Auditors Under the Companies Act 2013

UNYKS CS
Your perfect Compliance Partner

Sooraj UN, ACS LLB
Company Secretary

Introduction

The Companies Act, 1956

XIII Parts | 658 Sections | XV Schedules

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The Companies Act, 2013

XXIX Chapters | 470 Sections | VII Schedules

a. 283 of 470 sections of the Act have got notified in a phased manner
b. Concise as Compared to Old Act. But Enforcement of many of the sections are dependent on rules made/ to be made thereunder.
c. Is extended to subordinate legislation over 300 ref to the rules. 18 rules have got notified (Chapter 1-14, 22, 26 & 29)

Auditors and the Companies Act 2013

Law Regulates:

Chapter X (Section 139 to 148) of the Companies Act, 2013

The Companies (Audit and Auditors) Rules, 2014

Eligibility and Qualification

Eligibility:

In case Individual :

Chartered Accountant

In case of Firm/LLP:

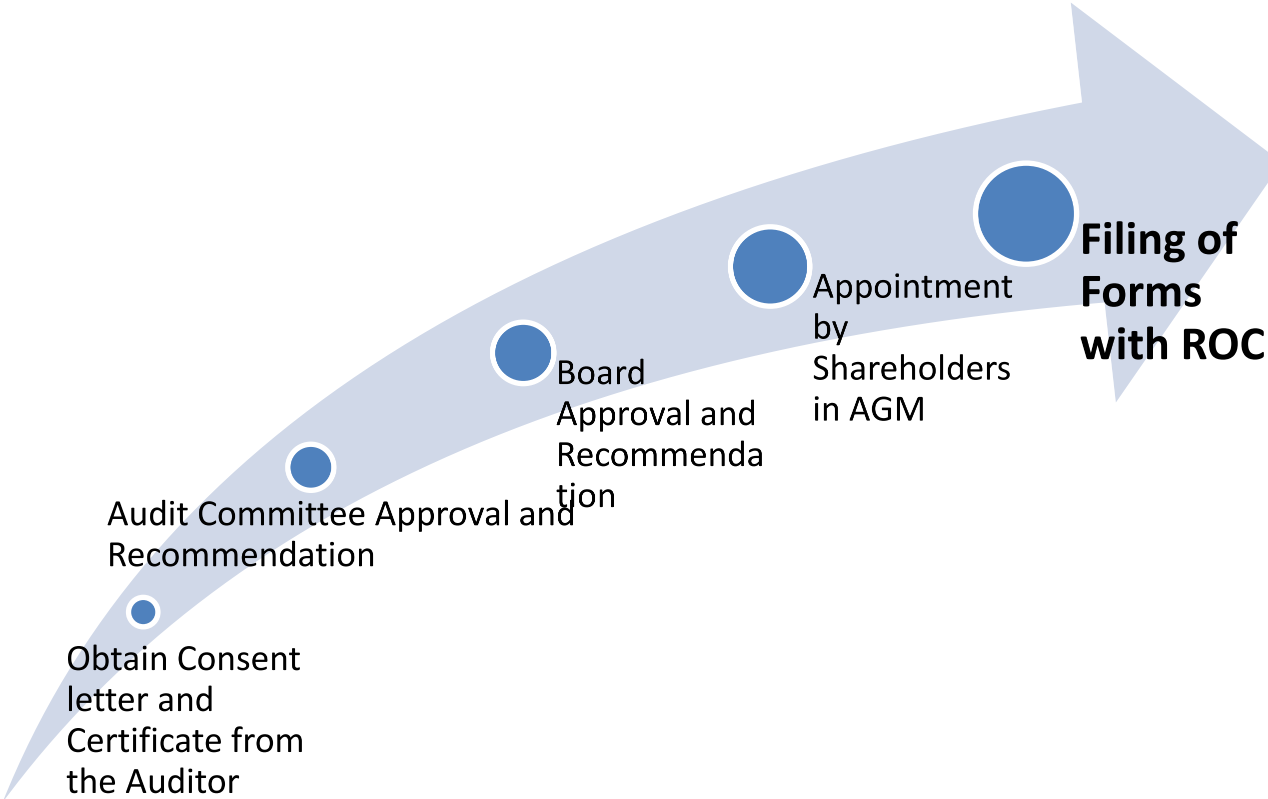
Partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

