

# Mayank Arora & Co.

Company Secretaries

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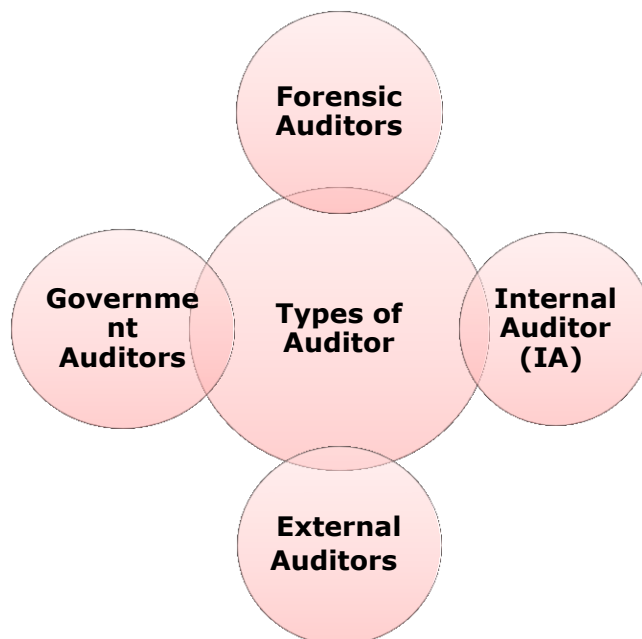
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## Appointment and Resignation of Statutory Auditor As per the Companies Act, 2013

### ❖ Who is an Auditor?

In general terms, an auditor is a person authorized to review and verify the accuracy of financial records and ensure that companies comply with tax laws. They protect businesses from fraud, point out discrepancies in accounting methods and, on occasion, work on a consultancy basis, helping organizations to spot ways to boost operational efficiency. Auditors work in various capacities within different industries.

### ❖ Types of Auditors:



## Appointment of Statutory Auditor of the Company

### 139. APPOINTMENT OF STATUTORY AUDITORS

#### 1. Section 139 (1) – First Auditor

Subject to the provisions of this Chapter, 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 its sixth annual general meeting.

In the 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, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

However **First auditor of a company**, other than a government company, shall be appointed by the Board of Directors within thirty days from the date of registration of company and on failure to do so, members of the company, shall appoint the same within ninety days of incorporation at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

Further provided that before such appointment Company should obtain the written consent from the Auditor to such appointment and certificate from him or it that appointment , if made, shall be in accordance with the condition as may be prescribed, shall be obtained from auditor,

➤ Condition for Appointment and notice to Registrar:

1. The auditor appointed under rule 3 shall submit a certificate that:

- (a) The individual or the firm, as the case may be , is eligible for appointment and is not disqualified for appointment under the Act, the Chartered accountant Act, 1949 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 proceeding against the audit 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.

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in Section 141

The Company shall file the said appointment with the Registrar of Companies in **e-Form ADT-1 within fifteen days (15 days)** from the date of his/her appointment.

## **2. Section 139(2) – Term for Appointment and reappointment**

For the purpose of subsection (2) of section 139, No listed company and following class or classes of companies

All unlisted companies having paid up share capital of rupees ten crore or more;

All private limited companies having paid up share capital of rupees fifty crore or more;

All companies having paid up share capital of below threshold limit mentioned in above, but having public borrowing from financial institution, banks or public deposits of rupees fifty crore or more.

### **Excluding one person companies and small companies shall appoint or reappoint:**

- (a) An individual as auditor for more than one term of five consecutive years; and
- (b) An audit firm as auditor for more than two terms of five consecutive years:

Provided that an individual auditor and Auditor firm who have completed his term under clause (a) & (b) respectively, shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term;

Provided further that 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 five years.

### **3. Section 139(3) – Rotation of Auditor’s Period**

Subject to the provisions of this Act, members of a company may resolve to provide that—

- (a) 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
- (b) the audit shall be conducted by more than one auditor.

### **4. Section 139(4)**

The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

### **5. Section 139(8) – Casual vacancy-**

- (i) in the case of a company other than government company casual vacancy shall be filled by the Board of Directors within thirty days and if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;
- (ii) in the case of a government company casual vacancy shall be filled by the Comptroller and Auditor-General of India within thirty days: Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

## **Removal and Resignation of Statutory Auditor of the Company**

### **140. REMOVAL AND RESIGNATION OF AUDITOR**

#### **1. Section 140(1) – Removal of Auditor**

The auditor appointed under section 139 may 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 **(Regional Director) (As per notification dated 19th December, 2016)** in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

## **2. Section 140(2) – Resignation of Auditor**

The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

The Company shall file the said resignation with the Registrar of Companies in **e-Form ADT-3 within Thirty days (30 days)** from the date of his/her Resignation.

## **3. Section 140(3) - Punishment**

If the auditor does not comply with the provision of sub-section (2), he or it shall be liable to penalty of -

- Fifty thousand rupees (Rs. 50,000) **or**,
- an amount equal to the remuneration of the auditor,  
Whichever is less.

And in case of continuing failure, with further penalty of five hundred rupees for each day after first during which such failure continues, subject to maximum of five lakh rupees.

Contribution by Kajal Khetani

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Date: 21<sup>st</sup> June 2020