

**APPOINTMENT OF DIRECTORS: CONFORMITY
WITH AMENDMENTS MADE TO THE RULES FOR THE
APPOINTMENT OF DIRECTORS**

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I. ABSTRACT

Only an individual can be a director and every company must have one resident director. Directors work as agents of the company and are liable for its actions. The process of appointment of directors is laid down under Sec 152 of The Companies Act, 2013 read along with Rule 8 whereas the conditions for disqualifications of a director are prescribed under Sect 164 of The Act. Consequent to amendments, Rule 8 requires for consent of the person being appointed as a director to be sought and Rule 10 prescribes declaration to be filed vide forms DIR 2 & DIR 3.

II. INTRODUCTION

There are different types of companies that exist, a prominent classification of directors and rules applicable for the appointment such directors. The provisions of Section 2(34) of the Companies Act, 2013 state that a director can be termed as an individual or a person designated to hold the position of a director in a particular company. Any person who has been chosen to serve as a director but has not made a decision or has not made a choice regarding the appointment, the same will not fall under the category of a director under the ambit of this Act. It has to be noted that only a specific individual person shall be designated as the director as fixing responsibilities and duties in cases of corporate firms becomes difficult.

- According to Section 149(3) at least one of the directors has to be an Indian resident.
- As per the rules, a minor cannot become a director as he is not eligible to obtain DIN as mentioned under Section 152(3).

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What will be the Minimum and Maximum number of Directors?

A corporation classified as a public company requires a minimum of 3 directors wherein the case of a private company, the requirement is 2 directors.

There can be a maximum of 15 directors appointed to a public company.

It is required that no person shall serve as a director in more than 20 companies if it is a public company, it is 10 in accordance with the requirement of Section 165 falling under the Companies Act. While keeping a track on the limit, a dormant company as well as a company holding a license under section 8 are excluded.

For instance, a person is holding the directorship in 15 corporations out of which 9 of them are public companies and 6 of them are private companies. Such a person is now eligible to hold the directorship only in 1 more public corporation and or 4 private corporations and if no public corporation is in existence, then 5 of the private corporations. Under this, a public corporation includes any holding or subsidiary company.

III. APPOINTMENT OF DIRECTORS

The Companies Act of 2013 covers the appointment of directors by way of **Section 152** along with **Rule 8** of the Companies (Appointment and Qualification of Directors) Rules, 2014.

- According to this section, the companies must elect the directors in the general meetings.
- Any individual who is supposed to be appointed must furnish Director's Identification Number (DIN)
- Such person has to furnish a declaration which states that he is not falling under the category of disqualified persons as recognized by law to hold the office and serve as a director under this Act.
- According to Section 152(4) of the Act of 2013, any person who is so appointed ought not to act unless he has filed his consent with the company and such consent must be submitted to the Registrar in the manner specified within thirty days of his appointment.
- Section 152(5) specifies that any such person is appointed as an independent director it is necessary that an explanatory statement was attached together with the notice

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convening the meeting inclusive of a statement which in the Board's opinion such a person complies with the conditions mentioned for such appointment under this Act.

The documents required for the appointment:

- For any person to hold the Directorship of a Company, it is mandatory for Director Identification Number (DIN) to be allotted under Section 154 of the Companies Act, 2013.
- For the allotment of the same an application for the same can be made on the Portal of the Ministry of Corporate Affairs (MCA) under Section 153, by filling Form DIR-3 and there is a requirement for Digital Signature Certificate (DSC).
- Passport Size Photograph is required.
- ID Proof (Copy of Passport, National ID, PIO Card, Copy of OCI Card issued by Government of India).
- Address Proof
- When DIN is allotted, documents for appointment are to be filed under Form DIR-12. The documents which are to be filed include; Form DIR-2 which deals with (Consent to serve as the Director), Form DIR-8 which deals with (Interest in other corporations as well as disqualification of the directors as mentioned under Section 164 of the Act), Appointment Letter by the company, the Resolution which is passed by the Corporation for the appointing of such director in the meeting.
- Filing of form DIR-12 within a period of 30 days from his appointment with the Registrar of Company.

