

PROCEDURE FOR APPOINTMENT OR RE-APPOINTMENT AND REMUNERATION OR INCREASE IN REMUNERATION OF MANAGING DIRECTOR IN CASE OF PRIVATE LIMITED COMPANY

24

{Section 196 of the Companies Act, 2013}

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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 117, 118, 170, 173, 196 and 403,
The Companies (Incorporation) Rules, 2014	Rule 25A
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 17 and 18
The Companies (Meetings of Board and its Powers) Rules, 2014	Rules 8 and 9
The Companies (Management and Administration) Rules, 2014	Rule 24
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1of 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 MGT-14

Significant Relevant Approvals and Requirements

- ❖ Consent of the appointee
- ❖ Justification for appointment
- ❖ Board resolution

24.1 PROCEDURE WITH CHECK POINTS WHERE THE AGE OF PROPOSED MANAGING DIRECTOR IS BELOW 70 YEARS

S. No.	Particulars
1.	Ensure that the person to be appointed as a Managing Director <i>(Section 196(3) of the Act)</i> - <ul style="list-style-type: none">• is not below the age of 21 (twenty-one) years and has not attained the age of 70 (seventy) years,• is not an undischarged insolvent and has not at any time been adjudged as an insolvent,• has not at any time suspended payment to his/her creditors or makes, or has not at any time made, a composition with them; or• has not at any time been convicted by a court of an offence and sentenced for a period of more than 6 (six) months.
2.	Ensure that- <ul style="list-style-type: none">• in case of appointment of managing director, other than the existing directors, first he/she will be appointed as an additional director by the directors of the company. (In case of appointment as an additional director, complete the formalities of appointment of an additional director and please see the procedure for appointment of an additional director).• The period of appointment or reappointment, other than in a government company, shall not be for a term exceeding 5 (five) years. <i>{Section 196(2) of the Act read with exemption notification no. GSR 463(E) dated 05.06.2015}</i>.• the company is incorporated before 1st January, 2018 and the status of the company is 'ACTIVE COMPLIANT COMPANY' otherwise the Registrar shall not accept and take on record the e-Form DIR-12 which is required to be filed in case of change in director. <i>(Fourth Proviso of Rule 25A of the Companies (Incorporation) Rules, 2014}</i>, and if the status of the company is 'ACTIVE NON-COMPLIANT', then first complete the formalities of filing of e-FORM INC-22A as per rule 25A of the Companies (Incorporation) Rules, 2014.
3.	Arrange following documents from the appointee: <ul style="list-style-type: none">• Director Identification Number and Digital Signature Certificate• Consent in writing to act as managing director.
4.	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
	<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 Appointment and Qualification of Directors) Rule, 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 Appointment and Qualification of Directors) Rule, 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 \(in 2 vols.\)](#)