

Remember to issue shares when converting a CC to a private company

By [Raphael Chitambira](#)

6 May 2020

Since the passing of the Companies Act, 2008 (Companies Act) in May 2011 it is no longer possible to register a close corporation (CC). However, the Companies Act allows a CC that existed prior to 1 May 2011 to continue to exist or to convert to a private company.



© serezhnyy – [123RF.com](#)

Business owners often opt to convert their CCs to a private company because the accounting standards applied to the business may be similar to that applicable to a CC, depending on the size and nature of the business.

Every member of a CC is entitled to become a shareholder in the company upon conversion. But the member's shares in the company need not be in proportion to the member's interest in the CC. A different percentage shareholding can be agreed amongst the members. Upon conversion, the CC must file a notice of conversion in the prescribed manner and form (Form CoR18.1), a written statement of consent signed by members holding at least 75% of the members' interest in the CC approving the conversion, a memorandum of incorporation for the company, and payment of the prescribed filing fee.

Many people believe that on conversion of a CC, the members of the CC automatically become shareholders of the converted entity, which is not correct.

On conversion, the company must pass a board resolution in accordance with section 40(2) of the Companies Act to issue shares to the members who will become the new shareholders of the company in the agreed proportions.

A board that issues any shares, must determine the consideration for which, and the terms on which, those shares will be issued.

The board may decide that the loss of the erstwhile member's interest in the CC constitutes adequate consideration for the issue of the shares in the company because the members have swapped one asset for another in the same business. If the shareholding proportions are significantly different to the proportion of members' interests, the board may decide that consideration must be provided, but this is not essential.

ABOUT THE AUTHOR

Raphael Chitambira is an Associate Designate with Norton Rose Fulbright

For more, visit: <https://www.bizcommunity.com>