

PROCEDURE FOR APPOINTMENT OF INDEPENDENT DIRECTOR

{Section 149(6) and 150 and schedule IV of the Act read with Rules 4, 5, and 6 of the Companies (Appointment and Qualification of Directors) 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 110, 118, 149, 150, 152, 153, 154, 158, 159, 161, 164, 165, 170, 173 and 403, Schedule-IV
The Companies (Incorporation) Rules, 2014	Rule 25A
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 4, 5, 6, 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
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

20.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that the company is required to appoint an independent director as per Section 149(4) of the Companies Act, 2013 and rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 wherever it is stated that following companies, except Sec 8 (Non-profit) companies, are required to appoint an Independent Directors:</p> <ul style="list-style-type: none">• every listed company and in listed company 1/3rd (one third) of the total number of directors must be Independent Directors.• every below mentioned public companies, except a joint venture unlisted public company, a wholly owned subsidiary unlisted public company and dormant unlisted public company according to Section 455 of the Companies Act, 2013, must have 2 (two) Independent Directors:<ul style="list-style-type: none">- companies having paid up share capital of Rs. 10 (ten) crore or more, or- companies having turnover of Rs. 100 (hundred) crore or more, or- companies which have, in aggregate, outstanding loans, debentures and deposits exceeding Rs. 50 (fifty) crores. <p>Also note that above companies may appoint a higher number of Independent Directors due to composition of its Audit Committee. {<i>Rule 4(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014</i>}.</p>
2.	<p>Ensure that the person proposed to be appointed, who is selected after due diligence, as an independent director fulfils the following conditions {<i>Section 149(6) of the Act read with rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014</i>}:</p> <ul style="list-style-type: none">(i) he/she possess appropriate skills, experience, and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.(ii) he/she in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;(iii) he/she is or was not a promoter of the company or its holding, subsidiary or associate company;(iv) he/she is not related to promoters or directors in the company, its holding, subsidiary or associate company;(v) he/she has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or

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 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 Rules, 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 Rules, 2014).
5.	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 \(in 2 vols.\)](#)