

## PROCEDURE FOR CHANGE IN DESIGNATION DUE TO DISCONTINUATION FROM THE MANAGING/WHOLE TIME DIRECTORSHIP BUT TO CONTINUE AS DIRECTOR OF THE COMPANY

*{Section 168 of the Companies Act, 2013}*

### 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	118, 168 and 196
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 15, 16 and 17
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
e-Forms to be filed	DIR-12

### Significant Relevant Approvals and Requirements

- ❖ Resignation letter
- ❖ Board resolution

### 26.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that the resigning director has given notice of resignation/discontinuation from managing/whole time directorship in writing to the company <i>{Section 168(1) of the Act read with rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014}</i>
2.	Resignation/Discontinuation shall be effective from the date on which the notice is received by the company or the date, if any specified by the director in the notice; whichever is later <i>{Section 168(2) of the Act read with rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014}</i> .
3.	Director shall be liable for prosecution etc. even after his resignation for offences occurred during his/her tenure.

S. No.	Particulars
4.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> <li>• Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting.</li> <li>• Send notice of board meeting to all the directors <ul style="list-style-type: none"> <li>– at least 7 days before the date of board meeting or</li> <li>– in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.</li> </ul> </li> </ul>
5.	<p>Convene board meeting for:-</p> <ul style="list-style-type: none"> <li>• Taking in record the resignation/discontinuation from managing/ whole time directorship and acceptance for the same</li> <li>• Authorisation to director/company secretary to sign the documents.</li> </ul>
6.	<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"> <li>• 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).</li> <li>• 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.</li> <li>• Add the suggested comment(s) given or suggested by any director and finalise the minutes.</li> <li>• Enter the minutes, in the minute book of the board meeting, within thirty days from the date of conclusion of the board meeting.</li> <li>• Minutes of the board meeting shall be signed and dated by the chairman of that meeting or by the chairman of the next meeting.</li> <li>• The signed minutes duly certified by Company Secretary/ any director where Company Secretary is not appointed shall be circulated within 15 days of signing to all the directors as on the date of meeting and appointed thereafter, except those directors who have waived to receive such signed minutes.</li> </ul>
7.	<p>File <b>e-Form DIR-12</b> with the Registrar of Companies along with attachment with in 30 days of change in designation and pay fee as per the Companies (Registration Offices and Fees) Rules, 2014. (This form is to be filed for change in designation of diector) <i>{Section 168(1) of the Act read with rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014}</i>.</p>
8.	<p>Inform each department/authority for such change in the directorship of the company.</p>
9.	<p>Make necessary entries in the Register of Directors, Key Managerial Personnel and their shareholding <i>{Section 170 of the Act read with rule 17 of the Companies (Appointment and Qualification of Directors) Rules, 2014}</i>..</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"> <li>• 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).</li> <li>• 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 jointly incorporated companies, 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).</li> <li>• 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).</li> <li>• 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"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
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 Appointment and Qualification of Directors) Rule, 2014.
4.	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 164 of the Companies Appointment and Qualification of <b>Directors</b> ) Rule, 2014.
5.	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](http://www.bharatlaws.com)

**[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)**