



# FALQs

PART II OF A VI PART SERIES  
OF THE CORPORATE AND COMMERCIAL LAW  
FREQUENTLY ASKED LEGAL QUESTIONS.

## CHANGE OF COMPANY OFFICIALS AND CONVERSION PROCESS

### 1. What is the procedure for removing a director from office?

- Section 139 of the Companies Act No 17 of 2015 (“**the Act**”) provides for removal of directors from office as follows:
  - o A company may, by ordinary resolution at a meeting, remove a director before the end of the director’s period of office, despite anything to the contrary in any agreement between the company and the director.
  - o A special notice is required for a resolution to remove a director or to appoint a person to replace the director so removed at the meeting at which the director is removed.
  - o A person appointed to replace a director who is removed is taken to have become a director on the day on which the director in whose place the person is appointed was last appointed as a director – for the purposes of determining the time which the person is to retire from office.
  - o A vacancy created by the removal of a director, if not filled at the meeting at which the director is removed, can be filled as a casual vacancy.
  - o A person who ceases to be a director continues to be subject to the duty to avoid conflict of interest with regard to: the exploitation of any property, information or opportunity that the person became aware of while a director; and not to accept benefits from 3rd parties with regard to things done or omitted to be done by that person before ceasing to be a director.

## 2. What are the reasons for and ways of removal of a director from office?

- By voluntary resignation;
- By ordinary resolution of members;
- By an order of the court;
- If the director becomes of unsound mind;
- If the director is absent without permission for more than 6 months from meetings of directors held during that period;
- Upon death of the director;
- Upon retirement under articles of association; and
- Upon dissolution of a company.

## 3. What is the procedure for removal of a director from office?

- Fill Form – CR 9 to show the outgoing director (s);
- Fill the annual returns form (CR 29) to show that company returns have been made;
- During the Annual General Meeting, the minutes must be signed by the company chair-person and the company secretary. The minutes should show clearly that the directors agree to remove directors;
- Fill in Form CR19 on Notice of special/ordinary resolution which contains the resolution on removal of the Directors;
- In case a director is leaving the company, he/she should provide a resignation letter and an affidavit;
- Once all the relevant documents are filed at the Companies Registry, request for CR 12 (official list of directors and shareholders) to confirm the changes have been effected.

## 4. How can a director protest against his/her removal from office?

Section 141 of the Companies Act provides for a director's right to protest against removal as follows:

- On receipt of a notice of a motion for a resolution to remove a director, the company sends a copy of the notice to the director concerned.
- The director, whether or not a member of the company, may be heard on the discussion of the motion at the meeting.
- Within 27 days after the notice is given, the director may make with respect to the motion representations in writing to the company and request that the members of the company be notified of the director's representations.
- On receipt of any such request, the company, unless the representations are received by it too late for it to do so –
  - o In any notice of the resolution given to members of the company, states the fact of the representations having been made; and
  - o Sends a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company.
- If a copy of the representations is not sent as required, because they were received late or because of the company's default, the director may orally require the representations to be read out at the meeting.
- If the company or a person affected claims that the representations made by the director contain defamatory matters, the company or the person may apply to the court for an order.
- The director is entitled to be served with a copy of such an application and to be heard at the hearing of the application by the court.

- On the hearing of such an application, the court, if satisfied that the representations of the director contain defamatory matter, makes an order that they need not be sent out to the company's members and need not be read out at the meeting, but if not so satisfied, it dismisses the application.
- If the court has made an order to that respect, copies of the director's representations need not be sent out to the company's members, and those representations need not be read out at the meeting.

