

भारत के नियंत्रक एवं महालेखापरीक्षक का कार्यालय
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OFFICE OF THE COMPTROLLER &
AUDITOR GENERAL OF INDIA
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दिनांक / DATE 29-01-2025

सेवा में,

सभी क्षेत्रीय लेखापरीक्षा कार्यालयों के प्रमुख
(Commercial Audit Wing के अंतर्गत)

विषय: Standard Operating Procedure (SoP) in respect of Government owned/controlled other companies

महोदया / महोदय,

The Companies Act, 2013 gives mandate to the CAG to appoint statutory auditor of Government companies and Government owned/controlled other companies {Section 139(5) and 139(7)}. The duties and powers of the CAG in their case also include issuing directions to the statutory auditor, conducting supplementary audit of the financial statements and conducting test audit {Section 143(5), 143(6) and 143(7)}.

2. It has been noticed that some Government owned/controlled other companies are either not approaching the CAG Office or approaching after quite a few years for appointment of statutory auditor.

3. In this connection, Standard Operating Procedure (SoP) has been prepared to streamline the process regarding audit of Government owned/controlled other companies as per provisions of the Companies Act, 2013. Copy of the SoP is enclosed for necessary action by all concerned offices.

4. This issues with the approval of the Deputy CAG (Commercial).

संलग्न: Copy of Standard Operating Procedure.

भवदीय

(Signature)
29/01/25

(Naveen Singhvi)
Principal Director (Commercial-II)

Standard Operating Procedure (SoP) in respect of Government owned/controlled other companies

1. Introduction

Section 139(5)/139(7) of the Companies Act, 2013 provides that 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 CAG shall, in respect of a financial year, appoint auditor/first auditor. Ministry of Corporate Affairs (MCA) vide Circular No.33/2014 dated 31.07.2014 has clarified that the words "*any other company owned or controlled, directly or indirectly by the Central Government and partly by one or more State Government*" appearing in sub-sections (5) and (7) of Section 139 of the Companies Act, 2013 are to be read with the definition of 'control' in Section 2(27) of the Companies Act, 2013.

Section 2(27) stipulates that "control" shall include the right to appoint majority of the Directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. MCA vide ibid Circular has also clarified that documents like articles of association and shareholders' agreements etc. envisaging control under Section 2(27) are to be taken into account while deciding whether an individual company is covered under Section 139(5)/139(7) of the Companies Act, 2013.

Section 2(45) of the Companies Act, 2013 defines Government company as a company in which not less than 51 *per cent* of paid-up share capital is held by Government i.e., Central Government or by one or more State Governments or partly by Central Government and partly by State Government(s) and includes subsidiary of a Government company. Thus, the Government owned/controlled other companies are those companies where the shareholding of the Government is lower than 51 *per cent* but the still the Government exercises control over such companies as defined under Section 2(27) of the Companies Act, 2013.

Government companies and Government owned/controlled other companies, where statutory auditor is appointed by the CAG under provisions of Section 139(5)/139(7) of the

Companies Act, 2013, are also subject to Section 143(5), 143(6) and 143(7) of the Companies Act, 2013 where the duties and powers of the CAG include issuing directions to the statutory auditor, conducting supplementary audit, conducting test audit etc.

2. Present system of appointment of first statutory auditor by CAG

MCA vide Circular dated 31.07.2014 has clarified that it will be the responsibility of both, the relevant company and the Government concerned to inform the CAG about incorporation of a company subject to audit by an auditor to be appointed by the CAG for the purpose of appointment of first auditor. Similar provisions exist in CAG's Regulations on Audit and Accounts, 2020 under Regulation 55 and 56.

Accordingly, on receipt of request from the company/Government along with the requisite information like paid-up capital, certificate of incorporation, memorandum & article of association, administrative Ministry/Department etc. for appointment of statutory auditor of the Government company/Government owned/controlled other company, the Commercial Audit Wing of Headquarters initiates process for appointment of statutory auditor under provisions of the Companies Act, 2013 and entrustment of audit to Field Audit Office.

