PART XVI

RESOLUTIONS

Chapter 1

General aspects of Resolutions

Synopsis

Important Provisions at a Glance

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1. Meaning of Resolution

The term 'resolution' has not been defined in the Companies Act, 1956. Taking the dictionary meaning, which should therefore hold good, resolution means a formal decision of the meeting. A motion when decided at a meeting becomes a resolution.

TYPES OF RESOLUTIONS

Resolution may be classified into the following categories.

2. Resolutions of the General meetings

The manner of decision making by members in the general meeting of a company is to pass a formal special or ordinary resolution considering the requirements of the Companies Act, 1956, the Memorandum of Association and Articles of Association of the company. The following types of resolutions are required to be passed at a general meeting as per requirements of the provisions of the Companies Act, 1956.

(*a*) Ordinary Resolutions

(*b*) Special Resolutions

(*c*) Resolutions requiring special notice.

3. Resolutions of the Board meetings

Matters are generally decided at the Board meetings by way of formal resolution with simple majority of the directors present at the meeting. Resolutions can also be passed by circulation among the directors in accordance with the provisions of section 289 of the Companies Act, 1956. The following types of resolutions are generally passed by the Board of directors of a company.

(*a*) Resolutions passed by simple majority

(*b*) Resolutions passed by circulation

(*c*) Resolutions passed with the consent of all directors present at the meeting.

4. Date of passing a resolution in the case of a resolution passed at the adjourned meeting

Section 191 of the Act, provides that where a resolution is passed at an adjourned meeting it shall be treated as having been passed on the date on which it was in fact passed, *i.e.* on the date of the adjourned meeting.

REGISTRATION OF RESOLUTIONS AND AGREEMENTS

Section 192 of the Companies Act, 1956, provides that a company shall file resolutions and agreements of the following nature with the Registrar of Companies electronically in an e-Form 23 for registration:—

(*a*) all special resolutions;

(*b*) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(*c*) any resolution of the Board of directors of a company or agreement executed by a company relating to the appointment/re-appointment/renewal of the appointment, or variation of the terms of appointment of a managing director/whole time director/manager;

(*d*) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(*e*) resolutions passed by a company according its consent to the Board of directors to exercise powers stipulated u/s 293(1)(*a*), 293(1)(*d*) and 293(1)(*e*);

(*f*) resolutions passed by a company approving the appointment of sole selling agent under section 294 or 294AA;

(*g*) resolutions requiring a company to be wound up voluntarily, passed pursuant to section 484(1);

(*h*) copies of the terms and conditions of appointment of a sole selling agent u/s 294 or of a sole selling agent or other person appointed u/s 294AA.

5. Manner of Registration

A copy of resolution as aforesaid together with the copy of the statement of material facts (explanatory statement) annexed under section 173 of the Act, to the notice of the meeting in which such resolution has been passed and/or a copy of agreement as aforesaid shall be filed with the concerned Registrar of Companies alongwith requisite filing fee as per Schedule X of the Act, within 30 days after passing such resolution. If default is made in complying with the provision of section 192(1), the company and every other officer of the company who is in default shall be punishable with fine which may extend to Rs. 200 for every day during which default continues.

On receipt of e-Form 23, the Registrar shall register such resolutions and agreements. After registration in accordance of the provisions of the Act, these resolutions shall be available for inspection at the office of the Registrar of Companies.

6. Passing of resolutions by Postal Ballot

Section 192A of the Companies Act, 1956 provides that a listed public company may in the case of resolutions relating to such business as the Central Government may by notification declared, to be passed only by postal ballot instead of transacting the business in general meeting.

Therefore, section 192A of the Companies Act, is not applicable to a private company or an unlisted public company. (Text of passing of resolution by postal ballot given in Appendix 1).

Appendix 1

Text of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001[1]

Notification No. GSR 337(E), dated 10-5-2001

In exercise of the powers conferred by section 192A read with clauses (*a*) and (*b*) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001.

(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,

(*b*) "postal ballot" includes voting by shareholders by postal or electronic mode instead of voting personally by presenting for transacting businesses in a general meeting of the company,

(*c*) "requisite majority" with regard to special resolution means votes cast in favour of the business is three times more than the votes cast against, with regard to ordinary resolution, votes cast in favour is more than the votes cast against.

2A. Method for sending notice

(*a*) The company may issue notices either,—

- (*i*) under Registered Post Acknowledgement Due; or
- (*ii*) under certificate of posting; and

(*b*) With an advertisement published in a leading English Newspaper and in one vernacular Newspaper circulating in the State in which the registered office of the company is situated, about having despatched the ballot papers.

3. Application.—These Rules shall be applicable to listed companies and in the case of resolutions relating to such businesses as are specified under rule 4.

4. List of businesses in which the resolutions shall be passed through postal ballot:—

(*a*) alteration in the object clause of memorandum;

(*b*) alteration of articles of associations in relation to insertion of provisions defining private company;

(*c*) buy-back of own shares by the company under sub-section (1) of section 77A;

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1 **See** section 192A.

(*d*) issue of shares with differential voting rights as to voting or dividend or otherwise under sub-clause (*ii*) of clause (*a*) of section 86;

(*e*) change in place of registered office outside local limits of any city, town or village as specified in sub-section (2) of section 146;

(*f*) sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (*a*) of sub-section (1) of section 293;

(*g*) giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A;

(*h*) election of a director under proviso to sub-section (1) of section 252 of the Act;

(*i*) * * *

(*j*) variation in the rights attached to a class of shares or debentures or other securities as specified under section 106.

5. Procedure to be followed for conducting business through postal ballot.—(*a*) The company may make a note below the notice of general meeting for understanding of members that the transaction(s) at serial number requires consent of shareholders through postal ballot.

(*b*) The Board of directors shall appoint one scrutinizer, who is not in employment of the company, may be a retired judge or any person of repute who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner.

(*c*) The scrutinizer shall submit his report as soon as possible after the last date of receipt of Postal Ballots.

(*d*) The scrutinizer will be willing to be appointed and he is available at the registered office of the company for the purpose of ascertaining the requisite majority.

(*e*) The scrutinizer shall maintain a register to record the consent or otherwise received, including electronic media, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-voting rights and the scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form. The postal ballot and all other papers relating to postal ballot will be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/register safely till the resolution is given effect to.

(*f*) The consent or otherwise received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.

Clarifications issued by the Central Government *vide* General Circular No. 16/2001, dated 24th July, 2001

The section 192A(1) of the Companies Act, 1956 was inserted by the Companies (Amendment) Act, 2000 which came into force with effect from 13th December, 2000. The provisions of the section give all listed companies, an option of passing shareholder's resolution through postal ballot. Further, they are necessarily required to get certain businesses as notified by the Central Government *vide* Notification Number GSR 337(E), dated 10th May, 2001 to be passed through postal ballot.

The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 which were notified on 10th May, 2001 mention transactions to be transacted through postal ballot. Pursuant to section 2 of the Companies (Amendment) Act, 2000, Notification Number SO 523(E), dated 15th June, 2001 was published indicating the date from which the provisions of section 192A shall come into force *i.e.* 15th June, 2001.

The Department has received a number of queries from the professionals, Chamber of Commerce & Industry, corporate sectors, etc. on the above subject. The points raised have been carefully examined and Department's views thereon are indicated below:—

1. The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 read with section 192A, shall apply to notices calling meetings of the shareholders approved by the Board of directors after 15th June, 2001.

