

PROCEDURE FOR FILING OF DECLARATION OF BENEFICIAL INTEREST

60

{Section 89(1) and (3) read with rule 9 of the Companies (Management and Administration) Rules, 2014}

Synopsis

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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 89, 173 and 403
The Companies (Management and Administration) Rules, 2014	Rule 9
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
e-Forms to be filed	MGT-6
Forms to be filed as an attachment with respective form	MGT-5 (declaration by beneficial owner) MGT-4 (declaration by registered owner)

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Declaration from registered owner
- ❖ Declaration from beneficial owner
- ❖ Reasons for not registering shares in the name of beneficial owner
- ❖ Proof of identity of registered and beneficial owner

60.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	The provisions of Section 89 of the Act and Rule 9 of the Companies (Management and Administration) Rules, 2014 are applicable to each kind of shares and on each type of company except to a government company and to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India and the Central Government may, by notification, exempt any class or classes

S. No.	Particulars
	<p>of persons from complying with any of the requirements of section 89, except sub-section (10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification <i>{Section 89(11) of the Act read with rule9(1) of the Companies (Management and Administration) Rules, 2014 and exemptions granted to government companies vide notification no. GSR 463(E) dated 05.06.2015}</i>.</p>
2.	<p>Note following points about Registered Owner -</p> <ul style="list-style-type: none"> • Registered owner is a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares. <i>{Rule9(1) of the Companies (Management and Administration) Rules, 2014}</i>. • Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to— <ul style="list-style-type: none"> - to receive or participate in any dividend - to receive or participate in any distribution, like, right shares, bonus shares, etc. - to exercise all or any rights attached to these shares <i>{Section 89(10) of the Act}</i>. • Registered owner is not the actual owner of shares but enjoy the following rights attached to these shares: <ul style="list-style-type: none"> - voting right in the company - vote on a poll - signing of proxy form - counted for he purposes of quorum • Registered owner shall made a declaration specifying the name and other particulars of the person who holds the beneficial interest in such shares <i>{Section 89(1) of the Act}</i>.
3.	<p>Note following points about Beneficial Owner –</p> <ul style="list-style-type: none"> • Beneficial owner is a person who hold or acquire beneficial interest in those shares of the company which are not registered in his name • Beneficial owner is considered as actual owner of these shares and enjoys the following rights attached to these shares: <ul style="list-style-type: none"> - to receive or participate in any dividend - to receive or participate in any distribution, like, right shares, bonus shares, etc. - to exercise all or any rights attached to these shares <i>{Section 89(10) of the Act}</i>. • Beneficial owner shall made a declaration specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed <i>{Section 89(2) of the Act}</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-11) (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 Incorporation and Qualification of Directors Rules, 2014).
4.	Forms in electronic 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 Incorporation and Qualification of <u>Directors</u> Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-11) 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 \(in 2 vols.\)](#)