

PROCEDURE FOR APPOINTMENT OF ALTERNATE DIRECTOR

16

{Section 161(2) of the Companies Act, 2013}

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 117, 118, 149, 152, 153, 154, 158, 159, 161, 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
The Companies (Management and Administration) Rules, 2014	Rule 24
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
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	DIR-12
Forms to be filed as an attachment with respective form	DIR-2

Significant Relevant Approvals and Requirements

- ❖ DIN of the concerned person
- ❖ Consent to act as director in Form DIR-2
- ❖ Intimation of eligibility regarding non-disqualification in Form DIR-8
- ❖ Nomination and Remuneration Committee Resolution
- ❖ Board Resolution
- ❖ Ordinary resolution, if AOA is not authorising to appoint alternate director

16.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • Articles of Association have provisions to appoint an alternate director and if the articles of association have procedure for appointment of an alternate director, then the company must follow that procedure along with the procedure mention below. If the articles of association have no provisions for appointment of an alternate director, then first amend the articles of association as to include the provisions of appointment of an alternate director. {<i>Section 161(1) of the Act</i>} • the board of directors have been authorised by its article of association to appoint an alternate director, and if not, an alternate director may be appointed by a resolution passed by the company in general meeting {<i>Section 161(2) of the Act</i>}. • the proposed person not holding any alternate directorship for any other director in the company or holding directorship in the same company {<i>Section 161(2) of the Act</i>}. • the person proposed to be appointed as an alternate director in a company, other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013: <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies excluding directorship in dormant companies {<i>Section 165(1) of the Act</i>} - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies {<i>Section 165(1) of the Act</i>} - shall not be appointed if such person was associated with the company as a small shareholder's director during a period of 3 years prior to his appointment {<i>Rule 7(9) of the Companies (Appointment and Qualification of Directors) Rules, 2014</i>}. - is not a person who failed to get appointed as a director in general meeting of the company held in the past {<i>Section 161(1) of the Act</i>}. • any person proposed to be appointed as an alternate director in place of an independent director, he must possess the same qualification as are applicable for a person to be appointed as an independent director {<i>First proviso to section 161(2) of the Act</i>}. • any person who is to be appointed as an alternate director shall act as an alternate director for a director during his/her absence for a period of not less than 3 (three) months from India {<i>Section 161(2) of the Act</i>}. • an alternate director shall not hold office for a period longer than that permissible to the director in whose place he/she has been appointed and shall vacate the office if and when the director in whose place he/she has been appointed returns to India. (If the term of office of the original director is determined before he/she so returns to India, any provision for the automatic re-appointment of retiring directors in

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-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 jointly incorporated companies, 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 companies.
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 DIR-2 (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
3.	Forms an certificate in writing, on or before appointment, from the appointed director as Form DIR-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-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 \(in 2 vols.\)](#)