

DRAFT

*Guidance note on*

# Pre-Certification of E forms

*under*

*The Companies Act, 2013*

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The Council of the Institute of has been constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that “the duties of carrying out the provisions of this Act shall be vested in the Council” and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for certification of the eforms and also modify/ amend/ adopt new guidelines in this respect from time to time. These guidelines serve as a mechanism intended to further enhance the quality of professional services rendered by Practising Company Secretaries over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

## **Objectives :**

1.1 This Guidance manual on pre certification of the eforms deals with certifying professional responsibilities on the Quality Attestation/ certification Services and other assurance as required under the governing laws. This Manual is to be read in conjunction with the requirements of the Company Secretaries Act, 1980 and Regulations made thereunder, the Code of Conduct and other relevant guidelines of the Institute.

1.2 The objective of the manual is to establish and maintain a system of quality control to provide it with reasonable assurance that (a) the certifying professional has complied with the technical/professional standards and applicable legal and regulatory requirements; and (b) the reports or certificates issued by the Certifying professional/ firm or engagement partners are appropriate in the circumstances.

1.3 The objective of this Manual is to guide the Company Secretaries to establish policies, procedures & systems to maintain the highest standards of quality in the assignments undertaken by them.

1.4 The Objective of this Guidance Note is to highlight some of the important aspects which a Professional in Practice or Employment, all stakeholders who are effected should examine before certifying or dealing with the forms in any manner.

1.5 The Scope of the Guidance Note has been restricted to important forms>Returns required to be filed with the Registrar of Companies for the purpose of his taking the same on record

## Scope

This Manual applies to all firms of Company Secretaries in respect of certifications and reviews and other assurance and related services engagements.

Apart from this Manual, in undertaking any attestations / certification assignment, a certifying Professional / firm should ensure that all statements / compilations conform to the technical standards of ICSI and other legal requirement, to the extent they have come into force and are applicable for reporting.

This Manual contains the objective of the firm and requirements designed to enable the firm to meet the stated objectives. In addition, it contains related guidance in the form of application and other explanatory material, and introductory material that provides context relevant to a proper understanding of the manual, and definitions.

## Introduction

**The Ministry of Corporate Affairs (MCA)** is primarily concerned with administration of the Companies Act 1956/ 2013, the Limited Liability Partnership Act, 2008 & other allied Acts and rules & regulations framed thereunder mainly for regulating the functioning of the corporate sector in accordance with law. Companies Act requires filing of various e-forms by the companies which may be event based form or need to file on annual basis. For ensuring greater transparency for better governance, a number of disclosures are to be made while filing e-forms. Hence all the e-forms are required to be authenticated by authorized signatories of the company filing the same, using digital signatures. MCA has entrusted practicing professionals like members of the Institute of Company Secretaries of India (ICSI) with the responsibility of certifying the compliances and ensuring reliability of documents filed by companies with MCA in electronic mode and also ensuring proper due diligence for the same.

The term due diligence describes a general duty to exercise care in any transaction. The authorized signatory and the professionals, who certify e-form, are responsible for the correctness of the contents of e-forms and enclosures attached with the e-form. They are expected to verify/certify, whether all the requirements as per the provisions of the Act and the rules made thereunder have been complied with and all the attachments to the forms have been duly scanned and attached completely and legibly. Once an e-form has been pre-certified by a professional towards its authenticity based on the contained in the books of accounts and records of the company, the Registrar takes on record such e-form. Ensuring the correctness of information therefore becomes very critical. However, if a professional gives a false certificate or omits any material information knowingly, he is liable for

punishment under the provisions of Companies Act, 2013 as well as liable for professional or other misconduct.

The Guidance Note elucidates, wherever necessary, the basis for setting a standard, explains the legal, procedural aspects of pre-certifying as Standard Operating Procedure (SOP) and filing of e- forms and would be a valuable guide in the hands of practicing professionals in general to ensure that the contents stated in the form or return are as per the books and records of the company and comply with the various provisions of the Companies Act apart from being true and correct.

The note also appropriately integrates the replies to various queries raised by the stakeholders and would prove to be a vital guiding factor both for the management of the companies and the practicing professionals to examine before filling and certifying the e-forms.

### **Pre-certification- A Perspective:**

Pre-certification was introduced after detailed deliberations and this has been refined over time. Though it was initially aimed at avoiding delays in registration of documents and charges, its scope was expanded to authenticate correctness and integrity of documents being filed with the MCA in view of the benefits from such precertification. With a view to avoid delay in the registration of documents, MCA (the then Department of Company Affairs) on the initiative taken by the Institute of Company Secretaries of India issued two circulars advising the Registrars of Companies to take on record documents that are filed by companies or the creditors concerned, duly certified as correct by a Company Secretary/ Chartered Accountant/ Cost accountant in Practice.

The requirement of authentication of documents prescribed under Rule 8 of the Companies (Registration Offices and Fees) Rules, 2014 elaborates on the responsibility of professionals certifying the forms. The professional certifying the form must verify whether all the requirements as per the provisions of the Act and the rules made thereunder have been complied with and all the attachment to the forms have been duly scanned and attached completely and legibly. The following Declaration has to be made by a Professional before certifying the form:

A PCS while exercising due diligence need to be keen and alert while certifying the forms with their eyes wide open. They should not merely restrict themselves to the content of the

form and along with mandatory attachments they need to focus whether substantial laws were complied or not. They should exercise vigilance in circumstances such as management disputes, Regulatory complaints, investor complaints etc. All these factors have to be taken care of while certifying the forms.

While certification of eform the declaration is given by the certifying professional which is as follow.

***“I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed.***

***I further certify that:***

- i. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;***
- ii. All the required attachments have been completely and legibly attached to this form;”***

therefore, Pre-certification of forms is, not a routine or mechanical exercise but is a serious and involved work calling for sound application of mind in verifying the averments made in the respective forms after due consideration of the provisions of the Act read with the relevant rules.

### ***Penal Provisions:***

A wrong pre-certification leads to the following threat to the company, its authorised person and to the certifying professional.

#### **To the company:**

The provisions of the Companies Act, 2013 provides for the actions/ fine/ penalty to be imposed on the companies in case of the default made by the company/its officers. Further the action may be taken up by central government up to the order of the compulsory winding up of the company

***To the authorised representative of the company:***

The provisions of the Companies Act, 2013 provides for the actions/ fine/ penalty to be imposed on the companies in case of the default made by the company/its officers. Further the action may be taken up by central government under section 447,447 and 449 of the companies act,2013

***To the Certifying professional:***

**i. Risk on Reputation:**

Wrong certifications will not only lead to penal provisions but also will effect the reputation of a Company Secretary's firm and also in his individual capacity. It may lead to possibility of lose the practice also. Apart from this there is bad rift to ICSI. So, a PCS has to keep this in mind while certifying or attesting the forms.

**ii. Under the Company Secretaries Act 1980:**

The Second Schedule to the Company Secretaries Act, 1980 in clause 2 provides that where a Company Secretary in Practice certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in Practice, he shall be deemed to be guilty of professional misconduct.

Further, clauses 5, 6, 7 and 8 provide that where a Company Secretary in Practice while pre-certifying any e-Form or document fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, or fails to report a material mis-statement known to him or does not exercise due diligence, or is grossly negligent in the conduct of his professional duties or fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion, he would be deemed to be guilty of professional or other misconduct under the provisions of the Company Secretaries Act, 1980.

In case there is any false statement in any material particular or omission of any material fact in the form certified as correct by a Practicing Company Secretary, he would be liable for disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980.

In view of section 21B(3) of the Company Secretaries Act, 1980, in case he is found guilty of professional or other misconduct mentioned in the second schedule to the Company Secretaries Act, 1980, he will be liable for the following actions

- (a) Reprimand,
- (b) Removal of name from the registrar of members permanently or for such period as may be thought fit by the disciplinary committee,
- (c) Fine which may extend to five lakh rupees.

***iii. Under the Companies Act 2013:***

With a view to ensure that the secretary in practice carries out his work with due diligence, the Registrar may carry out scrutiny of Forms on random basis.

As per rule 8(9) of the Companies (Registration Officers and Fees) Rules, 2014, where any instance of filing document, application or return etc. containing a false or misleading information or omission of material fact, requiring action under section 448 or section 449 is observed, the person shall be liable under section 448 and 449 of the Act.

Section 448 of Companies Act, 2013 deals with penalty for false statements. The section provide that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made

thereunder, any person makes a statement, –

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

Section 447 deals with punishment for fraud which provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

In view of this, a company secretary in practice will be attracting the penal provisions of section 448, for any false statement in any material particular or omission of any material fact in the e forms . However, a person will be penalised under section 448 in case he makes a statement, which is false in any material particular, knowing it to be false, or which omits any material fact knowing it to be material.

It is pertinent to note that section 448 applies to “any person”. In view of this, a company secretary in practice, who is an independent professional, will be attracting the penalty, as prescribed in section 448 in case his observations in the secretarial audit report turns out to be false or he omits any material fact, knowing it to be false or material.

***iv. Action by Regulator***

Further as per rule 8(10) **The Companies (Registration Offices and Fees) Rules, 2014**, without prejudice to any other liability, in the case of certification of any form, document, application or return under the act containing wrong or false or misleading information or omission of material fact or attachments by the person, the Digital Signature Certificate shall be de-activated by the central government till a final decision is taken in this regard.

As per MCA circular no. 10/2014 dated 07.05.2014, where any instance of filing of documents, application or return or form etc, containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules, 15 days’ notice may be given for the purpose.

The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action under section 447 and 448 of the Act wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.

The E-Governance cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action under section 448 and 449 of the Act wherever prima facie cases have been made out. The E-Governance cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.

The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Governance Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month

## **Preparation before Certification:**

Professional in Practice before undertaking the work relating to Pre-certification should thoroughly read the requirements of the provisions of the Companies Act 2013 and Rules made thereunder and familiarize himself with the actual practices that are followed in this regard. He should particularly ensure the following:

- Ensure that letter of engagement/Board Resolution authorizing the professional for the assignment by the company to be obtained.( Where the statutory requirement is there for the board resolution or general meeting resolution then a copy of the extract of such resolution shall be obtained by PCS. Wherever the instance is possible it is recommended to record such appointment in the Board meetings.)
- Maintain a physical/scanned of all documents verified (subject to confidentiality requirement)
- Ensure that all relevant documents and attachments are legible & visible.
- verification of the documents from the original records of the company.
- Correctness of the records and the material departure from the facts
- the form is signed by the authorised person of the company
- before certification of any form, the person should be aware about the relevant provisions under the Act and Rules made thereunder, Process to be followed by the company, approval if any required etc..

## ***Guideline on the Register of Certification***

For the purpose of maintaining quality of attestation /certification services provided by Company Secretaries in Practice, every Practising Company Secretary/Firm of Practising Company Secretaries shall maintain a register regarding attestation /certification services provided by him/her/it, which shall be open for inspection by such person as may be authorised.

2. The format of the register to be maintained by a Practising Company Secretary/Firm of Practising Company Secretaries regarding attestation /certification services is as under :

Sl. No.

