

It must be noted that as per Rule 7(1) of the Companies (Incorporation) Rules 2014, Section 8 Company cannot be converted into a One Person Company, hence it Can be Converted into Private Company or Public Company.

However, there is no restriction after its conversion into Private /Public Company, to Convert it into OPC.

The Provisions Which Deal with The Conversion of Sec 8 Company into Private Company

- *Section 8 of the Companies Act, 2013.*
- *Rule 21 of the Companies Incorporation Rules, 2014.*
- *Rule 22 of the Companies Incorporation Rules, 2014.*
- *Rule 23 of the Companies Incorporation Rules, 2014.*

The procedure for conversion of section 8 company into private company as follows: -

- The Company to Give Notice of Board Meeting to approve notice of General Meeting and to Authorise any Practicing Professional to File Application for Conversion with RD.
 - Hold the Board Meeting and approve notice and explanatory statement for General Meeting.
 - Give Notice of the General Meeting along with Explanatory Statement.
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1. Company should **pass a Special Resolution in its General Meeting** for the Conversion of Section 8 Company into Private Company.

2. The **Notice of the General Meeting** should be sent **along with Explanatory Statement**. The Explanatory Statement **should include:**

- The Incorporation date of the Company.
- The main objects in the Memorandum of Article (MoA) of the proposed Company.
- The reason due to which the current structure of the Company is not able to achieve the main object.
- If the main objects of the Company are proposed to be altered then what would be the altered objects and the reason for alteration of such objects.
- The details of the impact of Conversion on the members of the Company
- The details of the benefits that may accrue to the members of the Company after the Conversion of Section 8 Company into Private Company.
- List of privileges and concessions which are currently enjoyed by Section 8 Company. The privileges and concessions include the tax exemptions, receiving donations, foreign contributions, land or any other immovable properties.
- The details of the market price of the property acquired by the Company and the concessional rate given by the Company of such property.
- The Details of donations and bequests received by the Company.

3. The company has to **file with the ROC the** certified true copy of the special resolution in **form MGT-14 within 30 days** from the date of **passing of the special resolution**.

4. A company must intimate and obtain a **“No Objection Certificate”**, from authorities such as IT Department, Charity Commissioner, Central or State government department, Municipal body or any other recognized authority, in case it has obtained special status, privilege, benefit, exemption or grant from any of them.
 5. The existing Section 8 Company must file an application to the Regional Director in **Form INC- 18** along with a **copy to Registrar of Companies** for its conversion to any other kind of Company **along with following documents: -**
 - A certified true copy of the resolution passed in the general meeting;
 - With the copy of the notice of the general meeting with the explanatory statement;
 - Proof of serving the notice to all the authorities mentioned below:
 - ☛ Chief Commissioner of Income Tax Authority having jurisdiction over the company;
 - ☛ Income Tax Officer;
 - ☛ Charity Commissioner;
 - ☛ Chief Secretary of the state where the registered office of the company is situated;
 - ☛ To the authority under whose jurisdiction the company is operating.
 6. A Declaration shall be given by the Board of Directors to the effect that no part of property or income of the Company has been directly or indirectly transferred or paid by way of bonus or dividend to persons or members of the Company or claiming through any one or more of them.
 7. Along with the application, the Company shall also need to attach a **Certificate from a Practicing CA/CS/CMA** certifying that all the conditions relating to the conversion of Section 8 company as laid down in the Act has been duly complied with.
 8. The company shall file all its Financial Statements, Annual Returns, and all such Returns as required by the Act up to the previous year of making the application to the Regional Director.
- Note -** In case, an application is filed and 3 months have expired from the preceding date of Financial year to which financial statement has been filed, then, a statement of financial position duly approved by the Chartered Accountant up to the date of not preceding 30 days of submitting the application needs to be attached.
9. The company shall publish notice in the newspaper of the district where the registered office of the company is situated in vernacular language and one in the English newspaper having a wide circulation and also on the website of the company if any;
 10. The applicant shall file a copy of such notices to the Regional Director, in **Form INC- 19 immediately after the publication of the notice.**
 11. After the approval from the Regional Director, the Company should hold a General Meeting (2nd General Meeting) for the **alteration of Memorandum of Association (MoA) and the Articles of Association (AoA) for the Conversion.** The Company after the General Meeting shall file with the Registrar of Companies:

- The true **certified copy of the approval of the Regional Director within 30 days** of receipt of approval **in Form INC-20** with the prescribed fees.
- The **altered Memorandum of Association (MoA)** and **Articles of Association (AoA)** of the Company.
- The declaration by the Directors that the conditions if any imposed by the Regional Directors are duly complied with.

Forms to Be Filled with Respect to Conversion Procedure: -

- **RUN** (if there is change of name of the Company)
- **MGT-14 - File within 30 days** from the date of passing of the special resolution.
- **INC-18** – File an application to the **Regional Director**
- **INC-19** - copy of notice of Conversion of Company to the Regional Director, immediately after the publication of the notice **in Newspapers**
- **INC-20** - Certified copy of the approval of the Regional Director **within 30 days** of receipt of approval.

