

44

PROCEDURE FOR CONVERSION OF ONE PERSON COMPANY (OPC) INTO PUBLIC LIMITED/PRIVATE LIMITED COMPANY

{Section 18 read with Rule 6 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, 117, 122, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rules 3 and 6
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 ¹	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	MGT-14 DIR-12 (if directors are appointed) INC-6

Significant Relevant Approvals and Requirements in case of voluntary conversion

- ❖ Board resolution
- ❖ Member resolution
- ❖ List of creditors and consent from creditors and no objection letter of secured creditors of the OPC
- ❖ Copy of latest audited balance sheet and profit & loss account

¹ Applicable where one person company has more than one director.

- ❖ List of members and directors
- ❖ Declaration by director by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion

**44.1 PROCEDURE WITH CHECK POINTS IN CASE OF
VOLUNTARY CONVERSION OF ONE PERSON COMPANY INTO
PUBLIC LIMITED/PRIVATE LIMITED COMPANY**

S. No.	Particulars
1.	<p>Ensure that-</p> <ul style="list-style-type: none"> • the minimum number of directors shall be 2 or more if converted into a private company and shall be 3 or more if converted into public limited company {Section 149(1)(a) read with Rule 6 (2) of the Companies (Incorporation) Rules, 2014}. • in case the company needs to appoint director(s) to increase the number of directors to 2 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. • the minimum number of members shall be 2 or more if converted into a private company and shall be 7 or more if converted into public limited company {Section 3(1) read with Rule 6 (2) of the Companies (Incorporation) Rules, 2014}. • that the memorandum and articles of association of OPC shall be altered as to include the provisions related to private company or public company, as the case may be, and to delete the articles related to one person company by passing the required resolutions in accordance with Section 122(3) of the Act {Rule 6 (1) of the Companies (Incorporation) Rules, 2014}. • no objection certificate from secured creditors shall be obtained.
2.	Prepare the draft memorandum of association and articles of association as per the clauses applicable to private company, in case OPC is converted into private company and as per the clauses applicable to public company, in case OPC is converted into public company.
IF OPC HAS ONLY ONE DIRECTOR	
3.	No need to send board meeting notice to director, in case OPC has only one director.
3A.	Enter the resolutions for (i) taking note of the circumstances and approval of director for conversion of one person company into public limited company or private limited company, and (ii) approval for alteration of memorandum of association and articles of association of the company subject to the member approval and (iii) authorisation to director to sign the documents, in the minutes book of the directors' meeting and get it signed with date by the director and such date shall be deemed to be date of meeting for all purposes of the Act {Section 122(4) of the Act}.

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 154 or any other number as may be prescribed under section 153 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 practice & procedure company act regulations in 2014 (INC) about 16.2017). • 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.	Form created 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-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 \(in 2 vols.\)](#)