CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY

A private limited company, if it desires to convert itself into a public limited company, will have to follow the under-mentioned procedure:

(1) It should take the necessary decision in its board meeting and fix up the time, place and agenda for convening a general meeting to alter the articles of association and consequently the name by a *special resolution* as well as to alter by special resolution the "objects clause" of the memorandum subject to the confirmation of the Company Law Board under Section 17 and by ordinary resolution the share capital clause under Section 94 if the alteration of share capital is involved in the process.

(2) The company has to see that any change in the articles confirms to the provisions of the Companies Act [Section 31(1)]; also to see that such change does not increase the liability of any member who had become the member before the alteration.

(3) It must issue notices for the general meeting in order to pass there at the special resolutions together with the explanatory statements for the alteration of the articles and the memorandum.

(4) It will have to convene the general meeting in order to pass there at the special resolution (*i*) for the purpose of the alteration of the memorandum and article of association; and (*ii*) also for the purpose of deleting those articles which are required to be included in the articles of a private company only [Section 3(1)(*iii*)]. Such other articles which do not apply to a public company should be deleted and those which apply should be inserted. Consequent upon the above changes, it will have to delete the word "private" from its name [Section 21].

(5) It shall file either the prospectus in the Form prescribed under Schedule II or the statement in lieu of prospectus in the form

prescribed under Schedule IV within 30 days of the passing of the resolution mentioned in (4) above in the manner stated in Section 44.

The aforesaid prospectus or the statement in lieu of the prospectus must be in conformity with Parts I and II of Schedule II or with Parts I and II of Schedule IV respectively.

(6) In the matter of the prospectus or the statement in lieu of the prospectus the company has to adopt abundant caution against any untrue statement being included therein, because inclusion of untrue statement will attract penalty by virtue of Section 44(4). It may be noted that a statement included in a prospectus or statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included. Likewise, where the omission from prospectus or a statement in lieu of prospectus of any matter is calculated to mislead, it shall be deemed, in respect of such omission, to be a prospectus or a statement in lieu of prospectus in which an untrue statement is included.

(7) It shall file with the concerned stock exchange 6 copies of such amendments on both articles and memorandum, one of which must be a certified copy.

(8) It shall file with the Registrar the said special resolution together with the explanatory statement within 30 days of their passing [Section 192].

(9) It must take some of the steps regarding further issue of capital under Section 81 which are not in common with the steps discussed in relation to further issue of shares.

(10) The company has to apply to the Registrar for the issue of a fresh certificate of incorporation for the changed name, namely, the existing name with the word “private” deleted. On issue of such certificate shall the name of the converted company be final and complete [Section 23].

Source: ICAI’s Study Material for PCC

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