CONVERSION OF PUBLIC LIMITED COMPANY INTO PRIVATE LIMITED

PREFACE

Promoters always have some intention while registering its business either as Public Limited Company or Private Limited.

There are various reasons for registering a Company as Public Limited:

- Led by Board of Directors
- Limited Liability
- Transferable shares
- Large Capital

Since Public money involves, the level of accountability, disclosure obligations and transparency becomes essentials for this to maintain as the regulator also keep keen surveillance over these companies in stringent manner to protect the interest of investors.

Hence, it is always advisable and advantageous to carry on the operations as Private Limited Company especially when the company is actually a closely held and not carrying on its business with public funding as it is found that the Government is flexible and generous towards carrying on the business as Limited Liability Partnership or Private Limited Companies by bringing so many flexibilities and exemptions in terms of compliances from the provisions of the Act. Under its MAKE IN INDIA project, Government has launched various schemes for small business.

PRIVILEGES ENJOYED BY PRIVATE LIMITED COMPANIES

i. No prior approval of Shareholders are required in case if Private Limited Company intends to sell, lease, or otherwise dispose of the whole or substantially the whole of the undertaking of the Company. [Sec. 180(1)(a)]
ii. No limits with regards to borrowing, unlike Public Company where the Board of Directors are not allowed to borrow money in excess of paid-up share capital, free reserve, and premium without the prior approval of the Company's Shareholders. [Sec. 180(1)(c)]
iii. The Private Limited Company may by its Article provides for additional grounds of disqualifications i.e. in addition to those specified in sub-section (1) of (2) of Sec. 164 of the Companies Act, 2013.
iv. Interested Director may participate in such an agenda of the Board Meeting in which he/she is interested after Disclosure of his interest.
v. The Private Limited Companies are totally exempt from the requirements of Sec. 185 and are allowed to grant Loan, provide guarantee and create security to/ on behalf of its Directors & their relatives and partners, subject to the fulfillment of certain conditions.
vi. In the case of Private Limited Companies, the related party to any contract or any the arrangement can also vote on such resolution as a Member of the Company, which in case of Public Company, he/she is not allowed to do so.
vii. Non-applicability with regards to the mandatory appointment of Key Managerial Personnel. [Sec. 203(1)].
viii. The limits with regards to Managerial Remuneration and prior approval of the Ministry of Corporate Affairs if the terms of appointment of managerial personnel are in variation from schedule V of the Companies Act, 2013. [Sec. 197(1) & (3)].
ix. In the case of Financial Statement with respect to the small company and private company in case of a start-up, it may not include Cash Flow Statement. [Sec. 2(40)].

The Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 mandates every unlisted public company to issue the securities only in dematerialized form and facilitate the dematerialization of all its existing securities in accordance with provisions of the Depositories Act, 1996. This is now considered to be the fixed cost on such Public companies especially those which have minimum shareholders.

Hence, considering the various aspects of cost and lesser compliance burden, many promoters opt to convert status of Public Limited Company into Private Limited.

PROVISIONS OF CONVERSIONS

The legal provisions related to conversion are given in section 14 of the Companies Act, 2013 read with rule 41 of Companies (Incorporation) Rules, 2014, as amended.

Section 13: Alteration of Memorandum of Association

Section 14: Alteration of Articles of Association

Rule 41: Application under section 14 for the conversion of a public company into a private company.

PROCEDURE

1. Convene a Board Meeting and pass Board Resolution for:

   i. approving conversion of status of Company from Public Limited to Private Limited
   ii. Change in Articles of Company for inclusion of restrictions and limitations which are required to be included in the articles of a private company;
   iii. To call an Extraordinary General Meeting and approve Notice and Explanatory Statement;
   iv. Authorize any of the Directors of the Company or to other officials to make application to Regional Director for seeking approval for aforesaid conversion

2. Dispatch the Notice of EGM to all Shareholders of the Company in accordance with the provisions of Section 101 of the Act read with Secretarial Standard – 2 by giving 21 clear days notice or by shorter notice as the case may be.

3. Convene an EGM and pass all resolutions

4. File an E-Form MGT-14 within thirty days of passing the Special Resolution stated in the above clause. (as per section 117 of Companies Act, 2013)

ATTACHMENTS:

i. Board Resolution(s)
ii. Notice calling EGM
iii. Minutes of EGM
iv. Attendance Sheet of EGM with no of shares held by shareholders and votes casted by them
v. altered Memorandum of Association(if any) and Articles

5. Give an advertisement in Form No. INC 25A, at least 21 days before filing an application, in a vernacular newspaper in the principal vernacular language in the district and in the English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated and serve the Copy by registered post with acknowledgement due a notice to Registrar of Company, Regional Director and other relevant regulatory body with which it is governed.

