

PROCEDURE FOR INCORPORATION OF ONE PERSON COMPANY(OPC)

7

{Rule 3 of the Companies (Incorporation) Rules, 2014}

Synopsis

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 3, 4, 5, 7, 10A, 12, 122, 152, 153, 403 and Schedule-I
The Companies (Incorporation) Rules, 2014	Rules 3, 4, 6, 8, 8A, 8B, 9, 9A, 12, 13, 14, 15, 17, 18, 23A, 25, 27, 38 and 38 A
The Companies (Appointment and Qualification of Directors) Rules, 2014	Rules 8, 9 and 17
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
e-Forms to be filed	SPICE+ (INC 32), SPICE+ MOA (INC 33), SPICE+ AOA (INC 34), AGILE- PRO - S (INC 35) INC-22.
Forms to be filed as an attachment with respective form	INC-9- {Mandatory where subscriber and/or any director does not have DIN/PAN} DIR-2 and DIR-8 INC-3

Significant Relevant Approvals and Requirements

- ❖ DSC of the applicant and/or director of the intended company.
- ❖ Particulars of nominee and his/her consent.
- ❖ Proof of identity of the member and the nominee.
- ❖ Residential proof of the member and the nominee.
- ❖ Copy of PAN card of member and nominee.
- ❖ Trademark registration certificate/trademark application
- ❖ No objection certificate from the sole proprietorship/partner/other associates/company/body corporate
- ❖ Proofs of office address/registered office address
- ❖ Proof for appointment of authorised signatory for bank account/GSTIN, etc
- ❖ Formats of Specimens Signature of the authorised person
- ❖ DIN related documents, if DIN is to be taken.
- ❖ Consent of directors in DIR 2
- ❖ Eligibility/non-disqualification letter from directors in DIR 8
- ❖ Declaration for commencement of business.

7.1 PROCEDURE WITH CHECK POINTS

S. No.	Procedure
1.	<p>Ensure that—</p> <ul style="list-style-type: none">• the person who is incorporating One Person Company (OPC) is a natural person and an Indian Citizen whether resident in India or otherwise (Resident of India means person who has stayed in India for a period of not less than 120 days during the immediately preceding financial year) {<i>Rule 3(1) of the Companies (Incorporation) Rules, 2014</i>} and in case of a newly incorporated company the requirement under section 149(3) shall apply proportionately at the end of the financial year in which it is incorporated {<i>Section 149(3) of the Act</i>}.• the person who is incorporating an OPC is not a member in any other OPC as he cannot be member of more than one OPC at any point of time {<i>Rule 3(2) of the Companies (Incorporation) Rules, 2014</i>}.• the person who is incorporating an OPC is not a minor as a minor cannot be member or nominee of OPC or cannot hold share with beneficial interest {<i>Rule 3(4) of the Companies (Incorporation) Rules, 2014</i>}.• that the objects of the proposed OPC are not related to charitable activities as per Section 8 of the Companies Act, 2013 as an OPC cannot be incorporated or converted into a company under section 8 (non-profit) company {<i>Rule 3(5) of the Companies (Incorporation) Rules, 2014</i>}.• that the objects of the proposed OPC are not related to Non-Banking Financial Investment activities including investment in securities of any body corporate. {<i>Rule 3(6) of the Companies (Incorporation) Rules, 2014</i>}.

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe+ (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form DIR-2 (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	Forms an certificate in writing, on or before appointment, from the appointed director as Form DIR-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of Directors Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe+ (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)