### 5. What is the procedure for transferring shares?

- According to Regulation 80 of the Companies (General) Regulations, 2015 ("the Regulations"), shares can be transferred from one person to another through a share transfer document duly executed by, or on behalf of the transferor and transferee. The transferor remains the holder of the shares concerned until the name of the transferee is entered in the Register as the shareholder.
- A fee may not be charged by the company for registering any document of transfer or other document relating to or affecting the title to any share. The company may retain any document of transfer that is registered.
- The member proposing to transfer any shares is required to give notice in writing to the Company that he desires to transfer the same. Such notice specifies the sum he or she gives as the fair value and constitutes the Company his or her agent for the sale to any member of the Company or person selected as aforesaid at the price so fixed or at the option of the purchaser, at the fair value to be fixed by the auditor.
- Every instrument of transfer is lodged at the Company for registration accompanied by the certificate relating to the shares to be transferred and such other evidence as the Directors may require in relation thereto.
- Regulation 81 of the Regulations provides that the Directors may decline to register any transfer unless:
  - o the share is fully paid;
  - o the document of transfer is lodged at the company's registered office or another place that the directors have appointed;
  - o the document of transfer is accompanied by the certificate for the share to which it relates, or other evidence the directors reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
  - o the transfer is in respect of one class of shares.
- In any case where the directors refuse to register a transfer, the transferor or transferee may request a statement of the reasons for the refusal; and the directors are required to return the document of transfer to the transferor or transferee who lodged it unless the directors suspect that the proposed transfer may be fraudulent.
- If the Directors refuse to register a transfer they shall, within two months after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice of the refusal.
- If a request for reasons for the refusal of registration of the transfer is made by a party, the directors are required to send the transferor or transferee who made the request a statement of the reasons for the refusal; or register the transfer within 28 days after receiving the request.
- A certificate duly executed in accordance with section 37 of the Act specifying any shares held by a member is, in the absence of proof to the contrary, evidence of the member's title to the shares as in section 495 of the Act.

- In practice, the Companies Registry requires that the Share Transfer Deed uploaded into the BRS portal be one that is franked by the Land's Registry. You will therefore need to present the signed Share Transfer Deed, Form D of the Stamp Duty Act and confirmation that the assessed Stamp Duty has been paid to the Land's Registry for franking prior to uploading of these documents to Companies Registry BRS Portal.

### 6. In what ways can a company convert itself?

A company can convert itself into any of the following ways:

- from being a private company to being a public company;
- from being a public company to being a private company;
- from being a private limited company to being an unlimited company;
- from being an unlimited private company to being a limited company; or
- from being a public company to being an unlimited private company.

### 7. What are the conditions a company should meet to qualify for conversion from a private to a public company?

- Under sections 70 -73 of the Act, 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 (See also the summary below in Practice Note – PN/05: Alteration of Status of Companies available on the Business Registration Service (BRS) website at: <https://brs.go.ke/assets/downloads/PN-05-Alteration-of-Status-of-Companies.pdf>):
  - o the shareholders of the company should have passed a special resolution approving the conversion of the company to a public company;



- o the company has a share capital;
- o the nominal value of the company's allotted share capital must not be less than the authorized minimum (currently the authorized minimum for public companies is KES. 6,750,000 as per section 518 of the Act);
- o 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);
- o 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;
- o 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
- o 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;
- o the company must have:
  - a. a recent balance sheet (not more than seven months before the date on which the application is lodged);
  - b. an unqualified report by the Company's auditor on the balance sheet; and
  - c. 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.
- o 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;
- o 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;

- o 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
- o 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.

### 8. How do I apply for the conversion from a private to a public 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 [www.https://brs.go.ke/assets/downloads/forms/CR17.docx](https://brs.go.ke/assets/downloads/forms/CR17.docx)
- According to PN/05: Alteration of Status of Companies, you must deliver the *Application for Registration of Conversion of Company’ Form CR 17* at the Companies Registry, accompanied by:
  - o a copy of the name reservation;
  - o a copy of the special resolution approving the conversion of the company to a public company;
  - o a copy of the amended articles of association;
  - o a copy of the relevant balance sheet;
  - o a copy of the auditor’s written statement;
  - o a copy of the auditor’s unqualified report; and
  - o a 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.

### 9. Is there a chance that the Registrar will refuse an application for conversion?

- Yes, the Registrar may refuse to register the conversion under certain circumstances. According to section 74 (1) of the Act, the Registrar will not register a conversion of a private company into a public company if the application does not comply with the requirements in section 74 (2) of the Act.
- As well summarised in Practice Note – PN/ 05 on Alteration of Status of Companies (and reproduced in verbatim below), the Registrar will not register conversion of a Private Company into a Public Company if:
  - o 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;
  - o 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;
  - o 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; and

- o the *Application for Registration of Conversion of Company* (Form CR 17) is not properly completed and/or the accompanying documents set out under paragraph 8 above have not been enclosed.
- A fee is payable at the Companies Registry 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.
- 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.

