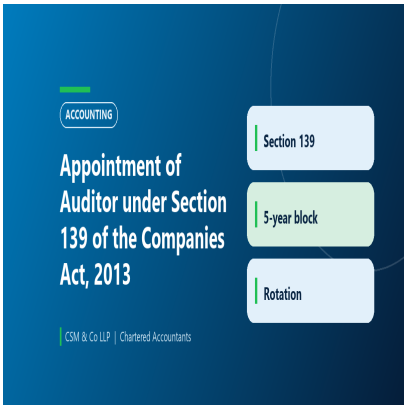


Appointment of Auditor under Section 139 of the Companies Act, 2013: Term, Rotation, First Auditor, Casual Vacancy and Removal

Description

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Quick summary

- A company appoints an auditor at its first AGM, to hold office till the sixth AGM, and then for each further block of five years (until the conclusion of every sixth AGM).
- The first auditor is appointed by the Board within 30 days of registration, or by members at an EGM within 90 days if the Board fails. For a Government company, the CAG appoints within 60 days.
- Listed companies and prescribed classes must rotate: an individual for one term of five years, a firm for two terms, then a five year cooling off.
- Removal before the term ends needs a special resolution and the previous approval of the Central Government. A resigning auditor files a statement within 30 days.

Every company must have a statutory auditor. Section 139 of the Companies Act, 2013 says how the auditor is appointed, how long the appointment lasts, who steps in when the post falls vacant, and when a change is compulsory. Sections 140 and 141 deal with removal, resignation, and who may be an auditor.

Who can be an auditor (section 141)

- A chartered accountant, or a firm in which the majority of partners practising in India are chartered accountants (an LLP counts as a firm). Only the partners who are chartered accountants may sign.
- Not eligible: a body corporate other than an LLP; an officer or employee of the company; a person whose relative is a director or key managerial personnel; a person (or relative or partner) holding securities of the company above the permitted limit, or indebted to it above the prescribed amount; a person with a prescribed business relationship; a person holding more than 20 company audits; a person convicted of fraud in the last ten years; and a person who provides the prohibited non-audit services under section 144.
- If an auditor becomes disqualified after appointment, the office is vacated and treated as a casual vacancy.

First auditor

Type of company	Who appoints	By when	Holds office till
Company other than a Government company	Board of Directors	Within 30 days of registration	Conclusion of the first AGM
Same, if the Board fails	Members at an extraordinary general meeting	Within 90 days (the Board informs the members)	Conclusion of the first AGM
Government company	Comptroller and Auditor-General of India	Within 60 days of registration; if CAG does not, the Board within next 30 days; if the Board fails, members within 60 days at an EGM	Conclusion of the first AGM

At the first AGM and after

At the first annual general meeting, the company appoints an individual or a firm as auditor to hold office from the conclusion of that meeting till the conclusion of its **sixth annual general meeting**, and thereafter till the conclusion of **every sixth meeting**. Before the appointment, the company must obtain the auditor's written consent and a certificate that the appointment is within the prescribed conditions, including that the auditor meets section 141. The company must inform the auditor of the appointment and file a notice with the Registrar within 15 days of the meeting (this is done in Form ADT-1).

"Appointment" includes re-appointment. A retiring auditor can be re-appointed if not disqualified, has not given written notice of unwillingness, and no special resolution has been passed to appoint someone else or to say that he shall not be re-appointed. If no auditor is appointed at an AGM, the existing auditor continues.

If the company must have an Audit Committee, appointments and the filling of a casual vacancy are made after taking its recommendations into account.

Rotation (section 139(2))

No listed company, and no company in a class prescribed by rules, may appoint or re-appoint:

- an **individual** auditor for more than **one term of five consecutive years**, or
- an **audit firm** for more than **two terms of five consecutive years**.

After completing its term, the individual (or the firm) is not eligible for re-appointment in the same company for **five years**. A firm that has a common partner with an outgoing firm, whose tenure has just expired, cannot be appointed for five years. Members may also resolve that the auditing partner and team be rotated, or that the audit be done by more than one auditor (section 139(3)). The companies in the prescribed classes are set outin the Companies (Audit and Auditors) Rules, 2014: please check the paid-up capital and borrowing thresholdsin the current rules before concluding that your company is outside rotation.