Name and Registration No. of the company to which attestation[/certification services\* provided

Services rendered

Date of signing of Certificate/ Return/ Audit Report

Signature of the PCS

Signature of the person authorised for verification

\* The various attestation /certification]1 services mean :

1. Signing of Annual Return (MGT-7)
2. Certification of Annual Return (MGT-8)
3. Issue of Secretarial Audit Report (MR-3)
4. Certification of E forms of MCA under Companies Act, 2013 7 LLP Act, 2008
5. Internal Audit of Depository Participants/ portfolio Manager/ Stock Broker
6. Annual Compliance auditor under sebi (Research Analyst) Regulations, 2014
7. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges.
8. Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D&CC/FITTC/Cir-16/2002 dated December 31, 2002.
9. Conduct of Internal Audit of Operations of the Depository Participants.
10. Corporate Governance Certification under SEBI (LODR) Regulations, 2015

## **Communication to previous professional**

Whenever a practicing company secretary is engaged in place of the existing practicing company Secretary or other professional, he/she should communicate the appointment to the earlier incumbent in writing, in view of the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 and the relevant pronounced judgments

## **Signing and Certification of Annual Return MGT-7 by a Practicing Company Secretary**

While Signing of the Annual Return of a company by a Company Secretary or a Company Secretary in practice shall observe the guidance note on the Certification of the Annual Return as published by the ICSI and take the appropriate professional judgements wherever necessary.

It is the duty of the signing professional to take the copy of the records and record such relevant facts upon which he has taken his professional Judgement while signing the form.

While the certification of Annual Return in Form No MGT-8, the certifying professional shall observe all the statements in the true and fair manner. It is the duty of the professional to give the observation, Limitation and disclaimer as may be required and appropriate for the certification.

### ***Signing of form AOC-4***

A company secretary in practice shall observe the Guidance note on the AOC-4 as published by the ICSI, along with his professional judgement while signing of the Form AOC-4.

## ***Incorporation of Company E form INC-32 :***

### **INC- 32: SPICe (Simplified Proforma for Incorporating Company Electronically)**

#### **Relevant Section and Rule**

- Section 4, 7, 12, 152 and 153 of the Companies Act, 2013 and rules made thereunder

#### **Purpose:**

To register the Company with the Registrar through single application involving reservation of name, incorporation of a company, application for allotment of DIN and/or application for PAN and TAN.

#### **Check Points for Professionals**

##### **Name Availability:**

1. The professional engaged in the incorporation of Company shall educate themselves and the promoter of the company about the declaration given by them on the following points of Declarations:

***\*I have gone through the provisions of the Companies Act, 2013, the rules thereunder and prescribed guidelines framed thereunder in respect of reservation of name, understood the meaning thereof and the proposed name is  in conformity thereof.***

***\*I have used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) for checking the resemblance of the proposed name with the companies and Limited Liability partnerships (LLPs) respectively already registered or the names already approved. I have also used the search facility for checking the resemblances of the proposed name with registered trademarks and trade mark subject of an application under the Trade Marks Act, 1999 and other relevant search for checking the resemblance of the proposed name to satisfy myself with the compliance of the provisions of the Act for resemblance of name and Rules thereof.***

***\*The proposed name is not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time.***

***\*The proposed name is not offensive to any section of people, e.g. proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity.***

***\*The proposed name is not such that its use by the company will constitute an offence under any law for the time being in force.***

***\*I undertake to be fully responsible for the consequences in case the name is subsequently found to be in contravention of the provisions of section 4(2) and section 4(4) of the Companies Act, 2013 and rules thereto and I have also gone through and understood the provisions of section 4(5) (ii) (a) and (b) of the Companies Act, 2013 and rules thereunder and fully declare myself responsible for the consequences thereof.***

2. In case if the proposed name is similar to the name of any other company or any foreign company, ensure that the Certified True Copy of NOC from such company by way of Board Resolution has been obtained.
3. In case the promoters are carrying on any partnership firm, sole proprietary or unregistered entity in the name as applied for, ensure that the NOC from such entity has been obtained.
4. In case proposed name is based on registered Trade Mark/Application pending for registration, ensure that the NOC of the trade mark applicant/owner has been obtained.

**Check points for certifying professional:**

1. Ensure that the certifying professional has been duly engaged for the purpose of certification of this form.
2. Ensure that the particulars (including attachment(s)) from the original/certified records maintained by the applicant which is subject matter of the form are verified and are true, correct and complete.
3. Ensure that the attached memorandum and articles of association have been drawn up in conformity with the provisions of sections 4 and 5 and rules made thereunder; and ensure that all the requirements of Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 7 of the Act and

matters precedent or incidental thereto have been complied with. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;

4. Ensure that all the attachments to the form are as per the requirements of the act, rules and are complete and legible.
5. Ensure that before certification the professional shall personally visited the proposed registered office given in the form at the address
6. Ensure that if the Article of Association is entrenched, it is according to the permissible criteria of the act.
7. Ensure the name is duly approved and Valid on the date of Application.
8. Ensure the documents attached are valid on the date of application.
9. Ensure that correct data relating to area code, AO type, Range code, AO No relating to PAN and TAN has been filled.

**Ensure that the following document shall be attached to the form:**

1. **Memorandum of Association** – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN.
2. **Articles of Association** – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN.
3. Duly Notarized Affidavit and declaration by first subscriber(s) and director(s)(INC-9) Mandatory in all cases.
4. Duly Notarized Affidavit by first directors and subscribers for non acceptance of deposits.
5. Declaration from first Directors (DIR-2) along with Copy of Proof of Identity and residential address

**If the address for correspondence is the address of registered office of the company, then following attachments are mandatory:**

5. Proof of office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);
6. Self attested copy of utility bills that are not older than two months.
7. NOC from the owner of the premises, if rented office.

**If proposed name requires approval of Central Government, then attach the following:**

8. Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from Central Government.

**If the proposed name is based on a registered trademark or is subject matter of an application pending for registration under the Trade Marks Act, then it is mandatory to attach:**

9. Approval of the owner of the trademark or the applicant of such trademark for registration of Trademark.

**If the promoters are carrying on any Partnership firm, sole proprietary or unregistered entity in the name as applied for, then it is mandatory to attach:**

10. NOC from the sole proprietor/ partners/other associates/ existing company

**If proposed name requires approval from any sectoral regulator, then it is mandatory to attach (if already received):**

In principle approval from the concerned regulator If any subscriber to the proposed company is Foreign company and/or company incorporated outside India, then it is mandatory to attach:

11. Copy of certificate of incorporation of the foreign body corporate and resolution passed

*Note: It is optional to attach Copy of certificate of incorporation in case the subscriber to the proposed company is Body Corporate.*

**If any subscriber to the proposed company is a Company itself, then it is mandatory to attach:**

12. Resolution passed by promoter company

**In case the name is similar to any existing company, then it is mandatory to attach:**

13. A certified true copy of No objection certificate by way of board resolution / resolution

**In case any of the director has any interest in the proposed company, then it is mandatory to attach:**

14. Interest of first director(s) in other entities, if these entities have CIN/FCRN/LLPIN, need not mention the entity details.

15. Proof of Identity (Voter Id/ Passport/ Driving License/ Aadhar Card) and Proof of residence (mobile bill or telephone bill)/ Bank Statement etc.) of First Directors and Subscribers, if the subscribers are already holding a valid DIN and the particulars of the same are updated then the proof of identity and proof of residence need not be attached.

\* PAN is mandatory in addition to proof of Identity for Indian National.

\*Proof of residence shall not be older than 2 months.

**In case of an OPC, it is mandatory to attach:**

15. Consent of nominee

16. Proof of identity and residential address of the subscribers If any of the director (including subscriber cum director) does not have DIN, then it is mandatory to attach:

17. Proof of identity and residential address of the nominee If any one of the subscriber does not have a DIN, it is mandatory to attach.

18. Proof of identity and residential address of such director

**If SRN of INC-1 is mentioned in the form and any of the person mentioned in INC-1 as promoter is not subscribing to MOA, then attach:**

19. NOC in case there is change in the promoters (first subscribers to Memorandum of Association).

20. Any other information can be provided as an optional attachment.

21. A separate declaration in format of INC-8 is not required to be attached.

**Certification:**

**Ensure that the e-Form INC-32 has been certified by either of the following:-**

- a. Chartered accountant (in whole-time practice)
- b. Cost accountant (in whole-time practice)
- c. Company secretary (in whole-time practice)

Ensure that the membership number and certificate of practice number are correctly mentioned.

## ***DIR-3 (Application for allotment of Director Identification Number)***

### **Relevant Section and Rule**

- Section 153 of the Companies Act, 2013
- Rule 9(1) of the Companies (Appointment and Qualification Of Directors) Rules, 2014

### **Purpose:**

This form is filed for making an application to MCA for allotment of Director Identification Number (DIN).

### **Secretarial Checkpoints:**

1. Ensure that the latest photograph of the applicant has been attached in .jpeg format.
2. Ensure that no prefix/ suffix like Mr./ Ms./ Mrs/ Late/ Shri/ Ji have been used in the name field.
3. Ensure that the information filled in the form is verified from the original records maintained by the Company/applicant and are true, correct and complete and no information material has been suppressed in the form;
4. Ensure that the applicant is not restrained, disqualified, removed of, for being appointed as Director of a company;
5. Ensure that the applicant has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court;
6. Ensure that the applicant has not been already allotted a Director Identification Number (DIN).
7. Ensure that the supporting documents shall be self attested and shall be attested by the practicing professional.
8. The attesting authority shall display signatures, name in full (in capitals), Registration No. and Seal/stamp.
9. If the applicant is residing outside India, the attached documents shall be attested by the Consulate of the Indian Embassy, Foreign public notary or by the Company secretary in full time employment /CEO / Managing director of the Indian company in which he / she proposed to be a director
10. Ensure that the eForm DIR-3 has been digitally signed by the applicant

## Attachments

✓ **Proof of Identity (PAN for Indian National and Passport of Foreign National)**

Ensure that the proof of identity of the applicant should also contain the date of birth of the applicant.

✓ **Proof of Residence (passport/ election (voter identity) card/ ration card/ driving license/ electricity bill/ telephone bill/ aadhaar)**

**For Indian National**, proof of residence should not be older than 2 months from the date of filing of the eForm

**For Foreign National**, proof of residence should not be older than 1 year from the date of filing of the eForm.

The proofs which are in languages other than Hindi / English, then they should be translated in Hindi / English from professional translator carrying his details (name, signature, address) and seal.

In the case of foreign nationals, translation done by the notary of home country is also acceptable.

## Certification:

**Ensure that the eForm DIR-3 shall also be signed either by the Practising Professional or Company Secretary in whole time employment/ director of the existing Company**

If certified by the Practising Professional than they shall be either of the following:-

- a. Chartered accountant (in whole-time practice)
- b. Cost accountant (in whole-time practice)
- c. Company secretary (in whole-time practice)

Ensure that the membership number and certificate of practice number are correctly mentioned.

### **DIR-3B**

(Intimation of allotment of Director Identification number (DIN) to the Company by the Director)

#### **Relevant Section and Rule**

- Rule 10A of the Companies (Appointment and Qualification Of Directors) Amendment Rules, 2014

#### **Purpose:**

To intimate the allotment of Director Identification Number (DIN) to the Company by the Director within one month of the receipt of Director Identification Number (DIN)

#### **Secretarial Check points:**

1. Whether such director has given the complete details as required under the Form DIR - 3B.
2. Whether the Intimation is received with the one month time of the receipt of the DIN.
3. Check the DIN Allotment Letter.
4. Whether all the details provided in the DIN Intimation letter are as per the records with the company.
5. In case of any changes, whether same has been updated on the basis of the supporting documents.
6. Whether the company has acknowledged the receipt of Form DIR -3B.
7. Whether the Director has given the declaration as required in Form DIR - 3B, along with the supporting document i.e. Copy of resolution, Filed eForm DIR- 12.
8. Whether the Declaration is dated and signed by the Director and same is matched with the specimen signature provided in the form.

