

SECP
Guide
Series

Conversion of Status of Companies



SECURITIES AND EXCHANGE COMMISSION
OF PAKISTAN

1. AIMS AND OBJECTIVES

This booklet is a simple guide to understand the procedures involved in conversion of status of companies from public into private, private into public, single member into multi-members and *vice versa*. It must be read in conjunction with the relevant provisions of the Companies Ordinance, 1984 (“The Ordinance”) and the rules framed hereunder such as the Companies (General Provisions and Forms) Rules, 1985 (“the Rules”) and the Single Member Companies Rules, 2003 (“the SMC Rules”), etc.

Please remember that if your company is considering for conversion of status, you should seek appropriate professional advice.

It is a summary of steps to be taken and provides information and procedure for the aforesaid conversions. In case of any conflict between the Guide and provisions of the law/Rules, the latter would prevail.

2. TYPES OF CONVERSION OF STATUS OF COMPANIES

Generally, the following are types of conversion of companies:-

- a) Private Company into Public Company;
- b) Public Company into Private Company;
- c) Private (Multi-members) Company into Single Member Company; and
- d) Single Member Company into Private (Multi-members) Company.

3. CONVERSION FROM PRIVATE COMPANY INTO PUBLIC COMPANY

Section 45 of the Ordinance provides that a private company may convert its status into a public company by altering its articles of association in such a manner that they no longer include the provisions which, under clause (28) of sub-section (1) of section 2 of

the Ordinance, are required to be included in the articles of association of a company to constitute it a private company, the company shall:-

- a) on the date of the alteration, cease to be a private company; and
- b) within a period of fourteen days after the said date, file with the registrar either a prospectus or a statement in lieu of prospectus.

No approval of any authority for the conversion of status from a private company into public company is required, however the company has to adopt below mentioned stepwise procedure for such conversion.

3.1 PROCEDURE FOR THE CONVERSION OF STATUS OF COMPANY FROM PRIVATE COMPANY INTO PUBLIC COMPANY

Following procedure is required for conversion of private company into public company:-

- Step 1: The proposal for conversion of status of private company into public company is firstly discussed by the Board of Directors.
- Step 2: 21 days notice accompanied with the proposed special resolution is issued for convening the general meeting of shareholders of the company.
- Step 3: Resolution for conversion of the status from Private Company into Public Company and alteration in Articles of Association is placed before the members as a special resolution. Such special resolution is to be passed by a majority of not less than three-fourth, of such members entitled to vote as are present in person or by proxy at a general meeting.

- It may be noted that significant difference in the Articles of both the companies exist and therefore are required to be amended on change of the status.
 - The resolution not only meant for removal of word “(Private)” from the name of the company, but would also resolve deletion of restriction clauses imposed on private company and substitute of new articles meant for a public company.
- Step 4: The company has to increase its directors and shareholders to minimum number i.e. 3 required for public company.
- Step 5: The company shall file the under-mentioned documents with the registrar concerned:-
- a) Form 26 within 15 days of passing of special resolution.
 - b) Amended copy of Memorandum and Articles of Association.
 - c) Prospectus or statement in lieu of prospectus. Prospectus is filed by the company which invites the subscription from the general public otherwise Statement in Lieu of Prospectus is filed. Prospectus is prescribed in Part I (Prospectus also required prior approval by the Commission) and Statement in Lieu of Prospectus is prescribed as Part III of the Second Schedule of the Ordinance.
 - d) Form 3 (allotment of shares to new members/directors in case the new directors are not members of company).

- e) Form 27 i.e. list of persons consenting to act as directors.
- f) Form 28 (Consent to act as directors).
- g) Form - 29 (in case of additional directors of the company does not already have three directors required for a public company).
- h) Bank challan (deposited in designated branch of HBL) of Rs. 200 being filing fee for each return.

Step 6: The registrar concerned issues filing certificate. He will issue a certificate regarding conversion of private company into public company.

Step 7: The company may obtain a certified copy of Memorandum and Articles of Association on payment of copying fee of Rs. 20 per page and providing requisite court fee stamps.

Step 8: Change of status is recorded in all letterheads, bills, invoices, seal etc. Copies of Memorandum and Articles of Association are also recorded with the alteration.

4. CONVERSION FROM PUBLIC COMPANY INTO PRIVATE COMPANY

A public company can be converted into a private company with the prior approval in writing, and subject to such conditions (being regress nature case) as may be imposed by the Securities and Exchange Commission of Pakistan (Commission) in terms of section 44 read with section 28 of the Ordinance and in compliance with rules 7, 28, 30, 32 and 34 of the Rules.

Under rule 7 of the Rules, where the articles of association of a public company have been amended having the effect of converting its status from public company into a private company, the company is required to file an application, not later than sixty days from the

date on which the special resolution seeking such alteration was passed, on Form 2 to the Commission for its approval under section 44 of the Ordinance.

