

PROCEDURE FOR CONVERSION OF PRIVATE LIMITED COMPANY INTO PUBLIC LIMITED COMPANY

42

{Section 14(1) read with Rule 33 of the Companies (Incorporation) Rules, 2014}.

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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 12, 14, 18, 117, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rule 33
The Companies (Management and Administration) Rules, 2014	Rule 24
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	DIR-12 (if directors are appointed) MGT-14 INC-27

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution

- ❖ Affidavit from directors regarding filing of Balance Sheet and Annual Return for the last 3 years
- ❖ Consent of creditors of the company, if any

42.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that-</p> <ul style="list-style-type: none"> • the number of directors are 3 (three) and number of members are 7 (seven), otherwise take appropriate steps to increase the number of directors to 3 or more by appointing more directors and increase the number of members to 7 or more either by allotment of shares or transfer of shares from existing members in order to complete the requirement of minimum number of directors and members in case of a public limited company. {Section 149(1)(a) read with Section 3 (1) (a) of the Act}. • <i>in case the company needs to appoint director(s) to increase the number of directors to 3 or more, the status of the company is ACTIVE COMPLIANT COMPANY as if the status of company is ACTIVE NON -COMPLIANT COMPANY, it shall not be able to file DIR 12 in respect of change of directors so first complete the formalities of obtaining the status of company as ACTIVE COMPLIANT COMPANY.</i> • subject to the provisions of this Act and the conditions contained in its memorandum, if any, a special resolution shall be passed to alter its articles including alterations having the effect of conversion of a private company into a public company. {Section 14(1) of the Act}. • the special resolution passed for alteration of articles of association shall be filed with the Registrar of Companies within a period of 15 (fifteen) days from the date of passing of resolution as every altered article pursuant to section 14(2) of the Act must be filed within a period of 15 (fifteen) days from the date of alteration in articles of association.
2.	<p>Note that –</p> <ul style="list-style-type: none"> • any alteration of the articles registered under section 14(2) of the Act shall be valid as if it were originally in the articles. {Section 14(3) of the Act}. • if a private company alter its articles of association as to convert itself into a public company, the private company shall cease to be a private company from the date of such alteration. {Proviso to Section 14(1) of the Act}. • the conversion of a company from private to public shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts will be enforced in the manner as if such conversion had not been done. {Section 18(3) of the Act}. • in case of change of name also other than addition or deletion of word ‘Private’, the procedure of change of name shall also be followed.

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-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 company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	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).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
3.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 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 164 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	The particulars of first directors to be integrated with Form SPICe-1 (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 \(in 2 vols.\)](#)