6. File copy of petition in form GNL-1 with registrar of Companies

7. Prepare and file the application for conversion in form RD-1 only after expiry of 21 days from the date of advertisement.

ATTACHMENTS:

i. Detailed Application
ii. Affidavit verifying application
iii. Board Resolution including Board Resolution for appointing authorized representative
iv. EGM Notice, Resolution, altered Memorandum of Association(if any) and Articles
v. Attendance Sheet of EGM with no of shares held by shareholders and votes casted by them
vi. NOC from Creditors
vii. List of Secured/Unsecured Creditors if no creditors, statement to that effect
viii. Copy of Challan for filing petition with Registrar of Companies
ix. Proof of dispatch of notice to all Shareholders
x. Proof of dispatch of notice to Creditors
xi. Affidavit verifying Creditors
xii. Declaration by Directors that :
    - Company has not made application for conversion during past five years
    - Company is not registered under section 8 of Companies Act, 2013
    - Company has furnished notices to all creditors
xiii. Memorandum of Appearance
xiv. Copy of News Advertisement

8. If the No Objection received from any person in response to the advertisement or notice referred in clause 5 above and the application is complete in all respects, the same may be put up for orders without hearing and the concerned Regional Director shall pass an order approving the application within 30 days from the date of receipt of the application.

Objection can be received on any ground:
Eg. If there is a non-compliance of Section 117(3)(g) r/w Section 179 (3) (g) of the Act during any of the Financial Year(s) prior to the date of filing application.

9. If the Regional Director on examining the application finds it necessary to call for further information or finds such application to be defective or incomplete in any respect, he shall within 30 days from the date of receipt of the application, give intimation of such information called for or defects or incompleteness.

If no reply is made to Regional Director on the subject cited above and no reply/ documents/ communication has been filed within stipulated time frame it would be presumed that we have nothing to say in the matter and the application filed in e-form RD-1 will be disposed off by rejecting the same for non-compliance of the requisite documents.

10. For effecting conversion of Public Limited Company into Private Limited, application for Conversion of public company into private company or private company into public company be filed in form INC-27. The Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the same manner as its first registration.

ATTACHMENTS:
Order of the Regional Director
Printed copy of the altered articles;

within fifteen days of the receipt of the order from the Central Government

COMPLIANCES TO BE MADE AFTER CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY

1. Print the revised copies of MOA & AOA with a fresh name and Fresh Certificate of Incorporation;
2. Make the necessary changes in PAN, TAN, GST Portal, Bank Accounts, etc;
3. Intimate about change to Banks, Income Tax Department, PF Department, ESI Department, and all other departments.

Bibliography:

The Ministry of Corporate Affairs

Company (Incorporation) Rules, 2014

https://www.mca.gov.in/Ministry/pdf/GeneralCircularNo3_11032019.pdf

https://www.livemint.com/companies/news/public-ltd-cos-to-find-it-tougher-to-go-pvt-11611706252667.html

FORMATS

BOARD RESOLUTION FOR CONVERSION OF STATUS OF THE COMPANY

CERTIFIED TRUE COPY OF RESOLUTION NO. … PASSED AT THE (NO OF MEETING) MEETING OF THE BOARD OF DIRECTORS OF ………………….. LIMITED HELD ON ………….DAY OF…………….20… AT ………… AM/PM AT ……………………CONCLUDED AT…………AM/PM

CONVERSION THE STATUS OF COMPANY INTO PRIVATE LIMITED COMPANY AND ALTERATION OF ARTICLES OF ASSOCIATION OF THE COMPANY

Provisions of Section 14 (1) of Companies Act, 2013 (hereinafter referred as the Act) read with Rule 41 of the Companies (Incorporation), 2014 (amended time to time and hereinafter referred as the Rules) relating to conversion of public company into private Company were brought to the notice of members of Board. The Board was apprised that as per section section 14 of the Companies Act 2013 read with Rule 41 of Companies (Incorporation) Rules 2014, a public company can be converted into private company only after obtaining its shareholder approval by way of passing of special resolution in general meeting.

Second proviso to sub section (1) of section 14 provides 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 Regional Director.

Hence Board considered the matter of conversion of Public Company into Private Company after in-depth study of pros and cons of such conversion and passed the following resolution:

"RESOLVED THAT pursuant to provisions of Section 14 and Rule 41 of Companies (Incorporation) Rules 2014 and other applicable provisions, if any, of the Companies Act, 2013 readwith applicable rules and subject to approval of Shareholders by way special resolution at general meeting of the Company, Company be converted into Private Limited Company and the name of the Company be changed from "…………………… **Limited" to "………………….Private Limited".**

FURTHER RESOLVED THAT a new set of Articles of Association as applicable to Private Company as placed before this meeting be approved and adopted as new set of Articles of Association of the company.