Disqualification

1. Body corporate other than LLP
2. Officer or employee of the Company
3. Person who is a partner, or who is in the employment, of an officer or employee of the company;
4. PERSON WHO, OR HIS RELATIVE OR PARTNER – holding interest / Indebted/ Provided Guarantee or security to such Indebtedness.
5. Person or a firm has business relationship with the company.
6. relative is a director or is in the employment of the company as a director or KMP.
7. Person who is in full time employment elsewhere.
8. Person or a partner of a firm holding appointment as auditor of more than twenty (20)companies.
9. Person who has been convicted by a court of an offence involving fraud and 10 years has not elapsed from the date of such conviction.
10. Person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

Manner of Appointment

Basic Appointment Process ;



Appointment of First Auditor

Class of Companies

By the Board – within 30 days of Inco.

By Members – Within 90 days of Inco.

Unlisted Companies

By the Board – within 30 days of Inco.

By Members – Within 90 days of Inco.

Government Companies

By CAG – within 60 days of Inco.

By Board – with in next 30 days

By Members – Within 60 days.

First Auditor

Appointment of Subsequent Auditor

Appointment of Subsequent Auditor

Filing with ROC:

Form ADT 1 with in 15 days of appointment

Attachments

- ❑ Intimation Letter by Company
- ❑ Consent Letter and Certificate from Auditor
- ❑ Appointment Resolution

Unlisted Companies

By Members

To hold office till conclusion of 6th AGM subject to ratification by members at every AGM

listed / *Class of Companies

By Members

To hold office till conclusion of 6th AGM subject to ratification by members at every AGM

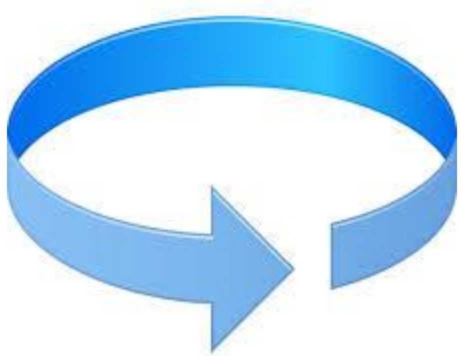
The appointment can be made for a maximum one term of 5/10 consecutive years as the case may be.

Government Companies

By CAG within 180 days from 01st of April.

Rotation of Auditors

- Auditor can hold office for a maximum continuous period of 5/10 years as the case may be.
- Applicable for all **listed Companies and such Class of Companies** as prescribed in the rule;
- A break in the term for a continuous period of 5 years shall be considered as fulfilling the requirement of rotation.



Rotation of Auditors

- All listed Companies
- Unlisted Public companies with a Paid up share Capital of Rs. 10 Cr or more
- Private Limited Companies with a paid up share capital of Rs. 20 Cr or more
- Companies Having public borrowings or public Deposits of Rs. 50 Cr or more

Class of Companies

Note:

a. Auditor/ firm has held office prior to the commencement of this Act, shall be taken into account for calculating the period of 5/10 years as the case may be.

b. Associated Auditor or Auditor firm under the same network are not eligible for appointment.

