

Prepared by:

CS Ankur Garg

<https://www.facebook.com/#!/ankur.gargcs>

Important Company Law Procedures at one place - Part 1

Dear Professional Colleague

In last few days I have written and uploaded different corporate law procedures under Companies Act, 2013 for my fellow professionals. In this article you may find some of them at one place in to the point and crisp language. I am sure that this article will act as a ready reference as far as procedure and corporate secretarial practice is concerned.

1. **Procedure for Change in Object Clause**

Change in Object clause of the Company involves alteration of Memorandum of Association (hereinafter referred to as “**Memorandum**”) of the Company. Main provisions related to alteration of Memorandum are given in Section 13 of the Companies Act, 2013 read with Companies (Incorporation) Rules, 2014.

Procedure for Change in object clause

Secretarial procedure for alteration in object clause is given below in brief:

1. Issue notice under section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors.
2. Hold Board meeting and:
 - a. Pass board resolution in order to obtain approval of Directors for change in object clause of Memorandum.
 - b. Pass board resolution to fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for amendment in object clause of Memorandum under section 13 of Companies Act, 2013;
 - c. Pass board resolution to approve notice of EGM along with Agenda and Explanatory Statement as per section 102(1) of the Companies Act, 2013;
 - d. Pass board resolution to authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM).
3. Issue Notice of the EGM to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;
4. Hold the EGM on due date and pass the necessary Special Resolution under section 13(1) of the Companies Act, 2013, for change in object clause of Memorandum.

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5. As per section 13(6), Company is required to file Special Resolution with concerned Registrar of Companies. Hence, file form **MGT.14** within 30 days of passing of Special Resolution with the concerned Registrar of Companies, with prescribed fees and along with following **attachments**:
 - a. Notice of EGM;
 - b. Certified True copy of Special Resolution;
 - c. Altered Memorandum of Association;
 - d. Certified True copy of Board Resolution may be attached as an optional attachment.
6. **Duty of Registrar of Companies**: Concerned Registrar of Companies (ROC) will check the E-forms and attached documents. As per section 13 (9) The Registrar shall register any alteration of the Memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the Special Resolution and will give effect to the change in Object clause of the Memorandum.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for change in Object Clause of Memorandum" available at the link below:

<http://www.caclubindia.com/forum/procedure-for-change-in-object-clause-of-the-company-300394.asp>

2. **Procedure for appointment of Additional Director**

Appointment of Director by Board as Additional Director is regulated by Section 161 of the Companies Act, 2013. Such Additional Director is required to be regularized in General Meeting by shareholders through passing an Ordinary Resolution Section 160 of the Companies Act, 2013.

Please find below the **procedure** for appointment of Additional Director in Board Meeting as per Companies Act, 2013:

1. Check whether Articles of the Company contain power/authorisation to appoint Additional Director. If not, then alter the Articles of the company to have enabling clause for appointment of Additional Director as desired by Section 161(1).
2. Collect DIN number of the proposed director u/s 153 read with from **DIR-3** and **DIR-4**.
3. Procure following Documents/Consent/Declaration from the proposed director:

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- i. Consent in writing to act as Director in form **DIR-2** pursuant to Rule-8 of Companies (Appointment & Qualification of Directors) Rules, 2014.
 - ii. Intimation in Form **DIR-8** pursuant to Rule-14 in terms of Companies (Appointment & Qualification of Directors) Rules, 2014, to the effect that he/she is not disqualified u/s 164(2) of Companies Act, 2013.
 - iii. Disclosure of Interest in Form **MBP.1** pursuant to section 184(1) read with rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014. Remember one thing **MBP.1** should not be dated earlier than date of his/her appointment as Director.
 - iv. Self-certified copies of Proof of Identity and Proof of Residence.
 - v. Document with respect to Interest in other entities (One of the attachment of form DIR.12)
4. Hold a board meeting to pass Board Resolution for appointment of Additional Director u/s 161 of Companies Act, 2013.
 5. File form **DIR.12** with ROC as return of appointment of Additional Director within 30 days of passing board resolution for appointment along with following **attachments**:
 - i. Board Resolution for appointment
 - ii. Appointment Letter given to Additional Director
 - iii. Form DIR.2
 - iv. Interest in other entities
 - v. Self-certified copies of Proof of Identity
 - vi. Self-certified copies of Proof of Residence
 6. Make necessary entries in the Register of Directors along with their Shareholding, if any, maintained u/s 170 of Companies Act, 2013.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for appointment of Additional Director" available at the link below:

