

**PROCEDURE FOR CONTRIBUTION TO
BONA FIDE CHARITABLE FUNDS
IF THE AGGREGATE AMOUNT OF
CONTRIBUTION IS MORE THAN 5%
OF ITS AVERAGE PROFIT FOR
THE THREE IMMEDIATELY
PRECEDING FINANCIAL YEARS**

{Section 181 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 173 and 181 |
| 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 18 |
| e-forms to be filed | ----- |

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Ordinary resolution
- ❖ Particulars of the charitable organisation
- ❖ Amount of contribution proposed to be made and amount already paid during the current financial year
- ❖ Average profit for the three immediately preceding financial years

121.1 PROCEDURE WITH CHECK POINTS

| S. No. | Particulars |
|--------|--|
| 1. | Decide the amount of contribution, donation, etc., and search a <i>bona fide</i> charitable organisation for contributing funds exceeding 5% of its average profit for the three immediately preceding financial years . |
| 2. | Complete formalities regarding calling of board meeting in the following manner: <ul style="list-style-type: none"> • Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting. |

| S. No. | Particulars |
|--------|--|
| | <ul style="list-style-type: none"> • 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. |
| 3. | <p>Convene board meeting to pass the following resolutions for:</p> <ul style="list-style-type: none"> • contributing the funds of the company for charitable purposes for an aggregate amount in any financial year in excess of 5% of its average net profits for the three immediately preceding financial years subject to approval of shareholders by way of ordinary resolution. • fixing up the day, date, time and venue of the general meeting • approving the notice of general meeting • authorising a person to complete the formalities for the same. |
| 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"> • 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). • 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. • Add the suggested comment(s) given or suggested by any director and finalise the minutes. • Enter the minutes, in the minute book of the board meeting, within thirty days from the date of conclusion of the board meeting. • Minutes of the board meeting shall be signed and dated by the chairman of that meeting or by the chairman of the next meeting. • 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. |
| 5. | <p>Send notice of general meeting to all directors, shareholders, auditors, secretarial auditors and Debenture Trustee, if any, of the company at least 21 clear days before the date of general meeting. However, notice may be given at a shorter period of time if consent in writing is given thereto, by physical or electronic means, by not less than ninety five percent of the members entitled to vote at such meeting in case the matter is considered in Annual General Meeting, however, if the matter is taken in Extra Ordinary General Meeting, then shorter notice of general meeting may be given subject to consent of majority members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting.</p> |

| S. No. | Particulars |
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| | <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 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. |
| 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 DIR-2 (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014). |
| 4. | 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). |
| 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 \(in 2 vols.\)](#)