

# **PROCEDURE FOR CONDONATION OF DELAY IN FILING OF VARIOUS FORMS**

119

*{Section 460 of the Companies Act, 2013}*

## **Synopsis**

119.1 Procedure with check points	2109
119.2 Forms to be filed	2111
119.3 List of documents required	2111
119.4 List of information required	2112
<b>Appendix 119.1</b> Format of application to Central Government	2112
<b>Appendix 119.2</b> Sample board resolution	2114
<b>Appendix 119.3</b> Format of undertaking	2115

## **Relevant Sections, Rules and Forms at a Glance**

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 173 and 460
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-forms to be filed	CG-1 INC-28

## **Significant Relevant Approvals and Requirements**

- ❖ Board resolution
- ❖ Reasons for delay of non-filing of application or form, etc., within due time
- ❖ Application with particulars of the company including brief facts of the application
- ❖ Undertaking stating that no prosecution has been filed against the company and right of the shareholders are secured
- ❖ Details of the application or form, etc., to be filed

## **119.1 PROCEDURE WITH CHECK POINTS**

S. No.	Particulars
1.	<p>Note that, notwithstanding anything contained in this Act</p> <ul style="list-style-type: none"> <li>- the Central Government may condone the delay, for reasons to be recorded in writing, in filing of any application which was required to be filed with the Central Government under any provision of this Act in respect of any matter, which was not made within the time specified under concerned provision of this Act</li> <li>- the Central Government may condone the delay, for reasons to be recorded in writing, where any document required to be filed with the Registrar under any provision of this Act, which was not filed within the time specified under concerned provision of this Act.</li> <li>- the maximum time period, i.e., 270 days from the due date for filing of any application to the central government or filing of certain document with the Registrar of Companies has elapsed and condonation of delay of the same is required under the Act.</li> </ul>

S. No.	Particulars
2.	<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>
3.	<p>Convene board meeting to pass the following resolutions for:</p> <ul style="list-style-type: none"> <li>• filing an application with the Central Government, i.e., the Ministry of Corporate Affairs for condonation of delay in filing of any document with the Registrar of Companies or other authorities under the Companies Act, 2013.</li> <li>• authorising a director to execute an undertaking as required by the Central Government.</li> <li>• authorising a director to sign and execute the application and to digitally sign the form.</li> </ul>
4.	<p>Complete formalities regarding minutes of the board meeting as per Section 118 of the Companies Act, 2013 in the following manner:</p> <ul style="list-style-type: none"> <li>• Prepare draft minutes of the board meeting and circulate, within a period of fifteen days from the date of conclusion of that meeting, to all directors, by hand/speed post/registered post/courier/e-mail or by any recognised electronic means, for their comment(s).</li> <li>• All directors shall communicate their comment(s), if any, on the draft circulated minutes within a period of seven days from the date of circulation of the draft minutes.</li> <li>• Add the suggested comment(s) given or suggested by any director and finalise the minutes.</li> <li>• Enter the minutes, in the minute book of the board meeting, within thirty days from the date of conclusion of the board meeting.</li> <li>• Minutes of the board meeting shall be signed and dated by the chairman of that meeting or by the chairman of the next meeting.</li> <li>• The signed minutes duly certified by Company Secretary/any director where Company Secretary is not appointed shall be circulated within 15 days of signing to all the directors as on the date of meeting and appointed thereafter, except those directors who have waived to receive such signed minutes.</li> </ul>
5.	<p>Prepare an undertaking stating that no prosecution has been filed against the company and right of the shareholders are secured and there is no effect of non-filing of the said form/resolution and the said undertaking shall be signed by either managing director/whole time director/director/secretary of the company.</p>
6.	<p>Arrange all the documents required to be attached with the application and prepare application and get it signed by two directors of the company.</p>

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>
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 Appointment and Qualification of Directors) Rule, 2014.
4.	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 164 of the Companies Appointment and Qualification of <u>Directors</u> ) Rule, 2014.
5.	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 \(in 2 vols.\)](#)