

PROCEDURE FOR APPOINTMENT OR RE-APPOINTMENT AND REMUNERATION OR INCREASE IN REMUNERATION OF MANAGING DIRECTOR/WHOLE-TIME DIRECTOR IN CASE OF PUBLIC COMPANY

25

{Section 196, 197, 198, and 203 of the Act and Schedule V read with Rules 3 and 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014}

Synopsis

25.1	Procedure with check points for appointment and payment of remuneration of MD/WTD without Central Government approval	490
25.2	Procedure with check points for appointment and payment of remuneration of MD/WTD with central government approval	499
25.3	Forms along with the attachments to be filed	509
25.4	List of documents required	512
25.5	List of information required	514
Appendix 25.1	Format of consent letter of Managing Director/Whole Time Director as per the Companies Act, 2013	515
Appendix 25.2	Format of appointment letter of director	516
Appendix 25.3	Format of interest of director in Form MBP-1 as per the Companies Act, 2013	516
Appendix 25.4	Format of list of interest in other entities	517
Appendix 25.5	Format of shorter notice	517
Appendix 25.6	Sample board resolutions	518
Appendix 25.7	Sample shareholders resolutions	521

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 110, 117, 118, 170, 173, 179, 196, 197, 198, 200, 201, 203, 403 and 460, Schedule V
The Companies (Incorporation) Rules, 2014	Rule 25A
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 17 and 18
The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	Rules 3 and 8
The Companies (Management and Administration) Rules, 2014	Rule 24
The Companies (Meetings of Board and its Powers) Rules, 2014	Rules 8 and 9

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies (Registration Office and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	MGT-14 DIR-12 MR-1

Significant Relevant Approvals and Requirements

- ❖ Consent of the appointee director
- ❖ Nomination and Remuneration Committee resolution
- ❖ Board resolution
- ❖ Ordinary resolution
- ❖ Special resolution if the person has attained the age of 70 years
- ❖ Special resolution, if remuneration is above limits under Schedule V

25.1 PROCEDURE WITH CHECK POINTS FOR APPOINTMENT AND PAYMENT OF REMUNERATION OF MD/WTD WITHOUT CENTRAL GOVERNMENT APPROVAL

S. No.	PARTICULARS
1.	<p>Ensure that –</p> <ul style="list-style-type: none"> • the individual proposed to be appointed/re-appointed holding the position of the Chairperson of the company is not appointed as Managing Director of the company at the same time unless: <ul style="list-style-type: none"> - the articles of such company provide, or - the company does not carry multiple businesses. <i>{Section 203(1) of the Act}</i>. • if the appointee person is holding position of Managing Director in another company (not more than one company), appointment of such person is approved by a resolution passed at the meeting of Board with the consent of all the directors present at the meeting and specific notice has been given to all the directors then present in India. (Note that such Managing Director can draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one company) <i>{Section 203(3) of the Act}</i>. • the person to be appointed as a Managing Director is complying the following condition of Sec 196(3) of the Companies Act, 2013: <ul style="list-style-type: none"> (a) is not below the age of twenty-one years or has not attained the age of seventy years:

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 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 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.	Forms an certificate 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).
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 \(in 2 vols.\)](#)