

# Conversion of Business Entities

## Lesson 6

### KEY CONCEPTS

■ Public Company ■ Private Company ■ Section 8 Company ■ Limited Liability Partnership ■ One Person Company ■ Company Limited by shares ■ Company Limited by Guarantee

### Learning Objectives

#### To understand:

- The conversion from one corporate entity to other
- The registration and effect of registration under Part XXI of the Companies Act, 2013

### Lesson Outline

- Introduction
- Conversion of Private Company into Public Company and *Vice Versa*
- Conversion of Section 8 company into other kind of Company
- Conversion of Company into LLP and *Vice Versa*
- Conversion of OPC to other type of Company and *Vice Versa*
- Companies authorized to registered under chapter XXI of the Companies Act, 2013
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- The Companies Act, 2013
- The LLP Act, 2008
- The Companies (Incorporation) Rules, 2014

## INTRODUCTION

The provisions of the Companies Act, 2013 read with rules made thereunder provides for the conversions of various entities from one type of company to other another type of Company. However, in some case the company is mandatorily required for the conversion in to another type of Company.

Section 18 of the Companies Act, 2013 deals with conversion of companies already registered and provided that a company already registered in a class may convert itself as a company of another class by alteration of memorandum (section 13) and articles (section 14) of the company in accordance with the provisions of the Chapter II of the Companies Act, 2013.

An application in this regard is required to be made to Registrar. The Registrar after being satisfied that all provisions have been complied with, shall close the former registration of the company. After registering the documents relating to conversion, the Registrar shall issue a fresh certificate of incorporation for the converted entity. The conversion of a company shall not affect any debt, liabilities and obligations. Such debt, liabilities, obligation and contracts may be enforced as if there is no such conversion.

The company can convert into following type of companies:

- Conversion of a private company into a public company;
- Conversion of a public company into a private company;
- Conversion of One Person Company to private company/ public company;
- Conversion of private company to One Person Company;
- Conversion of section 8 company into any other kind;
- Conversion of unlimited liability company in to a limited liability company by share or guarantee;
- Conversion of a company limited by guarantee in to a company limited by shares;
- Conversion of Limited Liability Partnership into company;
- Conversion from private company into limited liability partnership;
- Conversion from unlisted public company into limited liability partnership;
- Incorporation of part XXI companies.

## CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY

The provisions related to conversion of private company into public company are provided under section 18 (conversion of companies already registered) and 14 (alteration of articles) of the Companies Act, 2013 read with Rule 33 of Companies (Incorporation) Rules, 2014.

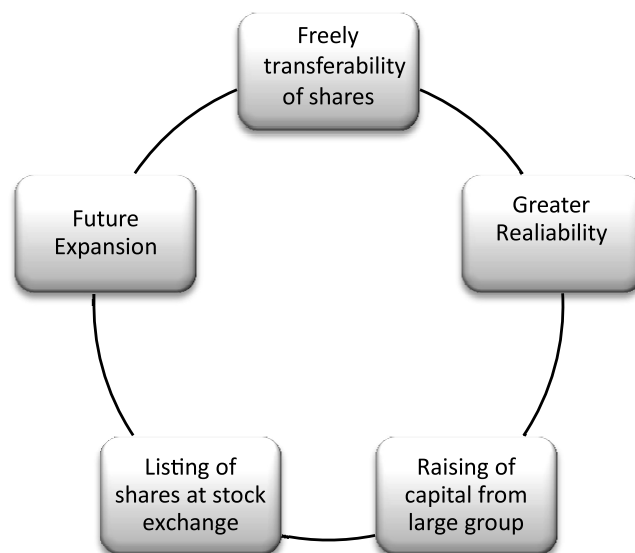
Section 14 of the Companies Act, 2013 plays an important role during conversion of a private company into a public company. Conversion of a private company into a public company involves alteration of article of association of private company, which cannot be done without passing special resolution by the company in general meeting. The company shall have minimum of 7 members in the company.

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.

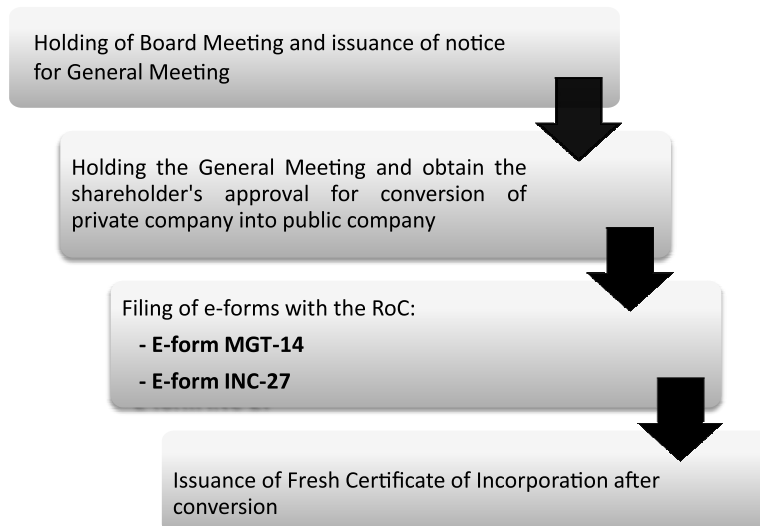
### Benefits of Conversion of Private Company into a Public Company:

Now a days the private companies which are planning for future expansion prefer to get it converted into public limited companies due to various benefits and growth opportunities available to the public companies. The main advantage of being a public company is access to capital fund. Public company can easily raise share capital from existing and new investors. Even the shareholders of public company have the benefit of liquidity of their investments as the shares of public limited company are freely transferable, if listed on stock exchange. Various other benefits being a public company are illustrated below:

#### BENEFITS OF CONVERSION OF PRIVATE TO PUBLIC COMPANY



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



**Detailed Procedure for Conversion of a Private Limited Company into a Public Company:**

- 1. Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Private Limited Company into Public Limited Company. The main agenda for this board meeting would be:
  - a. To pass a board resolution to get in-principal approval of Directors for conversion of private company into a public company.
  - b. 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.
  - c. To approve notice of general meeting 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. The notice of general meeting must contain the special resolution for effecting the conversion of private limited company into public limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
  - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
  - e. Pass Board resolution for increase in number of Directors, if Directors are less than 3 in the company.
  - f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
  - g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Public Limited Company.
- 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 Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Shorter notice can be issued if the consent of majority of shareholders holding 95% of paid-up capital has been obtained. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
- 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 Memorandum of Association and Articles of Association under section 14 for such conversion including the removal of restrictive provisions as applicable to the private limited company and for change of name of the company to delete the word "private".
- 4. Filing of e-form MGT-14:** In case of conversion of Private Company into a Public Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
  - a. Notice of general meeting along with copy of explanatory statement under section 102;
  - b. Certified true copy of special resolution;
  - c. Altered memorandum of association;

- d. Altered articles of association
  - e. Certified true copy of board resolution may be attached as an optional attachment.
- 5. Filing of e-form INC-27:** For effecting the conversion of a private company into a public company, the application shall be filed in Form No.INC.27 with fee.
- 6. Scrutiny of documents by ROC and issuance of fresh Certificate of Incorporation:**

As per Section 18, for conversion of a private company into a public company, the Registrar shall on an application made by the company and on the approval of E-Form MGT-14 and E-Form INC-27, 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.

