

PART XV

NOTICE, QUORUM, PROXY FOR MEETINGS

Chapter 1

Notice for Meetings

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Important Provisions at a Glance

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Notice in the case of general meetings are governed rigorously as compared to the notice in the case of Board meetings. Proper, complete and timely notice of general meeting is must for a proper proceedings thereat to be valid. Absence of notice or insufficient notice may invalidate the whole proceedings at a meeting and render the resolutions passed thereat to be insufficient.

Notice of every meeting of the board of directors of a company is required to be given in writing to every director for the time being in India. Section 172(1) provides that every notice of a meeting of a company shall specify the place and the day and hour of the meeting and shall contain a statement of the business to be transacted thereat. Section 173 provides that in respect of every special business the Explanatory statement is also required to be given relating to each item of special business. Therefore, the distinction is quite clear regarding the notices of board meetings and general meetings. [*Kashinath Taporiah v Incab Industries Ltd.* (1995) 6 SCL 201 (Cal.)].

I. NOTICE FOR GENERAL MEETINGS

1. Contents of notice

Every notice shall specify the place, day, date and hour of the meeting and shall contain the business to be transacted at the meeting. While sending the notice, due care should be given to the manner of sending the notice as prescribed in section 53 of the Act. Thus, the notice shall be deemed to have been properly served, if the envelope containing the notice is addressed to the member concerned at the address given by him to the company and the envelope is sent under Certificate of Posting. The envelope shall be sent by registered post where the member has desired the company to send the notice to him by registered post and has deposited sufficient amount with the company for the purpose.

2. Explanatory statement to be annexed to notice

Section 173 provides that in case of a business other than the four ordinary businesses, the company shall annex an explanatory statement with the notice explaining material facts relating to the business proposed for approval, availability of documents for inspections, disclosure of interest and requirements of the law as applicable for such business. It applies to a public company and a private company, which is a subsidiary of a public company. It may be noted that the lack of material facts or incomplete or inadequate explanatory statement will make a general meeting invalid. The said explanatory statement is intended to apprise the members of all material facts concerning each item of special business to enable the members to come to a proper judgment on the said item.

It is therefore, mandatory that the explanatory statement shall contain all material facts. The Court had observed that the provision in section 173 is mandatory and not directory and disregard of the requirements must lead to nullification of the action taken. [*Firestone Tyre and Rubber Co. Ltd. v Synthetics and Chemicals Ltd.* (1971) 41 Comp Cas 377 (Bom)]. The omission to mention the letter of the Central Government regarding appointment of sole selling agent was held material, which vitiated the notice.

In some matters the Court held that, lengthy circulars containing all manner of details would defeat the chief object. In the same way a minor defect in complying with the provisions of section 173(2) would not be a ground for making the resolution null and void. [*Joseph Michael v Travancore Rubber & Tea Co. Ltd.* (1986) 59 Comp Cas 898 (Ker)].

3. Object of section 173

The object of enacting section 173 is to secure that all facts, which have a bearing on the question on which the shareholders have to form their judgment are brought to the notice of the shareholders so that the shareholders can exercise an intelligent judgment. The provision is enacted in the interests of the shareholders so that the material facts concerning the item of business to be transacted at the meeting are before the shareholders and they also know what is the concern or interest of the management in any item of business, the idea being that the shareholders may not be duped by the management and may not be persuaded to act in the manner desired by the management unless they have formed their own judgment on the question after being placed in full possession of all the material facts and apprised of the interest of the management in any particular action being taken. Having regard to the whole purpose and scope of the provision enacted in section 173, it is mandatory and not directory and that any disobedience to its requirements must lead to the nullification of the action taken. [*V.G. Balasundaram v New Theatres Carnatic Talkies (P) Ltd.* (1993) 77 Comp Cas 324 (Mad.)].

Any fact, which would influence the shareholders in making of their minds, one way or the other, would be a material fact and has to be set out in the explanatory statement to the notice

4. Authority to make amendment in the special business

All the special businesses submitted to the meeting shall be subject to such modification as may be considered appropriate and accepted by the members at the meeting. It is a good secretarial practice to start each business with the following style:

'To consider and, if thought fit, to pass with or without modification(s), if any, the following Ordinary/Special Resolution'.

