

PROCEDURE TO MAKE CONTRIBUTION TO POLITICAL PARTIES

122

{Section 182 of the Companies Act, 2013}

Synopsis

122.1 Procedure with check points	2129
122.2 Forms to be filed	2131
122.3 List of documents required	2132
122.4 List of information required	2132
Appendix 122.1 Sample Board Resolution	2132

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, 173, 179 and 182
The Representation of the People Act, 1951	Section 29A
The Companies (Meeting of Board and its Powers) Rules, 2014	Rule 8
The Companies (Management and Administration) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-forms to be filed	MGT-14

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Particulars of the political party
- ❖ Certificate of Political Party registered under section 29A of the Representation of the Peoples Act, 1951.

122.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Note that the following companies cannot make any contribution, directly or indirectly, to any political party if- <ul style="list-style-type: none">- a government company- a company in existence for less than 3 financial years {Section 182(1) of the Act}
2.	Ensure that the political party to whom contribution is to be made is a political party registered under Section 29A of the Representation of the People Act, 1951 as obtain certificate of Political Party as registered under section 29A of the Representation of the Peoples Act, 1951.

S. No.	Particulars
3.	<p>Note that following contribution shall also be considered as contribution for a political purpose—</p> <p>(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose</p> <p>(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,</p> <p>(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and</p> <p>(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.</p> <p><i>{Section 182(2) of the Act}.</i></p>
4.	Decide the political party(ies) to whom contribution shall be made.
5.	<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.
6.	<p>Convene board meeting to pass the following resolution for:</p> <ul style="list-style-type: none"> • contributing an amount of ₹-----, to political party(ies) as per section 182 of the Companies Act, 2013. • authorising a person/ director to complete the formalities for the same
7.	<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.

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 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 208-2 (Part 2 of the Companies Incorporation and Qualification of Directors Rules, 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 17 of the Companies Incorporation and Qualification of <u>Directors</u> 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 \(in 2 vols.\)](#)