

Companies Act, 1956

Section 43A - Private Company to Become Public Company in Certain Cases

1 [43A. Private company to become public company in certain cases

(1) Save as otherwise provided in this section, where not less than twenty-five per cent of the paid-up share capital of a private company having a share capital, is held by one or more bodies corporate, the private company shall,-

(a) on and from the date on which the aforesaid percentage is first held by such body or bodies corporate, or

(b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960), on and from "the expiry of the period of three months from the date of such commencement unless within that period the aforesaid percentage is reduced below twenty-five per cent of the paid-up share capital of the private company,

become by virtue of this section a public company:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven:

Provided further that in computing the aforesaid percentage, account shall not be taken of any share in the private company held by a banking company, if, but only if, the following conditions are satisfied in respect of such share, namely: -

(a) that the share -

(i) forms part of the subject-matter of a trust,

(ii) has not been set apart for the benefit of any body corporate, and

(iii) is held by the banking company either as a trustee of that trust or in its own name on behalf of a trustee of that trust; or

(b) that the share -

(i) forms part of the estate of a deceased person,

(ii) has not been bequeathed by the deceased person by his will to any body corporate, and

(iii) is held by the banking company either as an executor or administrator of the deceased person or in its own name on behalf of an executor or administrator of the deceased person;

and the registrar may, for the purpose of satisfying himself that any share is held in the private company by a banking company as aforesaid, call for at any time from the banking company such books and papers as he considers necessary.

2 [Explanation.-For the purposes of this sub-section, "bodies corporate" means public companies, or private companies which had become public companies by virtue of this section,]

3 [(1A) Without prejudice to the provisions of sub-section (1), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1974 or incorporated thereafter, is not, during the relevant period 4 [less than such amount as may be provided] the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turnover, a public company by virtue of this sub-section:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

(1B) Where not less than twenty-five per cent of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall, -

(a) on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1974, or

(b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1974 on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below twenty-five per cent of the paid-up share capital of the public company,

become by virtue of this sub-section, a public company, and thereupon all other provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.]

2 [(1C) Where, after the commencement of the Companies (Amendment) Act, 1988 a private company accepts, after an invitation is made by an advertisement, or renews, deposits from the public, other than its members, directors or their relatives, such private company shall, on and from the date on which such acceptance or renewal as the case may be, is first made after such commencement, become a public company and thereupon all the provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be, reduced below seven.]

(2) Within three months from the date on which a private company becomes a public company by virtue of this section, the company shall inform the Registrar that it has become a public company as aforesaid, and thereupon the Registrar shall delete the word "Private" become the word "Limited" in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association.

5 [(2A) Where a public company referred to in sub-section (2) becomes a private company on or after the commencement of Act 53 of 2000, such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the word "private company" for the word "public company" in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association within four weeks from the date of application made by the company."]

(3) Sub-section (3) of section 23 shall apply to a change of name under sub-section (2) as it applies to a change of name under section 21.

(4) A private company which has become a public company by virtue of this section shall continue to be a public company until it has, with the approval of the Central Government and in accordance with the provisions of this Act, again become a private company.

(5) If a company makes default in complying with sub-section (2), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

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(8) Every private company having a share capital shall, in addition to the certificate referred to in sub-section (2) of section 161, file with the Registrar along with the annual return a second certificate signed by both the signatories of the return, stating either -

(a) that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, no body or bodies corporate has or have held twenty-five per cent or more of its paid-up share capital, 7 [***]

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3 [(c) that the private company, irrespective of its paid-up share capital, did not have during the relevant period, an average annual turnover of 9 [such amount as is referred to in sub-section (1 A) or more;]

2 [(d) that the private company did not accept or renew deposits from the public.]

3 [(9) Every private company, having share capital, shall file with the Registrar along with the annual return a certificate signed by both the signatories of the return, stating that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, it did not hold twenty-five per cent or more of the paid-up share capital of one or more public companies.

2 [(10) Subject to the other provisions of this Act, any reference in this section to accepting, after an invitation is made by an advertisement, or renewing deposits from the public shall be construed as including a reference to accepting, after an invitation is made by an advertisement or renewing deposits from any section of the public and the provisions of section 67 shall, so far as may be, apply, as if the reference to invitation to the public to subscribe for shares or debentures occurring in that section, includes a reference to invitation from the public for acceptance of deposits.]

Explanation, -For the purposes of this section, -

(a) "relevant period" means the period of three consecutive financial years, -

(i) immediately preceding the commencement of the Companies (Amendment) Act, 1974,
or

(ii) a part of which immediately preceded such commencement and the other part of which immediately, followed such commencement, or

(iii) immediately following such commencement or at any time thereafter;

(b) "turnover", of a company, means the aggregate value of the realisation made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;]

2 [(c) "deposit" has the same meaning as in section 58A.]

5 [(11) Nothing contained in this section, except sub-section (2A), shall apply on and after the commencement of Act 53 of 2000."]

1. Inserted by Act 65 of 1960, Section 14 (w.e.f. 28-12-1960).

2. Inserted by Act 31 of 1988, Section 7 (w.e.f. 15-6-1988).

3. Inserted by Act 41 of 1974, Section 6 (w.e.f. 1-2-1975).
 4. Substituted by Act 31 of 1988, Section 7, for "less than rupees one crore" (w.e.f. 15-6-1988).
 5. Inserted by 53 of 2000, Section 12 (w.e.f. 13-12-2000).
 6. Sub-sections (6) and (7) omitted by Act 31 of 1988, Section 7 (w.e.f. 15-6-1988).
 7. The word "or" omitted by Act 31 of 1988, Section 7 (w.e.f. 15-6-1988).
 8. Clause (b) omitted by Act 31 of 1988, Section 7 (w.e.f. 15-6-1988).
 9. Substituted by Act 31 of 1988, Section 7, for "rupees one crore or more" (w.e.f. 15-6-1988).
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