5. Authority for issuance of notice for meeting

A general meeting, whether an annual general meeting or an extraordinary general meeting, must be called under the authority of a resolution of the Board of directors subject to the provisions contained in the company's articles; if the managing director, manager, secretary or other officers calls a meeting without such authority, it will not be effective unless the Board ratify the same before the meeting is held.

The notice should state that 'By the orders of the Board'.

In case of a notice for the Board meeting, it should be issued on the instructions of the Chairman of the Board of directors of the company.

NOTICE PERIOD FOR GENERAL MEETING

Section 171 of the Companies Act, 1956 provides that a public company or a private company which is a subsidiary of the public company shall give a clear notice of not less than 21 days for calling a general meeting, whether annual general meeting or any other general meeting.

6. Manner of counting 21 days for notice of a general meeting

For notice of meeting sent by post, period of 21 days is to be counted from expiry of 48 hours after posting. [*Balwant Singh Sethi v Sardar Zorawarsingh Hushnak Singh Anand* (1988) 63 Comp Cas 310 (Bom)].

As provided in section 171, an advance notice of not less than 21 days shall be given for calling a general meeting of members. The requirement of 21 days means 21 clear days, exclusive of the day when notice is served and the day when the meeting is held [*Bharat Kumar Dilwalia v Bharat Carbon and Ribbon Manufacturing Co. Ltd.* (1973) 43 Comp Cas 197 (DB)(Del). (See also *N.V.R. Nagappa Chettiar v Madras Race Club* (1949) 19 Comp Cas 175 (Mad)]. Thus, there should be at least 23 clear days for the despatch of a notice for a general meeting.

In this connection, section 53(2) provides that the service of a notice for a general meeting shall be deemed to have been effected at the expiration of 48 hours after the same is posted. There is one section of opinion that the said 48 hours (two days) shall also be added to the requirement of 23 days for a notice for a general meeting. Thus, the notice shall be sent 25 days in advance. When the full notice is advertised the period of 21 days starts from the day of the advertisement appears and the day of the meeting shall be excluded. In that case the explanatory statement need not be advertised but may be sent to the members alongwith the notice.

7. Exemptions available to section 25 companies

In the case of a general meeting of section 25 companies, it may be called by giving notice of not less than 14 days. [Section 171(1)]

8. Calling of a general meeting at shorter notice

Section 171(2) of the Act, provides that a general meeting of a company can be called by giving shorter notice of less than 21 days, subject to the fulfillment of the following conditions:—

- (i) In the case of an annual general meeting, it should be consented by all the members entitled to vote thereat; and
- (ii) In the case of any other meeting of members, it should be consented by members holding not less than 95% of the paid-up share capital, having a right to vote at the meeting. In the case of a company not having a share capital, the proposal must be approved by members holding not less than 95% of the total voting power.

Members shall give their consent in the prescribed Form 22A for convening a general meeting by shorter notice. The consent shall be obtained from the members entitled to attend the meeting either before or at the time of the meeting. (Appendix 1).

Sub-section (2) of section 171 is mandatory and consents means 'consent of members entitled to attend and vote' and 'not of members entitled to vote and present'. [*N.V.R. Nagappa Chettiar v Madras Race Club* (1949) 19 Comp Cas 175 (Mad)].

Even though consent of shareholders to shorter notice for meeting at which a special resolution is passed, is not obtained prior to meeting, the consent obtained thereafter would validate the resolution. [*Parikh Engg. & Body Building Co. Ltd., In re* (1975) 45 Comp Cas 157 (Pat)].

Shareholders may validate by post consent a resolution passed at a meeting called on a shorter notice. [*Self Help (P) Industrial Estate (P) Ltd., In re* (1972) 42 Comp Cas 605 (Mad)].

9. Where there is a small delay?

Where the notice for a meeting was deficient by a day, the Bombay High Court condoned the delay by observing that the requirement of the section as to the length of the notice is directory only and not mandatory because otherwise, it would have been difficult for large companies to function effectively. [*Shailesh Harilal Shah v Maturnvee Textile Ltd.* AIR 1994 Bom 20].

10. Service of notice

Section 53 raises a presumption about service of documents, send by registered post, but the presumption is rebuttable. If a document had been sent by registered post but it had not reached, the addressee, it could not be said that the company is to be discharged from its obligation and that no right remain with the addressee. [*Inter Sales v Reliance Industries Ltd.* (2002) 108 Comp Cas 680 (Cal)] It is duty of legal representative to furnish his address to a company for notice to be sent to him.