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

- Yes. Section 76 (3) of the Act provides that the Registrar shall issue to the company a certificate of incorporation stating the company's unique identifying number and that the company is a public company.
- Section 76 (2) of the Act states that 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.

**11. What are the circumstances under which a public company can be converted to a private company?**

- As per sections 77 – 81 of the Act, a public company can convert to a private company in the following ways:
  - o a special resolution to that effect has been passed by members;
  - o following a cancellation of shares the nominal value of the company's allotted share capital is brought below the authorized minimum as provided for under section 427(2)(b) of the Act.



## 12. What are the conditions to be met for conversion through passing of a special resolution?

- According to section 77 (2) of the Act, a 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:
  - o the shareholders of the company have passed a special resolution approving the conversion of the company to a private company;
  - o the conditions in section 77 (2) of the Act are satisfied, that is, there should be no application made to Court to cancel the resolution for conversion or if made, the Court has confirmed the resolution and a copy of that court order has been delivered to the registrar; and
  - o the company has made such 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.

## 13. How do I apply for the conversion from a public to a private company?

- According to PN/05 on Alteration of Status of Companies (Chapter 2, 1.1 (b), 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, accompanied by:
  - a. a copy of the special resolution converting the company into a private limited company;
  - b. a copy of the amended articles of association;
  - c. a copy of the name reservation; and
  - d. Duly filled and completed Form CR19.
- Section 80 of the Act provides that the Registrar may not register the conversion of a public company as a private limited company unless the conditions, as prescribed under section 80 of the Act are met. These include a requirement that the application:
  - o be accompanied by a statement as to the new name of the company on conversion;
  - o a copy of the resolution converting the company (unless one had been sent to the Registrar);
  - o a copy of the company's articles as proposed to be amended.
- Based on the provisions of section 77 of the Act, you should 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.
- The Registrar shall issue a certificate of incorporation stating the company's unique identifier number.

## 14. Can shareholders of the company object to the conversion?

- Yes. According to section 78 of the Act, a shareholder has a right to object to a conversion through an Application to the Court for cancellation of the resolution for conversion. The application to court may be made through an application by:
  - o the holders of not less in the aggregate than five per cent (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



- o if the company is not limited by shares, at least five per cent (5%) of its members; or
- o by not less than fifty (50) of the company's members;
  - the court will only hear such an application if it is made within twenty-eight days of the passing of the resolution. Also, the application cannot be made by a person who has consented to or voted in favour of the resolution.
- Upon hearing the application, the court shall make an order either cancelling or confirming the resolution;
- The applicants are required to immediately notify the registrar of the court application.
- PN/05: Alteration of Status of Companies instructs that:
  - o the company must deliver a copy of the Court's order to the Companies Registry within fourteen days of the order being made. Failure to deliver the court order to the registrar is an offence.
  - o A fee is payable at the Companies Registry at the time of presenting the Application for Registration of Conversion of a Company (Form CR 17). Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

### 15. What is the procedure for conversion of a public company to a private company following cancellation of shares?

PN/05 on Alteration of Status of Companies (Chapter 2, 1.2) provides details on how cancellation of shares can result to compulsory conversion of a public company to a private company, and also provides for the procedure of conversion as listed below:

- a. Where the cancellation of the shares results in the nominal value of its allotted share capital falling below the authorized minimum, the company must convert to a private company. The directors can pass a resolution to convert to a private company.
  - b. You must deliver the application to convert to a private company to the Companies Registry 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.
  - c. A fee is payable at the Companies Registry 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.
- 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.

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

- Yes. Section 76 (1) of the Act states that the Registrar shall register the conversion of a company into a public company if satisfied that an application for conversion complies with the requirements of the Act.
- The registrar shall issue a certificate of incorporation stating the company's unique identifying number and that the company is registered as a public company.

### 17. What is the process of converting a private limited company to an unlimited company?

- The conditions and process of converting a private limited company to an unlimited company is provided for in Division 4, sections 82 – 84 of the Act.
- Section 82 of the Act provides that 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; and
  - an application for registration of the conversion is lodged with the Registrar of Companies in accordance with section 83 of the Act.

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

- The practical process of applying for conversion of a Company to an unlimited company is explained in PN/05 on Alteration of Status of Companies (Chapter 3, question 3) as reproduced below:
- 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](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, 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.
- A fee is payable at the Companies Registry 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.
- Section 84 of the Act provides that the Registrar shall issue a certificate of incorporation to the company stating the company's unique identifying number and that the company is an unlimited company. Once the certificate of incorporation is issued:
  - the company becomes an unlimited company; and
  - the changes in the company's name and articles take effect.

