

PART XXII

DIRECTORS

Chapter 1

Director Identification Number

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1. Application for allotment of Director Identification Number

Section 266A inserted by the Companies (Amendment) Act, 2006 which, has been notified by Notification No. G.S.R. 648E dated 19th Oct., 2006 and has come into the force w.e.f. 1st Nov., 2006 the new section provides that every—

- (a) Individual, intending to be appointed as director of a company; or
- (b) Director of a company appointed before the commencement of the Companies (Amendment) Act, 2006, shall make an application for allotment of Director Identification Number to the Central

Government in such form, and manner (including electronic form) along with such fee, as may be prescribed:

Provided that every director appointed before the commencement of the Companies (Amendment) Act, 2006 shall make, within sixty days of the commencement of the said Act, such application to the Central Government:

Provided further that every applicant, who has made an application under this section for allotment of Director Identification Number, may be appointed as a director in a company, or, hold office as director in a company till such time such applicant has been allotted Director Identification Number. (Appendix 2)

2. Allotment of Director Identification Number

Section 266B has been inserted by the Companies (Amendment) Act, 2006, which provides that the Central Government shall, within one month from the receipt of the application under section 266A, allot a Director Identification Number to an applicant, in such manner as may be prescribed.

The Central Government has issued Companies (Directors Identification) Rules, 2006, which has been notified by Notification No. GSR 649E dated 19th Oct., 2006 and has come into the force w.e.f. 1st Nov., 2006 (Appendix 1)

3. Prohibition to obtain more than one Director Identification Number

Section 266C inserted by the Companies (Amendment) Act, 2006 provides that no individual, who had already been allotted a Director Identification Number under section 266B, shall apply, obtain or possess another Director Identification Number.

4. Obligation on the Director to intimate Director Identification Number to concerned company or companies

Section 266D of the Companies (Amendment) Act, 2006 provides that every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director. Such intimation is required to be given in e-form DIN-2 as notified by GSR 649E, dated 19th Oct., 2006 and has come into force w.e.f. 1st Nov., 2006 (Appendix 3)

5. Intimation for Director Identification Number to the Registrar

As per provisions of section 266E(1) every company shall, within one week of the receipt of intimation under section 266D, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government in e-Form DIN- 3 as notified by GSR 649E, dated 19th Oct., 2006 and has come into force w.e.f. 1st Nov., 2006. (Appendix 4)

6. Changes in the personal particulars of director

Any changes in the personal particulars of a Director, including his address, after he has submitted the information initially in Form DIN-1 is required to be intimated to the Central Government [Regional Director (Northern Region) at NOIDA] in Form DIN-4 (Appendix 5) in manual mode as in the case of Form DIN-1 as notified by GSR 649E, dated 19th Oct., 2006 and has come into force w.e.f. 1st Nov., 2006

7. Indication of Director Identification Number

Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall quote the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

8. Important features of Director Identification Number

- (a) Any individual who is a director or intends to become a director of a company should apply for DIN. All the directors of a company must obtain DIN.
- (b) DIN Application Form is available on the home page of MCA website. It is required to be filled up and on submission of this form a Provisional DIN is generated by the system and is displayed on the screen. The applicant is required to save and take a print out of the filled form, affix his/her photograph and send the same, along with photocopies of identity and residence proof, duly

attested by Notary/ Gazetted Officer/Certified Professionals (CA/CS/ICWA) to the MCA DIN Cell, P.O. Box No. 03, Noida – 201301 Uttar Pradesh, India.

- (c) No fee is chargeable for this and an online application is to be filed for obtaining the same.
 - (d) The Form will be processed by the MCA Din Cell. Once approved, DIN confirmation and activation letter will be sent to the applicant. An e-mail in this regard will also be sent to the applicant at the e-mail ID provided in the DIN application.
 - (e) The provisional DIN can be used for e-filing.
 - (f) Towards identity proof, duly attested photocopies of any one of the following viz. PAN card, Driving License, Passport, Voter ID Card, Telephone Bill, Ration card, Electricity Bill and Bank Statement, need to be filed with the DIN application.
 - (g) DIN application is also to be supported with proof of residence of the applicant director which can be any one of the following viz. Passport, Voter ID Card, Ration card, Driving license, Electricity Bill Telephone Bill and Bank Statement. In case of a foreign director, residence proof can be submitted in form of certificate from the management of the company certifying the present residential address of the foreign director in India.
 - (h) DIN is mandatory for e-filing of forms and documents and PAN cannot be used as an alternative to DIN.
 - (i) DIN is mandatory for directors of Indian companies who are not citizens of India.
 - (j) DIN is not mandatory for directors of foreign company having branch offices in India.
 - (k) Only a single DIN is required for an individual, irrespective of number of directorships held by him/ her. All the directorships of an individual would be mapped in the database through that DIN.
 - (l) Even on resignation of a director the DIN will not be cancelled.
- Company Secretaries and Managers are not required to obtain DIN.

9. Last date for filing of forms DIN-1 and DIN-3 without payment of fees extended from March 31, 2007 to June 30, 2007

In terms of Rule 4, application in Form DIN 1 is to be submitted to the MCA alongwith fees of Rs. 100. The last date upto which such applications could be accepted without payment of fees was laid down as December 31, 2006 which was subsequently extended to March 31, 2007 *vide* the Companies (Director Identification Number) Amendment Rules, 2007 issued *vide* Notification No. GSR 14(E), dated 9-1-2007. The same has now been extended by MCA up till June 30, 2007.

Similarly, pursuant to Rule 6, DIN 3 duly certified by a company secretary in full time employment of the concerned company or by a company secretary in practice is required to be filed along with fees as prescribed under Schedule X of the Companies Act, 1956. However, companies furnishing details of DIN on or before March 31, 2007 were exempted from payment of fees. Such date has now been extended by 30th June, 2007.

10. Formalities to be complied with for appointment of first directors

In the case of the appointment of first directors of a company, the following formalities must be complied with at the time of incorporation:—

1. Confirm whether the proposed director is having Directors Identification Number (DIN), if he is not having DIN, apply in Form DIN. As per proviso inserted under section 253 of the Companies Act, by the Companies (Amendment) Act, 2006 no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B.
2. Obtain consent in the plain paper and the same shall be filed with the e-Form 32.
3. Prepare e-Form 32 in respect of the first directors and file it with the Registrar supported by the consent to act as a director;

4. Agreement, if any, which the company proposes to enter into with any individual for appointment as its managing director or whole-time director or manager shall be filed with the Registrar;
5. E-Form 32 may be filed within 30 days after incorporation. It is advisable to file them at the time of filing of other documents for incorporation. The Registrar also insists on it to be filed at the time of incorporation;
6. Particulars in the Register of directors shall be entered with respect to each director immediately after the incorporation of the company;
7. Particulars of the directors' shareholding will be entered in the Register of directors' shareholdings; [Section 307]
8. Information relating to the director's interests in other companies, firms and also names of his relatives for the purposes of sections 297 and 299 of the Act will be obtained. A general notice of the interests under section 299 will also be given in Form 24AA prescribed under the Companies (Central Government's) General Rules & Forms, 1956.

The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006. As such, all the existing and intending Directors have to obtain DIN within the prescribed time-frame as notified.

STEP BY STEP PROCESS

Step by step process to be followed by the applicant is as under:

- (i) The applicant is required to click and open the application form (Form DIN-1) on the portal www.mca.gov.in and fill-up various particulars on-line. Please ensure that you do not use any abbreviations or initials in the case of name;
- (ii) Click on the '**Submit**' function and the system would automatically generate a provisional DIN in the space provided for in this form;
- (iii) Thereafter, the applicant is required to take a print-out of the two-page form, affix his photograph in the space provided, manually sign the undertaking at the end, enclose copies of the proof of identity and the proof of residence with the application form and get the requisite certifications from any of the authorities specified therein;
- (iv) On completion of Step (iii) above, the applicant is required to send these papers by post to the Central DIN Processing Cell at NOIDA. Address is given on the DIN form.

Processing of the application by MCA:

The application is examined and processed in the DIN Processing Cell in the office of Regional Director (NR) at NOIDA. After it is found to be in order, a DIN approval letter is generated and dispatched under Postal Certificate to the applicant at the address given by him in the application form. The 'provisional' status of DIN is converted into a regular DIN and activated in the system.

Steps after the DIN is allotted:

- (i) The Director, to whom a DIN is allotted, is required to inform the companies, on which one is a Director, about the Director Identification Number allotted to him/her in Form DIN-2 within a period of one month of allotment of the DIN.
- (ii) The companies, thereafter, are required to inform the Director Identification Numbers of the Directors on their Company Board to the Registrar of Companies in Form DIN-3 (to be made available after notification by the ministry) within a period of seven days after receipt of information to this effect from the Directors. This information is to be sent by the companies to the ROCs on-line in a paperless mode.

Provision has also been made for incorporating any changes in the personal particulars of a Director, including his address, after he has submitted the information initially in Form DIN-1. The required changes are to be intimated to the Government of India [Regional Director (Northern Region) at NOIDA] in Form DIN-4 (to be made available after notification by the ministry) in manual mode as in the case of Form DIN-1.

ACTIVITIES BY APPLICANT DIRECTOR

1. DIN Form (Annexure A) is on MyMCA portal.
2. Fill the form online and submit for DIN allocation, by following steps laid down hereunder:
 - (a) All the items against which (*) mark is displayed are mandatory i.e. needs to be filled in compulsorily
 - (b) Please fill in your Name, Father's Name and Address in **FULL**
 - (c) Forms with abbreviations will be Rejected
 - (d) After filling the complete Form – please press 'Check Form' button to verify that all the details are filled in properly
 - (e) In case you need to change any item OR to correct any error encountered during verification, press 'Modify' button and do the corrections ELSE press 'Submit' button
 - (f) After all the corrections are done, please do the 'Check Form' activity again, followed by pressing 'Submit' button

- (g) You will have to wait for a while to get system response
 - (h) After processing, system will prompt the success or failure message
 - (i) After successful processing provisional DIN will be allocated on-line and displayed in the Form, else a caution or error message will be prompted for you to take appropriate action
 - (j) Take guidance from the system prompts and proceed
3. The MCA21 system will process the request and respond with a provisional DIN number in a PDF letter form. In case of a probable duplicate, the system will prompt 'probable duplicate' as a caution, however you have facility to press YES to proceed ahead with the DIN request. Ideally the incidence of duplicate would not arise. Duplication can happen if you have applied once, forgotten DIN or have not saved the Form for printing and now you wish to apply again.
 4. Save and Print the Form after you are prompted with successful submission and a Provisional DIN allotted on-line.
 5. Send the above printed DIN Form along with various proof(s) duly attested/certified by authorities to central processing desk address (P O Box) written on the Form.
 6. The attestation/certification of the proof of identification and address can be done by Notary, Gazetted Officer, Certified Professional (Chartered Accountant/Company Secretary/Cost Accountant) with stamp and registration number (in case of CA/CS/Cost Accountant).
 7. After processing you will be advised the status of your application through Post and also through e-mail, if provided in the Form.

FREQUENTLY ASKED QUESTIONS

1. What is Director Identification Number (DIN)?

The Ministry of Company Affairs (MCA) has launched a major e-Governance initiative 'MCA 21'. It envisages e-filing of all documents related to company matters on the MCA portal. Director Identification Number (DIN) is a unique identification number for an existing director or a person intending to become the director of a company. In the scenario of e-filing, DIN will be a pre-requisite for filing of certain company related documents.

2. Are there any eligibility criteria for applying for DIN?

Any individual who is a director or intends to be a director of a company should apply for DIN.

3. What is the procedure to apply for DIN?

Visit MCA Portal and fill DIN application online, which is a simple form available on the link 'Apply For DIN'. On submission of this form, a 'Provisional DIN' is generated by the system and is displayed on the screen. Save and take a print out of the filled form, affix your photograph and send the same by normal post/registered/speed post or courier, along with photocopies of proofs of identity & residence, duly attested by Notary/Gazetted Officer/Certified Professionals (CA/CS/ICWA) to the following address of the Regional Director

MCA DIN Cell
A-14, Sector – I
PDIL Bhawan
Noida
U.P.

The form will be processed by the MCA DIN Cell. Once approved, the DIN confirmation and activation letter will be sent to the applicant. An email in this regard will also be sent to the applicant on the email id provided in the DIN application.

4. Can I use the Provisional DIN?

Yes. As of now, the provisional DIN can be used for e-filing until the DIN is approved and activated by the MCA DIN Cell.

5. What are the documents to be attached with DIN application form?

Duly attested photocopies of the following should be attached —

A. Identity Proof (Any one of the following)

- PAN Card
- Driving License
- Passport
- Voter Id Card

B. Residence Proof (Any one of the following)

- Driving License
- Passport
- Voter Id Card
- Telephone Bill
- Ration Card
- Electricity Bill
- Bank Statement

6. Can I enquire the status of my DIN application?

Yes. You can check the status using the 'Enquire DIN Approval Status' option available under the 'Director Identification Number' link on the home page of the MCA portal (www.mca.gov.in)

7. Can PAN be used as an alternative to DIN?

No. DIN is mandatory for all Directors. PAN cannot be used in place of DIN.

8. What are the charges for applying for DIN?

No charges are payable.

9. Is DIN mandatory for directors of Indian Companies who are not citizens of India?

Yes.

10. Is DIN mandatory for directors of foreign company having branch offices in India?

No.

Appendix 1

Text of Companies (Director Identification Number) Rules, 2006¹

In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of section 642 read with sections 266A, 266B and 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely—

1. Short title and commencement.—(1) These rules may be called the Companies (Director Identification Number) Rules, 2006.

(2) The Central Government hereby appoints the 1st day of November, 2006 as the date on which the provisions of these rules shall come into force.

2. Definitions.—In these rules, unless the context otherwise requires,—

- (i) "Act" means the Companies Act, 1956 (1 of 1956);
- (ii) "Director Identification Number" (DIN) means an identification number which the Central Government may allot to any individual intending to be appointed as director or to any existing directors of a company for the purpose of his identifications as such;

¹ Notification No. GSR 649(E), dated 19-10-2006.

- (iii) "form" means the form annexed to these rules;
- (iv) "Pre-fill" means and refers to the automated process of data input by the computer system out of the database maintained in electronic registry;
- (v) "Provisional Director Identification Number" refers to the provisional identification number generated by the electronic system setup by the Ministry of Company Affairs for filing of documents, after the on-line application form is submitted through the portal on the website of the Ministry of Company Affairs (www.mca.gov.in);
- (vi) "section" means the section of the Act.

3. Application and allotment of Director Identification Number.—(1) Every individual, who is an existing director or intending to be appointed as director of a company shall make an application electronically to the Central Government for allotment of Director Identification Number in Form No. DIN-1.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of Director Identification Number through a portal on the website of the Ministry.

(3) The applicant shall access the Form No. DIN-1 from the portal fill-in the required particulars sought therein and use 'submit' function provided therein upon which the system will electronically generate and indicate in the space provided a Provisional Director Identification Number.

(4) A provisional Director Identification Number generated online under sub-rule (3) by the applicant intending to be a director will remain valid for a period of sixty days from the date on which it was generated.

(5) (i) The applicant shall, after the allotment of provisional DIN, submit a formal application to the Central Government alongwith the fee as specified in rule 4 for the allotment of regular Director Identification Number within sixty days from the date on which provisional DIN was generated on-line, failing which the provisional DIN will lapse:

Provided that the individuals who have obtained provisional Director Identification Number (DIN) prior to the notification of these rules shall be allowed a period of sixty days from the date of notification to make an application to the Central Government for allotment of regular DIN failing which their provisional DIN will lapse.

(ii) For making an application under sub-rule (i) the applicant shall take a print out of Form No. DIN-1 affix his photograph in the space provided in that Form, enclose true copies of the proof of identity and proof of residence and physically sign the form at the place specified therein. The photograph and the proof of identity and residence shall be certified by any one of the following authorities:

- (a) Gazetted Officer of the Central or State Government;
- (b) Notary Public;
- (c) Chartered Accountant, Company Secretary, Cost & Works Accountant holding a certificate of Practice under the Chartered Accountants Act, 1949, Company Secretaries Act, 1980 and the Cost & Works Accountants Act, 1959;
- (d) Company Secretary in full time employment of the company.

(6) The Central Government shall process the applications received for allotment of DIN under sub-rule (5) decide on the approval or rejection thereof and communicate the same alongwith the DIN allotted in the case of approval to the applicant by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application:

Provided that all Director Identification Numbers allotted to individuals(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(7) The Director Identification Number so allotted is valid for the life time of such applicant and shall not be allotted to any other person during his life-time.

4. Fee.—Each application made under sub-rule (5) of rule 3 shall entail a payment of a fee of Rupees one hundred only:

Provided that applicants making such application before [30th June, , 2007]¹ shall be exempted from payment of fee under this rule.

5. Intimation of DIN to the Company.—Every existing director shall, within one month of the receipt of the Director Identification Number from the Central Government under sub-rule (6) of rule 3 intimate his Director Identification Number to the company or all companies wherein he is a director in Form No. DIN-2

6. Intimation of DIN to the Registrar.—Every company shall furnish the details of Director Identification Number within one week of the receipt of intimation from directors under rule 5 to the Registrar in Form No. DIN-3 in electronic form along with fee as prescribed under Schedule X of the Act and duly certified by a Company Secretary in full time employment of the concerned company as required under section 383A of the Companies Act, 1956 or by a Company Secretary in full time practice:

Provided that the companies furnishing details of DIN under this rule on or before 31st March, 2007 shall be exempted from payment of fee.

7. Duty of director to intimate changes of particulars.—(1) Every director, in the event of any change in his particulars as stated in Form No. DIN-1, who has been allotted a Director Identification Number under these rules, shall intimate such change(s) to the Central Government within a period of 30 days of such changes(s) in particulars by using Form No. DIN-4 made available by the Ministry on its website. The concerned director will also intimate such changes to the company or companies on which he is a director.

(2) The directors shall fill-in the relevant changes in prescribed Form DIN-4, enclose a copy of the proof of the changed particulars, affix signature at the place specified, obtain certificate of the evidence from any of the authorities specified in sub-rule (5) of rule 3 and file the same in physical form to the Central Government. There shall be no fee for intimating the changes in particulars in DIN-4 under sub-rule (1).

(3) The Central Government, upon being satisfied, through verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the director by way of a letter issued by post or electronically or in any other mode confirming the effect of such change in the electronic data-base maintained by the Ministry.

Appendix 2

Specimen of Application of Allotment of Director Identification Number

Provisional Director Identification Number (DIN)

Applicants name (Enter full name and do not use abbreviations)

First Name *

DEEPTI

Last Name *

KHANDELWAL

Middle Name

Affix a latest passport size photograph and get it attested/certified for submission of physical copy of the form with MCA

¹ Substituted in place of 31st December, 2006 *vide* the Companies (Director Identification Number) Amendment Rules, 2007 issued *vide* Notification No. GSR 14(E), dated 9-1-2007.