## ***Form DIR- 3C***

**(Intimation of information of Directors, managing director, manager and secretary by an Indian Company)**

### **Relevant Section and Rule**

- Section 157 of the Companies Act, 2013
- Rule 10A(2) of Companies (Appointment and Qualification of Directors) Rules, 2014

### **Purpose:**

To intimate the DIN of the directors and PAN of the manager/ secretary of the Company to the Registrar in Form DIR-3C within 15 days of receiving the intimation.

### ***Secretarial Check Points for Form DIR- 3C***

1. Whether the details filled under the form DIR- 3C are correct as per the Form DIR-2/DIR -3B and are verified with the original Documents.
2. Whether the appointed director has given declaration to the company that he/she is not restrained/ disqualified/ removed of, for being appointed as Director of a company under the provisions of the Companies Act,2013 including Section 164 of the said Act.
3. Whether the appointed Director has given a declaration to the company that he/she has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court.
4. Whether Certifying professional has recorded the relevant certification in its register of certification and the copy of the supported documents has been taken in records of the professional.
5. Whether the company has presented the form for certification within the due dates, if not the reason for delay in filing of form should also be recorded by the professionals.
6. The eForm shall be digitally signed by the Director, Managing Director, Manager or Company Secretary duly authorised by the Board.

**Attachments:**

Form DIR-2/ DIR-3B

**Certification:**

Ensure that the e-Form DIR-3C has been certified by either of the following:-

- a. Company Secretary (in whole-time practice)
- b. Comapany Secretary (in full time employment)
- c. Ensure that the membership number is correctly mentioned.

## **DIR-12**

### **Checkpoints for filing/pre-certification for Appointment of Directors/Key Managerial Personnel (KMP) and Changes among them -**

#### **Appointment of Director \***

1. Ensure that the persons to be appointed must have Director Identification Number [Section 152(3)];
2. Ensure the Company has received the Consent in Form DIR-2;
3. Ensure that director has given a declaration in Form DIR- 8 regarding disqualification;
4. Ensure that the list of other entities in which appointee is available in form (MBP-1 );
5. Ensure that director -
  - is not the director including any alternate directorship in more than 20 companies.
  - is not the Director of more than 10 public companies including the Directorship in Holding & Subsidiary Companies.
6. Ensure that Number of Director in the company does not exceed the maximum number of directors as provided in article of the company.
7. Ensure that the compliance of the SS-2 (Secretarial Standards on General meeting) has been duly complied.
8. Check that the Resolution is passed with the requisite majority.
9. Check Letter of Appointment is issued by the company contains the terms and conditions, Remuneration, if any and other details.
10. Check the Director who is signing the form has been duly authorised by the resolution passed by the board of the company for filing of for DIR- 12.
11. Check the Board Minutes, Notices, Explanatory statement and Certified Copy of the resolution etc.
12. In case of Listed Company, ensure that the compliance required under the SEBI (LODR) Regulations, 2015 has been duly complied.

(\* Wherever applicable)

#### **Additional Checkpoints**

**(In the following conditions, the points listed below in shall additionally checked with the checkpoints of appointment of Director)**

**(a) In case of the new company, also**

- Ensure whether the Articles of Association have provision for First Directors.
  - If yes, ensure that the compliance of the appointment of Director as mentioned above is duly made.
  - If not, then individuals Subscribers to the Memorandum shall be deemed to be first directors of the Company.

**(b) In case of Appointment of additional director also**

- Ensure the Compliance of Secretarial Standard -1 has been duly complied in respect of the calling of Board Meeting.
- Ensure that, whether the company has the Nomination and Remuneration committee
- If yes, check whether the Nomination and Remuneration committee has recommended for appointee as Additional Director.
- Ensure that the person who is to be appointed by board of directors as additional director by exercising the power so conferred in them by the Articles of the company is not such a person who has failed to get appointed as a director in a general meeting.

**(c) In case the company has received the notice under section 160, Also**

- Ensure that the person proposed to be appointed is not a retiring Director,
- Ensure that the company has received the Notice for appointment of a person as a director not less than 14 days before the General Meeting.
- Ensure that the company has received a deposit of Rs.1 lakh per candidate along with the notice of intention from such member.
- Ensure that all the members of the company have been informed about the aforesaid candidature not later than 7 days before the meeting.

**(d) In case of Appointment of Independent Directors, Also**

- Ensure that the Nomination and Remuneration committee if any, has recommended for the appointment of such person as Independent Director.
- Ensure that the Notice and Explanatory Statement of the relevant shareholders meeting shall include a statement that in the opinion of the Board the Independent Director proposed to be appointed fulfils the conditions specified in the Act and the Rules thereunder.
- Ensure that the statement shall also contain all details as per section 152(2) including justification for such selection.

- Ensure that the shareholders resolution for the appointment is passed with the requisite majority.
- Ensure that the formal letter of appointment issued by the Company to the Independent Director.
- Check whether the terms of appointment of independent director is disclosed on the website of the company.
- Check the declaration of Independence given by the Independent director as per section 149(6) of the Companies act 2013.
- In case of re-appointment of Independent Director ensure that the re-appointment has been done on the basis of report of performance evaluation.
- Ensure that in case of re-appointment, the director shall not be appointed for more than two consecutive terms.

**(e) In case of Appointment of Alternate Director**

- Check whether the Articles of Association of the Company or any resolution passed at the General Meeting of the Company has authorized the Board to appoint Alternate Directors.
- Check that the Alternate Director should not be a person holding any alternate directorship for any other director in the Company.
- Ensure that Board has appointed Alternate Director to act as an alternate director for a director during his absence for a period of not less than three months from India.
- If Alternate director appointed is alternate to an Independent Director check that the Alternate Director is also independent under the provisions of the Act.
- Ensure that the reappointment on account of retirement by rotation of the original director is applied to original Director not to the alternate director.

**(f) Appointment of Nominee Director**

- Ensure that the Articles of Association of the Company empowers Board of Directors of a Company to appoint the Nominee Director
- Check whether Nominee Director is nominated by any Financial Institutions/Lenders under any agreements, covenants, joint venture agreements or by the Central Government or State Government having shareholding in the Company.
- Check Nomination letter is attached
- Ensure the Board meeting was held in compliance with the Secretarial Standards-I.

- Ensure that the incumbent Nominee Director is not liable to retire by rotation nor removed by the Company subject to such agreement /covenants / Joint venture agreement.

**(g) In case of Appointment of Director in casual vacancy**

1. A casual vacancy in the office of a Director may, in default of and subject to the provisions of the Articles of the company, be filled by the Board of Directors at its meeting of the Board. Check Articles of Association and Board Resolution for the appointment and related compliances under the SS-I for the said meeting in which appointment has been made.
2. Filling up of casual vacancy through resolution by circulation (Section-175) is not allowed as casual vacancy is compulsorily to be filled at the meeting of the Board of Directors of a Public Company. So, check that no circular resolution for appointment is attached.
3. Ensure that only vacancy of directors who were appointed by company in General meeting is filled as a Casual Vacancy under section 161(4).
4. Check whether the Director appointed in the Casual Vacancy has the tenure up to the period for which the director in whose place he is appointed would have held office if it had not been vacated.

**(h) In case of Appointment of Director elected by Small Shareholders ( in case of Listed Company only )**

1. Ensure that the company has received the notice from the requisite number of small shareholders.
2. Check the notice containing the details of the proposed director has been given by the small shareholders within the prescribed time period.
3. Ensure that the proposed small shareholder's director has given declaration of independence.
4. Ensure that such a director is elected by the shareholders through postal ballot.
5. Ensure the compliance for conducting postal ballot and Secretarial Standard.
6. Ensure that the director elected shall not retire by rotation and the tenure shall not exceed a period of three consecutive years.

7. Ensure that the candidate holding position as small shareholder director for a terms shall not reappointed before the expiry of a period of three years.
8. Ensure that Small shareholders director shall not be appointed in more than two companies.

### Cessation of Directorship

#### **(a) In case of Disqualification or vacation of Office**

1. Check whether the director suffers from disqualification under section 164(1) & 164(2) of Companies Act 2013.
2. Check whether the Director has vacated the office under section 167(1) of the company.
3. In case of private company check the Articles of Association whether there are additional conditions of disqualifications other than those provided in section 164(1) and (2).
4. Check whether director has intimated the company of his disqualifications in form DIR-8 before his appointment or re-appointment or at any time during his appointment tenure.
5. In case the company fails to file financial statements or annual returns or fails to repay any deposit, interest, dividend or fails to redeem its debentures, check whether company has filed Form DIR-9 with the Registrar furnishing the names and addresses of all directors of the company.

#### **(b) Resignation of a Director**

1. Check whether director resigns from his office by giving a notice in writing to the company as per section 168(1) of the Act. Check the date of resignation and the date of receiving of the same by the company.
2. Ensure the evidence of cessation is attached.
3. Ensure that the resignation of director shall take effect from actual date on which the notice/ resignation is received by the Company or the date if any specified by the director in the notice whichever is later.

#### **(c) Removal of Director under section 169**

1. Ensure that the Company has received the special notice as required for any resolution, to remove a director, or to appoint somebody in place of a director so removed.
2. Ensure that the Special notice to the Company is given by the requisite Numbers of shareholder

3. Ensure that the special notice has been sent not earlier than three months from the date of meeting but at least 14 clear days before the date of the meeting, at which the resolution is to be moved.
4. Ensure that on receipt of notice of a resolution to remove a director, the company has immediately sent a copy thereof to the director concerned.
5. Ensure that the opportunity to be heard on the resolution at the meeting has been given to the director.
6. Check whether a copy of the representation if any, is sent to every member of the company to whom notice of the meeting is sent.
7. Check whether company has passed resolution for removing a director.

### Appointment and Resignation of KMP's :

#### **Managing Director/ CEO/Whole-time Director**

8. Check whether appointment conforms to requirement of section 196 of the Companies Act 2013 and remuneration is in accordance with section 197 and schedule V of the Act.
9. Ensure that the term of appointment is not exceeding five years.
10. Ensure that the Re- appointment, shall not be made earlier than one year before the expiry of the term
11. Check whether the whole-time key managerial personnel hold office in more than one company except in its subsidiary company at the same time. If Yes, Check for Board approval granting such permission, if required.
12. Ensure that the appointee has attained the age of 21 years.
13. Check whether the appointee has attained the age of 70 years. If Yes, Check whether Special Resolution in General Meeting is passed and explanatory Statement to the notice of such meeting justifying such appointment.
14. Ensure that Company does not have any Manager or vice versa as per the provisions of Section 196 which provides that no company shall appoint or employ at the same time or continue the appointment or employment at the same time of a Managing Director and a Manager.
15. Check the Board Resolution for appointment and other related compliances under secretarial standards - I for meeting in which appointment done.
16. It is required to be ensured that appointee does not suffer from disqualification in Sections 164, 196 and Schedule V of the Act.

