



Republic of Kenya

## PN/05: Alteration of Status of Companies

This publication is not a legal document. It contains general information intended as a basic guide on the main requirements for alteration of a company's status and conversion under the Companies Act, 2015 ("Companies Act"). The note is not drafted with unusual or complex transactions in mind. This guide should not be deemed to substitute any need to take specialist professional advice.

This practice note will be relevant to you if:

- you would like to convert your company from a private company to a public company;
- you would like to convert your company from a public company to a private company;
- you would like to change your company from a private limited company to an unlimited company;
- or you would like to change your company from an unlimited private company to a limited company;
- you would like to change your company from a public company to an unlimited private company; or
- you act as an adviser to a company and are looking for guidance on company conversion requirements in Kenya.

These Practice Notes were prepared by the Joint Liaison Committee ("JLC") comprised of members from Business Registration Service, Law Society of Kenya – Nairobi Branch and Institute of Certified Secretaries.

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## Introduction

This note explains how you can convert your company to alter its status, for example, from a private company to a public company and *vice versa*. It outlines the steps that the company would need to undertake and the documents that you must send to the Registry of Companies Registry.

You will find the relevant law in the following places:

- Part VI of the Companies Act, 2015 (sections 69 to 91 inclusive)
- the Registrar of Companies (Companies Forms) Rules 2015 (Schedule 1)
- the Companies (General) Regulations, 2016

You should consider seeking professional advice.

## Chapter 1

### CONVERSION OF A PRIVATE COMPANY TO A PUBLIC COMPANY

#### 1. What is the difference between a private company and a public company?

The primary difference between a private company and a public company is that the transfer of shares in a private company is restricted and it cannot invite the public to subscribe to its shares. The membership of a private company is also limited to fifty.

On the other hand, a public company can invite members of the public to subscribe to its shares and there is no restriction on the transfer of its shares nor a limitation on the number of members.

*Please refer to [PN/01 - Incorporation of Companies] for additional information.*

#### 2. Are there any conditions my company should meet to qualify for the conversion?

Yes.

Under Sections 70 -73, a company would need to meet the following conditions so as to be eligible to apply for conversion from a private company to a public company:-

- the shareholders of the company should have passed a special resolution approving the conversion of the company to a public company;
- The company has a share capital;
- the nominal value of the company's allotted share capital must not be less than the authorised minimum (currently the authorised minimum for public companies is KShs.6,750,000 as per Section 518 of the Companies Act);
- at least 25% of the nominal value of the company's allotted shares, must be paid up as well as the whole premium on any of the allotted shares (except shares allotted to employees pursuant to an employees' share scheme);
- if any of the shares in the company or any premium on them have been fully or partly paid by an undertaking given by a person for the carrying out of work or performance of services, such undertaking has been performed or otherwise discharged;
- if any of the shares in the company have been allotted as fully or partly paid up as to their nominal value or any premium for a non-cash consideration, and the non-cash consideration includes an undertaking to the company, such undertaking has been performed (or discharged); or a contract exists between the company and a third party under which the undertaking is to be performed within five years after the date of passing the special resolution for the conversion of the company to a public company;
- the company must have a recent balance sheet (not more than seven months before the date on which the application is lodged); an unqualified report by the Company's

auditor on the balance sheet; and a written statement by the Company's auditor that in the auditor's opinion at the balance sheet date the amount of the company's net assets was not its called up share capital and undistributable reserves; the company allots shares in the period after accounts just mentioned above were drawn up and before the special resolution approving the conversion is passed, and those shares were issued wholly or partly for a non-cash consideration, then the rules applicable to non-cash consideration received by a public company must have been complied with. As a general rule, a public company issuing shares for a non-cash consideration is required to undertake independent valuation of the assets and the valuation has to be conducted not more than six months before an allotment of shares; the company has not previously converted itself into an unlimited company;

- the name and the articles of association of the company should be changed as necessary in order for the company to become a public company. For example, the name will now need to end with "public limited company" or "plc" and the articles of association will need to be amended to remove any restrictions on the transfer of shares; and
- That the company has not previously converted itself into an unlimited company;

in the case of an unlimited company, the articles of association of the company should be changed as necessary, for example, by including a new article that provides that the liability of the members is limited, in order for the company to become a company limited by shares.