Father's name (Even married women must give fathers name)

First Name *

SHRI RAM

Last Name *

KHANDELWAL

Middle Name

(Signature of the
applicant) Signature
should be within the
Box

Whether citizen of India *



Yes



No

Nationality

IN

Date of Birth *

26/10/1984

(DD/MM/YYYY)

Gender *

FEMALE

Place of birth

JALGAON

Income Tax Permanent Account Number

Voters Identity Card Number

Passport Number

A123456

Driving Licence Number

Permanent residential address

Line 1 *

KOSMI INDUSTRIAL AREA

Line 2

City *

BETUL

Country *

IN

State *

Madhya Pradesh-MP_

Pin Code *

460001

Phone

Fax

Email Id

deepti@yahoo.com

Whether present residential address is same as permanent residential address *

☒ Yes

☐ No

Present residential address

Line 1 *

KOSMI INDUSTRIAL AREA

Line 2

City *

BETUL

Country *

IN

State *

Madhya Pradesh-MP

Pin Code *

460001

Phone

Fax

deepti@yahoo.com

Following documents are being enclosed:

Proof of identity (Tick against the document being enclosed)

☒

1. Passport

☐

2. Election (voter identity) card

☐

3. Driving Licence

☐

4. Income-Tax PAN card

☐

5. Others-Please Specify

Proof of residence (Tick against the document being enclosed)

☐

1. Passport

☐

2. Election (voter identity) card

☐

3. Ration card

☐

4. Driving Licence

☐

5. Electricity bill

☐

6. Telephone bill

☐

7. Bank account statement

☐

8. Others- Please specify

I DEEPTI KHANDELWAL

son/daughter of SHRI RAM KHANDELWAL

resident of KOSMI INDUSTRIAL AREA, BETUL (M.P.)

hereby declare and verify that the information given in this application and the documents enclosed is correct and complete. I confirm that I do not possess and have not been allotted another Director Identification Number by the Central Government. I also confirm that no other application (including physical documents) submitted by me is pending for allotment of Director Identification Number.

Signature of the applicant (to be signed for submission of physical copy of the form with MCA)

Dated 31/12/2006

Place Betul

General Guidelines For DIN Application

1	Obtain Provisional DIN	The applicant should first fill in the application on-line, generate a provisional DIN and then take a print out for dispatch to the DIN Processing Cell. An application without a provisional DIN cannot be accepted for further process and would merit straight rejection.
2	Attestation/ certification of proof of identity and proof of residence	A Public Notary or a Gazetted Officer of a Government or a practicing professional (Chartered Accountant/ Company Secretary/ Cost Accountant) or a Company Secretary in full time employment of the company.
3	Particulars of the attesting/ certifying authority	The attesting authority must indicate the following while attesting the documents:- (i) Signatures; (ii) Name in full in capitals; (iii) Registration No.; and (iv) Seal/ Stamp.
4	Language of proofs for identity and residence	In case the proof of identity and proof of residence is in a language other than Hindi or English, a certified copy of translation of the same in Hindi or English should be enclosed and the translation be also certified by the professional who has otherwise certified the said proofs.
5	Date of Birth	The proof of identity enclosed with DIN form should also contain the Date of Birth of the applicant and the same should match the Date of Birth filled in the application form. In case the proof of identity does not indicate the Date of Birth then additional proof of Date of Birth duly certified/ attested, should be attached.
6	Process for applicants who are (i) Indian citizens residing abroad; (ii) foreign nationals residing in India; and (iii) foreign nationals residing outside India	While general conditions as mentioned at Sr.No.1, 3, 4 and 5 would be applicable in these categories also, the certification of attached documents and the photograph may be done by a notary in the resident country of the applicant or the managing Director or CEO of the Company on which he is a Director or the Company Secretary in full time employment of the Company. Further, in the case of a Foreign National, certified copy of the valid passport should be enclosed.

Appendix 3
Specimen of Form DIN-2

(See Rule 5)

Intimation of allotment of Director Identification Number (DIN) to the Company by the Director

To
The Board of Directors
The Institute of Corporate Directors of India
4th Floor, Silver Ark Plaza,
20/1, New Palasiya
Indore (M.P.)

Date: 6th November, 2006

Subject: Intimation of allotment of Director Identification Number (DIN) to the Company by the Director

Sir,

Reference section 266D of the Companies Act, 1956 and the Rules made thereunder, I am submitting the information regarding DIN allotted to me along with additional information as prescribed:

Sr. No.	Subject	Particulars
1.	Director Identification Number (DIN)	0823456
2.	Name	DEEPTI KHANDELWAL
3.	Father's Name	SHRI RAM KHANDELWAL
4.	Present residential address	Kosmi Industrial Area, Betul (M.P.) 460001
5.	e-mail ID	deepti@yahoo.com
6.	Designation (Director or Managing Director or Alternate director or Additional Director or Director appointed in casual vacancy or Nominee Director or Whole-time director) (please specify)	Director
7.	Specify whether Chairman, Executive Director, Non-Executive Director (in case more than one, specify both)	Non Executive Director
8.	Category (Promoter or Professional or Independent)	Promoter
9.	Name of the company or Institution whose Nominee the director is director	Nil
10.	Date of Appointment	30/12/2006

A copy of the DIN Allotment Letter is enclosed. Please acknowledge the receipt.

Yours Faithfully
(DEEPTI KHANDELWAL)

Appendix 4
Specimen of Form DIN-3

(See rule 6)

Intimation of Director Identification Number by the company to the Registrar

Note: All fields marked in * are to be mandatory filled

1. *Corporate identity number (CIN) of company

XXXXXXXXXXXXXXXXXX

2. (a). Name of the company

KHANDELWAL INDUSTRIES PVT. LTD.

(b) Address of the registered office of the company

Kosmi Industrial Area, Betul (M.P.) 460001

(c) *City

Betul

(d) *District

Betul

(e) *State

Madhya Pradesh

(f) *ISO country code

IN

(g) *Pin Code

460001

3. *e-mail ID of the company

khandelwal@yahoo.com

4. Authorised capital (in Rupees)

5. Number of members of the company

50,00,000

6. Paid-up capital (in Rupees)

50,00,000

7 (a). Total number of Managing Director, Director(s) as on the date of filing of this form

3

7. (b) Number of Managing Director, Director(s)

1

(Enter here the total number of managing director, directors for which the form needs to be filed)

8. Details of the Managing Director, Directors of the company

I. Details of the Director or Managing Director of the company

Director Identification Number (DIN)

0823456

Full name

DEEPTI KHANDELWAL

Father's name

SHRI RAM KHANDELWAL

Present residential address

Kosmi Industrial Area,
Betul (M.P.) 460001

Date of birth (DD/MM/YYYY)

26/10/1984

Date of approval of DIN by Central Government (DD/MM/YYYY)

20/12/2006

Date of receipt of Form DIN 2 from the director (DD/MM/YYYY)

28/12/2006

Attach copy of
Form DIN-2

Whether the address is as per the company's records

Yes

☒

No

☐

Designation

DIRECTOR

Category

PROMOTER

Whether Chairman, Executive Director, Non-Executive Director

☐

Chairman

☐

Executive Director

☒

Non Executive Director

DIN of the director to whom the appointee is alternate

Name of the director to whom the appointee is alternate

Name of the company or institution whose nominee the appointee is

Date of appointment (DD/MM/YYYY)

30/12/2006

e-mail ID

deepti@yahoo.com

9. Details of the Manager or Secretary of the company

I. Details of the Manager or Secretary of the company

Income Tax Permanent Account Number (PAN)

First name

Middle Name

Last name

Father's name

First name

Middle Name

Last name

Present residential address Line 1

Line 2

(a) City

(b) State

(c) Country

(d) Pin code

(e) Phone

(f) Fax

Date of birth (DD/MM/YYYY)

Designation

Date of appointment (DD/MM/YYYY)

Whether employee full time or part time Yes ☐ No ☐

Email ID

II. Details of the Manager or Secretary of the company

Income Tax Permanent Account Number (PAN)

First name

Middle Name

Last name

Father's name

First name

Middle Name

Last name

Present residential address Line 1

Line 2

(a) City

(b) State

(c) Country

(d) Pin code

(e) Phone

(f) Fax

Date of birth (DD/MM/YYYY)

Designation

Date of appointment (DD/MM/YYYY)

Whether employee full time or part time Yes ☐ No ☐

Email ID

Attachments

1. Optional attachment(s) - if any

*** Verification**

☒ To the best of my knowledge and belief, the information given in this form is correct and complete.

I have been authorized by the board of directors' resolution dated * (DD/MM/YYYY)
to sign and submit this form.

To be digitally signed by

Managing director or director or manager of the company

* Designation

Director Identification Number of Director

☒ *** Certification**

It is hereby certified that I have verified the above particulars from the records of M/s
and found them to be true and correct.

To be digitally signed by

Company Secretary in whole-time practice or the Company Secretary in full-time employment of the
company

* Designation

Membership Number of Secretary

INSTRUCTIONS FOR FILLING/SUBMISSION OF E-FORM DIN- 3

(Intimation of Director Identification Number by the company to the Registrar)

S. No.	Detailed Instructions
	Every Individual intending to be appointed as director of an Indian company or the existing director has to make an application for allotment of Director Identification Number. Once the DIN of the director has been approved and he has received an intimation of the same from the Central Government, the Director is required to intimate to all the companies in which he is a director of the DIN. Such intimation is to be submitted within 30 days of the date of receipt of intimation of the approval of the DIN. Once the director has intimated to the company, the company is required to intimate to MCA within 7 days of the receipt of intimation from the director by filing Form DIN-3. This form shall accept only approved DINs.
	<i>Note:</i> Instructions are not provided for the fields which are self explanatory You have to mandatorily enter fields marked with * in the form.
1	Enter 'Corporate Identity Number' (CIN) of the company • You may find CIN by entering existing registration number of the company in the 'Find CIN/GLN' service at the portal www.mca.gov.in
2 (a-b)	Click the "Pre-fill" button. System will automatically display the name and address of the registered office of the company. Enter the email ID of the company

4	Enter the Authorised capital of the company as on the date of filing Form DIN-3 in case of company with share capital.
5	Enter the number of members of the company as on the date of filing Form DIN-3, in case of company without share capital.
6	Enter the Paid up capital of the company as on the date of filing Form DIN-3 in case of company with share capital
7	Enter the number of directors of the company, whose details are to be provided in the form (Based on the number entered here, number of blocks shall be enabled for entering the details) You can provide the details of maximum 12 directors in one Form DIN-3.
8	Enter the DIN of the director. Click the "Pre-Fill" button. System will display director's personal details, including date of approval of DIN by the Central Government. Enter the date when the intimation was received from the director in Form DIN-2. Select the designation and category of the director from the drop down list. Select one or more options that whether the director is Chairman, Executive or Non-Executive (Executive and Non-Executive director, both cannot be selected) In case, designation selected is alternate director, Enter DIN of the director in whose place, the person is appointed as alternate director. In case designation selected is Managing director, enter the date of appointment as a director of the company, in case the person was holding the designation of director before being appointed as a Managing director. Enter the email id of the director, if available. Attach copy of Form DIN- 2 filed by the director with the company (This attachment is required with respect to every director whose details are provided in the form)
9	Enter the details of the Manager and secretary of the company. You are advised to enter the full name instead of using abbreviation in the name fields. Enter the present residential address of the person. If the person is residing outside India, select NA in the state field from the drop down list and enter the Country code from the list of ISO Country code provided below. In case of secretary, select the person is appointed full time or part time.
Attachment	Any other information can be provided as an optional attachment
Verification	Enter the date of board resolution authorising the signatory to sign and submit the e-Form.
Digital Signature	The e-Form should be digitally signed by Managing director or director or manager of the company.
Designation	Select the designation of the person digitally signing the e-Form Enter the DIN in case the person digitally signing the e-Form is a director or managing director.
Certification	The e-Form should be certified by Company Secretary in whole-time practice or the Company Secretary in full-time employment of the company by digitally signing the e-Form.
Designation	Select the designation of the person certifying the e-Form and enter membership, number of secretaries if available

Appendix 5
Specimen of FORM DIN-4

(See rule 7)

Intimation of change in particulars of Director to be given to the Central Government

1. Director Identification Number (DIN)

0823456

2. Please identify (tick) and fill-in particulars sought to be changed:

☒

Applicant Name

Nationality

☐

Date of birth

☒

Income-tax permanent account number

☐

Voters Identity card number

Passport number

☐

Driving license number

Permanent residential address

☒

Present residential address

Affix a latest passport size photographh and get it attested/certified for submission of the Form with MCA

3. Applicant's name (Enter full name and do not use abbreviations)

Signature of the applicant Signature should be within the box

First name

DEEPTI

Middle Name

RAJEEV

Last name

KHANDELWAL

4. Whether citizen of India

Yes

☒

No

☐

5. Nationality

INDIAN

6. Date of Birth

26/10/1984

(DD/MM/YYYY)

7. Income Tax Permanent Account Number

ABTPJ1234K

8. Voters Identity Card Number

9. Passport Number

A1234567

10. Driving Licence Number

11. Permanent residential address

Line 1	KOSMI INDUSTRIAL AREA		
Line 2			
(a) City	BETUL	(b) State	Madhya Pradesh-MP
(c) Country	India	(d) Pin code	460001
(e) Phone		(f) Fax	

12. Present residential address

Line 1	A-16, Civil Lines		
Line 2			
(a) City	Jaipur	(b) State	Rajasthan
(c) Country	India	(d) Pin code	313001
(e) Phone		(f) Fax	

Note I.—Enclose necessary documents verified by a public notary or gazetted officer or certified professional (Chartered accountant/Company secretary/Cost accountant) evidencing change in particulars mentioned above.

Note II.—In case any proof enclosed is in language other than Hindi or English then the certified copy of the same in English or Hindi shall be required to be enclosed. It should be certified by the same professional who has certified other proof.

Note III.—In case the Director submitting change in particulars is not residing in India, the certification of attached documents and the photograph may be done by a notary in the home country of the applicant or the Managing Director/ CEO of the Company on which he is a Director or the Company Secretary in full time employment of the Company. Further, in the case of a Foreign National, certified copy of the valid passport should be enclosed.

Note IV.—The photograph of the applicant being affixed on the form should also be attested/ certified. IF ANY OF THE REQUIREMENTS ARE NOT MET, CHANGES WILL NOT BE CONSIDERED.

I	DEEPTI RAJEEV KHANDELWAL
son/ daughter of	SHRI RAM KHANDELWAL
resident of	A-16, Civil Lines, Jaipur (Rajasthan)

hereby declare and verify that the information given in this form and the documents enclosed is correct and complete.

Signature of the applicant

Dated (DD/MM/YYYY)

Place

For office use only:

Signature of the authorising officer

Dated (DD/MM/YYYY)

Place

Chapter 2

Directors and Constitution of the Board

Synopsis

Important Provisions at a Glance

1. Meaning of 'Director'
 2. 'Shadow' or 'Deemed' director
 3. Meaning of 'Board' and 'Board of directors'
 4. The term 'Officer' includes a director
 5. Only individuals can be directors
 6. Types of Directors
 - 6.1. Ordinary Directors
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 - 6.3. Whole-time/Executive Directors
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 - 6.5. Alternate Director
 - 6.6. Professional Directors
 - 6.7. Nominee Directors
 - 6.8. Independent Directors
 7. Total strength of the Board of directors
 8. Minimum number of directors
 9. Director may be a director of a rival company
 10. Increase in the number of directors without approval of the Central Government
 - 10.1. Increase in the number of director within the limit fixed by the Articles (upto twelve directors)
 - 10.2. Increase in number of directors beyond the limit fixed in the Articles (upto twelve directors)
 11. A public company cannot increase number of directors beyond twelve without previous approval of the Central Government
 - 11.1. Procedure for obtaining approval of the Central Government
- Register of Directors and their Shareholdings*
12. Company shall keep Register of managing director/directors/manager and secretary at the Registered Office
 - 12.1. Section 303 casts two statutory obligations on a company
 - 12.2. Particulars required to be entered in the Register under section 303
 - 12.3. Entries in the Register should be made within a reasonable time
 - 12.4. Inspection of Register of directors
 13. Filing of director's particulars with the Registrar in e-Form 32
 - 14. Providing information in e-Form 32 for directorship held in more than 15 companies**
 15. Filing of Addendum to e-Form 32
 16. Requirement to submit Form DIN-2 by the director to the Company within 30 days from the date of receipt of approval letter
 17. Requirement to file e-Form DIN-3 to Registrar
 18. Duty of disclosure by every director
 19. Penalty
 20. Register of directors' shares and debentures holding
 - 20.1. Disclosure of shareholdings by directors
 - 20.2. Regi

- 20.3. Production of Register of directors' shareholdings before the annual general meeting
- 20.4. Penalty
- Appendix 1 Specimen of e-Form 24
- Appendix 2 Register of Directors, Managing Directors, etc.
- Appendix 3 Register of Director's share and debenture holding

Important Provisions at a Glance

<i>Sl. No.</i>	<i>Sections</i>	<i>Matters dealt with</i>	<i>E-Form Nos.</i>
1.	2(6)	Definition of "Board of Directors".	
2.	2(13)	Definition of "Director".	
3.	2(30)	Officer includes a director of a company.	
4.	303(1)	Deemed directors.	
5.	252	Minimum number of director.	
6.	253	Only individual to be directors.	
7.	258-259	Increase or reduction in number of directors.	24
8.	302	Filing of particulars of directors, managing director, whole-time directors and secretary with the Registrar.	32
9.	303-304	Register of directors and its inspection.	
10.	305-306	Disclosure by directors for other directorships held and inspection of register of such disclosures.	
11.	307-308	Disclosure for directors shareholding and inspection of the Register of directors shareholding.	

1. Meaning of 'Director'

Section 2(13) of the Companies Act, 1956 defined a term director and states that 'director' includes any person occupying the position of director, by whatever name called.

In the ordinary sense a director is someone who administers, controls or directs something, especially a member of a commercial company; one who supervises, controls or manages; a person elected by the shareholders of a company to direct company's policies; person appointed or elected according to law, authorised to manage and direct the affairs of a company.

2. 'Shadow' or 'Deemed' director

Explanation to section 303(1) says that any person in accordance with whose directions or instructions, the Board of directors of a company is accustomed to act shall be deemed to be a director of the company.

Same provisions of the Companies Act, 1956 also applies to a 'Shadow director' being person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act. However, if the Board of directors acts on advice given by a person in his professional capacity he will not be considered as a deemed or shadow director of the company.

Shadow director pre-supposes that there is a Board of directors who act in accordance with the instructions from some one else. [*Lo line Electrics Motors Ltd.* (1988) 2 (All) ER 692] The shadow director must be infact a puppet master controlling action of the Board. They must be people who act on the directions or instructions of the shadow director as a matter of regular practice. That must refer to acts not on one individual occasion but over a period of time and as a regular course of conduct. [*Unisoft Group Ltd. No. 3* (1994) 1 BCCC 609].

3. Meaning of 'Board' and 'Board of directors'

Section 2(6) of the Act has defined the term 'Board of directors', means in relation to a company, means the Board of directors of the company. The directors collectively are referred to in the Act as the "Board of directors" or "Board". [Section 252(3)]

The expression 'Board of directors' means a group of those individuals elected by the shareholders of a company to manage the business affairs of the company.

Since a company is an artificial legal person created by law, therefore, it is necessary to act only through the agency of natural persons. It can only act through human beings, and it is the directors through whom mainly the company acts. It is on account of the peculiar character of a company that the need for directors arises. Therefore, the management of a company is entrusted to a body of persons called 'Board of directors'.

