

PROCEDURE FOR RECTIFICATION OF NAME (AFTER RECEIVING ORDER FROM THE CENTRAL GOVERNMENT)

31

{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 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
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	RUN MGT-14 INC-24 INC-28

Significant Relevant Approvals and Requirements

- ❖ No objection through board resolution, if name is similar to an existing company
- ❖ Consent or no objection certificate from the trademark mark owner
- ❖ Central Government, if the proposed name contains specified words or expressions,
- ❖ No objection certificate from proprietor/partners, if the promoters carrying any business with the proposed name under any proprietorship/partnership firm.
- ❖ In principle approval from the concerned sectoral regulator, if applicable
- ❖ Board resolution
- ❖ Special resolution
- ❖ Approval from Registrar of Companies

31.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Note that-</p> <ul style="list-style-type: none"> • if the Central Government either after the incorporation of a company or at the time of registration of a company with a new name, is of the opinion that the name of such company is identical with or too nearly resembles the name of a company which is registered under the Companies Act, 2013 or registered under any previous company law, may direct such other company to change its name within a period of 3 (three) months from the issue of such directions after adopting an ordinary resolution for the same. {<i>Section 16(1)(a) of the Act</i>}, or • if the Central Government on an application made by a registered proprietor of a trademark that the name of a company is identical or too nearly resemble to a registered trademark of such proprietor within a period of 3 (three) years of incorporation or registration or change of name of the company, formed an opinion that the name is identical or too nearly resembles to an existing trade mark, it may direct the company to change its name within a period of 3 (three) months from the date of such directions after adopting an ordinary resolution for the same {<i>Section 16(1)(b) of the Act</i>}.
2.	<p>After receiving directions from the Central Government regarding change of name, the company has to change its name within a period of 3 (three) months, if direction is given u/s 16(1)(a) and also within a period of 3 (three) months, if direction is given u/s 16(1)(b) of the Companies Act, 2013.</p>
3.	<p>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.
4.	<p>Decide proposed name(s) and thereafter check availability of the proposed name(s) at the Ministry of Corporate Affairs and Trademark Authorities Portal</p>
5.	<p>Ensure that the proposed name is in accordance to provisions of Section 4 of the Companies At, 2013 read with Rules 8, 8A and 8B of the Companies (Incorporation) Rules, 2014, and in brief, ensure that—</p> <ul style="list-style-type: none"> • the proposed name shall not be identical with or resemble too nearly to the name of an existing company registered under the Companies Act, 2013 or any previous company law {<i>Section 4(2)(a) of the Act</i>}; or • the proposed name shall not be such that its use by the company will constitute an offence under any law for the time being in force; or is undesirable in the opinion of the Central Government {<i>Sections 4(2)(b)(i) and (ii) of the Act</i>}, or

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.
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.	Form as mentioned in writing, on or before appointment, from the appointed director as Form 208-2 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 <u>Directors</u>) 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

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