2. According to the provisions of section 192A it is not mandatory for the company to release an advertisement giving the date of completion of despatch of postal ballots. However, as a measure of good corporate governance, companies, in their own interest, may release an advertisement for publishing the date of completion of despatch of postal ballots.
3. A specimen of postal ballot form and items to be included in the calendar of events for conducting voting through postal ballot are enclosed for the use and convenience of the companies. The concerned companies must ensure that the postal ballots are serially numbered and have distinguishing water marks in order to avoid printing of any duplicate ballot papers.
4. The companies are required to specify the last date by which the postal ballot must be received by the company keeping in view the provisions contained in rule 5(*f*) of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 and the instructions at serial number 5 of the specimen postal ballot form.
5. It is clarified that voting right on postal ballot shall be in proportion to the shareholders share of the paid up equity share capital of the company.
6. The company secretary alongwith one of the functional directors should be made responsible for the entire postal ballot process by means of an appropriate board resolution. The resolution should be passed in the Board meeting in which notice required to be sent to the shareholder under section 192A(2) is approved by the Board. A copy of the Board resolution should be despatched alongwith item to be included in the calendar of events within one week of passing of the Board resolution to the concerned Registrar of Companies for information.
7. A query has been raised whether Companies (Passing of Resolution by Postal Ballot) Rules, 2001 is applicable only in respect of list of businesses as notified under rule 4 of the said rule. It is hereby clarified that the Central Government may at any time include or delete the items to be transacted through postal ballot, therefore, the procedure as specified in the rules has to be followed for any business to be transacted through postal ballot.
8. A query has also been raised whether passing of all resolutions in respect of ordinary and special business other than those covered under rule 4 of the said Rules can be treated as sufficient compliance of provisions of section 166 of the Companies Act, 1956 and also whether the company is required to convene a general meeting in case the resolutions are to be passed through postal ballot. While the companies are required to hold annual general meetings which is a mandatory requirement under section 166 of the Companies Act, 1956 it is hereby clarified that any listed company which intends to transact such businesses as notified under rule 4 of the said Rules has to do so only in the general meeting alongwith other ordinary businesses and special business, if any. The companies are required to send notice only in respect of item to be transacted through postal ballot well in advance so that the reply is received from the shareholders before the date of the general meeting. This will enable the scrutinizer to be in a position to make an entry in the appropriate register maintained for the purpose and make it available to the chairman of the general meeting who shall declare the results in the general meeting. The date of passing of the resolution will be the date of the general meeting.

TEXT OF THE POSTAL BALLOT FORM

XYZ LIMITED

Registered Office

Postal Ballot Form

1.	Name(s) of shareholder(s)	: ……………………………. (in block letters)
	(including joint holders, if any)	: …………………………….
2.	Registered address of the sole/first named shareholder	: …………………………….

3. Registered folio No./DP ID No./Client ID No.* : …………………………….
   (* Applicable to investors holding shares in dematerialized form)
4. Number of shares held : …………………………….
5. I/We hereby exercise my/our vote in respect of the ordinary/special resolution to be passed through postal ballot for the business stated in the notice of the company by sending my/our assent or dissent to the said resolution by placing the tick (✓) mark at the appropriate box below.

Item No.	No. of shares	I/We assent to the resolution	I/We dissent to the resolution

Place:
Date:

(Signature of the shareholder)

Instructions:—

1. A member desiring to exercise vote by postal ballot may complete this Postal Ballot Form and send it to the company in the attached self-addressed envelope. Postage will be borne and paid by the company. However, envelopes containing postal ballots, if sent by courier at the expenses of the registered shareholder will also be accepted.
2. The self-addressed envelope bears the address of the scrutiniser appointed by the Board of directors of the company.
3. This form should be completed and signed by the shareholder. In case of joint holding, this form should be completed and signed (as per the specimen signature registered with the company) by the first named shareholder and in his absence, by the next named shareholder.
4. Unsigned Postal Ballot Form will be rejected.
5. Duly completed Postal Ballot Form should reach the company not later than the close of working hours on …......... (day) …............ (date). Postal Ballot Form received after this date will be strictly treated as if the reply from the member has not been received.
6. Voting rights shall be reckoned on the paid up value of shares registered in the name of the shareholders on the date of despatch of the notice.

Items to be included in the calendar of events

1. Date of dispatch of notice of meeting in which the business as notified by the Central Government will also be transacted through postal ballot.
2. Date of completion of dispatch of notice alongwith postal ballot.
3. Date of appointment of scrutinizer.
4. Date on which consent given by the scrutinizer to act as scrutinizer.
5. Last date for receiving postal ballot papers by scrutinizer.
6. Date of signing of the minutes book by the chairman in which the results ballot is recorded.
7. Date of returning the Ballot papers, register required to be maintained by the scrutinizer under rule 5(*e*) of the Companies (Passing of the Resolutions by Postal Ballot) Rules, 2001 and other related papers to the chairman by the scrutinizer.
8. Date of Board resolution authorising one of the functional directors and the secretary to be responsible for the entire poll process.
9. Date of handling over the ballot papers to the designated authority.

Appendix 2

Specimen of the Postal Ballot process for shifting the registered office from one state to another state

I. Board Resolution for consideration of the matter relating to shifting of the registered office from one state to another

The Chairman informed the Board that presently the Company's Registered Office is situated in the state of Madhya Pradesh. He further informed that since two of its directors are based at Ahmedabad (Gujarat) so to carry on the business activities more economically and efficiently. Further that the Gujarat State is a very advance state in the industrialisation of business, therefore if the Registered Office of the Company if shifted at Gujarat, it shall also help to enlarge the area of its business operations.

The Board considered that in terms of the provisions of section 17 of the Companies Act, 1956, the registered office of the Company may be shifted from one state to another by way of approval of the member with special resolution and confirmation of the Central Government. The Chairman further informed that as the Company's securities are a listed with the recognised stock exchanges therefore, by virtue of section 192A read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, it is required to pass necessary resolution by means of Postal Ballot only. It is required to send a notice to all the members along with the draft resolution explaining the reasons thereof, and requesting them to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the letter.

The Board considered and passed the following resolution unanimously:

RESOLVED THAT subject to the provisions of section 17, 146(2), 192A of the Companies Act, 1956 read with the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, and confirmation of the CLB/Central Government, the consent of the Board of directors of the Company be and is hereby accorded for shifting of the Registered Office of the Company from the State of Madhya Pradesh to the state of Gujarat.

FURTHER RESOLVED THAT the notice alongwith the draft resolution and Explanatory Statement for conducting the Postal Ballot u/s 192A of the Companies Act 1956, as placed before the Board duly initialed by the Chairman for the purpose of identification be and is hereby approved and Shri SJ, the Director of the Company be and is hereby authorised to issue the notice as required under the above said Rules as applicable to the Company.

FURTHER RESOLVED THAT Shri SJ, the Director of the Company be and is hereby authorised to file a copy of the Board Resolution along with the required calendar of events to the Registrar of Companies as per requirement of the Rules.

FURTHER RESOLVED THAT Shri SJ, the Director of the Company be and is hereby authorised for submission of the said notice to the Stock Exchange and for publication of an advertisement in the news papers specifying the date of completion of despatch of Postal Ballots.

II. Consent letter from the Scrutiniser

FROM:

M/S RAJESH KUMAR JAIN
CHARTERED ACCOUNTANTS,
Chetak Centre Annexe,
Indore (M.P.)

1st January, 2007

To,

The Board of directors,
ISE Ltd.,

Sub: Consent to act as the Scrutinizer for the Postal Ballot Voting Process

Dear Sir/s,

This has in reference with the discussion had with your representative for offer to appoint our firm as the Scrutinizer for the Postal Ballot Voting Process in accordance with the provisions of section 192A, read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001.

We are pleased to give our consent to act as the Scrutinisers for the above said purpose and to include our name in the notice of the Postal Ballot to be issued by the Company to its members.

