CONVERSION OF A PARTNERSHIP FIRM INTO A COMPANY UNDER PART IX OF THE COMPANIES ACT, 1956

Section 565 to Section 581 under Part IX of the Companies Act, 1956 deals with such conversion

Eligibility

(i) Minimum seven number of members
(ii) A company should be a joint-stock company as defined in Section 566
(iii) Majority of members should give their assent for the proposed conversion.

Meaning of a 'Joint Stock Company' as per Section 566

For the purposes of Part IX, as far as the registration of companies as companies limited by shares is concerned, a joint-stock company means a company

- having 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,
- formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

Such a company, when registered with limited liability under Part IX of the Companies Act, shall be deemed to be a company limited by shares.

Advantages of converting the Partnership Firm into Private limited company:

Stamp Duty

All movable and immovable properties of the firm automatically vest in the Company. No instrument of transfer is required to be executed and hence no stamp duty is required to be paid.

Capital Gain Tax

No Capital Gains tax shall be charged on transfer of property from Partnership firm to Company.

Other Advantages

1. Separate legal entity.
2. Perpetual succession
3. Easy transferability of shares
4. Distribution of profits by way of dividends
5. Remuneration to directors.
6. Limited liability of members
7. Raising of capital through Issue of equity/ preference shares and debentures
8. Favourable attitude of financial Institutions while granting various facilities.

Precautions

1. Interest on capital cannot be paid.
2. Deposits can be accepted only from Members, Directors and their relatives
3. All legal proceedings by and against the company remain continued even after the conversion.

CHECKLIST FOR CONVERSION OF A PARTNERSHIP FIRM INTO A PRIVATE LIMITED COMPANY

List of Documents to be submitted for proposed conversion

NO.	Particulars
1.	Form 1A – along with necessary annexure
2.	Memorandum and Articles of Association
3.	Form 32 for the appointment of directors
4.	Form 18 for The place of Registered Office of the Company
5.	Form 1 on a Stamp Paper of Rs. 100/- (Declaration by the proposed director for compliance of provisions under the Companies Act, 1956)
6.	Form 37 on a Stamp Paper of Rs. 100/- (Application for registration as a limited / a private limited Company)
7.	Form 39 on a Stamp Paper of Rs. 100/- (List of members)
8.	Power of Authorisation on a Stamp Paper of Rs. 100/-
9.	Affidavit on a Stamp paper of Rs. 100/- for declaration by directors for giving list of pending suits against the Partnership Firm
10.	Certified as true copies of the Partnership Deeds entered into by the partners of the Company since formation of such Partnership Firm
11.	Certified Copy of the Partnership Registration Certificate
12.	Certified as true copy of the resolution for conversion into a limited company (On the letterhead of the firm)
13.	Certified as true copy of the Minutes of the meeting for considering the proposal of conversion into a limited company (On the letterhead of the firm)
14.	Consent of all the Partners to convert the firm into a Company
15.	Certified Copy of the Latest Income Tax Assessment Order **OR** Certified True Copy of the Income Tax Return Acknowledgement
16.	Certified Copy of the latest Audited Balance Sheet of the firm

17.	Certified Copies of The Sales Tax Registration Certificates under CST & BST

Notes:

(i) Instructions for filing of e-forms 37 & 39 do not provide any instruction as to the payment of stamp duty on the same unlike it is specifically given in e-forms 1 and 5. These forms are in the nature of Declaration and Verification respectively, hence it is suggested to get these forms stamped in accordance with the local stamp acts and to forward the same to the Registrar of Companies along with Form 1.

(ii) Erstwhile Form Nos. 40 (Statement specifying certain particulars with reference to the Capital structure) & 41 (Copy of resolution assenting to registration with the limited liability under Section 565 (1)) as per the Companies (Central Government) General Rules and Forms Rules, 1956 are clubbed in Form 39 prescribed under the e-forms.