<http://www.caclubindia.com/articles/procedure-for-appointment-of-additional-director-in-ca-2013-20653.asp>

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3. **Procedure for resignation of Director**

Section 168 of the Companies Act, 2013 regulates the procedure for resignation of director. Please find below Law and procedure in this regard:

1. As per section 168 (1), a director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same by passing a board resolution to that effect.
2. As per Rule 15 of Companies (Appointment and Qualification of Directors) Rules, 2014, the company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form **DIR-12** and post the information on its website, if any.
3. As per Rule 16 of Companies (Appointment and Qualification of Directors) Rules, 2014, a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation through filing of **Form DIR.11**.
4. As discussed E-forms to be filed in case Resignation of Director are form **DIR.11** and **DIR.12**. Filing of Form DIR.11 is the responsibility of resigning director under his/her digital signature whereas Filing of Form DIR.12 is the responsibility of Company. Documents to be arranged/attached for filing of **DIR.11** and **DIR.12** are:
 - a. Notice of Resignation filed with the Company (Resignation Letter);
 - b. Proof of Dispatch of resignation;
 - c. Evidence of Cessation (Resignation acceptance Letter by the Company);
 - d. Board Resolution for taking note of resignation.

We can use Board Resolution for taking note of resignation or Resignation acceptance Letter by the Company as Evidence of Cessation. Further Resignation Letter given by the Director shall act as Notice of Resignation filed with the Company. You may download soft copy of above mentioned Letters, Board resolution etc from the link given below:

<http://www.caclubindia.com/forum/procedure-for-resignation-of-director-under-ca-2013-299123.asp>

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for resignation of Director" available at the link below:

<http://www.caclubindia.com/articles/procedure-for-resignation-of-director-under-ca-2013-21155.asp#.U89qraO816Y>

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4. Procedure for Increase in Authorized Share Capital

Procedure for Increase in Authorize share Capital is one of the most frequently searched topics by professionals. Under Companies Act, 2013, the process of Increase in Authorise Capital is governed by Section 61 read with section 13 and 64 of Companies Act, 2013. Procedure in this regard is given below:

Procedure for Increase in Authorize share Capital

1. As per section 61 of the Companies Act, 2013, for Increase in Authorise Share Capital, authorization in Articles of Association (AOA) is a must. If there is no such provision then the company has to alter its AOA so as to insert the clause enabling increase in the Authorised share capital.
2. Issue notice under section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors.
3. Hold Board meeting and:
 - a. Pass board resolution in order to obtain approval of Directors for Increase in authorised share Capital.
 - b. Pass board resolution to fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Ordinary Resolution, for amendment in authorised share Capital clause of MOA under section 61 of Companies Act, 2013;
 - c. Pass board resolution to approve notice of EGM along with Agenda and Explanatory Statement as per section 102(1) of the Companies Act, 2013;
 - d. Pass board resolution to authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM).
4. Issue Notice of the EGM to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;
5. Hold the EGM on due date and pass the necessary Ordinary Resolution under section 61(1)(a) of the Companies Act, 2013, for increase in authorize share capital of the Company.
6. **ROC Form filing:** File form **SH-7** within 30 days of passing of Ordinary Resolution with the concerned Registrar of Companies, with prescribed fees and along with following attachments as desired by section 64:
 - a. Notice of EGM;
 - b. Certified True copy of Ordinary Resolution;
 - c. Altered Memorandum of Association.

