

# Chapter - 6

## Conversion of Business Entities

Conversion of Business Entity refers to changing the business structure to align with the evolving goals and requirements of the organisation.

### Types of Conversion

- 1) Private Company into Public Company
- 2) Public Company into Private Company
- 3) Section 8 Company into Other Type of Company
- 4) One Person Company into Public or Private
- 5) Private Company into OPC
- 6) Company into LLP
- 7) LLP into Company

## 1. Conversion of Private Company into Public Company

### Benefit of Private to Public

1. Shares of Public Company are freely transferable.
2. A public Company is viewed more credible (reliable) by investors and customers.
3. Public Companies can raise money Capital from larger group.
4. Can get them listed at stock exchange.



### Procedure for Conversion

#### 1. Holding a Board Meeting

- Pass a Board Resolution
- Set date, time and venue for General Meeting to pass special resolution.
- Authorise the Director or Company Secretary to issue the Notice of General Meeting.
- If the Company has less than 3 directors, pass board resolution to increase the number of directors.
- Authorise the signing, certification and filing of the required documents with ROC.
- Approve the draft MOA and AOA that comply with public Co.

#### 2. Issue of Notice of General Meeting

- Notice must be sent to all members, directors and auditors at least 21 days before meeting.
- Notice should include date, time, venue and agenda (purpose) for the meeting.
- If 95% of the shareholders agrees, shorter notice can be given.

#### 3. Holding the General Meeting

- Pass the Special Resolution for Conversion and make necessary amendments in MOA & AOA.

↳ Remove restrictive provisions that apply to private companies.

→ Change the Company's name to exclude the word 'Private'.

#### 4. Filing of e-form MGT-14 with ROC

MGT-14 form is filed for filing special resolution, Alteration of MOA or AOA with ROC.

- file within 30 days of passing the Special Resolution.
- Documents to file
  - Certified copy of Board Resolution.
  - Notice of General Meeting
  - Certified copy of special resolution.
  - Altered MOA
  - Altered AOA

#### 5. Filing e-form INC 27

Form INC 27 is used for conversion of company from one private to public or public to private.

- file form INC 27 with the prescribed fees for effecting the conversion.

#### 6. Issuance of New Certificate of Incorporation

- After successful filing, ROC issue new certificate of incorporation.

#### Points to be kept in mind

- Increase no. of members to atleast 7.
- Increase no. of directors to atleast 3.
- Amend MOA Name clause.
- Amend AOA - remove restrictive clauses
- Company must have not defaulted in filing Annual Return or financial statements.
- Company should have not failed to repay matured deposit or debentures.

## 2) Conversion of Public Company into Private Company

Benefits of Conversion from Public to Private

- 1- Lesser Compliances
- 2- Better Control
- 3- Few Members - Better decision making
- 4- NO Independent or women director requirement

#### Procedure for Conversion

##### 1. Holding a Board Meeting

- Pass a Board Resolution
- Set date, time and venue for General Meeting to pass special resolution.
- Authorise the Director or Company Secretary to issue the Notice of General Meeting.
- Authorise the signing, certification and filing of the required documents with ROC.
- Ensure the total number of members is limited to two hundred (200).
- Approve the draft MOA and AOA that comply with Private Company provision.

##### 2. Issue of Notice of General Meeting

- Notice must be sent to all members, directors and auditors at least 21 days before meeting.
- Notice should include date, time, venue and agenda (purpose) for the meeting.
- If 95% of the shareholders agrees, shorter notice can be given.

##### 3. Holding the General Meeting

- Pass the Special Resolution for conversion and make necessary amendments in MOA & AOA.

↳ Include restrictive provisions that apply to private companies.

→ Change the company's name to include the word 'Private'.

#### 4. Filing of e-form MGT-14 with ROC

- file within 30 days of passing the Special Resolution.
- Documents to file
  - Certified copy of Board Resolution.
  - Notice of General Meeting
  - Certified copy of special resolution.
  - Altered MOA
  - Altered AOA

#### 5. Publication of Advertisement

Advertisement serves as public notice to inform public, creditors and employees about change.

