

## PROCEDURE FOR ISSUE OF SHARES THROUGH RIGHTS ISSUE

53

{Section 62(1)(a) of the Act}

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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 46, 62, 88, 117, 173, 179 and 403
The Companies (Prospectus and Allotment of Securities) Rules, 2014	Rules 9, 9A and 12
The Companies (Share Capital and Debenture) Rules, 2014	Rules 5, 12A and 19
The Companies (Management and Administration) Rules, 2014	Rules 3, 5 and 24
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	MGT-14 (in case of public company) PAS-3
Forms to be filed as an attachment with respective forms	PAS-4 and PAS-5

### Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Offer or invitation to subscribe or issue of shares only to existing equity shareholders of the company
- ❖ Offer shall be opened for minimum 15 days or such lesser number of days as may be prescribed and maximum 30 days and offer would be deemed as denied, if not accepted within a specified time
- ❖ Entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in case of unlisted public company, except Nidhi company, Government company or wholly owned subsidiary company
- ❖ Offer shall carry right of renunciation

### 53.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> <li>• the company, having a share capital, is increasing its subscribed capital by the issue of further shares, by offering shares only to those persons who, at the date of the offer, are holders of equity shares of the company and offer shall be in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares {Section 62(1)(a) of the Act}.</li> <li>• the company is offering shares to the existing equity shareholders by sending an offer letter subject to the following conditions, namely: <ul style="list-style-type: none"> <li>- the offer is made by a notice specifying the number of shares offered;</li> <li>- the offer is open for minimum period of 7 (seven) days from the offer and maximum 30 (thirty) days and offer would be deemed as denied, if not accepted within a specified time; {Section 62(1)(a)(i) of the Act read with Rule 12 A of the Companies (Share Capital and Debentures) Rules, 2014} <ul style="list-style-type: none"> <li>* the period of offer may be less than 7 days, in case of private company and specified IFSC public company, subject to consent, in writing or through electronic mode, of 90 per cent or more members of the company.</li> </ul> </li> <li>- the offer letter, unless the articles of the company otherwise provide, includes a statement of a right to renounce the shares offered to him in favour of any other person; and</li> <li>- the offer letter specifies that the Board of Directors may dispose of shares in a manner not disadvantageous to the shareholders and the company, in case share are declined by the person to whom it is offered or not accepted within the time offered in the notice. <ul style="list-style-type: none"> <li>{Section 62(1)(a) of the Act}.</li> </ul> </li> </ul> </li> <li>• every unlisted public company, except Nidhi company, Government company or wholly owned subsidiary company, making any offer for issue of any shares shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial</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 company provisions of 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 Appointment and Qualification of Directors) Rule, 2014.
4.	Form as mentioned in writing, on or before appointment, from the appointed director as Form 208-2 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 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](http://www.bharatlaws.com)

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)