**Points to ponder:**

- Appropriate steps should be taken to increase the number of members to at least seven, if the company has less than seven members.
- Name clause of Memorandum needs to be amended to exclude the word 'Private'.
- The Articles of Association should be amended to remove the restrictive provisions applicable to the Private Company.
- If the number of directors of the Company is two, the number of directors should be increased to at least three.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- Company has not failed to pay or repay matured deposits or debentures or interest thereon.

**Post Conversion requirements to be arranged by the company**

Once the company gets converted into public limited company, it needs to intimate and inform some authorities, persons as required by law. Following are the major compliance that needs to be followed by the company after conversion:

- A fresh PAN card has to be applied to reflect the conversion done.
- The bank account details of the company needs to be updated.
- Proper intimation needs to be given to tax authorities and other regulatory authorities about the conversion.
- Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.
- A fresh rubber stamp is required to be arranged with the new name of the Company.
- Paint or affix or print, new name along with the former name so changed on the outside of every office.
- Inform about the conversion from private limited to public limited to various Government authorities like GST department, Regional Provident Fund department, Income tax department, etc.
- Intimate all the banks where the current accounts of the company are opened about the conversion with regard to change in the name and status of the Account holder.

**CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE LIMITED**

Section 13, 14, 15 & 18 of the Companies Act, 2013, Rule 33(2) the Companies (Incorporation) Rules, 2014 regulate the conversion of public company into private company. Conversion of status of company from public to private would become effective from the date of receipt of the approval of the Registrar by means of issuing a new certificate of Incorporation.

As per Section 13 and Section 14 of the Companies Act 2013 read with Rule 33 of the 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.

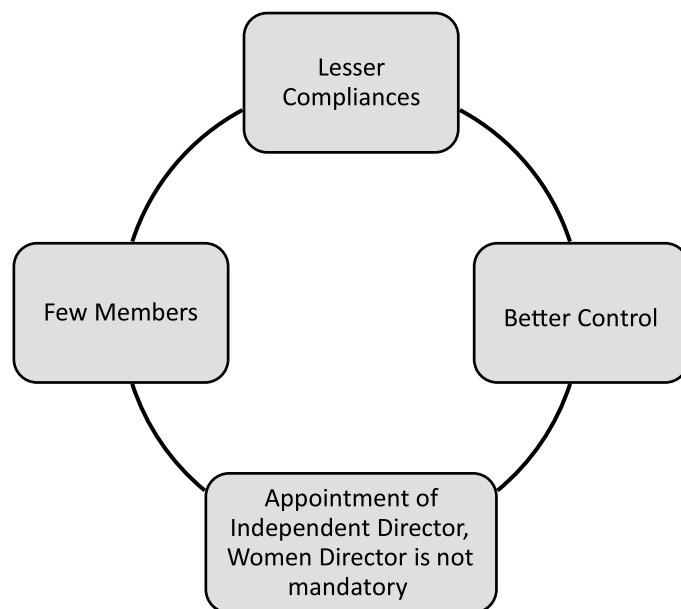
For conversion of public company into private company foremost requirement is Alteration in Article of Association of Company. According to the Act, any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Regional Director.

For effecting the conversion of a public company into a private company, a copy of order of the Regional Director approving the alteration, shall be filled 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 Regional Director.

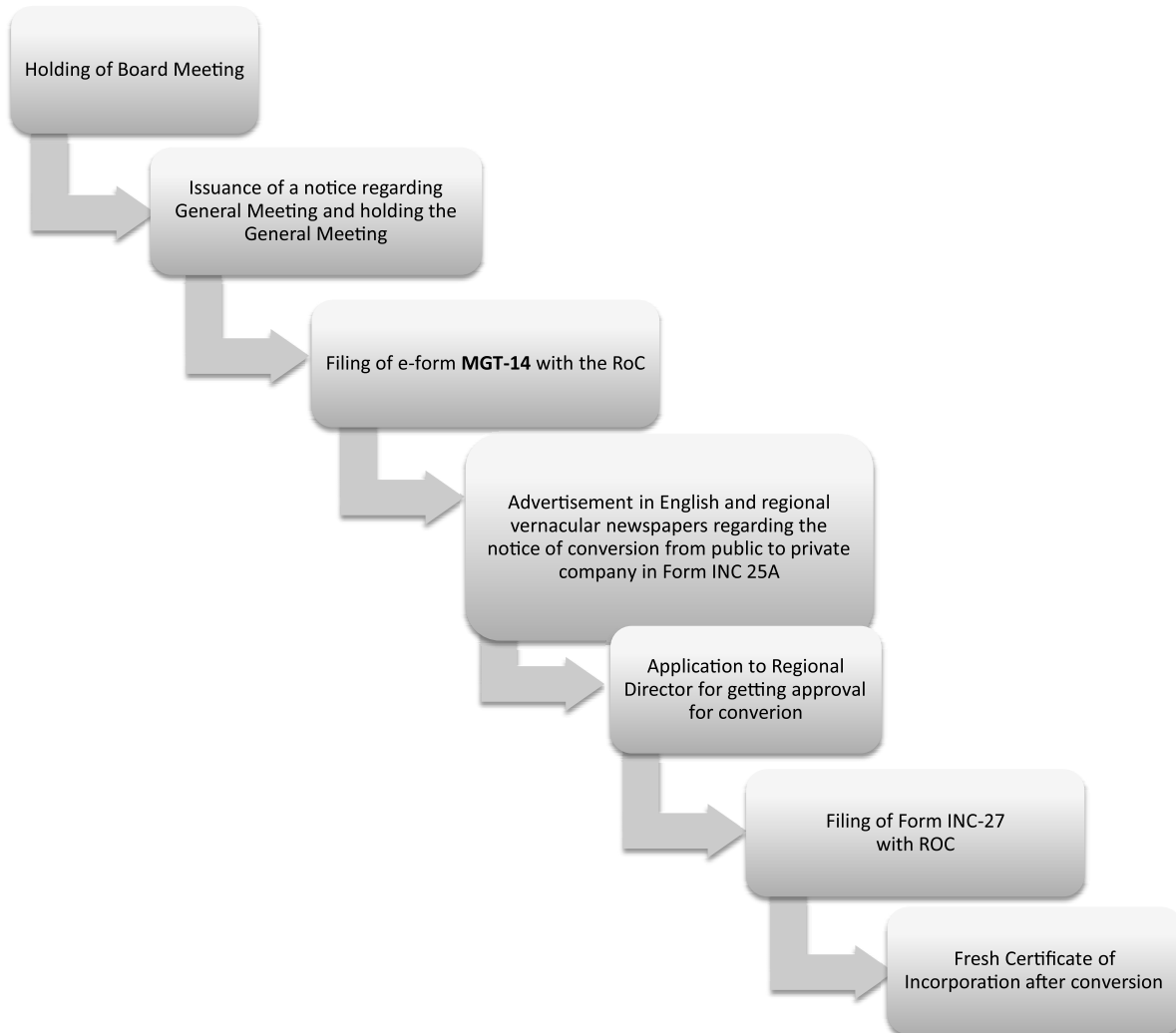
At the time of Conversion Company have to make several alterations. Some of them are mentioned below:

