



Date:13 March, 2021

**VIRTUAL COACHING CLASSES
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

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CH.10 AUDIT AND AUDITORS

Section 139 to 148 of Companies Act, 2013 read with Companies (Audit and Auditor) Rules 2014.

APPOINTMENT OF AUDITORS [S.139]

Section 139(1) reads as:

*(1) 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 and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:*

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

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

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.-- For the purposes of this Chapter, "appointment" includes re-appointment.

MANNER AND PROCEDURE OF SELECTION OF AUDITOR

The manner and procedure for selection of auditors by the members of the company at an AGM has been prescribed in Rule 3 of the Companies (Audit and Auditors) Rule 2014.

The Board of directors **of every listed companies** and the following classes of companies shall constitute an Audit Committee-

- (i) all public companies with a paid up capital of ten crore rupees or more;
- (ii) (all public companies having turnover of one hundred crore rupees or more;
- (iii) (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more

Rule 3 reads as: -

(1) In case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company:

Provided that while considering the appointment, the Audit Committee or the Board, as the case may be, shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court

. (2) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit.

(3) Subject to the provisions of sub-rule (1), where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.

(4) 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

(5) 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.

(6) 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 annual general meeting.

(7) The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting

CONDITIONS FOR APPOINTMENT AND NOTICE TO THE REGISTRAR

As per second proviso of section 139(1) read with rule 4 stipulates that written consent of the auditor must be taken before appointment. The auditor appointed shall submit a certificate that–

- (1) (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 Accountants 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 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.

COMMUNICATION TO THE AUDITOR & REGISTRAR

The company shall inform the auditor concerned of his or its appointment, and also file a notice (in the Form ADT-1) [Rule 4(2)] of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

REPORTING TO NFRA UNDER NFRA RULES

*As per Rule 3 (2) of NFRA Rules, **every existing body corporate other than a company governed by NFRA rules**, shall inform the National Financial Reporting Authority (NFRA) within 30 days of the commencement of the NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of the NFRA rules.*

According to Rule 3(3) of NFRA Rules, every body corporate, other than a company as defined in clause (20) of section 2 of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under sub-section (1) of section 139, inform the NFRA in Form NFRA1, the particulars of the auditor appointed by such body corporate, provided that a body corporate governed under clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

TERM OF AUDITOR [S.139(2)]

(a) Section 139(2) provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint—

- (1) an individual as auditor for more than one term of five consecutive years; and
- (2) an audit firm as auditor for more than two terms of five consecutive years.

Rule 5 of the Companies (Audit and Auditors) Rules, 2014 has prescribed the following classes of companies for the purposes of section 139(2):

- (1) all unlisted public companies having paid up share capital of rupees 10 crores or more;
- (2) all private limited companies having paid up share capital of rupees 50 crore or more;
- (3) all companies having paid up share capital of below threshold limit mentioned in (2) and (3) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more.

COOLING OFF PERIOD

(1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

(3) Further, 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.

Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section (2) of S. 139, shall comply with the requirements of this subsection within three years from the date of commencement of this Act:

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

TENURE OF SUBSEQUENT AUDITORS



Can the Auditor be appointed for a period less than 5 years?

The terms for appointment of Statutory Auditors is defined under Section 139(1), which clearly stipulates that the auditor appointed **shall** hold office till the conclusion of **sixth** AGM from the AGM in which he is appointed. Thus, one can opine that the auditor cannot be appointed for one term, consisting of period *less than or more than* five years. Even if a Company has previously appointed an auditor for a term lesser than 5 years, it shall still be treated as one full term and the cooling period under Section 139(2) shall be required for specified companies.

If the auditor is appointed to fill in the *casual vacancy* arisen due to vacancy of office of previous years, then, the period he serves to complete the tenure of the previous auditor (i.e. till the conclusion of ensuing AGM) shall *not be counted* as term of this auditor and he can be appointed for a fresh term of 5 consecutive years in the same Company.

Example: XYZ Ltd. which is a listed company appoints individual Mr. Raghav as an auditor in its AGM dated 29th September, 2016. Mr. Raghav will hold office of Auditor from the conclusion of this meeting upto conclusion of sixth AGM i.e. AGM to be held in the year 2021. Now as per sub-section (2), Mr. Raghav shall not be re-appointed as Auditor in XYZ Ltd. for further term of five years i.e. he cannot be appointed as Auditor in XYZ Ltd. upto year 2026

Example: XYZ Ltd. which is a listed company appoints M/s Raghav & Associates as an audit firm in its AGM dated 29th September, 2016. M/s Raghav & Associates will hold office from the conclusion of this meeting upto conclusion of sixth AGM to be held in the year 2021. Now as per sub-section (2), M/s Raghav & Associates can be appointed or reappointed as auditor for one more term of five years i.e. upto year 2026. It shall not be re-appointed as Audit firm in XYZ Ltd. for further term of five years after year 2026 to year 2031.