17. Check whether the notice convening board or general meeting includes the terms and conditions, remuneration and other details including interest of directors in such appointment.
18. Check Shareholders Resolution for the approval of appointment.
19. Check the agreement has been signed between the Company and the Managing Director/ Whole-time Director.
20. Ensure that in case the appointment is not in accordance with the provisions of Schedule V of the Act, Check the order of Central Government approving appointment.
21. Check whether Form MGT-14 and a return of appointment of a managing director, whole time director or manager in Form MR-1 has been filed.
22. Check that on vacation of the office of a whole time Key Managerial Personnel, the resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of 6 months.
23. Check whether the appointment is ratified by shareholders in the general meeting and whether the terms and conditions of appointment including remuneration are circulated to all the members.

**Company Secretary and Chief Financial Officer /Chief Executive Officer**

1. In case of appointment of Company Secretary /Chief Financial Officer /Chief Executive Officer ensure that he is not holding certificate of practice. Ensure that appointment is through a Board resolution.
2. Ensure that the CS/CEO/CFO has given his consent for such appointment.
3. Being a KMP under the Act, the CS/CEO/CFO can be appointed only through a board resolution which shall contain the terms and conditions of his / her appointment as CFO/CEO/CS including the remuneration to be paid, tenure etc.
4. Check board resolution, notice of board meeting and related procedure for holding the aforesaid board meeting as per SS1.
5. Check copy of PAN card of Company Secretary/CEO/CFO.
6. Check whether Form MGT-14 and a return of appointment of a managing director, whole time director or manager in Form MR-1 has been filed.
7. Check whether the consent to act Company Secretary /Chief Financial Officer /Chief Executive Officer has been obtained.
8. Check whether the letter of appointment has been obtained and shall be attached with the eForm DIR-12.
9. Ensure the compliance of Rule 8 & 8A of the Companies (Appointment and Remuneration ) Rules, 2014

## **Resignation of KMP**

1. Check that resignation letter is in compliance of terms and conditions as agreed through letter of appointment/ resolution/ agreement etc
2. Check that resignation is accepted by person authorized to do the same.
3. Check that, if any Board resolution is passed for taking note of the resignation.
4. Check whether the register of KMPs is updated by the company.

## **Form MGT- 14 (filing of Resolutions and agreements to the Registrar under Section 117)**

### ***Relevant Section and Rule***

- Section 94(1), 117(1) of the Companies Act, 2013 and rules made thereunder

### **Purpose of the e-Form**

A company or liquidator has to file with the concerned RoC certain resolutions and agreements. These are to be filed after being passed at the meeting of the Board / Shareholders / Creditors of the company. The particulars of such resolutions or / and agreement are to be filed through this e-Form.

The provisions of Section 94 and 117 are applicable regarding registration of certain resolutions and agreements with RoC. The e-Form has to be filed with RoC within 30 days of passing of the resolution or of the making of the agreement.

### ***SECRETARIAL CHECK POINTS:***

#### ***GENERAL CHECKLIST***

1. Ensure that the form has been filed for the respective purposes for which it is necessary or required mandatory to be registered with the ROC under the provisions of the Companies Act, 2013.
2. Ensure that whether the form has been filed for the registration of:
  - (a) Board Resolution(s) /Resolution(s) passed by the Members/Creditors
  - (b) Agreement

(c) Postal ballot resolution(s) under Section 110

(d) Proposed resolution under section 94(1)

3. Ensure and verify whether the correct Date of dispatch of notice and date of passing of Board Resolution(s) / Resolution(s) passed by the Members/Creditors / Postal ballot resolution(s) has been mentioned.
4. Ensure that the company has complied with Secretarial Standards– 1 on Meeting of the Board of Directors and Secretarial Standards – 2 on General Meeting.
5. Ensure that, in case the form has been filed for more than one resolution(s) (including postal ballot resolution(s)) then ensure that the details regarding the resolution number, order of resolutions passed and the purpose are correctly mentioned and further ensure that not more than ten resolutions of same category and postal ballot resolutions could be provided through a single form.
6. However, in case there are more number of resolutions verifies that, they must have been attached as an optional attachment to the e-form.
7. Ensure that whether any prior Resolution has been passed in the same subject matter.
8. Ensure that in case of a listed company, if the resolution has been passed by the postal ballot, then verify from the true copy, whether the details of the authority passing or agreeing to the resolution and the type of resolution are correctly mentioned.
9. Further verify the aforesaid details, in case of resolution passed by a postal ballot, from the scrutinizers report.
10. Ensure that the details of only one agreement can be provided through this e-Form, in case the e-form has been filed for an agreement entered into by the company. In case of more than one agreement, separate e-Form MGT-14 shall be filed.
11. Ensure whether the company has filed this form within 30 days of date of passing of resolution(s).
12. If not, then ensure whether the SRN of Form INC-28 filed for condonation of delay, has been mentioned correctly.

13. Ensure and verify that all the following attachments have been made in true and fair manner:-

- Certified true copy of resolution(s) along with copy of explanatory statement under section 102
- Altered memorandum of association (if any)
- Altered articles of association (if any)
- Copy of agreement
- Any other information can be provided as an optional attachment(s).

14. Ensure that the declaration has been given by the person who is authorized by the board of directors of the company.

**VERIFY THE FOLLOWING ADDITIONALLY IN EACH CASES**

***ENTRENCHMENT OF ARTICLES UNDER SECTION 5***

1. Ensure that, in case of 'private company' consent of all the members of the company i.e. unanimous resolution has been passed, whereas in case of 'public company' consent of members by way of special resolution has been taken.
2. Ensure that, the form has been filed by an existing company, as provided under Rule 10 of the Companies (Incorporation) Rules, 2014 within 30 days from the date of entrenchment of the articles along with the prescribed fees.

***CHANGE OF THE REGISTERED OFFICE OUTSIDE THE LIMIT OF THE CITY/TOWN/VILLAGE WHERE THE REGISTERED OFFICE IS SITUATED UNDER SECTION 12(5)***

1. Ensure that, whether the Board's approval has been taken for the above stated purpose.
2. Ensure that, if a special resolution has been passed by the postal ballot for the aforesaid purpose and the details entered in the form must be further verified from the scrutinizers report.

3. Ensure that, the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Companies Act.

***ALTERATION IN MEMORANDUM OF ASSOCIATION EXCEPT IN CASE OF INCREASE IN THE AUTHORISED SHARE CAPITAL***

1. Ensure **that the notice alongwith the explanatory statement** has been send to the members, directors and auditors of the company for the said purpose.
2. Ensure that, the date of filing of MGT-14 form would not constitute the effective date of increase in the authorised share capital of the company
3. Ensure whether the following attachments have been made to the form:
  - (a) Copy of the Resolution(s) along with copy of
  - (b) Explanatory statement under section 102
  - (c) Altered memorandum of association
  - (d) Altered articles of association (if required)
  - (e) Optional attachment(s) - if any

***ALTERATION IN MEMORANDUM FOR CHANGE IN NAME UNDER SECTION 13 (1) READ WITH SECTION 4***

1. Ensure that, before filing this e-form, Board resolutions must have been passed for the:
  - proposed new names for the company;
  - authorizing any Director or Company Secretary for making an application with the office of Registrar of Companies for the approval of new name as decided by the Board;
2. Ensure that the name approval has been obtained from the RoC by submitting application in e-form INC-1.
3. Ensure that if in case such resolution has been filed in respect of a link with any other form such as change of name, conversion etc. then in that case, it must be ensured that a separate form MGT-14 has been filed for such resolutions.

4. Ensure that, as per Rule 29 (1) of Companies (Incorporation) Rules,2014, the company has not defaulted in:
  - (a) Filing its annual returns or financial statements; or
  - (b) Filing of any other document due with RoC; or
  - (c) Repayment of matured deposits or debenture; or
  - (d) Repayment of interest on deposits or debentures.
5. Ensure that, in case of a listed company, a time period of at least one year must have been elapsed from the last name change.
6. Ensure whether in case of a listed company, the change of name has been made due to change in the main activity of the/ project of the company, then verify following conditions must have been satisfied in prior to change of name of the company:-
  - (a) at least fifty percent. of the total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name; or
  - (b) the amount invested in the new activity/project is at least fifty percent of the assets of the listed entity.
7. Ensure that, in case of a listed company, not more than 6 months have been elapsed from change in line of activity due to which, if change in name has been made.

***ALTERATION IN OBJECT CLAUSE UNDER SECTION 13 (1) READ WITH SUB SECTION (9)***

1. Ensure that if the company has raised money from public through prospectus and doesn't have any unutilized amount out of the money so raised.
2. Ensure that, for change in object clause, a special resolution must have been passed through postal ballot for the approval by members and verify the details of the form from the scrutinizers report.
3. Ensure that, in case of alteration in object clause, whether there is any change in the industrial activity of the company.
4. If yes, then further ensure that based on the altered main objects of the company, the correct main division of the industrial activity as per National Industrial Classification (NIC)-2004 as provided in Annexure A of the form, has been specified.

***CHANGE IN OBJECT OF THE COMPANY IN CASE COMPANY HAS UNUTILISED AMOUNT OF MONEY RAISED THROUGH ISSUE OF PROSPECTUS UNDER SECTION 13 (8) OF THE COMPANIES ACT, 2013***

1. Ensure that the company has passed a special resolution by postal ballot in a general meeting for the aforesaid purpose.
2. Ensure that a notice has also been published in the newspaper and on the website of the company, if any, as stated under the Section 13(8)(i) of the Companies Act, 2013.
3. Ensure that in case of a listed company, compliances have been made to the SEBI Regulations applicable, if any, for the said purpose.
4. Ensure and verify the details of the form from the scrutinizer's report.

***CONVERSION FROM PRIVATE TO PUBLIC COMPANY & VICE VERSA UNDER SECTION 14(1) READ WITH 13(1)***

1. Ensure whether the approval of the members of the company has been obtained by passing a special resolution.
2. Ensure explanatory statement pursuant to section 102 has been duly attached with the eForm MGT-14.
3. Ensure whether any other word has been changed in the name of the company apart from addition or deletion of the word "private".
4. If yes, then ensure that prior approval of the ROC in form INC-1 has been taken.

***APPROVAL OF VARIATION OF RIGHTS OF SPECIAL CLASSES OF SHARES***

1. Ensure that whether the article or the memorandum of the company authorizes the company to vary the rights attached to any class of shares and such rights are not prohibited by either of them or by the terms of issue of that class of shares

2. Ensure that in case of listed companies the resolution must have been passed by postal ballot.

### **ISSUE OF SWEAT EQUITY SHARES**

1. Ensure that, not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business.

(f) Ensure that the Board has authorised the issue of Sweat equity in its meeting and a separate MGT 14 has been filed u/s 179 and proper notice as per secretarial standard 1 has been complied with.

(g) Ensure that the company has not issued sweat equity shares for more than

(a) fifteen percent of the existing paid up equity share capital in a year; or

(b) shares of the issue value of rupees five crores, -whichever is higher

2. Further ensure that the company has not exceeded the maximum limit of twenty five percent, of the paid up equity capital of the Company at any time.

The resolution should specify the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.

The explanatory statement annexed to the notice of the general meeting pursuant to section 102 shall contain particulars as prescribed in Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014

3. In case of a startup company, ensure whether the company has completed five years from the date of incorporation or registration.

4. If no, then further ensure that such startup company has not issued sweat equity shares exceeding fifty percent of its paid up capital.

### **ISSUE OF FURTHER SHARES TO EMPLOYEES UNDER A SCHEME OF EMPLOYEES STOCK OPTIONS**

1. Ensure that a special resolution must have been passed for the said purpose.
2. Ensure that Board has also authorized for the ESOP scheme.