- 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 Limited Company into Private Limited Company:**



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



#### Detailed Procedure for Conversion of a Public Limited Company into a Private Company:

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Public Limited Company into Private Limited Company. The main agenda for this board meeting would be:
  - a. To pass a board resolution for approving proposal of conversion of Public Company into a Private Company, and to recommend the proposal for conversion for approval of shareholders in the General Meeting of the Company.
  - b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Public company into a Private company.
  - c. To approve notice of general meeting 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. The notice of general meeting must contain the special resolution for effecting the conversion of public limited company into private limited company and the required alteration in the Memorandum of Association and Articles of Association of the Company.

- d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
  - e. Pass Board resolution for considering and approving the reduction in the total number of members of the company to a maximum of 200 members.
  - f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
  - g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Private Limited Company.
- 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 Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Shorter notice can be issued if the consent of majority of shareholders holding 95% of paid-up capital has been obtained. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
- 3. Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Public Limited Company into a Private Limited company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion including insertion of restrictive provisions as applicable to the private limited company and for change of name of the company to insert the word "private".
- 4. Filing of e-form MGT-14:** In case of conversion of Public Company into a Private Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
- a) A certified true copy of Altered MoA;
  - b) A certified true copy of Altered AoA;
  - c) Notice of General Meeting along with an explanatory statement;
  - d) Certified true certified copy of Special Resolutions passed in General Meeting along with explanatory statement.
- 5. Publication of an Advertisement:** The Company shall, at least twenty-one days before the date of filing of the application with Regional Director must advertise an application for conversion of public limited company into private limited company in a vernacular newspaper in the district, and in English newspaper, which is circulated widely in the State in which the Registered Office of the Company is situated as per Rule 41(5) of the Companies (Incorporation) Rules, 2014. The application should be advertised in **Form INC-25A**. The Company shall also serve the individual notice by registered post with acknowledgement due to each of the Creditors and debenture holders of the company and to the RD, Registrar of Companies and the regulatory body for the same.
- 6. File an Application with the Regional Director for Conversion of Public Company into Private Company:** The Company must draft an application for the conversion of Public Company into

Private Company and file the same with the Regional Director within sixty days from the date of passing of Special Resolution in **e-Form RD-1** along with the prescribed fee as per Rule 41(1) and 41(3) of the Companies (Incorporation) Rules, 2014. The form needs to be filed along with the following annexures:

- (a) e-Memorandum of Association and e-Articles of Association, with proposed alterations including the alterations pursuant to Section 2(68).
- (b) Copy of minutes of General Meeting.
- (c) Copy of Board resolution dated not earlier than thirty days authorizing to file application for such conversion.
- (d) Declaration by a Key Managerial Personnel that pursuant to the provisions of Section 2(68) of the Companies Act, 2013 that the company limits the number of its members to 200 and also stating that no deposit has been accepted by the Company in violation of the Act and rules made thereunder.
- (e) Declaration by a Key Managerial Personnel that there has been no non-compliance of sections 73 to 76A, 177, 178, 185, 186 and 188 of the Act and rules made thereunder.
- (f) Declaration by a Key Managerial Personnel and in case if there is no KMP, by any director of the company, that no resolution is pending to be filed in terms of sub-section (3) of section 179 and also stating that the Company was never listed in any of the Stock Exchanges and if was so listed, all necessary procedures were complied with for complete delisting of the shares in accordance with the applicable rules and regulations laid down by Securities Exchange Board of India.
- (g) List of Creditors and Debenture Holders of a date not more than 30 days before the date of filing of Application with Regional Director along with the name and address of creditors and debenture holders, the nature of claims, debts and liability with amount due and in respect of any contingent or unascertained debt, the estimated value of such debt.
- (h) An affidavit signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be managing director, where there is one, to the effect that full enquiry have been made into affairs of the company and have formed an opinion that the list of creditors and debenture holders is correct, and that the estimated value of the debts or claims payable on contingency or not ascertained are proper estimates of the values of such debts and claims that there are no other debts, or claims against, the company to their knowledge.

- 7. Approval of Application for conversion by Regional Director or seeking of further information, if required, by Regional Director:** Where no objection has been received from any person in response to the advertisement or notice published in the newspaper and the application is complete in all respects, the concerned Regional Director shall pass an order approving the application within 30 days from the date of receipt of the application as per **Rule 41(6)(a) of the Companies (Incorporation) Rules, 2014**.

But where an objection has been received by the Regional Director or Regional Director on examining the application has specific objection under the provisions of the Act, the same shall be recorded in writing and shall hold a hearing/hearings within a period of 30 days as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with the reasons within 30 days from the date of hearing.

In case where no consensus is received, the Regional Director may approve the conversion, if he is satisfied having regard to all the circumstances of the case, that the conversion would not be against the interests of the company or is not being made with a view to contravene the provisions of the Act, with reasons to be recorded in writing.

Where the Regional Director on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within 30 days from the date of receipt of the application, call for such information or defects or incompleteness, directing the company to furnish such information, to rectify defects or incompleteness and to re-submit such application within a period of 15 days. In cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within 15 Days, the Regional Director shall reject the application with reasons within 30 days from the date of filing application or within 30 days from the date of last re-submission made, as the case may be.

- 8. Filing of e-form INC-28 with the Registrar of Companies:** Company shall file the order conveyed by the Regional Director with the Registrar in Form INC-28 within 15 days from the date of receipt of approval as per **Rule 41(9) of the Companies (Incorporation) Rules, 2014** along with the prescribed fee.
- 9. Filing of e-form INC-27:** For effecting the conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD-1, pertaining to order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 to be filed with Registrar along with fee together with the altered e-Memorandum of Association and e-Article of Association within fifteen days from the date of receipt of the order from the Regional Director.
- 10. Issuance of fresh Certificate of Incorporation:** The Registrar on the approval of E-Form MGT-14 and E-Form INC-27, after satisfying himself that the provisions applicable for conversion of companies have been complied with, close the former registration of the company and after registering the documents, issue a fresh certificate of incorporation in the same manner as its first registration.

#### Points to ponder:

- Name clause of Memorandum needs to be amended to include the word 'Private'.
- The Articles of Association should be amended to include the restrictive provisions applicable to the Private Company.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- Company has not failed to pay or repay matured deposits or debentures or interest thereon.
- Reduce in the total number of members of the company to a maximum of 200 members.