4.1 PROCEDURE FOR THE CONVERSION OF STATUS OF COMPANY FROM PUBLIC COMPANY INTO PRIVATE COMPANY

Following procedure is required for conversion of public company into private company:-

- Step 1: Approval by the Board of Directors for change of status of the company from public to private is sought.
- Step 2: 21 days notice accompanied with the proposed special resolution is issued for convening the general meeting of the shareholders of the company. In case of a listed company, the notice is also published in at least two newspapers having circulation in the provinces in which the stock exchanges on which the company is listed, exists. (It would be unusual if a public listed company goes for conversion to a private company. A listed company shall firstly convert into unlisted public company and then go for conversion to private company.)
- Step 3: Resolution for conversion of the status from Public Company into Private Company and alteration in Articles of Association is placed before the members, as special resolution. It may be noted that significant difference in the Articles of both the companies exists, therefore, the same may be amended to change the status through imposition of the restrictions meant for private companies.

- Step 4: Copy of Special Resolution on Form 26 along with bank challan (deposited in relevant branch of HBL) of Rs. 200 regarding filing fee is filed with the registrar concerned within 15 days of passing of the special resolution. **(A special resolution is to be passed by the majority of not less than three-fourth, of such members entitled to vote as are present in person or by proxy at a general meeting.)**
- Step 5: Application is sent to the Commission within 60 days of the date of passing of the special resolution. Such application is accompanied with the following documents:-
- i. Form 2. (prescribed under the Rules)
 - ii. Copy of Form 26 (Special Resolution).
 - iii. Copy of the Memorandum and Articles of Association duly amended.
 - iv. Certified copy of the existing Memorandum and Articles of Association.
 - v. Copy of latest audited Balance Sheet and Profit and Loss Account.
 - vi. Copy of minutes of the General Meeting.
 - vii. Bank challan (deposited in relevant branch of HBL) of Rs. 500.00 being application fee and filing fee of Rs. 200/- for filing of Form 26 with the Registrar concerned.
 - viii. Affidavit that the contents of the application are true.
 - ix. Consent of the creditors.
 - x. Application must be in duplicate and a copy is also required to be sent to the registrar concerned under Rule 32 of the Rules.
- Step 6: The Commission gives approval for conversion of public company into private company through an Order.

- Step 7: Certified copy of the order of the Commission is obtained by depositing Rs. 20/- for each copy, alongwith requisite court fee stamps.
- Step 8: Certified copy of the order along with copy of special resolution on Form 26 and amended copy of Memorandum and Articles of Association are filed with the registrar concerned alongwith bank challan (deposited in designated branch of HBL) of Rs. 200 being filing fee.
- Step 9: The registrar issues filing certificate of Special Resolution and Order of the Commission.
The company may obtain a certified copy of memorandum and Articles of Association on payment of copying fee of Rs. 20 per page and providing requisite court fee stamps.

5. CONVERSION FROM PRIVATE COMPANY INTO SINGLE MEMBER COMPANY

A private company (Multi-members) can be converted into a single member company in terms of Rule 9 of SMC Rules and for the purpose, the company has to pass a special resolution for change of its status and make necessary alteration in its articles and obtain approval of the Commission.

In terms of rule 10 of the SMC Rules "XYZ (SMC-Private) Limited" shall be the pattern and style of the name of a single member company and the parenthesis, letters, hyphen and words "(SMC-Private) Limited", shall form part of the name of every single member company.

5.1 PROCEDURE FOR THE CONVERSION OF STATUS OF A PRIVATE COMPANY (MULTI-MEMBERS) INTO A SINGLE MEMBER COMPANY

Following procedure is required for conversion of private company (multi-members) into single member company:-

- Step 1: Approval by the Board of Directors for change of status of private company into single member company is sought.
- Step 2: 21 days notice accompanied with the proposed special resolution is issued for convening the general meeting of the shareholders of the company.
- Step 3: Resolution for conversion of the status from Private Company into Single Member Company and alteration in Articles of Association is placed before the members, as special resolution. It may be noted that significant difference in the Articles of both the companies exists, therefore the same may be amended to change the status through imposition of the restrictions meant for single member companies.
- Step 4: Copy of Special Resolution on Form 26 along with bank challan (deposited in relevant branch of HBL) of Rs. 200 regarding filing fee is filed with the registrar concerned within 15 days of passing of the special resolution. A special resolution is to be passed by the majority of not less than three-fourth, of such members entitled to vote as are present in person or by proxy at a general meeting.
- Step 5: Application is sent to the Commission within 30 days of the date of passing of the special resolution. Such application is accompanied with the following documents:-
- i. Form S-4 prescribed under the SMC Rules.
 - ii. Copy of Form 26 (Special Resolution) (see section 172).
 - iii. Copy of the Memorandum and Articles of Association duly amended.