3. Explanatory statement annexed to the notice should contain the disclosures as mentioned in Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014
4. Ensure that approval of shareholders by way of separate resolution must have been obtained by the company in case of:
5. Grant of option to employees of subsidiary or holding company; or
6. Grant of option to identified employees, during one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant or option.
7. Ensure that, whether the form has been filed for the special resolution passed for variation in terms of Employee stock option scheme.
8. If yes, then take note such can only be passed if the scheme has not been exercised by the employees and such variation is not prejudicial to the interest of the option holders.
9. Ensure whether, in case of a startup company, such ESOPs have been issued to promoters who may be working as employees or employee directors or whole time directors, if yes, then further verify that the company has not completed five years from the date of incorporation or registration.
10. Ensure that in case of a listed company, SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 and SEBI (Share Based Employee Benefits) Regulations, 2014 has been complied with.

#### ***TO REDUCE THE SHARE CAPITAL***

1. Ensure that whether the article of the company authorizes the company to reduce its shares capital.
2. Ensure that a special resolution must have been passed for the said purpose.
3. Ensure that, the company has not defaulted in the repayment of any deposits accepted by it or the interest payable thereon.
4. Ensure that the provisions of Section 66 of the Companies Act, 2013 has been complied with.
5. Ensure and verify from the copy of order received whether such reduction has been made by the order of the Tribunal given in pursuance of Section 242 of the Companies Act, 2013.

### ***APPROVAL OF SCHEME FOR PROVIDING FINANCIAL ASSISTANCE FOR PURCHASE OF ITS OWN SHARES***

1. Ensure that in case of a company limited by shares or a company limited by guarantee, having share capital, the purchase of own shares has been made by way of reduction of share capital or redemption of preference shares only.
2. Ensure that, private companies can buy its own shares in addition to reduction of share capital or redemption of preference shares, if it fulfils below mentioned three conditions:-
  - (i) body corporate (includes foreign company, LLP) have not invested money in share capital of the private company;
  - (ii) borrowings from banks or financial institution or any-body corporate is less than twice the paid up share capital or Rs. 40 crore, whichever is lower; and
  - (iii) such private company has not made default in repayment of borrowings subsisting at the time of purchase of its own shares.
3. Ensure that the scheme of provision of money for purchase of or subscription for the shares as stated under section 67(1) of the Companies Act, 2013 has been approved by the members by passing special resolution in a general meeting.
4. Ensure that the value of shares purchased or subscribed in the aggregate together with the money provided by the company has not exceeded five per cent of the aggregate of paid up capital and free reserves of the company.

### ***PURCHASE THE COMPANY'S OWN SHARES OR SPECIFIED SECURITIES***

1. Ensure that whether the article of the company authorizes the company to purchase its own shares or any other specified securities.
2. To convene a board meeting to authorize buy back under section 179 and to file MGT 14 for board resolution.
3. Ensure that in case the amount of buy back exceeds ten percent of the paid up equity capital or free reserves of the company, then such buy-back must have been authorised by the member of the company by means of a special resolution passed at a general meeting.

4. Ensure that the buy-back has been made out of free reserves, securities premium account or from the proceeds of the issue of any shares or other specified securities only.
5. Ensure that no buy-back has been made out of proceeds of an earlier issue of the same kind shares or same kind of other specified securities.
6. Ensure that the buy-back do not exceed the limit of twenty-five percent of the free reserves and paid up equity capital in the financial year of the company.
7. Ensure that the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves.
8. In case the ratio is more, then further ensure that such has been notified by the Central Government by an order.
9. Ensure that all the shares or other specified securities for buy-back are fully paid-up.
10. Ensure that in case of a listed company, such buy-back of the shares or other specified securities has been done in accordance with the regulations made by the Securities and Exchange Board in this behalf.
11. Ensure that one year must have been elapsed from the date of the closure of the preceding offer of buy-back, if any.
12. The explanatory statement annexed to the notice should contain the disclosures as prescribed in Rule 17 of chapter IV (Share Capital and Debentures)
13. Ensure that the company has not defaulted in any of the following:-
  - (a) In repayment of deposit or interest payable thereon;
  - (b) Redemption of debentures, or preference shares; or
  - (c) Payment of dividend, if declared, to all shareholders within the stipulated time of 30 days from the date of declaration of dividend; or
  - (d) Repayment of any term loan or interest payable thereon to any financial institution or bank.

14. Ensure that the company has not made any default in complying with the provisions of filing of Annual Return, form or contents of Annual Accounts or any other default specified under Section 70 of the Companies Act, 2013.

### ***ISSUE OF DEBENTURES WITH AN OPTION TO CONVERT SUCH DEBENTURES IN TO SHARES***

1. Ensure that which type of debentures has been issued by the Company under the Board Resolution and resolutions has been passed for:-

- (i) Approval of Offer letter for private placement in Form No. PAS – 4 and Application Forms (In case of private placement of debentures)
- (ii) Approval of Form No. PAS – 5 (In case of private placement of debentures);
- (iii) Approval of Debenture Trustee Agreement and appointment of a Debenture Trustee (In case of Secured Debentures only);
- (iv) Appointment of an expert for valuation (In case of private placement of debentures);
- (v) Approval of increase of borrowing powers, if required;
- (vi) To authorize for creation of charge on the assets of the company;
- (vii) Approve the Debenture Subscription Agreement;
- (viii) To fix day, date and time for the extraordinary general meeting of shareholders.

2. Ensure the drafts has been prepared for:-

- (a) Debenture Subscription Agreement;
- (b) Offer Letter for private placement in Form No. PAS – 4 and Application Forms;
- (c) Records of a private placement offer in Form No. PAS – 5;
- (d) Debenture Trustee Agreement;
- (e) Mortgage Agreement for creation of charge on assets of the company.

3. Ensure that the company by means of special resolution has issued convertible secured debentures and increased borrowing powers of the company and has authorize the Board to create charge on the assets of the company.

4. No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures

4. In case the Company has decided to issue secured debenture, then ensure that the company has complied with the condition prescribed in the Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014.
5. Ensure whether any Debenture Trustee has appointed, if yes, then consent must have been obtained from the Trustee.
6. Ensure the following attachments has been made to the form MGT-14 :-
  - (a) Copy of Board resolutions,
  - (b) Copy of Special Resolution,
  - (c) Debenture Subscription Agreement,
  - (d) Debenture Trustee Agreement
  - (e) Such other attachments (if required)

#### ***APPOINTMENT OF MANAGING DIRECTOR, WHOLE TIME DIRECTOR OR MANAGER***

1. Ensure that the company has not appointed or employed at the same time a managing director or a manager.
2. Ensure that the resolution passed by the Board for such appointment must has clearly stated the following :-
  - Terms and conditions of such appointment.
  - Remuneration payable to such Managerial Personnel.
  - Interest of Directors in such appointment.
3. Ensure that if the person appointed as a managerial person has attained the age of seventy years then a special resolution must have been passed by the company in a general meeting.
4. Ensure that appointment has been made in compliance of the provisions stated under Section 196 and Schedule V of the Companies Act, 2013.
5. Ensure that remuneration has been paid in accordance with the Section 197 and Schedule V of the Companies Act, 2013.
6. Ensure that if in case company is covered under the provisions of sub-section (1) of section 178 the remuneration must have been approved by the Nomination and Remuneration Committee alongwith the approval of the Board.
7. Ensure that term of appointment is not more than 5 years.

8. Ensure that notice convening Board or General meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and interest
9. Ensure that the director so appointed for the aforesaid purposes are not subject to any disqualification as stated under Section 164 and 165 of the Companies Act, 2013.

***AGREEMENT RELATING TO APPOINTMENT, REAPPOINTMENT OR RENEWAL OF APPOINTMENT OR VARIATION OF TERMS OF APPOINTMENT UNDER SECTION 196 OF THE COMPANIES ACT, 2013***

1. Ensure that the agreement has been duly drafted as per the Indian Contracts Act, 1872.
2. Ensure that the prior approval of the Board and the shareholders has been taken by the company for registration of such agreement.
3. Ensure that, in case of both public and private company, there is only either of two appointed with the company.
4. Ensure that term of appointment or reappointment or renewal is not more than 5 years.
5. Ensure that the company has complied with all the applicable provisions under Section 196 and Schedule V of the Companies Act, 2013.
6. Ensure that the director so appointed for the aforesaid purposes are not subject to any disqualification as stated under Section 164 and 165 of the Companies Act, 2013.

***TO FIX REMUNERATION PAYABLE TO DIRECTORS INCLUDING MANAGING DIRECTOR OR WHOLE TIME DIRECTOR OR MANAGER***

1. Ensure that the public company has complied with the provisions of Section 197 and Schedule V of the Companies Act, 2013 has been complied with.
2. Ensure that the remuneration payable has been approved by the members in the general meeting by means of special resolution, in different cases as provided under the Act.

### ***APPLICATION TO REGISTRAR TO REMOVE NAME OF COMPANY FROM REGISTER OF COMPANIES***

1. Ensure that the company has passed a special resolution or a notice has been received by the Registrar stating either of the following reason for removal of name:-
  - (a) company has failed to commence its business within one year of its incorporation; OR
  - (b) Company is not carrying on any business or operation for a period of two immediately preceding financial years; AND has not made any application within such period for obtaining the status of a dormant company under section 455.
2. Ensure that the consent of the members of the company has been obtained by means of a special resolution or consent of seventy-five per cent members in terms of paid-up share capital of the company for the said purpose.
3. Ensure that company has extinguished all its liabilities prior to take approval or consent of the members in the general meeting.
4. Ensure that the company has not being restricted by either of the provisions as stated under Section 249.

### ***APPLICATION TO REGISTRAR FOR OBTAINING THE STATUS OF DORMANT COMPANY***

1. Ensure that the company has not been carrying on any business or operation.
2. Ensure that the company has not made any Significant Accounting Transaction during the last two financial years.
3. Ensure that the company has not filed Financial Statements and Annual Returns during the last two financial years.
4. Ensure that the company has fulfilled all the conditions, before passing a special resolution, as stated under Rule 3 of the Companies (Miscellaneous) Rules, 2014.

#### ***VARIATION IN TERMS OF CONTRACT REFERRED TO IN THE PROSPECTUS OR OBJECTS FOR WHICH THE PROSPECTUS WAS ISSUED***

1. Ensure that variation in the terms of a contract referred to in the prospectus or objects or which the prospectus is issued is passed by special resolution in general meeting
2. The details as prescribed in Rule 7(1) of Companies (Prospectus and Allotment of securities) Rules, 2014 is complied with
3. The advertisement of the notice for getting the resolution passed for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued shall be in form PAS 1 and such advertisement shall be published simultaneously with dispatch of Postal Ballot to shareholders.
4. Ensure that the notice is also uploaded on the website.

#### ***REGISTERS AND RETURNS TO BE KEPT AT A PLACE OTHER THAN WHERE REGISTERED OFFICE IS SITUATED***

1. Ensure and verify from the register of members, that more than one-tenth of the total number of members resides at such new place approved by the Board for keeping the registers and returns.
2. Ensure that a copy of the proposed special resolution in advance has been filed with the Registrar as required in accordance with first proviso of sub-section (1) of section 94, at least one day before the date of general meeting of the company in Form No.MGT.14.

