

PROCEDURE FOR ISSUE OF EQUITY SHARES

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{Sections 23, 26, 31, 32, 39 and 40 of the Act read with Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 and also read with Rules 9, 9A, 12, 39 and 40 of the Companies (Prospectus and Allotment of Securities) 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 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 39, 62(1)(c), 88, 117, 118, 173, 179, and 403
The Companies (Prospectus and Allotment of Securities) Rules, 2014	Rules 9, 9A, and 12
The Companies (Management and Administration) Rules, 2014	Rules 3, 5, 6, 8, 9, 15 and 24
The Companies (Share Capital and Debentures) Rules, 2014	Rules 7 and 19
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Securities and Exchange Board of India Act, 1992, rules and regulations made thereunder.	—
The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation, 2018 as amended.	—
The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015 as amended.	—
The Securities Contracts (Regulation) Rules, 1957 as amended	—
The Reserve Bank of India Act, 1934 and regulations, in case of Foreign/NRI equity participation.	—
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 GNL-2 PAS-3

59.1 PROCEDURE WITH SUBSTANTIAL CHECK POINTS FOR ISSUE OF EQUITY SHARES THROUGH PROSPECTUS

S. No.	Particulars
1.	<p>The section 23 of the Companies Act, 2013 states that a public company may issue securities—</p> <p>(a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of Part I of Chapter III of the Companies Act, 2013; or</p> <p>(b) through private placement by complying with the provisions of Part II of Chapter III of the Companies Act, 2013; or</p> <p>(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.</p>
2.	<p>Note that the company shall not be eligible to make an initial public offer-</p> <ul style="list-style-type: none"> • if the company, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by the Board and shall not apply to the persons or entities mentioned therein, who were debarred in the past by the Board and the period of debarment is already over as on the date of filing of the draft offer document with the Board.

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 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 DIR-2 (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	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).
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 \(in 2 vols.\)](#)