Illustration Explaining Rotation of Auditors

Individual Auditor

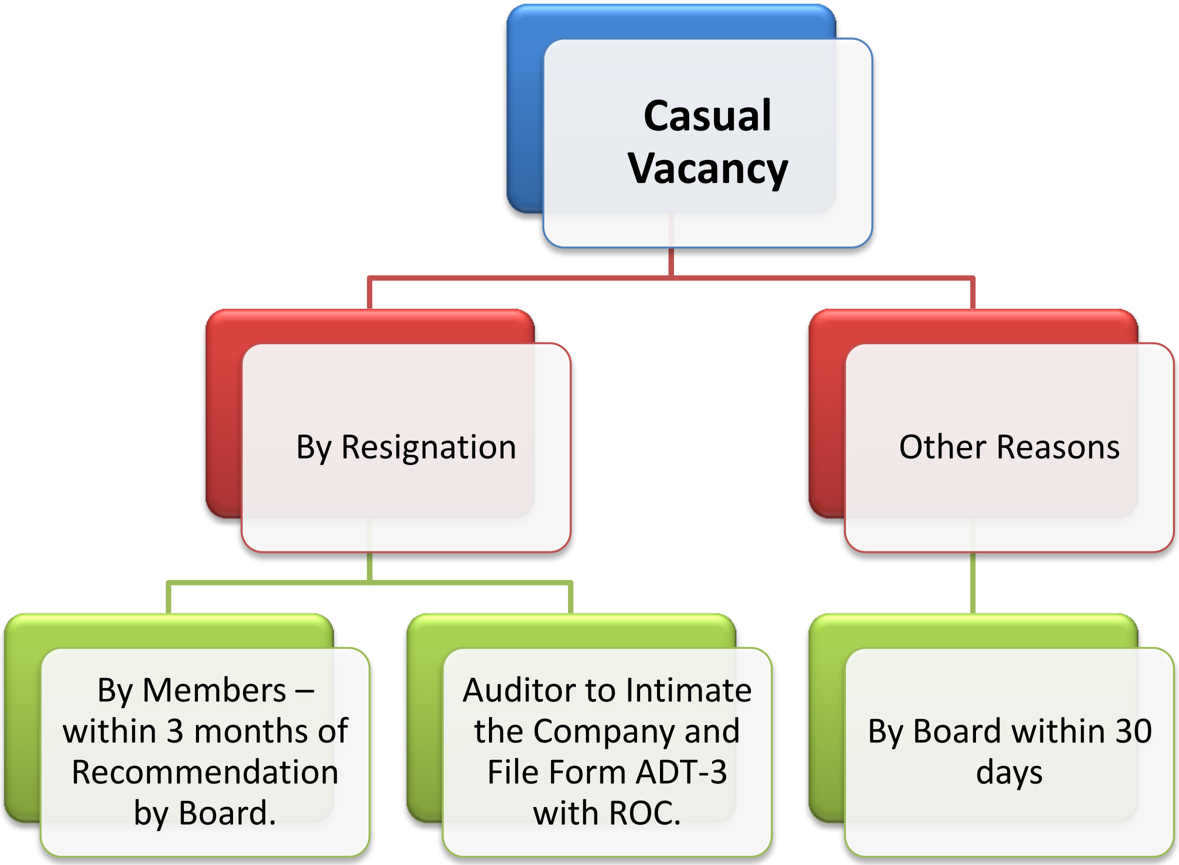
Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional 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	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

Illustration Explaining Rotation of Auditors

Audit Firm

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
10 Years or more	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

Filling of Casual Vacancy



Note:

Auditor appointed under Casual Vacancy shall hold office till next AGM.

Removal of Auditor

Removal of Auditors

- On Expiry of Term
  - By Members at AGM
- Before Expiry of Term
  - a. ROOBH to Auditor
  - b. Prior approval from CG. (ADT -2) – with in 30 days of Board approval.
  - c. Special Resolution approval. (within 60 days of CG Approval)
  - d. Special Notice.
  - e. Notice to Auditor

Remuneration to Auditor

- Remuneration shall be paid in the form of Audit fee;
- It also includes the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended thereto.
- BUT DOES NOT INCLUDE any remuneration paid to him for any other services rendered by him at the request of the company

Restricted Services by Auditor

1. Accounting and book keeping services;
2. Internal audit;
3. Design and implementation of any financial information system;
4. Actuarial services;
5. Investment advisory services;
6. Investment banking services;
7. Rendering of outsourced financial services;
8. Management services; and
9. Any other kind of services as may be prescribed:

