CONVERSION OF PUBLIC COMPANY INTO A PRIVATE COMPANY

A public company can be converted into a private company by passing a special resolution altering its articles so as to include therein the restrictions contained in Section 3(1)(*iii*) of the Act. A special resolution passed to convert a public company into a private company is binding on dissenting shareholders provided it is *bona fide*, is in the interest of the company as a whole, and is consistent with the objects in the memorandum of association [*Bal Ramba vs. Master Silk Mills AIR* 1955 *N.U.R. Saurashtra* 927]. Under Section 31(1), any alteration made in the articles to convert a public company into a private company shall not have effect unless such an alteration has been approved by the Registrar of Companies.

Rule 4B of the Companies (Central Government's) General Rules and Forms, 1956 lays down that where the alteration of articles of association of any company has the effect of converting a public company into a private company, the company must have the approval of the Central Government. This approval must be had through an application, within three months from the date when the special resolution for the alteration of the articles of the company was passed. The application must be in writing and in Form No. 1A or in a form as near thereto as the circumstances of the case admit.

(Further, under Section 192, a copy of the special resolution together with a copy of the statement of material facts annexed under Section 173 to the notice of the meeting at which such a resolution has been passed must be filed with the Registrar of Companies within 30 days from the date it was passed by the company. The copies of the above-mentioned documents must be either printed or type written and duly certified under the signature of an officer of the company).

After obtaining the approval of the Central Government in the manner just discussed, it must file with the Registrar a printed copy of the articles as altered within one month of the date of receipt of the order of approval [Section 31(2A)].

When altering the articles for the aforesaid purposes, the company should take care to see that the articles as a whole confirm to the requirements of the Act regarding private companies, *e.g.*, if the articles provide for power to issue share warrants to bearer, the same must be deleted, for a private company cannot issue the same.

Source: ICAI's Study Material for PCC