Thanking you

RAJESH KUMAR JAIN

Chartered Accountant

III. Board resolution for appointment of Scrutinizer

The Chairman informed that in terms of rule 5(*b*) of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, the Company is required to appoint a scrutinizer who is willing to act for conducting the postal ballot voting process in a fair and transparent manner. He placed before the Board a letter dated 1st January, 2007 received from Rajesh Kumar Jain, Chartered Accountants, signifying his consent to act as the scrutinizers for the above said process.

The Board considered the matter and passed the following resolution unanimously:

RESOLVED THAT Rajesh Kumar Jain., Chartered Accountants of Indore be and is hereby appointed as Scrutinizer for conducting the entire postal ballot voting process in relation to passing the resolution for shifting the registered office of the Company from the state of Madhya Pradesh to the state of Gujarat.

FURTHER RESOLVED THAT Shri Rajesh Kumar Jain, Chartered Accountants of Indore be and is hereby authorised to do all such acts, deeds and things as may be necessary to conduct the process in a fair and transparent manner and to submit their final report, ballot papers and other related papers and registers to the Board of directors of the Company within the specified time period.

IV. Board resolution for appointment of Compliance Officer

The Chairman suggested that in order to conduct the Postal Ballot voting process smoothly it is required to appoint a Compliance Officers of the Board who shall be held responsible for the entire process. The Board considered to appoint Shri SJ, Director of the Company and Shri SR, Executive of the Company as the Compliance Officers.

The Board discussed the matter and after due deliberations passed the following resolution unanimously:

RESOLVED THAT Shri SJ, the Director of the Company and Shri SR, the Executive of the Company be and are hereby appointed as the Compliance Officers for conducting the entire postal ballot voting process in relation to passing the resolution for shifting the registered office of the Company from the state of Madhya Pradesh to the state of Gujarat.

FURTHER RESOLVED THAT Shri SJ, the Director of the Company and Shri SR, the Executive of the Company be and are hereby severally authorised to do all such acts, deeds and things as may be necessary for the above said purpose.

V. Letter to be given to shareholders

Under Certificate of Posting

Indore, 1st January, 2007

To,

The Shareholders

In accordance with the provisions of section 17 and 146(2) of the Companies Act, 1956, the registered office of the Company may be shifted outside the local limits of any city, town or village on the authority of the special resolution passed by the Company and if the Registered office is to be shifted from one state to another shall be subject to the confirmation of the CLB/Central Government.

The Board of directors of the Company at their meeting held on 1st January, 2007 has considered the matter relating to shifting of the registered office of the Company from the state of Madhya Pradesh to the state of Gujarat, therefore, it has become necessary to seek your consent by way of special resolution.

As per section 192A of the Act read with the Companies [Passing of resolution by Postal Ballot] Rules, 2001, the shareholders consent for the above said purpose is required to be obtained by means of Postal Ballot only. Accordingly a draft of the proposed special resolution and explanatory statement is being appended herein under. "The Postal Ballot Form" is also being enclosed separately for your kind consideration.

It is requested you to please return the "Postal Ballot Form" giving your assent or dissent as required, in the attached self-addressed envelope, postage to be paid by the addressee so as to reach us within 30 days from the date of posting of this letter.

Members may also opt to submit their Postal Ballot Form through E-mail on or before the stipulated time. Please note that Postal Ballot Form has also been placed at the Company's web site at "www.ise.com"

The Company has appointed Shri Rajesh Kumar Jain, Chartered Accountants, having office at Chetak Center, Indore (M.P.) as scrutinizer for conducting the postal ballot voting process in a fair and transparent manner.

Thanking you

For, ISE LTD

SJ

DIRECTOR

VI. Letter to be given to the Stock Exchange

To,

1. The Secretary,
   M.P. Stock Exchange
2. The General Manager,
   The Stock Exchange Mumbai
3. The Secretary,
   Ahemdabad Stock Exchange.
4. The Secretary,
   Jaipur Stock Exchange.

Sub: Filing of Board Resolution for approval of the Board for seeking approval of member by Postal Ballot u/s 192A of the Companies Act, 1956.

Dear Sir,

This is to inform that the Board of directors of the Company at their meeting held on 1st January, 2007 has decided to submit a resolution for seeking approval of members u/s 17 read with section 146(2) of the Companies Act, 1956 for shifting the Registered Office of the Company from the state of Madhya Pradesh to the state of Gujarat through the process of the Postal Ballot u/s 192A of the Companies Act, 1956 read with the Companies [Passing of resolution by Postal Ballot] Rules, 2001, Six copies of the Notice for postal ballot and Specimen form of Postal Ballot Form being enclosed herewith for your kind reference.

Necessary notice is being also published in newspaper and clipping of the same shall be forwarded separately.

You are requested to please take on record the above said information for reference and record.

ITEMS OF THE CALENDER OF EVENTS FOR CONDUCTING POSTAL BALLOT

	Particulars	*Date*
1.	Date of consideration of the matter in the board meeting	01-01-2007.
2.	Date on which consent given by the scrutinizer to act as such	01-01-2007.
3.	Date of appointment of scrutinizer.	01-01-2007
4.	Date of Board resolution authorising one of functional directors and executive officer to be responsible for the entire poll process.	01-01-2007
5.	Date of despatch of notice of meeting in which the business as notified by the Central Government will be transacted through postal ballot.	02-01-2007
6.	Date of completion of despatch of notice along with postal ballot.	02-01-2007
7.	Filing of intimation of the Board resolution and event of calendar for conducting postal ballot to the stock exchange.	02-01-2007
8.	Filing of intimation of the Board resolution and event of calendar for conducting postal ballot to the registrar of companies.	07-01-2007
9.	Publication of notice in newspaper for postal ballot process and appointment of scrutiniser and compliance officer.	07-01-2007
10	Last date for receiving postal ballot paper by scrutinizers.	01-02-2007
11	Date of handing over the ballot papers to the designated authority.	02-02-2007
12.	Date of Extra Ordinary General Meeting in which the results of the postal ballot will be announced by the Chairman	02.02.2007
13	Date of signing of the minutes book by the chairman in which the result ballot is recorded.	03-02-2007
14	Date of returning the ballot papers, register required to be maintained by the scrutinizer under rule 5(*e*) of the companies (passing of the resolution by postal ballot) rules, 2001 and other related papers to the chairman by the scrutinizer.	03-02-2007

VII. Notice to be published in the newspaper

Shareholders are hereby informed that the Company has on 2nd January, 2007, completed the despatch of Notice, dated 1st January, 2007 u/s 192A of the Companies Act, 1956 alongwith the Postal Ballot Form and a self-addressed Business reply envelope (for which postage stamp has been affixed by the Company) in relation to a Special Resolution u/s 17 read with section 146(2) of the Companies Act, 1956 seeking shareholders consent for shifting of the registered office of the Company from the state of Madhya Pradesh to the state of Gujarat.

The Board of directors has appointed Shri Rajesh Kumar Jain, Chartered Accountant, having their office at Chetak Center, Indore (M.P.) as the Scrutinizer for conducting the Postal Ballot in a fair and transparent manner. Shri SJ, Director and Shri SR, Executive of the Company has been appointed as the Compliance Officer to comply with the requirement of section 192A of the Act read with the Companies [Passing of resolution by Postal Ballot] Rules, 2001.

Shareholders are requested to note that the Postal Ballot Form duly completed and signed should reach the Company not later than the closing of working hours on 1st February, 2007. All Postal Ballot Forms received after the said date will be strictly treated as if reply from such shareholders has not been received.

Date: 2nd January, 2007

Place: Indore

VIII. Publication of results of Postal Ballot in the newspaper

Notice is hereby given to all the members that the resolution for seeking of approval by way of Special Resolution under section 17 of the Companies Act, 1956 for shifting of the Registered Office of the

Company from the State of Madhya Pradesh to the State of Gujarat which was circulated vide notice dated 1st January, 2007 have been passed with the requisite majority as per the report dated 2nd Feb., 2007 submitted by Shri Rajesh Kumar Jain, Chartered Accountant of Indore (M.P.) being the Scrutiniser appointed for the purpose.

