit & Auditors

**Chapter X of the Companies Act, 2013**

**Section no. 139 to 148**

**Companies (Audit & Auditors) Rules, 2014**

<b>Section no.</b>	<b>Particulars</b>
<b>Section 139</b>	Appointment of Auditors
<b>Section 140</b>	Removal, Resignation of Auditor and giving of Special Notice
<b>Section 141</b>	Eligibility, qualifications and disqualifications of Auditor
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<b>Section 148</b>	Central Government to specify audit of items of cost in respect of certain companies

## **Section 139 : Appointment of Auditors :**

**Section 139(1) :** Every company shall at the first Annual General Meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of every Sixth Annual General Meeting.

Provided that the company shall place the matter relating to such appointment for ratification by members at every Annual General Meeting.

Provided further that **before** such appointment is made, the written consent of the auditor to such appointment and a certificate from him shall be obtained from the auditor. Such certificate shall also indicate whether the auditor satisfies the criteria provided in Section 141.

Company shall inform the auditor concerned of his or its appointment and also file a notice of such appointment with the Registrar in Form no. **ADT-1** within 15 days of the meeting in which the auditor is appointed.

**Important :** In case of Specified IFSC Public Company, ADT-1 can be filed within 30 days instead of 15 days.

**Consent of the Auditor :** As per second proviso of Section 139(1) read with Rule 3 & 4 of the Companies (Audit and Auditors) Rules, 2014, the written consent of the auditor must be taken before appointment.

The Auditor appointed shall submit a certificate that :

- a) the individual/firm is eligible for appointment and is not disqualified for appointment under the Companies Act, the Chartered Accountants Act and the rules or regulations made thereunder.
- b) the proposed appointment is as per the term provided under the Act
- c) the proposed appointment is within the limits laid down by or under the authority of the Act
- d) the 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.

The notice to registrar about appointment of auditor shall be in Form **ADT-1** to be filed by company to ROC within 15 days of the meeting in which auditor is appointed.

# Rotation of Auditors/ Term of the Auditor

(Section 139(2) and Rule 5 of Companies (Audit and Auditors) Rules, 2014)

**Section 139 (2) read with Rule 5 of the Companies (Audit & Auditors) Rules, 2014** states that the restrictions relating to compulsory rotation of auditors shall be applicable only to the following classes of companies :

- Listed Company
- All unlisted public company having paid up share capital of ₹ 10 crore or more
- All private limited companies having paid up share capital of ₹50 crore or more
- Any company having public borrowings from financial institutions, banks or public deposits of ₹ 50 crores or more.



Provisions relating to rotation are not applicable to One Person Company and Small Company even if they attract any of the above criteria.

Thus as per Section 139(2), any company coming in the above category :

- ⌚ Shall not appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years
- ⌚ Shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years

## Provided that

- an Individual auditor who has completed his term shall not be eligible for re-appointment as auditor of the same company for **five** years from the completion of his term.
- an audit firm which has completed its terms shall not be eligible for re-appointment as auditor in the same company for **five** years from the completion of his term.

**Important :** The above restriction of one term/two terms are not applicable to a Specified IFSC Public Company

## Other Important Points to remember regarding rotation :

- ⌚ No audit firm shall be appointed or re-appointed as auditor of the company for a period of 5 years, if the same firm presently having a common partner(s) to the previous audit firm, whose tenure has expired in a company in the immediately preceding financial year.

- ⌚ Every company existing on or before the commencement of this Act, shall comply with the provisions of rotation within a period which shall not be later than the date of the first Annual General Meeting of the company held after three years from the date of commencement of this Act.
- ⌚ The right of the company to remove the auditor and the Right of the auditor to resign is not affected due to rotation. Thus, the company may remove the auditor or the auditor may resign anytime irrespective of the provisions of rotation.
- ⌚ The incoming auditor/audit firm shall not be eligible if such auditor/audit firm associated with the outgoing auditor/audit firm under the same network of audit firms (common control/brand name etc).
- ⌚ If a partner, who is in charge of an audit and certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of 5 years.
- ⌚ In case if the company has appointed two or more persons as joint auditors, 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.

**Section 139(3) : Internal Rotation :** Besides the rotation as above, the members of the company may resolve to provide that :-

- ❖ in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members or
- ❖ the audit shall be conducted by more than one auditor

### **Time Limit for appointment of Auditor in Government Company**

**First Auditor in Government Company : Section 139(7) :** First auditors in Government Company or Government controlled company shall be appointed by the Comptroller and Auditor General of India within **60 days** from the date of registration of the company.

In case of failure of the C&AG to do so, the Board shall appoint the auditors **within next 30 days** and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within **60 days** at an Extra Ordinary General Meeting (EGM), such auditor shall hold office till the **conclusion** of the first Annual General Meeting.

**Appointment of subsequent Statutory Auditor in Government Company :Section 139(5) :**In case of Government Company or any company owned/controlled directly or indirectly by Central/State Government, the Comptroller and Auditor General of India shall, in respect of a financial year, appoint an auditor within a period of 180 days from the commencement of financial year who shall hold office till the **conclusion** of the Annual General Meeting.

## Time Limit for appointment of Auditor in Other Companies (other than Government Company)

**Section 139(6)** : First Auditors of a Company other than Government Company shall be appointed by the Board **within 30 days** of its date of registration and in case of failure to do so by the Board of Directors, the members shall be informed and they shall appoint the same at an Extra Ordinary General Meeting **within 90 days from the information**, who shall hold office till conclusion of first Annual General Meeting.