Documents/ Information required	**No. of Copies**
Form 1A – Application for availability of name	
• Full Name of the Applicant	---
• Full name of the father (in case of married woman's also this is compulsory)	---
• Date of Birth	---
• Place of Birth	---
• Full present residential address	---
• Full permanent residential address, if the present address is not permanent residential address	---
• Phone number available at both the address.	---
• Personal e mail id, if any	---
• Occupation	---
Names of promoters	
Proposed Name containing the name of the partnership firm proposed to be converted	---
Proposed Main Object clause – in consonance with the partnership firm to be converted	---
Proposed Authorised Share Capital	---
Details of the Directors and Subscribers to the memorandum of Association **DIN Form/ Form 32/ Form 1**	
• Full name of the person proposed to be appointed as **director and subscriber** to the Memorandum and Articles of Association	---
• Full name of the father. (in case of married woman's also this is compulsory)	---
• Date of Birth	---
• Place of Birth	---

• Full present residential address	---
• Full permanent residential address, if the present address is not permanent residential address	---
• Phone number available at both the address.	---
• Personal e mail id, if any	---
• Occupation	---
• Nationality	---
• Photo copy of proof of identity: i.e. 1. Passport 2. Election (voter identity) card 3. Driving license 4. Income-tax PAN card	3
• Photo copy of proof of residence: i.e. 1. Passport 2. Election (voter identity) card 3. Driving license 4. Ration Card 5. Electricity bill 6. Telephone bill 7. Bank account statement	3
• Latest passport size photograph.	3
• <u>Details with reference to following</u> ➢ Directorships in other companies – Names of such companies and their CIN Numbers and designation of a person ➢ Partnership in any firm – Name/ Address/ City / State and Country in which such partnership exists ➢ Owner of any Sole proprietary concern – Name of sole proprietary/ Address/ City/ State and Country where the said proprietary concern carries on its business	---
• Consent letter from the director to act as such director in the proposed company	---
<u>Form 18</u>	
• Full Address where the proposed Registered office of the company is proposed to be situated	---
• Full Address of the Police station within whose jurisdiction the registered office of the company is situated	---
<u>Form 37</u>	
• Date of execution of the latest Partnership Deed	---
• Copy of the Latest Partnership Deed	2
<u>Form 39</u>	
• Number of shares taken up as on the date of execution of Memorandum of Association	
• Amount paid on each Equity as well Preference Share	

• List of members as on the date of execution of the Memorandum of association along with the following details ➢ Full Name ➢ Address ➢ Occupation ➢ Number of shares or amount of Stock held ➢ Face Value of shares/ debentures ➢ Type of share – equity/ preference	2

Procedure for the conversion of a Partnership into a company under Part IX:

1. Prepare a **draft of Partnership deed** which shall contain following details along with the other necessary details to regard the Partnership firm as an existing Joint Stock Company as per the provisions of Section 566 of the Companies Act, 1956;

   a. Permanent paid up or nominal share capital

   i of fixed amount divided into shares of fixed amount or
   ii. held and transferable as stock or
   iii. divided and held partly in one way and partly in the other way

The Fixed Capital mentioned in the Partnership Deed shall be the initial paid up capital of the company in order to meet the criterion of Minimum Paid up Capital as applicable to the company

b. The clauses of Main Object, Objects ancillary to the attainment of Main Objects and Other Objects

c. The Deed shall be entered into in between the persons who will be the proposed members of the company.

In order to convert the partnership into a company as per Part IX there should be at least **7 members/ subscribers** to the Memorandum of Association of the proposed company.

2. File the Partnership Deed with the Registrar of Firms
3. Convene a Meeting of the Partnership Firm and pass the resolution for the conversion of the partnership into a company and for giving the authority to any two partners of the company to take the necessary steps for the proposed conversion.