- Publish advertisement atleast 21 days before filing application with Regional Director.
- One in Vernacular language and one in English.
- Use Form INC-25A format.

#### 6. File application with Regional Director

file form RD-1 with all required documents within 60 days of passing special Resolution.

#### 7. Approval Process by RD

- If no objection, RD will approve in 30 days.
- If objections arise, resubmit the form.

#### 8. Filing of form INC-28

- Form INC 28 is filed to inform ROC about approval of order from RD.
- file within 15 days of receiving RD approval.

#### 9. Filing of form INC 27

- file within 15 days of receiving RD order.

#### 10. Issuance of New Certificate of Incorporation

- After successful filing, ROC issues new certificate of incorporation.

#### 3. Conversion of Section 8 Company into other types of Companies

A section 8 company (incorporated for charitable purpose) can convert itself into any other type of companies

Exception  $\Delta$  : can't convert into a OPC

#### Procedure for Conversion

##### 1. Holding a Board Meeting

- Pass a Board Resolution
- Set date, time and venue for General Meeting to pass special resolution.
- Authorise the Director or Company Secretary to issue the Notice of General Meeting.
- Authorise the signing, certification and filing of the required documents with ROC.
- Approve the draft MOA and AOA that comply with new company type.

##### 2. Issue of Notice of General Meeting

- Notify members, directors and auditors at least **14** days before the meeting.
- Include date, time, venue and agenda to be transacted.
- Shorter notice period not allowed.

##### 3. Holding the General Meeting

- Pass special Resolution for conversion
- Approve changes to MOA and AOA.

##### 4. Filing form MGT-14

- file within 30 days of passing the special Resolution.
- Documents to file
  - Certified copy of Board Resolution.
  - Notice of General Meeting

- Certified Copy of special resolution.
- Altered MOA
- Altered AOA

## 5. Publication of Advertisement

- within one week of filing MGT-14
- Advertisement - One in vernacular language  
- One in English language
- use format given in Form INC 19.

## 6. Filing of e-form INC 18

- Application to Regional Director to seek approval for conversion, within a reasonable time.

## 7. Approval Process by RD

- If no objection, RD will approve in 30 days.
- If objections arise, resubmit the form.

## 8. Filing of form INC-28

Form INC 28 is filed to inform ROC about approval of order from RD.

## 9. Issuance of Fresh Certificate of Incorporation

- ROC issues fresh certificate.

Points to be kept in mind

- Obtain NOC for any special status, exemptions, or grant from the government.
- Ensure up-to-date filing of financial statements & Annual Return
- Confirm that no income/property was transferred as dividend.

## Post Conversion Requirement

- Company can't claim exemption available to section 8 co.
- Pay difference b/w market price and purchase price for property acquired at concessional rate before conversion.
- Post conversion, transfer any remaining funds to Investor Education Protection fund (IETF) within 30 days.

## 4. Conversion of Company into LLP

### Pre-conditions for Conversion

- All members of company **must** become partners in LLP.
- Statutory compliances like filing of financial statement, Annual Return and Income Tax Return are completed.
- Creditors consent is required.

### Procedure for Conversion

#### 1. Holding a Board Meeting

- Pass a Board Resolution
- Set date, time and venue for General Meeting to pass special resolution.
- Authorise the Director or Company Secretary to issue the Notice of General Meeting.
- Obtain DIN for individuals who will become designated partner.

#### 2. Issue of Notice of General Meeting

- Notice must be sent to all members, directors and auditors at least 21 days before meeting.
- Notice should include date, time, venue and agenda (purpose) for the meeting.
- If 95% of the shareholders agrees, shorter notice can be given.

#### 3. Application for Name Availability on LLP Portal

- file the form RUN-LLP with ROC for name reservation
- Attach board resolution approving the conversion.

