

PROCEDURE FOR INCORPORATION OF SECTION 8 COMPANY

8

{Section 8 of the Act read with rule 19 of the Companies (Incorporation) Rules, 2014}

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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 4, 8, 7, 10A, 12, 152, 153, 403 and Schedule I
The Companies (Incorporation) Rules, 2014	Rules 8, 8A, 8B, 9, 9A, 12, 14, 15, 17, 18, 19, 20, 23A, 38 and 38A
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 8, 9 and 17
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
e-Forms to be filed	SPICe+ (INC 32), AGILE- PRO- S (INC 35) INC-22.

Particulars	Section(s), Rule(s) and Name of e-Form(s)
Forms to be filed as an attachment with respective forms	INC-9- {Mandatory where total number of subscribers and/or directors are greater than 20, and/or any subscriber and/or director does not have DIN/PAN} DIR-2 and DIR-8 INC-14 and INC-15 INC-13 (MOA) and INC-31 (AOA)

Significant Relevant Approvals and Requirements

- ❖ DSC of the applicant and/or director of the intended company.
- ❖ Trademark registration certificate/trademark application
- ❖ No objection certificate from the sole proprietorship/partner/other associates/ company/body corporate
- ❖ Proofs of office address/registered office address
- ❖ Proof for appointment of authorised signatory for bank account/GSTIN, etc
- ❖ Formats of Specimen Signatures of the authorised person
- ❖ DIN related documents, if DIN is to be taken.
- ❖ Consent of directors in DIR 2
- ❖ Eligibility/non-disqualification letter from directors in DIR 8
- ❖ An estimated figure of future annual income and expenditure of the proposed company, specifying the source of income and object of expenditure.
- ❖ Declaration from promoters and professional regarding incorporation.
- ❖ Declaration for commencement of business.

8.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars																		
1.	<p>Ensure:</p> <ul style="list-style-type: none"> • that the minimum number of Members and Directors of the proposed company are as below— <ul style="list-style-type: none"> (a) Number of Members for: {Section 3(1) of the Act}. <table border="0"> <thead> <tr> <th>Type of Co.</th> <th>Minimum</th> <th>Maximum</th> </tr> </thead> <tbody> <tr> <td>Private Co.</td> <td>2</td> <td>200</td> </tr> <tr> <td>Public Co.</td> <td>7</td> <td>No Limit</td> </tr> </tbody> </table> <p>A firm may be a member of the company registered under section 8 of the Act {Section 8(3) of the Act}.</p> (b) Number of Director for: {Section 149(1)(a) of the Act}. <table border="0"> <thead> <tr> <th>Type of Co.</th> <th>Minimum</th> <th>Maximum</th> </tr> </thead> <tbody> <tr> <td>Private Co.</td> <td>2</td> <td>15</td> </tr> <tr> <td>Public Co.</td> <td>3</td> <td>15</td> </tr> </tbody> </table> <p>Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year, provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated {Section 149(3) of the Act}.</p> 	Type of Co.	Minimum	Maximum	Private Co.	2	200	Public Co.	7	No Limit	Type of Co.	Minimum	Maximum	Private Co.	2	15	Public Co.	3	15
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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"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 2 (two) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • 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). • 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). • 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"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
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 Incorporation and Qualification of Directors) Rule, 2014.
4.	Form as mentioned in writing, on or before appointment, from the appointed director as Form 208-2 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 Incorporation and Qualification of Directors) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) 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

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