#### ***REMOVAL OF AUDITOR BEFORE THE EXPIRY OF HIS TERM UNDER SECTION 140(1) OF THE COMPANIES ACT, 2013***

1. Ensure that a resolution has been passed by the Board for the removal of auditor.
2. Ensure that the company has filed a prior application to the Central Government in Form ADT-2 within thirty days of the resolution passed by the Board.

3. Ensure that the company has conducted a general meeting and a special resolution has been passed by the company within sixty days of receipt of approval of the Central Government.

***INTER CORPORATE LOANS AND INVESTMENT OR GUARANTEE OR SECURITY IN EXCESS OF THE PRESCRIBED LIMIT UNDER SECTION 186(3) OF THE COMPANIES ACT, 2013***

1. Ensure that in case the company has exceeded the limits as specified under Section 186(2), then the loan or guarantee or providing any security or the acquisition has been done after taking approval of the members by means of a special resolution in a general meeting.
2. Ensure that the prior approval of the Board and Public Financial Institution has been taken, if so required as stated under the Section 186 of the Companies Act, 2013.
3. Ensure that the company has not defaulted in the repayment of any deposits accepted or in payment of interest.
4. Ensure that the provisions of Section 186 and Rule 11 of Companies (Meetings of Board and its Powers) Rules, 2014 have been complied with for the said purpose.

***ISSUE OF GLOBAL DEPOSITORY RECEIPT IN ANY FOREIGN COUNTRY UNDER SECTION 41 OF THE COMPANIES ACT, 2013***

1. Ensure that whether the company is eligible to issue depository receipts in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations.
2. Ensure that the company has taken a prior approval of the Board to issue depository receipts by passing a resolution.
3. Ensure that the company has taken a prior approval of the members to issue depository receipts by passing a special resolution in a general meeting.
4. Ensure that the company has complied with the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India.

## ***TO WIND UP THE COMPANY VOLUNTARILY***

1. Ensure that approval of the Board has been taken, in prior as stated under section 59(3) (a) of Insolvency Code, 2016, along with a declaration from majority of the directors of the company verified by an affidavit stating that—
  - (a) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
  - (b) The company is not being liquidated to defraud any person.
2. Ensure that the company has filed the aforesaid declaration with ROC in e-form GNL-2 along with following attachments:
  - (a) Audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later;
  - (b) A report of the valuation of the assets of the corporate person, if any, prepared by a registered valuer;
3. Ensure that, within 4 weeks passing of above said declaration by the company :
  - (a) a special resolution must have been passed to approve the proposal of Voluntary liquidation of the company and to appoint an insolvency professional to act as the liquidator along with terms and conditions of the appointment of the insolvency professional, including the remuneration payable to him; OR
  - (b) a resolution must have been passed for the Voluntary liquidation of the company as a result of the expiry of the period of its duration, if any, fixed by its articles of association or on the occurrence of any event in respect of which the articles of association provide that the company should be dissolved, as the case may be and to appoint an insolvency professional to act as liquidator.
4. Ensure that whether the company owes any debt to any person.

5. If yes, then further ensure that the resolution mentioned in point 4 must have been passed by the creditors representing two-thirds in value of the debt of the company.

#### **Rules under sub-section (3) of section 179**

**In addition to the power specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors for which E-form MGT 14 is required to be filed:**

*To make political contribution:*

*To appoint or remove KMP:*

*To appoint internal auditors and secretarial auditor.*

Private Companies are exempted for filing of e-form MGT 14 to all the above mentioned items specified in Rule 8

#### ***Power exercised under section 180***

**The Board of directors of a Company can exercise certain powers only with the consent of the Company by special resolution under section 180 namely:**

a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the Company or where the Company owns more than one undertaking, of the whole or substantially the whole of any of such undertaking. The resolution should highlight conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction

b) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation.

c) To borrow money but ensure the money to be borrowed together with the money already borrowed by the company will exceed aggregate of its paid up capital and free reserve apart from temporary loans obtained from the company's bankers in the ordinary course of business. Ensure that the resolution should specify the total amount up to which monies may be borrowed by the board of directors.

No debt incurred by the company in excess of the limit imposed by this section is valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed the clause had been exceeded

d) To remit or give time for the repayment of any debt due from a director

## PAS- 3

### *Form PAS- 3 (Return of Allotment)*

#### Relevant Section and Rule

- Section 39(4) and 42(9) of the Companies Act, 2013
- Rule 12 and 14 Companies (Prospectus and Allotment of Securities) Rules, 2014

### **Purpose**

Whenever Company makes any allotment of securities, it is required to intimate the registrar within 30 days from the date of allotment of securities in eForm PAS-3

### **Secretarial Checkpoints:**

#### **Securities allotted payable in cash**

1. Ensure that the amount of allotment is within the authorised share capital of the company.
2. Ensure that the company has received the minimum subscribed amount as mentioned in the prospectus through cheques and other instrument or any other banking channel.
3. Ensure the required resolution is passed in the duly conveyed meeting as the case may be for allotment of securities.
4. Ensure that the MGT-14 for Registration of Special Resolution with Registrar of Companies has been filed in case of Preferential Allotment and Private Placement, and the SRN of duly filed form MGT-14 should be mentioned in the form PAS-3

#### **Attachments**

- CTC of Board Resolution
- List of Allottees (as per table B)
- Valuation Report, if obtained
- Form PAS-4 and PAS-5, in case of private placement

#### **Allotment through private placement**

1. Resolution under Section 42 and rules made there under is passed for further issue of shares
2. The Offer or invitation to subscribe to securities was made in Form PAS 4.
3. The Company shall maintain a complete record of private placement offers in Form PAS-5

4. Offer not to be made to more than 200 persons (excluding offers made to QIB and employees) in a financial year (this limit would be reckoned individually for each kind of security i.e. equity shares/ preference shares/ Debenture) (Not applicable to NBFC/ Housing Finance Companies).
5. Offer letter was serially numbered and was sent in the individual name of the proposed allottee
6. Letter of Offer was sent in writing or electronic mode
7. Value of Offer per person was with an investment size of minimum of Rs. 20,000/- (Not applicable to NBFC / Housing Finance Companies)
8. Ensure Authorised Capital can accommodate the present offer size
9. Offer not to be made unless earlier allotment has been made, completed, withdrawn or abandoned (even of other security)
10. No advertisement was released to Public or no use of media, marketing or distribution channels or agents be made for informing the Public about the offer
11. Money to be received from the bank account of the person subscribing and record of such bank account to be maintained. If joint shareholders money to be received from bank account of person whose name appears first in the application
12. Money to be received by cheque, Bank Draft or any Banking channel but not in CASH.
13. Check whether the basis or justification for the price (incl. Premium, if any) at which the offer or invitation is being made shall be disclosed.
14. Check whether the list of security holders contains all the requisite details.
15. Allotment was made within 60 days of receipt of money.
16. Money was received in separate bank account and money was not used except for allotment or refund

#### **Attachments**

- CTC of Board resolution
- List of allottees
- Form PAS-4
- Form PAS-5

#### ***Right issue of shares***

1. Ensure that offer is made to the existing shareholders and the company has duly dispatched the offer letter at least 3 days before opening of issue along with the letter of acceptance / renunciation / decline
2. Ensure that the right to renounce shall be mentioned in the offer letter unless articles of the company otherwise provides..
3. Ensure the offer period remains open for atleast 15 days and not more than 30 days (such period can be reduced in private company if consent of 90% of members is obtained)
4. Ensure that the Company has made allotment within 60 days from the date of receipt of application money.
5. Ensure that the articles of the Company do not provides for the restriction of the right exercisable by the person

**Attachments:**

- CTC of Board resolution
- List of allottees

***Securities issued other than cash***

1. The contract as well as list of allottees and any other contract of sale, or a contract for services or other consideration in respect of which that allotment is made shall be attached
2. If not, then an attachment has been attached by the company mentioning all the particulars of the contract in writing.

**Attachments**

- CTC of Board Resolution
- List of allottees (as per table C)

***Employee Stock Option Scheme***

1. Ensure that Employees Stock Option Scheme is approved by the shareholders of the company by passing a special resolution
2. Ensure that the MGT-14 for registration of Special Resolution with Registrar of Company is duly filed within 30 days of the passing of special resolution.
3. Ensure that the ESOP is available for the eligible employees only.
4. Ensure that the company has made necessary disclosures in the explanatory statement annexed to the notice for passing of the resolution

5. Whether the company has disclosed the variation of terms of Employees Stock Option Scheme along with the rationale therefor, and the details of the employees who are beneficiaries of such variation.
6. Review the ESOP plan and the terms mentioned therein.
7. Ensure that special resolution has been passed if the terms of ESOS have been varied.
8. Check the options granted shall not transferred to any other person.
9. Check that the option granted shall not pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any manner.
10. Check that in case of death of employee while in employment, all option granted to him shall be vested in his legal heir or nominees.
11. Ensure that the proper disclosure has been made in the explanatory statement annexed to the notice

**Attachments:**

- CTC of Board Resolution
- List of allottees

***Bonus issue of Shares***

1. Ensure that the company has the sufficient eligible reserve for the issue of bonus shares or h capitalizeise its profits or reserves for the purpose of issuing fully paid-up bonus shares
2. Ensure that the company while capitalization of profit :
  - has authorised by its articles;
  - has, on the recommendation of the Board, been authorised in the general meeting by way of special resolution of the company and has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
  - has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
  - the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
  - the Companies which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.
3. Ensure that the bonus shares are not issued in lieu of dividend.

**Attachments:**

- CTC of Special Resolution
- CTC of Board Resolution
- List of Allottees (as per table D)

***Preferential allotment of shares***

1. Check the authority articles & special resolution shall be passed.
2. Ensure whether the securities allotted are fully paid up
3. Allotment shall be completed in 12 months from the date of passing special resolution.
4. Ensure the valuation report has been obtained
5. Check whether the Convertible securities are offered with an option to apply and get equity shares allotted the price of the resulting shares shall be determined before hand on basis of valuation report
6. If allotment for consideration other than cash then justification and valuation report to be given
7. Check whether the following disclosures are made in explanatory statement
  - Objects of the issue
  - Total number of shares to be issued
  - Price or price band within which the allotment is proposed
  - Basis on which the price is arrived along with registered valuer report
  - Relevant date with reference to which price has been arrived at
  - The class or classes of person to whom the allotment is proposed
  - Intention of promoter, director, KMP to subscribe
  - Proposed time for completion of allotment
  - Names of proposed allottees and the % of post preferential offer capital that may be held by them
8. Attachments:
  - CTC of special resolution
  - CTC of Board Resolution
  - Valuation report
  - List of allottees

## CHG-1 (Application for registration of Creation, Modification of charge (other than those related to debentures))

### *Relevant Sections and Rules*

- Section 77, 78 and 79 and Section 384 of the Companies Act, 2013
- Rule 3(1) of Companies (Registration of Charges) Rules, 2014

### *Purpose of the e-Form*

To file particulars for registration of charges created or modified on various types of assets situated in or outside India and may be created in favour of lenders (Eg. Banks, Financial Institutions etc) within specified period to the concerned Registrar of Companies (RoC).. Every charge that is created or modified by the company is required to be filed in e-Form CHG-1 to the concerned RoC in case of Indian Company and RoC, Delhi in case of a foreign company.