The said results were declared on 2nd Feb., 2007 by the Chairman at the Extra Ordinary General Meeting held on 2nd Feb., 2007 at the Registered Office of the Company.

For, ISE LTD
SJ
DIRECTOR

Place: Indore
Date: 7th Feb., 2007

Chapter 2

Board Resolutions

Synopsis

1. Compulsory requirement for passing of resolutions at duly convened Board meetings

Section 292(1) provides that the Board of directors shall exercise the following powers on behalf of the company, and it shall do so only by means of resolution passed at the meetings of the Board:—

(*a*) To make calls on shareholders in respect of money unpaid on their shares.

(*b*) To issue debentures.

(*c*) To borrow money otherwise than on debentures.

(*d*) To invest the fund of the company.

(*e*) To make loans.

Proviso to section 292(1) provides that the Board may, by a resolution passed at the meeting delegate to any committee of directors/managing director/manager or any other principal officer of the company or in the case of a branch office, to the branch manager, the powers specified above on such conditions as the Board of directors may prescribe subject to provision of sections 292(2), 292(3) and 292(4) respectively.

Except, the certain businesses, all the resolutions shall be passed by the Board by simple majority of the directors present at the meeting. In case of a tie, the chairman shall also have an additional casting vote.

2. Passing of certain resolutions by circulation

Section 289 state that no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the circulation has been circulated in draft together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India, not being less in number than the quorum fixed for the meeting of the Board or a committee, and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of such of them, as are entitled to vote on the resolution.

3. Requirements for passing of resolutions by circulation

The following conditions have to be complied with for passing of resolutions by the Board or by a committee thereof by circulation:—

(*i*) Draft of the resolution should be circulated together with the necessary papers, if any, to all the directors or to all the members of the committee, then in India. "Necessary papers" would refer to those papers or documents which would explain the purpose of the resolution and the urgency for passing it by circulation. A brief note explaining the resolution has to be sent along with the draft resolution.

(*ii*) The number of directors in India to whom the draft circular resolution is sent should not be less than the quorum fixed for meetings of the Board or Committee as the case may be. [Section

287(2) of the Act provides that the quorum for a meeting of the Board of directors shall be one third of its total strength (any fraction contained in that one-third being rounded off as one) or two directors whichever is higher].

(*iii*) The draft of the resolutions should be circulated to all other directors or members of the committee who are away from India at their usual address in India. If these directors have furnished their foreign address to the company, the text of the circular resolution should be sent to their foreign address also.

(*iv*) The text of the resolution should be approved by all the directors as are then in India who are entitled to vote on the resolution and their number should not be less than the quorum fixed for the Board/Committee meeting.

(*v*) If the text of the resolution is not approved by all the directors in India who are entitled to vote on the resolution, if should be approved by a majority of the directors in India and abroad, who are entitled to vote on the resolution.

4. Provisions of section 289 illustrated

The provision of section 289 can be explained by a few simple illustration given below:—

1. The Board of a public company consists of seven directors. Three of the directors are in India, and the remaining four are living abroad. The company has sent a draft of the resolution to all the three directors in India and the remaining four directors abroad at their usual address in India. All the three directors in India have approved the circular resolution. The circular resolution is duly passed.
2. The Board of a public company consists of eight directors, four of the directors are in India, and the remaining four are living abroad. The company has sent the draft of the circular resolution to all the four directors in India and to the remaining four directors abroad at their usual address in India. Three of the directors in India and two of the directors abroad have approved the resolution. One director in India has not approved the resolution. The circular resolution is duly passed because a majority of directors (in India and abroad), that is, five directors, have approved the same.
3. There are six directors on the Board of a public company. One of the directors is living abroad and the remaining five directors are in India. One of the directors in India is interested in resolution. The company has sent the draft resolution to all the five directors in India and to the director living abroad at his usual address in India. The interested director did not return the draft circulation resolution. The remaining four directors in India have approved the draft resolution. The resolution is duly passed because it is approved by a majority of director entitled to vote on the resolution.
4. There are eight directors on the Board of a private company, which is neither a subsidiary nor a holding company of a public company. All the directors reside in India. Four of the directors are interested in the arrangement proposed in the circular resolution. The company has sent the draft of the circular resolution to all the directors. Six of the directors, of whom four directors are interested directors, approve the circulation resolution. The circular resolution is passed because it is approved by a majority of directors who are entitled to vote. In the case of an independent private company interested directors are not debarred from voting or the resolution — section 300(1)(*a*).

5. When does a circular resolution become effective

The circular resolution may be sent by post to the directors for their approval or an officer of the company may personally take the papers to each director in India, entitled to vote on the resolution and get his approval. Directors may approve the text to the draft resolution on different dates. In such cases, a question arises as to when the resolution becomes effective. The circular resolution is effective on the latest date on which all the directors then in India entitled to vote on the resolution approved the resolution. In case the resolution is not approved by all the directors in India and it is approved by some directors in India and by some directors living abroad, the latest date at which all the directors then in India entitled to vote on the resolution approved the resolution. In case the resolution approved by all the directors in India and it is approves by some directors in India and by some directors living abroad, the latest date on which majority of directors approved the resolution is to be taken as the date of passing the resolution.

6. Matters which can be approved by the circular resolution

All matter other than those which require shareholders' approval as contemplated in section 293 and other sections and matters which require approval of the Central Government, or the CLB/Tribunal or Regional Director can be passed by the directors or committee of directors by circular resolution. An illustrative list of matters which can be approved by the by passing circular resolution is given below:

(*i*) Opening a current account for the company with a bank;

(*ii*) Authorising the company secretary to file suits in civil courts on certain urgent matters;

(*iii*) Authorising on officer of the company to sign declaration forms;

(*iv*) Authorising for affixing common seal to a document the content of which have already been discussed and approved at a Board meeting;

(*v*) Authorising the managing director to fix the dates of closure of register of member/register of debentureholders;

(*vi*) Fixing 'record date' for rights or bonus issue or authorizing managing director for fixing the 'record date';

(*vii*) Changing the rate of interest payable on fixed deposits whenever the Government amends rule 3(*c*) of the Companies (Acceptance of Deposits) Rules, 1975;

(*viii*) Convening an extra ordinary general meeting on requisition of certain members;

(*ix*) Authorising on officer to make application for telex, fax and telephone connection for the company;

(*x*) Changing the registered office within the same town or city;

(*xi*) Appointing on Auditor in the casual vacancy caused by death of Auditors;

(*xii*) Appointing Additional Director in case of urgency;

(*xiii*) Appointing Alternate Director in case of urgency;

(*xiv*) Engaging a practising Company Secretary to issue compliance certificate contemplated by proviso to section 383A(1) of the Act;

(*xv*) Authorising an officer of the company to file criminal complaints in a Judicial Magistrate's Court for dishonour of cheque under section 138 of the Negotiable Instruments Act, 1881;

(*xvi*) Authorising the printing of share certificates;

(*xvii*) Appointment of Cost Auditors;

(*xviii*) Authorising Managing Director to sign the Listing Agreement with Stock exchange;

(*xix*) Nominating a director as occupier of a factory;

(*xx*) Forming subcommittees of thee Board, in case of urgency;

(*xxi*) Approving Transmission of shares before a Right Issue;

(*xxii*) Approving a mutual fund scheme by the Board of an Assets management company;

(*xxiii*) Authorising contribution to National Defence Fund;

(*xiv*) Making investment in the shares of Company's Employees Cooperative Credit society;

(*xxv*) Appointing the first Auditors within one month of incorporation of the company, in case the Board is unable to meet within a month from the date of incorporation of the company;

(*xxvi*) Fixing the date and time of an adjourned general meeting in case the adjourned general meeting is not desired to be held on the same day in the next week;

(*xxvii*) Appointing a representative of the company to represent the company in the general meeting of any other company;

(*xxviii*) Authorisation of the Board to keep company's books of account at a place other than the registered office.

