

PROCEDURE FOR CONVERSION OF PUBLIC LIMITED COMPANY INTO PRIVATE LIMITED COMPANY

43

{Section 14(1) read with Rule 41 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 14, 18, 110, 117, 118, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rules 33 and 41
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	MGT-14 RD-1 INC-27 INC-28 RD-GNL-5

Significant Relevant Approvals and Requirements

- ❖ No inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.
- ❖ No resolution is pending for filing u/s 179(3) of the Act.
- ❖ No non-compliance of Section 73 to 76A, 177, 178, 185, 186 and 188 of the Act and rules made thereunder.
- ❖ Reasons for conversion.
- ❖ Board resolution.
- ❖ Special resolution.
- ❖ Newspaper advertisement.
- ❖ Acknowledgement proof regarding notice to the jurisdictional Registrar of Companies and to sectoral regulatory body, if company is regulated by a regulatory authority.
- ❖ Approval of jurisdictional Regional Director.
- ❖ Consent of creditors and debentureholders of the company, if any.
- ❖ Declarations duly signed by key managerial personnel/director.
- ❖ Affidavits duly signed by key managerial personnel/ director.

43.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that— <ul style="list-style-type: none"> • no inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act and if any inquiry , inspection or investigation has been initiated, conversion shall be allowed on completion of such inquiry inspection

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 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Forms in electronic in writing, on or before appointment, from the appointed director as Form 208-2 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 Appointment and Qualification of <u>Directors</u>) Rule, 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 \(in 2 vols.\)](#)