

PROCEDURE FOR PASSING BOARD RESOLUTION BY CIRCULATION

*{Section 175 of the Act read with Rule 5 of the
Companies (Meetings of Board and its powers) Rules, 2014}*

Synopsis

111.1 Procedure	1914
Appendix 111.1 Sample of letter to the directors for resolutions to be passed by circulation	1919

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, 173, 175, 179, 180 and 184
The Companies (Meetings of Board and its Powers) Rules, 2014	Rules 5 and 8
Secretarial Standard-1	Clauses 3, 4, 5, 6, 7 and 8

111.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that the subject matter of resolution can be passed through resolution by circulation as following resolutions cannot be passed through resolution by circulation as per Section 179 read with Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 and further as per SS1 issued by ICSI the following list of items of business prescribed under the Act and under Secretarial Standard I which cannot be exercised by the board by passing resolutions by circulation:</p> <p style="margin-left: 40px;">(A) Items of business as per section 179(3)¹ of the Companies Act, 2013—</p> <ul style="list-style-type: none"> (a) to make calls on shareholders in respect of money unpaid on their shares; (b) to authorise buy-back of securities under section 68; (c) to issue securities, including debentures, whether in or outside India; (d) to borrow monies;* (e) to invest the funds of the company;* (f) to grant loans or give guarantee or provide security in respect of loans;*

1 *In case of Specified IFSC public company or Specified IFSC private company, the Board can exercise powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation. {Exemption Notification No. GSR 8 (E) for public company and GSR 9(E) for private company both dated 04.01.2017}.*

S. No.	Particulars
	<p>(g) to approve financial statement and the Board's report;</p> <p>(h) to diversify the business of the company;</p> <p>(i) to approve amalgamation, merger or reconstruction;</p> <p>(j) to take over a company or acquire a controlling or substantial stake in another company;</p> <p>* Board after passing a board resolution can delegate its power to a committee of directors, managing director or manager or principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office {<i>First proviso to section 179(3) of the Act</i>}.</p> <p>* In section 8 company matters may be decided by the Board by circulation instead of at a meeting {<i>Exemption Notification No. GSR 466(E) dated 05.06.2015</i>}.</p> <p>(B) Items of business¹ as per Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014-</p> <p>(a) to make political contributions;</p> <p>(b) to appoint or remove key managerial personnel (KMP);</p> <p>(c) to appoint internal auditors and secretarial auditor;</p> <p>(C) Items of business as per Secretarial Standard-1 of ICSI which shall not be passed by circulation-</p> <p>(a) General Business Items:</p> <ul style="list-style-type: none"> • Noting Minutes of Meetings of Audit Committee and other Committees. • Approving financial statements and the Board's Report. • Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company. • Specifying list of laws applicable specifically to the company. • Appointment of Secretarial Auditors and Internal Auditors. <p>(b) Specific Items:</p> <ul style="list-style-type: none"> • Borrowing money otherwise than by issue of debentures. • Investing the funds of the company. • Granting loans or giving guarantee or providing security in respect of loans. • Making political contributions. • Making calls on shareholders in respect of money unpaid on their shares.

¹ In case of Specified IFSC public company or Specified IFSC private company, the Board can exercise powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation. {*Exemption Notification No. GSR 8 (E) for public company and GSR 9(E) for private company both dated 04.01.2017*}.

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-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 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 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 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 <u>Directors</u> 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 \(in 2 vols.\)](#)