

**MARKING OF e-FORM AS DEFECTIVE BY
THE REGISTRAR OF COMPANIES ON
REQUEST OF A COMPANY AND
AUTHORISED PERSON**

126

*{Section 398 of the Act read with Rule 10(6) of the
Companies (Registration Offices and Fees) Rules, 2014}*

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	Section 398
The Companies (Registration Offices and Fees) Rules, 2014	Rule 10(6)
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	Concerned e-Form which is marked as defective

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Application to Registrar of Companies for marking the form defective
- ❖ Affidavit verifying the application
- ❖ Declaration by the professional who has certified the concerned form, if any

126.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that the e-Form related to..... (particulars of the form) inadvertently filed with a clerical mistake and company needs to file the form again after removing the defects of the filed form.
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. • Send notice of board meeting to all the directors

S. No.	Particulars
	<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"> • authorising a director sign application, affidavit and other documents as may be required in this regard. • authorising Company Secretary/Chartered Accountant/Cost Accountant to make application and represent the company before the Jurisdictional Registrar of Companies for marking the SRN as 'Defective'.
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 draft minutes. • Add the suggested comment(s) given or suggested by any director and finalise the minutes. • Enter the minutes, in the minute's 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 within fifteen days of signing, certified by the Company Secretary or where there is no Company Secretary by any Director authorised by the Board, shall be circulated to all the Directors, as on the date of the meeting and appointed thereafter, except to those Directors who have waived their right to receive the same either in writing or such waiver is recorded in the minutes.
5.	<p>Arrange following documents as required to be attached with the application to the jurisdictional Registrar of Companies:</p> <ul style="list-style-type: none"> • Copy of the filed/uploaded Form along with payment challan • Application for cancellation of SRN • Affidavit from director verifying the application. • Certified true copy of board resolution. • Declaration from professional who has certified the form, if any.
6.	<p>Prepare application and get it signed by the director authorised by the board in this regard.</p>
7.	<p>File an application for the marking the SRN as defective with the Registrar of Companies, along with the following documents:—</p> <ul style="list-style-type: none"> • Copy of the filed/uploaded Form along with payment challan • Application for cancellation of SR

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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-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 company.
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 164 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 \(in 2 vols.\)](#)