

PROCEDURE FOR ISSUE OF SHARES THROUGH BONUS ISSUE

{Section 63 read with Rule 14 of the Companies (Share Capital and Debentures) 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 39, 46, 63, 88, 117, 118, 173, 179 and 403
The Companies (Share Capital and Debentures) Rules, 2014	Rules 5, 14 and 19
The Companies (Management and Administration) Rules, 2014	Rules 3, 5 and 24
The Companies (Prospectus and Allotment of Securities) Rules, 2014	Rule 9, 9A and 12
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 (in case of public company) PAS-3
Forms to be kept as a record	PAS-4 and PAS-5

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution
- ❖ Fully paid-up bonus shares shall be issued to its members out of its free reserves, or the securities premium account or the capital redemption reserve account, provided that capital reserve is not created by the revaluation of assets

- ❖ Company has not defaulted in payment of interest or principle in respect of fixed deposit or debt securities issued by it
- ❖ Company has not defaulted in payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.
- ❖ Company cannot issue bonus shares in lieu of dividend
- ❖ 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
- ❖ Decision of the board regarding announcement of recommending a bonus issue, can not subsequently be withdrawn by the company.

54.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the company shall issue fully paid-up bonus shares to its members out of its free reserves, or the securities premium account or the capital redemption reserve account, provided that capital reserve is not created by the revaluation of assets {<i>Section 63(1) of the Act</i>}. • the company has not defaulted in payment of interest or principle in respect of fixed deposit or debt securities issued by it {<i>Section 63(2)(c) of the Act</i>}. • the authorised share capital is sufficient for issue of bonus shares and if authorised capital is not enough, then first alter the capital clause of the memorandum of association of the company. • the articles of association authorise for issue of bonus shares, and if not then first alter the articles of association to include provisions for issue of shares through bonus issue {<i>Section 63(2)(a) of the Act</i>}. • the company has not defaulted in payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus {<i>Section 63(2)(d) of the Act</i>}. • if the shares are partly paid-up shares as any outstanding on the date of allotment, are made fully paid-up {<i>Section 63(2)(e) of the Act</i>}. • the company cannot issue bonus shares in lieu of dividend {<i>Section 63(3) of the Act</i>}. • 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 personnel has been dematerialised in accordance with provisions of the Depositories Act 1996 and regulations made there under {<i>Section 29 read with rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014</i>}. • every unlisted public company, except Nidhi company, Government company or wholly owned subsidiary company, shall issue shares only in dematerialised forms and any person to whom shares are offered by an unlisted public company by way of bonus issue shall ensure that all his existing securities of the company are held in dematerialised form before such subscription {<i>Rule 9A(1)(a) and (3)(b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014</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 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 companies.
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

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