4. The term 'Officer' includes a director

Section 2(30) defines the term officer, which includes a director or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is/are accustomed to act. As per provisions of section 5 of the Act, a director is also an 'officer-in-default' for the purposes of the offences under the Companies Act.

5. Only individuals can be directors

Section 253 of the Companies Act, 1956 states that no body corporate, association or firm shall be appointed as a director of any company, and only an individual shall be so appointed.

6. Types of Directors

Following are the categories of directors who constitute 'Board' of a company:—

6.1. Ordinary Directors

Ordinary directors are also referred to as simple directors who attend Board meeting of a company and participate in the matters put before the Board. These directors are neither whole time directors nor managing directors.

6.2. Managing Director

Managing Director is a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its Memorandum or Articles of Association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.

6.3. Whole-time/Executive Directors

Whole-time Director or Executive Director includes a director in the whole-time employment of the company.

6.4. Additional Directors

Additional Directors are appointed by the Board between the two annual general meetings subject to the provisions of the Articles of Association of a company. Additional directors shall hold office only up to the date of the next annual general meeting of the company. Number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the Articles.

6.5. Alternate Director

An Alternate Director is a person appointed by the Board if so authorised by the Articles or by a resolution passed by the company in the general meeting to act for a director called "the original director" during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held. Generally, the alternate directors are appointed for a person who is Non-resident Indian or for foreign collaborators of a company.

6.6. Professional Directors

Any director possessing professional qualifications and do not have any pecuniary interest in the company are called as "Professional Directors". In big size companies, sometimes the Board appoints professionals of different fields as directors to utilise their expertise in the management of the company.

6.7. Nominee Directors

The banks and financial institutions which grant financial assistance to a company generally impose a condition as to appointment of their representative on the Board of the concerned company. These nominated persons are called as nominee directors.

6.8. Independent Directors

Independent director as per Clause 49 of the Listing agreement amended *vide* SEBI Circular No. SEBI/CFD/DIL/CG/1/2004 dated 29th October, 2004 and further amended on dated 29th March, 2005 shall mean non-executive director of the company who—

- (a) apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect the independence of the director;
- (b) is not related to promoters or persons occupying management positions at the Board level or at one level below the Board;
- (c) has not been an executive of the company in the immediately preceding three financial years;
- (d) is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:—
 - (i) the statutory audit firm or the internal audit firm that is associated with the company;
 - (ii) the legal firm(s) and consulting firm(s) that have a material association with the company.
- (e) is not a material supplier, service provider or customer or a lessor or lessee of the company which may effect the independence of the director; and
- (f) is not a substantial shareholder of the company, *i.e.* owning two percent or more of the block of voting shares.

7. Total strength of the Board of directors

The total strength of the Board is fixed in the Articles. Normally, the Articles contain the maximum number of directors as twelve, as the prior approval of the Central Government is required to have more than twelve directors in a public limited company. A private company can have more than twelve directors if its Articles permit.

8. Minimum number of directors

Section 252 provides that every public company shall have at least three directors and every private company shall have at least two directors at all time in the Board of directors of the company.

9. Director may be a director of a rival company

It is a settled law that a person can be a director of two rival companies at the same time it is subject to the condition that he will not commit breach of fiduciary responsibilities he owns as director of either company. A director is precluded from diverting to himself a maturity business opportunity that his company was actively pursuing, even after his resignation, where the resignation was prompted or influenced by a desire to acquire that opportunity for himself. [*Atmaram Modi v ECL Agrotech Ltd.* (1999) 35 CLA 14 (CLB)].

10. Increase in the number of directors without approval of the Central Government

Increase in number of directors depends upon the provisions of the Articles of a company and subject to the maximum limit prescribed under the Act. A company may increase the number of directors upto maximum twelve directors without approval of the Central Government as under:—

10.1. Increase in the number of director within the limit fixed by the Articles (upto twelve directors)

By the resolution passed by the company in a Board or general meeting for appointment of some more directors in the company.

10.2. Increase in number of directors beyond the limit fixed in the Articles (upto twelve directors)

This situation requires approval of members by way of special resolution in a general meeting for amendment in the Articles as per the provisions of section 31 of the Act. After increasing the limits in the

Articles a company may increase the number of directors in the Board meeting or at a general meeting as the company may consider appropriate.

11. A public company cannot increase number of directors beyond twelve without previous approval of the Central Government

A public company or a private company which is a subsidiary of a public company may by special resolution alter its Articles so as to increase the number of directors beyond twelve subject to the approval of the Central Government. Such increase in the strength of the Board in excess of twelve directors in the articles will be effective only if this is approved by the Central Government.

11.1. Procedure for obtaining approval of the Central Government

A public company or a private company which is a subsidiary of a public company, which proposes to increase the number of directors in excess of twelve shall make an application in an e-Form 24 to the Ministry of Company Affairs electronically along with the fees prescribed in Companies (Fees on Application) Rules, 1999. (See Appendix 1 for Specimen of e-Form 24) Before making application the company shall be required to comply with the provisions of section 640B of the Act, which provides requirement for publication of a general notice in a newspaper in the vernacular language of the area where the registered office is located, and in an English newspaper in English circulating in the district and copies of the notice duly certified as on the date of publication shall be sent with the application.

The notice shall indicate the nature of application being made and provide an opportunity to the general public having objection to the proposal to forward their objection to the Department as stated in Rule 20A of the Companies General Rules and Forms, 1956 within 30 days of publication of the notice. The notice shall also indicate that any objection received after 30 days of publication of the notice will not be considered by the Government.

REGISTER OF DIRECTORS AND THEIR SHAREHOLDINGS

12. Company shall keep Register of managing director/directors/manager and secretary at the Registered Office

Section 303(1) of the Companies Act provides that every company shall keep at its registered office a Register of its directors, managing directors, manager and secretary, containing with respect to each of them the following particulars, that is to say:—

- (a) in the case of an individual, his present name, and surname in full; any former name or surname in full; his father's name and surname in full; or where the individual is a married woman, the husband's name and surname in full; his usual residential address; his nationality and, if that nationality is not the nationality of origin, his nationality of origin, his business occupation, if any, if he holds the office of director, managing director, manager or secretary in any other body corporate, the particulars of each such office held by him; and except in the case of a private company which is not a subsidiary of a public company, the date of his birth;
- (b) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality, and nationality of origin, if different from that nationality, the father's name or where a director is a married woman, the husband's name of each of its directors; and if it holds the office of manager or secretary in any other body corporate, the particulars of each such office;
- (c) in the case of a firm, the name of the firm, the full name, address, nationality, and nationality of origin, if different from that nationality the father's name or where a partner is a married woman, the husband's name of each partner; and the date on which each became a partner; and if the firm holds the office of manager or secretary in any other body corporate, the particulars of each such office;
- (d) if any director or directors have been nominated by a body corporate, its corporate name; all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (b) in respect of the body corporate;

- (e) if any director or directors have been nominated by a firm, the name of the firm, all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (c) in respect of the firm.

Explanation.—For the purposes of this sub-section:—

- (1) any person in accordance with whose directions or instructions, the Board of directors of a company is accustomed to act shall be deemed to be a director of the company;
- (2) in the case of a person usually known by a title different from his surname, the expression "surname" means that title; and
- (3) reference to a former name or surname do not include—
 - (i) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the title;
 - (ii) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years; and
 - (iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

12.1. Section 303 casts two statutory obligations on a company

Section 303 of the Act casts on every company the two statutory duties in relation to *inter alia*, a person becoming and ceasing to be a company's director. First, maintenance of the Register of directors and secondly, giving the Registrar of Companies an intimation regarding constitution of the Board of directors and any change therein from time to time.

12.2. Particulars required to be entered in the Register under section 303

The particulars with respect to every director, managing director, manager and secretary, to be entered in the Register as per Format given in Appendix 2.

12.3. Entries in the Register should be made within a reasonable time

Section 303 does not prescribe any time-limit for making entries in the Register. Nonetheless, entries should be made within a reasonable period after the happening of an event of which entries are required to be made.

12.4. Inspection of Register of directors

The Register of directors kept under section 303 shall be kept open for inspection of any member of the company without fee and of any other person on payment of rupee one for each inspection, during business hours subject to such reasonable restrictions as the company may by its Articles or in general meeting impose, so that not less than two hours in each day are allowed for inspection. [Section 304]

Any request for taking extract from the register of directors, managing director, manager and secretary or asking for copy of such register shall be not taken into consideration and only inspection of register of directors, etc. is permissible.

Persons dealing with a company from outside are not expected to search the register of directors to find for themselves whether a person acting in fact is also a director who has been properly appointed and that his name is borne by the register of directors.

A member or any other person, who has been refused inspection of the Register of directors under section 304, may make a petition to the Central Government.

13. Filing of director's particulars with the Registrar in e-Form 32

Wherever a director, managing or whole-time director, manager or secretary is appointed or when one ceases to be a director, managing or whole-time director, manager or secretary in the company, the company shall file a return in e-Form 32 with the Registrar of Companies, electronically, within 30 days of appointment or change with adequate filing fee as prescribed in Schedule X to the Companies Act, 1956. [Section 303(2)]

Section 303(2) does not require any company to send to the Registrar of Companies a return containing the particulars of the subscribers of its memorandum.

14. Providing information in e-Form 32 for directorship held in more than 15 companies

If a person is a director in more than 15 companies which includes directorship in private companies and alternate directorships which are excluded for calculating the limit of 15, provide details of 15 directorships in the space available in the e-Form 32, and the details of the other directorships should be provided as an optional attachment to the e-Form.

15. Filing of Addendum to e-Form 32

In case if the change in the particulars of more than 3 directors on the same day, the Addendum of e-Form 32 should be submitted for directors in excess of 3 directors after uploading of e-Form 32 and on mentioning of SRN No. of e-Form 32, no separate filing fee will required to be paid for Addendum of e-Form 32.

16. Requirement to submit Form DIN-2 by the director to the Company within 30 days from the date of receipt of approval letter

The Director is required to submit Form DIN-2 to the Company within 30 days from the date of receipt of DIN Approval letter. (See Chapter 1 of Part XXII)

17. Requirement to file e-Form DIN-3 to Registrar

On receipt of DIN 2 Form from the Director, the Company is required to file E-DIN Form 3 to the Registrar electronically within 7 days from the receipt of Form DIN-2. (See Chapter 1 of the Part XXII)

18. Duty of disclosure by every director

Pursuant to section 305, every director in a company shall disclose to the company, whenever he is appointed director, manager or secretary in any other company or whenever he ceases to hold any such office, the particulars regarding thereto. This intimation shall be given within 20 days of such event. This is to enable a company to maintain its Register of directors properly.

19. Penalty

If default is made in complying with the provisions of section 303, the company and every officer, who is in default shall be punishable with fine upto Rs. 500 for every day during which the default continues.

Failure to allow inspection of Register under section 304 is also punishable with fine up to Rs. 500. If a company refuses inspection, the person aggrieved by the refusal may apply to the Tribunal for an order compelling the company for immediate inspection of the Register.

For default of section 305 every director concerned or other person shall be punishable with fine up to Rs. 5,000.

20. Register of directors' shares and debentures holding

Every company shall keep a register (format given in Appendix 3) showing the following particulars with respect of each director of the company, the number, description and amount of shares and debentures held by a director or manager:—

- (i) in the company in which he holds office;
- (ii) in its subsidiary or holding company;
- (iii) in the subsidiary of the company's holding company;
- (iv) where the shares/debentures are purchased or sold, the date and the price or other consideration for the transaction; and
- (v) the nature of interest of the director in such shares.

The SEBI has also casts an obligation on directors of a listed company to make disclosure to the company and the stock exchange for any type of transactions in the securities in excess of a particular volume of shares or amount of each transaction made by them in such listed company, where they hold

office of the director.

20.1. Disclosure of shareholdings by directors

Pursuant to section 308, every director of a company shall give notice to the company for the purchase and sale of shares so that the register can be kept up to date. Disclosure is also required to be made by a person deemed to be a director of the company. [Section 305(2)]

No time-limit is prescribed for giving the notice, however, it must be given promptly as default in complying with the provision is punishable with imprisonment which may extend to two years and/or fine up to Rs. 50,000.

20.2. Register of directors' shareholding shall be kept at the registered office for inspection of directors and shareholders

The Register shall be kept at the registered office and shall be kept available for inspection of members/debentureholders. If a company refuses inspection of Register of directors' shareholdings, the Central Government may also, by order, compel for immediate inspection of the Register.

Any request by the members or debentureholders of the company for taking extract from the Register of directors' share/debenture holding or asking for copy of such register shall be not taken into consideration and only inspection of register is permissible.

20.3. Production of Register of directors' shareholdings before the annual general meeting

The Register of directors' shareholding shall also be made available for inspection for a period starting 14 days before the date of the company's annual general meeting and ending 3 days after the said meeting, for not less than two hours in each day. The Register shall also be available for inspection during the annual general meeting by every member.

In computing the 14 days and the 3 days mentioned above, any day which is Saturday, Sunday or a public holiday shall be disregarded.

If default is made in placing of Register of directors' shareholding before annual general meeting, the company and every officer of the company who is in default, shall be punishable with fine, which may extend to Rs. 5,000.

20.4. Penalty

In case of the default in maintaining the Register under section 307(1) or default in showing date and price of transaction under section 307(2) or refusal for inspection and/or failure in sending copy is committed, then the company, and every officer of the company who is in default, shall be punishable with fine, which may extend to Rs. 50,000 and also with a further fine which may extend to Rs. 200 for every day during which default continues.

Appendix 1

Specimen of e-Form 24

Form of application to the Central Government for increase in the number of directors of the Company

[Pursuant to section 259 of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

- | | |
|---|--|
| 1. (a) *Corporate identity number (CIN) of company | <div>XXXXXXXXXXXX</div> |
| (b) Global location number (GLN) of company | <div></div> |
| 2. (a) Name of the company | <div>DEEPAK COLONISERS LIMITED</div> |
| (b) Address of the registered office of the company | <div>SCHEME NO. 54, VIJAY NAGAR,
INDORE (M.P) 452001</div> |
| 3. * Maximum number of directors permitted under the articles of association | <div>12</div> |
| 4. *Number of directors in office on the date of application (including alternate director) | <div>12</div> |

5. *Article number of the articles of association, which requires amendment
6. *Number of directors proposed to be added
7. *Reason(s) for increase in number of directors

In view of the requirement to appoint more than 50% of the independent directors in the Board of directors of the Company, it is required to appoint four more directors in the category of the independent directors to fulfill the requirement of Clause 49 of the listing agreement.

- 8 (a) *Whether the company has obtained any loan from banks or financial institutions ☒ Yes ☐ No
- (b) * Whether banks or financial institution hold any shares in the company ☒ Yes ☐ No

Attachments

1.	*Copy of the Board resolution for increasing the number of directors.	Attach	
2.	*Minutes of the general meeting of the company along with the details of voting.	Attach	
3.	*Newspaper clippings in which notices pursuant to section 640B have been published.	Attach	
4.	No objection certificate from financial institution(s) or bank(s).	Attach	
5.	Details of proposed appointee.	Attach	
6.	Optional attachment(s)-if any.		

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

I have been authorised by the board of directors' resolution dated *
(DD/MM/YYYY) to sign and submit this application.

To be digitally signed by

Managing director or director or manager or secretary of the company

For office use only

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Annexure to Appendix 1

Specimen of Resolution for increase in number of directors beyond 12

RESOLVED THAT pursuant to sections 258, 259 and all other applicable provisions, if any, of the Companies Act, 1956, and subject to the approval of the Central Government, the number of Directors of the Company for the time being in the office be increased from twelve to sixteen.

RESOLVED FURTHER THAT pursuant to section 31 and all other applicable provisions, if any, of the Companies Act, 1956, existing Article 102 of the Articles of Association of the Company shall stand deleted and the following shall stand substituted in its place and stead as new Article 102 with effect from the date of Central Government's approval in accordance with the provisions of the Companies Act, 1956:

102. Unless otherwise determined by the Company in General Meeting, the number of Directors shall not be less than 5 (five) and shall not be more than 16 (sixteen).

RESOLVED FURTHER THAT the Board be and is hereby authorised to take all such steps as may be necessary, proper or expedient to give effect to this resolution.

Explanatory Statement to the above Resolution

The process of reforms in the power sector in India has brought about significant change in the overall industry structure including change in the operational structure, commercial orientation and transparency in operations with thrust on world class practices and controls at all levels.

To meet the new challenges, it is imperative that the Company's Board is strengthened to enhance its effectiveness, which is central to maximizing long-term shareholder value. The Company accordingly needs to have a set of directors with appropriate qualifications, skills, experience and/or background in diverse or related fields. In view of the above and to comply with the mandatory Corporate Governance requirements and other applicable provisions of law, it is proposed to increase the total number of Directors for the time being in the office, from twelve to sixteen.

Consequently, Article 102 of the Articles of Association of the Company is sought to be amended in the manner as set out in the resolution.

In terms of Section 259 of the Companies Act, 1956, the aforesaid amendment requires approval of the Central Government besides obtaining approval of the shareholders by passing a Special Resolution.

Your Directors commend the resolution for your approval.

None of the Directors of the Company is, in any way, concerned or interested in the said resolution.

Appendix 2

Register of Directors, Managing Directors, etc.