Example : M/s Krishna & Associates is an audit firm having 2 partners namely Mr. Krishna and Mr. Shyam. Mr. Shyam is also a partner of another audit firm named M/s Kukreja & Associates. M/s Krishna & Associates was appointed as the auditors in the company Golden Smith Ltd. for two consecutive periods of 5 years i.e. from year 2016 to year 2026. Now, if Golden Smith Ltd. wants to appoint M/s Kukreja & Associates as its audit firm, it cannot do so because Mr. Shyam is the common partner between both the Audit firms. This prohibition is only for 5 years i.e. upto year 2031. After 5 years, Golden Smith Ltd. may appoint M/s Kukreja & Associates or M/s. Krishna & Associates as its auditors.

ROTATION OF AUDITORS

S.139(3) & (4) reads as:

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

Explanation.-- For the purposes of this Chapter, the word "firm" shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009).

ROTATION OF AUDITORS

Rule 6 reads:

Manner of rotation of auditors by the companies on expiry of their term. —

(1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.

(2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.

ROTATION OF AUDITORS

(3) For the purpose of the rotation of auditors-

- (i) in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;
- (ii) 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.
- Explanation. I - For the purposes of these rules the term “same network” includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

ROTATION OF AUDITORS

Explanation. II - For the purpose of rotation of auditors,-

- (a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;
- (b) 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 chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

ROTATION OF AUDITORS

Illustration explaining rotation in case of individual auditor

Illustration 1:-

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

Note: 1. Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any. 2. Consecutive years shall mean all the preceding financial years for which the individual auditor has been the auditor until there has been a break by five years or more.

ROTATION OF AUDITORS

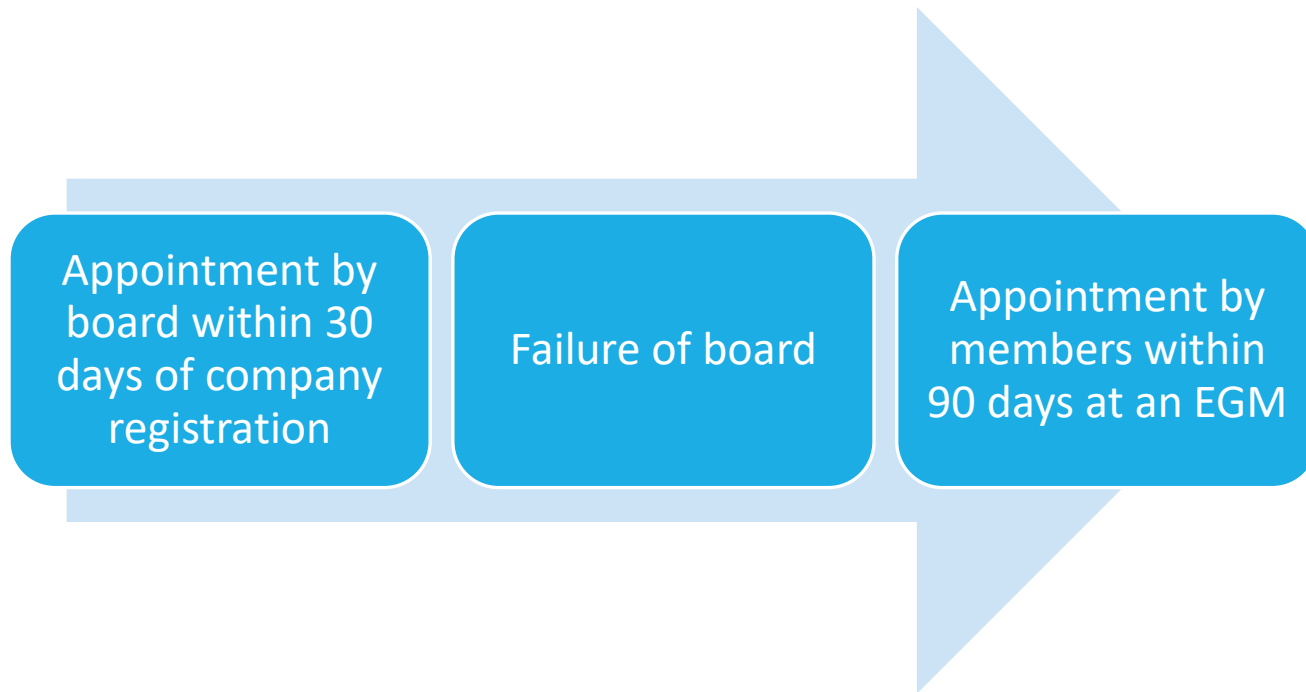
Illustration explaining rotation in case of audit firm

Illustration 2:-

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 year	9 years	10 years

Note:1. Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners. 2. Consecutive years shall mean all the preceding financial years for which the firm has been the auditor until there has been a break by five years or more. (4) Where a company has appointed two or more individuals or firms or a combination thereof 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

Appointment of 1st auditor other than in government Co. [S.139(6)]



The first auditor holds office till the conclusion of 1st AGM

Section 139(6) reads as:

6) Notwithstanding anything contained in sub-section (1), the 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 the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting

FILLING UP CASUAL VACANCY in Any COMPANY [S.139(8)]

(a) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by 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.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Casual vacancy of Auditor

Filling the casual vacancy by Board within 30 days

If vacancy is caused by Resignation- appointment by Board shall also be approved by company at GM convened within 3 months of recommendation of Board

the Auditor so appointed shall hold office until the conclusion of next AGM.

