

PROCEDURE FOR RECTIFICATION OF NAME (APPLICATION TO THE CENTRAL GOVERNMENT)

{Section 16(1)(b) read with Rule 29 of the Companies (Incorporation) Rules, 2014}

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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 4, 13, 15, 16, 117, 118, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rules 8, 8A, 8B, 9 and 29
The Companies (Management and Administration) Rules, 2014	Rule 24
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	RD-1 GNL-2

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Application to jurisdictional Regional Director

30.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	A person or a company who is registered proprietor of a trade mark registered under the Trade Marks Act, 1999 can make an application to the Central Government for rectification of name of such other company on the ground that the name of such other company is identical with or similar or nearly resembles to a registered trademark of such person or company and said application can be filed only within 3 (three) years of incorporation or registration or change of name of such other company <i>{Section 16(1)(b) of the Act}</i> .

S. No.	Particulars
2.	Arrange valid proof of a document evidencing use of applicant's registered trademark by other company or the name of other company is identical or nearly resembles the registered trademark of the applicant company.
3.	The application can be filed by a company after obtaining approval of the Board while an application can also be made by a registered proprietor of a Trademark, if name of such other company is identified with or two nearly resembles to his registered trademark under the Trademark Act, 1999.
4.	<p>In case the applicant is a company, 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.
5.	<p>Convene board meeting for:</p> <ul style="list-style-type: none"> • Taking note of the unauthorised use of registered trademark or such name, which is identical or nearly resembles with the name of the applicant company. • Submitting an application to the Central Government (power delegated to the Regional Director) under section 16(1)(b) of the Act. • Authorising to sign the application and represent the company before the office of the Central Government.
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"> • 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). • 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. • Add the suggested comment(s) given or suggested by any director and finalise the minutes. • Enter the minutes, in the minute book of the board meeting, within thirty days from the date of conclusion of the board meeting. • Minutes of the board meeting shall be signed and dated by the chairman of that meeting or by the chairman of the next meeting. • 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.

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 154 or any other number as may be prescribed under section 155 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 155 of the Act read with rule 153 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 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). • 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 companies.
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.	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 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 \(in 2 vols.\)](#)