PROCEDURE FOR CHANGE OF NAME (STATUS) BY CONVERSION OF PRIVATE LIMITED COMPANY INTO PUBLIC LIMITED COMPANY ………

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INTRODUCTION

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the Memorandum of Association of the company states the name by which a company is known. The company may adopt any suitable name provided it is not undesirable.

Section 20 of the Companies Act, 1956 provides that no company shall be registered by name which, in the opinion of the Central Government, is undesirable. A name which is identical with or too nearly resembles the name by which a company is in existence has been previously registered, will be deemed to be undesirable. The object is to prevent the use of name likely to mislead the public.

The company after incorporation can change their name by following way:

(a) Conversion of name from private to public, or
(b) Conversion of name from public to private, or
(c) Change of name from ABC limited to XYZ limited

Section 21 of the Companies Act, 1956 deal with change of name which says that the name of the company can be changed by a special resolution and with the approval of the Central Government. Approval of Central Government is not required if the change relates to the addition/deletion of the words "private" to the name.

PROCEDURE FOR CONVERSION OF NAME FROM PRIVATE TO PUBLIC

The procedure for altering name clause of Memorandum or Articles of Association of the company is being given herein under:

1. Management decision to change the name

The Board of Directors of the company should first consider the need and reason for changing the status by conversion of name from private to public of the company.

2. Appointment of New Directors and Allotment of Shares

If the company is going to conversion from private limited to public limited and must comply the provisions of section 12 and section 252 of the Companies Act, 1956 dealing with minimum requirement of public limited company. In this regard a meeting of Board of Director will be hold for passing of resolution for:

(a) Appointment of new director to comply the minimum number of directors of section 252 of the Companies Act, 1956.

(b) If the Authorised Capital is 5lakh or more then there is no need to increase authorised share capital of the company, otherwise firstly increase authorised capital.

(c) Allotment of further shares to new shareholders to comply the provision of section 12 (1) of the Companies Act, 1956 i.e. increase the number of members up to seven or more, for increasing paid up share capital up to five lakh or more.

3. Filing of Forms with ROC

After appointment of new director for said conversion, company is required to file Form-32 with ROC, within 30 days from the date of appointment of director with a prescribed fee. In addition to filing of Form-32, the company is also required to file Form-2 with ROC for increased paid up capital within 30 days from the date of allotment of shares.

4. Calling of Board Meeting for Change of Name

Again, the Board of Director will hold a meeting to discuss the matter regarding change of name and calling of general meeting.(Annexure-I)

5. Calling of General Meeting

At the general meeting pass the following resolution:

(i) Passing of resolution for alteration of name clause of Memorandum of Association (Annexure-II)
(ii) Passing of resolution for alteration of name clause of Articles of Association (Annexure-III)

6. The Company will file Form-23 with the concerned ROC along with special resolution with explanatory statement , certified copy of altered MOA and AOA within 30 days from passing of such resolution.

7. File with concerned ROC the Statement in Lieu of Prospectus in the Form as prescribed under Schedule IV in Form-62 within 30 dyas from the date of passing of special resolution with the requisite fee prescribed under Schedule X of the Companies Act, 1956. {Section 44(2) (b)}

8. It should be noted that although the company becomes a public company as soon as the special resolution to change the MOA or AOA to make it public company is passed, the change in its name becomes complete and effective only on the issue of the fresh Certificate of Incorporation by the concerned ROC in the change name.

9. The concerned ROC will issue new Certificate of Incorporation with new CIN of your company. The new CIN of the company will also change with the change of status of your company.

10. Keep in mind that necessary alteration in MOA of the company will also be made by the concerned ROC on its own immediately after issue of fresh Certificate of Incorporation in the change name effected by the conversion of the company from private to public.

11. After getting the new Certificate of Incorporation with new CIN, the company will adopt the same in next Board Meeting.

The company will change the Memorandum of Association, Articles of Associations, name plates, letter head, stamp, common seal and other official publications of the company after getting new Certificate of Incorporation. The company also must comply the provision of section 147 of the Companies Act, 1956 accordingly.