FURTHER RESOLVED THAT Mr…………., Director of the Company be and is hereby instructed to sign the notice calling General Meeting of the Company and any of the Directors of the Company be and is hereby authorized to make requisite application to the Registrar of Companies, ………………, in prescribed form and file the requisite e-forms and to do all such acts, deeds and things as may be required to give effect to the above said resolution."

Certified True Copy

For…………………………Limited

(Name of Authorised Signatory)
Designation:
DIN:
Address:

EGM RESOLUTION FOR CONVERSION THE STATUS OF COMPANY INTO PRIVATE LIMITED COMPANY AND ALTERATION OF ARTICLES OF ASSOCIATION OF THE COMPANY

CERTIFIED TRUE COPY OF RESOLUTION NO. .... PASSED AT THE (NO OF MEETING) EXTRA ORDINARY GENERAL MEETING OF .... LIMITED HELD ON ....,DAY OF...........20... AT .... AM/PM AT THE REGISTERED OFFICE OF THE COMPANY AT .... CONCLUDED AT.............AM/PM

SPECIAL BUSINESS:

1. CONVERSION OF PUBLIC COMPANY INTO PRIVATE LIMITED COMPANY AND ALTERATION OF ARTICLES OF ASSOCIATION OF COMPANY

To consider fit and pass following as Special Resolution:

"RESOLVED THAT pursuant to provision of Section 14(1) and other applicable provisions, if any and subject to approval of Regional Director, the consent of 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 "................ **LIMITED"** to **"...........PRIVATE LIMITED"** by inserting the word "**PRIVATE"** before the word "**LIMITED**" whereras appears in the Articles of Association of the Company.

FURTHER RESOLVED THAT a new set of Articles of Association as applicable to Private Company as placed before this meeting be approved and adopted as new set of Articles of Association of the company.

FURTHER RESOLVED THAT the Board of Directors of the Company be and is hereby authorised to make an application in the prescribed Form, along with the prescribed enclosures and the prescribed application fee and to comply with all necessary formalities in this regard."

Certified True Copy

For..............................Limited

(Name of Authorised Signatory)
Designation:
DIN:
Address:

EXPLANATORY STATEMENT:

ITEM NO....

CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY

As the members are aware that the Company was originally incorporated on .... as 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 Private Limited Company to avoid unnecessary formalities and to obtain privileges which are available to Private Limited Company which would help the management to carry out affairs efficiently.

Moreover conversion into a Private Company shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such conversion had not been done.

The Board of directors of the company, at its meeting held on ....day of.....20...resolved to convert the company into a private company so as to include the following as per definition under Section 2(68) of Companies act, 2013:

The company is a private company and accordingly –

(a) limits the number of its members to two hundred not including -
(i) persons who are in the employment of the company; and
(ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and
(b) prohibits any invitation to the public to subscribe for any security of, the company;
(c) restricts the right to transfer its shares, provided that where two or more persons hold one or more shares in the company jointly, they shall, for the purposes of this article, treated as a single member; and
(iii) the name of the company be and is hereby accordingly changed from **..............LIMITED** to **................PRIVATE LIMITED**.

All the material documents and corrected copies of Memorandum & Articles of Association of the Company are available for inspection during the business hours of the Company till the date of meeting.

NEWS ADVERTISEMENT

BEFORE THE REGIONAL DIRECTOR,

.............REGION, ...
In the matter of the Companies Act, 2013, Section 13

AND

Pursuant to the Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2012

AND

In the matter of .... LIMITED

Registered Office: ....
.........Petitioner

Notice is hereby given that the above named petitioner Company proposes to file a petition under Section 13 of the Companies Act, 2013 before the Regional Director, ... Region, ... seeking confirmation to the proposed alteration to Clause II (Situation Clause) of its Memorandum of Association so as to change its Registered Office from the **"............"** to the " **...............** " in terms of Special Resolution passed at the Extra Ordinary General Meeting held on ....day of.....20... at its Registered Office.

Any person whose interest is likely to be affected by the proposed alteration of the Memorandum of Association of the Company may deliver or cause to be delivered or send by registered post his/her objections supported by an affidavit stating the nature of his/her interest and grounds of objection to the Regional Director, ... Region, (Address)................... within 21 days from the date of publication of this notice and also to the petitioner Company at its Registered office at the address mentioned above.

For .... LIMITED

Sd/-

Name of Director
DIN:
Designation

Date: ....
Place:....

Thank You
CS Neha Sarpal
Sr. Executive- Blueair India(Unilever Group)
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