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

Dear Professional Colleagues,

In my previous article I have shared the procedure for Conversion of Public Company into Private Company under Companies Act, 2013. Through this write up an attempt has been made to share the basic procedure for conversion of Private Company into Public Company under Companies Act, 2013. Through this write up we'll also discuss the relevant provisions for this conversion under Companies Act, 1956 so that we can figure out the difference between new act and old act. Please find below the link to check the procedure for Conversion of Public Company into Private Company under Companies Act, 2013:

[Procedure for Conversion of Public Company into Private Company under CA 2013](#)

I believe that the procedure for Conversion of Private Company into Public Company along with sample resolutions discussed through this article would be of some help for you all.

### **Position under Erstwhile Companies Act, 1956**

Under Erstwhile Companies Act, 1956, there were 2 methods for Conversion of Private Company into Public Company which are as follows:

1. **Conversion by Default** under Section 43 of CA 1956 where if a Private Company made a default in complying with basic conditions prescribed in section 3(1)(iii) related to definition of a Private Company, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under CA 1956, and the Act shall apply to the company as if it were not a private company.
2. **Conversion by Act of volition** under Section 44 of CA 1956, where a private company voluntarily converts itself into a Public company.

### **Position under Companies Act, 2013**

Legal Provisions related to Conversion of Private Company into Public Company are given in Section 14 read with section 18 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. Rule 33 of Companies (Incorporation) Rules, 2014, are reproduced for your quick reference:

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### **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.

### **Adoption of New Set of Articles for Public Company**

Articles of a Private Company usually contains certain restrictions so during conversion process it is advisable to adopt a new set of articles for resulting public company in order to avoid any future administrative inconvenience. You may find various clauses like quorum for General Meeting, Number of Directors etc which needs to be redrafted again as per Public company. So, It is, advisable to adopt a new set of Articles applicable to a public company.

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

Section 14 of Companies Act, 2013 (Section 31 of Erstwhile Companies Act 1956) plays an important role during conversion of a Private company into a Public company. Conversion of a Private company into a Public company involves alteration of article of association of Private Company u/s 14 which cannot be done without passing special resolution of Shareholders in the General Meeting.

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

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- a. Pass a board resolution to get in-principal approval of Directors for conversion of a Private company into a public company by altering the AOA.
  - 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 Private company into a Public 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 Private company into a Public 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 Private company into a Public 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 conversion of Private company into a Public company**

In case of alteration in Article of Association for conversion of Private Company into a Public 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.

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

As per Rule 33 of Companies (Incorporation) Rules, 2014, 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. Accordingly an Application for conversion of a Private company into a Public 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. Altered Articles of Association;
- iii. Certified True copy of Board Resolution may be attached as an optional attachment.
- 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 Private Company into a Public Company kindly take care of 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 stationary with new name of the Company.
4. Analyse your newly adopted AOA and MOA and remove all things which are in contradiction with the conditions of AOA.
5. Raise the paid-up capital to minimum Rs. 5 lakhs, if the same is less than Rs. 5 lakhs.
6. Increase Number of Director to minimum 3 Directors.

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## **SECRETARIAL PRACTICE / DRAFTING**

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

**“RESOLVED THAT** pursuant to the provisions of Section 14 and other applicable provisions of the Companies Act, 2013 if any, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approval of the Members of the Company at the General Meeting, to the conversion of this Company into a Public Limited Company and consequently the name of the Company be and is hereby changed from **“XYZ Private Limited”** to **“XYZ 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.”

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

**“RESOLVED THAT** pursuant to the provisions of section 14 of the Companies Act, 2013 and other applicable provisions, if any, of the Companies Act 2013, the consent of the shareholders of the Company be and is hereby given to convert the Company from Private Limited' to 'Public Limited' and consequently the name of the company be changed from **CAC Tyres Private Limited** to **CAC Tyres Limited** by deleting the word 'PRIVATE' before the word 'LIMITED', whereas appears in the Articles of Association 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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