

12

CHAPTER

Conversion of Business Entities

Section 14 of Companies Act 2013 lays down the procedure for conversion of a private company into a public company.

Procedure:

Chapter Coverage

S. No.	Topic
12.1	Conversion of a Private Company into a Public Company – Section 14
12.2	Conversion of a Public Company into a Private Limited – Section 14
12.3	Conversion of section 8 company into any other kind – Section 8
12.4	Conversion of Company into LLP – LLP Act
12.5	Conversion of LLP into Company – Section 366
12.6	Conversion of One Person Company to Private Company/ Public company – Section 18
12.7	Conversion of Private Company to One Person Company – Section 18
12.8	Conversion of Unlimited Liability company into a Limited Liability company By Share or Guarantee.
12.9	Conversion of a company limited by guarantee into a company limited by shares
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Regulatory Framework Coverage

The Companies Act, 2013

Section 8	Formation of Companies with Charitable Objects, etc.
Section 13	Alteration of Memorandum
Section 14	Alteration of Articles
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Section 366	Companies Capable of being Registered

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Rule 6	Conversion of One Person Company into a Public Company or a Private Company
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Rule 7A	Penalty
Rule 21	Conditions for Conversion of a Company Registered under section 8 into a Company of any Other Kind
Rule 22	Other Conditions to be complied with by Companies Registered under section 8 seeking Conversion into any Other Kind.
Rule 33	Alteration of Articles
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Rule 39	Conversion of a Company Limited by Guarantee into a Company Limited by Shares
Rule 41	Application under section 14 for conversion of Public Company into Private Company.

The Companies (Authorised to Registered) Rules, 2014 - Rule 3

12.1 Conversion of Private Company into Public Company

[Section 14 and Section 18 of Companies Act, 2013 read with Rule 33 of Companies (Incorporation) Rules, 2014]

Introduction	<p>Section 14 of Companies Act, 2013 plays an important role during conversion of a private company into a public company. Conversion of a private company into a public company involves alteration of article of association of private company, which cannot be done without passing special resolution by the company in general meeting. The company shall have minimum of 7 members in the company.</p> <p>The alteration of the articles of the private company shall be made in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company i.e. minimum and maximum number of members, transfer of shares, number of directors, quorum of the general meeting etc., the company shall, as from the date of such alteration, cease to be a private company.</p>
Benefits of Conversion of Private Company into Public Company	<ul style="list-style-type: none"> ◆ Listing of Shares. ◆ Increase in Reputation. ◆ Shares can be freely transferred. ◆ Raise Investment through Public .

Procedure for Conversion of a Private Company into a Public Company

Step 1: Calling of Board Meeting (BM):

Issuing notice for convening BM. The main agenda of such BM would be:

- ◆ To pass a board resolution to get in-principal approval of Directors for conversion of private company into a public company by altering the AOA.
- ◆ To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution for conversion of a Private company into a Public company.
- ◆ To approve notice of general meeting along with agenda & explanatory statement to be annexed to the notice of general meeting as per Section 102(1) of Companies Act, 2013.
- ◆ To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
- ◆ Pass Board resolution for increase in number of Directors, if Directors are less than three in the company.



Step 2: Issue of Notice of General Meeting: Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial.



Step 3: Holding of General Meeting: Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Private Company into a Public company along with alteration in articles of association under section 14 for such conversion.



Step 4: Filling of e-Forms: For alteration in Article of Association for conversion of private Company into a public company under section 14.

Stage I: Copy of special resolution is required to be filed with concerned ROC in E-form MGT-14 within 30 days of passing special resolution in the general meeting.

Stage II: Application for conversion of a private company into a public company in E-form INC-27 to the ROC concerned with all the necessary annexure and prescribed fee.

Attachments of E-form MGT-14:	Attachments of E-form INC-27:
<ul style="list-style-type: none"> i. Notice of general meeting along with copy of explanatory statement under section 102; ii. Certified true copy of special resolution; iii. Altered memorandum of association; iv. Altered articles of association v. Certified true copy of board resolution may be attached as an optional attachment. 	<ul style="list-style-type: none"> i. It is mandatory to attach minutes of the member's meeting where approval was given for conversion and altered articles of association. ii. Altered articles of association. iii. Certified true copy of board resolution may be attached as an optional attachment. iv. Other information if any can be provided as an optional attachment(s).