### **3. How do I apply for the conversion?**

You must complete the '*Application for Registration of Conversion of Company*' Form CR 17. The Form may be downloaded from the Business Registration Service (BRS) website on <https://brs.go.ke/assets/downloads/forms/CR17.docx>

You must deliver the '*Application for Registration of Conversion of Company*' Form CR 17 at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, accompanied by:

- a copy of the name reservation;
- a copy of the special resolution approving the conversion of the company to a public company;
- a copy of the amended articles of association;
- a copy of the relevant balance sheet;
- a copy of the auditor's written statement; and
- a copy of the auditor's unqualified report.
- Duly filled and completed Form CR19.

If the private company that is converting to a public company does not have a secretary, the application form (Form CR 17) should include a statement of the proposed secretary. It must also include a copy of the valuation report in the event of a recent allotment of shares for non-cash consideration.

#### **4. Can the Registrar refuse my application?**

The Registrar will not register a conversion of a private company into a public company:-

- if the company has resolved to reduce its share capital pursuant to section 407 of the Act and this reduction has been confirmed by the Court under section 408 of the Act;
- if between the balance sheet date and the date on which the application is lodged, the company's financial position is found to have changed so that the amount of the company's net assets has become less than the aggregate of its called-up share capital and undistributable reserves;
- An independent valuation of non-cash consideration has not been conducted within a period of not more than 6 months before an allotment of shares and when a company fails to comply with sections 73(2) (b) and 73 (3) of the Act;
- if the *Application for Registration of Conversion of Company* (Form CR 17) is not properly completed and/or the accompanying documents set out under paragraph 3 above have not been enclosed.

#### **5. Is there a fee?**

A fee is payable at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, Kenya, at the time of presenting the *Application for Registration of Conversion of Company* (Form CR 17). Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

#### **6. When does the conversion to a public company take effect?**

The conversion from a private company to a public company becomes effective upon issuance of the Certificate of Incorporation. The changes to the company's name and the articles of association also become effective upon issuance of the certificate of incorporation.

#### **7. Will I receive any documents to show that the company has been converted to a public company?**

Yes.

If your company does not already have a unique identifying number, the registrar shall allocate such a number to the company and shall issue to the company a certificate of incorporation stating the company's unique identifying number, and indicating that the certificate is issued on registration of the conversion, and that the company is a public company. The certificate of incorporation is conclusive evidence that the requirements of this Act as to conversion of the company into a public company have been complied with.

## Chapter 2

### CONVERSION OF A PUBLIC COMPANY TO A PRIVATE COMPANY

#### 1. Circumstances under which a public company can be converted to a private company?

As provided for under Sections 77 – 81 of the Companies Act, a public company can convert to a private company in the following ways:-

- 1.1 by passing a special resolution by members to do so;
- 1.2 following a cancellation of shares the nominal value of the company's allotted share capital is brought below the authorised minimum as provided for under Section 427(2)(b).

#### 1.1 Conversion through passing of a special resolution

##### (a) Conditions

Your company would need to meet the following conditions so as to be eligible to apply for conversion from a public company to a private company:-

- the shareholders of the company should have passed a special resolution approving the conversion of the company to a private company;
- there should be no application made to Court to cancel the resolution or if made, the Court has confirmed the resolution and copy of that court order has been delivered to the registrar; and
- the company has made changes to its name and its articles of association for it to convert itself to a private company limited by shares or into private company limited by guarantee.

##### (b) How to apply

You must complete the '*Application for Registration of Conversion of Company*' Form CR 17. The Form may be downloaded from the Business Registration Service (BRS) website on <https://brs.go.ke/assets/downloads/forms/CR17.docx>

You must deliver the *Application for Registration of Conversion of Company (Form CR 17)* at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, accompanied by:

- a copy of the special resolution converting the company into a private limited company;
- a copy of the amended articles of association;
- a copy of the name reservation; and
- Duly filled and completed Form CR19.

The Registrar may not register the conversion of Requirements for registration of a public company as a private limited company unless the above conditions are met as prescribed under section 80 of the Companies Act, 2015.

It is important to note that an application for conversion may only be successful if an application to cancel the conversion has not been made or if the same has been made it has been withdrawn or an order has been made confirming the resolution and a copy of the order lodged by the registrar.