(Pursuant to section 303)

The Present Name or Names and Surname, in full	Any former Name or Names and Surname in full	Father's/ Husband's name in full	Usual Residential Address	Nationality and Nationality of origin (if other than the Present Nationality)	Business, Occupations and particulars of other directorship, managership and secretaryship held	Date of Birth (in case of individuals only)	Date of Appointment	Remark

Appendix 3

Register of Director's share and debenture holding

(Pursuant to section 307)

Name	Number of Shares or Debentures held	Description of Shares or Debentures	Amount	Date of acquisition	Price or other consideration	Date of Disposal	Price or other consideration	Remarks (including Nature & extent of Interest)

Chapter 3

Appointment and change in the Directors

Synopsis

Important Provisions at a Glance

First Directors

1. First directors are named in the Articles
2. In certain cases the subscribers shall be deemed to be the first directors
3. Formalities to be complied with for appointment of First and subsequent new directors
4. First directors shall act till the directors are appointed at a general meeting of the company
5. Appointment of directors in the case of a private company

Directors liable to retire by rotation and their re-appointment

6. Not less than two-third of the total directors shall be liable to retire by rotation
7. One-third of rotational directors shall retire annually
8. Directors who have been longest in office shall be determined for retirement
9. Retirement of director in special situations
10. Nominees of certain Financial Institutions are not liable to retire
11. Nominee director of ICICI and IFCI shall be rotational
12. Ascertainment of directors liable to retire by rotation
13. Provisions relating to the retirement of directors by rotation
14. Articles may provide for retirement of all the directors every year
15. Exclusion of Managing Director/Whole-time Director for liable to retire by rotation
16. Re-appointment of rotational directors
17. Appointment of other than retiring directors as directors
18. Automatic re-appointment of retiring directors
19. Retiring director shall cease to be a director on the conclusion of the annual general meeting in certain cases
20. Status of directors in respect of retirement by rotation in case of a private company
21. Appointment of directors in Government Companies
22. Composition of Board of directors of listed company

Additional, Casual and Alternate Director

23. Appointment of additional directors
24. Tenure of additional director
25. Appointment of additional director needs to be appointed as ordinary director at the next annual general meeting
26. Position in a private company
27. Appointment of casual director
28. Tenure of casual director
29. Appointment of an alternate director

Procedure for Appointment of Directors

30. Requirement of consent to act as director and filing with the Registrar
31. Filing of e-Form 32 to Registrar where additional director or director in a casual vacancy is appointed as a ordinary director at the next annual general meeting
32. E-Form 32 is not required to be filed if a director is appointed at the same annual general meeting

Appointment of Director by Small Shareholders

33. Meaning of small shareholder

34. Only a member holding shares of nominal value upto Rs. 20,000 shall be eligible under the category
35. Company may appoint itself or small shareholders may propose for the appointment
36. Conditions for notice for proposal for appointment of small shareholders' director should be fulfilled
37. Requirement of consent by the proposed candidate for his appointment
38. Manner of passing resolution in general meeting
39. Small shareholders' director needs not to retire by rotation
40. Small shareholders' director shall not be appointed as the Managing or Whole-time Director

Removal of Directors

41. All directors are subject to removal
42. Certain director cannot be removed by a company
43. Special notice of resolution for removal may be given by a member
44. Members' right to propose for removal of a director is a statutory right
45. A single member can give the special notice irrespective of his shareholding or voting powers
46. It is not necessary to give reasons or explanatory statement for removal of a director
47. Minimum 14 days clear notice shall be given to the company
48. Company shall serve a copy of special notice for removal to the concerning director
49. Concerned director shall be entitled to be heard on the resolution
50. Company shall serve a notice of removal to all the members
51. Passing of resolution for removal and appointment of another director in his place
52. Where the vacancy on removal is not filled, the Board shall have powers to fill it?
53. Removal of a non-rotational director of a Government company
54. Removal of director by the Central Government
55. Removal of director by CLB/Tribunal
56. Civil Court cannot interfere in the matters of removal of a director
57. Section 284 not applicable on removal of Managing Director
58. Section 284 is an independent section

- Appendix 1 Specimen of Board resolution recording appointment of First Directors
- Appendix 2 Specimen of Board resolution for appointment of Additional Director
- Appendix 3 Specimen of General meeting resolution for confirmation of appointment of Additional Director as an Ordinary Director
- Appendix 4 Specimen of Board resolution for appointment of Alternate Director
- Appendix 5 Specimen for alteration of article for incorporation in the Articles of Association for incorporation of new clause for appointment of an alternate director
- Appendix 6 Companies (Appointment of the Small Shareholders' Director) Rules, 2001
- Appendix 7 Specimen of resolution for appointment of Small shareholder's Director
- Appendix 8 Specimen of notice to move a resolution for removal of a director
- Appendix 9 Specimen of intimation letter to be given by a company to the concerned director
- Appendix 10 Specimen of representation letter by concerned director
- Appendix 11 Specimen of notice of resolution to be given to all the members

Important Provisions at a Glance

<i>Sl. No.</i>	<i>Sections</i>	<i>Matters dealt with</i>	<i>E-Form Nos.</i>
1.	254	Subscribers to Memorandum of Association deemed to be first directors.	32
2.	255	Appointment of first director at general meeting.	
3.	256	Annual retirement of directors.	
4.	260	Appointment of additional director.	
5.	262	Filling up of casual vacancies.	

<i>Sl. No.</i>	<i>Sections</i>	<i>Matters dealt with</i>	<i>E-Form Nos.</i>
6.	264	Consent to act as a director	
7.	313	Appointment of alternate director.	
8	284	Removal of directors.	

FIRST DIRECTORS

1. First directors are named in the Articles

Generally, promoters provide in the Articles at the time of incorporation of a company the names of persons who will be the first directors. When the said directors are named in the Articles, the said persons will act as directors till the directors are appointed at the first general meeting after incorporation of the company. (Appendix 1)

2. In certain cases the subscribers shall be deemed to be the first directors

In the absence of any provision regarding appointment of first directors then the subscribers to the Memorandum, who are individuals, shall be the first directors of the company.

The DCA in its Letter No. 8/25(254)/64-PR, dated 19-5-1964 has confirmed that the words "until the directors are duly appointed in accordance with section 255 occurring in section 254" refer to the point of time prior to the appointment of individuals either by the company in general meeting or by person or persons having right to appoint directors by virtue of powers conferred on them by the Articles of Association or the company.

Thus the subscribers to the Memorandum shall cease to be directors of the company when individuals are appointed as directors either by the company in general meeting or by persons in exercise of the powers in that behalf conferred on them by the Articles.

The words "in default of and subject to any regulations in the Articles" occurring in section 254 show that, the subscribers of the Memorandum who are individuals are deemed to be the directors of the company when the Articles do not make any provision for some individuals acting as directors of the company until the appointment of individuals as directors in general meeting or by other persons in accordance with section 255. In other words, if the Articles of Association of the company make provisions for some individuals acting as directors of the company after its incorporation and prior to the appointment of individuals as directors in accordance with section 255, then section 254 is never attracted."

3. Formalities to be complied with for appointment of First and subsequent new directors

For the requirements relating to Directors Identification Number, Refer Chapter 1 of the Part XXII.

4. First directors shall act till the directors are appointed at a general meeting of the company

When the said directors are named in the Articles or where the subscribers become directors, the said persons will act as directors till the directors are appointed at the first general meeting after incorporation of the company.

After the incorporation of a company, the first directors, who are subject to retirement as above, shall be appointed at the general meeting to be called and held after incorporation irrespective of the manner of their appointment. [Section 255]

5. Appointment of directors in the case of a private company

In the case of a private company, which is not a subsidiary of a public company, the first directors assume the office from the date of incorporation. Therefore, a private company, which is not a subsidiary of a public company, can provide in its Articles of Association the manner of appointment of directors. The Articles can also provide that the first directors appointed by the Articles shall continue to hold office until their office become vacant by resignation, removal, death or otherwise, or they are superseded by appointing other directors in accordance with the provisions of the Articles.

It is permissible for a private company to provide in its Articles that none of its directors is liable to retire by rotation. In the absence of anything to the contrary in the Articles, however, all the first directors of such a private company who have been appointed under the Articles may hold office till the directors are

appointed in accordance with the provisions of section 255(2) at the first general meeting held after incorporation but before the holding of the first annual general meeting.

It is desirable to have an explicit and clear provision in the Articles of Association of a private company, which is not a subsidiary of a public company regarding the manner of appointment of directors. If the Articles are silent or do not specifically provide for appointment of directors otherwise than at a general meeting, then the directors of such a private company are to be appointed at general meetings. [*Swapna Dasgupta v Navin Chand Suchanti* (1988) 64 Comp Cas 562 (Cal)].

If appointment of directors is not in accordance with articles, they are not the directors. [*Rajan Nagindas Doshi v British Burma Petroleum Co. Ltd.* (1972) 42 Comp Cas 197 (Bom)].

Where the company has delegated power to appoint a director to the Board, in event of board being unable to function, the members have the power to appoint. [*B.N. Viswanathan v Tiffin's Barytes Asbestos & Paints Ltd.* (1953) 23 Comp Cas 29 (Mad.)].

DIRECTORS LIABLE TO RETIRE BY ROTATION AND THEIR RE-APPOINTMENT

6. Not less than two-third of the total directors shall be liable to retire by rotation

In a public or a private company, which is a subsidiary of a public company, not less than two-thirds of the total number of directors shall be such whose period of office shall be subject to retirement by rotation.

The duration of office of remaining one-third of the total strength shall be as per the provisions in the Articles. In the absence of any such provision, the said remaining directors shall also be subject to retirement by rotation.

The directors in a private company, in case of default of any provision in the Articles, will also be appointed by the company in its general meeting.

7. One-third of rotational directors shall retire annually

In a public company or a private company which is a subsidiary of a public company, at every annual general meeting, one-third of the directors liable to retirement by rotation (namely one-third or two-thirds of the total directors and where there is no provision in the Articles, one-third of the remaining directors who are also subject to retirement) will retire but eligible for re-election.

Fraction if any, may be corrected to the nearest whole number for working out one-third. It is advisable to round off any fraction as one, irrespective of whether the fraction is half or less than half.

8. Directors who have been longest in office shall be determined for retirement

The directors to retire by rotation shall be those who have been longest in office. When some directors are appointed on the same day, then those who are to retire shall be subject to mutual agreement or shall be decided by way of lot.

9. Retirement of director in special situations

Where public financial institutions give loans or other financial assistance to companies, agreements are entered into between them. In some cases the agreement may provide that the financial institution reserves the right to appoint their nominees as directors on the Board of companies.

10. Nominees of certain Financial Institutions are not liable to retire

Some of the public financial institutions were established under special statutes of Parliament like IDBI, LIC, UTI and SFCs. The respective Act gives the institution overriding power to nominate persons as directors on the Board of loanee companies and to withdraw them at any time. The provisions of the Companies Act, 1956 regarding appointment and removal of directors, share qualifications etc. do not apply to such nominee directors. Therefore, nominee directors of IDBI, LIC, UTI and SFCs are not liable to retirement by rotation in a public company and a private company which is a subsidiary of a public company.

11. Nominee director of ICICI and IFCI shall be rotational

IFCI was also one such institution but after it has been converted as a company under the Companies Act, 1956, the special position that their nominees enjoyed earlier is no longer applicable. Therefore, the

nominee of IFCI, ICICI and such other institutions, unless such nominees are appointed against one-third of total strength shall be liable to retirement as per section 255.

12. Ascertainment of directors liable to retire by rotation

Let us assume that in a public company:—

Total strength of directors is	12
Nominee directors of LIC and UTI are	2
Total strength of directors for the purpose of section 255	10
2/3rd of total strength will be	7
1/3rd of Directors due to retirement will be	3 in the 1st year 2 in the 2nd year, and 2 in the 3rd year

If the Articles so provide, the remaining 3 directors will be non-retiring comprising of Managing Directors, Joint Managing Director, and Nominee Director, if applicable, in the above example.

If presuming, nominee is from IFCI instead of UTI and is not against non-retiring portion, the total strength for the purpose of section 255 will be 11 and the directors subject to retirement will be 8 directors instead of 7 as illustrated above.

13. Provisions relating to the retirement of directors by rotation

A company may include suitable provision in the Articles of Association in this regard as follows:—

1. Not less than two-thirds of the total number of directors shall (a) be persons whose period of office is liable to retirement by rotation and (b) save as otherwise expressly provided in the Act, be appointed by the company in general meeting.
2. At every annual general meeting, one-third of the directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.
3. The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to the agreement among themselves, be determined by lot.

14. Articles may provide for retirement of all the directors every year

The opening part of sub-section (1) of this section, is, "unless the Articles provide for the retirement of all directors at every annual general meeting", therefore, a company is free to incorporate in its Articles, that all the directors of the company would retire at every annual general meeting. The following clarifications given by the Department of Company Affairs are relevant in this behalf:—

- "(1) At the first annual general meeting of a public company or a private company which is a subsidiary of a public company held after the first general meeting not less than two-thirds of the total number of directors who have been appointed under the Articles are required to vacate their office. It is, however, open to such a company to provide in its Articles the manner of appointment in and the vacation of office of not more than one-third of its total number of directors.

Not less than two-thirds of the total number of directors of a public company or a private company which is a subsidiary of a public company are liable to retirement by rotation and one-third of the directors who are liable to retirement by rotation are required to retire at every annual general meeting including the first annual general meeting. It is open to such a company to provide in its Articles that all the directors are liable to retirement by rotation or even that all the directors shall retire at every annual general meeting.

- (2) It will be in order for all the directors of a company to retire at every annual general meeting if the Articles of the said company provide to that effect and, in such case, each of such director can be regarded as a director retiring by rotation". [Letter No. 8/16/(1)/PR, dated 9th May, 1961]

If it is not incorporated in the Articles, then the rule enacted in the following part of the sub-section, viz., not less than two-thirds of the total number of directors, shall come into operation. The two-thirds of the total number of directors shall be the persons whose period of office is liable to determination by retirement by rotation. [Section 255(1)(a)]

These directors shall, save as otherwise expressly provided in the Act, be appointed by the company in general meeting. [Section 255(1)]

15. Exclusion of Managing Director/Whole-time Director for liable to retire by rotation

Articles of most companies contain an express provision relating to the excluding managing and whole-time directors from the conditions for retirement by rotation and provides that a person shall not be liable to retirement by rotation so long as he continues to hold the office of the managing or whole-time director. Such a provision may read thus:

"The managing director/s or whole-time director/s shall not while he/they continues/continue to hold the office, be taken into account in determining the rotation of retirement of directors or the number of directors to retire and his/their appointment shall be subject to determination *ipso facto* if he/they ceases/cease from any cause to be a director or if the company in general meeting resolves that his/their tenure of office as managing director or whole-time director be determined".

16. Re-appointment of rotational directors

At an annual general meeting a director retiring by rotation is eligible for reappointment and may be re-appointed. But the company may appoint some other person in place of the retiring director. [Section 256(3)]

17. Appointment of other than retiring directors as directors

Section 257 allows a person who is not a retiring director to be eligible for appointment to the office of director at any general meeting, if he or some member, intending to propose him has, not less than 14 days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, along with a deposit of Rs. 500 which shall be refunded to such person or, as the case may be, to such member, if the person succeeds in getting elected as a director.

Since section 257 does not say that tender of nomination should be before a particular time on last day, rejection of nomination on ground that deposit was tendered one minute later than 3.30 p.m. *i.e.*, office hours, for cash transactions, would be erroneous inasmuch as it contravened provisions of section 257. [*Oriental Benefit and Deposit Society Ltd. v Bharat Kumar K. Shah* (2001) 30 SCL 246 (Mad)].

18. Automatic re-appointment of retiring directors

Section 256(4) provides for automatic re-appointment of retiring directors in certain circumstances. It will come into operation and consequently, a retiring director will get automatically re-appointed, unless certain positive act as prescribed in the sub-section, is done.

If the annual general meeting ends without filling the vacancy of a retiring director, either by re-appointing the retiring director or appointing some other person, that gives rise to the automatic re-appointment of the retiring director.

If the vacancy of the retiring director is not so filled or it is resolved not to fill the vacancy, the annual general meeting will automatically be adjourned and will be held again on the same day in the next week, at the same time and the same place. But if that day is a public holiday, the meeting will be held on the next succeeding day, which is not a public holiday, at the same time and same place, [section 256(4)(a)]. Next succeeding day means the succeeding day, which is not a public holiday. No fresh notice of the adjourned meeting is necessary, because the adjournment is automatic, by operation of law.

If the adjourned meeting also ends without filling the vacancy of the retiring director or without resolving that the vacancy be not filled, the retiring director will get automatically re-appointed even in the absence of any resolution for the re-appointment of the retiring director, if any of the following things does not happen:—

- (a) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost; or

- (b) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed; or
- (c) he is not qualified or is disqualified for appointment; or
- (d) a resolution, whether special or ordinary, is required for his appointment or re-appointment in virtue of any provisions of the Companies Act; or
- (e) the proviso of section 263(2) is applicable to the case, if any of the three positive acts does not occur, namely:—
 - (i) to fill the vacancy by re-appointing the retiring director; or
 - (ii) to fill the vacancy by appointing somebody else instead of the retiring director; or
 - (iii) to pass a resolution to the effect that the vacancy of the retiring director be not filled, and none of the circumstances mentioned in the five clauses of section 256(4)(b) becomes applicable, the retiring director will get automatically re-appointed.

19. Retiring director shall cease to be a director on the conclusion of the annual general meeting in certain cases

Except, in the circumstances mentioned in section 256(4) regarding the automatic re-appointment of a retiring director, he will cease to be a director at the annual general meeting at which his term is to expire at the adjourned meeting as contemplated in section 256(4)(a). The conditions on which the retiring director shall cease to be a director are as under:—

- (i) if the retiring director is not re-appointed but in his place some other person is appointed as director; or
- (ii) it is resolved not to fill the vacancy of the retiring director; or
- (iii) if at the annual general meeting a resolution for the re-appointment of the retiring director has been lost; or
- (iv) if the retiring director has informed the company about his unwillingness to be re-appointed as director.

20. Status of directors in respect of retirement by rotation in case of a private company

Generally, Articles of private companies provides for non-retirement of directors. However, the Articles of Association of a private company which is a subsidiary of a public company should provide for the manner of appointment of non-retirable directors and vest that power in a person or body other than the shareholders, *e.g.*, Board of directors. The Articles need not give the authority for appointing directors of the company in general meetings, the authority can be given to the Board of directors.

The Articles may also provide that the first directors appointed by the Articles shall continue to hold office until their office becomes vacant by resignation, removal, death or otherwise, or they are superseded by appointing other directors in accordance with the provisions of the Articles.

In such a case, the non-retirable directors must be appointed in the manner and by the person/body authorised by the Articles.

In the absence of any explicit provision in the Articles in this regard, the power to appoint directors of the company must be exercised only by such company in general meetings. The provisions of section 255 also do not apply to such a private company unless its Articles of Association expressly provides for the manner of appointment of directors. The rule of retirement of directors by rotation is not applicable to a private company, which is not a subsidiary of a public company, unless its Articles make it applicable.

Therefore, it is open for a private company, which is not a subsidiary of a public company to provide in its Articles, the manner of appointment of and the vacation of office of all its directors. It is permissible for a private company to provide in its Articles that none of its directors is liable to retirement by rotation.

In the absence of anything to the contrary in the Articles, all the first directors of such a private company who have been appointed under the Articles may hold office till the directors are appointed in accordance with the provisions of section 255(2) at the first general meeting held after incorporation but before the holding of the first annual general meeting.

21. Appointment of directors in Government Companies

In the case of a Government Company in which the entire paid up share capital is held by the Central Government or by one or more State Governments or by the Central Government and by one or more State Governments, the provisions of sections 255 and 256 are not applicable. [Notification No. GSR 234, dated 31-1-1978, issued under section 620].

22. Composition of Board of directors of listed company

Pursuant to the Clause 49 of the Listing Agreement covering the Corporate Governance Clause, a listed company shall ensure that its Board of directors shall have an optimum composition of executive and non-executive directors, with not less than 50% of the Board of directors comprising of non-executive directors. The number of independent directors out of 50% non-executive directors would depend on whether the chairman is executive or non-executive. In case of a non-executive chairman, at least one-third of the Board should comprise of independent directors and in case of executive Chairman, at least half of the Board should comprise of independent directors.

ADDITIONAL, CASUAL AND ALTERNATE DIRECTOR

23. Appointment of additional directors

Where the Articles so authorise, the Board can appoint additional directors, if by such appointment, the total strength of the Board is within the limit fixed by the Articles. The appointment may be made at a Board meeting or by a circular resolution. (Specimen of Board resolution has been given in Appendix 2)

24. Tenure of additional director

The person so appointed can act as an additional director up to the date of next annual general meeting. This provision is not meant to enable the company to keep on its Board a person as additional director for an indefinite period of time by not holding the annual general meeting. Section 260, therefore, must necessarily be read with section 166 which stipulates that the annual general meeting be held every year and not more than 15 months shall elapse between the date of one AGM and the next. [*P. Natarajan v Central Government* (2004) 60 CLA 274 (Mad)].

