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## Procedure for Conversion of Public Company into Private Company under CA 2013

Dear Professional Colleagues,

Keeping in view the relaxations provided to a Private Company, many public companies have converted into Private Companies or in the process of such conversion. Through this brief write up an attempt has been made to unlock the technicalities related to Conversion of Public Company into Private Company prescribed under Companies Act, 2013. I believe that the procedure for Conversion of Public Company into Private Company along with sample resolutions discussed through this article would be of some help for you all.

### **Legal Provisions related to Conversion of Public Company into Private Company**

Legal Provisions related to Conversion of Public Company into Private Company are given in Section 18 and 14 of the Companies Act, 2013 read with Rule Section and Rule 33 of Companies (Incorporation) Rules, 2014. E-Form **INC-27** is required to be filed for this conversion pursuant to section 14 and rule 33.

Section 14 of the Companies Act, 2013 and Rule 33 of Companies (Incorporation) Rules, 2014, are reproduced for your quick reference:

#### **Section 14: Alteration of Articles**

*(1) Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of—*

- (a) A private company into a public company; or*
- (b) A public company into a private company:*

*Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company:*

*Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.*

*(2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together*

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*with printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.*

*(3) Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.*

### **Rule 33: Alteration of Articles**

*(1) For **effecting the** conversion of a private company into a public company or vice versa, the application shall be filed in **Form No. INC-27** with fee.*

*(2) A copy of order of the competent authority approving the alteration, shall be filed with the Registrar in **Form No. INC-27** with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Central Government.*

*Explanation - For the purposes of this sub-rule, the term “competent authority” means, the Central Government.*

### **Conversion of Companies already registered [Section-18]**

Section 18 of the Companies Act, 2013 allows an existing Company to convert itself as a Company of other class by altering its memorandum and articles of association in the manner prescribed in Chapter II of the Companies Act 2013. Section 13 provides for alteration of Memorandum of Association whereas Section 14 provides for alteration of Articles of Association.

### **PROCEDURE FOR CONVERSION OF A PUBLIC LIMITED COMPANY INTO A PRIVATE LIMITED**

Section 14 of Companies Act, 2013 (Section 31 of Erstwhile Companies Act 1956) plays an important role during conversion of a public company into a private company. As conversion of a public company into a private company involves alteration of article of association of public company which cannot be done without previous approval of Tribunal (powers delegated to the ROC by Central Government vide General Circular No. 18/2014 dated June 11, 2014).

**Find below detailed Secretarial procedure for Conversion of a Public Limited Company into a Private Limited**

1. **Calling of Board Meeting:** Issue notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors. Main agenda for this Board meeting would be:
  - a. Pass a board resolution to get in-principal approval of Directors for conversion of a public company into a private company by altering the AOA subject to the approval of Central Government;

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- b. Fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for conversion of a public company into a private company.
  - c. To approve notice of EGM along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;
  - d. To authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board under clause 1(c) mentioned above.
2. **Issue of EGM Notice:** Issue Notice of the Extra-ordinary General meeting (EGM) to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;
  3. **Holding of Extra Ordinary General Meeting:** Hold the Extra-ordinary General meeting (EGM) on due date and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Public Limited Company into Private Limited Company along with alteration in articles of association under section 14 for such conversion.
  4. **ROC Form filing:** For alteration in Article of Association for conversion of public company in Private Company under section 14, few E-forms will be filed with concerned Registrar of Companies at different stages as per the details given below:

**A. E-form MGT.14 – For filing special resolution with ROC, passed for change in registered office address**

In case of alteration in Article of Association for conversion of public company in Private Company Special resolution is required to be passed under section 14. Accordingly as desired by section 117(3)(a), copy of this special resolution is required to be filed with concerned ROC through filing of form **MGT.14** within 30 days of passing special resolution in the EGM. It is relevant to note that First you have to file form MGT.14 as SRN No. of form MGT.14 will be used in form INC.27.