#### 4. Filing Incorporation document in LLP portal

- file form FillIP for LLP incorporation.

#### 5. Application for conversion of company into LLP

- Submit form 18 for conversion.

#### 6. file the LLP Agreement in Form 3

- Prepare LLP Agreement and file in Form 3.

#### 7. Fresh Certificate of Incorporation

## 5. Conversion of LLP into Company

### Procedure for Conversion

#### 1. Hold Meeting of Partners

- Conduct meeting of partner to secure approval of all the partners.

#### 2. Approval of name

- Apply for name reservation via RUN form

#### 3. Secure DSC and DIN

- Obtain Digital Signature Certificate (DSC) and Director Identification Number (DIN) for all future directors.

#### 4. Publish an advertisement

- Advertisement in newspaper, One in Vernacular language another in English.

#### 5. file Form URC-1

Form URC 1 (Unregistered Companies) is used for registration of entities that are currently unregistered.

After approval of name, file form URC-1 with the following attachments :

- Approval letter from partners
- List of partners and Designated Partners
- LLP Agreement
- NOC from creditors
- Name of company with limited or Pvt Ltd.
- List of members : Name, address, Shares to be held
- List of joint directors : Name, address, DIN
- Affidavit under section 164 from proposed directors that they are not disqualified to act as directors.
- Any other Supporting documents

#### 6. file SPICE Forms

- SPICE + Part B
- SPICE eMOA and SPICE eAOA

### Conditions for Conversion of LLP into Company

- All Partners must approve the conversion
- LLP must comply with all statutory return & filing.
- Publish advt in two newspaper - Vernacular and English
- Ensure there are no open charges (liab) against LLP.
- LLP must have atleast two partners at time of conversion.

### 6. Conversion of OPC into Public or Private

Exception  $\Delta$  : can't convert into a Section 8 Company.

### Procedure for Conversion

#### 1. Holding a Board Meeting

- Pass a Board Resolution
- Set date, time and venue for General Meeting to pass special resolution.
- Authorise the Director or Company Secretary to issue the Notice of General Meeting.
- Authorise the signing, certification and filing of the required documents with ROC.
- Approve the draft MOA and AOA that comply with new business structure.

#### 2. Issue of Notice of General Meeting

- Notice must be sent to all members, directors and auditors at least 21 days before meeting.
- Notice should include date, time, venue and agenda (purpose) for the meeting.
- If 100% of the shareholders agrees, shorter notice can be given.

#### 3. Holding the General Meeting

- Pass the Special Resolution for conversion and make necessary amendments in MOA & AOA.

#### 4. Filing form MGT-14

- file within 30 days of passing the Special Resolution.
- Documents to file
  - Certified Copy of Board Resolution.
  - Notice of General Meeting
  - Certified Copy of special resolution.
  - Altered MOA
  - Altered AOA

#### 5. Filing of e-form INC 6

- INC 6 form is used for conversion of
- OPC into Any other type
  - Any other type to OPC

file form INC 6 with following attachment

- list of members and creditors
- Audited financial statements
- NOC from creditor and Shareholders.

#### 6. ROC to issue fresh certificate of incorporation

- ROC issues form INC-25 for certificate of incorporation

Points to be kept in mind

- Increase minimum no. of members to 2 for Pvt Co. and 7 for public Company.
- Increase minimum no. of directors to 2 for Pvt Co. and 3 for public Company.

#### 7. Conversion of Company into OPC

Exception  $\Delta$  : Public Company can't be converted into OPC  
only Pvt Company can be converted.

#### 1. Holding a Board Meeting

- Pass a Board Resolution
- Set date, time and venue for General Meeting
- Authorise the Director or Company Secretary to issue the Notice of General Meeting.
- Authorise the signing, certification and filing of the required documents with ROC.
- Approve the draft MOA and AOA that comply with OPC

#### 2. Issue of Notice of General Meeting

- Notice must be sent to all members, directors and auditors at least 21 days before meeting.
- Notice should include date, time, venue and agenda (purpose) for the meeting.
- If 95% of the shareholders agrees, shorter notice can be given.

