

PROCEDURE FOR PASSING OF RESOLUTION(S) THROUGH POSTAL BALLOT

114

{Section 110 of the Act read with Rule 22 of the Companies
(Management and Administration) Rules, 2014}

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 109, 110, 111, 118 and 173
The Companies (Management and Administration) Rules, 2014	Rules 22 and 25
Secretarial Standard-2 of ICSI	Clause 16 and Annexure

14.1 PROCEDURE WITH MAJOR CHECK POINTS

S. No.	Procedure
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • if the company is a listed company other than the listed on SME exchange or if the company having more than the 200 members, the following business shall be conducted only through postal ballot:- <ul style="list-style-type: none"> (a) alteration of the object clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum; (b) alteration of articles of association in relation to insertion or removal of provisions which, under section 2(68) of the Act, are required to be included in the articles of a company in order to constitute it a private company; (c) change in place of registered office outside the local limits of any city, town or village as specified in section 12(5) of the Act; (d) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under section 13(8) of the Act; (e) issue of shares with differential rights or otherwise section 43(a)(ii) of the Act; (f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48 of the Act; (g) buy-back of shares by a company under section 68(1) of the Act; (h) election of a director under section 151 of the Act; (i) sale of the whole or substantially the whole of an undertaking of a company as specified under section 180(1)(a) of the Act.

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	<p>(j) giving loans or extending guarantee or providing security in excess of the limit specified under section 186(3) of the Act. <i>{Rule 22(16) of the Companies (Management and Administration) Rules, 2014}</i></p> <ul style="list-style-type: none"> • any aforesaid items of business required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108 of the Act, in the manner provided in that section <i>{First proviso to Rule 22(16) of the Companies (Management and Administration) Rules, 2014}</i> • one person companies and other companies having members up to 200 (two hundred) shall not be required to transact any business through postal ballot <i>{Second proviso to Rule 22(16) of the Companies (Management and Administration) Rules, 2014}</i>. • the business to be conducted through postal ballot is not an ordinary business <i>{Section 110(1)(b) of the Act}</i>. • the business to be conducted through postal ballot is not any business in which director or auditor have a right to be heard at the meeting <i>{Section 110(1)(b) of the Act}</i>.
3.	Search a person who can be appointed as a scrutiniser who shall not be in the employment of the company and obtain his consent for the same.
4.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> • Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting. • Send notice of board meeting to all the directors <ul style="list-style-type: none"> - at least 7 days before the date of board meeting or - in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1
5	<p>Prepare a draft notice of postal ballot with explanatory statement including following contents as per Rule 22 of the Companies (Management and Administration) Rules, 2014 and Secretarial Standard-2:</p> <ul style="list-style-type: none"> • a draft resolution explaining the reasons therefore and requesting them to send their assent or dissent in writing on a postal ballot; • day, date and time and venue where the results of the voting will be announced and the link of the website where such result will be displayed; • mode of declaration of result of the voting by postal ballot; • date of commencement of voting (postal and e-voting); • date of end of voting (postal and e-voting); • statement that any postal ballot form received from the Member after thirty days from the date of dispatch of Notice will not be valid; • statement to the effect that Member who has not received postal ballot form may apply to the company and obtain a duplicate thereof; and • contact details of the person responsible to address the queries/ grievances connected with the voting by postal ballot including voting by electronic means, if any.

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 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.	Form created 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+ (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 \(in 2 vols.\)](#)