It is open to the Board of directors to appoint additional director if power has been conferred on the Board by the Articles of Association, irrespective of the provisions of section 255, 258, & 259 of the Companies Act. The additional director so co-opted shall hold office only upto the date of the next AGM. The co-option of an additional director in terms of the first proviso to section 260 ceases unless re-appointed on the last day of the next AGM that should have been held. The word 'shall hold office only upto the date of next AGM' mean that such director shall hold office upto the last date on which the next AGM should have been held and not the actual holding of that meeting if it is beyond the statutory period for holding of such meeting. [*Dushyant D. Anjaria v Wall Street Finance Ltd.* (2001) 105 Comp Cas 655 (Bom)].

25. Appointment of additional director needs to be appointed as ordinary director at the next annual general meeting

Since the Board may appoint an additional director to hold office till the date of the next annual general meeting, his appointment needs to be appointed as a normal director by way of an ordinary resolution as a special business at the annual general meeting. (Specimen of resolution at the annual general meeting has been given in Appendix 3)

The provision for an additional director is one which is meant to enable the companies to have the benefit of the services of a person, who otherwise is suitable for serving on the Board, and whose presence in the Board is desirable in the interests of the company till upto the time the next AGM is held. That provision is not meant to enable the company to keep on its Board a person as additional director for an indefinite period of time by not holding the annual general meeting. Section 260, therefore, must necessarily be read with section 166 which stipulates that the AGM be held every year and not more than fifteen months shall elapse between the date of one AGM and the next. [*P. Natranjan v Central Government* (2004) 60 CLA 274 (Mad)]. e-Form 32 for change in the designation of director should be filed by the Company electronically to the Registrar within 30 days from the date of general meeting.

26. Position in a private company

If the Articles of a private company so authorise, additional directors can be appointed in a private company. But since the Articles of a private company can regulate the appointment of directors, as stated in section 255, a private company may not have any provision in its Articles.

If a private company adopts Table A, clause 72 thereof regarding appointment of additional director automatically applies to such a company.

27. Appointment of casual director

If an office of a director is vacated by the person concerned before expiry of his term, the resulting casual vacancy can be filled by the Board only at a meeting. The person appointed will act as director up to the date at which the "original" director would have ceased to be director. This provision does not apply to a private company. The provision, if any, in the Articles will apply. e-Form 32 for appointment of casual director should be filed by the Company electronically to the Registrar within 30 days from the date of appointment.

28. Tenure of casual director

The person so appointed will be eligible to act as a casual director till the remaining tenure of the director in whose place he was appointed by the company. On returning of the Original director, e-Form 32 for cessation of the office of casual director should be filed by the Company electronically to the Registrar within 30 days from the date of cessation.

29. Appointment of an alternate director

The Board may appoint an alternate director only if this is authorised by the Articles. The alternate director will act as a director for a director (original director) during his absence for at least three months from the state in which Board meetings are ordinarily held. This appointment may be made at a meeting of the Board or by a circular resolution. The Articles of a private company may provide for the appointment of an alternate director. (See Appendix 4 & 5)

The original director and the alternate director can remain on the Board so long as the above position continues and there is no need of approval by the company in general meeting. But whenever the "original" director returns to the state in question, the alternate director automatically vacates his office and he may be appointed again when the original director leaves that state. The return of the original director to the state will be enough for the cessation of office of the alternate director whether or not the original director attends a Board meeting. E-Form 32 shall be filed electronically with the Registrar in respect of vacation of office and appointment on every occasion.

Although either the original director or the alternate director can act at a given time, it appears that an alternate director can be appointed only where the maximum strength of the Board permits such addition to the Board.

PROCEDURE FOR APPOINTMENT OF DIRECTORS

The procedure for appointment of directors as explained hereunder will apply to the additional director and others referred to above.

30. Requirement of consent to act as director and filing with the Registrar

A person appointed as director shall give to the company, whether public or private company to act as a director, on plain paper and authorisation to file-e-Form 32, if appointed and shall be attached with the e-Form 32. [Sections 264(2) & 303] The earlier Form 29 has been merged with e-Form 32 vide Notification No. GSR 56(E) dated 10th Feb, 2006.

31. Filing of e-Form 32 to Registrar where additional director or director in a casual vacancy is appointed as an ordinary director at the next annual general meeting

Pursuant to section 303(2) a company shall send to the Registrar a return electronically in an e-Form 32 whenever there is a change among its directors, managing directors, manager or secretary. Thus, whenever a person is appointed to any of the above offices in a company or wherever any change takes place, the company shall file the said e-Form 32.

It has been clarified by the Department that where an additional director or a director in a casual vacancy is appointed as a director at the annual general meeting, a change takes place in the position of the said additional director and director in the casual vacancy and hence after their appointment at the annual general meeting, the company shall file e-Form 32 within 30 days of the date of the annual general meeting.

32. E-Form 32 is not required to be filed if a director is appointed at the same annual general meeting

It has been considered that there will be no change when a director subject to retirement by rotation retires at an annual general meeting and re-appointed as a director pursuant to section 256 and no return in e-Form 32 will be required to be filed with the Registrar of Companies in such cases as per section 303(2).

APPOINTMENT OF DIRECTOR BY SMALL SHAREHOLDERS

Proviso to section 252(1) provides that a public company having paid-up capital of not less than Rs. 5 crore and 1,000 or more small shareholders may have a director elected by such small shareholders in the manner as may be prescribed.

33. Meaning of small shareholder

Small shareholder means a shareholder holding shares of nominal value of Rs. 20,000 or less in a public company. A shareholder holding any number of shares up to Rs. 20,000 will be able to participate in the election. The Central Government has issued Rules in this respect *vide* Notification No. GSR 168(E), dated 9th March, 2001, the text which has been reproduced in Appendix 6.

34. Only a member holding shares of nominal value upto Rs. 20,000 shall be eligible under the category

Explanation to proviso of section 252(1) provides that a small shareholder means a shareholder holding shares of nominal value of Rs. 20,000 or less in a public company. A shareholder holding any number of shares up to Rs. 20,000 will be able to participate in the election. Therefore, the market value of shares has no relevance.

35. Company may appoint itself or small shareholders may propose for the appointment

The Companies (Appointment of the Small Shareholders' Director) Rules, 2001 provides that a company may act *suo moto* to elect a small shareholders' director from amongst small shareholders.

The small shareholders who are not less than 1/10th of total small shareholders may also serve notice to the company and propose name of a person who shall also be a small shareholder of the company.

36. Conditions for notice for proposal for appointment of small shareholders' director should be fulfilled

Small shareholders intending to propose a person shall require to leave a notice of their intention with the company at least 14 days before the annual general meeting. The notice should be supported with the signature of at least 100 small shareholders specifying name, address, shares held and folio number and particulars of share with differential rights as to dividend and voting, if any, of the person whose name is being proposed for the post of director and of other small shareholders proposing such person as a candidate for the post of director or small shareholders.

37. Requirement of consent by the proposed candidate for his appointment

A person whose name has been proposed for the post of small shareholders' director shall sign, and file with the company, his consent in writing to act as a director.

38. Manner of passing resolution in general meeting

The Rules, provides that a listed public company shall elect small shareholders nominee director through the postal ballot. (See Appendix 7)

An unlisted public company may appoint such small shareholders' nominee subject to above conditions if majority of small shareholders recommend his candidature for the post of director in their meeting.

39. Small shareholders' director needs not to retire by rotation

The small shareholders' director need not have to retire by rotation. He shall be appointed for a maximum period of 3 years subject to meeting the requirement of provisions of Companies Act.

On expiry of his tenure, the same person if so desired by small shareholders, may be elected for another period of 3 years.

40. Small shareholders' director shall not be appointed as the Managing or Whole-time Director

Such director shall not be appointed as whole-time director or managing director. However, he will be treated as director for all other purposes.

REMOVAL OF DIRECTORS

The provisions of section 284 relating to the removal of directors are applicable to private and public limited companies.

41. All directors are subject to removal

If no fixed period has been provided for retirement in articles of association of a private company, a director appointed is entitled to continue till he is removed in accordance with provisions of section 284.

Directors can be removed under section 284 by members in general meeting, whether they are subject to retirement or not in a public company.

42. Certain director cannot be removed by a company

The following categories of directors can not be removed by a company under section 284 of the Act:—

- (a) a director appointed by the Central Government under section 408;
- (b) a nominee director of a public financial institution which is by its charter empowered to nominate a person as a director or to remove him notwithstanding any power contained in any other Act;
- (c) a director in a private company holding office for life on 1st April 1952;
- (d) a director coming within the purview of directors appointed according to the principle of proportional representation under section 265 of the Act.

A person appointed as a life director or permanent director by the Articles or by an agreement is nevertheless removable by the company in general meeting and has no security of tenure in office. While the shareholders have no power, apart from that given in the statute or the Articles, to intervene in the management of the company's affairs, this section is designed to enable them to control the directors by their removal.

A company has power under section 284 to remove a permanent director even if articles of association put restrictions on removal of the permanent director.

43. Special notice of resolution for removal may be given by a member

It is a significant right vested with every member that a member who is entitled to attend a general meeting and move a resolution may give special notice of a resolution to remove a director at a general meeting or to appoint somebody instead of the director so removed.

A notice of intention to move a resolution for the removal of a director shall be given in writing. (Specimen of notice has given in Appendix 8).

44. Members' right to propose for removal of a director is a statutory right

The right given by section 284 is a statutory right, which cannot be taken away by the Memorandum, Articles or by any contract or any other document, and if it is sought to be taken away, such a provision will be void. [Section 9]

By virtue of section 284(4), the CLB (now Central Government) has the power to direct a company not to circulate the notice for removal of a director if it was convinced that the provisions of this section were being abused. [*Dabur India Ltd. v Anil Kr. Poddar* (2002) 108 Comp Cas 293 (CLB)].

The Articles of Association generally contain provision regarding removal of directors in the following manners "Subject to the provisions of Articles, the company may by ordinary resolution passed at a general meeting remove any director (not being a director appointed by the Central Government in pursuance of section 408 of the Act) in accordance with the provisions of section 284 of the Act. A director so removed shall not be re-appointed a director by the Board of Directors".

45. A single member can give the special notice irrespective of his shareholding or voting powers

The special notice can be given by even a single member irrespective of the number of shares he holds. The Karnataka High Court has observed in *Karnataka Bank Ltd. v A.B. Datar* (1994) 79 Comp Cas 12 (Kar) that section 284 is an independent provision and the procedure prescribed for removing a director cannot be subordinated to the provisions of section 188.

46. It is not necessary to give reasons or explanatory statement for removal of a director

It is not necessary to give reasons in the special notice given to the company or in the company's notice to the members, or in the resolution proposed by the company's Board itself, for removal of a director.

The provisions of section 173(2) as to the explanatory statement are not applicable in respect of the resolution for the removal, because the company is merely acting in pursuance of a special notice received by it to move the resolution; it is not a resolution proposed by the company. [*LIC of India v Escorts Ltd.* (1986) 59 Comp Cas 548 (SC)].

However, in the case of *Queens Kuries & Loans P Ltd. v Sheena Jose* (1993) Comp Cas 820 (Ker) the High Court has observed that special notice to be given under section 284 must disclose the ground on which the director is proposed to be removed, as the disclosure of the ground for removal is a matter of substance and not of form because the director concerned is entitled to make a representation against the removal.

47. Minimum 14 days clear notice shall be given to the company

The special notice of resolution for removal of a director shall be served on the company at least 14 days before the meeting exclusive of the day on which it is served and the day of the meeting. [Section 190]

48. Company shall serve a copy of special notice for removal to the concerned director

When a special notice of resolution is properly served on a company, a copy thereof shall forthwith be sent to the director concerned as required u/s 284(3). (Specimen of intimation letter has been given in Appendix 9).

Any omission to serve a special notice on the directors sought to be removed constitutes denial of their statutory right of reply and in the absence of such notice to the directors, any resolution for their removal would be vitiated by such omission. [*S. Varadarajan v Udhayem Leasings & Investments P. Ltd.* (2005) 62 SCL 315 (CLB - Chennai)].

49. Concerned director shall be entitled to be heard on the resolution

The director concerned shall be entitled to be heard on the resolution at the meeting. Where the director makes a representation in writing of reasonable length and requests circulation of the same to the members, the company shall unless the representations are received by it too late for it is required to do the following:—

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representations by the company, and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the director may without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting. However, the Central Government is empowered to order, on an application from the company or any aggrieved person, that the representation need not be sent to members nor read at the meeting, if the Central Government is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Central Government may order at the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it. (Appendix 10)

50. Company shall serve a notice of removal to all the members

The company is required to serve the notice of removal received from the members as mentioned in section 190. If it is not possible to send notice of the resolution for the removal of a director or appointment of some other person as director, to all the members individually, it is enough if the notice is given by advertisement in a newspaper of appropriate circulation not less than seven days before the meeting.

Notice of the general meeting to consider a resolution to remove a director may be given in the following as the specimen given in Appendix 11.

51. Passing of resolution for removal and appointment of another director in his place

Where the resolution for the removal of a director is passed at the general meeting, the meeting may appoint another person in place of the director removed if special notice for appointment of some other person has also been served on the company. A director so appointed shall hold office if he had not been removed as aforesaid.

52. Where the vacancy on removal is not filled, the Board shall have powers to fill it?

If another person is not appointed at the said meeting, the Board may fill the vacancy as a casual vacancy as per section 262 at a meeting of the Board. However, the director so removed shall not be re-appointed by the Board.

53. Removal of a non-rotational director of a Government company

Directors appointed by the State Government as a nominee director can be removed by such Government. The Government is entitled to revoke the nomination as a matter of right, which flows from the Articles of Association. Revoking of the appointment by the Government under the Articles is not the same thing as removal of a director by the company under section 284 of the Act. Hence, if the Government revokes the nomination, there is no circumvention of section 284.

54. Removal of director by the Central Government

Under section 388B to 388E, the CLB/Tribunal is empowered to record, on an enquiry, its decision stating therein specifically as to whether or not any director or other officer of the company is a fit and proper person to hold the office of director or any other office connected with the conduct of the management of the company. Upon such a decision, by the CLB/Tribunal, the Central Government shall, by order, remove from the office any director or other officer of the company. The CLB/Tribunal is also authorised to remove a director or any other officer from his office during the pendency of an application made by the Central Government under section 388E for the removal of a director or other officer from his office.

55. Removal of director by CLB/Tribunal

On an application made to it under section 397/398 seeking prevention of oppression or mismanagement, the CLB/Tribunal has the power to reconstitute the Board of the company concerned. In such an event, the directors of the company would cease to be directors. [*Bennett Coleman & Co Ltd. v Union of India* (1977) 47 Comp Cas 92 (Bom)].

56. Civil Court cannot interfere in the matters of removal of a director

The right to remove a director of the company is provided in the Companies Act and it itself provides a procedure for enforcement of such right. Civil Courts cannot interfere with such matters of internal management of the companies. [*Khetan Industries Pvt. Ltd. v Manju Ravindra Prasad Khetan* (1995) 16 CLA 169 (Bom)].

The Court should not be a party to removal of permanent directors (or of any director) of a company by exercising its discretion under section 186 and dispensing with the special notice as required in section 284, in the absence of concrete, precise and specific charges against these directors.

57. Section 284 not applicable on removal of Managing Director

Section 284 does not affect the power of the Board to revoke the appointment of a managing director or any director. Sub-section (1) provides that nothing in the section shall affect any power of the Board to remove a director, which may exist apart from this section.

Nothing in this section shall be taken—

- (a) as depriving a person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director; or
- (b) as derogating from any power to remove a director which may exist apart from this section.

Where no valid notice as required either under article of association or under Companies Act was given to managing director of company, holding Board meetings as well as EGM would be void and subsequent alteration/deletion of article and removal of managing director would be bad in law. [*M.S. Madhusoodhanan v Kerala Kaumudi (P.) Ltd.* (2003) 46 SCL 695 (SC)].

58. Section 284 is an independent section

Section 284 is an independent provision providing for removal of directors and it is available to any shareholder for moving a resolution for removal of a director in meetings called by the company and there is nothing to insist on compliance with the provisions in section 188(2) to call a meeting to move a resolution.

Thus, where on receiving notice for general meeting two shareholders gave separate notice to company intending to move resolution under section 284 for removal of some of the directors, and the company gave notice to shareholders of the notice through advertisement in newspaper, it was held that compliance of section 188 was not necessary. [*Karnataka Bank Ltd. v A.B. Datar* (1994) 79 Comp Cas 417 (Kar)].

Appendix 1

Specimen of Board resolution recording appointment of First Directors

RESOLVED THAT the appointment of Shri ABC, Shri DEF and Shri GHI, who have been named as first directors of the Company in terms of the Articles of Association of the Company and the Form 32 filed with the Registrar of Companies at the time of incorporation, be and is hereby noted and recorded.

Appendix 2

Specimen of Board resolution for appointment of Additional Director

RESOLVED THAT pursuant to the provisions of section 260 of the Companies Act, 1956 and in terms of the Article No. XXX of the Articles of Association of the Company, Shri JKL who has signified his consent, if appointed, to act as a director of the Company, be and is hereby appointed as an additional director of the Company.

Appendix 3

Specimen of General meeting resolution for confirmation of appointment of Additional Director as an Ordinary Director

RESOLVED THAT Shri JKL, who was appointed as an additional director of the Company by the Board of directors and who ceases to hold office under section 260 of the Companies Act, 1956 and in respect of whom the Company has received a notice under section 257 in writing proposing his candidature for the office of director, be and is hereby elected and appointed as a director of the Company liable to retirement by rotation.

Explanatory statement

Shri JKL was appointed an additional director of the Company on XX.XX.XXXX by the Board of directors of the Company. According to the provisions of section 260 of the Companies Act, 1956, he holds office as director only upto the date of the ensuing Annual General Meeting. As required by section 257 of the Act, a notice has been received from member signifying his intention to propose appointment of Shri

JKL as a director along with a deposit of Rs. 500. The Board considers it desirable that the Company should continue to avail itself of his services.

Except, Shri JKL no other directors of the company are concerned or interested in the proposed resolution.

Appendix 4

Specimen of Board resolution for appointment of Alternate Director

RESOLVED THAT pursuant to the provisions of section 313 of the Companies Act, 1956 and in terms of the provisions of the Article No. XXX of the Article of Association of the Company, Shri MNO be and is hereby appointed as an alternate director to Shri ABC during his absence from the state of Madhya Pradesh and who shall vacate his office as and when Shri ABC returns to the said state.

(BY THE GENERAL MEETING)

RESOLVED THAT pursuant to section 313 of the Companies Act, 1956, the Board of directors of the Company be and is hereby authorised to appoint an alternate director to act for a director (hereinafter called 'the original director') during his absence for a period of not less than 3 months from state of Madhya Pradesh and an alternate director shall vacate his office as and when original director returns to the said state.

Explanatory Statement

Section 313 of the Companies Act, 1956 provides that the Board of directors of a company may, if so authorised by its Articles or by a resolution passed by the Company in general meeting, appoint an alternate director to act for a director during his absence from the state of Madhya Pradesh. Since the Articles of Association of the Company do not provide for the appointment of alternate director, the proposed resolution seeks the necessary authority of the general meeting to enable the Board of directors to appoint alternate director as and when necessary arises.

Appendix 5

Specimen for alteration of article for incorporation in the Articles of Association for incorporation of new clause for appointment of an alternate director

The Board of Directors may appoint an Alternate Director to act for a Director (hereinafter called "the original Director") during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held.