See Appendix 1 for specimen of some of the resolutions that can be pass by circulation**.**

7. Circular resolution needs to be recorded at next Board meeting

There is no specific provision in the Act, which requires that circular resolution should be confirmed/ recorded by the Board at the next Board meeting. However, as a good company practice the resolution of directors passed by circulation should be recorded at the next Board meeting to ensure their authenticity. Secretarial Standard on Board Meeting issued by the Institute of Company Secretaries of India states that circulation resolution should be placed before the next Board meeting for noting and should be reproduced as part of minutes of that meeting.

8. Matters requiring approval by resolutions passed with the consent of all directors present at the meeting

For obtaining approval of the Board in certain matter, it is required to pass the resolution for the following matters by the unanimous consent of the directors present at the meeting:—

1. A public company or a private company which is a subsidiary of a public company employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company including a private company which is a subsidiary of a public company. [Section 316]

   Provided that such appointment or employment is made or approved by a resolution passed at the meeting of the Board with the consent of all the directors present at the meeting and of the meeting and the resolution to be moved thereat, specific notice has been given to all the directors then in India.

2. A company may appoint or employ a person as its manager, if he is the manager or managing director of one and of not more than one other company:

   Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, and of the meeting and of the resolution to be moved thereat, specific notice has been given to all the directors then in India. [Section 386(2)]

3. Making of loan or investments or giving of guarantee or providing of security by the Board of directors of investing company in pursuance of section 372A.

Appendix 1

Specimen of Board resolutions which can be pass by circulation

I. Opening a current account with a Bank

RESOLVED:—

(*a*) THAT a Current Banking Account in the name and style of `MC Limited Current Account No. I be opened with the IDBI Bank Ltd., Indore Branch, Indore (M.P.) and Shri RCM, the Managing Director of the Company be and is hereby authorised to sign the necessary forms and documents therefore.

(*b*) AND THAT the Bank be instructed to honour all cheques, promissory notes, and other orders drawn by and all bills accepted on behalf of the Company whether such account be in credit or overdrawn and to accept and credit to the account of the Company all moneys deposited with or owing by the bank on any account or accounts at any time or times kept or to be kept in the name of the Company and the amount of all cheques, notes, bills, other negotiable instruments, orders or receipt provided they are endorsed/signed by Shri RCM, the Managing Director of the Company and such signature(s) shall be sufficient authority to bind the Company in all transactions between the Bank and the Company including those specifically referred to herein.

(*c*) AND THAT Shri RCM, the Managing Director of the Company be and is hereby authorised to acknowledge all types of debts on behalf of the Company.

(*d*) AND THAT the bank be furnished with a copy of its Memorandum and Articles of Association and specimen signature of Shri RCM, the Managing Director of the Company be furnished to the Bank.

(*e*) AND THAT a copy of any resolution of the Board if purporting to be certified as a correct by the Chairman of the meeting be furnished to the Bank which will be conclusive evidence of the passing of the resolution so certified and this resolution be communicated to the bank by Shri RCM, the Managing Director of the Company and remain will in force until notice in writing of its withdrawal or cancellation is given to the bank by the Company.

II. Authority to deal with the Central Excise Department

RESOLVED THAT Shri AKK, General Manager (Finance) of the Company be and is hereby authorised to deal with the various matters including authentication and signing of the Invoices cum gate pass, challans, statements, returns, declarations, bonds, etc. and to appear before the authorities of the Central Excise to represent the Company and to do all such acts, deeds and things as may be required from time to time for and on behalf of the Company.

FURTHER RESOLVED THAT the above said resolution be submitted to the Central Excise Department alongwith the specimen signatures of Shri AKK duly attested by Shri ANC, the Managing Director to accept the authorisation of the Board.

III. Authority to deal in the court cases/matters for and on behalf of the Company

RESOLVED THAT consent of the Board of Directors of the Company be and is hereby accorded to file FIR u/s 138 of the Negotiable Instrument Act and to file criminal/civil suits before the Ist Class Chief Judicial Magistrate, Indore against Shri KR, the Proprietor of M/s MKI Enterprises, Tenkashi (T.N.).

FURTHER RESOLVED THAT Miss Abha Jaiswal, Director of the Company be and is hereby authorised to file and/or to defend the suits/cases under any laws of the land of the Country before the competent Court, Tribunal, authorities or forum for and on behalf of the Company from time to time.

FURTHER RESOLVED THAT Miss Abha Jaiswal be and is hereby authorised to engage any advocate/solicitors/consultants and to submit Vakalatnama, statements, documents, evidences, declarations, etc. before the appropriate authorities/court and/or the Police Authorities for and on behalf of the Company and to enter into any compromise, settlement of case as they may consider appropriate in the interest of the Company from time to time.

IV. Confirmation of the authority to sign the Demat application forms on behalf of the Company

RESOLVED THAT Shri SJ, the Director of the Company be and is hereby authorised to sign the required DRF and/or any documents/forms for dematerialization of the Equity Shares held in the DLAF Ltd. which are kept in physical form.

FURTHER RESOLVED THAT the specimen signatures of Shri SJ, Director of the Company alongwith the certified copy of the aforesaid resolution be communicated to all the concerning authority to process for Demat of the shares and to act upon the instructions as may be given by him and further authorised to do all such deeds, act and things which are necessary for conversion of such shares into Demat.

V. Authority to operate Demat Account

RESOLVED THAT the consent of the Board of Directors of the Company be and is hereby granted to open and operate a D-mat account in the name of the Company with SCB Securities Pvt. Ltd., Indore and Shri AS, Chairman and/or Shri SK, Director of the Company be and is hereby severally authorized to sign and submit the application form for that purposes and to comply with all the formalities as may be required for and on behalf of the Company.

RESOLVED FURTHER THAT M/s SCB Securities Pvt. Ltd. be and is hereby authorised to act upon the instructions as may be given by the above said signatories severally relating to the D-mat account and to accept all the D-mat delivery instructions, etc. from time to time.

RESOLVED FURTHER THAT a certified copy of the above said resolution together with the copy of the Memorandum and specimen signatures of the above said signatories be furnished to the DP by Shri AS, Chairman of the Company.

VI. Delegation of Power of Attorney

RESOLVED THAT Shri KCJ, the Chief Executive Officer of the Company be and is hereby appointed to be the attorney of the Company for such purposes and with such powers, authorities and discretions as embodied in the draft power of attorney, a copy of which is submitted to this meeting and for the purpose of identification initialled by the Chairman.

RESOLVED FURTHER THAT Shri AKJ and Shri DS, the Directors of the Company be and are hereby authorised to execute the said power of attorney on behalf of the Company in favour of Shri KCJ and that the common seal of the Company be affixed thereto in their presence.

VII. Maintenance of books at a place other than the registered office

RESOLVED THAT the books of account of the Company be maintained at Company's Corporate office at Navneet Drshan, 16/1, Old Palasiya, Indore (M.P.) and that Miss Abha Jiaswal, Company Secretary of the Company be and is hereby authorised to notify the said decision to the Registrar of Companies, Madhya Pradesh at Gwalior in the prescribed e-Form 23AA.

