

**PROCEDURE FOR CONSOLIDATION AND
DIVISION OF SHARE CAPITAL OF
COMPANY INTO SHARES OF A LARGER
AMOUNT THAN ITS EXISTING SHARES
WHERE VOTING PERCENTAGE OF
SHAREHOLDERS WILL AFFECT**

{Sec 61(1)(b) read with Rule 71 of the NCLT Rules, 2016}

Synopsis

38.1	Procedure with check points	683
38.2	Forms to be filed	690
38.3	List of documents required	691
38.4	List of information required	692
Appendix 38.1	Sample Board Resolutions	692
Appendix 38.2	Sample Shareholder's Resolutions	694
Appendix 38.3	Form No. NCLT.1	694
Appendix 38.4	Form No. NCLT.6	695
Appendix 38.5	Form No. NCLT.3A	696
Appendix 38.6	Form No. NCLT.12	696

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 14, 61, 64, 101, 110, 114, 117, 118, and 173
The Companies (Incorporation) Rules, 2014	Rule 25A
The Companies (Prospectus and Allotment of Securities) Rules, 2014	Rules 9 and 9A
The Companies (Management & Administration) Rules, 2014	Rule 24
The Companies (The Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
The National Company Law Tribunal Rules, 2014	Rules 34, 35, 45, 71 and 161
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-form to be filed	MGT-14 SH-7 NCLT-1 INC-28

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
- ❖ Newspaper advertisement
- ❖ National Company Law Tribunal approval

38.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that</p> <ul style="list-style-type: none">• the status of the company is ‘ACTIVE COMPLIANT COMPANY’ otherwise the Registrar shall not accept and take on record the e-Form SH-7 which is required to be filed in case of change of authorised capital. (<i>Fourth Proviso of Rule 25A of the Companies (Incorporation) Rules, 2014</i>), and if the status of the company is ‘ACTIVE NON-COMPLIANT’, then first complete the formalities of filing of e-FORM INC-22 A as per rule 25A of the Companies (Incorporation) Rules, 2014.• if the company is an unlisted public company (except a Nidhi company, Government company, and a Wholly owned Subsidiary company) and making any offer for issue of any securities, before making such offer has obtained International Securities Identification Number (ISIN) and given dematerialisation of securities’ facility to all the shareholders of the company and has dematerialised of its securities held by its promoters, directors, key managerial personnel in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder {<i>Rules 9 & 9A. of the Companies (Prospectus and Allotment of Securities) Rules, 2014</i>}.• that Articles of Association of the company contains provision for consolidation and division of its share capital and if there is no such provision then articles shall be altered in accordance with Section 14 of the Companies Act, 2013 to include such provision.• special resolution shall be passed if the articles of association require a special resolution is to be passed for consolidation and division of share capital, otherwise an ordinary resolution shall be passed for consolidation or division of share capital of the company• that due to such consolidation and division, voting percentage of shareholders shall be changed.• that the cancellation of shares under section 61(1) shall not be deemed as a reduction of share capital {<i>Section 61(2) of the Act</i>}.• 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>}.

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 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 company.
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 \(in 2 vols.\)](#)