An Alternate Director appointed under Sub-Article (a) shall vacate office if and when the original Director returns to the State in which meetings of the Board are ordinarily held.

If the term of office of the original Director is determined before he so returns to the State aforesaid, any provision for the automatic re-appointment of retiring Directors in default of another appointment shall apply to the original, and not to the Alternate Director.

Appendix 6

Companies (Appointment of the Small Shareholders' Director) Rules, 2001¹

In exercise of the powers conferred by section 642 read with section 252 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Companies (Appointment of the Small Shareholders' Director) Rules, 2001.

¹ See section 252 of the Companies Act, 1956.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires,—

- (a) "Act" means the Companies Act, 1956 (1 of 1956);
- (b) "Small Shareholder" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which section 252 of the Act applies.

3. Applications.—These rules shall apply to public companies having—

- (a) paid-up capital of five crore rupees or more;
- (b) one thousand or more small shareholders.

4. Manner of election of small shareholders' director.—(1) A company may act *suo moto* to elect a small shareholders' director from amongst small shareholders or upon the notice of small shareholders, who are not less than 1/10th of total small shareholders and have proposed name of a person who shall also be a small shareholder of the company.

(2) Small shareholders intending to propose a person shall leave a notice of their intention with the company at least 14 days before the meeting under the signature of at least 100 small shareholders specifying name, address, shares held and folio number and particulars of share with differential rights as to dividend and voting, if any, of the person whose name is being proposed for the post of director and of other small shareholders proposing such person as a candidate for the post of director or small shareholders.

(3) A person whose name has been proposed for the post of small shareholders' director shall sign, and file with the company, his consent in writing to act as a director.

(4) The listed public company shall elect small shareholders nominee subject to sub-rules (1), (2) and (3) above through the postal ballot.

(5) The unlisted company may appoint such small shareholders' nominee subject to above conditions if majority of small shareholders recommend his candidature for the post of director in their meeting.

(6) Tenure of such small shareholders' director shall be for a maximum period of 3 years subject to meeting the requirement of provisions of Companies Act except that he need not have to retire by rotation.

(7) On expiry of his tenure, the same person if so desired by small shareholders, may be elected for an another period of 3 years.

(8) Such director shall be treated as director for all other purposes except for appointment as whole time director or managing director.

5. Disqualification.—A person shall not be capable of being appointed as small shareholders' director of a company, if—

- (i) he has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;
- (ii) he is an undischarged insolvent;
- (iii) he has applied to be adjudicated as an insolvent and his application is pending;
- (iv) he has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence;
- (v) he has not paid any call in respect of shares of the company held by him, whether along or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or
- (vi) an order disqualifying him for appointment as director has been passed by a court in pursuance of section 203 and is in force, unless the leave of the court has been obtained for his appointment in pursuance of that section.

6. Vacation of office.—A person appointed as small shareholders' director shall have to vacate the office if,—

- (i) such person so elected, as director of small shareholders ceases to be a small shareholders' director on and from such date on which he ceased to be a small shareholder;

- (ii) he has been rendered disqualified by virtue of sub-rule (1) of rule 5;
- (iii) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call;
- (iv) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;
- (v) he is a partner of any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 295;
- (vi) he acts in contravention of section 299;
- (vii) he becomes disqualified by an order of court under section 203;
- (viii) he is removed in pursuance of section 284.

7. Restriction on number of directorship.—No person shall hold office at the same time as small shareholders' director in more than two companies.

Appendix 7

Specimen of resolution for appointment of Small shareholder's Director

RESOLVED THAT pursuant to the provisions of section 252 of the Companies Act, 1956, and the Companies (Appointment of the Small Shareholders' Director) Rules, 2001, consent be and is hereby given of the small shareholders for the appointment of Mr. X, as a director on the Board of Directors of the Company to represent the small shareholders of the Company, for a period of three years w.e.f., subject to fulfilment of the other requirements of the Companies Act, 1956, except that he shall not retire by rotation."

Explanatory Statement

Section 252 of the Companies Act, 1956 read with the Companies (Appointment of the Small Shareholders' Director) Rules, 2001, provides for the appointment of a director to represent the small shareholders, in the case of a public company having a paid up capital of (i) Rs. 5 crores or more; (ii) 1,000 or more shareholders. Your Company is having a paid-up share capital of Rs. 225 crores and 10,000 "small shareholders", as provided in the *Explanation* to section 252(1) of the Companies Act, 1956. Your Company is listed on the Stock Exchanges at and

The Company has received on, a notice from small shareholders, being not less than one-tenth of the total number of small shareholders, proposing the name of Mr. X, who is also a small shareholder of the company, for being appointed as a Director to represent small shareholders on the Board of Directors of your company. Mr. X, is an Advocate by profession based in Delhi, having Bar experience of 20 years. He is presently aged 50 years. Mr. X has since consented to his appointment. The Company has not received any other nomination. A copy of the notice received in this behalf is sent herewith.

The tenure of office of Mr. X, if elected, will be for a period of 3 years w.e.f. i.e., the date of the meeting. Mr. X, if elected, will not be retiring by rotation. Mr. X does not suffer from any of the disqualifications as mentioned in the Rules under reference. As the Company is a listed company, the proposed resolution for election of Mr. X is to be considered and passed through postal ballot. The necessary papers for facilitating exercise of voting right through postal ballot are sent herewith along with instructions.

None of the Directors is interested in this resolution.

Appendix 8

Specimen of notice to move a resolution for removal of a director

To

The Company Secretary

ABC Limited

Dear Sir,

I/We, the undersigned member(s) of ABC Ltd., give notice pursuant to the provisions of section 284(2) read with section 190 of the Companies Act, 1956 that I/we intend to move at the forthcoming annual general meeting/extraordinary general meeting of the Company an ordinary resolution that Mr. XYZ be removed from the office of director of the Company.

Yours faithfully,

Abha Jaiswal

Appendix 9

Specimen of intimation letter to be given by a company to the concerned director

To

Mr. XYZ

Director of

ABC Limited

Dear Sir,

I enclose a copy of the notice, which has been received by the Company from its member(s). As appears from the notice, a resolution is to be proposed at the next AGM/EGM of the Company for removal, pursuant to the provisions of section 284 of the Companies Act, 1956.

Your attention is drawn to the provisions of sub-section (4) of section 284 [copy enclosed for reference]. In case you intend to make representations against the resolution for your removal, I request you to send the representations so as to reach us by XX.XX.XXXX, so that it may be circulated to the members of the Company. In the event, the representations are not received by the aforesaid date, the same may be read out at the meeting.

Kindly acknowledge the receipt of letter for our reference and record.

Yours faithfully,

For, ABC Ltd.

Abha Jaiswal

Company Secretary

Appendix 10

Specimen of representation letter by concerned director

To

The Company Secretary

ABC Ltd.

Dear Sir,

With reference to your letter No. XXXX and dated XX.XX.XXXX, I hereby enclose my representation with respect to the intended resolution to be moved at the next AGM/EGM of the company for my removal from office as a director of the Company.

I request you to give notification of the representations to all the members of the company in accordance with the provisions of section 284(4) of the Companies Act, 1956.

Yours Faithfully,

XYZ

Director

Appendix 11

Specimen of notice of resolution to be given to all the members

NOTICE is hereby given that an EGM of the company will be held on day, XX.XX.XXXX, at 11.00 A.M. at the registered office of the Company situated at 4th Floor, Silver Ark Plaza, 20/1, New Palasiya, Indore (M.P.) to transact the following business:—

1. To consider and, if thought fit, to pass, with or without modifications, the following resolution as an ordinary resolution, in respect of which a special notice has been received by the Company from a member(s) pursuant to section 284 read with section 190 of the Companies Act, 1956:

RESOLVED THAT Mr. XYZ be and is hereby removed from the office of director of the Company with effect from the conclusion of this meeting.

A written representation with respect to the resolution set out above for the removal of Mr. XYZ as a director have been received from Mr. XYZ in accordance with the provisions of section 284(4) of the Companies Act, 1956. A copy of the representations is enclosed to this notice.

Date. XX.XX.XXXX
Place. Indore (M.P.)

By order of the Board of Directors
MNO
Company Secretary

Chapter 4

Qualifications and Disqualifications of Directors

Synopsis

Important Provisions at a Glance

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1. Share qualifications may be prescribed by Articles of Association
2. Maximum qualification shares
3. Qualification shares must be acquired within a period of two months of appointment of a director
4. Company cannot require a person to acquire the qualifying shares before his appointment or in a shorter period than 2 months
5. Directors exempted from holding the qualification shares
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7. How qualifying shares should be acquired?
8. Failure to hold qualification shares within a period of two months or continue to hold the office of director shall be liable to penalty

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10. No company can dispense with or relax the disqualifications specified in section 274(1)
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14. Disqualification of directors under section 274(1)(g) of the Companies Act, 1956 – Clarification
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17. Application of section 283 on all the companies
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27. Articles may provide that a director may resign at any time on giving notice to the company
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- Appendix 1 The Companies (Disqualification of Directors Under Section 274(1)(g) of the Companies Act, 1956) Rules, 2003
- Appendix 2 Specimen of letter by a company to its directors for confirmation of disqualification under section 274(1)(g) of the Act
- Appendix 3 Specimen of resolution for confirmation of the Board under section 274(1)(g)
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- Appendix 6 Specimen of the Board resolution for acceptance of resignation

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	E-Form Nos.
1.	270	Director's Share Qualification.	
2.	274	Disqualification of directors.	
3.	278	Limit on number of directorship.	
4.	283	Automatic vacation of office of director.	

DIRECTOR'S QUALIFICATIONS

The Companies Act has not prescribed any qualification for appointment as a director in a company. Further there is no age limit under the Act except, in case of a managing or whole-time director, namely, not less than 25 years and not more than 70 years of age. Therefore, any individual person can become a director whatever may be his qualification and age.

However, it has been provided under section 274 of the Act, that a person shall not be capable of being appointed as a director, if he has certain disqualifications.

1. Share qualifications may be prescribed by Articles of Association

Sections 270, 272 and 273 of the Companies Act provides for share qualification for a director if it is required under the Articles of Association of the company. Therefore, a director of a company need not be a shareholder unless the Articles of Association of the company requires that a director must hold certain shares.

2. Maximum qualification shares

If a company opts to prescribe share qualification for its directors, then it must follow the provisions of section 270 of the Act and the nominal value of the qualification shares shall not be more than Rs. 5,000. Any types of shares, equity or preference, may be prescribed as share qualification. The maximum value stated under the Act is the face or nominal value. However, the actual price paid by the director may be higher than the face value. [Section 270(3)]

3. Qualification shares must be acquired within a period of two months of appointment of a director

A director may acquire his qualification share before or after his appointment. If a director is not holding specified qualifying shares before his appointment, he must acquire it within two months after his appointment as a director. [Section 270(1)]

4. Company cannot require a person to acquire the qualifying shares before his appointment or in a shorter period than 2 months

The Articles of Association of a company cannot provide that a director shall acquire his qualifying share/s before his appointment. The Articles of Association of any company also cannot prescribe a period shorter than two months for acquisition of share/s; if prescribed, it will be void (*i.e.*, having no legal force or effect; not legally binding or enforceable) and instead of the period prescribed under the Articles, the period of two months will be applicable. [Section 270(4)]

5. Directors exempted from holding the qualification shares

A director appointed by the Central Government on the Board of any company under section 408 of the Companies Act need not hold qualification shares. [Section 408(4)]

The nominee directors representing those financial institutions that are established by a separate statute of parliament are not required to acquire the qualifying shares by virtue of an overriding provision contained in the concerned statute. Those nominee directors who represent the financial institutions which are established as companies under the Companies Act, are excluded from requirement of the qualifying shares by including in the Articles of Association of the concerned company a suitable provision in this regard.

Similarly, directors who under the Articles of Association of the company are not required to hold qualification shares, need not hold them.

6. Provisions for qualification shares are not applicable on Private companies

Section 273 provides that the provisions of section 270 shall not apply to a private company unless it is a subsidiary of a public company. Thus, a private company, which is not a subsidiary of a public company need not adhere to the provisions of section 270 in regard to the share qualification and it can have its own rules, *e.g.* it may stipulate a shorter or a longer period than the two months or may prescribe an amount more than five thousand rupees.

7. How qualifying shares should be acquired?

It should be noted that the qualifying shares need not be taken from the company, unless the director is named in the Articles as the first director. It is enough if they are taken in the open market, even beneficial ownership is not necessary. But where the Articles provided that the share qualification of a director should be the holding in his own right, the director must not only have the legal right to deal with them, but must have beneficial ownership in them. He may still be the beneficial owner even if he has mortgaged the shares. The registered holder of the shares, though he has transferred them is sufficient compliance with the requirement as to share qualification.

The Registration of qualification shares by the company in its Register in the director's name is essential. Where transfers of shares to the directors of their qualification shares were approved at the Board meeting and they were forthwith elected as directors, though the transfers were actually registered on a subsequent date, it was held that before their appointment the transferees had acquired an absolute right to registration, but they were not qualified persons before actual registration take place and their appointment as directors shall be invalid.

8. Failure to hold qualification shares within a period of two months or continue to hold the office of director shall be liable to penalty

If a director failed to acquire the qualification shares within the two months time, and continue to hold the office of directors thereafter, the office of the director shall be deemed to be vacated [section 283(1) (a)]. In addition to such automatic vacation he would entail a penalty of five hundred rupees per day after the expiry of the two months time till the date up to which the directorship is held *vide* section 272.

DISQUALIFICATIONS OF DIRECTORS

Section 274(1) of the Companies Act, 1956 provides that a person shall not be capable of being appointed as a director in a public limited or private limited company if:—

- (a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- (b) he is an undischarged insolvent;

- (c) he has applied to be adjudicated as an insolvent and his application is pending;
- (d) he has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than 6 months, and a period of five years has not been elapsed from the date of expiry of the sentence;
- (e) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for payment of the call; or
- (f) an order disqualifying him for appointment as director has been passed by a Court or the Tribunal in pursuance of section 203 of the Act and is in force, unless the leave of the Court or the Tribunal has been obtained for his appointment in pursuance of that section;
- (g) such person is already a director in a public company which,—
 - (A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after 1-4-1999; or
 - (B) has failed to repay its deposit or interest thereon on due or redeem its debentures on due date or pay dividend and such failure continues for one year or more:

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of 5 years from the date on which such public company in which he is a director failed to file annual accounts and annual returns under sub-section (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B).

Section 274(2) provides that the Central Government may by notification in the Official Gazette remove disqualification of conviction by a court of any offence involving moral turpitude and sentenced to imprisonment for at least six months and a period of five years has not elapsed and disqualification due to non-payment of call as per clauses (d) and (e) of section 274(1), respectively.

No other body or authority, i.e. court of law or shareholders has powers to remove disqualifications of director except the limited powers of granting dispensation from the disqualifications specified above vested on the Central Government.

Provision of section 274(1)(g) does not make the distinction between the Government nominated directors and other directors. [*Snowcem India Ltd. v. Union of India* [2005] 60 SCL 50 (Bom.)]

9. Private company may provide for additional disqualifications

Section 274(3) states that a private company which is not a subsidiary of a public company, may by its Articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in section 274(1). Thus, a private company, which is not a subsidiary of a public company is free to prescribe in its Articles, additional disqualifications for directors. A person suffering from these could not be appointed as its director.

10. No company can dispense with or relax the disqualifications specified in section 274(1)

Neither a public company nor a private company can dispense with or relax any of the statutory disqualifications specified in section 274(1). A limited power of granting dispensation from the disqualifications specified in clauses (d) and (e) of section 274(1) has been vested in the Central Government.

11. Point of time for disqualification

The Act is silent on the point of qualification,, it does prescribe certain contingencies which disqualify a person from being appointed as a director, and also certain contingencies which result in vacation of office of a director. If the directors are not aware of their disqualification, their acts are not invalid.

12. Directors appointed by the BIFR are exempted from disqualification under section 274(1)(g)

The matter whether directors appointed under section 16(4) of the Sick Industrial Companies (Special Provisions) Act, 1985 by the Board for Industrial and Financial Reconstruction (Board) shall be liable to be disqualified under section 274(1)(g) of the Companies Act, 1956 has been examined in this Department in detail.

Provisions of section 16(5) of SICA, 1985 provide that the special director appointed under section 16(4) of said Act shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 or in any other law for the time being in force or in the Memorandum and Articles of Association or any other instrument relating to the industrial company, and any provision, regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Board.

In view of overriding effect of provisions of section 16(5) of SICA over Companies Act, 1956 it is hereby clarified that Special directors appointed under section 16(4) of SICA shall not be liable to be disqualified for appointment as directors by virtue of section 274(1)(g) of the Companies Act, 1956. [General Circular 11/1 NO.2/8/2001-CLV, dated 25th May, 2001]

13. Directors nominated by the banks/financial institutions are exempted from the disqualification under section 274(1)(g)

1. The Department of Company Affairs *vide* its General Circular No. 2/5/2001-CL.V, dated 22-3-2002 clarified that the provisions of section 274 of the Companies Act, 1956 were amended through Companies (Amendment) Act, 2000, w.e.f. 13-12-2000 and a new clause (g) was inserted to sub-section (1) of this section. Through this clause a director of a public company, which has made defaults in filing of annual accounts and annual returns and in repaying deposits/interests thereon on due date or redeeming its debentures on due date or in paying dividend for period specified in that section, is disqualified to be appointed as a director of other public companies for a period of five years from the date on which such public company(ies) so defaulted.

2. A high proportion of the companies had been defaulting in filing the annual accounts and annual returns and a large number of companies were defaulting in repayment of deposits/interest thereon and in redemption of debentures which put investor to lots of hardships and the remedial action including a deterrent punishment to the errant directors was essential. But ironically, the errant directors were not only continuing in the defaulting companies but becoming directors in other companies too. It was in this context that in the Companies Act, 1956 the new sub-section 274(1)(g) was inserted and the RBI also took some remedial measures.

3. The intention and purpose of the above amendment was to disqualify the errant directors, protect the investors from mismanagement, ensure compliance in filing of annual accounts and annual returns which are the means of disclosure to all the stakeholders, increase the compliance rate of filing of the statutory documents and infuse good corporate governance in the regulation of corporate affairs in the country.

4. The Department, however, has received representations from Public Financial Institutions, Government owned financial companies and other Financial Institutions and Companies in respect of these provisions. The Banking Division in the Finance Ministry has also supported the apprehension of the Financial Institutions. The representations have been considered carefully keeping in view on the one hand, the need for strict compliance with the provisions of the clause (g) of sub-section (1) of section 274 of the Companies Act, 1956 and on the other hand the *non-obstante* clause in statutes of some of the Public Financial Institutions and the special situation of the nominee directors of Public Financial Institutions/Banks and the nominees of Central and State Government companies.

5. The Government has decided to: (i) clarify the legal position in respect of the Public Financial Institutions/Banks having *non-obstante* clause in their statute (ii) to give some relief to the nominees of the Public Financial Institutions/Banks/Central and State Government; and (iii) to exempt Government Companies from the applicability of the provisions of section 274(1)(g) of the Companies Act, 1956.

