

## **APPOINTMENT OF COMPANY SECRETARY/ CHIEF FINANCIAL OFFICER/CHIEF EXECUTIVE OFFICER**

27

*{Sec 203(1) of the Act read with Rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) 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	Sections 117, 118, 170, 173, 179, 203, 205 and 403
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 17 and 18
The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	Rules 8, 8A and 10
The Companies (Management and Administration) Rules, 2014	Rule 24
The Companies (Meetings of Board and its Powers) Rules, 2014	Rule 8
The Companies (Registration Offices 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	MGT-14 (in case of public company) DIR-12

### Significant Relevant Approvals and Requirements

- ❖ Consent of the appointee person
- ❖ Non-disqualification intimation of the concerned person
- ❖ Nomination and remuneration committee resolution
- ❖ Board resolution

### 27.1 PROCEDURE WITH CHECK POINTS FOR APPOINTMENT OF COMPANY SECRETARY, CHIEF FINANCIAL OFFICER, CHIEF EXECUTIVE OFFICER AS KEY MANAGERIAL PERSONNEL

S. No.	Particulars
1.	<p>Ensure that-</p> <ul style="list-style-type: none"><li>• the company is required to appoint a Whole-time Key Managerial Person as per Section 203 of the Companies Act, 2013 read with rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, as every listed company and every public limited company having a paid-up share capital of Rs. 10 (ten) crores or more shall have following Whole-time Key Managerial Personnel.<ul style="list-style-type: none"><li>(i) Managing Director/Chief Executive Officer/Manager or in these absence Whole Time Director</li><li>(ii) Chief Financial Officer</li><li>(iii) Company Secretary</li></ul></li><li>• the person be appointed as KMP is not holding office in more than 1 (one) company except in its subsidiary company at the same time <i>{Section 203(3) of the Act}</i>.</li><li>• a Whole-time Key Managerial Personnel can act as a director of any other company with the permission of the board of that another company <i>{First proviso to section 203(3) of the Act}</i>.</li><li>• An individual shall not hold two positions at the same time and separate individual is appointed in each of the designation separately.</li></ul>
2.	<p>Obtain consent in writing, on or before appointment, from the appointee to act as a company secretary, chief financial officer and chief executive officer regarding he/she has not been disqualified to act as such under the Companies Act, 2013 and rules made thereunder or under any other prevailing Laws and Acts and thereafter obtain membership number (secretary)/permanent account number of the proposed appointee as the case may be. In case of a new company secretary is appointed, obtain the consent with e-CSIN generated under the ICSI (Employee Company Secretaries Identification Number) guidelines, 2019.</p>
3.	<p>In case of companies where section 178 regarding nomination and remuneration committee is applicable, call and convene a meeting of nomination and remuneration committee to pass a resolution for recommendation of appointment and payment of remuneration to company secretary/chief financial officer/chief executive officer as key managerial personnel <i>{Section 178(3) and (4) of the Act}</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+ (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 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).</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 company provisions of 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 company.</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 Incorporation and Qualification of Directors Rules, 2014).
4.	Form as mentioned 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 <b>Directors</b> 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](http://www.bharatlaws.com)

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