VIII. Indemnity bond in favour of steamer agents/port commissioners

RESOLVED THAT the under-noted persons be and are hereby authorised jointly and severally to execute for and on behalf of the company indemnity bonds to Steamer Agents/Port Commissioners in consideration of their agreements to deliver consignments to the company pending subsequent production of the Bills of Lading by the company:—

Shri ABC

Shri XYZ

IX. Authority under Drugs & Cosmetics Act

RESOLVED THAT the Board of Directors of the Company do hereby severally authorise the following officers of the Company to comply with the requirements of section 34 of Drugs and Cosmetic Act, 1940 and all other sections, rules and regulations as may be applicable to the Company in connection with the Company's manufacturing activities of all types of Ayurvedic Products from time to time.

1. Shri DKT: Chemist
2. Shri SNB: Manager Quality
3. Shri GPS: Manager Quality Control
4. Shri BKS: Asstt. Manager

RESOLVED FURTHER THAT the above said officers of the Company shall be jointly and/or severally responsible for the Company and the concerning Govt. Department for comply with all the requirements of the above said Act as may be applicable from time to time.

RESOLVED FURTHER THAT a certified copy of the above said resolution be submitted by the Chairman of the Company to the concerning department to act upon it.

X. Authority to transact Custom House Business

RESOLVED THAT any one of the following representatives be and is hereby authorised to transact Customs House Business *e.g.*:

(1) to sign customs documents such as bills of entry, shipping bills;

(2) to sign manifests, refund orders or drawback bills;

(3) to receive money or grant receipts; and

(4) to execute Bonds of Guarantees on behalf of the company in respect of goods imported by the company.

XI. Authority to avail capital subsidy inventive

RESOLVED THAT Ms. AJ, Director of the Company, be and is hereby authorised to file any document/affidavit or give any undertaking for filing the claim and receiving the money from the Government with respect to capital subsidy under modernisation and/or technology upgradation incentive applicable to us as per M.P. Industrial Policy, 2006, in the office of the General Manager, District Industries Centre and the Director of industries, Punjab, Chandigarh, for and on behalf of the Company to conduct Enquiry, make application(s) to the above office for the development of the industrial unit.

RESOLVED FURTHER THAT Ms. AJ be and is hereby further authorised to receive the investment incentive of Rs.___________ (Rupees ____________________ only) from the bank/financial institution Department of Industries and to issue the actual payees receipt at the time of disbursement of incentive amount after the execution of the deed and to do all acts, deeds and the things whatsoever he may deem fit, proper and advisable.

RESOLVED FURTHER THAT Ms. AJ will be the authorised signatory of the Company with regard to all matters pertaining to or arising out of the availment of incentives and all the acts, deeds and things done by him shall be binding on the Company.

Chapter 3

General Meeting Resolutions

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	188	Circulation of Members' resolution	
2.	189(1)	Ordinary Resolutions.	
3.	189(2)	Special Resolutions.	
4.	190	Resolutions requiring special notice.	

A. ORDINARY RESOLUTIONS

Section 189(1) of the Act, provides that most of the matters, which require the approval of the members, may be approved by them by an ordinary resolution. A resolution is deemed to have been passed as an ordinary resolution if it is approved by the members at the general meeting by a majority. In other words, the votes cast in favour of the resolution should be more than the votes cast against, if any.

It is not mandatory for inclusion of the text of an ordinary resolution in the notice sent to members, but the notice required for convening a general meeting, shall be duly complied with.

A resolution duly passed unanimously cannot be questioned on the ground that meeting was not adequately represented.

1. Matters which may be approved by company in a general meeting by way of ordinary resolution

Sl. No.	*Section*	*Matters which may be approved by Ordinary Resolution*
1.	22	Rectification of name of company which resembles the name of another existing company.

Sl. No.	*Section*	*Matters which may be approved by Ordinary Resolution*
2.	61	Variation of contract stated in the prospectus or statement in lieu of prospectus.
3.	79	Issue of shares at a discount specifying the maximum rate, subject to sanction of Central Government.
4.	94(2) & 86*	Alteration of share capital by increasing authorised capital, sub-division of individual shares and consolidation of individual shares into shares of larger amount.
5.	98	Increase nominal amount of capital by an unlimited company
6.	121	Reissue redeemed debentures.
5.	149(2B)	Commencement of new business where a special resolution could not be passed.
6.	165	Approval of statutory report.
7.	205	Declaration of dividend.
8.	210	Adoption of annual accounts and directors' report.
9.	214	Authorising representatives of holding company to inspect books of a subsidiary.
10.	224(1)	Appointment of retiring auditors.
11.	224(2)	Appointment of an auditor, other than retiring auditor or a resolution that retiring auditor shall not be reappointed.
12.	224(5) proviso (*a*)	To remove an auditor and appoint another auditor in his place.
13.	224(6)	Filling of casual vacancy caused by resignation of auditor.
14.	228(3)(*a*)	Audit of accounts of a branch office other than by company's auditors.
15.	255	Appointment of first directors in default of provision in the Articles.
16.	256	Appointment of directors retiring by rotation at an annual general meeting.
17.	257	Appointment of a director who is not a retiring director proposed by notice from a member.
18.	258	Subject to the provisions of sections 252, 255 and 259, to increase or reduce the number of directors of the company within the limits fixed by its articles.
19.	269	Appointment/re-appointment of managing/whole-time director.
20.	284(1)	Removal of a director by special notice.
21.	284(2)	Appointment of a director in place of one removed.
22.	292(5)	Impose restrictions and conditions on the exercise by the board of directors of any of the powers specified in section 292(1).
23.	293(l)(*a*)*	Authority to the Board to dispose of the whole or substantially the whole of the undertaking.
24.	293(l)(*b*)	Authority to give time to make repayment of any sum due from a director.
25.	293(l)(*c*)	Investment of compensation received from the Government otherwise than in trust securities.
26.	293(l)(*d*)	Authority to the Board to borrow money in excess of paid up capital and free reserves.
27.	293(l)(*e*)	Consent to make contribution in a year in excess of Rs. 50,000 or 5 per cent of the net profits of the company, whichever is greater, to funds not relating to the business or welfare of the employees of the company.

Sl. No.	*Section*	*Matters which may be approved by Ordinary Resolution*
28.	294(2)	Approval for appointment of Sole Selling Agents made by the Board.
29.	309(1) & Schedule XIII	Remuneration to a director for technical services.
30.	313(1)	Appointment of an alternate director in case there is no provision in the Articles.
31.	484(l)(*a*)	Winding up voluntarily the affairs of the company.
32.	490(1)	Appointment of liquidators in voluntary winding up.
33.	491	Continuance of powers of Board.
34.	492	Filling up vacancy in the office of liquidator.
35.	500/503	Appointment of committee of inspection.
Provisions for Producer Companies		
35	581C(4)	Reimbursement to promoters of Producer Company, all direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof, at its first general meeting.
36	581E(3)	Distribution of surplus, if any, amongst the members of producer company, as patronage bonus, in proportion to their participation in the business of the producer company, either in cash or by way of allotment of equity shares, or both, as may be decided by the members at general meeting.
37	581P(5)	ppointment of directors of a producer company.
38.	581S(1)	To give consent to the Board of directors of a Producer Company to exercise following powers on behalf of that company: approval of budget and adoption of annual accounts of the Producer Company; approval of patronage bonus; issue of bonus shares; declaration of limited return and decision on the distribution of patronage; specify the conditions and limits of loans that may be given by the Board to any director; and approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.
39.	581ZA(3)	Adoption of articles of producer company; Appointment of Board of directors of producer company.
40.	581ZJ	Issue of bonus shares by a producer company.
41.	581ZK	any loan or advance to any director or his relative.
42.	581ZN(1)	to transfer its assets and liabilities, in whole or in part, to any other Producer Company, which agrees to such transfer by a resolution passed at its general meeting, for any of the objects specified in section 581B; divide itself into two or more new Producer Companies.
43.	581ZN(2)	to amalgamate with other producer company(ies) and form a new producer company; to merge one producer company with another producer company.
44.	581ZS	n of producer company to inter-State co-operative society.

