

GOVERNMENT OF INDIA
Ministry of Corporate Affairs

**NOTICE INVITING COMMENTS ON THE DRAFT COMPANIES (Incorporation)
Second AMENDMENT RULES 2016**

Dated the 17th February, 2016

1. The draft Companies COMPANIES (Incorporation) Second AMENDMENT RULES 2016 i.e. **conversion of unlimited liability company into limited liability company** has been placed on the Ministry's website at www.mca.gov.in. It has been decided to invite suggestions/comments on the above draft.

2. Suggestions/comments on above mentioned draft along with justification in brief may be sent latest by 02.03.2016 through email at conv.ulc@mca.gov.in. It is requested that the name, Telephone number and address of the sender should be indicated clearly at the time of sending suggestions/comments.

Name, Address, Contact No. of Stake holder _____

SL.No	Rule No.or Form No.	Suggestion	Justification

To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

Government of India

Ministry of Corporate Affairs

NOTIFICATION

New Delhi, February, 2016

G.S.R. .—In exercise of the powers conferred by sub-sections (1), (2) and (3) of section 18 read with sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2016.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014,

(i) After existing Rule 36, the following Rules shall be inserted.-

37. Conversion of unlimited liability company into limited liability company:-

(1) For effecting the conversion of an unlimited liability company into limited liability company, the company shall pass a special resolution in a general meeting and thereafter, an application shall be filed in Form INC-27 in the manner hereinafter provided.

(2) The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice of such proposed conversion in newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into limited liability company, and seeking objections if any from the persons interested in its affairs, to such conversion and cause a copy of such notice to be dispatched to its creditors and debentures holders by registered post or electronic mode or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.

(3) The Company shall within sixty days of passing of the special resolution file an application as prescribed in sub rule (1) for its conversion into Limited Liability Company alongwith the fees as provided in the **Companies (Registration offices and Fees) Rules, 2014**, by attaching the following documents, namely:-

- a. Notice of the general meeting along with explanatory statement;
- b. Copy of the resolution passed in the general meeting;
- c. Copy of the newspaper publication;

- d. A copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the directors duly authorised in this behalf.

- e. Declaration from all the directors of the Company that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).
- f. A complete list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than thirty days, setting forth the following details, namely:-
 - (i) the names and address of every creditor and debenture holder of the Company;
 - (ii) the nature and respective amounts due to them in respect of debts, claims or liabilities;
 - (iii) declaration by a director of the company that notice as required in sub-rule (2) has been dispatched to all creditors and debenture holders with proof of dispatch.
- g. A declaration signed by not less than two directors of the company, one of whom shall be a managing director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have formed an opinion that the list

of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the Company to their knowledge.

- h. A declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director where there is one to the effect that the Board of Directors of the company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting.
 - i. The company should also obtain a certificate from the Statutory Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per (h) above.
 - j. NOC from sectoral regulator, where necessary.
 - k. NOCs from all secured creditors, if any.
- (4) Declaration from all the directors of the Company that no complaints are pending against the company from the members or investors.

(5) Where no objection has been received from any persons, who have been duly served with notice, the application shall be decided by the Registrar on merits. Where an objection has been received, the company shall either obtain the objector's consent to the conversion or his debt or claim has been discharged or determined or has been secured as the case may be, to the satisfaction of the Registrar.

(6) The certificate of incorporation consequent to conversion of unlimited liability company to the limited liability company in Form INC-11A shall be issued to the company upon grant of approval for conversion.

(7) Conditions to be complied with, subsequent to conversion:-

(i) Company shall not change its name for a period of one year from the date of such conversion.

(ii) The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.

(8) An Unlimited Liability Company shall not be eligible for conversion into Limited Liability Company in case :-

(a) Its networth is negative, or

(b) It has incurred losses continuously for the past three financial years, or

- (c) Scrutiny or inquiry or investigation is pending and where it is completed and prosecution is pending against the company or its directors under the provisions of the Companies Act, 1956/2013 as consequence thereof, or
- (d) An application is pending under the provisions of the Companies Act 1956/2013 for striking off its name, or
- (e) The company has defaulted in filing Annual Returns and or financial statements under the provisions of the Companies Act.

(ii) For the existing form INC-27 the following form INC-27 shall be substituted.

