

**PROCEDURE FOR CONVERSION  
OF A LIMITED COMPANY INTO  
A COMPANY WITH CHARITABLE OBJECTS  
{SECTION 8 (NON-PROFIT) COMPANY}**

*{Section 8 read with Rule 20 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 8, 13, 14, 18, 117, 118, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rule 19 and 20
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-12

**Significant Relevant Approvals and Requirements**

- ❖ Memorandum of association in conformity with **Form INC-13** and articles of association in conformity of **Form INC-31**
- ❖ Board resolution
- ❖ Special resolution
- ❖ Financial statements including the Board's and the audit reports, for each of the two financial years immediately preceding the date of the application, or of one financial year if the company has functioned only for one year.

- ❖ Signed statement showing in detail the assets and the liabilities of the company, as on the date of the application or within thirty days preceding that date.
- ❖ Signed estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure.
- ❖ Declaration, duly signed, from an advocate, a chartered Accountant, company Secretary, or cost accountant in practice declaring that memorandum of association and articles of association have been drawn up in conformity with the provision of Act and rules made thereunder relating to registration of the company under section 8 of the Act.
- ❖ Declaration from the applicant company in Form No. INC-15.
- ❖ A notice published in the newspapers within a week from the date of submitting of the application to the Registrar

### 47.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that-</p> <ul style="list-style-type: none"> <li>• the company is not a one person company as a one person company can not be converted into a company under section 8 of the Act. {<i>Rule 3 (5) of the Companies (Incorporation) Rules, 2014</i>}.</li> <li>• the company <ul style="list-style-type: none"> <li>- having objects regarding promotion of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other objects;</li> <li>- intends to apply its profits, if any, or other income in promoting its objects; and</li> <li>- intends to prohibit the payment of any dividend to its members</li> </ul> </li> </ul> <p>as only those companies having objects specified under section 8(1)(a) and the restrictions as mentioned in section 8(1)(b) and prohibitions as mentioned in section 8(1)(c) can be converted into section 8 company {<i>Section 8(1) and (5) read with Rule 20 (1) of the Companies (Incorporation) Rules, 2014</i>}.</p>
2.	Note that a firm may be a member of a company registered under section 8 of the Act. { <i>Section 8(3) of the Act</i> }.
3.	<p>Complete formalities regarding calling of board meeting in the following manner:</p> <ul style="list-style-type: none"> <li>• Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting.</li> <li>• Send notice of board meeting to all the directors <ul style="list-style-type: none"> <li>– at least 7 days before the date of board meeting or</li> </ul> </li> </ul> <p>in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.</p>
4.	Prepare draft notice of shareholders meeting, explanatory statement as required under section 101 (2) of the Act and draft resolution(s) to be passed in the shareholders meeting.

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-1 (INC-11) (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 not applicable in 2014-15) (Section 164 of the Act).</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-1 (INC-11) 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 \(in 2 vols.\)](#)