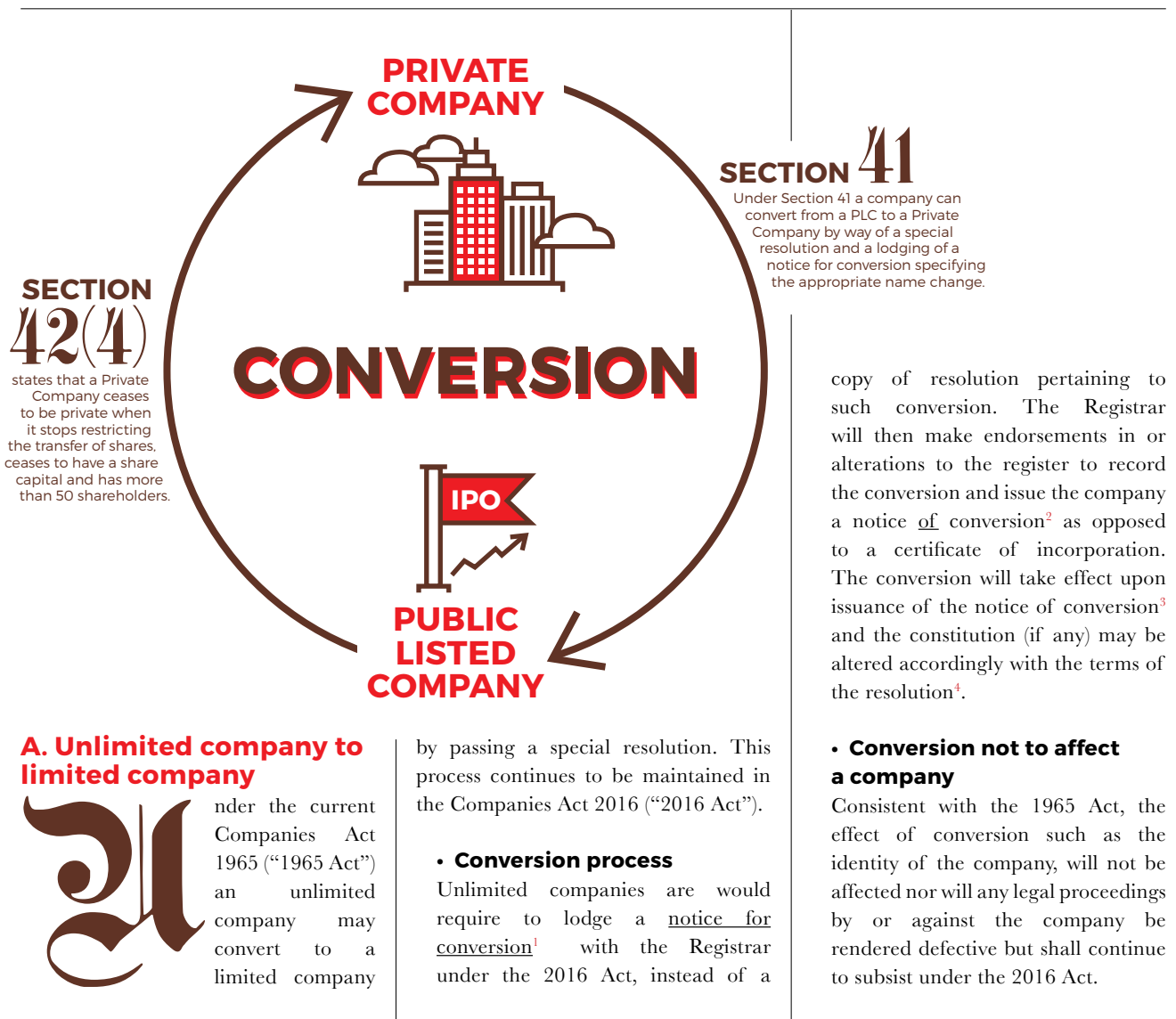


CONVERSION OF COMPANY STATUS



¹ Section 40(1) of the Companies Act 2016; ² Section 40(2) of the Companies Act 2016; ³ Section 40(4) of the Companies Act 2016; ⁴ Section 40(4) of the Companies Act 2016

“It is a positive and encouraging trend to confer such powers on the Registrar as it allows for an efficient and smooth transition from a private company to a public company.”

B. Private company to Public company by Registrar

The 2016 Act retains the requirement that private limited companies shall have no more than fifty shareholders⁵ and restricts the transfer of its shares . However, the prohibitions on the offering of shares or debentures to the public and invitation to the public to deposit money with the company has been fine-tuned⁷, in that it specifies what constitutes an ‘offer to the public’ or otherwise⁸.

The Registrar is conferred the power to convert a private company to a public company if it determines that a company has ceased to be a private company. A company ceases to be a private company vis-à-vis when a private company ceases to restrict the transfer of its shares or ceases to have a share capital or has more than fifty shareholders⁹. The company will then be converted into a public company¹⁰. The conversion takes effect upon issuance of a notice of conversion by the Registrar. Consequently, this now public company can only re-convert to a private company with leave of Court.

It is a positive and encouraging trend to confer such powers on the Registrar as it allows for an efficient and smooth transition from a private company to a public company; otherwise such a process can be lengthier as a private company is required to pass a special resolution to this effect.

C. Public company to Private company

The conversion from a public company to a private company or vice versa also requires the passing of a special resolution¹¹ and the lodgement of a notice for conversion¹² with the Registrar rather than a copy of the special resolution. The 2016 Act retains two other obligations - to lodge a statement in lieu of prospectus and to lodge a prescribed statutory declaration with the Registrar for the conversion of private company to a public company¹³. The conversion from public companies to private companies or vice versa, will take effect on the issuance of the notice of conversion.

⁵ Section 42(1) of the Companies Act 2016;
⁶ Section 42(2) of the Companies Act 2016;
⁷ Section 43 of the Companies Act 2016;
⁸ Section 44 of the Companies Act 2016;
⁹ Section 42(4) of the Companies Act 2016;
¹⁰ Section 42(5) of the Companies Act 2016;
¹¹ Section 41(1) and 41(2) of the Companies Act 2016; ¹² Section 41(1) and 41(2) of the Companies Act 2016; ¹³ Section 41(2) of the Companies Act 2016; ¹⁴ Section 41(4) of the Companies Act 2016