Note: Scrutiny of documents by ROC: As per Section 18, for conversion of a private company into a public company, the Registrar shall on an application made by the company, after satisfying himself that the provisions of Chapter II of the Companies Act, 2013 applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents, issue a certificate of incorporation in the same manner as its first registration.

Question For Practice

Ques 1: List out attachment of E-form MGT-14 and E-form INC-27 in case of Conversion of Private Company into Public Company?

Hint: Refer Topic 12.1 Conversion of Private Company into Public Company.

12.2 Conversion of Public Company into Private Company	
<i>[Sections 13, 14, 15 & 18 of Companies Act, 2013, Rule 33(2) of Companies (Incorporation) Rules, 2014 and Rule 68 of National Company Law Tribunal Rules, 2016]</i>	
Introduction	<ul style="list-style-type: none"> ◆ As per Section 13 and Section 14 of the Companies Act, 2013 read with Rule 33 of Companies (Incorporation) Rules, 2014. A public company can be converted into the private company only after obtaining its shareholders' approval by way of passing of special resolution in general meeting. ◆ For conversion of public company into private company foremost requirement is Alteration in Article of Association of Company. According to the Act, any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed. ◆ For effecting the conversion of a public company into a private company, a copy of order of the Central Government approving the alteration, shall be filed with the Registrar in Form No. INC -27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Central Government. ◆ At the time of Conversion Company have to make several alterations. Some of them are mentioned below: <ul style="list-style-type: none"> ■ Change of Name. ■ Alteration of Memorandum of Association. ■ Alteration of Article of Association. ■ New Certificate of Incorporation. ■ Alteration of Letter head, book & papers.
Benefits of Conversion of Public Company into Private Company	<ul style="list-style-type: none"> ◆ Greater Control. ◆ Less Number of Directors and Members required. ◆ Lesser Compliances.

Procedure for Conversion of a Public Limited Company into a Private Limited

Step 1: Holding of Meetings

- ◆ Convene Board Meeting as per Section 173 and SS-1 to meet primary requirements for such conversion.

General matters for discussion in board meeting are like:

- ◆ Approval of Conversion of Company subject to approval of Tribunal.
- ◆ Authorize any Director, Company Secretary of the Company for completing the necessary compliances, formalities, Issue of Notice of General Meeting.
- ◆ Authorizing professional or legal practitioner/ advocate to appear before Tribunal.
- ◆ To fix date, time and place for holding Extraordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for conversion of a public company into a private company.
- ◆ Convene General meeting to pass special resolution (SR) for alteration in AOA & MOA of the Company for the purpose of conversion of Company.
- ◆ Filing of MGT-14 for filing copy of Special resolution with concerned ROC within 30 days of passing Special Resolution in General Meeting.



Step 2: Filing of form

Application in prescribed form needs to be filed for getting approval from Central Government as per Section 14 with Rule 41 of Companies (Incorporation) Rule, 2014.



Step 3: Filing of Form with ROC

After receiving of order Company will file Form INC-27 along with copy of the order of the Central Government along with below mentioned attachment within 15 days from the date of receipt of order from Central Government:

- ◆ Copy of Order
- ◆ Altered copy of MOA & AOA



Step 4: New Certificate of Incorporation from ROC

On being satisfied that all the information and documents are submitted and all requirements under the Act are complied with, ROC shall issue a new certificate of incorporation of the Company after regarding all the documents and information.

QUESTION

Ques 1: An unlisted Public Ltd. Company is having 220 members, 5 directors and is having public deposits of INR 5 crores and shareholders deposits of INR 3 crores (paid-up capital is INR 1 crore and free reserves INR 1 crore and Bank Loan INR 2 crores) is proposing to convert it into a Private Ltd. Company. Mention conditions to be satisfied before conversion of the Company into Private Ltd. Also licedures to be complied for such conversion.

Hint: Refer Topic 12.2 Conversion of Public Company into Private Company.

