

PROCEDURE FOR ALTERATION OF THE MEMORANDUM OF ASSOCIATION AS PER THE COMPANIES ACT, 2013

40

{Section 13(1) of the Act}

Synopsis

40.1 Procedure of the check point	707
40.2 Forms to be filed	710
40.3 List of documents required	710
40.4 List of information required	711
Appendix 40.1 Format of notice calling general meeting	711
Appendix 40.2 Sample board resolutions	714
Appendix 40.3 Sample general meeting resolutions	716

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, 17, 110, 117, 118, 173, 179 and 403 and Schedule I
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 17
e-Forms to be filed	MGT-14

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution

40.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that- <ul style="list-style-type: none"> • the company was incorporated under the Companies Act, 1956 and the memorandum of association is not updated as per Schedule I of the Companies Act, 2013 • 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 {Section 110(1) (b) of the Act}.

S. No.	Particulars
2.	<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.
3.	<p>Prepare memorandum of association as per Schedule I of the Companies Act, 2013.</p>
4.	<p>Convene board meeting and pass following resolutions:</p> <ul style="list-style-type: none"> • Approval of alteration of the memorandum of association as per the Companies Act, 2013 subject to members approval • Fixing of day, date, time and venue for calling general meeting, if resolution is not to be transacted through postal ballot. • Approving of notice for calling of general meeting to pass special resolution for alteration of memorandum of association of the company OR approve notice of postal ballot in case resolution is to be passed through postal ballot. • Authorisation to director/company secretary to sign the documents.
5.	<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.
6.	<p>Send notice of general meeting to all directors, shareholders, auditors, secretarial auditors and Debenture Trustee, if any, of the company at least 21 clear days before the date of general meeting. However, notice may be given</p>

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-11) (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.
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 164 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-11) 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 \(in 2 vols.\)](#)