(iii) After the existing Form INC-11, the form no. INC-11A shall be inserted

Form No. INC-11A

Certificate of Incorporation pursuant to conversion of Unlimited Liability company into Limited Liability Company

[pursuant to section 18 of the Companies Act, 2013 read with Rule 37 of the Companies (Incorporation) Rules, 2014]

I hereby certify that.....(name of the company prior to conversion) having unlimited liability has been converted into.....(name of the company after conversion) company having limited liability with effect from the date of this certificate on the company is limited by shares/limited by guarantee.

The CIN of the company is.....

Given under my hand at..... this..... day of..... two thousand.....

SEAL:

.....

Registrar of Companies

.....

(State)

[F. No. 1/13/2013 CL-V]

AMARDEEP SINGH BHATIA, Jt. Secy.

Note: — The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i), *vide* number G.S.R. 250(E), dated the 31st March, 2014, amended *vide* number G.S.R 349(E) dated 1st May,

2015, amended *vide* G.S.R. 442 (E) dated 29.05.2015 and lastly vide number G.S.R. 99(E) dated 22.01.2016.

Form No. INC-11A

Certificate of Incorporation pursuant to conversion of Unlimited Liability company into Limited Liability Company

[pursuant to Rule 37 of the Companies (Incorporation) Rules, 2014]

I hereby certify that (name of the company) has been converted from..... to..... with effect from the date of this certificate on the company is limited by shares/limited by guarantee.

The CIN of the company is.....

Given under my hand at..... this..... day of..... two thousand.....

SEAL:

.....

Registrar of Companies

.....

(State)

FORM NO. INC-27

[Pursuant to sections 14 and 18 of the Companies Act, 2013 and Rule 33 and Rule 37 made there under of the Companies Rules, 2013]



Conversion of public company into private company or private company into public company and Conversion of Unlimited Liability Company into Limited Liability Company

Form language English Hindi

Refer the instruction kit for filing the form.

1. *Application for Conversion of private company into public company
 Conversion of public company into private company
 Conversion of Unlimited Liability Company into Limited Liability Company

Pre-fill

2. *(a) Corporate identity number(CIN) of company

(b) Global Location Number

3. (a) Name of the Company

(b) Address of registered office

(c) email Id of the company

4. *Reason(s) for conversion

5. *Particulars of filing Form No. MGT-14 with Registrar of Companies (RoC)

(a) SRN of Form No. MGT-14

(b) Date of passing the special resolution (DD/MM/YYYY)

(c) Date of filing Form No. MGT-14 (DD/MM/YYYY)

6. *Particulars of the order of Tribunal

(a) Date of passing the order

(b) Date of receiving the order

7. *Name of the company at the time of incorporation (to be displayed in the certificate)

8. (a) Details of members present at the meeting where the decision of conversion was taken and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(b) Details of the members who voted in favour of the proposal and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(c) Details of the members who voted against the proposal and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(d) Details of members who abstained from voting and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

Attachments

List of attachments

1. members' meeting;
2. * Copy of altered Memorandum Articles of Association;
3. Order for condonation of delay;
4. *Copy of special resolution;
5. *Copy of newspaper publication;
6. Order of competent authority;
7. *Declaration of all Directors as per Rule 37(3)(e);
8. *Declaration of Directors As per Rule 37(3)(g);
9. *Complete list of creditors and debentures holders;
10. *Declaration of Solvency;

Attach

Attach

Attach

Attach

Attach

Attach

Attach

Attach

Attach

Remove Attachment

11. *Declaration regarding no complaints Attach
As per Rule 37(4)
12. * A copy of Statutory Auditors Certificate Attach
13. Optional attachment(s) (if any)

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments are correct and complete. The company has obtained all the mandatory approvals from the concerned authorities, departments and substantial creditors. I have been authorized by the board of directors' resolution number * dated * (DD/MM/YYYY) to sign and submit this application.

To be digitally signed by

*Designation

DSC BOX

*Director identification number of the director; or
DIN or PAN of the manager or CEO or CFO; or
Membership number of Company secretary

Note: Attention is drawn to provisions of Section 448 and 449 of the Companies Act, 2013 which provide for punishment for false statement / certificate and punishment for false evidence respectively.

For office use only:

eForm Service request number (SRN)

eForm filing date (DD/MM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Date of signing

(DD/MM/YYYY)