However, in some instances, it has been observed that the Government owned/controlled other companies are seldom not clear whether they are under CAG's audit jurisdiction for appointment of statutory auditor and audit under provisions of the Companies Act, 2013. Further, in some cases it has been observed that there has been different interpretation of the word 'control' by the companies with respect to the applicability of provisions of Section 139(5)/139(7) for appointment of statutory auditor by the CAG in their case. Resultantly, such companies have either not approached CAG Office or have approached after quite a few years for appointment of statutory auditor.

3. Objective of the SoP

In order to cover all the Government owned/controlled other companies under CAG's mandate as per provisions of the Companies Act, 2013, SoP has been prepared with the objective of clearly laying down the process to be followed for identifying Government owned/controlled other companies to help in proper implementation of provisions of the Companies Act, 2013 regarding CAG's mandate in case of Government owned/controlled other companies.

A. Action to be taken centrally by Commercial Audit Wing in Headquarters

- A yearly exercise would be carried out by Commercial Audit Wing requesting MCA to instruct the Registrar of the Companies (RoC) to have a preliminary assessment of new companies considering the shareholding pattern and composition of the Board of Directors of the companies and, in case it appears to RoC/MCA that the companies are falling under CAG's mandate in terms of MCA's Circular dated 31.07.2014, such cases may be brought to the notice of CAG Office for appointment of statutory auditor under provisions of the Companies Act, 2013.
- A yearly exercise would be carried out by Commercial Audit Wing requesting the Institute of Chartered Accountants of India to sensitize the Chartered Accountant fraternity to not accept statutory audit of the financial statements of such Government owned/controlled other companies where their appointment is made by the Management of such companies instead of by the CAG in view of the fact that the Chartered Accountants Act, 1949 (Clause 9 of Part-I) casts a responsibility upon the Auditor to ascertain from the company whether the requirements of Section 139 of the Companies Act, 2013 or any other law pertaining to appointment of Auditors have been complied with. Further, ICAI would be requested to sensitize its members to forward details of these identified cases to the O/o CAG of India.
- Commercial Audit Wing would take required steps for appointment of statutory auditor and entrustment of audit of these companies to concerned Field Audit Offices.

B. Action to be taken by Field Audit Offices and respective Headquarters Wings

- A yearly exercise should be carried out by the Field Audit Office apprising various Ministries/ Departments of the Government as well as the existing companies under their jurisdiction about MCA's Circular dated 31.07.2014. If instances of existing or new Government owned/controlled other companies, which are still not under CAG's mandate, come to the notice, the same may be brought to the notice of CAG Office. The similar exercise may be clubbed with during audit of apex auditable unit with regular audit plan.
- If instances of existing or new Government owned/controlled other companies, which are still not under CAG's mandate, come to the notice of the Desks/functional Wings in CAG Office

during examination of draft audit reports or draft comments or otherwise, the same may be brought to notice of Commercial Audit Wing.

- The following areas may be kept in focus while carrying out this exercise:
 - a) There is a strong probability that companies formed by the Government autonomous bodies/authorities like companies established by the National Highways Authority of India may be covered under CAG's mandate as Government owned/controlled other companies. Special emphasis may be given to these entities during the exercise carried out as stated above.
 - b) MCA has clarified (December 2016) that the equity stake of a Municipality or Local Body may not be treated at par with the equity stake of a State or Central Government for the purposes of reckoning as to whether a company is a Government company within the meaning of Section 2(45) of the Companies Act, 2013. However, the companies floated by such Municipalities or Local Bodies can still fall under CAG's mandate as Government owned/controlled other companies if Government's control can be established keeping in view their memorandum of association, articles of association, by-laws etc. and Section 2(27) of the Companies Act, 2013. This aspect may be carefully examined in these cases. All the instances which come to notice by any Field Audit Office, these may be informed to Commercial Audit Wing for further examination and taking required steps under the provisions of the Companies Act, 2013.
- Every Field Audit Office may designate a Nodal Officer for coordinating required actions under the SoP.