

# PROCEDURE FOR RE-APPOINTMENT OF DIRECTORS (RETIRING BY ROTATION) IN CASE OF PUBLIC COMPANIES

13

{Section 152(6) of the Companies Act, 2013}

## Synopsis

13.1 Procedure with check points	371
<b>Appendix 13.1</b> Sample Shareholders Resolution	374
<b>Appendix 13.2</b> Sample Board Meeting Noting	374

## Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 118, 149, 152, 153, 154, 158, 159, 162, 164, 165, 170, 173 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
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	-

## Significant Relevant Approvals and Requirements

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

## 13.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Check following points before ascertaining the number of directors liable to retire by rotation at the ensuing annual general meeting of the company as per section 152 of the Companies Act, 2013 -</p> <ul style="list-style-type: none"> <li>• the provisions of Section 152(6) of the Companies Act, 2013 regarding retirement of directors is applicable to all public companies <b>except a government company, which is not a listed company, in which (a)</b> not less than fifty-one per cent of paid-up share capital is held- by- the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; <b>(b) a subsidiary of a Government company</b>, referred to in (a) above.</li> </ul>

S. No.	Particulars
	<ul style="list-style-type: none"> <li>• the Article of Association (AOA) of a private limited company may contain provisions regarding retirement of directors, so at the time of sending notice of annual general meeting of a private limited company, check the articles of the articles of association of that private limited company whether it contains the provisions regarding directors retireable by rotation {<i>Section 152(6) of the Act</i>}.</li> <li>• unless the articles of association provide for the retirement of all directors at every annual general meeting, not less than 2/3rd (two-thirds) of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation {<i>Section 152(6) of the Act</i>}. (The total number of directors means total directors excluding Independent Directors, if any, appointed into the company).</li> <li>• at the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, the 1/3rd (one third) of such of the directors whose period of office is liable to retire by rotation, shall be liable to retire by rotation at an Annual General Meeting (AGM) and 1/3rd directors shall be those directors who have been longest in the office since their last appointment and if their number is neither 3 (three) nor multiple of 3 (three), then the number nearest to 1/3rd (one third) shall be taken for the purposes of retirement. Also, the case where more than one director is appointed on the same date, the directors who will retire shall be determined subject to an agreement among themselves, if any, otherwise it will be determined by lot {<i>Section 152(6)(c) and (d) of the Act</i>}.</li> <li>• a person shall not be eligible for re-appointment, if he/she has any disqualification for appointment as a director {<i>Section 164 of the Act</i>}</li> </ul>
2.	Ascertain the number of directors liable to retire by rotation at the ensuing annual general meeting of the company and identify which director(s) will be liable to retire by rotation and also ensure that the identified directors must not be, independent director, director appointed by small shareholder or nominee director as these categories of directors are not liable to retire by rotation.
3.	Obtain consent of the retiring director, whether the retiring director is willing to be re-appointed as a director or not.
4.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> <li>• Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting.</li> <li>• Send notice of board meeting to all the directors <ul style="list-style-type: none"> <li>- at least 7 days before the date of board meeting or</li> <li>- in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.</li> </ul> </li> </ul>
5.	Convene the board meeting and pass board resolution along with resolutions of annual general meeting businesses, for:

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 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-1 (INC-32) (Section 152 of the Act read with rule 152 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 companies provisions a 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 208-2 (Part 2 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 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 <b>Directors</b> Rules, 2014).
4.	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](http://www.bharatlaws.com)

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