### **(c) Objections**

A shareholder has a right to object through an Application to Court to cancel a conversion

if:

- the holders of at least an aggregate of 5% in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares); or
- at least 5% of the members of a company not limited by shares; or
- at least 50 members of the company's members;

object to the passing of the special resolution to convert the company to a private company, they can apply to the Court to cancel the resolution within twenty-eight days of the passing of the resolution. The application cannot be made by a person who has consented to or voted in favour of the resolution.

The applicants are required to immediately notify the registrar of the court application.

The company must deliver a copy of the Court's order to the Registry of Companies, Sheria House, Harambee Avenue, Nairobi, Kenya within fourteen days of the order being made. Failure to deliver the court order to the registrar is an offence.

### **(d) Fees**

A fee is payable at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, Kenya, at the time of presenting the *Application for Registration of Conversion of Company* (Form CR 17). Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

## **1.2 Conversion for public company to a private company following cancellation of shares**

Where the cancellation of the shares results in the nominal value of its allotted share capital falling below the authorised minimum, the company must convert to a private company. The directors can pass a resolution to convert to a private company.

You must deliver the application to convert to a private company to the Registry of Companies, Sheria House, Harambee Avenue, Nairobi, Kenya by completing the *Application for Registration of Conversion of Company' (Form CR 17)* accompanied by a copy of the court order and a copy of the amended articles of association.

A fee is payable at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, Kenya, at the time of presenting the *Application for Registration of Conversion of Company' (Form CR 17)*. Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

## **2. When does the conversion to a public company take effect?**

The conversion from a private company to a public company becomes effective upon issuance of the Certificate of Incorporation. The changes to the company's name and the articles of association also become effective upon issuance of the certificate of incorporation.

## **3. Will I receive any documents to show that the company has been converted to a public company?**

Yes.

If satisfied that an application for conversion complies with the requirements of this Act relating to the same, the Registrar shall register the company and allocate to it a unique identifying number.

The registrar shall issue a certificate of incorporation stating the company's unique identifying number and that the company is registered as a private limited company.

## Chapter 3

### CONVERSION OF A PRIVATE LIMITED COMPANY TO AN UNLIMITED COMPANY

#### 1. What is the difference between a limited company and an unlimited company?

Where a company is unlimited, there is no limit on the liability of its members however, where a company is limited by share capital or guarantee, the liability of its members, in the case of a company with a share capital, is limited to the amount, if any, unpaid on their shares. In the case where the company is limited by guarantee, the liability of members is limited to the amount they agree to contribute to the company's assets if it is wound up. Please refer to [PN/01 - Incorporation of Companies] for additional information.

#### 2. When can a private limited company convert itself to an unlimited company?

Conversion of a private limited company to an unlimited company is provided for in Sections 82 – 84 of the Companies Act, 2015.

A private company may convert itself into an unlimited company if the following conditions are met:-

- all the members of the company have assented to its conversion to an unlimited company
- the company has not been previously registered as an unlimited company;
- an application for registration of the conversion is lodged with the Registrar of Companies.

#### 3. How does one apply for the conversion to an unlimited company?

You must complete the '*Application for Registration of Conversion of Company*' Form CR 17. The Form may be downloaded from the Business Registration Service (BRS) website on <https://brs.go.ke/assets/downloads/forms/CR17.docx>. You must deliver the *Application for Registration of Conversion of Company (Form CR 17)* at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, accompanied by

- the prescribed form of assent (set out in Form CR 17);
- duly filled and completed Form CR19.
- a copy of the amended articles of association; and
- a statement of the company's new name on conversion.

The form of assent is to show that all members have agreed to the conversion to an unlimited company and must be authenticated by or on behalf of all the members of the company.

#### **4. Is there a fee**

A fee is payable at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, Kenya, at the time of presenting the *Application for Registration of Conversion of Company* (Form CR 17). Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

#### **5. When does the conversion to an unlimited company take effect?**

The conversion from a private limited company to an unlimited company becomes effective upon issuance of the certificate of incorporation. The changes to the company's name and the articles of association also become effective upon issuance of the certificate of incorporation.

## Chapter 4

### CONVERSION OF AN UNLIMITED COMPANY TO A PRIVATE LIMITED COMPANY

#### 1. What is the difference between a limited company and an unlimited company?

Where a company is unlimited, there is no limit on the liability of its members however, where a company is limited by share capital or guarantee, the liability of its members, in the case of a company with a share capital, is limited to the amount, if any, unpaid on their shares. In the case where the company is limited by guarantee, the liability of members is limited to the amount they agree to contribute to the company's assets if it is wound up. Please refer to [PN/01Incorporation of Companies] for additional information.

