

{Section 169 of the Companies Act, 2013}

Synopsis

23.1 Procedure with check points	460
23.2 Forms to be filed	464
23.3 List of documents required	464
23.4 List of information required	465
Appendix 23.1 Format of notice by company to director	465
Appendix 23.2 Format of special notice for removal of director	466
Appendix 23.3 Sample board resolution	467

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 115, 118, 169, 170, 173 and 403
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rule 17
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8, 11 and 12
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 17
e-Forms to be filed	DIR-12

Significant Relevant Approvals and Requirements

- ❖ Special Notice received from requisite number of members
- ❖ Board Resolution
- ❖ Ordinary Resolution
- ❖ Special Resolution in case an Independent Director re-appointed for a second term is removed
- ❖ Newspaper notice, if required
- ❖ Notice sent to removed director

23.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure- <ul style="list-style-type: none"> • that a special signed notice for the removal of a director is furnished by number of members according to requirement of section 115 of Companies Act, 2013. • that the signed special notice is given by such members, who <ul style="list-style-type: none"> (i) are holding not less than 1% of total voting power, OR

S. No.	Particulars
	<p>(ii) are holding shares on which an aggregate sum not less than Rs. 5 (five) lakhs, as may be prescribed, has been paid up on the special notice date. {Section 115 of the Act read with rule 23(1) of the Companies (Management and Administration) Rules, 2014}</p> <ul style="list-style-type: none"> • that the notice of any general meeting has been served to the members, then in such case, the special notice for removal of director is furnished by the proposer at least 14 days before the meeting at which it is to be removed. {Section 115 of the Act read with rule 23(2) of the Companies (Management and Administration) Rules, 2014}.
2.	<p>Ensure—</p> <p>(a) that the notice for removal of a director is for a director other than a director appointed by the Tribunal under section 242 of the Companies Act, 2013 {Section 169(1) of the Act}.</p> <p>(b) that the director of whose removal notice has been received is not a director who was appointed under section 163 with the principle of proportional representation {Second proviso to section 169(1) of the Act}.</p>
3.	<p>Immediately after receiving of the notice of the intention to move any resolution for removal of a director, the company shall give notice of said resolution to the members of the company in the same way as it gives notice of the meeting {Section 115 of the Act read with rule 23(3) of the Companies (Management and Administration) Rules, 2014}.</p>
4.	<p>Publish an advertisement, in case it is not possible for the company to give notice to all the members, in the newspaper having an appropriate circulation within a period of not less than 7 days before the date of meeting {Section 115 of the Act read with rule 23(4) and (5) of the Companies (Management and Administration) Rules, 2014}.</p>
5.	<p>On receipt of notice, send copy of such notice to the director concerned and intimate him about his entitlement of an opportunity of being heard in general meeting {Section 169(3) of the Act}.</p>
6.	<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.
7.	<p>Convene the board meeting and pass board resolutions for:</p> <p>(i) Removal of Director subject to the approval of shareholders in general meeting be way of ordinary resolution.</p> <p>(ii) Fixing day, date, time and venue for calling general meeting and</p> <p>(iii) Approving notice of general meeting</p> <p>Note that point no. (ii.) & (iii.) above, is not to be considered if special notice is received after serving of general meeting notice.</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"> • 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.
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 Appointment and Qualification of Directors Rules, 2014).
4.	Forms in electronic in writing, on or before appointment, from the appointed director as Form DIR-2 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 Appointment 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 \(in 2 vols.\)](#)