4. Obtain DIN for the proposed directors
5. Obtain DSC for at - least two directors as Form 39 needs to be digitally signed by two directors

6. File Form No. 1A for the availability of Name with the concerned Registrar of Companies. The proposed name shall contain the name of the partnership firm, which is proposed to be converted into a Company under Part IX of the Companies Act. The Form shall be accompanied by the following documents;

a. Annexure containing the Main Object Clause
b. Certified copy of the resolution passed by the Partnership Firm along with the consent signed by all the partners to convert the said partnership into a Company (On the letterhead of the partnership firm)
c. Certified as true copy of the Minutes of the meeting held by the partnership firm for considering the proposal of conversion (On the letterhead of the firm) along with the names and signatures of the partners present at the meeting
d. Certified copy of Partnership Registration Certificate.
e. Certified copy of Income Tax Assessment Order. **OR**
   Certified copies of Income Tax Return Acknowledgement.
f. Certified copy of latest balance sheet of the Firm.
g. Certified copies of BST Registration certificate of the Firm.

7. After obtaining the Name Availability Letter, prepare **Memorandum & Articles of Association** and rest of the documents necessary for the purpose of proposed conversion

The Memorandum of Association shall contain

- the names of the subscribers/ members who shall execute the same as parties to the said document
- details of the existing activity carried on by the partnership firm
- details of all the partnership deeds entered into by the partners with effect from its formation along with the changes in the structure of the firm
- details of the resolution passed by the firm for converting the partnership into a limited company
- details of shares proposed to be acquired by the partners and their share in Profit/ Loss
- Name clause
- Domicile clause
- Main Objects, Ancillary Objects, Other Object clause (These clauses should be the same clauses which were mentioned in the Partnership Deed entered into between the partners for converting the firm into the existing joint stock company)
- Liability clause
- Capital clause

It is to be noted that the Memorandum of Association starts with the clause pertaining to the execution of the Memorandum of Association by the subscribers to it. While putting the date of such execution, following points should be considered;

a. The date should be any date **after the date of stamping**
b. The date should not be the date more than **Six Clear Days** before the date of registration as per Section 567 (a) of the Companies Act. Thus such date shall not be more than 6 clear days before the date of filing of all the documents with the concerned ROC.
c. The same date should be put **on the subscription pages** to the Memorandum and Articles of Association.

d. The same date shall be mentioned in Form 39
   - at item no. 3 (a) - date upto which the shares have been taken up by the members
   - at item no. 4 –date of List of members

6. Make Payment of stamp duty on the following documents and get all the documents signed from the authorized persons
   - Form 1
   - Form 37
   - Form 39
   - Memorandum and Articles of Association

7. Get form 18 and 32 duly certified by the Company Secretary/ Chartered Accountant/ Cost Accountant in whole time practice

8. Filing of documents

   Following documents should be submitted to the concerned ROC for the purpose of getting proposed conversion.

i. Two copies of Memorandum and Articles of Association duly signed and stamped.
ii. Form No. 1 on a stamp paper of Rs. 100/-
iii. Form No. 18
iv. Form No. 32. (in duplicate)
v. Letter of Authority on a stamp paper of Rs. 100/
vi. Original Name Approval Letter.
vii. Form No. 37 on a stamp paper of Rs. 100/- along with a list of annexure
viii. Certified as true copy of all the Partnership deeds entered into by the partners with effect from the formation of such partnership till the date of conversion.
ix. Form No. 39 on stamp paper of Rs. 100/- along with list of members as annexure
x. An Affidavit on a Stamp Paper of Rs. 100/- for giving declaration that there or no legal suits pending against the partnership OR alternatively the declaration giving the list of the suits pending against the Partnership firm. Any two directors of the company shall sign the declaration. The affidavit shall have to be **notarized** from the Notary Public before submitting to the concerned ROC.
xi. Document evidencing payment of necessary registration fees to the Registrar of Companies

Copies of duly stamped e-form 1, 37 and 39 are required to be submitted physically to the concerned Registrar of Companies

After getting a Certificate of Incorporation. Make necessary arrangements for obtaining the Common Seal, Share Certificates, Loose Leaf Binder, Statutory Register etc.

Sd/-
Shilpa Dixit
MRM Associates
Company Secretaries