Who has to approve the remuneration	
By Board	By Members

Power and Duties of an Auditor

Power

a. Access Books of accounts & Vouchers
b. Call for explanations/ Information from the officers.
c. Right to access the records of subsidiary companies.
d. Check whether Loans and advances properly made with adequate security and accounting treatment are correct or not.
e. Check whether Transactions (mere book entries) prejudicial to the interest.
f. Price of securities sold.
g. Personal Expenditure inclusion
h. Allotment of securities

Duties

a. Make Audit Report to members of the Company as per the Act.
b. Make sure that financial statements give a true and fair view of the state of affairs of the Company.
c. To comply with the Auditing Standards as may be prescribed.

Miscellaneous Provisions

- To sign the auditor’s report or sign or certify any other document of the company
- The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor’s report shall be read before the company in general meeting and shall be open to inspection by any member of the company
- To Attend any general meeting
- The right to be heard at meeting on any part of the business which concerns him as the auditor.
- In case of Identification/Knowledge of fraudulent offenses against the company, Report to the Central Government in ADT -4 with in 60 days of such knowledge.

Non- Compliance / Penalty for Contraventions

Violation		Penalty		
Section	Particulars	Section	Contravention By	
140(2)	Intimation of Resignation with Company & ROC	140 (3)	Individual Auditor Min: INR 50,000/- Max: INR 5,00,000/-	Firm Min: INR 50,000/- Max: INR 5,00,000/-
141 (3)	Disqualification	141 (4)	To Vacate the office	To Vacate the office
143 (12)	Reporting of Fraud with CG	141 (15)	Individual Auditor Min: INR 1,00,000/- Max: INR 25,00,000/-	Individual Auditor Min: INR 1,00,000/- Max: INR 25,00,000/-
139-146	Contravention of section 139 -146	147 (1)	Company Min: INR 25,000/- Max: INR 5,00,000/-	Officer in Default **Imprisonment** Min: 1 day, Max: 1 year **AND / OR** **Fine -** Min; INR 10,000/- Max: INR 1,00,000/-
139, 143,144 , 145	Contravention by Auditor	147 (2) & (3)	Willful / Intentionally Min: 1 day, Max: 1 year **AND** **Fine** Min; INR 100,000/- Max: INR 25,00,000/- **And** Refund the remuneration. Pay Damages	WITHOUT KNOWINGLY **Fine** Min; INR 100,000/- Max: INR 25,00,000/- **And** Refund the remuneration. Pay Damages

NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the Thirtieth Annual General Meeting of the Members of .... Private limited will be held on ....day, ...th ...., 2014 at .... pm/am at ...., to transact the following business:

ORDINARY BUSINESS:

a. To receive, consider and adopt the Financial Statements of the Company for the year ended 31st March, 2014, including Audited Balance Sheet as at 31st March, 2014, the Statement of the Profit & Loss Account for the year ended on that date and Reports of the Board of Directors and Auditors thereon.

b. To declare the dividend on Equity shares, if any, for the Financial Year ended March 31, 2014

c. To Appoint Statutory Auditors and to fix their remuneration

To consider, and if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution:

"RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions, if any, of the Companies Act, 2013, read with rules made thereunder, M/s. ...., Chartered Accountants, (FRN No. ....),retiring auditors of the Company be and are hereby re-appointed as Statutory Auditors of the Company, to hold office for a period of 5 years from the conclusion of this Annual General Meeting until the conclusion of the ....th Annual General Meeting of the Company, subject to ratification of the appointment by the Members of the Company at every Annual General Meeting as per the provisions of the Companies Act, 2013, on such remuneration as may be agreed upon between the Board of Directors and the Statutory Auditor, in addition to the reimbursement of service tax and actual out of pocket expenses incurred in relation with the audit of accounts of the Company.

Registered Office:

By the Order of the Board

Name:..............................
Director
DIN:...............................

