

PROCEDURE FOR COMMENCEMENT OF BUSINESS

10

{Section 10A of the Act read with Rule 23A of the Companies (Incorporation) Rules, 2014}

Synopsis

10.1 Procedure with Check Points	325
10.2 Forms to be filed	327
10.3 List of documents required	328
Appendix 10.1 Sample Board Resolution	328
Appendix 10.2 Declaration Format	329

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 10A, 12, 118, 173 and 403
The Companies (Incorporation) Rules, 2014	Rule 23A
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-form to be filed	INC-20 A

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Declaration regarding receipt of subscriber's money from all subscribers as agreed.
- ❖ Proof of receipt of Subscriber's money.
- ❖ Registration/approval of applicable sectoral regulatory authority, if applicable
- ❖ Proof of filing of verification of registered office.

10.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that the newly incorporated company, having a share capital, has not commenced its business or exercised its borrowing powers without complying the provisions of section 10A of the Companies Act, 2013 and rule 23A of the Companies (Incorporation) Rules, 2014.

S. No.	Particulars
2.	Ensure that within a period of 30 (thirty) days ¹ of the date of incorporation of the newly incorporated company, the verification of registered office as provided under section 12 (2) of the Companies Act, 2013 has been filed with fee with the jurisdictional Registrar of Companies in e-Form INC-22 in cases where intimation regarding the same was not given during incorporation of the company.
3.	<p>Ensure that within a period of 180 (one hundred and eighty) days of the date of incorporation of newly incorporated company:</p> <ul style="list-style-type: none"> • the value of the shares, in cash or in kind, from every subscriber to the Memorandum of Association (MOA) as agreed by them has been received by the newly incorporated company, however, if value of shares has been adjusted by any subscriber against the pre-incorporation expenses incurred by him/her, a board resolution has been passed by the newly incorporated company in this regard. • registration or approval from applicable sectoral regulatory authorities, like, Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) etc., if company's pursuing objects requiring such registration/approval has been obtained by the newly incorporated company. <p><i>{Section 10A(1)(a) of the Act read with rule 23A of the Companies(Incorporation) Rules, 2014}</i></p>
4.	Arrange bank statement of the company showing the subscription amount received by the company from every subscriber to the MOA and prepare a declaration stating that the subscribed money in full has been received, in cash or in kind, from each subscriber to the MOA as agreed by him/her and has been deposited into bank account of the company.
5.	<p>Complete the formalities regarding calling of board meeting within a period of 180 (one hundred and eighty) days in the following manner:</p> <ul style="list-style-type: none"> • prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting. • Send notice of board meeting to all the directors— <ul style="list-style-type: none"> - at least 7 days before the date of board meeting or - in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.
6.	<p>Conduct board meeting and pass the following resolutions:</p> <ul style="list-style-type: none"> - take note of receipt of subscription money from every subscriber to the MOA. - take note of adjustment of subscription money against pre-incorporation expenses incurred by subscriber(s) to the MOA. - take note of approval of sectoral authority(ies), if applicable

1 In case of Specified IFSC Public Company and IFSC Private Company -the words “thirty days” read as “sixty days”. - Notification No. GSR 8(E) and GSR 9(E) both date 4th January, 2017.

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 3 (three) persons can be obtained through incorporation with integrated form SPICe+ (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 companies provisions a 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.
1.	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).
2.	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 Rules, 2014).
3.	Form an affidavit 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 Incorporation and Qualification of Directors Rules, 2014).
4.	The particulars of first directors to be integrated with Form SPICe+ (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 \(in 2 vols.\)](#)