

SECP Guide
SERIES

SECURITIES AND EXCHANGE COMMISSION
OF PAKISTAN



Guide on
Conversion of Status of
Companies

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AIMS AND OBJECTIVES

1. AIMS AND OBJECTIVES

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

2. TYPES OF CONVERSION OF STATUS OF COMPANIES

Generally, following are the 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 as 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 and approved 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 which is carried as 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.

There is significant difference in the Articles of both the types of companies. Therefore; the Articles are required to be amended on

change of the status, especially restrictive clauses applicable on a private company are to be deleted.

Step 4: The Company shall increase its directors and shareholders if they are less than the minimum number which are required for a 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 the Memorandum and Articles of Association.
- c) Prospectus or Statement in Lieu of Prospectus within 14 days of passing of special resolution.

Prospectus is required to be filed by the company which invites subscription from the general public; otherwise a Statement in Lieu of Prospectus is to be filed. Prospectus is prescribed in Part I of the Second Schedule to the Ordinance and also requires prior approval by the Commission. The Statement in Lieu of Prospectus as prescribed in Part III of the Second Schedule to the Ordinance is to be filed.

- 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 increase of directors, if the company does not already have three directors required for a public company)

- h) Bank challan evidencing the deposit of filing fee of the documents in any of the designated branches of MCB as per schedule given in annexure-A.

Step 6: The registrar concerned shall issues a certificate regarding conversion of status of private company into public company and a filing certificate.

Step 7: The Company may obtain a certified copy of Memorandum and Articles of Association on payment of copying fee of Rs. 500/- for the application submitted online and Rs. 1,000/- for the application submitted in the physical form.

Step 8: The name of the company with the changed status i.e. without the word “private” shall be mentioned 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 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 make 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: The proposal for the conversion of status of a public company into private company is firstly discussed and approved by the Board of Directors.

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 the conversion of status from Public Company into Private Company and alteration in Articles of Association is placed before the members, which is carried as special resolution.

There is significant difference in the Articles of both the types of companies. Therefore; the Articles are required to be amended on change of the status; therefore the same must be amended to change the status especially the imposition of restrictions meant for a private company.

Step 4: Special Resolution on Form 26 along with Bank challan evidencing the deposit of fee in any of the designated branches of MCB (as per schedule given in Annexure A), shall be filed with the registrar concerned within 15 days passing thereof.

Step 5: Application shall be sent to the Commission within 60 days of the date of passing of the special resolution. Such application shall be 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 evidencing the deposit of fee in any of the designated branches of MCB, as per schedule given in Annexure-A, on account of application fee (Form-2)
- viii. Affidavit that the contents of the application are true.
- ix. Application must be in duplicate and a copy is 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 the fee as per schedule given in Annexure A for each copy and the requisite court fee stamps.

Step 8: Certified copy of the order along with amended copy of the Memorandum and Articles of Association are filed with the registrar concerned with bank challan evidencing the deposit of filing fee in any of the designated branches of MCB (as per schedule given in Annexure A).

Step 9: The registrar shall issue certificate on conversion of status of a public company into a private company and the filing certificate in respect of Special Resolution and Order of the Commission.

The company may obtain a certified copy of the Memorandum and Articles of Association on payment of copying fee of Rs. 250/- for the application submitted online and 500/- in physical form, and the requisite court fee stamps.

5. CONVERSION FROM PRIVATE COMPANY TO SINGLE MEMBER COMPANY

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

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

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

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

Step 1: Approval of 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 which is carried as special resolution.

There is significant difference in the Articles of both the types of companies. Therefore; the Articles are required to be amended on change of the status; therefore the same must be amended to change the status especially the imposition of restrictions meant for single member private companies. The regulations in S-8 of the SMC Rules may be adopted for this purpose.

Step 4: Special Resolution on Form - 26 along with bank challan evidencing the deposit of filing fee in any of the designated branches of MCB (as per schedule given in Annexure-A), 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 evidencing the deposit of fee in any of the designated branches of MCB, as per schedule given in Annexure-A, on account of application fee (Form S-4).
- vii. Affidavit that the contents of the application are true.
- viii. Application must be in duplicate and a copy is 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 Form S-1, Form S-5 and amended copy of the Memorandum and Articles of Association are filed with the registrar concerned with bank challan evidencing the deposit of filing fee of all the aforesaid documents in any of the designated branches of MCB, as per schedule given in Annexure-A.

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 file the particulars of out going directors (being more than one 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. The appointment of company secretary is to be reported to the registrar concerned on prescribed Form-29 within 14 days from the date of appointment.

Step 12: In terms of 7 of SMC Rules, the single member shall nominate two individuals; one of whom shall be the nominee director to work in case of death of single member. The other shall be alternate nominee director to act as nominee director in case of non-availability of 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 the death of single member, provide particulars of the legal heirs and in case of any impediment, report the circumstances, if any, seeking the directions, in the form as set out in Form S-3 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.

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 the 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 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.

There is significant difference in the Articles of both the types of companies. Therefore; the resolution not only meant for removal of word “(SMC)” from the name of the company, but would also to substitute new articles 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:-

- a) Form 26 within 15 days of passing of special resolution.
- b) Amended copy of Memorandum and Articles of Association.
- c) Circular u/s 86(3) (if further shares are offered to the existing members)
- d) Form - 3 (in case if further allotment of shares is made).
- e) Form - 29 (for the appointment of additional director, within 14 days of the date of appointment).
- f) Bank challan evidencing the deposit of filing fee of all the aforesaid documents in any of the designated branches of MCB, as per schedule given in Annexure-A.

Step 6: The registrar concerned issues a filing certificate regarding conversion of single member company into private company and a filing certificate.

Step 7: The Company may obtain a certified copy of the Memorandum and Articles of Association on payment of copying fee of Rs. 250/- for the application submitted online and 500/- in physical form, and the requisite court fee stamps.

Step 8: Change of status is recorded in all letterheads, bills, invoices, seal etc. Copies of the 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.

Registrar of Companies,
Securities and Exchange Commission of Pakistan,
NIC Building, Jinnah Avenue, Blue Area,
Islamabad, Pakistan
Telephone No. (051)-9206306

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

headquarters@secp.gov.pk

ANNEXURE "A"

SCHEDULE OF FEE

Item	Fee for online submission	Fee for submission in physical form
Form 3	600	1,500
Form 26	600	1,500
Form 27	600	1,500
Form 28	600	1,500
Form 29	600	1,500
Form S-1	600	1,500
Form S-2	600	1,500
Form S-3	600	1,500
Form S-5	600	1,500
Copy of SECP's Order	100	200
Application fee (Form 2 or Form S-4 as the case may be)	2,500	5,000

DISCLAIMER

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 a professional for seeking advice.

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