

# PROCEDURE FOR CONVERSION OF PRIVATE LIMITED COMPANY INTO ONE PERSON COMPANY

# 45

{Section 18 read with Rule 7 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 14, 18, 117, 122, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rules 4 and 7
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 INC-6
Forms to be filed as an attachment with respective forms	INC-3

## Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution
- ❖ List of creditors with their consent and no objection letter of secured creditors of the private company

- ❖ Copy of latest audited balance sheet and profit & loss account
- ❖ 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
- ❖ Consent of nominee

#### **45.1 PROCEDURE WITH CHECK POINTS**

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> <li>• the company is a private company other than a company with charitable objects (Section 8 of the Companies Act, 2013 or section 25 of the Companies Act, 1956). {<i>Rule 3(5) of the Companies (Incorporation) Rules, 2014</i>}.</li> <li>• if the company is a public limited company and it intends to convert itself into a one person company, then first convert the public company into a private company and thereafter convert it into a one person company {<i>Section 3 (1) (c) of the Act</i>}. (Please refer procedure for conversion of public limited company into private limited company)</li> <li>• the conversion shall be approved by members by passing a special resolution in the general meeting {<i>Rule 7(1) of the Companies (Incorporation) Rules, 2014</i>}.</li> <li>• before passing of special resolution by members in general meeting, a no objection in writing from members and creditors shall be obtained {<i>Rule 7(2) of the Companies (Incorporation) Rules, 2014</i>}.</li> <li>• only one person shall be a member of one person company and such person shall be a natural person and an Indian Citizen whether resident in India or otherwise (NRI) where 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>}.</li> <li>• the person who shall be member of a one person company shall not be a member in any other one person company as he cannot be member of more than a one person company at any point of time {<i>Rule 3(2) of the Companies (Incorporation) Rules, 2014</i>}.</li> <li>• the person who shall be member of a one person company is not a minor as a minor cannot be member or nominee of a one person company or cannot hold share with beneficial interest {<i>Rule 3(4) of the Companies (Incorporation) Rules, 2014</i>}.</li> <li>• that the objects of the proposed one person company shall not be related to charitable activities as per Section 8 of the Companies Act, 2013 as a one person company 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>}.</li> <li>• that the objects of the proposed one person company shall not be 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>}.</li> </ul>

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"> <li>• 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).</li> <li>• 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).</li> <li>• 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).</li> <li>• 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"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
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 Incorporation and Qualification of Directors Rules, 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 17 of the Companies Incorporation and Qualification of <u>Directors</u> Rules, 2014).
4.	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](http://www.bharatlaws.com)

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