IV. DISQUALIFICATION OF A DIRECTOR

The Companies Act of 2013 covers the categories of persons are not eligible to be appointed as directors of a company by way of **Section 164:**

1. Any person who is not sound minded. Specifically, a person of unsound mind.
2. Any person who has been declared as insolvent.
3. Any person who has made an application for to be proclaimed as insolvent moreover the particular application rests unsettled.
4. Any individual who has been awarded with imprisonment for a duration that is longer than six months and the term of five years have not passed.
5. Any person who has been disqualified by the Court or Tribunal.

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6. If any call money is not paid by such person and the period of 6 months have elapsed.
7. A person will be considered as disqualified if pronounced guilty of an offence of transaction of a related party in the duration of preceding 5 years.
8. If the Director Identification Number (DIN) has not been allotted to any such person.

V. AMENDMENTS TO RULES REGARDING APPOINTMENT OF DIRECTOR

The Ministry keeping a tight rein on the Corporate Affairs (MCA) on 1st June 2022 by dint of notification, notified the corporations regarding the Amendment Rules of 2022, (Appointment and Qualification of Directors) and modified Rule 8, Rule 10 along with Form DIR- 2 and Form DIR-3 of Rules of 2014, (Appointment and Qualification of Directors) in order to prevent Chinese as well as other foreign investors from controlling the operations and functioning of Indian Companies.

Amendment made to **Rule 8** which deals with the **Consent of such person to act as Director:**

Ministry of Corporate Affairs has added a new condition to sub-rule (1) of Rule 8 of the Act. The amendment made consisted:

- Every person appointed to clasp the directorship in any company must furnish his consent under Form DIR-2 in written to act and serve as the Director of such company, to the company on the appointment or before that.
- Such consent is to be submitted by the company to the Registrar of the Company so as to be added in the register of the company under Form DIR-12 accompanied by the fees within 30 days of the appointment as directed in the Companies (Registration Offices and Fees) Rules, 2014.

Wherein any person who is pursuing designation is a resident of a nation which shares the border geographically with India, shall attach with the consent a security clearance as required from the Home Ministry, Government of India.

Amendment made to **Rule 10** which deals with the **Issuance of Director Identification Number to the such person:**

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As provided by the Rules of 2014 which deal with Appointment and Qualification of Directors of a corporation in order to obtain the DIN, the company is needed to file Form DIR-3 on the Ministry of Corporate Affairs' portal along with the obligatory amount of fees to be paid by means of online mode. An application number shall be automatically generated by the system on above submission and transaction being successful

Following the amendment, the MCA has stated that unless the person who is applying for a DIN share the border with India attaches clearance in terms of security as required from the Home Ministry accompanying the application made for DIN, an application number shall not be generated.

Amendment made in the **Declaration Details of Form DIR-2 and DIR-3:**

As per the Rules provided therein, a person who is appointed to hold the Directorship of a company shall submit the following declaration:

In Form DIR-2:

- Prior to applying for the position of a director, I am not obliged to procure a clearance in terms of security as required from the Ministry of Home Affairs, Government of India.
- Prior to applying for the position of a director, I am obliged to procure a clearance in terms of security as required from the Home Ministry, Government of India and that it has been procured and attached.

In Form DIR-3:

- Before seeking for DIN, I am not obliged to procure a clearance in terms of security as required from the Home Ministry, Government of India under sub-rule (1) of Rule 10.
- I am obliged to procure a clearance in terms of security as required from the Home Ministry, Government of India prior to applying for a DIN and the same has been procured and attached under sub-rule (1) of Rule 10.

As per the new rules which are inserted, it will be a compulsion for the companies procure security clearance from the Government of India prior to appointing directors from the nations which share the land border with India.

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VI. CONCLUSION

An individual who is appointed or designated to hold the directorship undertakes the functioning and operations of the corporation. Such person takes the charge and is responsible for the conduct of the business of the corporation. The directors are in a way the representatives of the company. Therefore, it is intrinsic that any person so designated must undergo the requisite procedure and the Rules as laid down by law must be conformed with during the appointment.

VII. REFERENCES

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