The change of name shall not affect any rights or obligations of the company, or render defective any legal proceeding by or against it, and any legal proceeding which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

It should be noted that when a private company is converted into public company, is not required to obtain Certificate of Commencement of Business (COB) from ROC.

ANNEXURE-I

SPECIMEN BOARD RESOLUTION FOR CHANGE OF NAME

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF THE COMPANY HELD ON FRIDAY, …… NOVEMBER, 20….. AT………………. AT 10.30 A.M.

CHANGE OF STATUS OF THE COMPANY FROM PRIVATE TO PUBLIC

"**RESOLVED THAT** pursuant to the provisions of Section 21, 31, 44 and other applicable provisions of the Companies Act, 1956 if any, the consent of the Board be and is hereby accorded subject to the approval of members to the conversion of this Company into a public limited company and consequently the name of the Company be and is hereby changed from **"ABC Private Limited"** to **"ABC Limited"** by deletion of the word "Private" from the name of the Company.

RESOLVED FURTHER THAT the word "Private" wherever appearing in the Memorandum and Articles of Association of the Company in the name of the Company be and is hereby deleted.

RESOLVED FURTHER THAT the Company Secretary or any Director of the Company be and is hereby authorised to make application, file forms, etc. for change of status of the Company and consequently its name with the Registrar of Companies office and are hereby further authorised to do all such acts, deeds and things as may be required or deemed expedient to implement this resolution."

ANNEXURE-II

SPECIMENT GENERAL MEETING RESOLUTIONS

I. CHANGE OF STATUS OF THE COMPANY FROM PRIVATE TO PUBLIC

To consider and if thought fit, to pass with or without modification(s) the following resolution as a Special resolution:

"**RESOLVED THAT** pursuant to the provisions of Section 21, 31, 44 and other applicable provisions of the Companies Act, 1956 if any, the consent of the members be and is hereby accorded to the conversion of this Company into a public limited company and consequently the name of the Company be and is hereby changed from **"ABC Private Limited"** to **"ABC Limited"** by deletion of the word "Private" from the name of the Company.

RESOLVED FURTHER THAT the word "Private" wherever appearing in the Memorandum and Articles of Association of the Company in the name of the Company be and is hereby deleted.

RESOLVED FURTHER THAT the Company Secretary or any Director of the Company be and is hereby authorised to make application, file forms, etc., for change of status of the Company and consequently its name with the office of Registrar of Companies and are hereby further authorised to do all such acts, deeds and things as may be required or deemed expedient to implement this resolution."

ANNEXURE-III

II. ALTERATION OF ARTICLES OF ASSOCIATION OF THE COMPANY

To consider and if thought fit, to pass with or without modification(s) the following resolution as a Special resolution:

"**RESOLVED THAT** pursuant to Section 31 and other applicable provisions of the Companies, 1956 existing Articles 1 to 46 of the Articles of Association of the Company be and is hereby deleted and substituted by new set of Articles 1 to 137, initialed the Chairperson of the meeting for the purpose of identification, as per enclosed Annexure 'A'.

RESOLVED FURTHER THAT the Company Secretary or any director of the Company be and is hereby authorised to do all such acts, deeds and things as may be required or deemed expedient to implement this resolution."

ANNEXURE –IV

EXPLANATORY STATEMENT

[Pursuant to Section 173(2) of the Companies Act, 1956]

Item No. 1 & 2

This Company was a Private Limited Company within the meaning of the Companies Act, 1956.The Board in its meeting held on ....15, 20.... resolved to change the status of the Company from 'Private Limited' Company to a 'Public Limited' Company, subject to the approval of the members of the Company in the General Meeting. Board of Directors of the Company considered that looking into the expanded business activities of the company and its future expansion plans, it is deemed fit to get it converted into Public Limited Company. It is proposed to delete the word 'Private' wherever appearing from the name of the Company by alteration of its Memorandum & Articles of Association. Further to meet the statutory requirements of a Public Company, the present Articles of Association of the Company are proposed to be altered in the manner as set out in the above resolution so as to suit the requirements of Public Limited Company. The Board recommends the passing of the resolution at Item No. 1 & 2 of this notice as special resolution.

None of the Directors is concerned or interested in the proposed resolutions except to the extent of their shareholding in the Company.

THANK YOU