

“A Legacy of Independence: How Section 139 Champions Transparency in Business”

As per Section 139 (1) every Company shall, at its first Annual General Meeting (AGM), appoint an individual or a firm as its auditor. The appointed auditor shall hold office from the conclusion of that meeting until the conclusion of its sixth AGM, and thereafter, until the conclusion of every sixth AGM. The procedure and manner of selection of auditors by the members of the Company at such a meeting shall be as prescribed under the rules.

Conditions Precedent to Appointment of Auditors:

Before appointing an auditor under SECTION 139(1) of the COMPANIES ACT, 2013, the company must obtain:

The written consent of the auditor to such an appointment.

A certificate from the auditor confirming that the appointment, if made, will comply with the prescribed conditions.

This certificate must also state whether the auditor meets the eligibility criteria specified under SECTION 141 OF THE ACT.

Furthermore, the Company must:

Inform the auditor of their appointment.

File a notice of such an appointment with the Registrar of Companies within fifteen days of the meeting where the appointment is made.

Rotation of Auditors

AS PER SECTION 139(2) OF THE COMPANIES ACT, 2013:

A Listed Company or specified class of Companies cannot appoint or re-appoint.

An individual as an auditor for more than one term of five consecutive years.

An audit firm as an auditor for more than two terms of five consecutive years.

Provided that: -

An individual auditor who has completed their term (five consecutive years) cannot be re-appointed as the auditor of the same Company for five years after the completion of their term.

An audit firm that has completed its term (two consecutive terms of five years each) cannot be re-appointed as the auditor of the same Company for five years after the completion of its term.

No audit firm with common partners to another firm whose tenure just expired can be appointed as the auditor of the same Company for five years.

Companies existing before the commencement of the Act must comply with these provisions by the first AGM held within the period specified in Section 96(1), after three years from the commencement of the 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.]

Rotation of Auditing Partner or Multiple Auditors:

AS PER SECTION 139 (3) OF THE COMPANIES, members of a Company may resolve to:

- (a) Rotate the auditing partner and their team within the appointed audit firm at intervals decided by the members, or
- (b) Appoint **more than one** auditor to conduct the audit.

Appointment of Auditor for Government Companies:

NOTWITHSTANDING SECTION 139(1) OF THE COMPANIES ACT, 2013, in the case of a Government Company or any Company owned or controlled, directly or indirectly, by the Central or State Government(s), **the Comptroller and Auditor-General of India (CAG)** shall appoint a duly qualified auditor **within 180 days from the start of the financial year**. The appointed auditor shall hold office until the conclusion of the Annual General Meeting.

Appointment of First Auditor (Non-Government Company):

NOTWITHSTANDING SECTION 139(1) OF THE COMPANIES ACT, 2013, the Board of Directors must **appoint the first auditor of a company (other than a Government company) within 30 days of the company's registration**. If the Board fails to do so, the members must appoint the auditor **within 90 days** at an Extraordinary General Meeting. The appointed auditor shall hold office until the conclusion of the first Annual General Meeting

Filling Casual Vacancy in Auditor's Office:

Any casual vacancy in the office of an auditor shall be filled as follows:

(i) For Companies not audited by the Comptroller and Auditor-General of India (CAG), the Board of Directors must fill the vacancy **within 30 days**. If the vacancy is due to the resignation of the auditor, the appointment must also be approved by the Company at a General Meeting within three months of the Board's recommendation. The appointed auditor will hold office until the conclusion of the next Annual General Meeting.

(ii) For companies audited by the CAG, the CAG must fill the vacancy **within 30 days**. If the CAG does not do so, the Board of Directors shall fill the vacancy **within the next 30 days**.

Re-appointment of Retiring Auditor:

AS PER SECTION 139(9) OF THE COMPANIES ACT, 2013, a retiring auditor may be re-appointed at an annual general meeting if:

- (a) **They are not disqualified for re-appointment.**
- (b) **They have not given written notice of their unwillingness to be re-appointed; and**
- (c) **No special resolution has been passed at the meeting appointing another auditor or explicitly stating that they shall not be re-appointed.**

Continuation of Existing Auditor:

AS PER SECTION 139(10) OF THE COMPANIES ACT, 2013 If no auditor is appointed or re-appointed at an annual general meeting, the existing auditor shall continue to serve as the auditor of the company.

Audit Committee Recommendations for Auditor Appointments:

Where a company is required to constitute an Audit Committee under **SECTION 177 OF THE COMPANIES ACT, 2013**, all appointments of auditors, including filling a casual vacancy, shall be made after considering the recommendations of the Audit Committee.

CASE LAW: -

The Disciplinary Committee found Sachin Madhukar Pachkhede, a Chartered Accountant, **guilty of professional misconduct for several errors in the financial statements he audited for the financial year 2012-13.** Despite his claims that the errors were minor and did not impact the true and fair view of the statements, the Committee determined that the mistakes constituted professional misconduct. As a result, the Committee decided to remove his name from the Register of **Members for three months and imposed a fine of ₹1,00,000, payable within 60 days.**



The Disciplinary Committee found Sushil Suresh Bajaj, a Chartered Accountant, **guilty of professional misconduct for failing to exercise due diligence while certifying e-Forms, leading to the approval of disqualified directors.** Despite his claims that his digital signature was misused by firm staff and that he was a victim of a conspiracy, the Committee determined that he did not meet professional standards. As a result, **Bajaj was reprimanded and fined ₹30,000, payable within 60 days.**

Just as our nation's freedom is safeguarded by the rule of law, the integrity of Corporate India is protected by the regulations that promote independence and fairness. Section 139 is not just a legal requirement; it is a vital safeguard that upholds the trust and confidence of stakeholders in the financial integrity of our Companies.