Government companies

The Comptroller and Auditor-General appoints the auditor within 180 days of the start of each financial year, and the auditor holds office till the AGM.

Casual vacancy (section 139(8))

- **Company not audited by a CAG-appointed auditor:** the Board fills the vacancy within 30 days. If the vacancy arose from the auditor's resignation, the company must approve the appointment at a general meeting convened within three months of the Board's recommendation. The new auditor holds office till the next AGM.
- **Company audited by a CAG-appointed auditor:** the CAG fills the vacancy within 30 days; if it does not, the Board fills it within the next 30 days.

Special notice and removal (section 140)

- **Special notice** is required for a resolution at an AGM appointing a person other than the retiring auditor, or saying that the retiring auditor shall not be re-appointed. It is not needed where the retiring auditor has completed the maximum term of five or ten years under section 139(2). The company sends a copy of the notice to the retiring auditor, and if the auditor makes a reasonable written representation, the company states this in the notice to members and sends the representation to members. If it is received too late, the auditor can ask that it be read out at the meeting. The Tribunal can stop this if the right is being abused.
- **Removal before the term ends:** only by a special resolution of the company, after getting the previous approval of the Central Government in the prescribed manner, and after the auditor has been given a reasonable chance to be heard.
- **Resignation:** the auditor files a statement in the prescribed form with the company and the Registrar within 30 days of the resignation, giving reasons. For a failure to do so the auditor is liable to a penalty of Rs 50,000 or the amount of the remuneration, whichever is less, and Rs 500 for each day of continuing failure, up to Rs 2 lakh.
- **Fraud:** the Tribunal can direct a company to change its auditor if the auditor has acted fraudulently or colluded in fraud. An auditor against whom a final order is passed is not eligible for appointment in any company for five years.

Remuneration (section 142)

Fixed by the members in general meeting or in the manner they decide. The Board can fix the first auditor's remuneration. Expenses incurred for the audit are included, but not remuneration for other services requested by the company.

Points to check

- Auditor rotation applies only to listed companies and the prescribed classes, so a small private company can keep the same auditor for any number of terms.
- Forms (ADT-1 and the resignation forms), thresholds and fees come from the Rules and can change; use the current Companies (Audit and Auditors) Rules, 2014 and the MCA portal.
- The text above follows the Companies Act as published on India Code, including its amendments up to the footnotes in that edition.

Frequently asked questions

When is the first auditor appointed?

By the Board of Directors within 30 days of the date of registration of the company. If the Board fails, it informs the members, who appoint within 90 days at an extraordinary general meeting. The first auditor holds office till the conclusion of the first AGM.

What is the term of an auditor?

At the first AGM the company appoints an auditor to hold office till the conclusion of its sixth AGM, and thereafter till the conclusion of every sixth meeting. This is the usual five year term.

Is auditor rotation compulsory for every company?

No. Section 139(2) applies to listed companies and the classes of companies prescribed by rules. An individual can serve one term of five consecutive years and an audit firm two terms, with a five year cooling off after that.

How is a casual vacancy filled?

The Board fills it within 30 days. If the vacancy is due to the auditor’s resignation, the company must also approve the appointment at a general meeting held within three months of the Board’s recommendation, and the appointee holds office till the next AGM.

Who appoints the auditor of a Government company?

The Comptroller and Auditor-General of India, within 180 days from the start of the financial year. The first auditor is appointed by the CAG within 60 days of registration.

Can an auditor be removed in the middle of the term?

Only by a special resolution of the company, after obtaining the previous approval of the Central Government, and after giving the auditor a reasonable opportunity of being heard.

What if no auditor is appointed at an AGM?

The existing auditor continues to be the auditor.

Official sources

- India Code: The Companies Act, 2013 (sections 139, 140, 141)
- Ministry of Corporate Affairs

Related reading

- Powers and Duties of a Statutory Auditor (Sections 143 to 147): Audit Report, Fraud Reporting, Prohibited Services and Penalties

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