Short Summary of Conversion Procedures –

1. Give **Notice of Board Meeting** to Approve the Conversion, Authorisation and Notice of General Meeting.
2. **Hold Board Meeting** – Approve notice of General Meeting and Explanatory Statement. Authorise any person to Appear before Regional Director and file the Petition for the Company
3. **Give Notice of General Meeting** and **hold the meeting (1st General Meeting)** to Approve the Conversion and Authorisation Resolution.
4. **File E-Form MGT 14** with RoC **within 30 Days** of Passing of Resolution.
5. **Make an Application to Regional Director** in **Form INC-18** and a copy should also be filed with RoC along with required Documents. (**RD Order will vary as per COVID working Norms**)
6. Publish a notice **Form INC- 19 (vernacular & English) within a week** (Simultaneously) from the date of submitting application in INC-18. The same **should be available on the Website of the Company**, if any.
7. Simultaneously, **proof of serving of notice shall be** sent to the **below authorities by registered post or in-hand delivery**:
 - Chief Commissioner of Income Tax (having jurisdiction over the company)
 - Income Tax Officer who has jurisdiction over the company
 - Charity Commissioner
 - Chief Secretary of the State
 - Department of the Central Government or State Government
 - Other authority under whose jurisdiction the company has been operating

8. Copy of proof of serving such notice shall be attached to the application.
9. On receipt of the application, and on being satisfied, the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions.

Post conversion formalities

10. After the approval from the Regional Director, the Company should Hold a Board Meeting to take note of Order of Regional Director directing Conversion of the Company.
11. The Company should hold a General Meeting (2nd General Meeting) for the alteration of Memorandum of Association (MoA) and the Articles of Association (AoA) for the Conversion. The Company after the General Meeting shall file with the Registrar of Companies:
 - The true certified copy of the approval of the Regional Director within 30 days of receipt of approval in Form INC-20 with the prescribed fees.
 - The altered Memorandum of Association (MoA) and Articles of Association (AoA) of the Company.
 - The declaration by the Directors that the conditions if any imposed by the Regional Directors are duly complied with.
12. ROC on receipt of the above application (Form INC – 20) shall issue a fresh Certificate of Incorporation.

Legal Framework with respect to Conversion of the Section 8 Company

Any existing company registered under The Companies Act, 2013 or under any previous company law can apply for conversion subject to the following:

The Memorandum and Articles of Association either have (or are amended such that they have) the objects specified in clause (a) of sub-section (1) of Section 8 and the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section are incorporated in the Memorandum/ Articles, and the Company is desirous of being registered under Section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited".

For conversion, the procedure prescribed under section 8(5) read with Rule 20 of the Companies (Incorporation) Rules, 2014 shall apply

Section 8 Company can be converted into any other company including OPC as prescribed under Section 8(4)(ii) read with Rules 21 and 22 of Companies (Incorporation) Rules, 2014.

Rule 21-Companies (Incorporation) Rules, 2014

Conditions for conversion of a company registered under Section 8 into a company of any other kind.

1. A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a **special resolution at a general meeting** for approving such conversion.
2. The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely: -
 - the date of incorporation of the company;
 - the principal objects of the company as set out in the memorandum of association;
 - the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e., as a section 8 company;
 - if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
 - what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.;
 - details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.

Note - A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee.

3. The company shall file an application in Form No.INC.18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in subrule (2) of rule 22.
4. A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

Rule 22-Companies (Incorporation) Rules, 2014

Other conditions to be complied with by companies registered under section 8 seeking conversion into any other kind. –

1. The company shall, **within a week from the date of submitting the application** to the Regional Director, **publish a notice at its own expense**, and a **copy of the notice, as published, shall be sent forthwith to the Regional Director** and the said notice shall be in **Form No.INC.19** and shall be published-
 - At least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and
 - On the website of the company, if any, and as may be notified or directed by the Central Government.
2. The **company shall send a copy of the notice**, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, **to the Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated**, any Companies organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and **if any of these authorities wish to make any representation** to Regional Director, **it shall do so within sixty days** of the receipt of the notice, after giving an opportunity to the Company.
3. **The copy of proof of serving such notice shall be attached to the application.**
4. The **Board of directors shall give a 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 or to any one or more of them or to any persons claiming through any one or more of them.

5. Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a **“No Objection Certificate”** must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.
6. The company should have filed all its financial statements and Annual Returns Upto 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.

Note - In the event the application is made after the expiry of 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 thirty days of filing the application shall be attached.

7. The **company shall attach with the application a certificate** from **practicing** Chartered Accountant or Company Secretary in practice or Cost Accountant in practice **certifying that the conditions** laid down in the Act and these rules **relating to conversion** of a company registered under section 8 into any other kind of company, **have been complied with.**
8. The **Regional Director may require** the applicant to **furnish the approval or concurrence of any particular authority for grant of his approval** for the conversion and he may also obtain the report from the Registrar
9. **On receipt of the application**, and on being satisfied, the Regional Director **shall issue an order approving the conversion** of the company into a company of any other kind subject to such **terms and conditions as may be imposed** in the facts and circumstances of each case including the following conditions, **namely; -**
 - a. the company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;
 - b. if the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;
 - c. any accumulated profit or unutilised income of the company 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 within thirty days of receiving the approval for conversion;
10. Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director.

11. On receipt of the approval of the Regional Director,

- the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;
- **the Company shall thereafter file with the Registrar. -**
 - a. a certified copy of the approval of the Regional Director within **thirty days** from the date of receipt of the order in **Form No.INC.20** along with the fee;
 - b. amended memorandum of association and articles of association of the company.
 - c. a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

12. On receipt of the documents referred to in sub rule (10) as mentioned above, the Registrar shall register the documents and **issue the fresh Certificate of Incorporation.**

- **Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in **Form No.INC.20** along with the fee to convert its status and change of name accordingly.**