

PROCEDURE FOR OBTAINING STATUS OF DORMANT COMPANY AS AN ACTIVE COMPANY

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{Section 455(5) read with Rule 8 of the Companies (Miscellaneous) Rules, 2014}

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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 18, 173 and 455
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
The Companies (Miscellaneous) Rules, 2014	Rule 8
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	MSC-4

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Duly audited statement of financial position

50.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Note that where a dormant company does or omits to do any act mentioned in the grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 (seven) days from such event, file an application for obtaining the status of an active company <i>{Rule 8(3) of the Companies (Miscellaneous) Rules, 2014}</i> .
2.	Complete formalities regarding calling of board meeting in the following manner: <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.	Convene board meeting to pass the following resolutions: <ul style="list-style-type: none"> – to make an application with Registrar of Companies for obtaining status of

S. No.	Particulars
	dormant company as an active company. – to authorise a director to make an application and sign documents or forms or to complete all the formalities.
4.	Prepare return in form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed { <i>Rule 8(1) of the Companies (Miscellaneous) Rules, 2014</i> }.
5.	Complete formalities regarding minutes of the board meeting as per Section 118 of the Companies Act, 2013 in the following manner: <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.	File e-form MSC-4 with Registrar of Companies along with fees and attach a return in e-Form MSC-3 for financial year in which an application for obtaining active status is being filed { <i>Rule 8(1) of the Companies (Miscellaneous) Rules, 2014</i> }.
7.	The Registrar after satisfaction shall issue a certificate in Form MSC-5 allowing the active status of company { <i>Rule 8(2) of the Companies (Miscellaneous) Rules, 2014</i> }.

50.2 FORMS TO BE FILED

S. No.	Name of the Form	Particulars/Attachments	Time Period for Filing
1.	e-Form MSC-4	<ul style="list-style-type: none"> ➤ Duly audited statement of financial position ➤ Board resolution authorising for filing this declaration (duly signed by a director other than the concerned/authorised director and advisable to get it signed by at least 2 directors) 	Within seven days from the happening of event affecting the status of dormant company

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 not applicable in IIR DIN) (Section 164 of the Act). • 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 308-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Form created in writing, on or before appointment, from the appointed director as Form 308-3 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.
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 \(in 2 vols.\)](#)