#### Post Conversion requirements to be arranged by the company

Once the company gets converted into private limited company, it needs to intimate and inform some authorities, persons as required by law. Following are the major compliance that needs to be followed by the company after conversion:

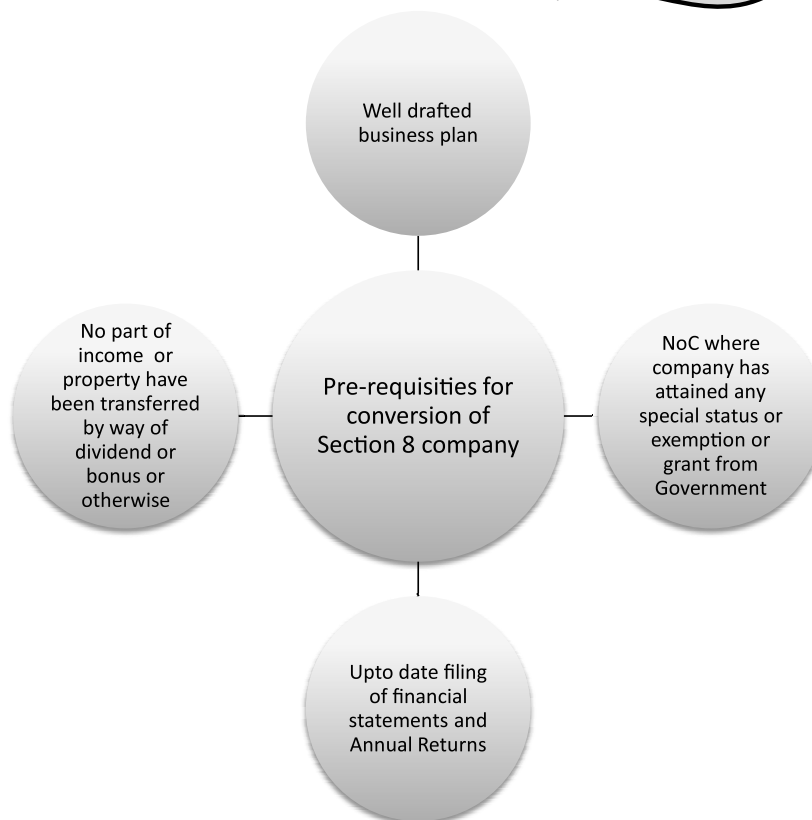
- Arrange new rubber stamps with the new name, and all the stationary in the new name of the Company.

- Arrange printing of fresh copies of Altered Memorandum of Association and Articles of Association with new Certificate of Incorporation.
- Paint the new name of the Company outside every office, building etc. along with former name so changed.
- Get the new name printed on its business letters, letter heads, Bill heads, Invoice Forms, Receipt Forms and all other official publications along with former name so changed.
- Inform about the conversion of the Company to all concerned persons/ govt. authorities.
- Intimate all the Banks where Company is operating Bank Accounts about its conversion and file necessary applications and documents with regard to change in the name of Account holder.
- Make application to Income Tax Department for new Permanent Account Number (PAN) and Tax Deduction and Collection Account Number (TAN).

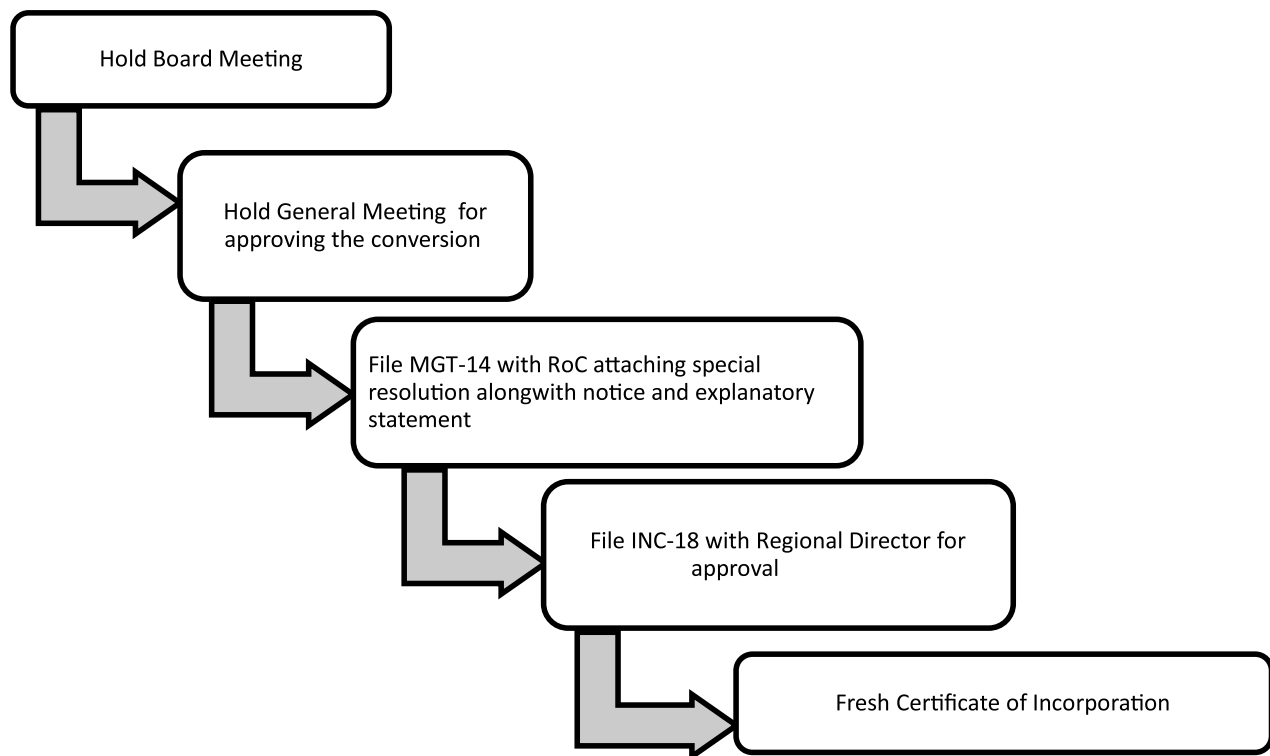
### CONVERSION OF SECTION 8 COMPANY INTO OTHER KIND OF COMPANY

Section 8(4)(ii) of the Companies Act, 2013 provides that a company registered under Section 8 may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

*Section 8 company cannot be converted to One Person Company.*



### Procedure for Conversion of a Section 8 Company into any other kind



#### Detailed Procedure for Conversion of a Section 8 Company into any other Company:

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting Section 8 Company into any other Company. The main agenda for this board meeting would be:
  - a. To pass a board resolution to get in-principal approval of Directors for conversion of section 8 company into any other company.
  - b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a section 8 company into any other company.
  - c. To approve notice of general meeting 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. The notice of general meeting must contain the special resolution for effecting the conversion of section 8 Company into any other company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
  - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
  - e. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.

