# PROCEDURE
# TO
# CONVERT A PUBLIC COMPANY INTO PRIVATE COMPANY

The Companies Act, 2013 was expected to simplify the provisions but on the contrary it brought lot of restriction on doing business. However it is proposed by Ministry of Corporate Affairs to provide various Exemptions to Private Limited Companies. If it approve there will be lot of relaxation to private companies. To take that future advantage many public companies are converting themselves into Private Companies.

## REGULATORY REQUIREMENT

Section 13 and section 14 of the Companies Act. 2013 and Rule 33 of Companies (Incorporation) Rules 2014 contain provisions relating to conversion of public company into private Company.

As per section 13 and section 14 of the Companies Act 2013 read with Rule 33 of Companies (Incorporation) Rules 2014. A public company can be converted into private company only after obtaining its shareholder approval by way of passing of special resolution in general meeting .

Second proviso to sub section (1) of section 14 provides that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal.

MCA vide its circular No. 18 dated 11th June 2014 has clarified that as second proviso to sub section (1) of section 14 of the Companies Act 2013 has not yet notified therefore corresponding provisions of Companies Act 1956 i.e. "*Sub section (2A) of section 31*" shall remain in force. The Central government has delegated such power to Registrar of Companies vide notification No,. 1538(E) dated 10th July 2012 and this delegation power remains in force.

Therefore we just need to file following E-form with Registrar of Companies to convert public company into private company;

1. MGT-14 (For registering special resolution)
2. INC-27 (Application for Conversion of Public Company into Private Company)

## STEP INVOLVED IN CONVERTING PUBLIC COMPANY TO PRIVATE

| Sr. No. | Steps | Actions |
|---|---|---|
| 1 | **Board Meeting** | • To discuss and approve proposal of conversion of the Public company into a Private company.<br>• To grant authority to director to take necessary action.<br>• To decide place, venue, time of general Meeting & to approve notice calling General Meeting |
| 2 | **Notice of General meeting** | Give 21 days' clear notice for the General Meeting proposing the Special Resolutions with suitable Explanatory Statement. Section 101 & Section 102 of the Companies Act 2013 |
| 3 | **Filing of Special Resolution with ROC in E-form MGT-14** | File Form No. MGT-14 within 30 days of passing of the resolution<br>**Attachments**<br>• Notice calling General Meeting<br>• CTC of the Special resolution<br>• Altered AOA<br>• Altered MOA |
| 5 | **Filing of INC-27 with ROC** | File Form INC-27 with ROC after approval of MGT-14.<br>**Attachments**<br>• Minutes of the General Meeting:<br>• Notice calling General Meeting<br>• Altered AOA |

## Note:-

Some ROC require following further documents in INC-27

1. Affidavit from Director or MD or WTD stating following;
    a. that Company was never listed with any stock exchange, never it accepted any deposit,
    b. letters of no objection have been obtained from all creditors/Debenture holders
    c. no demand from Sales Tax or Income Tax or Excise is pending.

2. Copy of certificate of Commencement of Business
3. Certified list of creditors of the Company as on date of EGM
4. Certified list of members of the Company as on date of EGM
5. Proof of filing of statutory report with ROC
6. List of cases pending before any Court of Law where Company is a party,

*Thanks & Regards:*

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