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d. Certified True copy of Board Resolution may be attached as an optional attachment.

7. Concerned Registrar of Companies (ROC) will check the E-forms and attached documents and will approve the increase in authorize share capital.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for Increase in authorised Share Capital" available at the link below:

http://www.caclubindia.com/articles/procedure-for-increase-in-authorise-capital-under-ca-2013-21069.asp#.U89_0qO816Y

5. **Procedure for Conversion of Private Company into One Person Company**

Secretarial procedure for Conversion of Private Company into One Person Company (OPC) is given below:

1. Issue notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors.
2. Hold Board meeting and:
 - a. Pass board resolution in order to obtain approval of Directors for Conversion of Private Company into One Person Company (OPC);
 - b. Pass board resolution to fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for Conversion of Private Company into One Person Company (OPC). This Conversion shall be in accordance with **Rule 7** of Companies (Incorporation) Rules, 2014;
 - c. Pass board resolution to approve notice of EGM along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;
 - d. Pass board resolution to authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board.
3. Issue Notice of the EGM to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;
4. Hold the Extra-ordinary General meeting (EGM) on due date and pass the necessary Special Resolution, for Conversion of Private Company into One Person Company (OPC).
5. **ROC Form filing:** As per Rule 7(3), Company is required to file Special Resolution passed by shareholders for Conversion of Private Company into One Person Company (OPC) with concerned Registrar of Companies. Hence, file form **MGT.14** within 30 days of

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passing of Special Resolution with the concerned Registrar of Companies, with prescribed fees and along with following **attachments**:

- a. Notice of EGM;
 - b. Certified True copy of Special Resolution;
6. The company shall file an application in **Form No.INC.6** for its conversion into **One Person Company** along with prescribed fees, by attaching the following documents, namely:-
- (i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;
 - (ii) the list of members and list of creditors;
 - (iii) the latest Audited Balance Sheet and the Profit and Loss Account; and
 - (iv) the copy of No Objection letter of secured creditors.
7. **Duty of ROC:** Concerned Registrar of Companies (ROC) will check the E-forms and attached documents filed by the Company. On being satisfied that Company has complied with prescribed requirements the Registrar shall issue the Certificate to the effect of Conversion of Private Company into One Person Company (OPC).

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for Conversion of Private Company into One Person Company (OPC)" available at the link below:

http://www.caclubindia.com/articles/procedures-for-conversion-of-private-company-into-opc-21255.asp#.U-xTT6PD_1U

6. **Procedure for change in registered office address within the Local Limits**

Procedure for change in registered office address within the limits of the same city, town or village is very simple. Board of directors of the company have full authority to take a decision in this regard.

A Company by passing Board resolution can change the situation of its registered office within the limits of the same city, town or village. An intimation of the change shall be given to the Registrar electronically in e-Form **INC.22** within 15 days of the date of such change.

Secretarial procedure for change in registered office within the limits of the same city, town or village is given below:

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1. Issue notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors.
2. Pass a board resolution for change in situation of registered office of the Company within the limits of the same city, town or village;
3. As per section 12(4), notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within **15 days** of the change through filing of E-form **INC.22**, with the following attachments:
 - a. Proof of registered office address. (Conveyance/Lease deed/Rent Agreement etc. along with the rent receipts not older than one month.
 - b. Copies of the utility bills (like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.
 - c. Proof that company is authorized to use the address as the registered office of the Company (Authorisation letter from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if registered office is owned by any other entity / person (Not taken on lease by the Company).

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for change in registered office address within the limits of the same city, town or village" available at the link below:

http://www.caclubindia.com/articles/procedure-for-change-in-registered-office-part-1-21336.asp#.U-xcd6PD_1U

Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks

CS Ankur Garg

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