

CONVERSION OF PRIVATE COMPANY INTO PUBLIC LIMITED COMPANY

EVALUATING THE REQUIREMENTS FOR CONVERSION OF AN
ENTITY FROM PRIVATE TO PUBLIC LIMITED COMPANY AS
PER THE COMPANY ACT OF NEPAL



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1. INTRODUCTION

- 1.1. This insight article examines the legal provisions and requirements for the conversion of a company established as a private limited company (the "**Company**") into a public limited company in Nepal.
- 1.2. The reason for conversion could be due to business needs or the operation of mandatory provision under **Section 12** of the **Company Act, 2063 (2006)** (the "**Company Act**") that prescribes specific conditions under which businesses like banking, insurance, mutual funds, and other notified activities are required to be incorporated as public limited companies.
- 1.3. Additionally, this section has been amended (through the first amendment to the Company Act) to include telecommunication service providers with paid-up capital exceeding **NPR 50 million** as subject to the same requirement.
- 1.4. This article will delve into the specific requirements and procedures for such conversion.

2. REQUIREMENTS FOR CONVERSION

- 2.1. **Paid-up Capital: Section 11** of the Company Act, and **Directives 13** and **14** of the **Company Directive 2072 (2015)** (the "**Company Directive**") outline the prerequisites for converting a private limited company into a public limited company. These prerequisites include:
 - 2.1.1. Minimum paid-up capital of **NPR 10 million**.
 - 2.1.2. The net assets of the company should not be less than the total of the paid-up capital and restricted reserve (non-distributable) fund of the company.
 - 2.1.3. A minimum of **7** shareholders.

3. PROCEDURE FOR PRIVATE LIMITED COMPANIES TO BE CONVERTED INTO PUBLIC LIMITED COMPANIES

- 3.1. **Conversion Decision: Section 13(a)** of the Company Act provides that a private company can be converted into a public company if the general meeting of the private company, by adopting a special resolution, decides to convert it.
- 3.2. **Special Resolution Requirement: Section 83(h)** of the Company Act mandates the requirement of a special resolution when converting a private company into a public

company or vice versa.

- 3.3. **Application to Office of the Company Registrar ("OCR"):** As per **Section 13(b)**, the private company to be converted into a public company must make an application, accompanied by a copy of the resolution and other required documents and fees, to the OCR within thirty days after passing the resolution.
- 3.4. **Conversion Time Frame:** The Act prescribes a time frame; if the private company fulfils the necessary requirements to operate as a public company, the OCR shall convert it within sixty days and issue the conversion certificates.

4. REQUIRED DOCUMENTS FOR CONVERSION

- 4.1. As per **Directive 14** of the Company Directive, the following are the required documents for the conversion process.
 - 4.1.1. Application requesting the conversion to OCR;
 - 4.1.2. Copy of special resolution authorising the conversion;
 - 4.1.3. Amended Articles of Association and Memorandum of Association - 2 Copies
 - 4.1.4. Copy of audited Financial Statements not older than 6 months from the date of application;

- 4.1.5. Declaration by the auditor that the net asset of the company is not less than the total of paid-up capital and restricted reserve (non-distributable) fund of the company;
- 4.1.6. Declaration by the directors of the company that the company is in compliance with all the required provisions and conditions of law to enable the conversion.

5. POST-CONVERSION REQUIREMENTS

- 5.1. **Section 13(8)** of the Company Act stipulates that all provisions applicable to a public limited company will apply to the converted entity as soon as it is converted.
- 5.2. This includes the requirement to obtain approval to commence business, which mandates that the Company must make an application to the relevant authorities, provide evidence of full payment of called and subscribed shares, and acquire the license to commence business within three months from the date of conversion.
- 5.3. Additionally, the memorandum of association and articles of association must be published within three months of obtaining the license.
- 5.4. It is crucial to comply with these post-conversion requirements to avoid penalties and complications.

KEY CONTACTS

If you have any questions or would like to know how this might affect your business, get in touch with these key contacts



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