Appointment and Removal of an Auditor

Who is an Auditor?

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.

Auditors assess financial operations and ensure that organizations are run efficiently. They are tasked with tracking cash flow from beginning to end and verifying that an organization’s funds are properly accounted for.

In the case of public companies, the main duty of an auditor is to determine whether financial statements follow generally accepted accounting principles (GAAP). To meet this requirement, auditors inspect accounting data, financial records, and operational aspects of a business and take detailed notes on each step of the process, known as an audit trail.

Once complete, the auditor’s findings are presented in a report that appears as a preface in financial statements. Separate, private reports may also be issued to company management and regulatory authorities as well.

The Securities and Exchange Commission (SEC) demands that the books of all public companies are regularly examined by external, independent auditors, in compliance with official auditing procedures. Official procedures are established by the International Auditing and Assurance Standards Board (IAASB), a committee of the International Federation of Accountants (IFAC).

All the government and non-government organizations have to keep track of their accounts and audit reports as the financial year approaches. The financial statements of these firms need to be thoroughly analyzed and assessed before submitting them to the authorized departments. This assessment of financial documents is done by an **Auditor**. In case of any discrepancy in the reports, the auditor is held responsible. Thus, the requirement of an auditor is a must for every organization.

Types of Auditors

- **Internal auditors** are hired by organizations to provide in-house, independent, and objective evaluations of financial and operational business activities, including corporate governance. They report their findings, including tips on how to better run the business, back to senior management.
- **External auditors** usually work in conjunction with government agencies. They are tasked with providing an objective, public opinion concerning the organization's financial statements and whether they fairly and accurately represent the organization's financial position.
- **Government auditors** maintain and examine records of government agencies and of private businesses or individuals performing activities subject to government regulations or taxation. Auditors employed through the government ensure revenues are received and spent according to laws and regulations. They detect embezzlement and fraud, analyze agency accounting controls, and evaluate risk management.
- **Forensic auditors** specialize in crime and are used by law enforcement organizations.

Appointment of Auditor

1. **<u>Within 30 Days</u>:**

   Every company must appoint its first auditor or an auditing firm within 30 days of registration of the company during the annual general meeting or within 90 days, in an Emergency General Body Meeting by the Board of Directors. The first auditor (or the auditing firm) appointed will hold office from the conclusion of the meeting (in which the appointment of auditor has been made) to the time when the sixth annual general meeting is held (five years). Therein, the auditor appointments are reviewed every sixth year.

2. **Written Consent:**

   A written consent from the auditor, with sufficient proof to suggest that the person (or firm) qualifies the criteria provided in Section 141 of the Act, needs to be submitted before an appointment.

3. **Appointment Notice:**

   The company should issue an appointment notice to the auditor, and a Form, ADT- 1 is required to be submitted with the registrar within 15 days of the meeting in which the auditor is appointed.

4. **Section 139:**

   The companies listed in Section 139 (belonging to the class or classes of companies as mentioned in the section) and Rule 5 of the companies (audit and auditor) rules, 2014, will not:

1. Appoint an individual as auditor for more than one consecutive five-year tenure;
2. Appoint an auditing firm for more than two terms of five consecutive years

Provided, the auditor who has finished his term will not be eligible for reappointment in the same company or the auditing firm who has completed a two-year tenure is not eligible for appointment in the same company for five years.
A three-year transition period is given to comply with this requirement. Although, according to the rules, the five years is calculated with the retrospective effect.

Sections 139 to 148 of the Companies Act, 2013 give a complete and detailed summary of the role of an auditor as well as the other requirements, such as their appointments or removal from the company payroll.

Reappointment of an Auditor

Reappointment of auditors/renewal of auditors. An auditor or an auditing firm will be re-appointed at the AGM, unless:

1. The auditor has shown his unwillingness to continue
2. An auditor appointment resolution has been passed at the general meeting to appoint a new auditor or an auditing firm
3. If at the AGM, no auditor is appointed or reappointed, the existing auditor shall continue in the firm.
4. In case of death of the auditor (if it is an individual), the casual vacancy shall be filled within 30 days by the board. He will hold office till the next AGM.
5. In case of resignation of the auditor, the casual vacancy is again filled by the BOD within 30 days, and same approved at the meeting held within 3 months of the appointment.

6. The auditor who has resigned from the company needs to file a Form – ADT 3 stating the resignation and the reasons for the same. If not, the auditor will be deemed responsible for the same.

Roles & Responsibilities of Auditor

The Companies Act, 2013 has revised and added new provisions under Role of Auditors as against the provisions made in the Companies Act, 1956. Accordingly, there are some very stringent norms and provisions made to the directors to make corporate governance clear and concise. The new norms also give an auditor a lot of additional responsibilities, and, therefore, liabilities under which, in case of any anomalies seen in the financial reports of the company, the auditor will come under the scanner too.

Roles and responsibilities of an auditor as prescribed by the Act:

1. The Companies Act, 2013 has made various amendments in the duties and the powers exercised by the auditors all over the country. Every auditor can access the account statements and vouchers of the company any time and he can ask the officials in-charge to present the documents as and when asked for.

2. He or she has to make sure that the loans and advances have been secured properly and are in the interests of the company and its members.

3. All the transactions and statements are true and are not detrimental to the company and its rules.

4. In case of any fraud or discrepancy in the company records, the auditor should report the matter to the higher authorities with proper evidence, failing which, he can be fined for up to Rs.25 lakhs for the error in judgment.

5. The auditor should not provide services such as internal audits, bookkeeping, investment advisory or banking services and so on, to the company wherein he holds the position of 'Auditor' of annual financial records.

6. He/she shall comply with the auditing standards.

7. If the auditor, company secretary or the cost accountant fails to abide by the standards, they shall be punished with a fine amount that ranges from Rs 1 lakh to Rs 25 lakhs.

8. The auditor must exercise rights to access to all records in all subsidiaries if required.

9. He/she must make sure to have all the desired information, and have backups for the same, in certified copies.

The Act prescribes several such essential responsibilities for auditors and thereby giving enough liability and the role of the auditors to perform as per the rules set by the Act.

Removal of Auditor

1. The Companies Act, 2013 lays the provision for the removal or change of auditor before the completion of his tenure. This happens in those cases where the organization is not satisfied with the services of the auditor. The procedure of the removal of the auditor has been given in the *sub-section* (1) of **Section 140** of the Act.
2. Before being removed by the firm, the auditor is given a fair and reasonable chance of laying down reasons for his inappropriate conduct.
3. If the auditor is being removed before the completion of his term, an approval from the central government is necessary before passing a special resolution by the company.

4. The application to the Central Government has to be done in the form **ADT-2** as prescribed in Rule **7** of the Companies (Audit & Auditors) Rules, 2014. A prescribed fee provided under Section **12** of the **Companies (Registration Offices and Fee) Rules, 2014** needs to be submitted along with this form.
5. The application has to be made within *thirty days* of the resolution passed by the board.
6. The company can hold a general meeting within *sixty days* of receipt of the approval of the Central Government for passing the auditor appointment resolution.

If you want to hire an auditor for your company, then you need to have a clear overview of the roles and responsibilities of an auditor. The rules related to appointment, reappointment, and removal of the auditor are certain factors that you need to consider before announcing recruitment.