* These resolutions are required to be passed by postal ballot process in case of a listed company.

B. SPECIAL RESOLUTIONS

Section 189(2) of the Act, provides that certain matters are deemed to have been passed at a general meeting as a special resolution only, if the votes cast in favour are at least three times the number of votes cast against the resolution, if any.

A special resolution passed at a meeting attended only by the shareholders who were in arrears in respect of calls, has no legal effect

The resolution shall be a special resolution if it fulfills the following conditions:—

(*a*) The intention to move the resolution as 'special resolution' is specified in the notice for the meetings.

(*b*) The text of the special resolution alongwith explanatory statement shall be given in the notice.

(*c*) The required notice for convening the meeting has been given as provided under the Act.

(*d*) The votes cast in favour of the resolution are at least three times the votes cast against, if any.

2. Matters, which shall be approved by a company in general meeting by passing a special resolution

Section 189 of the Companies Act stipulates that the notice must specify the resolution as special resolution and to be passed and where an article of the articles of association of the company contemplates increase in the number of directors by special resolution in general meeting, a special resolution should be passed for appointment of directors, and where it is not complied with, the appointment of director is not valid. [*V.G. Balasundaram* v. *New Theatres Carnatic Talkies (P.) Ltd.* [1993] 77 Comp. Cas. 324 (Mad.)]

A resolution for obtaining approval of any of the following matters shall be passed by way of a Special Resolution in a general meeting of the members of the company:—

Sl. No.	*Section*	*Matters which may be approved by Special Resolution*
1.	17*	Alteration of object clause of the Memorandum of Association for doing a new business to enable the company to carry on its business in the manner envisaged in sub-section (1).
2.	17	Change of the registered office outside the limit of the city/place where the registered office of a company is situated.
3.	21	Change of name of company other than deletion or addition of the word "Private" with the approval of the Central Government.
4.	25(3)	Change of name by deletion of "Limited" or "Private Limited" with the approval of the Central Government.
5.	31*	Alteration to the provisions of Articles including conversion of a public company into private limited which also requires approval of the Central Government.
6.	77A*	Authorising the company to buy-back its securities.
7.	79A	Issue of sweat equity shares.
8.	81(1A)	Issue of further shares to persons other than existing members (including issue to some members).
9.	81(3)	Issue of debentures and raising of loans containing a term for conversion into equity shares.
10.	99	Making any portion of share capital to be not called up except in winding up.
11.	100	Reduction of share capital so as to reduce the liability of any portion of share not called up; cancel any portion of paid-up capital and return of paid up amount.
12.	106	Variation of rights of special classes of shares by the class of shareholders.

Sl. No.	*Section*	*Matters which may be approved by Special Resolution*
13.	146(2)*	Changing the registered office outside the local limits of the existing location.
14.	149(2A)	Commencement of a new business relating to any of the "other" objects in the memorandum of a company formed after 15-10-1965 or any object in relation to a company formed prior to that date.
15.	163	Keeping of register of members, register of debentureholders, the indexes and copies of annual return at a place in the same city/town/village of registered office other than the place of the registered office.
16.	208	Payment of interest on paid-up capital raised for expenses of the construction of any work which will not be profitable for a lengthy period.
17.	224A	Appointment of auditor in a company in which not less than 25 per cent of shares are held by specified institutions.
18.	237	Request to the Central Government to appoint inspectors to inspect a company.
19.	294AA	Appointment of sole selling agent as well as sole purchasing agent by a company having a paid up capital of Rs. 50 lakh or more.
20.	309	Alteration of Articles for payment of commission to directors.
21.	309	Payment of commission to directors.
22.	310	Payment of increased fees to directors.
23.	313	Inclusion of provision in the Articles for appointment of alternate director.
24.	314(l)(*a*)	Appointing a director to an office or place of profit.
25.	314(l)(*b*)	Appointment to a place of profit in a company of a partner or relative of a director, firm in which director or relative is a partner or a private company in which the director first mentioned is a director or a director or manager of that private company at a remuneration of the sum prescribed.
26.	314(1B)	Appointment to a place of profit of a partner or relative of a director or manager, a firm in which a director, or manager or relative of either is a partner or a private company of which a director, manager or relative is a director or a member.
27.	323	Making the liability of any director or manager unlimited.
28.	372A*	Giving loan to any other body corporate, making investment or providing guarantee in excess of the limits specified.
29.	391(2)	Approval of compromise or arrangement or amalgamation by direction of the Tribunal.
30.	424D(3) (proviso)	Preparation and sanction of schemes relating to amalgamation by the shareholders of the transferee company.
31.	433(*a*)	Winding up of a company by the Tribunal.
32.	484(l)(*b*)	Voluntary winding up.
33.	494	Power of liquidator to accept shares, etc. as consideration.
34.	512	Powers of liquidator in members voluntary winding up by passing a special resolution in general meeting.

Sl. No.	*Section*	*Matters which may be approved by Special Resolution*
35.	517	Arrangement binding on the company if a special resolution is passed in general meeting.
36.	546	In a voluntary winding up special resolution to give powers to the liquidator.
37.	550	Authority for disposal of books and papers in voluntary winding up.
38.	579(1)	To alter the form of constitution of a company registered under Part IX of the Act.
		Provisions for Producer Companies
39.	581H	Alteration of object clause of the memorandum of a producer company and alteration relating to change of registered office from one state to another (change of registered office subject to confirmation by Central Government).
40.	581-I	Alteration of articles of a producer company
41.	581ZH	Donation or subscription to any institution or individual for the purposes of— (*a*) promoting the social and economic welfare of Producer Members or producers general public; or (*b*) promoting the mutual assistance principles.
42.	581ZI	Investment, in excess of thirty per cent of the aggregate of paid-up capital and free reserves by a producer company.
43.	581ZL(6)	To authorise the Board of a producer company to dispose of the investments referred under section 581ZL(3) and (4).

* These resolutions are required to be passed by postal ballot in a listed company.

C. RESOLUTIONS REQUIRING SPECIAL NOTICE

3. Right of members to give special notice for submission of a resolution at a general meeting

Section 190 of the Companies Act, 1956 gives a right to every member to give special notice to the company of his intention to move the resolution at a general meeting for certain purposes. The condition to be met is that the member shall be competent to attend the meeting and move the resolution. The procedure set out under section 190 and the matters where the facility of special notice is prescribed are outlined below.

4. Procedure to be complied with for Resolution requiring Special Notice at a general meeting

The Act has prescribed a special procedure for submission of a resolution in respect of certain proposals which requires the approval of the general meeting including annual general meeting as under:—

1. Notice for intention shall be given in writing to the company by a member not less than fourteen days before the meeting exclusive of the day it is given to the company and the day of the meeting.
2. On receipt of such a notice the company shall give its members notice of the resolution immediately or if that is not possible the company shall publish the special notice of the resolution in a newspaper in English, not less than seven days before the meeting. (It is stated in the section that the advertisement shall be in a newspaper of appropriate circulation).
3. On the date of the general meeting, the members shall consider the matter as other businesses moved by the company.

5. Matters on which special notice may be given

Special notice (*See* Appendix 1 for specimen of notices) u/s 190 of the Companies Act, 1956 may be given by a member to the company for any of the following purposes:—

1. Appointment of a person other than a retiring auditor at an annual general meeting. [Section 225(1)]

2. Resolution that a retiring auditor shall not be re-appointed. [Section 225(1)]
3. Appointment of first auditors at a general meeting after removal therein. [Sections 224(5) and 225(4)]
4. Removal of a director under section 284 and appointment of a director in his place. [Section 284]
5. Section 257 allowing a person to stand for election as director by giving notice to the company appears to be another provision of special notice, but this is an independent provision and not related to section 190.
6. Appointment of small shareholders' director [Section 252]
7. Nomination of auditor in place of first auditor removed at a general meeting. As soon as nomination is received from a member nomination a person as auditor in place of the first auditor removed, the company shall give notice to the members not less than 14 days before the meeting. [Section 224(5) proviso]

D. CIRCULATION OF MEMBERS' RESOLUTIONS

Section 188 of the Companies Act, 1956, enables members to avail of the administrative machinery of the Company to put resolutions at their expense, in the annual general meeting and make other members aware of the purpose behind submission of such resolutions.

