

PROCEDURE FOR ISSUE OF PREFERENCE SHARES WITHOUT PUBLIC OFFER

58

{Section 55 read with Rules 9 and 10 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, 42, 55, 62, 88, 117, 118, 173, 179, 247 and 403
The Companies (Share Capital and Debentures) Rules, 2014	Rules 5, 9, 10, 13 and 19
The Companies (Prospectus and Allotment of Securities) Rules, 2014	Rule 9A, 12 and 14
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 PAS-3
Forms to be kept as a record	PAS-4 and PAS-5

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution

- ❖ Preference shares are not entitled to receive bonus against existing shareholdings.
- ❖ Preference shareholders have no right to vote in the annual general meeting of a company
- ❖ Company cannot issue irredeemable preference shares
- ❖ Proposed preference shares shall be redeemed within a period of 20 years (may be after 30 years for infrastructure projects) from the date of issue of preference shares
- ❖ Company, at the time of issue of such preference shares, has no subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares
- ❖ Company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:-
 - (a) at a fixed time or on the happening of a particular event;
 - (b) any time at the company's option; or
 - (c) any time at the shareholder's option.
- ❖ Preference shares shall not be redeemed except
 - (a) out of the profits of the company which would otherwise be available for dividend, or
 - (b) out of the proceeds of a fresh issue of shares made for the purposes of such redemption
- ❖ Preference shares shall not be redeemed unless they are fully paid.
- ❖ Where preference shares are proposed to be redeemed out of the profits of the company, a sum equal to the nominal amount of the redeemed shares shall be transferred, out of the profits, to a reserve which shall be called, the Capital Redemption Reserve Account, and the provisions relating to reduction of share capital of a company under the Act shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company
- ❖ In case the company is not in a position to redeem any preference shares or to pay dividend, if any, on unredeemed preference shares in accordance with the terms of issue, it may, issue further redeemable preference shares equal to the amount due, including the dividend thereon,
 - with the consent of the holders of 3/4th (three-fourths) in value of such preference shares and
 - with the approval of the Tribunal on a petition made by it in this behalf. if the company issue further redeemable preference shares with the approval of requisite majority and with the approval of Tribunal when it is not in a position to redeem any preference shares or to pay dividend, if any, then on issue of such further redeemable preference shares equal to the amount due, including the dividend thereon on unredeemed preference shares, the unredeemed preference shares shall be deemed to have been redeemed
- ❖ Offer or invitation to subscribe or issue of shares only to a select group of persons as identified by the Board and whose number except in case of Non-banking Financial Company and Housing Finance Companies, in a financial year, shall not exceed 200 in aggregate, if issued through private placement or preferential basis

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+ (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 COA MOA about 16.2017). • 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 DIR-2 (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
3.	Form created in writing, on or before appointment, from the appointed director as Form DIR-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 17 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	The particulars of first directors to be integrated with Form SPICe+ (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 \(in 2 vols.\)](#)