- f. To approve the draft new set of Memorandum of Association and the Articles of Association.
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 Standards -2. Notice shall be given atleast 14 clear days' before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
  3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Section 8 Company into any other Company along with alteration in Memorandum of Association and Articles of Association under section 14.
  4. **Filing of e-form MGT-14:** In case of conversion of Section 8 Company into any other company special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
    - A certified true copy of Altered MoA.
    - A certified true copy of Altered AoA.
    - Notice of General Meeting along with an explanatory statement.
    - Certified true certified copy of Special Resolutions passed in General Meeting along with explanatory statement.
  5. **Filing of e-form INC-18 with the Regional Director and Registrar:** An intimation alongwith copy of the application with annexures as filed in Form no. INC.18 with the Regional Director shall also go to the Registrar through MCA system.
  6. **Publication of an Advertisement:** After submitting an application to the Regional Director, the Company should publish a notice in **FORM INC-19** in the newspaper at least one 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, for the Conversion of Section 8 Company into any other Company and on the website of the company, if any. The publication in the newspaper should be done within a week from the date of submitting an application to the Regional Director.
  7. **Order of Conversion by Regional Director:** On receipt of application and on being satisfied, the Regional Director shall pass the order of conversion with certain conditions, as may be required depending upon the facts and circumstances of each case. However, before imposing any conditions or rejecting the application, the Regional Director shall give a reasonable opportunity of being heard to the Company.
  8. **Issuance of fresh Certificate of Incorporation:** On receipt of all the required documents, the Registrar of Companies will Issue Fresh Certificate of Incorporation to the applicant. When the license of Company as Section 8 Company is revoked, the Company can apply for the Conversion of its status and name with the Registrar of Companies in **Form INC-20**.

**Points to ponder:**

- The Company has not transferred any part of the Income or property of the Company by way dividend or bonus or otherwise.
- Company has not defaulted in filing of Annual Returns or financial Statement due for filing with the Registrar.
- No objection certificate is required in case where the Company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority or from Government.

**Effect of conversion of Section 8 Company into Private Company**

- The Company cannot claim the privileges and exemptions as enjoyed by Section 8 Company after the conversion.
- The newly converted Company has to pay the difference between the balance of market price and purchase price, if before the Conversion the Company has bought any immovable property from the Government at lower rates than the market price.
- Where the Company is left with some unutilized income and accumulated profits which are brought forward from the previous year the same should be utilized for the purpose of settlement of outstanding dues or any amount due to suppliers or creditors.
- After settlement of all the dues, if any amount is left, it will be transferred to the Investor Education & Protection Fund. The amount should be transferred within 30 days of the Conversion of Section 8 Company into other form of Company.

**CONVERSION OF COMPANY INTO LLP**

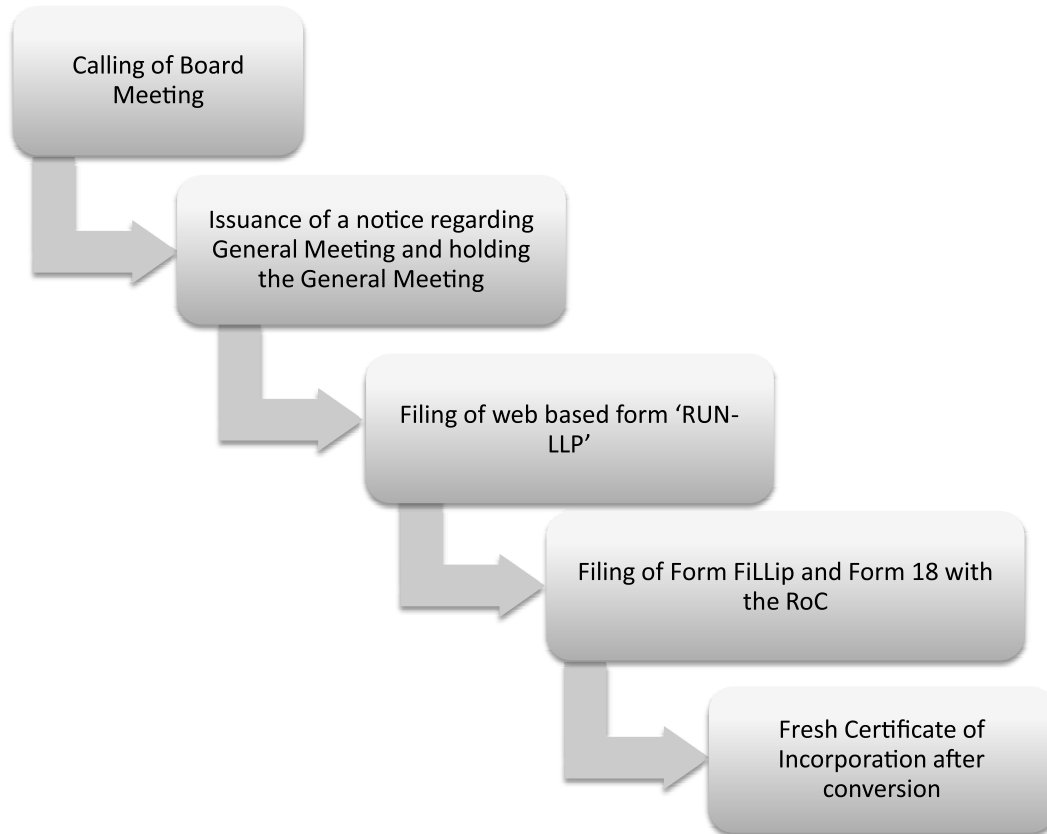
Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act.

Before proceeding for conversion of company into Limited Liability Partnership one needs to confirm regarding certain pre-conditions and once all these conditions are fulfilled, the process for conversion of company into Limited Liability Partnership can be initiated.

**Conditions to fulfill for conversion:**

- All members/directors will become the partners of the newly converted LLP
- All statutory compliances have been fulfilled including Income tax returns, RoC returns, etc. up-to-date
- Creditors must agree for the conversion
- No prosecution or pending cases against the company proposing to convert
- There should be no pending E-Forms of a company
- There should be no open charges for or against the Company.

### Procedure for Conversion of Company into Limited Liability Company



#### Detailed Procedure for Conversion of Company into Limited Liability Partnership:

1. **Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting Company into Limited Liability Partnership. The main agenda for this board meeting would be:
  - a. To pass a board resolution to get in-principal approval of Directors for conversion of Company into Limited Liability Partnership.
  - b. To fix date, time and place for holding general meeting to get written approval of shareholders, by way of Special Resolution, for conversion of Company into Limited Liability Partnership.
  - c. To authorize the Director to issue notice of the general meeting as approved by the board.