12.3 Conversion of Section 8 Company into any other kind of Company

[Section 8 of Companies Act, 2013 read with Rule 21 of Companies (Incorporation) Rules, 2014]

Conditions for conversion of a company registered under section 8 into a company of any other kind:

- ◆ 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.
- ◆ 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;
- 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.
- ◆ 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.
- ◆ 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.
- ◆ A copy of the application with annexure as filed with the Regional Director shall also be filed with the Registrar.

Other conditions to be complied with by Section 8 company for conversion [Rule 22 of the Companies (Incorporation) Rules, 2014]:

It stipulates the following other conditions to be complied with by Section 8 company for conversion:

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-
 - (a) 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
 - (b) 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 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 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 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,
 - (i) 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;
 - (ii) 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) above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

Question For Practice

Ques 1: Discuss conditions to be fulfilled for Conversion of Section 8 Company into any other kind of Company?

Hint: Refer Topic 12.3 Conversion of Section 8 Company into any other kind of Company.

12.4 Conversion of Company into LLP- LLP Act

Introduction	Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act. Form 18 needs to be filed with the registrar along with Form FiLLiP for such conversion.
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Procedure of Conversion of Company into LLP

Step 1: Obtain DIN for those designated partners who don't posses DIN already.

Step 2: Call Board Meeting pass resolution for Conversion of Company into LLP and pass Resolution to authorize any director to Apply for Name of LLP.

Step 3: Application for Name Availability: File RUN-LLP or apply name in Fillip along with Board resolution passed by the Company approving the conversion into LLP shall be attached with the aforesaid form.

Step 4: Obtain name Approval Certificate from ROC.

Step 5: Drafting of limited liability partnership agreement.

Contents of Agreement are: (1) Name of LLP; (2) Name of Partners & Designated Partners; (3) Form of contribution; (4) Profit Sharing ratio; (5) Rights & Duties of Partners; (6) Proposed Business ; (7) Rules for governing the LLP.

Step 6: Filling of incorporation documents: File FiLLip Form with ROC along with following attachments

ATTACHMENTS:

- ◆ *Proof of Address of Registered office of LLP.*
- ◆ *Subscription sheet signed by the promoters. (Notice of Consent & Appointment of Designated Partners with their personal details).*
- ◆ *Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner.*

Step 7: Filling of application for conversion: File e-FORM- 18 with ROC with requisite attachments.

Step 8: After all formalities and filings been complied with by the applicants and approved by REGISTRAR OF LLP TO ISSUE A CERTIFICATE OF REGISTRATION in Form No. 19 as to conversion of the LLP. The Certificate of Registration issued shall be the conclusive evidence of conversion of the LLP.

Step 9: Filling of E-Form-3: This form provides information in respect to the LLP Agreement entered into between the partners

Step 10: Certificate of incorporation as LLP form ROC.

Question for Practice

Ques 1: Discuss procedure Of Conversion Of Company Into LLP?

Hint: Refer Topic 12.4 Conversion Of Company Into LLP.

12.5 Conversion Of LLP Into Company

Corporatization is the need of the hour. The entire world is gradually drifting towards one global market without any trade barriers between the countries. With the emergence of corporate work culture and promotional start-up benefits, a great chunk of entrepreneurs are looking forward to corporatization.

This step can be initiated in 2 ways as enumerated below:

- i. Incorporation of a new corporate entity.
- ii. Conversion of existing entity (e.g. LLP/ Partnership Firm) into a Company.

The *ii* option of conversion of Limited Liability Partnership into a corporate entity might be practical for the existing entities to switch over from one mode of business to another. The process of conversion is a step by step procedure, which is a technical process but if handled with expert knowledge may be time and cost saving, as well.

There were no provisions under Companies Act, 2013 regarding Conversion of Limited Liability Partnership into Company. Ministry of Corporate Affairs has passed a notification on 31st May, 2016 in such notification its allowed conversion of LLP into Company. These rules called as "the Companies Authorized to register Amendment Rules, 2016."