**Attachments of E-form MGT.14:**

- i. Notice of EGM along with copy of explanatory statement under section 102;
- ii. Certified True copy of Special Resolution;
- III. Altered memorandum of association;
- iv. Altered Articles of association
- v. Certified True copy of Board Resolution may be attached as an optional attachment.

**B. E-form INC.27 – Application for conversion of a public company into a private company**

As per section 14 of the Companies Act 2013, any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal (Powers delegated to the ROC by Central Government vide General Circular No. 18/2014 dated June 11, 2014) which shall make such order as it may deem fit. Accordingly

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an Application for conversion of a public company into a private company is required to be filed in e-Form **INC.27** to the ROC concerned, with all the necessary annexures and with prescribed fee.

**Attachments of E-form INC.27:**

- i. It is mandatory to attach Minutes of the member's meeting where approval was given for conversion and altered articles of association.
- ii. It is mandatory to attach order of competent authority in case of conversion from public company to private company. (Here you can simply attach a note containing the fact that Tribunal has not yet been constituted under the provisions of erstwhile Companies Act, 1956 or Companies Act, 2013. So it would not be possible to obtain approval of Tribunal. Also state that powers given to Tribunal by section has been further delegated to the ROC by Central Government vide General Circular No. 18/2014 dated June 11, 2014. Please get this type of note signed by a Director and attach.)
- iii. Altered Articles of Association;
- iv. Other information if any can be provided as an optional attachment(s)

**SCRUTINY OF DOCUMENTS BY ROC**

As per Section 18, after receiving the documents for conversion of a Private Company into a Public Company, ROC shall satisfy itself that the Company has complied with the requisite provisions for registration of company. If so satisfied, ROC shall close the former registration and issue fresh certificate of incorporation, after registering the documents submitted for change in class of company.

It is further clarified in section 18(3) that conversion of company does not affect any debts, liability, obligations or contracts incurred or entered into, by the company or on behalf of the company before conversion. Such debts, liability, obligations or contracts shall be enforceable in the same manner as if such conversion has not been done.

**Post conversion formalities**

After conversion of public company into a private company kindly check the following points:

1. Intimate all the concerned authorities like Excise and sales tax etc about the status change.
2. Arrange new PAN No. of the company. Update company bank account details.
3. Arrange new stationery with new name of the Company.
4. You have to be fully compliant of the conditions given under section 2(68) regarding definition of a private Company.
5. Analyse your newly adopted AOA and MOA and remove all things which are in contradiction with the conditions of AOA.

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## **SECRETARIAL PRACTICE / DRAFTING**

### **Sample Special Resolution for conversion of a Public Company into a Private Company**

**“RESOLVED THAT** pursuant to the provisions of section 14 of the Companies Act, 2013 and other applicable provisions, if any and subject to the approval of the Tribunal, (powers delegated to the ROC by Central Government vide General Circular No. 18/2014 dated June 11, 2014) the consent of the shareholders of the Company be and is hereby given to convert the Company from 'Public Limited' to 'Private Limited' and consequently the name of the company be changed from **CAC Tyres Limited** to **CAC Tyres Private Limited** by inserting the word 'PRIVATE' before the word 'LIMITED', whereas appears in the Articles of Association of the Company.

### **EXPLANATORY STATEMENT (Most Important part of this Article)**

As the members are aware that the Company was originally incorporated on \_\_\_\_\_ as a public limited company. Your Board of directors considered that since there is no involvement of public in the shareholding or management of the Company, it would be appropriate to convert the Company into the Private Limited Company to avoid unnecessary formalities and to obtain privileges which are available to the Private Limited Companies which would help the management to carry out its affairs efficiently.

The Directors of your company recommend the adoption of the said Special Resolution as set out in Item No. \_\_\_\_\_ of the notice in the best interest of the Company. All the material documents and corrected copies of the Memorandum & Articles of Association of the Company are available for inspection during the business hours till the date of the Meeting.

None of the Directors of your Company are concerned or interested in the proposed resolution except as a Shareholder of the Company.

### **Disclaimer:**

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks

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