### *SECRETARIAL CHECK POINTS:*

1. Ensure that in case of a public company, the money to be borrowed does not exceed the limits prescribed under section 180 (1) (c) of the Companies Act 2013.
2. If yes, whether a special resolution has been passed by the company and the borrowing is within the limits permissible in such resolution.
3. Ensure that in case of a public company, the Board is authorised to sell, lease or otherwise dispose of the assets of the company under section 180 (1) (a) of the Companies Act 2013.
4. If no, whether a special resolution has been passed by the company and such transaction is within the limits permissible in such resolution.
5. Provisions of Section 180 is exempt for private companies as per notification dated 5th June, 2015.

6. Ensure that the board has approved the terms and conditions of borrowings from lender / financial institution / any other person and passed a resolution under Section 179 (3) (d) of the Companies Act, 2013.
7. Ensure that the Board has authorised a director/ KMP/ Manager/ officer of the company to sign and submit and execute the necessary documents to be signed on behalf of the company and its board.
8. In case of modification of charge, ensure that the company has suitably referred the previous charge registered on the same assets of the company.
9. In case there is change in the property, any addition or modification same has been incorporated clearly in the agreement.
10. Ensure that the title of the property is unencumbered on which the charge has been created.
11. Ensure that the company is authorised to create further charge or has obtained the No objection Certificate or has obtained necessary approvals / authorisation for creation or modification of Charge if the said property belongs to any other company.
12. Ensure that all the documents and events are in order and dated correctly.
13. Ensure that the stamp duty has been paid prior to the execution of the Document.
14. Check and verify instrument creating or modifying the charge are executed properly along with the annexure to the instrument.
15. Ensure that the particulars of Creation or modification of charge has been registered with the Registrar within 30 days of its creation or modification.
16. If the delay is more than 30 days but less than 300 days of the creation and modification of charge, ensure that the correct statement for reason for the delay has been given.

17. If the delay is more than 300 days of the creation and modification, ensure that an application for condonation of delay has also been filed in e-form CHG-8 along with a declaration by the secretary or director of the company stating reasons for delay in filing of e-form CHG-1.
18. Whether the company has obtained the approval of the Central Government for the condonation of delay in this respect before filing the e-form CHG-1.
19. If there are Series of instrument executed for creation/ modification of charge; ensure that such instruments were filed with the registrar in order of their execution.
20. Ensure that the amount stated is correct from the Instrument creating charge or total amount on which the charge stands after modification.
21. Ensure that the correct brief particular of the principal terms & conditions of charge has been filed in the form.
22. Ensure that the charge creating instrument, schedules to such instrument for the property charged provide short particulars of the property or asset(s) charged including complete address and location of the property.
23. And, in case the asset charged is other than an immoveable property-

all the fields should be captured as appearing in the revenue record, flat no, house no, Municipal Office/Municipal Corporation/Gram panchayat and must be specified along with the area of the immovable property.

Also take note that the fields for latitude and longitude are mandatory, so the same must be essentially verified whether truly stated or not.

24. Ensure that the copy of every instrument evidencing any creation or modification of charge has been verified as follows-

In case the charge is created/modified to a property situated outside India:

The copy shall be verified by a certificate issued either:

- (a) under the seal of the company; or

- (b) under the authorisation of any director or company secretary of the company; or
- (c) an authorised officer of the charge holder; or
- (d) under the hand of some person other than the company who is interested in the mortgage or charge.

In case the charge is created/modified, whether wholly or partly, to a property situated in India:

The copy shall be verified by a certificate issued either:

- (a) under the authorisation of any director or company secretary of the company; or
- (b) an authorised officer of the charge holder.

25. Ensure and verify that the particulars of the present modification from the copy of the instrument attached is proper. Ensure that correct particulars are entered as the same shall be displayed in the certificate of modification.

26. Ensure and verify that all the mandatory attachments have been made in true and fair manner:-

- (i) Instrument(s) of creation or modification of charge (Mandatory attachment).

27. In case if there is any acquisition of property which is already subjected to charge - Instrument(s) evidencing .....which is already subject to charge .....such acquisitions, (Mandatory Attachment)

- (ii) Particulars of all joint charge holders (stating their rank, if any), if number of charge holder is more than one. Also, attach a complete list of charge holders, details of extent of their charge, particulars of the property charged, amount secured etc.

- (iii) Any other information can be provided as an optional attachment(s).

- (iv) In case a charge is modified in favour of ARC or assignee, verify whether the debt assignment agreement has been attached as an optional attachment.

27. Ensure that the mandatory declaration has been made, in case e-Form is filed by the company:

“I am authorized by the Board of Directors.....”, whether the correct serial number and date of resolution of board of directors of the company authorizing the signatory to sign is mentioned in the form.

28. Also ensure that in case there is a delay in filing the e-Form beyond 30 days and e-Form can be filed by the company with a further declaration or by the charge holder.

29. Ensure that the e-form has been digitally signed by the authorised signatory :

- IN CASE OF AN INDIAN COMPANY: Director or Manager or Company Secretary or CEO or CFO
- IN CASE OF FOREIGN COMPANY: An authorized representative

27. Further ensure that, in case the charge is modified in favour of the asset reconstruction company (ARC) or assignee then the e- Form should also be digitally signed by such ARC or assignee.

28. Ensure that the e-Form is digitally signed by the same person who is giving the declaration and is authorized by board resolution to sign the e-Form.

29. Ensure that the valid income tax PAN of the charge holder, ARC or assignee or any other person has been provided. It is mandatory to enter designation if e-Form is signed by any other person.

30. Ensure that the e-Form CHG-1 has been certified by either of the following:-

- a. Chartered accountant (in whole-time practice)
- b. Cost accountant (in whole-time practice)
- c. Company secretary (in whole-time practice)

31. Ensure that the membership number and certificate of practice number are correctly mentioned.

#### CHG- 4 (Particulars of Satisfaction charge thereof)

##### *Relevant Section and Rule*

- Section 82(1) of the Companies Act, 2013
- Rule 8(1) of Companies (Registration of Charges) Rules, 2014

##### *Purpose of the eForm*

To intimate the Registrar about payment or satisfaction (in full) of any charge relating to the company within 30 days from the date of such payment or satisfaction. Indian companies will file eForm CHG-4 with their concerned RoC and the foreign companies will file eForm CHG-4 with the Delhi RoC.

##### *Secretarial Check points:*

Ensure that Letter of the charge holder stating the satisfaction of charge in full and effective date of Satisfaction is mentioned in the letter.

Ensure that the form is filed within 30 days from the date of its satisfaction.

If the form is filed beyond 30 days, the company is required to give reasons for such delay and also required to make an application to Central Government for condonation of delay in eForm CHG-8 for allowing the satisfaction of Charge .

Ensure correct particulars of the charge holder or ARC or Assignee has been filled in the eForm CHG-4.

In case the charge is modified in favor of the asset reconstruction company (ARC) or assignee then the eForm should also be digitally signed by such ARC or assignee.

Ensure that the correct details of the board resolution wherein the director/ manager / company secretary / CEO / CFO is authorised to sign and submit the form.

Attachments:

Letter of the charge holder stating that the amount has been satisfied.

Certification:

- a. Ensure that the e-Form CHG-4 has been certified by either of the following:-
  - Chartered accountant (in whole-time practice)
  - Cost accountant (in whole-time practice)
  - Company secretary (in whole-time practice)
- b. Ensure that the membership number and certificate of practice number are correctly mentioned.

*Form SH-7*

*Relevant Section and Rule*

Purpose:

*SECRETARIAL CHECK POINTS:*

*General Check Points*

1. Ensure that whether the articles of association of the company prima-facie contain a clause for authorising the company with power to alter its authorised share capital for any of the purposes as specified under sub-section (1) of Section 61.
2. If no, then ensure that whether the special resolution has been passed by the company to authorise such alteration in its authorised share capital for any of the purposes as specified in sub-section (1) of Section 61 in accordance with the provision of Section 14 of the Companies Act, 2013, before proceeding for any of such alterations.
3. Ensure, in case such alteration of articles has been done, the certified copy of the special resolution alongwith an explanatory statement annexed to the notice of the general meeting at which resolution for alteration of articles was passed and a printed copy of such altered articles has been filed to the Registrar of companies in e-form MGT-14 within 15 days of passing the resolution alongwith the prescribed fee.

Further verify the following in each particular cases of alteration of share capital/number of members

*IN CASE OF INCREASE IN SHARE CAPITAL INDEPENDENTLY BY COMPANY*

4. Ensure that the board's approval has been taken to call for extraordinary general meeting to get approval from the shareholders for increasing the authorised share capital and due notice along with the explanatory statement has been send in accordance with the provision of Section 101 and 102 of the Companies Act, 2013.
5. Ensure that the Board has authorised a director/ KMP/ Manager/ officer of the company to sign and submit the necessary forms to be signed on behalf of the company and its board.
6. Ensure whether, a special resolution has been passed by the shareholders for increasing the authorised share capital of the company as in accordance with the provisions of section 13(1) of the Companies Act, 2013.
7. Ensure that alteration clause of MOA/AOA mentioned in Special/Ordinary should be same as mentioned in altered MOA/AOA
8. Ensure, in case such increase in authorised share capital has been done, the certified copy of the special resolution alongwith an explanatory statement annexed to the notice of the general meeting at which resolution was passed and a copy of such altered Memorandum of Association and Article of Association has been filed to the Registrar of companies in e-form MGT-14 within 30 days of passing the resolution.
9. Ensure that if the company is required to file MGT-14 in relation to the resolution passed for change in capital structure, then such e-form MGT-14 must be filed prior to filing of e-form SH-7.
10. Ensure that the purpose of the form, type of resolution and the date of meeting are mentioned correctly; as in case of, alteration of share capital, due to increase in authorised share capital special resolution is required and in other cases an ordinary resolution is passed.

11. Ensure that Authorised share capital mentioned on MCA and revised Authorised share capital in Form SH 7 should have difference of addition figure of nominal value of capital mentioned in Form SH7
12. Ensure that the correct amount has been stated under the revised authorized capital (after increase) of the company and amount of difference in authorized capital (addition).
13. Ensure that the details for the break-up of the additional authorized capital for Equity shares and Preference shares and the conditions in respect of their issue are in accordance with the terms and conditions as approved by the members in the general meeting.
14. Ensure and verify whether the company has stated any revised conditions (e.g. voting rights, dividend rights, winding-up rights, etc.) subject to which new shares, if any, have been issued.
15. Ensure that Board resolution number mentioned on last page of Form SH7 just above DSC field should be as per company minutes.
16. Ensure whether following documents are duly attached to the e-form SH-7 in may be prescribed under the Companies Act, 2013:
  - (a) Copy of the resolution for alteration of share capital
  - (b) Altered Memorandum of association
  - (c) Altered Articles of association
  - (d) Such other attachments (if required)

#### *IN CASE OF INCREASE IN NUMBER OF MEMBERS*

14. Ensure that this option can be availed by a companies not limited by shares only.
15. Ensure that the purpose of the form, type of resolution and the date of meeting are mentioned correctly.

16. Ensure that the correct SRN i.e. service request number of e-Form MGT-14 has been stated, if any, filed with ROC for the registration of the above mentioned resolution
17. Ensure and verify that, the correct number of members increased for which special resolution has been passed by the company, if any; and the revised number of members (total maximum number of members after increase) of the company and difference in number of members (addition), has been mentioned
18. Enter that, in case of a private company, the maximum number of members excluding past and present employee is not greater than 200.

