

PROCEDURE FOR CONVERSION OF SECTION 8 COMPANY INTO ANY OTHER KIND OF COMPANY

{Section 8 read with Rules 21 and 22 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 8, 13, 14, 18, 117, 118, 173, 179 and 403 |
| The Companies (Incorporation) Rules, 2014 | Rules 21, 22 and 23 |
| The Companies (Management and Administration) Rules, 2014 | Rule 24 |
| The Companies (Registration Offices and Fees) Rules, 2014 | Rules 7, 8 and 12 |
| e-Forms to be filed | MGT-14 (2 times) INC-18 INC-20 |

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution
- ❖ Approval of Regional Director
- ❖ Newspaper notice published in principal Vernacular language and English language
- ❖ Company has filed all its financial statements and annual returns up to the financial year preceding the submission of the application to the Regional Director
- ❖ Declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company
- ❖ No objection certificate from concerned authority, if obtained any special status, privilege, exemption, benefit or grant(s) from any authority
- ❖ Reasons as to why objects of section 8 (25 of the Companies Act, 1956) company cannot be carried on in the current structure

- ❖ Obtain a valuation report from a registered valuer in respect of market value of its immovable property, if the company had acquired any immovable property free of cost or at a concessional cost from any government or authority
- ❖ Pay difference amount between the cost at which it acquired any property and the market price of such property at the time of conversion, to the government or authority, if had acquired any immovable property free of cost or at a concessional cost from any government or authority
- ❖ Accumulated profit or unutilised income, brought forward from previous years, shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund

48.1 PROCEDURE WITH CHECK POINTS

| S. No. | Particulars |
|--------|--|
| 1. | <p>Ensure that the company-</p> <ul style="list-style-type: none"> • cannot be converted into one person company as one person company cannot be incorporated or converted into a company under section 8 of the Act {<i>Rule 3 (5) of the Companies (Incorporation) Rules, 2014</i>}. • have filed all its financial statements and annual returns up to the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director and in the event the application is made after the expiry of 3 (three) months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding 30 (thirty) days of filing the application shall be attached. {<i>Rule 22 (6) of the Companies (Incorporation) Rules, 2014</i>}. • can be converted voluntarily after complying the provisions of the Act and rules made thereunder and after obtaining approval from members and the Regional Director. • shall be converted mandatorily/compulsorily, when the Central Government, by order, revoke the licence granted to the company registered under this section if the company contravenes any of the requirements of section 8 of the Act (section 25 of the Companies Act, 1956) or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name {<i>Section 8(6) of the Act</i>}. • through its board of directors shall submit a declaration along with the application with the Regional Director for conversion, to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of |

| 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 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. |
| 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 DIR-2 (Part 7 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 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). |
| 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 \(in 2 vols.\)](#)