6. While considering the applicability of the provisions of section 274(1)(g) of the Companies Act, 1956, the Government has taken into account the following points:—

- (i) In addition to protecting the interests of the Public Financial Institution/Bank which they represent, the Nominee Directors are also expected to serve the best interest of sound public policy and bring about higher levels of corporate governance.

- (ii) In view of implicit disqualification in section 274(1)(g), qualified and experienced professionals, both official and non-officials, suitable for being appointed on the Boards of assisted concerns may not agree/available, thus adversely affecting the interests of the Financial Institutions.
- (iii) Presence of the Nominee Directors on the Boards of assisted concerns and close monitoring through them of all the affairs of the assisted concerns is far more desirable when the company is in default to the Banks/Financial Institutions.

7. However, the Government hereby further clarifies that the Nominee Directors of Public Financial Institutions/Banks/Government should in order to avail the reliefs granted are expected to comply with the following:—

- (i) The Nominee Directors are expected to work assiduously towards observance of good corporate governance practices in the company with due regard to the legitimate interests of the various stakeholders. The various provisions relating to good corporate governance have been introduced in the Companies Act/Rules/Regulations and clause 49 of the Listing Agreement introduced by the SEBI. The Nominee Directors are expected to study these provisions of corporate governance and have them implemented.
- (ii) Ensure that the operations of the company are conducted in consonance with public policy.
- (iii) Ensure strict compliance in letter and spirit of all the statutory provisions in particular the provisions of the Companies Act and the regulations, clarifications, etc. issued thereunder. It is the duty of the Nominee Directors to fully acquaint themselves in the relevant provisions of the Company Law and ensure that measures are instituted to monitor and certify that these statutory provisions are being observed.
- (iv) The Nominee Directors should see that important committees of the Board of directors are constituted and are functioning effectively such as Audit Committee, Nominations Committee, Remuneration Committee, etc. The Nominee Directors are expected to seek membership of these important committees and through their active participation in such committees ensure that the objectives of setting up these committees are being achieved.
- (v) The Nominee Directors are expected to regularly attend and actively participate in the proceedings of the Boards and in committee on which they are included. Their frequent absence for insufficient reasons from the meetings of the Board of Directors/Committees would negate the purpose for which the Nominee Directors have been nominated by the Institutions and they would not be able to perform the various responsibilities listed out in this paragraph.
- (vi) Duly safeguard the interest of the Government/Banks/Financial Institutions, which they represent. Ensure proper utilization of financial assistance by the assisted company and prevent any misuse/diversion of funds by the promoters/management of the companies.
- (vii) Provide adequate feedback to the nominating Institutions/Banks/Companies on the affairs and operations of the assisted concerns.
- (viii) The Financial Institutions are expected to closely monitor the participation by the Nominee Directors in the Boards/Committees as above and to ensure that they are discharging their responsibilities as listed out above. In case any Nominee Director is failing to discharge his/her responsibilities the Institutions are expected to take steps to replace him/her. The Institutions are also expected to send a six monthly report to the DCA bringing out the steps taken by them to ensure that their Nominee Directors are discharging their responsibilities. The Financial Institutions should also in a separate section of their Annual Report clearly bring out the measures instituted by them to ensure that the system of Nominee Directors is functioning effectively.

8. Accordingly, it is clarified that:—

- (i) Nominee Directors appointed by the Public Financial Institutions and Companies established under the Acts of Parliament having *non-obstante* provisions over the Companies Act, 1956, like IDBI, LIC, UTI, IIBI, etc., in their respective statutes shall not be liable to be disqualified for appointment as directors by virtue of section 274(1)(g) of the Companies Act.

- (ii) Nominee Directors appointed on the Boards of assisted concerns or other public companies by (a) Public financial institutions within the meaning of section 4A of the Companies Act, 1956; (b) Central or State Government; and (c) Banking companies are also exempt from the provisions of section 274(1)(g) of the Companies Act, 1956.

9. All Regional Directors/Registrars of Companies are, therefore, directed not to take action under section 274(1)(g) of the Companies Act, 1956 in respect of the above directors.

14. Disqualification of directors under section 274(1)(g) of the Companies Act, 1956 – Clarification

The Department of Company Affairs has issued a Circular No.5 of 2003 F. No. 2/5/2001-CL.V, dated the 14th of January, 2003 states that in continuation of this Department's Circular No. 8/2002 dated 22nd March, 2002, it is hereby clarified that default of privately placed bonds/debentures/debt instruments by public financial institutions will not be considered as default to disqualify directors u/s 274(1)(g) of the Companies Act of 1956.

15. The Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003

The Central Government has framed and notified the above rules by Notification No. GSR 830(E), dated 21-10-2003. (The text of the rules may be seen in Appendix 1) The Rules make it clear that the disqualification arising out of clause (g) of section 274(1) applies to appointment as well as re-appointment of directors.

As it has been clarified in the Rules that the disqualification will attract the appointment as well as reappointment of directors in any other public company, on and from 21-10-2003 a disqualified director within the meaning of clause (g) of section 274(1) will also become ineligible for reappointment as director in another public company in which he is already a director.

These rules shall apply to all public limited companies registered under the Companies Act, 1956.

15.1. Commencement of the disqualification (Rule 3)

All the existing directors of a public company in default other than the directors who have been exempted from application of section 274(1)(g) by the Central Government, will be disqualified for appointment or reappointment as director in any other public company from the date on which the default committed by the above said company is deemed to crystallise into a disqualification of the directors prescribed under section 274(1)(g).

15.2. Date when the directors of defaulting company will become disqualified (proviso to Rule 3)

In respect of a public company which has defaulted in filing annual accounts and annual return for three continuous financial years or and after 1-4-1999, the date of disqualification will commence on the due date for filing the annual accounts and annual returns relating to the third consecutive financial year.

As regard a public company which has failed to repay any deposits or pay interest thereon on due date, redeem the debentures on due date or pay dividend declared within the prescribed period and such failure continues for one year or more, the disqualification will commence immediately on the expiry of that one year.

While framing the Rules it would have been kept in mind by the Central Government that the default in respect of debentures etc. may occur due to heavy losses suffered by the companies due to factors beyond the control of the companies and the same may not due to any fault on the part of directors. The losses may be caused by (i) sudden fire, earthquake or other natural calamities like floods; (ii) steep rise in prices of imported or indigenous raw-materials or in duties which cannot be passed on to consumers; (iii) technological obsolescence; (iv) out break of war in the customer-country even at home front; (v) adverse movement of foreign exchange etc. Disqualifying of directors in such cases is not justified.

There are some cases where the company's office(s) might be sealed or the relevant records might be seized by Government authority and the directors in spite of their best intention, cannot get sufficient relevant papers/information for finalising accounts or annual returns. The statutory presumptions underlying section 274 (1)(g) that all defaults are caused due to deliberation or negligence of the directors is therefore without merit.

It is not fair to disqualify a person to become a director of another company merely because the company in which he is a director has failed to comply with certain formalities or repayment of deposits etc. The disqualification would in particular, be unjustified for a non-executive director who is not in-charge of day-to-day management of the company.

The right course would be that where a company fails to file annual returns and annual reports or fails to repay deposits, redeem debentures, pay dividend etc., it should be under an obligation to report the matter to the Company Law Board/ Tribunal, which after affording an opportunity to the company and the directors concerned to explain the reasons thereof, may decide the case and impose restrictions/ disqualification deemed necessary.

15.3. Disqualification will not attach to a director if he resigns his office earlier

The language of the Act as well as of the Rules seems to suggest that all persons who are directors on the last due date for filing both the documents (Accounts and Annual Returns) in the third year beginning on or after 01.04.1999 shall be disqualified.

It follows from the above that any director who ceased to be director prior to this due date will not be disqualified. At the same time, any one who became director even after the first or second default date and who continued to be director on the third default date will attract disqualification.

The latter proposition could not be the legislative intent as it also ropes in director(s) who might have joined the Board a few days prior to the third default date. The legislative intent seems to be to disqualify persons who were directors continuously on three successive default periods, and others. Similar is the situation in respect of default referred in sub-clause (B) of section 274(1)(g). Hence authoritative clarification on this point is necessary.

It will be seen from the foregoing that the disqualification will not attach to the director of a defaulting company if they resign their office any time before the default of the company crystallises into a disqualification on the directors. In other words a director in a defaulting company may save himself from the stigma of becoming ineligible for appointment or reappointment as director if he resigns from the company as under:—

- (a) In the case of a company in default of filing annual accounts and annual returns, he can resign any time during the third consecutive financial year of default and before the due date of filing the said documents with the Registrar as explained in detail earlier.
- (b) In the case of a company in default of non-payment of deposit or interest thereon on due date, failure to redeem debentures on due date or pay the dividend declared within the prescribed period, a director in that company may leave the Board of that company at any time during the period of one year from the occurrence of the default and before the expiry of that year.

15.4. Directors to ensure submission of report on the relevant matters at Board meetings

In view of the serious consequences that may be fall on a director in a defaulting public company when the default becomes a disqualification for the director and in the interest of the "outside" and "independent" directors on the Board of directors of public companies, it is desirable that a report on the performance of the company to meet financial obligations covered in section 274(1)(g) may be placed before every Board meeting for information of directors and in respect of other matters the Board may be informed at the beginning of every year. Listed companies are already required to comply with more or less the above requirements as per clause 49 of Listing Agreement.

The language of the Act as well as of the Rules seems to suggest that all persons who are directors on the last due date for filing both the documents (Accounts and Annual Returns) in the third year beginning on or after 01.04.1999 shall be disqualified.

It follows from the above that any director who ceased to be director prior to this due date will not be disqualified. At the same time, any one who became director even after the first or second default date and who continued to be director on the third default date will attract disqualification. The latter proposition could not be the legislative intent as it also ropes in director(s) who might have joined the Board a few days prior to the third default date. The legislative intent seems to be to disqualify persons who were directors

continuously on three successive default periods, and others. Similar is the situation in respect of default referred in sub-clause (B) of section 274(1)(g). Hence authoritative clarification on this point is necessary.

15.5. Duty of statutory auditor to report on disqualification (Rule 4)

The Council of the Institute of Chartered Accountants of India (ICAI), has revised the format of auditor's certificate under section 274(1)(g) of the Companies Act, 1956. It may be noted that a sub clause (f) had been added to section 227(3) of the Companies At, 1956 by the Companies (Amendment) Act, 2000. In terms of the said clause, the auditors are required to examine and report whether any of the directors of the company under audit is disqualified to be appointed as directors in terms of the requirements of section 274(1)(g) of the Companies Act, 1956. It would be evident that clause (f) of section 227(3) was aimed at improving the corporate governance practices in the Indian corporate world and bring to light such delinquent directors who had failed in fulfilling the duties cast by them under the very statute.

Section 227(3)(f) of the Act provides that the auditor shall, in his report on the accounts of the company, *interalia*, state whether any director is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274. Rule 4 of the Rules further requires the auditor to furnish a certificate to the members each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment as director or not.

For the satisfaction of the auditors the company has to submit necessary evidences like own statement of the concerning directors for each of the companies in which they hold directorship and the confirmation made by the Board. (Appendix 2 and 3)

15.6. Duty of the company to intimate disqualification to the Registrar (Rule 5 & 5A)

Where a public company commits any of the defaults enumerated in clause (g) of section 274(1) of the Act and when each such default crystallises into a disqualification for the directors as outlined above, the company is required to file a return in e-Form DD-B electronically to the Registrar of Companies containing the names and addresses of all the directors of the company at that time other than the directors exempted by the Central Government. The above e-Form shall be filed within 30 days of the date of crystallisation of the default of the company into a disqualification. Failure to do so would make the officers of the company listed in section 5 of the Act as officers in default.

The requirement of furnishing in e-Form DD-B names and address of all the directors of the company "during the relevant financial years" negates the intention of identifying directors holding directorships continuously throughout the default period. The correspondent's interpretation that the disqualification will attach only to persons holding directorship continuously throughout the period (3 year and 1year as the case may be) needs to be confirmed by the Central Government, to save harassment of company-directors.

On receipt of e-Form DD-B, the Registrar shall register the document and make available for inspection to the public and the Ministry of Company Affairs who shall place all the required particulars on its web-site which will remain there for five years. The Central Government may also publish the names of the disqualified directors in such manner as it may consider appropriate. (Appendix 1)

15.7. Additional form to be filed by every director on his appointment or reappointment in a public company (Rule 9)

Rule 9 of the Rules under section 274(1)(g) also required that every director in a public company shall file a Form DD-A before he/she is appointed or re-appointed.

15.8. Application for seeking exemption for disqualifications

New Clause 8A has been inserted by the Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2006, *vide* Notification No. GSR 133(E) dated 3-3-2006, which provides that an application can be made to the Central Government in e-Form DD-C electronically for seeking exemption from disqualification of a director (Appendix 1).

15.9. Punishment for contravention (Rule 11)

The company and every officer of the company who is in default and such other person, who contravenes any of the provisions of the Rules, shall be punishable with fine upto Rs. 5,000 and a further fine upto Rs. 500 per every day of continuing contravention.

15.10. Enforcement of the rules and action to be taken by a public company

The Rules have come into force with effect from 21-10-2003, the date of notification. In this connection it may be noted that the provisions in section 274(1)(g) of the Act have come into effect from 13-12-2000. The date of coming into force of the Rules is important only in respect of the following matters:—

- (i) As it has been clarified in the Rules that the disqualification will attract the appointment as well as reappointment of directors in any other public company, on and from 21-10-2003 a disqualified director within the meaning of clause (g) of section 274(1) will also become ineligible for reappointment as director in another public company in which he is already a director.
- (ii) The Auditor shall give a certificate each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment/reappointment as director or not, in addition to complying with the provision in section 227(3)(f) as already referred.
- (iii) Every director is required to file Form DD-A with the Company before he is appointed or reappointed as director in a public company.
- (iv) Whenever a public company commits a default of the nature specified in clause (g) of section 274(1), the company shall immediately after the due date of the respective default, when it would attract disqualification for a director, file e-Form DD-B electronically with the Registrar of Companies within 30 days of such due date.

CEILING ON NUMBER OF DIRECTORSHIPS

Section 275 of the Act provides that no person, shall hold directorship in more than 15 companies. In calculation of 15 companies pursuant to the provisions of section 275 the following companies shall be excluded:—

- (a) a private company which is not a subsidiary/holding company of a public company;
- (b) an unlimited company;
- (c) an association not carrying on business for profit — section 25;
- (d) if he is an alternate director in another company.

16. Penalty

Any person who holds office, or acts, as a director in more than 15 in contravention, of the provisions shall be punishable with fine up to Rs. 50,000. [Section 279]

DEEMED VACATION OF OFFICE BY DIRECTORS

17. Application of section 283 on all the companies

Conditions given in section 283 relating to the automatic vacation of the office of a director is applicable to all the companies, whether it is a public limited or a private company. As per section 283, a person will cease to be a director in a public limited or private limited company if:—

- (a) he fails to obtain qualification shares, if any, within two months of his appointment or at any time ceases to hold, the qualification shares, if any required of him by the Articles of the company;
- (b) he has been found to be of unsound mind by a Court of competent jurisdiction;
- (c) he applies to be declared as an insolvent;
- (d) he has been adjudged an insolvent;
- (e) he is convicted by a court of any offence involving moral turpitude and sentenced to imprisonment for not less than six months;
- (f) he fails to pay any call in respect of the shares of the company held by him, whether alone or jointly, within six months from the last day fixed for such payment unless the Central Government has removed the said disqualification;
- (g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

- (h) he or a firm in which he is a partner or a private company in which he is a member or a director, accept a loan or any guarantee or security from the company in contravention of section 295 (This is not applicable in a pure private limited company);
- (i) he fails to give disclosure in terms of section 299;
- (j) he becomes disqualified under section 203;
- (k) he is removed under section 284; or
- (l) having been appointed a director by virtue of his holding any office or other employment in the company, he ceases to hold such office or other employment in the company.

Section 283(1)(f) creates a statutory liability which is not contemplated under the common law. A statutory right or a statutory disqualification created under a special statute leaves no manner of doubt that an application in relation thereto would lie before a company court. Automatic cessation of the office of the director of a company has a direct nexus with the functions of the company itself. [*K. Venkat Rao v Rockwood (India) Ltd.* (2002) 46 CLA 243 (AP)].

18. Postponement of effect of certain disqualifications

The disqualifications stated under sections 283(1)(d), 283(1)(e) and 283(1)(j) shall not take effect:—

- (a) for thirty days from the date of the adjudication, sentence or order;
- (b) where an appeal or petition is preferred within the 30 days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of 7 days from the date on which such appeal or petition is disposed of; or
- (c) where within the 7 days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

19. Exemptions to the directors appointed by the Financial Institutions and the Central Government

Section 283 concerning automatic vacation of office by directors does not apply to the directors appointed by the Financial Institutions and Government directors under section 408.

20. Freedom of private company to prescribe additional grounds

A private company which is not a subsidiary of a public company may, by its Articles, provide, that the office of director shall be vacated on any grounds in addition to those specified in (i) above. [Section 283(3)].

Where the Articles of a company provided that the office of a director shall *ipso facto* be vacated if for any reason he becomes incapable of acting as a director, it was held that the Articles contemplated some incapacity such as illness, long absence, imprisonment, insanity or any other reason. It could not be said that indebtedness of a director towards the company would incapacitate him. Where a director of a private company acts in contravention of section 299, he vacates his office under section 283(1)(i) although the resolution in which he is interested and on which he votes may not be valid under section 300.

21. Vacation of office is automatic on the happening of an event involving disqualification

Where a director has attracted any of the disqualification mentioned in section 283(1), he shall cease to be a director forthwith on the happening of any event involving the disqualification and the Board have no power to waive the event or to condone the offence or act which cause the vacation of the office.

22. Action to be taken by the directors on automatic vacation of office

The vacation of office is automatic, it does not require any confirmation by the Board or a meeting of members to become effective. The directors have nothing to do with the vacation of the office by an event over which they have no control, and with which they should satisfy themselves that the fact has happened if the fact to be put in issue.

The question whether a director's office had been vacated is one under which no doubt he is entitled to be heard. But the Board has no power to decide the question and any proceedings taken by the director to establish his right to the office must be determined according to whether or not disqualification has in fact

arisen. The view, which the Board has taken in the matter, whether with or without hearing the director is immaterial.

23. The Act does not prevent for immediate re-appointment of such director

The Companies Act does not prevent his immediate re-appointment if the disqualification has come to an end. If the disqualification is of a continuing character he cannot be re-elected till such disqualification continues.

24. Penalty

If a person functions as a director when he knows that the office held by him has become vacant on account of any of the disqualifications specified above, he shall be punishable with fine upto Rs. 5,000 for each day on which he so functions as a director. [Section 283(2A)]

25. Vacation of office from absents from the Board meetings

Director will lose his office of director if he absents himself from three consecutive meetings of the Board of directors or from all meetings for a continuous period of three months, whichever is longer, without obtaining leave of absence.

It was held in the case of *Permanand Choudhary v Shukla Devi Mishra* (1990) 67 Comp Cas 45 (MP) that where question arises whether a director's office has become vacant by reason of a director absents himself from Board meetings, the M.P. High Court observed that here we have to go by the provisions of section 283(1)(g) which does not require any such hearing should be given, and the vacation is automatic.

