

## PROCEDURE FOR ALTERATION IN SHARE CAPITAL CLAUSE

37

{Section 61(1)(a) read with Rule 15 of the Companies  
(Share Capital and Debentures) 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, 43, 61, 64, 110, 117, 118, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rule 25A
The Companies (Share Capital and Debenture) Rules, 2014	Rule 15
The Companies (Management and administration) Rules, 2014	Rule 24
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
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	SH-7 MGT-14 (if articles of association is altered)

### Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Ordinary resolution
- ❖ Special resolution
  - if articles of association contain provision of its alteration by special resolution
  - if articles of association have specific capital structure class

### 37.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> <li>• the company is a company which is limited by share capital</li> <li>• the status of the company is ‘<b>ACTIVE COMPLIANT COMPANY</b>’ otherwise the Registrar shall not accept and take on record the <b>e-Form SH-7</b> which is required to be filed in case of authorised capital. (<i>Fourth Proviso of Rule 25A of the Companies (Incorporation) Rules, 2014</i>), and if the status of the company is ‘<b>ACTIVE NON-COMPLIANT</b>’, then first complete the formalities of filing of <b>e-FORM INC-22 A</b> as per rule 25A of the Companies (Incorporation) Rules, 2014.</li> <li>• the articles of association have clauses to alter the share capital of the company and if the articles of association has no clause(s) then articles of association shall be amended so as to include the provisions of alteration of share capital clause.</li> <li>• special resolution shall be passed if the articles of association requires a special resolution is to be passed for increase of authorised share capital, otherwise an ordinary resolution shall be passed for increase of authorised share capital of the company.</li> <li>• a special resolution shall be passed, if the articles of association have specific capital structure clause mentioning the amount of share capital of the company.</li> <li>• that there is no consolidation and division of share capital into shares of larger amount than its existing shares.</li> <li>• the company is not a listed company or company is an unlisted public company and the number of members is up to 200 or the company is a One Person Company, otherwise, members resolution may be passed through postal ballot {<i>Section 110(1) (b) of the Act</i>}.</li> </ul>
2.	<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>
3.	<p>Convene board meeting and pass the following resolutions:</p> <ul style="list-style-type: none"> <li>• Alteration in share capital (Increase of equity share capital/creation of preference share capital) pursuant to sec 61(1)(a) of the Act.</li> <li>• Alteration in articles of association, if articles of association has specific capital structure clause in its article.</li> <li>• Authorisation to director/company secretary to sign the documents.</li> <li>• Fixation of day, date, time and venue for calling general meeting, if resolution is not to be transacted through postal ballot.</li> </ul>

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 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 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 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.	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 17 of the Companies Incorporation and Qualification of <u>Directors</u> Rules, 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 \(in 2 vols.\)](#)