Process of Conversion of LLP into Company

Step 1: Approval of Name: Hold a meeting of the partners to take assent of majority of its members summoned for the purpose of registering the LLP under section 366 of the Companies Act, 2013. To authorize one or more partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to registration of the LLP as a Company

Step 2: Securing DSC and DIN: In case all members, who are future directors of the company after conversion do not have the Digital Signature Certificate (DSC) and Director Identification Number (DIN) for all the future directors of the company must be obtained.

Step 3: Filing form No. URC – 1: After getting the approval of name from Registrar of Companies, the applicant must prepare & file the form No URC-1 in addition to the following documents.

- ◆ List of the members with various details viz. names, address, shares held by them appropriately, etc.
- ◆ List of the first directors of the private company with various details viz. names, address, the DIN, passport number with an expiry date, etc.
- ◆ List including the names & addresses of partners of LLP and a copy of LLP agreement & certificate of registration duly verified by two designated partners of LLP must be enclosed.
- ◆ A statement indicating the following specifications.
- ◆ Nominal share capital of firm & the number of shares into which it is separated.
- ◆ Number of shares taken & the amount paid for every share.
- ◆ Name of the firm, with the addition of word Limited or private limited is required.
- ◆ A written consent or No objection certificate from all creditors.
- ◆ Copy of newspaper advertisement, statement of accounts of the company which must not be 6 days preceding the date of the application and it must be duly certified by the auditor.

Step 4: Filing of e-form INC-32 (SPICE+) along with URC-1 as linked form with all the attachments as required in normal incorporation of company like; MOA & AOA, INC-9, INC-8, DIR-2 etc.

Notes:

- ◆ The process of conversion provides certain tax benefits.
- ◆ Another option available for LLP which is to establish a separate private limited company and after that get the whole business transferred to private company with the help of written agreement with restrictions for minimum 7 partners, newspaper publications, etc are not needed to be met. In this situation there is levy of capital gain tax. Stamp duty implications also applicable to such transfer.

Question For Practice

Ques 1: Discuss process of Conversion of LLP into Company?

Hint: Refer Topic 12.5 CONVERSION OF LLP INTO COMPANY.

12.6 Conversion of One Person Company to Private Company/ Public company – Section 18

Procedure of conversion of an One Person Company into Private Limited Company

1. The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
2. A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.
3. The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching documents, namely:
 - (a) Altered MOA and AOA;
 - (b) copy of resolution;
 - (c) the list of proposed members and its directors along with consent;
 - (d) list of creditors; and
 - (e) the latest audited balance sheet and profit and loss account.
4. On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

Steps to be followed for Conversion of an One Person Company into Private Limited Company

Step 1: Issue Notice in accordance with the provisions of section 173 of the Companies Act, 2013, for convening a meeting of the Board of Directors.

Main agenda for this Board meeting would be:

- ◆ To discuss with directors that Company has crossed the prescribed limits and there is mandatory conversion of OPC into private or public company.
- ◆ Pass Board Resolution for increase in No. of Directors (Minimum 2 or 3 directors).
- ◆ Pass Board Resolution to get in principal approval of directors for increase shareholder of the Company (Minimum 2 or 7 shareholders).
- ◆ Pass resolution to get shareholders' approval for alteration in MOA & AOA of Company.
- ◆ To approve and issue notice of general meeting.

Step 2: ROC FORM FILING:

- ◆ **e-form INC-5:** OPC within 60 days from the period when Condition as mentioned above attract give notice to ROC informing that it has ceased to be OPC and that it is now required to convert itself into a private company or public company.
- ◆ **e-form DIR -12:** For Appointment of Directors
- ◆ **e-form MGT-14:** For filing of Special Resolution with Explanatory statement
- ◆ **e-form INC-6:** E-form is required to be filed in case of conversion of OPC into private or public or conversion of private into OPC.

Note(s):

- ◆ In case paid -up share capital of One Person Company exceeds 50,00,000 or its average annual turnover during the relevant period exceeds 2 crores, it shall make an application in Form INC-6 within 6 months from the effective date on which the above threshold limit was exceeded. However, if any One Person Company wants to convert itself into private/public Company then also it can voluntarily apply through Form INC-6 after two years of its incorporation.
- ◆ **Attachments of e-Form 5:** Certified true copy of Board resolution where person giving notice has been authorised; copy of duly attested latest financial statements; certificate from a Chartered Accountant in practice for calculation of average annual turnover during the relevant period; information can be provided as an optional attachment(s).
- ◆ **Attachments of e-form 6:** Certified true copy of Board resolution where person giving notice has been authorised; copy of MOA & AOA; Copy of the duly attested latest financial statements, certified true copy of Special resolution where person giving notice has been authorised; any other information can be provided as an optional attachment(s).