Place :
Date :

NOTES:

A MEMBER ENTITLED TO ATTEND AND VOTE AT THE MEETING IS ENTITLED TO APPOINT A PROXY TO ATTEND AND VOTE ON A POLL INSTEAD OF HIMSELF / HERSELF AND THE PROXY NEED NOT BE A MEMBER OF THE COMPANY. THE INSTRUMENT APPOINTING THE PROXY MUST BE DULY FILLED IN ALL RESPECT AND SHOULD BE DEPOSITED AT THE REGISTERED OFFICE OF THE COMPANY NOT LESS THAN FORTY-EIGHT HOURS BEFORE THE COMMENCEMENT OF THE MEETING

Formats – Intimation Letter

Date :

To,

Kind Attn:

Name of the Auditor/ Audit Firm

Address

Sub: Intimation for appointment of Statutory Auditor

Ref: Seeking Consent Letter & Certificate for re-appointment as Statutory Auditor under the Companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014

Dear Sir,

This is hereby intimate your that, the Company is planning to hold its Annual General Meeting for the financial year ended ……………., on……………………….. As per the provisions of section 139 of the companies Act, 2013, we request you to provide us your consent letter to become the Statutory Auditor for the period ………. and also the certificate under section 141 of the companies Act, 2013.

Please acknowledge this letter and oblige.

Thanking You,

Yours Sincerely

For ……………………………… Private Limited

(Name of the Director)

Director

DIN:

Formats – Consent letter and Certificate

Date :

To,

The Members of the Board of Directors

…………………….. Private Limited

Address

Sub: Consent Letter & Certificate for re-appointment as Statutory Auditor under the Companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014

Ref: Intimation letter received from your company dated ……………………

Thank You for the intimation letter as above, intimating us for our proposed appointment as auditors of your company at the ensuing Annual General Meeting. In this regard, we are pleased to provide our consent to become the Statutory Auditor of the Company pursuant to the Companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014.

FURTHER WE HEREBY CERTIFY THAT;

1) We are eligible for appointment as Auditors and are not disqualified for appointment under the Companies Act 2013 (the Act) , the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
2) The proposed appointment is as per the term provided under the Act;
3) The proposed appointment is within the limits laid down by or under the authority of the Act; and
4) There are no matters pending proceedings against us or any partner with respect to professional matters of conduct to best of our knowledge and belief, as on date.
5) We satisfy the criteria as provided under section 141 of the Act.

We hereby request the Company to file Form ADT-1 with the Registrar of Companies, if the appointment is approved by the members at the ensuing Annual General Meeting.

Thanking You,

Yours Faithfully

For ……………………….
(FIRM REGISTRATION NO: ………………….)

(Name of the Partner)
Partner
Membership No:

Place: Chennai

Formats – Extract of AGM Resolution

To be on Letter Head

Date:

EXTRACT OF MINUTES OF THE ANNUAL GENERAL MEETING OF MEMBERS OF THE COMPANY HELD ON ……………………………… AT REGISTERED OFFICE OF THE COMPANY AT……………………….. AT …. PM.

a. Appointment of Statutory Auditor:-

"RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions, if any, of the Companies Act, 2013, read with rules made thereunder, M/s. ……………………., Chartered Accountants, (FRN No. …………….),retiring auditors of the Company be and are hereby re-appointed as Statutory Auditors of the Company, to hold office for a period of 5 years from the conclusion of this Annual General Meeting until the conclusion of the ………..th Annual General Meeting of the Company, subject to ratification of the appointment by the Members of the Company at every Annual General Meeting as per the provisions of the Companies Act, 2013, on such remuneration as may be agreed upon between the Board of Directors and the Statutory Auditor, in addition to the reimbursement of service tax and actual out of pocket expenses incurred in relation with the audit of accounts of the Company.

// Certified True Copy//

For ……………………………. Private Limited

(Name of the Director)

Director

DIN:

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Your perfect Compliance Partner

UNYKS CS

Your perfect Compliance Partner

Thanks