

- **Conversion of a Private Company into a Public Company**

**A private company may become a public company by**

1. Conversion by default, where a default is made by a private company in complying with the essential requirements of a private company, the company ceases to enjoy the privileges and exceptions conferred on a private company. In such a case, the provisions of the Companies Act apply to it as if it were not a private company. Company Law Board may relieve the company from the consequences as aforesaid, if it is of opinion that the non-compliance was accidental or due to inadvertence or other sufficient cause.

2. Conversion by operation of law (deemed public company), a private company becomes a public company-

(a) Where not less than 25% of the paid-up share capital of the private company is held by one or more bodies corporate.

(b) Where the average annual turnover of the private company at any time is not less than such amount as may be prescribed for 3 consecutive financial years.

(c) Where the private company holds not less than 25% of the paid-up share capital of a public company, having a share capital.

(d) Where the private company invites, accepts or renews deposits from the public.

3. Conversion by choice or volition, if a private company so alters its Articles that they do not contain the provision which make it a private company, it shall cease to be a private company as on the date of the alteration. It shall then file with the Registrar, within 30 days, either a prospectus or statement in lieu of prospectus. When this is done, the company becomes a public company.

## **A private company which becomes a public company shall also-**

- (1) File a copy of the resolution altering the Articles, within 30 days of passing thereof, with the Registrar;
- (2) Take steps to raise its membership to at least 7 if it is below that number on the date of conversion, and also increase the number of its directors to more than 2 if it is below that number;
- (3) Alter the regulations contained in the Articles which are inconsistent with those of a public company.

## What are the Advantages of a Private Company

1. Number of members-its formation requires only 2 persons. This facilitates its harmonious functioning and makes the choice of a private company most suitable for friendly or family concerns.
2. Allotment before minimum subscription-a private company can allot shares before the minimum subscription is subscribed for or paid.
3. Kinds of shares-a private company may issue share capital of any kind and with such voting rights as it may think fit.
4. Commencement of business-a private company can commence business immediately on incorporation without having to obtain a certificate for commencement.
5. Number of directors-a private company need not have more than 2 directors. All the directors can be given permanent appointment by a single resolution.
6. Index of members-a private company need not keep an index of members.
7. Prospectus or statement in lieu of prospectus- a private company may allot shares without issuing a prospectus or delivering to the Registrar a statement in lieu of prospectus.

8. Issue of new shares-it can issue new shares to outsiders. Section 81(now section 62 of companies act 2013) does not apply.
9. Statutory meeting and statutory report-a private company need not hold statutory meeting or file with the Registrar the statutory report.
10. Rules regarding directors-the rules regarding directors are less stringent.

- **company a citizen**

A company, though a legal person, is not a citizen. This has been the conclusion of a special bench of the Supreme Court in State Trading Corporation of India v. CTO (AIR 1963 SC 1811).

The State Trading Corporation of India is incorporated as a private company under the Companies Act, 1956. All the shares are held by the President of India and two secretaries in their official capacities. The question was whether the corporation was a citizen. One of the contentions put forth on behalf of the corporation was that “if the corporate veil is pierced, one sees three persons who are admittedly the citizens of India”, and, therefore, the corporation should also be regarded as a citizen.

But it was held that, “neither the provisions of the Constitution, Part II, nor of the Citizenship Act, either confer the right of citizenship on or recognize as citizen, any person other than a natural person. In striking words the Supreme Court observed,

“If all the members are citizens of India the company does not become a citizen of India any more than, if all are married the company would not be a married person.”

A company can have the benefit of only such fundamental rights as guaranteed to every “person” whether a citizen or not. However, it has a nationality, domicile and residence.

The hardship caused by the above pronouncement was later modified by holding that a citizen shareholder may petition, proceeding on behalf of the company, against violation of his company's fundamental rights.