

{Section 13(8) read with Rule 32 of the Companies (Incorporation) 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 4, 13, 15, 110, 117, 118, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rule 32
The Companies (Management and Administration) Rules, 2014	Rule 22 and 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 12
e-Forms to be file	MGT-14

Significant Relevant Approvals and Requirements

- ❖ Board resolution.
- ❖ Special resolution.
- ❖ Newspaper advertisement.
- ❖ Justification for change
- ❖ Affidavit from directors regarding deposits
- ❖ Exit opportunity to the dissenting shareholders

**36.1 PROCEDURE WITH CHECK POINTS IN CASE OF NON-
UTILISATION OF MONEY WHICH WAS RAISED FROM
PUBLIC THROUGH PROSPECTUS**

S. No.	Particulars
1.	<p>Ensure that –</p> <ul style="list-style-type: none"> • the company has raised money from public and the amount out of such raised money is still unutilised by the company. • the clause III of the memorandum of association shall be altered due to change in object clause. • the special resolution for alteration in object clause shall be transacted only through postal ballot {<i>Section 110 (1)(a) read with rule 22(16)(d) of the Companies (Management and Administration) Rules, 2014</i>} and the resolution may be transacted in general meeting after providing facility to members to vote by electronic means in the manner provided under section 108 of the Act {<i>First proviso to rule 22(16) of the Companies (Management and Administration) Rules, 2014</i>} .
2.	<p>Prepare draft object clause(s) to be added or deleted to/from the object clause of the memorandum of association and prepare the altered copy of memorandum of association.</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>Prepare –</p> <ul style="list-style-type: none"> • draft of the notice which shall be published in the newspapers as one in English and one in vernacular language which is in circulation at the place where the registered office of the company is situated. • Justification for change in object clause {<i>Section 13(8)(i) of the Act</i>}.
5.	<p>Convene board meeting and pass the following resolution for:</p> <ul style="list-style-type: none"> • Alteration of object clause subject to members approval by way of special resolution through postal ballot; • Authorisation to directors/company secretary to sign the documents. • Approval of notice of postal ballot for obtaining approval of shareholders. • Fixing of day, date, time and venue for calling general meeting, if resolution is not to be transacted through postal ballot. • Approve notice for calling of general meeting to pass special resolution for alteration in object clause OR approve notice of postal ballot in case resolution is to be passed through postal ballot.

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 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 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 Appointment and Qualification of Directors) Rule, 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 Appointment and Qualification of <u>Directors</u>) Rule, 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 \(in 2 vols.\)](#)