Cause of action arises for non-compliance with provision of section 53 at place where registered office of company is situated from where documents are to be sent and court which has jurisdiction for entertaining complaint for non-supply of requisite documents is court within jurisdictional limits of which registered office of company is situated. [*Karnataka Bank Ltd. v B. Suresh* (2001) 32 SCL 441 (Kar)].

11. Place of notice

In terms of section 53 notices to all the members of a company are to be sent to the addresses, which are registered with the company. If a letter is sent to any other address it will not amount to compliance with section 53. At the same time no shareholder who has not received notices of the company's annual general meetings and who has not expressed any grievance and that score for long time can make it an issue in proceedings u/s 397 & 398. [*Pearson Education Inc. v Prentice Hall of India (P) Ltd.* (2005) 64 CLA 177 (CLB)].

12. Jurisdiction of Court regarding directions for the meetings

By virtue of section 53 of the Companies Act, 1956, the cause of action arises at the place where the registered office of the Company is situated and the Court within whose jurisdiction, the registered office is situated could alone take cognizance of the offences. [*Karnataka Bank Ltd. v B. Suresh* (2001) 43 CLA 32 (Kar)].

ENTITLEMENT TO RECEIVE NOTICE

Section 172(2) deals with the persons entitled to receive notice of a general meeting. It requires to send notice to the followings in respect of each general meeting:—

13. All members

Notice of a general meeting shall be sent to every member of a company including those members, if any, who may not have paid any money called upon the shares. Preference shareholders, if any, are also entitled to receive notices of all general meetings, whether the dividend is paid or not.

14. Jointholders

In the case of jointholders of shares, the envelope containing the notice shall be addressed to the person first named in the register of members unless otherwise directed in writing by all the jointholders. [Section 53(4)]

15. In the case of death or insolvency of a member

In the case of the death or insolvency of a member, the notice should be addressed to the title of representative of the deceased or to the assignee of the insolvent or until the said address is furnished, the notice shall be sent as if the death or insolvency of a member has not occurred.

16. The Auditors

Notice of general meetings shall always be sent to all the auditors of the company. Omission to give notice of the meeting to the auditors does not invalidate the resolution.

17. Preference shareholders

Preference shareholders are also members of the company. But the holders of preference shares shall exercise voting rights at a general meeting if the company has not paid the dividend on preference shares for the period as specified in section 87 of the Act. Thus, even though a preference shareholder may not have a right to participate in the proceedings, he has a right to receive notice for general meeting and attend the same.

18. Accidental omission to give notice

There have been occasions when a company did not send notice due to an accidental omission. 'Accidental omission' means that omission was not only not designed but also not deliberate. The non-receipt of the notice by certain members will not invalidate the proceedings of the meetings. [*Maharaja Exports v Apparels Export Promotion Council* (1986) 60 Comp Cas 353 (Del)].

Onus of proof as to fact that notice is not given to the absent directors, is always on the contributory, who claims it.

SERVICE OF NOTICE FOR MEETINGS

The notice of meeting to the members of the company and persons entitled to share in consequence of the death or insolvency of a member, can be sent by a company by any of the manner as per provisions of section 53 of the Companies Act, 1956. Notice may be served in the following manner:—

- (a) Personal service. (Hand delivery)
- (b) Sending at the registered addresses of the person entitled to receive the notice by post under a certificate of posting. (UPC)
- (c) Sending at the registered addresses of a person entitled to receive notice by registered post.
- (d) Sending at the registered addresses of a person entitled to receive notice by other means as prescribed in the Articles (by courier or e-mail).
- (e) In the case of persons having no registered addresses in India, the documents including notice shall be sent:—
 - (i) to the address, if any, within India supplied by them to the company for giving notices to them; or
 - (ii) by advertising it in newspaper circulating in the neighbourhood of the registered office of the company.
- (f) Notice to the person entitled to shares in consequence of the death or insolvency of the member shall be sending it through post in a pre-paid letter addressed to them by name or by title of representatives of a deceased or assignee at the address, if any, supplied for the purpose by the person claiming to be so entitled or until such an address has been supplied by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred.
- (g) A document may be served by the company on the jointholders of a security by serving it on the jointholders named first in the register in respect of the seniority.