Appointment of 1st Auditor in Govt. Co

Appointed by CAG within 60 days from the date of incorporation

↓ failure

Board shall appoint within next 30 days

↓ failure

BOD shall inform the Co. and the member shall appoint the auditor within 60 days at EGM

Appointment of 1st Auditor in Govt. Co

Section 139(7) reads as:

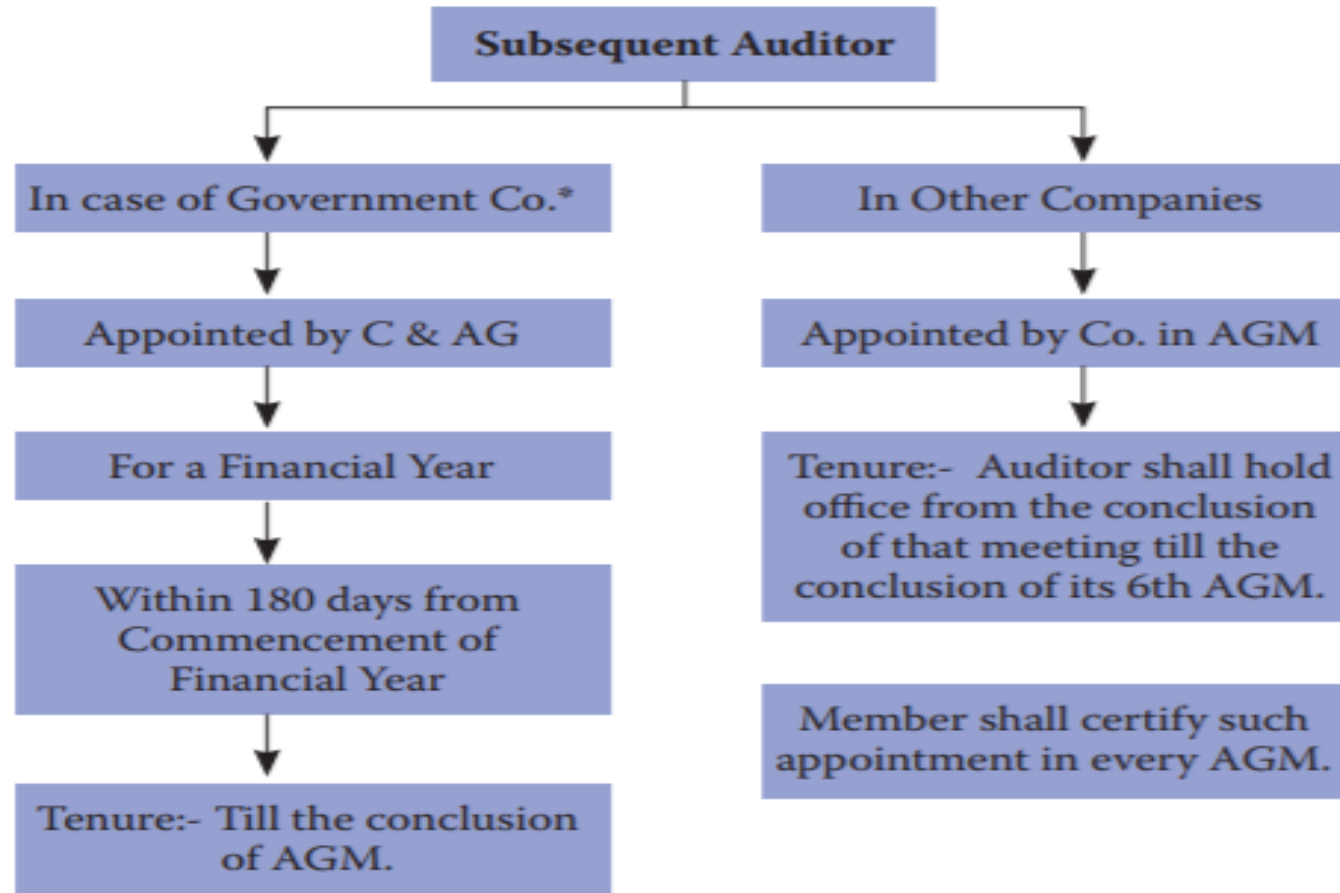
*(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, **the first auditor shall be appointed** by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.*

APPOINTMENT OF SUBSEQUENT AUDITOR IN GOVT. CO

S.139(5) reads as:

*(5) Notwithstanding anything contained in sub-section (1), 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.*

APPOINTMENT OF SUBSEQUENT AUDITOR



Please note :
Appointment of an auditor is an ordinary business



THANK YOU