#### 2. When can an unlimited company convert itself to a limited company?

Conversion of an unlimited company to a private limited company is provided for in Sections 85 – 88 of the Companies Act, 2015.

An unlimited company may be converted to a limited company if the following conditions are met:-

- if the members of the company pass special resolution that the company should be converted to a limited company. The resolution will be ineffective unless it states whether the company is to be limited by shares or by guarantee;
- the company has not been previously registered as a private limited company.
- an application for registration of the conversion is lodged with the Registrar of Companies.
- the company has made such changes to its articles as are necessary in connection with it becoming a private company limited by shares.

#### 3. How do I apply for the conversion to a private limited company?

You must complete the '*Application for Registration of Conversion of Company*' Form CR 17. The Form may be downloaded from the Business Registration Service (BRS) website on <https://brs.go.ke/assets/downloads/forms/CR17.docx>.

You must deliver the *Application for Registration of Conversion of Company (Form CR 17)* at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, accompanied by

- a copy of the special resolution converting the company into a private limited company;
- if the company is to be limited by guarantee, a statement of guarantee (set out in Form CR 17);
- duly filled and completed Form CR19;

- a copy of the amended articles of association; and
- a statement of the company's new name on conversion.

If a company whose conversion has been registered has already allotted share capital, you must complete and deliver a statement of capital within fourteen days after the registration as a private limited liability company.

#### **4. Is there a fee?**

A fee is payable at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, Kenya, at the time of presenting the *Application for Registration of Conversion of Company* (Form CR 17). Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

#### **5. When does the conversion to a limited company take effect?**

The conversion from an unlimited company to a limited company becomes effective upon issuance of the certificate of incorporation. The changes to the company's name and the articles of association also become effective upon issuance of the certificate of incorporation.

## Chapter 5

### CONVERSION OF A PUBLIC COMPANY TO AN UNLIMITED PRIVATE COMPANY WITH SHARE CAPITAL

#### 1. What is the difference between a public limited company and an unlimited company?

Where a company is unlimited, there is no limit on the liability of its members, however, a public company has limited liability, can invite members of the public to subscribe to its shares and there is no restriction on the transfer of its shares or a limitation on the number of members. Please refer to [PN/01 Incorporation of Companies] for additional information.

#### 2. When can a public company convert itself to an unlimited private company?

A public company may convert itself into an unlimited private company if the following conditions are met:

- all the members of the company have assented to its conversion to an unlimited private company;
- the company has not been previously registered as a limited company or an unlimited company; and
- an application for registration of the conversion is lodged with the Registrar of Companies.

#### 3. Conditions for conversion from Public Limited Company to Unlimited Company

If;

1. The condition is that the company has not previously been registered as a limited company; or as an unlimited company.
2. The company shall make such changes-
  - a. in its name; and
  - b. in its articles, as are necessary in connection with its becoming an unlimited private the company.

#### 4. How do I apply for the conversion to an unlimited private company?

You must complete the '*Application for Registration of Conversion of Company*' Form CR 17. The Form may be downloaded from the Business Registration Service (BRS) website on <https://brs.go.ke/assets/downloads/forms/CR17.docx>.

You must deliver the *Application for Registration of Conversion of Company (Form CR 17)* at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, accompanied by

- the prescribed form of assent (set out in Form CR 17);

- duly filled and completed Form CR19;
- a copy of the amended articles of association; and
- a statement of the company's new name on conversion.

The form of assent is to show that all members have agreed to the conversion to an unlimited company, and must be authenticated by or on behalf of all the members of the company.

#### 4. Is there a fee?

A fee is payable at the Companies Registry, Sheria House, Harambee Avenue, Nairobi, Kenya, at the time of presenting the *Application for Registration of Conversion of Company' (Form CR 17)*. Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

#### 5. When does the conversion to an unlimited private company take effect?

The conversion from a public company to an unlimited private company becomes effective upon issuance of the certificate of incorporation. The changes to the company's name and the articles of association also become effective upon issuance of the certificate of incorporation.

#### 6. Review of this Practice Note.

This Practice Note shall be reviewed at least once every two years by the JLC at its discretion and subject to any change in the Companies Act.

#### 7. Effective Date.

This Practice Note shall come into effect from 16th June 2020.

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