

# 5

## PROCEDURE FOR CANCELLATION OR SURRENDER OR DEACTIVATION OF DIN

{Section 155 read with Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014}

### Synopsis

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### Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 153, 155 and 403
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 11 and 12
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
e-Form to be filed	DIR-5

### Significant Relevant Approvals and Requirements

- ❖ DSC of the applicant and/or director of the intended company
- ❖ Board resolution
- ❖ Death Certificate of the DIN holder
- ❖ Declaration through Affidavit

### 5.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>The Director Identification number (DIN) of a person shall be cancelled or deactivated by the Central Government or Regional Director (Northern Region), or any officer authorised by the Regional Director, upon being satisfied, under any of the following circumstances:</p> <p>(a) circumstances for cancellation or surrender of DIN:</p> <ul style="list-style-type: none"><li>(i) DIN is found to be duplicated in respect of same person</li><li>(ii) DIN was obtained in a wrongful manner* or by fraudulent means**</li><li>(iii) Death of the concerned individual</li><li>(iv) Concerned individual has been declared as a person of unsound mind by a competent court</li></ul>

S. No.	Particulars
	<p>(v) Concerned individual has been adjudicated an insolvent</p> <p>(vi) DIN holder has made an application in Form DIR-5 for surrender his/her DIN stating that he/she has never been appointed as a director in any company and the said DIN has never been used for filing of any document with any authority</p> <p>(b) circumstances for deactivation of DIN:</p> <p>(i) The concerned individual failed to intimate his/her particulars in e-Form DIR-3 KYC or DIR-3 KYC-WEB within the stipulated time, i.e., on or before 30<sup>th</sup> September.</p> <p>* "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation.</p> <p>** "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.</p> <p>{Rule 11(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014}.</p>
2.	<p>In case of surrender of a DIN, an application in <b>e-Form DIR-5</b> shall be made with the Central Government with such fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014 by the following person:</p> <ul style="list-style-type: none"> <li>• by DIN holder himself/herself, in case of: <ul style="list-style-type: none"> <li>(a) multiple DINs;</li> <li>(b) DIN was obtained in wrongful manner or by fraudulent manner;</li> <li>(c) DIN was never associated with any Company/LLP.</li> </ul> </li> <li>• by director of that company in which the concerned person/DIN holder holds Directorship or by relative of the concerned person/DIN holder, in case of: <ul style="list-style-type: none"> <li>(a) Death of the concerned person/DIN holder;</li> <li>(b) Concerned person declared as a person of an unsound mind by a competent court;</li> <li>(c) Concerned person has been adjudicated as an insolvent.</li> </ul> </li> </ul>
3.	<p>Arrange following supported documents in case the application in <b>e-Form DIR- 5</b> is filed by the DIN holder:</p> <p>(a) Declaration through Affidavit duly notarised that DIN holder has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority.</p> <p>(b) Declaration through Affidavit that he/she will update his/her retained DIN with all Companies/LLPs.</p> <p>(c) Identity proof and residence proof of the applicant:</p> <p>(i) <b>Document as proof of identity:</b></p> <ul style="list-style-type: none"> <li>❖ Permanent Account Number (PAN) Card</li> <li>❖ Voter ID Card</li> <li>❖ Driving License</li> <li>❖ Aadhaar Card</li> <li>❖ Passport</li> </ul>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> <li>• Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 154 or any other number as may be prescribed under section 155 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-11) (Section 155 of the Act read with rule 153 of the Companies Incorporation Rules, 2014).</li> <li>• Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act).</li> <li>• A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012).</li> <li>• A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act)             <ul style="list-style-type: none"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.</li> </ul> </li> </ul>
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Appointment and Qualification of <u>Directors</u> ) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-11) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at [www.bharatlaws.com](http://www.bharatlaws.com)

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)