#### 3. Holding the General Meeting

- Pass the Special Resolution for conversion and make necessary amendments in MOA & AOA.
- Take NO Objection Certificate from creditors.

#### 4. Filing form MGT-14

- file within 30 days of passing the Special Resolution.
- Documents to file
  - Certified Copy of Board Resolution.
  - Notice of General Meeting
  - Certified Copy of special resolution.
  - Altered MOA
  - Altered AOA

#### 5. Filing of e-form INC 6

file form INC 6 with following attachment

- list of members and creditors
- Audited financial statements
- NOC from creditor and Shareholders.

#### 6. ROC to issue fresh certificate of incorporation

- ROC issues form INC-25 for certificate of incorporation

Points to be kept in mind

- A minor can't be member or nominee of OPC.
- A member of one OPC can't be member or nominee of any other OPC.
- A member or nominee both shall be Indian Citizen and Resident.

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**Post [After] Conversion Requirement**

- Apply for Fresh PAN and TAN Cards
- Update bank account details
- Notify Tax and Regulatory authority about conversion
- Avail new rubber stamp
- Display new name along with former name
- Inform all banks maintaining company accounts
- Ensure all changes to the MOA & AOA are updated in their copies.

**Process of Conversion in Tabular format**

①                      ②                      ③

Procedure	Private ↓ Public	Public ↓ Private	Section 8 ↓ Pvt   Public
Holding a Board Meeting	✓	✓	✓
Issue Notice of General Meeting	✓	✓	✓
Holding a General Meeting	✓	✓	✓
file MGT-14	✓	✓	✓
Publication of Advertisement	X	✓ (Format INC 25A)	✓ (Format INC 19)
Approval from RD	X	✓ (RD-1)	✓ (INC-18)
Informing ROC about RD approval	X	✓ (INC 28)	✓ (INC 28)
Form for Conversion	✓ (INC 27)	✓ (INC 27)	✓ (INC 28)
ROC will issue New Certificate of Incorporation	✓	✓	✓

**How many Forms we have learned ?**

1) MGT-14 : Form for filing resolution with ROC, contains 5 attachments, within 30 days from date of passing special Resolution.

2) INC 27 : Form for Conversion of  
 - Private Co. into Public Co., OR  
 - Public Co. into Private Co.

3) INC 25A : Format of advt when public → Private

4) RD-1 : Form for taking approval of RD, public → Pvt.

5) INC 28 : Intimating ROC about any notice, order received from Tribunal, RD, Central Govt.

6) INC 19 : Format of advt when section 8 → Any other.

7) URC 1 : Form for conversion of unregistered Company into Company.

8) INC 6 : Form for Conversion of  
 - OPC into Any other type of Company  
 - Any other type of Co into OPC

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⑤

Procedure	Company LLP ↓	LLP Company ↓
Holding a Board Meeting	✓	✗
Holding a partner's meeting	✗	✓
Issue of notice of general meeting	✓	✗
Holding of general meeting	✓	✗
Name application	✓	✓
Incorporation document	✓ (Fillip)	✓ (Spice+)
Conversion Form	✓ (Form 18)	✓ (URC-1)
Additional form	✓ (Form 5)	✗
Certificate of Incorporation	✓	✓

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Procedure	OPC ↓ Public / Private	Private ↓ OPC
Holding a Board Meeting	✓	✓
Issue notice of General Meeting	✓	✓
General Meeting	✓	✓
file MGT-14	✓	✓
file INC-6	✓	✓
Certificate of Incorporation	✓	✓

### Exception to member during Conversion

- 1) Section 8 company can't get converted into OPC, and vice versa (OPC also can't get converted into section 8 company).
- 2) Listed Public Company can't get converted into LLP
- 3) Public company can't get converted into OPC. only Pvt Company allowed to convert to OPC.