Section 53(2) further provides that the service of a notice for a general meeting shall be deemed to have been effected at the expiration of 48 hours after the same is posted.

PROXY

All the notice of general meetings of a company shall mention in the notice itself that:

"MEMBERS ENTITLED TO ATTEND AND VOTE MAY, APPOINT ONE OR MORE PROXIES TO ATTEND AND VOTE INSTEAD OF THEMSELVES AND A PROXY NEED NOT BE A MEMBER. PROXIES TO BE VALID MUST BE RECEIVED AT THE REGISTERED OFFICE OF THE COMPANY NOT LESS THAN FORTY-EIGHT HOURS BEFORE THE APPOINTED TIME OF THE MEETING."

A. NOTICE OF STATUTORY MEETING

19. Notice of the Statutory Meeting

At least 21 days clear notice shall be given to all the members of the company for convening of the Statutory Meeting.

A statutory meeting may be called after giving shorter notice of less than 21 days, provided the consent is accorded by the members of the company holding at least 95% of such part of the paid up capital.

20. Specify in the notice as it is a statutory meeting

Notice of the meeting must state that the meeting shall be a statutory meeting pursuant to the provisions of section 165 of the Act.

21. Enclosure of statutory report with the notice

Notice of the statutory meeting shall be enclosed with a certified copy of the statutory report duly approved by the Board and certified by the directors and the auditors of the company.

22. Contents of the notice of statutory meeting

Notice of the statutory meeting should have necessary contents as placed in Appendix 2.

B. NOTICE FOR CALLING AN ANNUAL GENERAL MEETING

23. Notice of the Annual General Meeting

As per section 171 of the Act, at least 21 days clear notice shall be given to all the members of the company for convening of the annual general meeting.

An annual general meeting may be called on a shorter notice than 21 days, provided it should be consented by all the members entitled to vote at the annual general meeting in the prescribed Form 22A.

24. Mention of such meeting as an Annual General Meeting

Notice of the annual general meeting must state that such meeting is being the annual general meeting in calling notice of the meeting itself. The notice should be issued in accordance with the compliance of the provisions of sections 171 to 173 of the Act.

25. Numbering of the Annual General Meeting

Notice of the annual general meeting must state whether it is 1st, 2nd, 3rd, etc., annual general meeting. It shows for how many years the company is in existence.

26. Balance Sheet and Profit and Loss Accounts to be annexed with the notice

A copy of the Balance Sheet, Profit and Loss Accounts together with the Directors' Report, attached with the Compliance Certificate (in case of a company having paid up capital of Rs. 10 lacs or more but less than Rs.200 lacs) and the Auditors' Report thereon shall be annexed with the notice of the meeting.

27. Business to be specify

Notice shall specify the nature of business as ordinary and special business. In the case of special business submitted to the meeting for approval, it shall also specify requirement of passing ordinary or special resolution, as the case may be.

28. Enclose explanatory statement with the notice

Notice shall also be annexed with the explanatory statement as per provisions of section 173 of the Companies Act, if any special business (other than the four ordinary businesses) has been submitted to the meeting for approval. In case of listed companies, disclosures as required under Clause 49 of the Listing

Agreement, SEBI Takeover Regulations and DIP Guidelines shall also be given apart from the requirements of the Companies Act.

29. Contents of the notice

Notice shall specify all the necessary contents, material facts are to be given and not particulars. A shareholder who by his conduct shows that he knew the real effect of the work to be transacted at a meeting, cannot complain of a notice on the ground of insufficiency. [*Maharani Lalita Rajya Lakshmi v Indian Motor Co. (Hazaribagh) Ltd.* (1962) 32 Comp Cas 207 (Cal); *Mackinnon Mackenzie & Co. (P) Ltd., In re* (1967) 37 Comp Cas 516 (Cal)].

If notice says that meeting is for the appointment of a chairman, and the shareholders appoint a person other than nominee of directors, it would not be outside scope of notice. [*Seth Sobhag Mal Lodha v Edward Mills Co. Ltd.* (1972) 42 Comp Cas 1 (Raj)]

Specimen of the notice of annual general meeting has been given in Appendix 3.