#### *IN CASE OF INCREASE IN SHARE CAPITAL WITH CENTRAL GOVERNMENT ORDER*

19. In case such increase in authorised share capital has been made with the order of the central government as provided under Section 64(1)(b) of the companies act, 2013; ensure whether the correct order no and date of order has been mentioned.
20. Ensure that, in case such increase in authorised share capital has been made with the order of the central government, whether following documents are duly attached to the e-form SH-7 as prescribed under the Companies Act, 2013:
  - (a) Copy of the resolution for alteration of share capital
  - (b) Copy of order of Central Government
  - (c) Altered Memorandum of association
  - (d) Altered Articles of association
  - (e) Such other attachments (if required)

#### *IN CASE OF CONSOLIDATION AND DIVISION OR SUB-DIVISION OF SHARE CAPITAL*

21. Ensure the resolution ( special or ordinary, as the case may be) has been passed by the board and the members for approval of consolidate and divide all or any of its share capital into shares of larger amount than its existing shares as per Section 61(1)(b) of the Companies Act, 2013.
22. Ensure that whether or not, such consolidation and division of shares causes any change to the voting percentage of the shareholders. as there should not be any change in voting percentage due to consolidation/division

23. If yes, whether a copy of order of the Tribunal has been attached to the e-form SH-7 as per section 61(1)(b) proviso of the Companies Act, 2013.
24. Ensure and verify whether the correct date of passing the order has been mentioned, from the order received by the company.
25. Ensure whether following documents are duly attached to the e-form SH-7 as prescribed under the Companies Act, 2013:
  - (a) Copy of the resolution for alteration of share capital
  - (b) Copy of order of Central Government (if any)
  - (c) Copy of the order of the Tribunal (if any)
  - (d) Altered Memorandum of association
  - (e) Altered Articles of association
  - (f) Working for calculation of ratios
  - (g) Such other attachments (if required)

#### *IN CASE OF CONVERSION OR RECONVERSION OF SHARE CAPITAL*

26. Ensure that, in case of a company limited by shares or company limited by guarantee having a share capital, the resolution (special or ordinary, as the case may be) has been passed by the board and the members, for approval of conversion of its fully paid up shares into stock or to reconvert stock into fully paid up shares of any denomination as per Section 61(1)(c) of the Companies Act, 2013.
27. Ensure that the Board has authorised a director/ KMP/ Manager/ officer of the company to sign and submit the necessary forms to be signed on behalf of the company and its board.
28. Ensure that only fully paid up shares are converted into stocks and no partly paid up stock are issued in conversion, similarly, in case where conversion has been made of fully paid up shares into stock or vice versa.
29. Ensure that whether the conversion of share capital has been directed by the order of the Government or by an order passed by the Tribunal, in case an appeal has been

preferred to the Tribunal, as provided under sub-section (4) read with sub-section (6) of Section 62 of the Companies Act, 2013

30. If yes, ensure whether a copy of order of the Government or Tribunal, as the case may be, has been attached to the e-form SH-7, as per section 64(1)(a) or as per section 61(1)(b) proviso, respectively, of the Companies Act, 2013.
31. Ensure that the Company not limited by shares cannot select the option for consolidation or division of shares, which results in changes of voting percentage of shareholders, unless prior approval of the Tribunal has been taken.
32. Ensure and verify whether the correct date of passing the order has been mentioned, from the order received by the company.
33. Ensure whether following documents are duly attached to the e-form SH-7 as prescribed under the Companies Act, 2013:
  - (a) Copy of the resolution for alteration of share capital
  - (b) Copy of order of Central Government (if any)
  - (c) Copy of the order of the Tribunal (if any)
  - (d) Altered Memorandum of association
  - (e) Altered Articles of association
  - (f) Working for calculation of ratios
  - (g) Such other attachments (if required)

#### *IN CASE OF CANCELLATION OR RECLASSIFICATION OF SHARES*

34. Ensure that the cancellation of shares has been done of a particular unissued class of shares and not the paid up share capital.
35. Ensure that the correct number and the denomination of cancelled shares have been mentioned in the form.
36. Ensure whether following documents are duly attached to the e-form SH-7 as prescribed under the Companies Act, 2013:
  - (a) Copy of the resolution for alteration of share capital

- (b) Altered Memorandum of association
- (c) Altered Articles of association
- (d) Such other attachments (if required)

#### *IN CASE OF REDEMPTION OF PREFERENCE SHARE CAPITAL*

- 37. Ensure that the preference shares which are redeemed are not partly paid-up, they must be fully paid-up only as provided under clause (b) of the second proviso to the section 55(2) of the Companies Act, 2013.
- 38. Ensure whether the Company has redeemed its preference shares on the terms on which they were issued such as:
  - (i) the tenure of redemption,
  - (ii) redemption of shares at premium;
  - (iii) if the preference shares are convertible, the terms of conversion; and
  - (iv) the manner and modes of redemption, etc.
- 34. And, if there are variations in the terms then such must have been approved by the preference shareholders of the company as provided under section 48 of the Companies Act, 2013.
- 35. Ensure that the description of preference shares to be redeemed, date of issue of series of shares, date on which preference shares were fully paid up and its due date of redemption and other details with respect to redemption of preference shares has been stated in accordance with the terms of issue of such preference shares, or as per the resolution passed by the preference shareholders in this behalf, or as per the order of the Tribunal, as the case may be.
- 36. Ensure whether any premium is payable on redemption, if yes, then the amount shall be provided out of profits or out of proceeds of a fresh issue of shares made for the purpose of such redemption as provided under clause (a) of the second proviso to the section 55(2) of the Companies Act, 2013.
- 37. Ensure that, if shares are redeemed out of profits then a sum equal to nominal amount of shares redeemed has been transferred out of profits to the Capital

Redemption Reserve Account as provided under clause (c) of the second proviso to the section 55(2) of the Companies Act, 2013.

38. Ensure whether such redemption has been affected by further issue of preference shares as provided under sub-section (3) of Section 55 of the Companies Act, 2013, then verify whether the consent of holders of at least three – fourths in value of such preference shares has been taken.
39. Ensure whether such redemption has been affected by the order of the tribunal, in case of any petition filed, as provided under sub-section (3) of Section 55 of the Companies Act, 2013, then the copy of order must be verified and attached to the form.
40. Ensure whether, in case of a company limited by shares, preference shares which are liable to be redeemed are issued for a period of not exceeding twenty years from the date of their issue as stated under the Section 55(2) of the Companies Act, 2013.
41. If, in case, such shares are issued for a period exceeding twenty years for infrastructure projects, then ensure whether the company has complied with the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.
42. Further ensure that, in case where the company engaged in the setting up and dealing with of infrastructural projects, has issued such preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the above mentioned condition as stated under the proviso to the Section 55(2) of the Companies Act, 2013.
43. Ensure that the company, at the time of issue of preference shares, has no subsisting default or whether any payment of dividend is due on any preference shares.

44. Ensure that the Board has authorised a director/ KMP/ Manager/ officer of the company to sign and submit the necessary forms to be signed on behalf of the company and its board.
45. Ensure and verify that whether the following attachments have been made in true and fair manner:-
  - (a) Copy of the resolution for alteration of share capital
  - (b) Copy of the order of the Tribunal (if any)
  - (c) Altered Memorandum of association
  - (d) Altered Articles of association
  - (e) Working for calculation
  - (f) Such other attachments (if required)

*Additional Checkpoints*

ALSO VERIFY THE FOLLOWING DETAILS IN ALL THE CASES MENTIONED ABOVE:

46. Ensure whether the company has paid the correct amount of stamp duty in respect of the states which have authorized the Central Government to collect stamp duty on their behalf, and in case where the stamp duty has been already paid, ensure that the details of SRN or receipt number, e-Form number, date of filing, amount of stamp duty has been mentioned correctly.
47. Ensure that the correct SRN i.e. service request number of e-Form MGT-14 has been stated, if any, filed with ROC for the registration of the above mentioned resolution
48. Ensure that the correct amount has been stated under the revised authorized capital (after alteration) of the company and amount of difference in authorized capital.
49. Ensure that if the company is required to file MGT-14 in relation to the resolution passed for change in capital structure, then such e-form MGT-14 must be filed prior to filing of e-form SH-7.

50. Ensure that the company e-form SH-7 has been filed within 30 days of passing such resolution for approval of alteration of authorised share capital, by the members of the company in the general meeting.

51. Ensure that the mandatory declaration has been made by the Director/ Manager/ Company Secretary/ CEO/ CFO of the company, whomsoever may be authorised by the Board:

*“I am authorized by the Board of Directors.....”, whether the correct serial number and date of resolution of board of directors of the company authorizing the signatory to sign is mentioned in the form.*

52. Ensure that the e-form has been digitally signed by the by the same person whose designation is reflected in the declaration section of the eForm and is authorized by board resolution to sign the eForm. :

53. Ensure that the e-Form is digitally signed by the same person who is giving the declaration and is authorized by board resolution to sign the e-Form.

54. Ensure that the valid income tax PAN of the charge holder, ARC or assignee or any other person has been provided. It is mandatory to enter designation if e-Form is signed by any other person.

55. Ensure that the e-Form SH-7 has been certified by either of the following:-

- Chartered accountant (in whole-time practice)
- Cost accountant (in whole-time practice)
- Company secretary (in whole-time practice)

56. Ensure that the membership number and certificate of practice number are correctly mentioned.

## Form MR-1

### *Relevant Section:*

### *Purpose:*

In case the appointment of an key managerial personnel is made within the specified parameters (in accordance of schedule V of the Companies Act, 2013) then a return has to be filed in eForm MR-1 with RoC within 60 days from the date of such appointment. The provisions of section 196 are applicable to all the companies whether public or private and no company can appoint at the same time managing director and a manager.

While the maximum term of Managing Director/ Whole Time Director & Manager has been fixed for 5 years at a time, it has been provided that no reappointment shall be made earlier than 1 year before the expiry of his term.

### *Secretarial Check Points:*

1. The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.
2. The person shall give free consent for the becoming the manager/ Whole time director / Managing Director of the company.
3. The appointee has not been disqualified for appointment of director under section 164 of the Act.
4. In case the company has the Nomination and Remuneration committee, the appointment to be done with the recommendation of the NRC committee and along with a certificate the effect that the remuneration is as per remuneration policy of the company
5. The appointment and remuneration shall be in line with the Schedule V of the Act.
6. The correct date of appointment shall be entered as per the minutes of the Board meeting for the relevant matter.

7. The date of appointment shall be from the date of meeting or any future date mentioned in the Board Resolution.
8. The Board resolution shall contain the Remuneration with complete Breakup and tenure of appointment.
9. The appointment and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule.
10. In case of the Change in designation: the date from which the such position is being taken by such person should be recorded.
11. In case the age of the appointee is more than 70 years (on the date of appointment or attending the age of 70 years during such tenure), the special resolution by company shall be passed.
12. Necessary KYC to be made that the appointee had not been convicted or detained under any of the Acts mentioned in Part I of Schedule V.
13. In case it is found that the Appointee has conviction, whether the approval of the central government is obtained.
14. Ensure that the approval for such appointment has been obtained from the members in immediate next general meeting of the company.
15. Ensure the Director signing the form has been authorized for signing of the form by the Board.

**Attachments:**

- Certified true copy of Board Resolution
- Certified true copy of shareholders resolution along with explanatory statement is mandatory in case passed for such appointment

- Copy of central government approval is mandatory in case appointee is convicted or detained as per Schedule V.
- Copy of letter of consent to act as a managing director, whole time director, or manager
- Copy of certificate by the Nomination and Remuneration Committee of the company, if any.
- Any other relevant information as may be required.