Step 3: Duty of ROC: The concerned Registrar of Companies (ROC) will check the E-forms and attached documents filed by the Company for Conversion of Private Company into One Person Company (OPC). On being satisfied that Company has complied with prescribed requirements, the Registrar shall issue the Certificate to the effect of Conversion of Private Company into One Person Company (OPC).

Question For Practice

Ques 1: Discuss steps to be followed for Conversion of an One Person Company into Private Limited Company?

Hint: Refer topic 12.6 Conversion of One Person Company to Private Company/ Public company – Section 18.

12.7 Conversion of Private Company to OPC-Section 18

Legal Provisions	<ol style="list-style-type: none"> 1. A private company other than a company registered under section 8 of the Act may convert itself into One Person Company by passing a special resolution in the general meeting. 2. Before passing such resolution, the company shall obtain No objection in writing from members and creditors. 3. The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14. 4. The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014, by attaching the following documents, namely: <ol style="list-style-type: none"> i. The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion; ii. The list of members and list of creditors; iii. The latest Audited Balance Sheet and the Profit and Loss Account; and iv. The copy of No Objection letter of secured creditors. 5. On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.
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Procedure/Steps For Conversion Of Private Company Into One Person Company

Step 1: Issue Notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors. Main agenda for this Board meeting would be:

- ◆ To get in-principal approval of Directors for Conversion of Private Company into One Person Company (OPC).
- ◆ Fix date, time and place for holding Extraordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for Conversion of Private Company into One Person Company (OPC).
- ◆ To approve notice of EGM along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013.
- ◆ To authorize the Director or Company Secretary to issue Notice of the Extraordinary General meeting (EGM) as approved by the board.

Note: Before passing such special resolution, the Company shall obtain No Objection Certificate in writing from existing members and creditors.

Step 2: NOTICE OF GENERAL MEETING: The provisions of the Section 101 of the Companies Act, 2013 provides for issue of notice of EGM in writing to below mentions at least 21 days before the actual date of the EGM to all directors, members, auditors of Company.

Step 3: CONVENE A GENERAL MEETING to

- ◆ Pass special resolution under Section 114(2) of Companies Act, 2013 to get shareholders' approval for Conversion of Private Company into One Person Company.
- ◆ Approval of alteration in MOA.
- ◆ Check quorum
- ◆ Check whether auditor is present or not.

Step 4: For conversion of private Company in OPC under section 18, few E-forms will be filed with concerned Registrar of Companies.

Step 5: Copy of special resolution is required to be filed with concerned ROC through filing of form MGT.14 within 30 days of passing Special Resolution in the general meeting.

Step 6: Application for conversion of a Private Company into OPC is required to be filed in e-Form INC.6 to the ROC concerned with all the necessary annexure and with prescribed fee.

Step 7: Duty of ROC: Concerned Registrar of Companies (ROC) will check the E-forms and attached documents filed by the Company for Conversion of Private Company into One Person Company (OPC). On being satisfied that Company has complied with prescribed requirements the Registrar shall issue the Certificate to the effect of Conversion of Private Company into One Person Company (OPC).

Penalty (Rule 7A of the Companies (Incorporation) Rules, 2014:

If a One Person Company (OPC) or any officer of such company contravenes any of the provisions of these Rules, the OPC or any other Officer of such company shall be punishable with fine which may extend to Rs. 5,000/- and with a further fine which may extend to Rs. 500/- per day after first offence, during which such contravention continues.

Question For Practice

Ques 1: Discuss steps for Conversion Of Private Company Into One Person Company?

Hint: Refer Topic 12.7 Conversion of Private Company to OPC-Section 18.