C. NOTICE FOR CALLING EXTRAORDINARY GENERAL MEETING

As discussed in Part XIV that such matters which cannot be prolonged for the next annual general meeting for approval of members as may be required under the provisions of the Companies Act, a company may call general meeting of members between two annual general meetings called 'Extraordinary General Meeting'.

30. Notice of the Extraordinary General Meeting

At least 21 days clear notice shall be given to all the members of the company for convening of the extraordinary general meeting. The preference shareholders are also the members of the company and have a right to receive notice for general meeting and also to attend the same.

In the case of joint holders of shares, the notice shall be addressed to the person first named in the Register of Members [Section 53(4)]

An extraordinary general meeting may be called after giving shorter notice than that of 21 days, provided the consent is accorded by the members of the company holding at least 95% of such part of the paid up capital. The consent should be given in Form 22A of the Act.

31. Notice in consequence of death or insolvency

Notice of every general meeting of the company shall be given to the persons entitled to a share in consequence of the death or insolvency of a member, by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description, at the address in India supplied for the purpose by the persons claiming to be so entitled or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred. [Section 172(2)(ii)]

32. Advertisement of notices in the newspaper

It is not obligatory to advertise notice in the newspaper. However, as an abundant precaution, the company may advertise in the newspapers to avoid objection from such of the shareholders as reside outside India and who incidentally may not receive the notices served through the post.

33. Every business at the Extraordinary General Meeting shall be special business

As per provisions of section 173(1)(b) of the Companies Act, 1956 all the businesses transacted in a meeting other than the annual general meeting shall be deemed as a special business.

34. Compulsory requirement to enclose Explanatory Statement with the notice of the meeting

In view of that all the business of the extraordinary general meeting has been considered as special business, it is required under section 173(2) of the Companies Act, to annex to the notice of the meeting a statement setting out all the material facts concerning each such item of business, including in particular the nature of concern or interest, if any therein, of every director and the manager of the company. (Appendix 4)

The explanatory statement is a part of the notice. It cannot be read de hors it. While it is necessary to annex the explanatory statement it is not necessary to include in it the text of the resolution or draft of the

resolution. Its purpose is that the members should be informed of the nature of the business to be transacted at the AGM. [*Rajiv Nag v Quality Assurance Institute (India) Ltd.* (CLB) decided on 10-7-2000].

II. NOTICE OF BOARD MEETING

35. Requirement for notice of Board meeting in writing

Section 286 of the Companies Act, stipulates that a meeting of the Board of directors shall be held after giving notice. The notice shall be given in writing to every director in India and at his usual address in India. Notice shall be given reasonably in advance at least seven days before the meeting.

Although it is not incumbent to give notice to a foreign director at the address outside India. However, sound corporate practice requires that notice to be sent to all directors, whether in India or outside.

In terms of section 286(1), notices have to be issued for Board meetings. Any decision to have a Board meeting on the 5th of the first month of every quarter as alleged will not serve to dispense with a formal notice for each meeting. Resolutions passed at meeting for which notices have not been sent to members having substantial stakes will have to be struck down as invalid. [*Hansraj Gokuldas Ved v Nitin Dyeing & Bleaching Mills (P) Ltd.* (2005) 64 CLA 64 (CLB)].

36. Inclusion in the notice of Board meeting an agenda of business

The Act does not prescribe that a formal agenda shall be fixed in advance. However, it is generally recognised that an agenda sent in advance for the meeting facilitates fruitful consideration of matters put before the Board. However, it is a general practice with well managed companies to forward an agenda for the meeting. A further refinement that is followed in well run public companies is the practice of sending with the agenda, brief notes thereon which promotes a better understanding of the business to be transacted at the meeting. However, the Chairman will be free to allow consideration of matters not included in the agenda. [*Suresh Chandra Marwaha v Laid's (P) Ltd.* 1978) 48 Comp Cas 110 (P&H)]. It may be appreciated that while the Board is a formal body, the discussions therein reflect a spirit of informality. (Appendix 6 & 7)

37. Authority to convene a Board meeting

Generally, the secretary or a director on the direction of the Chairman/Managing Director will call a Board meeting. The Articles describe the procedure in that matter.