Before conducting board meeting obtain DIN for all those designated partners who don't have DIN already.

2. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' written approval for Conversion of Company into Limited Liability Partnership.
3. **Application for Name Availability on LLP Portal:** The Company must apply for a name reservation, by filing web based form 'RUN-LLP' with ROC along with the board resolution passed by the Company approving the conversion into LLP and obtain Name Approval Letter from ROC.

- 4. Filing of incorporation documents in LLP Portal:** Once the Company reserves its name, LLP must file its incorporation in web based form FiLLip (Filing of Form of Incorporation) with ROC along with the below-mentioned documents:
  - Proof of Address of Registered office of LLP
  - Subscription sheet signed by the promoters
  - Latest Utility bill of registered office
  - NOC of owner of registered office, if taken on rent / lease
  - 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
- 5. Application for Conversion of company into LLP:** For converting the existing Company into LLP, FiLLip Form 18 must be duly filled. The following information is required to be furnished along with the form 18:
  - Statement of shareholders
  - Incorporation Documents & Subscribers Statements
  - Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor
  - List of all the Secured creditors along with their consent to the conversion
  - NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return
  - Approval from any other body/authority as may be required
  - Particulars of pending proceedings from any court/Tribunal etc.
- 6. Drafting of limited liability partnership agreement:** After the incorporation, the designated partners must enter into an LLP agreement in prescribed format. It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same needs to filed **in e-form 3** within 30 days of incorporation along with the Certificate of incorporation as LLP form ROC but in order to avoid any dispute between the partners as to the terms & conditions of the agreement the same can be filed afterwards. The contents of limited liability partnership agreement are as follows:
  - Name of LLP
  - Name of Partners & Designated Partners
  - Form of contribution
  - Profit Sharing ratio
  - Rights & Duties of Partners
  - Proposed Business
  - Rules for governing the LLP
- 7. Issuance of fresh Certificate of Incorporation:** After all formalities and filings been complied with by the applicants and approved by the Ministry, Registrar of LLP will 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.

**Effect of Conversion from Company to LLP:**

- The Company gets dissolved after conversion.
- Registrar of Company will remove the name of Company from the register of Companies maintained with it.
- Conversion does not affect present liability, obligation, agreements and contracts.
- On conversion of Company into LLP, assets of the Company will be transferred to LLP. There is no requirement of instrument of transfer. Hence, no stamp duty implication is required for such transfer.
- After conversion into LLP there is no requirement for holding minimum number of meetings as prescribed by the Companies Act, 2013.

**CONVERSION OF LLP INTO COMPANY**

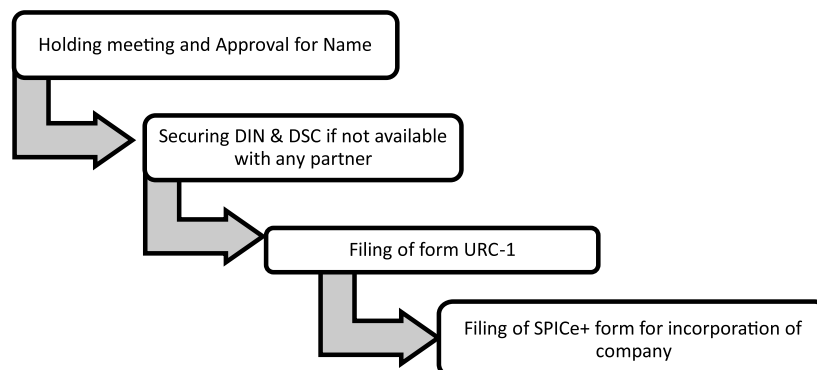
Several businesses started in India as Limited Liability Partnership (LLP), may now wish to convert into a private limited company for more growth in business or for infusing equity capital. The entire world is gradually drifting towards one global market without any trade barriers between the countries. With the emergence of corporate work culture and promotional startup benefits, a great chunk of entrepreneurs are looking forward to corporatization. This step can be initiated in 2 ways as enumerated below:

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

The second 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 conversion of LLP into Company is allowed. These rules called as “the Companies (Authorized to Register) Amendment Rules, 2016.

However, there are various requirements which need to be satisfied for converting an LLP into a Private Limited Company, for instance, an LLP must have at least 7 partners (however as per Companies Amendment Act, 2017 LLP with 2 partners can be convert into Company), approval from all the partners is required, advertisement in newspaper is to be done in a local and a national newspaper, a No Objection Certificate (NOC) is required from the ROC where such LLP is registered and then all the incorporation process has to be undertaken which includes:

**Procedure for Conversion of Limited Liability Company into Company**

**Detailed Procedure for Conversion of Limited Liability Partnership into a Company:**

- 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. One of the major advantages is that the business can be run under the same name as that of the LLP except that in addition to the name of the LLP the words 'limited' or 'private limited' has to be added. Apply for name reservation in form RUN in V3 portal. It is a web based form.
- 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. For obtaining the DIN, an application form must be filed on MCA portal. DIN application is processed & approved by central government via the office of regional director, the ministry of corporate affairs. The form must be accompanied by self-attested address proof and identity proof with 1 recent passport size color photo of the applicant. All the required documents should be attested by a practicing cost accountant or a practicing chartered accountant or a practicing company secretary.
- 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.
  - An affidavit from every person proposed as first directors, that he is not banned to be a director under section-164 and all the necessary documents filed with the registrar for the registration of firm must contain information which is complete and correct & true to be best of his belief and knowledge.
  - A 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.
    - The nominal share capital of firm & the number of shares into which it is separated.
    - The number of shares taken & the amount paid for every share.
    - The 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.
    - Written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration;
    - an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 as applicable;
    - A copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

In case of an application by a Limited Liability Partnership or firm for registration as a company limited by guarantee or as an unlimited company-

- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being

- more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm, as the case may be with proof of membership;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, along with DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
  - (iii) in case of a firm, deed of partnership, bye laws or other instrument constituting or regulating the company and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;
  - (iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of guarantee;
  - (v) written consent or No Objection Certificate from all the secured creditors of the applicant;
  - (vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration;
  - (vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899), as applicable;
  - (viii) A copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

**4) Filing of SPICe, SPICe MOA and SPICe AOA:** Similar to incorporation of new company, the process has to be followed by filing SPICe + form along with required attachments for the converted entity.

**Conditions to fulfill for conversion:**

- All the partners should have approved the conversion of LLP.
- The LLP should have complied with all the required returns and compliances.
- Publication related to such conversion of LLP into a Private Company, in at least two newspapers, one in English Language and another in any vernacular language newspaper of the place of registered office.
- The Limited Liability Partnership must have at least two partners who are required for incorporation of a Private Limited company.
- There should be no open charges for or against the Company.

**Points to ponder:**

- There is no capital gain tax in a private limited company.
- Existing LLP has just been replaced by the Private Limited Company by adding the “Pvt. Ltd.” at the end of its name.