### 19. What is the process of converting an unlimited company into a private limited company?

Division 5, sections 85 to 88 of the Companies Act provide for the requirements and process of conversion of an unlimited company to a private limited company.

For an unlimited company to be converted to a limited company, conditions as provided for in section 85 (2) of the Act must be met:

- a special resolution that the company should be converted to a limited company, provided that the resolution complies with the provisions of section 85 (3). This section provides that 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 in accordance with section 86 of the Act; and
- the company has made such changes to its articles as are necessary in connection with it becoming a private company limited by shares.

## 20. What is the practical process of conversion of an unlimited company to a private limited company?

The practical process of applying for conversion of an unlimited company to a private limited company is explained in PN/05 on Alteration of Status of Companies (Chapter 4, question 3) which is available on the BRS website, as reproduced below:

- 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, accompanied by:
  - o a copy of the special resolution converting the company into a private limited company;
  - o if the company is to be limited by guarantee, a statement of guarantee (set out in Form CR 17);
  - o duly filled and completed Form CR19 [Notice of special/ordinary resolution required by Companies Act to be lodged with the Registrar];
  - o a copy of the amended articles of association; and
  - o 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.
- A fee is payable at the Companies Registry 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.

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

- Section 87 (5) of the Companies Act provides that on the issue of a Certificate of Incorporation, the company becomes a limited company and the changes in the company's name and articles take effect;
- The certificate of incorporation is conclusive evidence that the requirements of the Act as to registration of the conversion have been complied with.

## 22. What are the requirements for conversion of a public company into an unlimited private company with share capital?

- The requirements for converting a public company into an unlimited private company are provided for in Division 6, section 89 to 91 of the Companies Act.
- A public company limited by shares may convert itself into an unlimited private company with a share capital if the following conditions are met:
  - o all the members of the company have assented to its conversion from a public company to an unlimited private company;
  - o the condition specified in section 89 (2) of the Act has been met. The said condition being that the company has not previously been registered as a limited company or an unlimited company; and
  - o an application for registration of the conversion is lodged with the Registrar of Companies in accordance with the provisions of section 90 of the Act.

### 23. What are the conditions for conversion from public limited company to unlimited company?

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

### 24. What is the process of converting a public company to an unlimited private company?

The practical process of applying for conversion of an unlimited company to a private limited company is explained in PN/05 on Alteration of Status of Companies (Chapter 5, question 4) which is available on the BRS website, as reproduced in the next three bullet points below:

- 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, accompanied by:
  - o the prescribed form of assent (set out in Form CR 17);
  - o duly filled and completed Form CR19;
  - o a copy of the amended articles of association; and
  - o a statement of the company's new name on conversion.
- A fee is payable at the Companies Registry 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.
- Section 90 (2) of the Act provides that the form of assent must be authenticated by or on behalf of all the members of the company. The form is an indication that all members have agreed to the conversion to an unlimited company.
- Section 91 (6) of the Companies Act provides that on the issue of a Certificate of Incorporation, the company becomes an unlimited private company and the changes in the company's name and articles take effect.
- The certificate of incorporation is conclusive evidence that the requirements of the Act as to registration of the conversion of the public company into an unlimited private company with share capital have been complied with.

Compiled by: George Karuthui Kamau, Susan Wairimu Munene, Sylvia Wambui Waiganjo; Francis Kabuchu and Doreen Khizi Kithinji.



Commissioners for Oaths & Notaries Public

GIGIRI • JKIA

#### GIGIRI OFFICE (Head Office):

House Number 161, Wispers Avenue,  
Off United Nations Avenue, Gigiri  
T: +254 700 139 999  
P. O. Box 64859 – 00620, Nairobi, Kenya  
E: [legal@gerivia.co.ke](mailto:legal@gerivia.co.ke)

#### JKIA OFFICE:

Office Suite B 1.1, 1st Floor, Fourth  
Season Centre, JKIA Cargo Centre  
T: +254 700 135 555  
P. O. Box 64859 – 00620, Nairobi, Kenya  
E: [legal@gerivia.co.ke](mailto:legal@gerivia.co.ke)

   @gerivialaw