In the case of *Bharat Bhushan v H.B. Portfolio Leasing Ltd.* (1992) 72 Comp Cas 20 (Del), it has been held that the vacation of office under section 283(1)(g) of the Act is automatic and it does not contemplate the passing of any Board resolution to the effect that the office of the director has been vacated by a particular director nor does it provide for giving the director an opportunity to show cause for that purpose.

When the company alleged that the plaintiff had ceased to be the director as he did not attend three consecutive meetings and the plaintiff claimed that two meetings were not held and notice of third meeting did not reach him and in subsequent general meeting he was not re-elected, subsequent non-re-election was to be taken into account by the Court and plaintiff could not continue as director—[*Devi Talkies (P.) Ltd. v. V.R. Parthasarathi Iyengar* [1982] 52 Comp Cas 242 (Mad.)].

In order to avoid the vacation of office on account of absence from the meetings of the Board it is necessary that the leave of absence from the Board is obtained by requesting to the Board in writing for the purpose. A Letter by a director asking for leave of absence may be sent in the form given in Appendix 4.

26. Vacation of office for contravention of non-disclosure of interest.

Vacation of office for contravention of section 299 is a mandatory consequence and neither the Board nor the company has power to interfere in it, even the Tribunal or Court has powers to relieve the director if contravention is established. Even if the director disputes it, he should first vacate the office and then resort to the Court for seeking a declaration that there was no contravention and therefore, he could not be deemed to have vacated the office.

Section 283 only sets out the circumstances on the occurrence of which the office of the director shall become vacant. The section does not counterplate any application being made to the company Court either to declare that the office has been vacated. The Company court cannot therefore, entertain a petition to declare that the petitioners continues to be a director and that he has not vacated the office. [*K. Radhakrishnan v Thirumani Asphalts & Flats (P) Ltd.* (98) 28 CLA 396 (Mad)].

RESIGNATION BY A DIRECTOR

Neither the Companies Act nor the Table A contains provision regarding resignation by a director. Moreover, section 283 also does not include resignation as one of the grounds for the vacation of office of a director. It is an inherent right of any person to render resignation and he cannot be compelled against his wishes to continue to function in the office for a day longer than he desires. The learned judges have held that vacation of office of a director by resignation cannot be a ground to be included in the Articles of a public company.

27. Articles may provide that a director may resign at any time on giving notice to the company

It is appropriate to include a provision in the Articles of Association in the following way:

"Any director of the company may at any time resign his directorship in writing under his hand addressed to the chairman of the Board, and the office of such director shall, except in the case of managing director or whole-time director, become vacant when the letter of resignation is received by the company. No acceptance of such resignation shall be necessary."

Once a resignation letter is submitted to the board, the date on which the intention to relinquish post is communicated to board would be the date from which the director ceases to be a director of the company. [*Mother Care (India) Ltd. v Prof. Ramaswamy P. Aiyar* (2004) 51 SCL 243 (Kar.)].

28. No need for acceptance of resignation by the Board

A director may at any time resign his office of director. Since there is no provision making acceptance of resignation necessary, a director vacates office on giving notice of his resignation. There will be no need that the resignation should be accepted by the Board of directors at the meeting. A letter of resignation of office by a director may be sent by way of letter as shown in Appendix 5.

The position is the same even if the Articles require that the vacation of office is not to take effect unless the directors pass a resolution to the effect that the director has vacated his office. Resignation takes effect from the date of the resignation letter. Where a resignation states that it is to take effect on acceptance, or the Articles so require, acceptance is necessary to end the tenure of office. Any form of resignation, whether oral or written, is sufficient, provided the intention to resign is clear.

When a director has tendered his resignation and the Board of directors has accepted it such director cannot be held liable for liabilities incurred by the company after the date of acceptance of his resignation, except the liability incurred by him for purchase of company's shares and nothing more. A director can tender his resignation unilaterally, without filing e-Form 32 and without sending notice to registrar. All that the director has to do is to send in writing a letter informing either the Chairman or the Secretary of the company of his intention to resign from the office of director.

29. Filing of e-Form 32 in case of winding up of company

A company has a statutory duty in terms of section 303(2) to file with the Registrar of Companies a Return in e-Form 32 with respect to any change among its directors. Where the company has been ordered to be wound up, this statutory duty shall fall upon the official liquidator, who will fulfill it with the leave of the winding up court as, in such cases, provisions of section 446(1) shall be attracted. [*V. Thangavel v Associated Business Credits Ltd. & ORS* (2006) 71 CLA 250 (CLB)].

30. Effect of the resignation

In the absence of any indication, a resignation takes effect immediately. However, the resignation will not relieve him from any liability, which he may have incurred while in office.

In *Krishna Bhoopal v Sanam Jhansi Devi* (2003) 113 Comp. Cas 363 (AP) it was held that by tendering resignation from the office of director after receiving the statutory notice of dishonor of the cheque issued by the director, the director cannot escape liability under section 138 of the Negotiable Instrument Act.

31. Action to be taken by the company after resignation

After the resignation is received and the chairman of the Board has noted it, a letter informing of the receipt of the resignation will be sent to the director concerned. The Registrar of Companies shall be informed of the resignation of the director from the directorship by way of filing Form 32 with the Registrar of Companies and the entry of the date of cessation will be made in the Register of directors.

At the next Board meeting, the letter of resignation will be placed before the Board and that fact will be recorded in the minutes of the meeting. It is common to place on record appreciation of the services of the concerned director. Draft of the resolution to be recorded in the next meeting has been given in Appendix 6.

Appendix 1

The Companies (Disqualification of Directors Under Section 274(1)(g) of the Companies Act, 1956) Rules, 2003¹

In exercise of the powers conferred by clause (b) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules to carry out the purpose of clause (g) of sub-section (1) of section 274 of the said Act, namely:—

1. Short title, commencement and extent.—(1) These rules may be called the Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003.

(2) These rules shall come into force from the date of their notification in the Official Gazette.

(3) These rules shall apply to all public limited companies registered under the Companies Act, 1956.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) "disqualifying company" is the company in which the default has occurred on account of which a director stands disqualified;

(b) "appointing company" is the company in which an individual is seeking appointment as a director, including re-appointment as director.

3. Disqualifications under clause (g) of sub-section (1) of section 274 of the Companies Act, 1956.—

(a) Whenever a company fails to file the annual accounts and annual returns, as described in sub-clause (A) of clause (g) of sub-section (1) of section 274, persons who are directors on the last due date for filing the annual accounts and the annual returns for any continuous three financial years commencing on and after the first day of April, 1999, shall be disqualified.

(b) If a company has failed to repay any deposit, irrespective of the enactment, rules or regulations under which the deposits have been accepted by the companies, or interest thereon, or redeem its debentures, or pay any dividend declared on the respective due dates, and if such failure continues for one year, as described in sub-clause (B) of clause (g) of sub-section (1) of section 274, then the directors of that company shall stand disqualified immediately on expiry of that one year from the respective due dates:

Provided that all the directors who have been directors in the relevant year, from the due date to the expiry of one year after the due date, will be disqualified:

Provided further that disqualification on account of the reasons cited under this Rule shall also apply to the reappointment as a director.

Explanation.—For the purpose of this rule, it is clarified that non-payment of dividend referred to in sub-clause (B) of clause (g) of sub-section (1) of section 274 due to the reason of dividend not being claimed or kept in separate bank account as required under section 205A of Companies Act, 1956 or paid into Investors Education & Protection Fund as required under section 205C of that Act shall not be deemed to be a failure to make payment of dividend.

4. Duty of Statutory Auditor to report on disqualification.—

(a) It shall be the duty of statutory auditor of the appointing company as well as disqualifying company, as required under section 227(3)(f) to report to the members of the company whether any director is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274 and to furnish a certificate each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment as a director or not.

¹ Notification No. GSR 830(E), dated 21-10-2003.

- (b) It shall be the duty of the statutory auditors of the "disqualifying company" as required in section 227(3)(f) to report to the members of the company whether any director in the company has been disqualified during the year from being re-appointed as director, or being appointed as director in another company under clause (g), of sub-section (1) of section 274.

5. Duty of company to intimate disqualification.—Whenever a company fails to file the annual accounts and returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as described in clauses (A) and (B) of clause (g) of sub-section (1) of section 274, the company shall immediately file a return in duplicate in Form 'DD-B', prescribed under these rules for this purpose, to the Registrar of Companies, furnishing therein the names and addresses of all the Directors of the company during the relevant financial years:

Provided that names of such directors who have been exempted from application of Section 274(1)(g) by the Central Government, from time to time, shall be excluded.

Provided further that no unusual abbreviations or short forms shall be used in filling up the Form 'DD-B', which shall give such details as may be necessary to distinguish and identify each director without any ambiguity.

¹[5A. The FORM DD-B prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under section 610A of the Companies Act, 1956 (1 of 1956)]

6. Failure to intimate disqualification shall render director as officer in default.—When a company fails to file the **Form 'DD-B'** as above within 30 days of the failure that would attract disqualification under section 274(1)(g), officers of the company listed in section 5 of the Companies Act, 1956 shall be officers in default.

7. (a) Upon receipt of the **Form 'DD-B'** in duplicate under rule 5, the Registrar of Companies shall immediately register the document and place one copy of it in the document file for public inspection.
- (b) The Registrar of Companies shall forward the other copy to the Central Government.

8. Names of the disqualified directors on the website etc.—

- (a) The Central Government shall place on the website of the Department of Company Affairs the names and addresses and such other details including names and details of the companies concerned, as may be necessary, in respect of all the disqualified directors.
- (b) The Central Government may also publicize the names of disqualified directors in such manner as it may consider appropriate.
- (c) The Central Government shall take such steps as may be required to update its web-site to ensure that name of the person, in whose respect disqualification period has expired after 5 years, is deleted from the web-site.

²[8A. The FORM DD-C prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under section 610A of the Companies Act, 1956 (1 of 1956).]

9. Duty of every director.—Every director in a public company registered under the Companies Act, 1956 shall file Form 'DD-A', prescribed under these Rules, before he is appointed or re-appointed.

10. If any question arises as to whether these rules are or are not applicable to a particular company, such question shall be decided by the Central Government.

11. Punishment for contravention of the rules.—If a company or any other person contravenes any provision of these rules for which no punishment is provided in the Companies Act, 1956, the company and every officer of the company who is in default or such other person shall be punishable with fine which

1 Inserted by the Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Amendment Rules, 2006, vide Notification No. GSR 133(E) dated 3-3-2006.

2 *Ibid.*

may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first, during which the contravention continues.

12. On the commencement of these rules, all rules, orders or directions in force in relation to any matter for which provision is made in these Rules shall stand repealed, except as respects things done or omitted to be done before such repeal.

¹[13. The electronic form shall be authenticated by the authorised signatories using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000).]

14. The Forms prescribed in these rules, when filed in physical form, may be authenticated by authorised signatory by affixing his signature manually.]

FORM DD-A

Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003

Intimation by Director

[Pursuant to Section 274(1)(g)]

Registration No. of Company

Nominal Capital Rs.....

Paid-up Capital Rs.

Name of Company

Address of its Registered Office.....

To

The Board of Directors

of

I son/daughter/wife of resident of
..... director/managing director/manager in the company hereby give notice that I am/was a
director in the following companies during the last 3 years:—

Name of the Company	Date of Appointment	Date of Cessation
1.		
2.		

I further confirm that I have not incurred disqualification under section 274(1)(g) of the Companies Act, 1956 in any of the above companies, in the previous financial year, and that I, at present, stand free from any disqualification from being a director.

or

I further confirm that I have incurred disqualifications under section 274(1)(g) of the Companies Act, 1956 in the following company(s) in the previous financial year, and that I, at present stand disqualified from being a director.

Name of the Company	Date of Appointment	Date of Cessation
1.....		
2.....		

Signature (Full Name)

Dated this..... day of

¹ Inserted by the Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Amendment Rules, 2006, vide Notification No. GSR 133(E) dated 3-3-2006.

Specimen of e-Form DD-B
Report by a public company
[Pursuant to section 274(1)(g) of the Companies Act, 1956 and rule 5 of the
Companies (Disqualification of Directors under section 274(1)(g) of the
Companies Act, 1956) Rules, 2003]

Note: All fields marked in * are to be mandatorily filled.

- | | |
|---|--|
| 1. (a) *Corporate identity number (CIN) of company | XXXXXXXXXXXXXX |
| (b) Global location number (GLN) of company | |
| 2. (a) Name of the company | ABC CONSULTANTS LIMITED |
| (b) Address of the registered office of the company | 4TH FLOOR, SILVER ARK
PLAZA, 20A, NEW PALASIYA,
INDORE (M.P.) 452001 |

3. *Paid up capital (in Rs.) 5000000

It is hereby reported under section 274(1)(g) of the Companies Act, 1956 that

ABC CONSULTANTS LIMITED have failed to

☒ File the annual accounts and annual return for the last three financial years ending as on
31-3-2005 (DD/MM/YYYY)

and/or ☐ others

☐ Repay deposits or interest thereon due date being (DD/MM/YYYY)

☐ Redeem its debentures due date being (DD/MM/YYYY)

☐ Pay dividend declared by the company since (DD/MM/YYYY)

The period of one year has expired on (DD/MM/YYYY)

The particulars of directors at the relevant period are as under

- | | |
|--|----------|
| 1.* (a) Director identification number (DIN) | XXXXXXXX |
| (b) Name of the director | ABC |
| 2.* (a) DIN | XXXXXXXX |
| (b) Name of the director | ABC |
| 3.* (a) DIN | XXXXXXXX |
| (b) Name of the director | GHI |
| 4. (a) DIN | XXXXXXXX |
| (b) Name of the director | HIJ |
| 5. (a) DIN | |
| (b) Name of the director | |
| 6. (a) DIN | |
| (b) Name of the director | |
| 7. (a) DIN | |
| (b) Name of the director | |

8. (a) DIN
- (b) Name of the director
9. (a) DIN
- (b) Name of the director
10. (a) DIN
- (b) Name of the director
11. (a) DIN
- (b) Name of the director
12. (a) DIN
- (b) Name of the director

Attachments

1.	Nil		
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Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the board of directors' resolution dated*
(DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary of the company

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Specimen of e-Form DD-C

**Form of application for removal of disqualification of directors
[Pursuant to section 274(1)(g) of the Companies Act, 1956 and rule 5 of the
Companies (Disqualification of Directors under section 274(1)(g) of the
Companies Act, 1956) Rules, 2003]**

Note: All fields marked in * are to be mandatorily filled.

1. (a) *Corporate identity number (CIN) of company
- (b) Global location number (GLN) of company
2. (a) Name of the company
- (b) Address of the registered office of the company

3. * Ground under which director(s) are disqualified DIN NO. xxxxxxxx Shi ABC, DIN No. xxxxxxxx Shri DEF, DIN No. xxxxxxxx Shri GHI For non filing of accounts and annual returns of the company
--

4.* Date of disqualification (DD/MM/YYYY)

5. * Details of the application

The company has filed accounts and annual returns on 1st Mach, 2006 for all the past years together with the additional filing fee. The default were committed by the company under the circumstances beyond the control, as the company's registered office was ceased by the MPFC together with the entire assets of the company, therefore, it was not possible to submit the accounts to the auditors and to file with the Registrar. Since the default has already been regularized, it is considered and resolved by the Board to seek permission for removal of disqualification of all the three directors viz ABC, DEF and GHI

Attachments

1.	Board resolution	Attach	
2.	Copy of the receipts for filing of balance sheet and annual returns.	Attach	

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

I have been authorised by the board of directors' resolution dated * (DD/MM/YYYY) to sign and submit this application.

To be digitally signed by

Managing director or director or manager or secretary of the company.

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Appendix 2

Specimen of letter by a company to its directors for confirmation of disqualification under section 274(1)(g) of the Act

To,

Shri ABC

Sub: Disclosure of directorships and confirmation for non-disqualification to act as director in terms of section 274(1)(g) of the Companies Act, 1956.

Dear Sir,

In terms of section (g) under section 274(1) of the Act and the Companies (Disqualification of Directors under section 274(1)(g) of the Companies Act, 1956) Rules, 2003, we would like to request you

to please confirm that you are not disqualified for the appointment/re-appointment in any other public company in terms of the following conditions of section 274(1)(g) reproduced hereunder:—

- (a) such director of public limited company which has not filed the annual accounts and annual returns for any of the continuous three financial years commencing on and after 1st April, 1999; or
- (b) has failed to repay its deposits or interest on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more:

Provided that such director shall not be eligible to be appointed as a director in any other Public Limited Company for a period of five years from the date on which the above default is committed by the Public Ltd. Company in which he is a director.

You are requested to furnish us the details of the present & past directorship held by you in all other companies in the following format:

<i>Sl. No.</i>	<i>Name of the Company</i>	<i>Address of the Registered Office</i>	<i>Details of the other Directorship period From - To</i>	<i>Whether these companies have committed default under section 274(1)(g) part (a) or (b)</i>
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Please note that the above said details are required for the purpose of consideration of the Board and to give it to the Auditor for the purpose of their Audit Report, therefore, give us complete details on top priority.

You are requested to please acknowledge the letter and arrange to send us the above required information for further needful.

Thanking you

Yours faithfully
For, ABCD LTD.
(XYZ)
Company Secretary

Appendix 3

Specimen of resolution for confirmation of the Board under section 274(1)(g)

RESOLVED THAT on the basis of the written representation received from all the directors of the Company as placed before the Board, duly initialed by the Chairman for the purpose of identification, the Board of directors of the Company be and is hereby state and confirm that none of the directors of the Company are disqualified to be appointed as a director pursuant to section 274(1)(g) of the Companies Act, 1956.

FURTHER RESOLVED THAT Shri XYZ, the Company Secretary be and is hereby authorised to submit a copy of the above said resolution to the Auditors of the Company for the purpose of their comments in the Auditor's Report.

Appendix 4

Specimen of letter for seeking leave of absence from attending the Board meeting

To,

The Board of Directors
ABC Ltd.

Re: **Request for leave of absence from attending the Board meeting**

Dear Sir,

I thankfully acknowledge the receipt of notice for the next meeting of the Board of directors of the Company scheduled for XX.XX.XXXX. I, however, regret to inform that I will not be able to attend the

meeting due to pre-decided engagement. I may, therefore, be excused and granted leave of absence from the meeting. I request that this letter be placed before the Board.

Yours faithfully,
CDE

Appendix 5

Specimen of Resignation Letter

To,
The Chairman/Secretary
ABC Ltd.

Re: **Resignation from the office of the director of the Company**

Dear Sir/s,

I hereby tender my resignation from the office of the director of the Company with immediate effect and request that a notice of my resignation be given to the Registrar of Companies and the Board of directors be informed at their next Board meeting.

I appreciate the Board of directors for having given me co-operation and assistance to discharge my duties during my tenure as a director of the Company.

Yours faithfully
ABC

Appendix 6

Specimen of the Board resolution for acceptance of resignation

The Chairman placed on table a letter received from Mr. XYZ tendering his resignation from the directorship of the Company.

The Board considered and accepted his resignation from the office of the director of the Company. The Board placed on record its appreciation of the valuable services and guidance rendered by Mr. XYZ as the director of the Company. Thereupon, the Board unanimously passed the following resolution:

RESOLVED THAT the Board of Directors accepts the resignation tendered by Mr. XYZ from the office of director of the Company w.e.f.