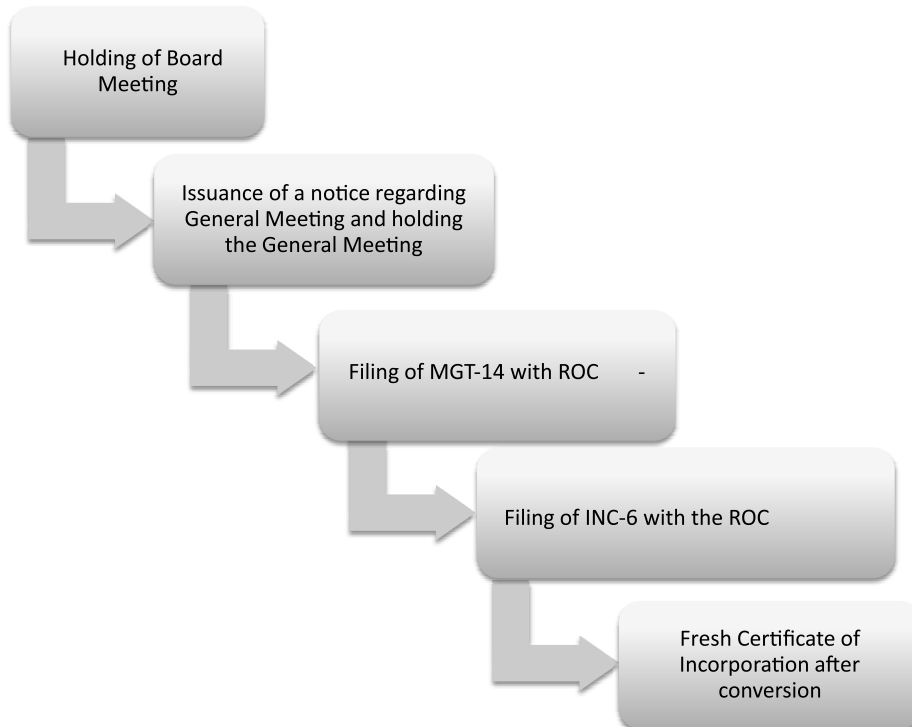
**CONVERSION OF ONE PERSON COMPANY INTO A PUBLIC COMPANY OR A PRIVATE COMPANY**

One Person Company (OPC) refers to a form of company that has only one person as a member, unlike a private company where the minimum number of members are two or a public company where the minimum number of members are seven. Section 18 of the Companies Act, 2013 read with Rule 6 of the Companies (Incorporation) Rules, 2014, explicitly provide provisions for the voluntary conversion of One Person Company (OPC) to other forms of the Company, as the case may be.

### When conversion is necessary into a Private Company or Public Company

1. The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with section 122(3) 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, alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA.
4. On being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

### Procedure for Conversion of One Person Company into other Company



#### Detailed Procedure for Conversion of OPC into company:

1. **Holding of Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a One Person Company into Other Company. The main agenda for this board meeting would be:
  - a. To pass a board resolution to get in-principal approval of Directors for conversion of One Person company into other company.
  - b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of One Person Company into other company.

- c. To approve notice of general meeting 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. The notice of general meeting must contain the special resolution for effecting the conversion of One Person Company into other company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
  - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
  - e. Pass Board resolution for increase in number of Directors as per the type of company chosen for conversion.
  - f. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
  - g. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of a Public Limited Company.
- 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 Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
- 3. Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for One Person Company into Other Company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion.
- 4. Filing of e-form MGT-14:** In case of conversion of One Person Company into Other Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3)(a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
- a. Notice of general meeting along with copy of explanatory statement under section 102;
  - b. Certified true copy of special resolution;
  - c. Altered memorandum of association;
  - d. Altered articles of association;
  - e. Certified true copy of board resolution may be attached as an optional attachment.
- 5. Filing of e-form INC-6:** 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, alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA.

On being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

- 6. Issuance of New Certificate of Incorporation:** On approval of Form MGT-14 and Form INC-6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company in Form INC-25.

**Conditions to fulfill for conversion:**

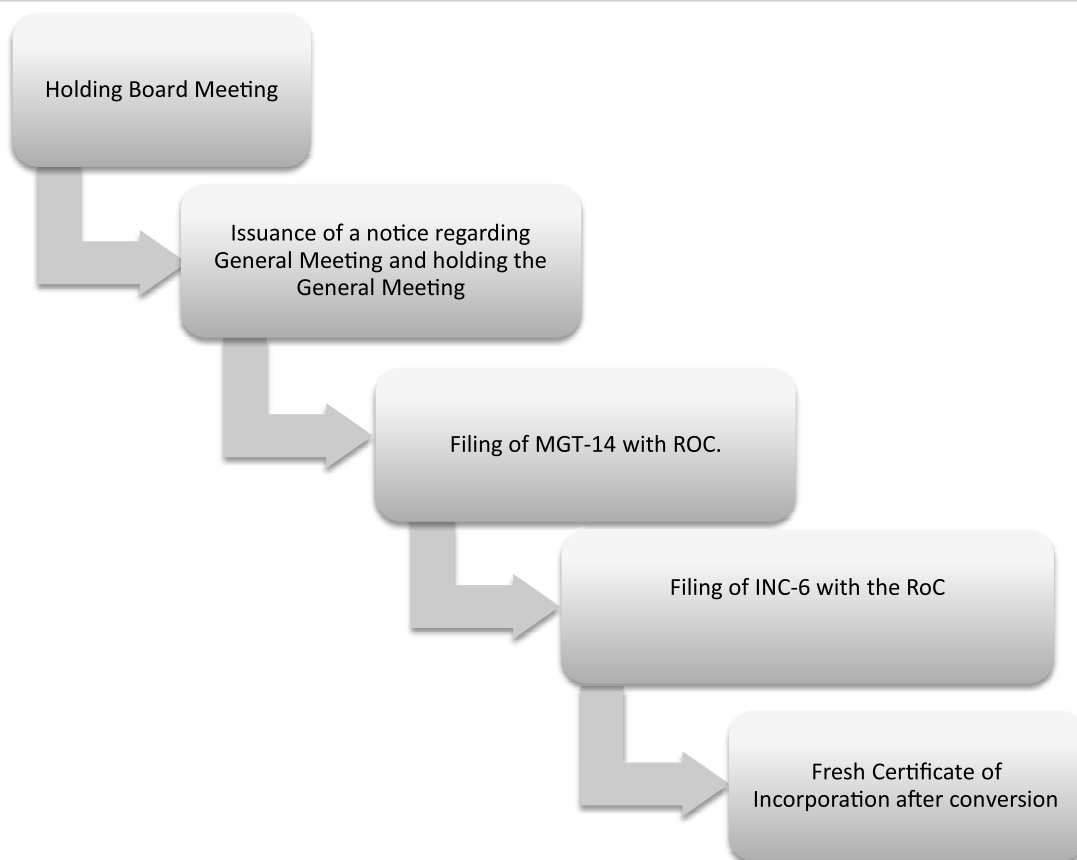
- Alteration of Memorandum of Association and Articles of Association in accordance with Section 122(3) of the Companies Act, 2013 to give effect to the conversion.
- Increase the minimum number of directors to two or three as the case may be.
- Increase the minimum number of members to two or seven as the case may be.
- Due compliance with the provisions of section 18 of the Companies Act, 2013.

