



# MCA tweaks norms for conversion of public company into private company - RD given discretion to approve in cases of objections - No more deemed approval

INSIGHTS

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MCA has made certain amendments to the process of conversion of a public company into a private company. Section 14 of the Companies Act, 2013 provides that any alteration of articles of association having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in prescribed form and manner. Rule 41 of the Companies (Incorporation) Rules, 2014, provides the process for the same. Following amendments are carried out in the rules:

## ▪ Discretion to Regional Director (RD) to approve the application despite absence of consensus

Where an objection has been received or RD on examining the application has specific objection under the provisions of the Companies Act, 2013, the same is required to be recorded in writing. The RD shall hold a hearing within a period of 30 days and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the RD shall pass an order either approving or rejecting the application along with the reasons within 30 days from the date of hearing.

Earlier, where no consensus was received for conversion within 60 days of filing the application while hearing or otherwise, RD was required to reject the application. Now, even in case no consensus is received from the company at the hearing, RD may approve the conversion, if he is satisfied giving regard to all the circumstances of the case, that the conversion would not be against the interests of the company or is not being made with a view to contravene or to avoid complying with the provisions of the Companies Act, 2013, with reasons to be recorded in writing.

## ▪ No deemed approval where RD has not issued an order

- **Where there are objections:** Where an objection has been received or the RD on examining the application has specific objection under the provisions of the Companies Act, 2013, the RD is required to pass an order either approving or rejecting the application along with the reasons within 30 days from the date of hearing. A failure to this deemed that application has been approved and approval order shall be automatically issued to the applicant. The deeming approval has been omitted now.
- **Where there are no objections:** Earlier, in the event there were no objections and no order for approval or re-submission or rejection has been explicitly made by RD within the stipulated period of 30 days, then the application made for the conversion of the public company into a private company was deemed to have been approved and an approval order was automatically issued to the applicant. The deeming approval has been omitted now.

The aforesaid amendment has been made vide Companies (Incorporation) Amendment Rules, 2021 dated January 25, 2021 ([available here](#)).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com)

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