- iv. Certified copy of the existing Memorandum and Articles of Association.
 - v. Minutes of the General Meeting.
 - vi. Bank challan (deposited in relevant branch of HBL) of Rs. 500.00 being application fee and Rs.200/- filing fee for Form S-4 with the Registrar concerned.
 - vii. Affidavit that the contents of the application are true.
 - viii. Application must be in duplicate and a copy is also required to be sent to the registrar concerned under Rule 32 of the Rules.
- Step 6: The Commission gives approval for conversion of private company into single member company through an Order.
- Step 7: Certified copy of the order along with copies of special resolution on Form S-1, Form S-5, Form 26 and amended copy of Memorandum and Articles of Association are filed with the registrar concerned with bank challan (deposited in designated branch of HBL) of Rs. 200 being filing fee for each Form.
- Step 8: The registrar issues filing certificate of Special Resolution and Order of the Commission.
- Step 9: The company shall transfer the shares to Single Member within 15 days of the order of conversion by the Commission.
- Step 10: The company shall also intimate the particulars of Director on Form-29 within 14 days of the change to the Registrar concerned.
- Step 11: In terms of section 204 A of the Ordinance and rule 6 of SMC Rules, a single member company is required to appoint a company secretary within fifteen days of incorporation or of becoming a single member company.

Step 12: In terms of rule 7 of SMC Rules, the single member shall nominate two individuals, one of whom shall become nominee director in case of death of single member and the other shall become alternate nominee director to work as nominee director in case of non-availability of the nominee director. The nominee director is required to:-

- (a) manage the affairs of the company in case of death of single member till the transfer of shares to legal heirs of the single member;
- (b) inform the registrar concerned of death of the single member, providing particulars of the legal heirs and in case of any impediment report the circumstances seeking the directions in the form as set out in Form S3 within seven days of the death of the single member;
- (c) transfer the shares to legal heirs of the single member; and
- (d) call the general meeting of the members to elect directors.

It shall be the duty of the company secretary to inform the registrar concerned of the death of the single member.

6. CONVERSION FROM SINGLE MEMBER COMPANY INTO PRIVATE COMPANY

A single member company originally incorporated as Single Member Company or converted from private company as such may convert into private company in accordance with rule 4 of the SMC rules. The persons becoming members due to transfer or transmission or further allotment of shares, as the case may be, shall pass a special resolution to make alteration in articles and appoint one or more additional directors. Where a single member company

converts into a private company pursuant to sub-rule (1), it shall file a notice of the fact in writing in the form as set out in Form S-2 with the registrar within 30 days from the date of passing of special resolution.

A single member company may be converted into a private company on increase of the number of its members to more than one due to transfer of shares or further allotment of shares or death of the single member or operation of law as provided in rule 4 of SMC Rules.

No approval of any authority for the conversion of status from a Single Member Company into Private Company is required, however, the company has to adopt below mentioned procedure for conversion.

6.1 PROCEDURE FOR THE CONVERSION OF STATUS OF COMPANY FROM SINGLE MEMBER COMPANY INTO PRIVATE COMPANY

- Step 1: The proposal for conversion of status of single member company into private company is firstly discussed and approved by the Board of Directors.
- Step 2: 21 days notice accompanied by with the proposed special resolution is issued for convening the general meeting of shareholders of the company.
- Step 3: Resolution for conversion of the status from Single Member Company into Private Company and alteration in Articles of Association is placed before the members which is carried as special resolution.
- ✓ It may be noted that significant difference in the Articles of both the companies exists and, therefore, may be amended on change of the status.
 - ✓ The resolution not only meant for removal of word “(SMC)” from the name of the company, but would

- also to substitute of new articles meant for a private company.
- Step 4: The company has to increase its directors and shareholders to minimum number i.e. 2 required for private company within 15 days of the passing of special resolution under section 174 (i) (b) of the Ordinance.
- Step 5: The company has to file the under-mentioned documents with the registrar concerned within 30 days of the passing of special resolution:-
- a) Form 26 within 15 days of passing of special resolution.
 - b) Amended copy of Memorandum and Articles of Association.
 - c) Form 3 (in case if shares are issued to new members).
 - d) Form- 29 (appointment of additional director within 14 days of the date of appointment).
 - e) Bank challan (deposited in designated branch of HBL) of Rs. 200 being filing fee for each return.
- Step 6: The registrar concerned issues filing certificate. He will issue a certificate regarding conversion of single member company into private company.
- Step 7: The company may obtain a certified copy of Memorandum and Articles of Association on payment of copying fee of Rs. 20 per page and providing requisite court fee stamps.
- Step 8: Change of status is recorded in all letterheads, bills, invoices, seal, etc. Copies of Memorandum and Articles of Association are also recorded with the alteration.

PUBLIC CONSULTATION

If you have any suggestions for the development in the legal framework or otherwise, please let us know about your opinion/comments on the following address:

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Securities and Exchange Commission of Pakistan,
NIC building, Jinnah Avenue, Blue Area,
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Telephone No: 9206306.

Comments can also be sent via electronic mail at the following address:

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The booklet has been published with the intention to create an awareness of the concept of the relevant matters. However, the booklet does not tell everything and the opinions or legal interpretations, contained in the booklet are circumstantial and may vary under different situations. If the reader is in doubt while dealing with any specific condition, it is recommended to refer to the Companies Ordinance, 1984 and allied laws and consult an adviser for seeking professional advice.



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