**Points to ponder:**

- A minor shall not become a member or nominee of the One Person Company.
- A minor can't hold shares with beneficial interest into One Person Company.
- One Person Company can't be incorporated or converted into a Section 8 company.
- One Person Company can't carry out Non-Banking Financial Investment activities including investment in securities of any Body corporates.

**CONVERSION OF COMPANY INTO ONE PERSON COMPANY**

Legal Provisions related to Conversion of Private Company into OPC are given in Section 18 the Companies Act, 2013 read with Rule 7 of Companies (Incorporation) Rules, 2014. One Person Company (OPC) can be easily managed with very fewer compliances to be followed as compared to other form of Company. The Conversion of Private Company into OPC will benefit most people associated with the Company.

**Procedure for Conversion of Private Company into One Person Company**

**Detailed Procedure for Conversion of company into OPC:**

1. **Holding of Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting a Company into One Person Company. The main agenda for this board meeting would be:
  - a. To pass a board resolution to get in-principal approval of Directors for conversion of a Company into One Person Company.
  - b. To fix date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a Company into One Person Company.
  - c. To approve notice of general meeting 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. The notice of general meeting must contain the special resolution for effecting the conversion of a Company into One Person Company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
  - d. To authorize the Director to issue notice of the general meeting as approved by the board.
  - e. To authorize the director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion.
  - f. To approve the draft new set of Memorandum of Association and the Articles of Association meeting the requirement of One Person Company.
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 Standards -2. Notice shall be given atleast 21 clear days before the actual date of General Meeting. Notice shall specify the day, date, time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.
3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Company into One Person Company along with alteration in Memorandum of Association and Articles of Association under section 14 for such conversion. Before passing the Special Resolution in the General Meeting, the Company should get a No Objection Certificate (NOC) in writing from the existing shareholders and creditors.
4. **Filing of e-form MGT-14:** In case of conversion of Company into One Person Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly as per section 117(3) (a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting. Following documents are required to be attached with e-form MGT-14:
  - a. Notice of general meeting along with copy of explanatory statement under section 102;
  - b. Certified true copy of special resolution;
  - c. Altered memorandum of association;
  - d. Altered articles of association;
  - e. Certified true copy of board resolution may be attached as an optional attachment.

- 5. Filing of e-form INC-6:** The company shall file an application in e-Form No. INC-6 for its conversion into One Person Company alongwith fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching the following details or documents, namely:-
- (i) altered e-MOA and e-AOA;
  - (ii) copy of NOC of every creditors with the application for conversion;
  - (iii) affidavit of directors confirming that all the members of the company have given their consent for conversion.
- 6. Issuance of New Certificate of Incorporation:** On approval of Form MGT-14 and Form INC-6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company or the Conversion of Company into OPC.

**Points to ponder:**

- A minor shall not become a member or nominee of the One Person Company.
- The Shareholder should not be holding any other OPC, or he/she should not be a member of any other OPC.
- The Shareholder of the new OPC should be a resident person of India.
- The Shareholder of the new OPC should have Indian nationality.

**COMPANIES AUTHORISED TO REGISTER UNDER THE COMPANIES ACT, 2013**

- (1) 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.
- (2) 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 two 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 contributories 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.
- (3) 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.

Once the compliance with respect to requirements of chapter XXI of the Act is done with respect to registration and on payment of prescribed fees under section 403 of the Act, the Registrar shall certify that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited.

As per section 368 of the Act, all the properties whether movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act. However the registration under this part shall not affect its rights or liabilities in respect of any debts or obligations incurred or any contract entered by or behalf of the company before registration.

With respect to the suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place.

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

### **Effect of Registration under Part XXI of the Act**

Following are the effects of registration of companies under this Part of the Act:

- 1) All provisions contained in any Act of Parliament or any other law for the time being in force constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and articles of Association.
- 2) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner as if it had been formed under this Act, subject to following:-
  - (a) Table F in Schedule I shall not apply unless it is adopted by special resolution;

- (b) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;
  - (c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration;
  - (d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories shall apply.
- 3) The provisions of this Act with respect to the registration of an unlimited company as a limited company; the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up and the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up shall apply to these companies notwithstanding anything in any Act of Parliament or any other law for the time being in force.

#### Essential pre-conditions of companies for Registration under Part XXI of the Act

- a) All the secured creditors of the company must either consented to or have given their no objection to company's registration under this Part;
- b) Publish an advertisement in newspaper (one English and one in vernacular language) giving notice about registration under this Part, seeking objections and address them suitably;
- c) file duly notarized affidavit from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

#### LESSON ROUND-UP

- Under section 2(71), a subsidiary of public company shall be deemed to be public company even if it continues to be private company in its Articles.
- Section 18 of the Companies Act, 2013 deals with conversion of companies already registered.
- 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.
- A public company can be converted into a private company only after the approval of the Tribunal.
- For commencement of new business by an existing company, the guiding criterion is whether the new activity is germane to the original business or not.
- For giving effect to conversion of Private Company into Public Company, an application in E-Form INC-27 needs to be filed with the Registrar of Companies along with prescribed fees within fifteen days of passing of Special Resolution.

- For effecting the conversion of a public company into a private company, a copy of order of the Regional Director approving the alteration, shall be filled with the Registrar in Form No. INC -27.
- 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.

### GLOSSARY

**LLP:** A limited liability partnership (LLP) is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008.

**General Meeting:** Meeting of a company's shareholders at which they discuss the company's activities and make important decisions.

**OPC:** One Person Company (OPC) is a company incorporated by a single person. Before the enforcement of the Companies Act, 2013, a single person could not establish a company.

### TEST YOURSELF

*(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)*

1. ABC Pvt. Ltd. wants to convert the Private Company into a One Person Company (OPC). The Company seeks your advice on the following matters :
  - (a) Provisions regarding notice of general meeting
  - (b) Whether company required to obtain 'No Objection Certificate'.
  - (c) Types of e-forms required to be filed with ROC for such conversion
  - (d) Penalty for contravention of provisions with respect to conversion.
2. Discuss the procedure for conversion of section 8 Company into other form of company?
3. State the essential pre-conditions of companies for Registration under Part XXI of the Act.
4. What are the benefits of conversion of Public Limited Company into Private Limited Company?
5. What are the important points to be kept in mind for conversion of a Private Limited Company into a Public Company?

### LIST OF FURTHER READINGS

- Bare Act – The Companies Act, 2013
- ICSI Premier on Company Law
- The LLP Act, 2008 and the Rules made thereunder

