

PROCEDURE FOR ALTERATION OF ARTICLES OF ASSOCIATION

41

{Section 14 read with Rule 33 of the Companies (Incorporation) Rules, 2014}.

Synopsis

41.1	Procedure with check points	719
41.2	Forms to be filed	723
41.3	List of documents required	723
41.4	List of information required	724
Appendix 41.1	Format of consent for shorter notice	724
Appendix 41.2	Format of list of directors	725
Appendix 41.3	Format of list of shareholders	725
Appendix 41.4	Sample board resolutions	726
Appendix 41.5	Sample shareholders resolutions	728
Appendix 41.6	Format of proxy form	730
Appendix 41.7	Format of attendance slip	731

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 5, 14, 15, 17, 46, 110, 117, 118, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rules 10 and 33
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	MGT-14

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution

41.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Note that the articles of association of a company may be altered in following cases: <ul style="list-style-type: none"> • By adopting new set of articles.

S. No.	Particulars
	<ul style="list-style-type: none"> • By inserting/adding of a new article. • By substituting an existing article with a new one. • By deleting an existing article. • By amending an existing article. • By conversion of company from private to public or vice-versa.
2.	<p>Ensure that-</p> <ul style="list-style-type: none"> • the procedure to be followed as referred in the entrenched articles, if articles of a company contain retrenchment provisions. <i>{Section 5 of the Act}</i>. • subject to the provisions of this Act and the conditions contained in its memorandum, if any, a special resolution shall be passed to alter its articles including alterations having the effect of conversion of a private company into a public company or a public company into a private company. <i>{Section 14(1) of the Act}</i>. • The special resolution passed for alteration of articles of association shall be filed with the Registrar of Companies within a period of 30 (thirty) days from the date of alteration in articles of association. • the company is not a listed company or company is an unlisted public company and the number of members is up to 200 otherwise, members resolution may be passed through postal ballot <i>{Section 110(1) (b) of the Act}</i>.
3.	<p>Note that –</p> <ul style="list-style-type: none"> • any alteration of the articles registered under section 14 (2) of the Act shall be valid as if it were originally in the articles. <i>{Section 14(3) of the Act}</i>. • if a private company alter its articles of association as to convert itself into a public company, the private company shall cease to be a private company from the date of such alteration. <i>{Proviso to Section 14(1) of the Act}</i>. • If any alteration in the articles of association having the effect of conversion of a public company into a private company, such alteration shall be effected only after approval of the Central Government and registration of the altered articles of association with the Registrar of Companies <i>{Section 14(2) of the Act}</i>.
4.	<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.
5.	<p>Prepare draft of the articles which shall be added or deleted or substituted and also prepare the altered articles of association.</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-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.
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 208-3 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 Directors) 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 \(in 2 vols.\)](#)