

# PROCEDURE FOR APPOINTMENT OF FIRST DIRECTOR/REGULARISATION OF DIRECTORS

12

{ Section 152 of the Act read with Rule 9 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 149, 152, 153, 154, 158, 159, 164, 165, 170 and 403
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 8, 9, 10, 14, 17 and 18
The Companies (Meetings of Board and its Powers) Rules, 2014	Rules 9, 15 and 16
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
e-Forms to be filed	For first directors: SPICe+(INC-32) For regularisation: No form is required to be filed
Forms to be filed as an attachment with respective forms	DIR-2

## Significant Relevant Approvals and Requirements

- ❖ DSC of the applicant and/or director of the intended company
- ❖ Director Identification Number
- ❖ Consent to act as director in Form DIR-2
- ❖ Intimation of eligibility regarding non-disqualification in Form DIR-8

## 12.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that <ul style="list-style-type: none"> <li>• the name of all the first directors are mentioned in the Articles of Association (AOA), which is filed at the time of incorporation of the company with the Registrar, Central Registration Centre (CRC) . If names are mentioned in articles of association then they are considered as first directors and if names are not mentioned in articles of association, then all</li> </ul>

S. No.	Particulars
	<p>the subscribers, who are individuals to 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 {<i>Section 152(1) of the Act</i>}.</p> <ul style="list-style-type: none"> <li>• that 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 153 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 web integrated form SPICe+ (INC-32) {<i>Section 152(3) of the Act read with rule 38(3) of the Companies (Incorporation) Rules, 2014</i>}.</li> <li>• out of 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 {<i>Section 149(3) of the Act</i>}.</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 {<i>Section 164 of the Act read with exemptions granted to a government company vide notification no. GSR 463(E) dated 05.06.2015</i>}</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 {<i>Section 165(1) of the Act</i>}: <ul style="list-style-type: none"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies excluding 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 companies</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 name(s) of first directors { <i>Section 152 (1) of the Act</i> }.
3.	Obtain consent in writing, on or before appointment, from the appointee director to act as director in the company in <b>Form DIR-2</b> { <i>Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014</i> }.
4.	Obtain an intimation in writing, on or before appointment, from the appointee director in <b>Form DIR-8</b> regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a director { <i>Section 164 of the Act read with rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014</i> }.
5.	File particulars of first directors in the Integrated Web Form SPICe+ (INC- 32) at the time of incorporation of company.

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+ (INC-32) (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>
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 <b>DIR-2</b> (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
3.	Form created in writing, on or before appointment, from the appointed director as Form <b>DIR-3</b> 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 <b>Directors</b> 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](http://www.bharatlaws.com)

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