12.8 Conversion of Unlimited Liability company in to a Limited Liability company By Share or Guarantee
As per Rule 37 of the Companies (Incorporation) Rules, 2014:

- (1) Without prejudice to any other provision in the Companies Act for effecting the conversion of an unlimited liability company with or without share capital into limited liability company by shares or guarantee, such a company shall pass a special resolution in a general meeting and thereafter, an application shall be filed in **Form No. INC- 27** in the manner provided in sub-rules (2) and (3).
- (2) The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debenture holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.
- (3) The Company shall within forty five days of passing of the special resolution file an application as prescribed in sub-rule (1) for its conversion into a company limited by shares or guarantee alongwith the fees as provided in the Companies (Registration Offices and Fees) Rules, 2014, by attaching the following documents, namely:-
 - (a) notice of the general meeting along with explanatory statement;
 - (b) copy of the resolution passed in the general meeting;
 - (c) copy of the newspaper publication;
 - (d) a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorised in this behalf or Company Secretary of the Company, if any;
 - (e) declaration signed by not less two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited);
 - (f) a complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:-
 - (i) the names and address of every creditor and debenture holder of the Company;
 - (ii) the nature and respective amounts due to them in respect of debts, claims or liabilities;
 - (iii) declaration by a Director of the Company that notice as required under sub-rule (2) has been dispatched to all the creditors and debenture holders with proof of dispatch.
 - (g) a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.
 - (h) a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, where there is one to the effect that the Board of Directors of the Company

have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.

- (i) The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause (h) above.
- (j) No Objection Certificate from sectoral regulator, if applicable.
- (k) No Objection Certificate from all secured creditors, if any.
- (4) Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.
- (5) The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.
- (6) The certificate of incorporation consequent to conversion of unlimited liability company to into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.
- (7) Conditions to be complied with, subsequent to conversion.
 - (i) Company shall not change its name for a period of one year from the date of such conversion.
 - (ii) The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.

Note: For above purpose, past debts, liabilities, obligations or contracts does not include secured debts due to banks and financial institutions.

- (8) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-
 - (a) its net worth is negative, or
 - (b) an application is pending under the provisions of the Companies Act, 1956 or the Companies Act, 2013 for striking off its name, or
 - (c) the company is in default of any of its Annual Returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or
 - (d) a petition for winding up is pending against the company, or
 - (e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or
 - (f) an inquiry, inspection or investigation is pending against the company.
- (9) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects.

Question For Practice

Ques 1: Discuss circumstances when an Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee?

Hint: Refer Topic 12.8 Conversion of Unlimited Liability company in to a Limited Liability company By Share or Guarantee.

12.9 Conversion of a company limited by guarantee into a company limited by shares

As per Rule 39 of the Companies (Incorporation) Rules, 2014:

1. A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares.
2. The company seeking conversion shall have a share capital equivalent to the guarantee amount.

3. A special resolution is passed by its members authorising such a conversion omitting the guarantee clause in its Memorandum of Association and altering the Articles of Association to provide for the articles as are applicable for a company limited by shares.
4. A copy of the special resolution shall be filed with the Registrar of Companies in Form No. MGT-14 within thirty days from the date of passing of the same along with fee as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.
5. An application in Form No. INC-27 shall be filed with the Registrar of Companies within thirty days from date of the passing of the special resolution enclosing the altered Memorandum of Association and altered Articles of Association and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee hitherto provided by its members.
6. The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects and upon approval of Form No. INC-27, the company shall be issued with a certificate of incorporation in Form No. INC-11B.

Question For Practice

Ques 1: Discuss Conversion of a company limited by guarantee into a company limited by shares?

Hint: Refer Topic 12.9 Conversion of a company limited by guarantee into a company limited by shares.

12.10 Incorporation of Part XXI Companies

For the purposes of Part XXI Companies, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up.

Provided that:

- (i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;
- (ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;
- (iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;
- (iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;
- (v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;
- (vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities

as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding a specified amount;

- (vii) a company with less than seven members shall register as a private company.

Note: In computing any majority required for the purposes of sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Question For Practice

Ques 1: Write Note on: Incorporation of part XXI Companies under Companies Act, 2013.

Hint: Refer Topic 12.10 Incorporation of Part XXI Companies.