

# Conversion of Sole Proprietorship into a Private Limited Company

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## In brief

Usually entrepreneurs start their business ventures in the form of Sole Proprietorship, reason being it is the simplest form which has least maintenance cost. Alongside, the owner has the complete control of the business and the ownership remains in his hands.

However, when the stage comes to boost your business to all together new phase or introduce new finances through investors or enter into markets, need of registering as a Private Limited Company becomes vital for most of the sole proprietorship concerns.

## In detail

### Procedure for conversion of Sole Proprietorship into a Private Limited Company –

- **Step 1:** Incorporate a new Private Limited Company through regular procedure.

(Refer our detailed article – <http://lawgicalstartup.com/blog-Private-Limited-Company-incorporation-through-spice/>)

- **Step 2:** At the time of drafting of Memorandum of Association (MOA) of the new company, one of the objectives should be mentioned as – “The Private Limited Company is formed for takeover of sole proprietorship concern”.

- **Step 3:** After the incorporation of the Private Limited Company, an agreement needs to be executed between the Private Limited Company and the Proprietor for the takeover of all the assets and liabilities of the proprietorship firm by the Private Limited Company. The details of assets, liabilities and the consideration in exchange of such assets need to be specified in the agreement.

This agreement should be executed on a stamp paper

of requisite value (depending on the State in which registered office of company is located).

### Conditions for conversion

- All the existing assets and liabilities of the sole proprietorship concern relating to the business immediately before the succession become the assets and liabilities of the Private Limited Company;
- The shareholding of the sole proprietor in the Private Limited Company is not less than 50% of the total voting power in the Private Limited Company and his shareholding continues to so remain as such for a period of 5 years from the date of the succession; and
- The sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the Private Limited Company;

### Key Benefits

- **No Stamp Duty payable –** All movable and immovable properties of the sole

proprietorship firm will automatically vest in the Private Limited Company. No instrument of transfer is required to be executed.

- **No Capital Gain Tax –** No Capital Gains tax shall be charged on transfer of property from Proprietorship firm to Private Limited Company. Private Limited companies also enjoys income tax benefits and profits that the investors get are not taxed.
- **Continuation of Goodwill –** The Brand value of the proprietorship firm remains intact and continues to enjoy the previous victories with a better legal recognition.
- **Separate legal entity –** The Private Limited Company has its distinct identity other than its shareholders and directors. As registered Private Limited Company under the Companies Act 2013, a business has a different legal identity from the proprietor; the organisation members have restricted liability.
- **Liability –** The members of the company have no personal liability to the creditors of a company for

the company's debts beyond whatever is their holding in the company.

- **Perpetual succession –**

A Private Limited Company is a separate legal entity and has a perpetual succession which implies that It continues to be in existence irrespective of the changes in membership.

**Other Important points**

- Once a new Private Limited Company comes into existence, the sole proprietorship can be duly terminated.

- The bank accounts in the name of the proprietary firm need to be formally closed and a new corporate account is to be opened for the Private Limited Company.
- Any contracts / leases / agreements signed by the proprietor need to be re-signed under the name of the newly incorporated Private Limited Company.
- All tax and other registrations in the name of the Proprietorship need to be surrendered and new registrations should be obtained in the name of the Private Limited Company.

**Conclusion**

The conversion allows you to enjoy the double benefits of keeping your goodwill and brand value intact while enjoying a legal existence. A Private Limited Company offers significant advantages over the proprietorship form of business, including that of limited liability, ability to attract equity capital, continued existence and more. Such changes can help you to expand your business, have better access to various modes of finances, manage risk of your liabilities, enjoy corporate tax incentives, attract investors and recruit quality talent on board your team.



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