6. Requirement of specified number of members who shall send requisition in writing for circulation thereof by company

Section 188(2) provides that a Company shall be bound to circulate members' resolutions, if requisition is received from,—

1. members acquiring not less than one-twentieth of the total voting power of all the members having at the date of the requisition a right to vote on the resolution or business to which requisition relates; or
2. not less than one hundred members having the right and holding shares in the company on which there has been paid-up an aggregate sum of not less than Rs. One Lakh.

In *Amarnath Malhotra* v *MCS Ltd.* (1993) Case 469 (Del) a single shareholder seeking to move a resolution at the AGM for removal of existing auditors and appoint another in their place. It was held that provision relating to special notice do not dispense with the requirement of section 188. Section 190 read with section 225 neither expressly nor by implication overrides the requirements of section 188. A single member cannot require the company to circulate a special resolution to the members for being taken up at the AGM. Section 188, 190, 225 and 284 must be read together.

7. Manner of Circulation of Members' Resolution

Notice of any such resolution shall be given by the company and such statement shall be circulated to all the members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member, in any manner permitted for service of notice of the meeting. Notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in such a manner permitted for giving them notice of meetings of the company.

8. Obligation on company to circulate the Members' Resolution

Section 188(1) casts an obligation on the company as to Circulation of Members' Resolution. Accordingly, a company shall, on requisition in writing of specified number of members and unless it resolves otherwise, at the expense of the requisitionists:—

(*a*) on receipt of resolution for circulation shall give it to all the members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved at that meeting;

(*b*) circulate to the members entitled to the notice of any general meeting sent to them, any statement of not more than 1000 words with respect to the matter referred to in any proposed resolution, or any business to be dealt with at the meeting. In other words, a proposed 'members resolution' shall be circulated by the company, subject to the following conditions:—

(*i*) Provisions of section 188 have been complied with.

(*ii*) Requisition shall be in writing.

(*iii*) Circulation shall be at the expense of the requisitionists unless the company resolves otherwise.

(*iv*) Requisition shall be of specified number of members.

9. Circumstances in which a company is not required to Circulate Members' Resolution

A company shall not be bound under section 188 of the Act, to give notice of any resolution or to circulate any statement unless:—

(A) a copy of the requisition signed by the requisitionists is deposited at the registered office of the company,—

(*i*) in the case of requisition requiring notice of resolution not less than 6 weeks before the meeting;

(*ii*) in the case of any other requisition, not less than 2 weeks before the meeting; and

(B) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(C) If on the application, either of the company or of any other person who claims to be aggrieved, the Central Government is satisfied that the rights conferred by section 188 are being abused to secure needless publicity for defamatory matter, and the Central Government may order the company's costs on an application under section 188 to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

10. Banking company is not bound to circulate members' resolution, if the Board does not wish to circulate

A banking company is not bound to circulate any statement under this section if, in the opinion of its Board of directors, the circulation will injure the interests of the company. [Section 188(6)]

11. Penalty

If default is made in complying with the provisions of section 188, every officer of the company who is in default, shall be punishable with fine, which may extend to Rs. 50,000. [Section 188(8)]

Appendix 1

Specimen of the notices

I. Special notice to be given by a member to the company for removal of auditor

To,

The Board of directors,
ABC Limited,
Indore

Dear Sir,

Sub: Special notice for appointment of another person in place of retiring statutory auditors

I Abha Jaiswal, a member of the Company hereby give you a 'special notice' in accordance with the provisions of section 225 read with section 190 of the Companies Act, 1956 that at the ensuing annual general meeting of the Company to be held on 30th Sept., 2006 at the registered office of the Company, I intend to move the following resolution as an ordinary resolution for the appointment of M/s RKJ & Associates, Chartered Accountants, Indore instead of M/s SM & Associates, Chartered Accountants, Indore, who are retiring at the ensuing annual general meeting.

RESOLVED THAT M/s J.P.Saraf & Co., Chartered Accountant, Indore, be and are hereby appointed as the statutory auditors of the Company in place of retiring auditors M/s SM & Associates, Chartered Accountants, Indore, to hold office from conclusion of this annual general meeting until the conclusion of the next annual general meeting at a remuneration to be fixed by the Board.

Yours faithfully

Abha Jaiswal
Member of the Company
(Folio No. E20)

II. Special notice by member to company regarding removal of a director

To,

The Board of directors,
ABC Ltd.
Indore

Dear Sir,

Sub: Special notice under section 284 of the Companies Act, 1956 for removal of Mr. SKJ from the office of director

I AJ, a member of the Company hereby give you a 'special notice' in accordance with the provisions of section 284(3) read with section 190 of the Companies Act, 1956 that at the ensuing annual general meeting of the Company to be held on 30th Sept., 2006 at the registered office of the Company I intend to move the following resolution as an ordinary resolution:

RESOLVED that Mr. SKJ be and is hereby removed from his office of Director of the Company with immediate effect.

Yours faithfully
AJ
Signature of the member
(Folio Number E24)

Chapter 4

Amendment in the Resolution

It is a statutory right of every member who attends a general meeting of members of the company, to move any amendment on a matter that is being discussed at the meeting, provided that the amendment should made in a positive manner, properly and relate to the business of the meeting. It is for the chairman of the meeting to decide whether the amendment proposed is in order. The amendment will be discussed and voted and if it is carried, the same will be incorporated in the main motion after which the main motion will be put for voting. [*Henderson* v *Bank of Australasia* (1890) 45 Ch. D. 330]

1. Amendment should not be in a negative manner

An amendment, which will negate the motion under discussion, is not a proper one, as the mover of the amendment can oppose at the time of voting.

An amendment to a resolution is valid if it is not a direct negative to resolution, is germane to business being conducted, and does not require notice of a special resolution.

2. Amendment should not be for increase in the liability/obligation than provided in the notice

No amendment to a resolution will be accepted or may be deemed to be valid, which will make the liability or compliance of any requirement on the part of the company more onerous than that, if any, indicated in the notice. This is on the hypothesis that members receiving notice of a meeting are advised of a certain course of action by means of the notice and if they cannot attend the meeting, they will at least satisfy themselves that a liability greater than provided in the notice will not be imposed on the company.

3. Time for proposal of amendment in a general meeting

When a motion is placed before the meeting, a member may stand and inform the chairman that he wants to move an amendment to the motion. With the permission of the chairman he may propose the amendment.

4. Amendment should be seconded and voted upon it

An amendment proposed by a member, should be seconded by another member in the meeting. If the chairman considers it proper, the meeting will discuss the amendment and then the chairman will put this amendment to vote on show of hands and if this is carried, the amendment will be incorporated in the main motion and thereafter the chairman will put the amended main motion to vote and declare the result.

5. Special resolution cannot be amended

In the case of special resolution the text of the special resolution is required to be included in the notice of the general meeting and the approved special resolution must also be identical to the text of the draft resolution included in the notice. [*Moor Gate Mercantile Holdings Ltd.* (1980) 1 All ER 40: WLR 229 Cited in Palmer's Company Law, Vol. 1, 1982]

However, amendment may be proposed in the special resolution in the following circumstances:—

(*i*) if the amendment is only in respect of any grammatical or clerical errors;

(*ii*) it is reduced into the form of a new text which was not included in the notice, provided there is no difference in substance.