38. Entitlement to receive notice of the Board meeting

Notice of every meeting of the Board of directors of the company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director. If a director is not in India, notice shall be given at his usual address in India. Every director even if they happens to be interested in a particular resolution must be furnished with notice of the Board meeting. Notice shall be sent to a director even if he has intimated to the company that the notice of the Board meeting need not be sent to him. Right to waive notices of Board meeting cannot be waived. However, waiver of formal notice is possible if Board decides to meet at regular intervals.

39. Period of advance notice

The Act, has not prescribed a period for sending notice of the Board meeting. As a good secretarial practice, notice must be given at least one week in advance from the appointed day of Board meeting. The Articles of a company may stipulate the periodicity of notice convening Board meetings. Failure to give notice of Board meeting will render resolutions passed thereat invalid.

If notice given is too short and does not state purpose of the meeting, and the motive is to hold meeting in the absence of those who would have objected to the proposal, the meeting is highly irregular and decision taken at it invalid.

40. Contents of notice

The notice convening Board meeting must state the time, day, date and venue of the meeting. It is not mandatory that the notice convening Board meeting shall contain an agenda. But as a good secretarial practice, generally agenda of business to be transacted at a board meeting is contained in or attached to the notice. Notice of every meeting of the Board of directors of a company is required to be given in writing to

every director for the time being in India. However, even if there is no specific agenda, under the miscellaneous item with the permission of the chairman, any other business may be transacted. Even if the business is not one of the item in the agenda, still the matter may be considered at the Board meeting and appropriate resolution may be passed. (See Appendix 5 for specimen of notice of Board meeting) Following comments deserve mention here:—

1. There is no particular form for notice of Board meeting. However, it must be unconditional and definite. A contingent notice has been held to be an insufficient notice.
2. If notice of Board meeting given is too short and does not state purpose of the meeting, and the motive is to hold meeting in the absence of those who would have objected to the proposal, the meeting is highly irregular and decision taken thereat could be invalid.

41. Agenda and draft resolution is required to be sent alongwith the notice of the meeting in certain cases

The Act, does not require to send agenda for the Board meeting. However, certain sections of the Companies Act, itself requires that the draft resolution is required to be given for the approval of the Board for the following businesses even it also requires that the resolution is required to be passed by unanimous consent of the Board:—

- (a) Appointment of a managing director, who is also a managing director of another company. [Section 316]
- (b) Appointment of a manager, who is also a manager of another company. [Section 386]
- (c) Approval for inter-corporate loans and investments. [Section 372A]

42. Penalty for default committed in sending notice

Section 286(2) says that every officer of the company whose duty is to give notice of Board meeting as aforesaid and who fails to do so, shall be punishable with fine which may extend to Rs. 1,000.

On the other hand, the offence of contravention of section 285 is punishable under section 629A which provide that the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs. 5,000, and where the contravention continues with, a further fine which may extend to Rs. 500 for every day after the first, during which the contravention continues. However, both the offences are compoundable under section 621A.

43. Situation where notice of Board meeting is not required

Under the following situation there will be no need to send notice of Board meetings to the directors:—

1. In case the Articles of Association of the company provides that meeting of the Board will be held on a certain day or date of particular month then notice of such Board meeting need not be given. For example, the Articles of Association of a company may stipulates that Board meeting will be held on 1st April, 1st July, 1st October and then on 1st January of every year, etc. notice of such board meeting need not be given.
2. Notice of adjourned meeting need not be given except, where meeting has been adjourned *sine die*.

44. Notice of adjourned Board meeting

There is no provision in the Act for giving notices of adjourned Board meeting, which is merely a continuation of the original meeting. However, the Articles of the concerned company must be pursued to see any provision contained therein in this regard.

45. Improper notice of Board meeting and consequences therefor

Proper notice of the meeting is a condition precedent for resolution passed thereat to be valid. Improper or insufficient notice or absence of notice may render resolutions passed thereat null and void. Failure to send notice of Board meeting to all the directors will render resolutions passed thereat void.

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)].

However, if notice of the Board meeting was not given, the proceeding of the meeting will not be invalid by reason of the fact that all the directors attended the meeting and did not raise any objection to failure to serve notice. One more remedy is that, it should be ratified at the next board meeting where directors who were absent in the last Board meeting, are also present.

46. Notice for postponement of a Board meeting

There is no ban under the Companies Act, for postponement of a Board meeting after sending a notice to the directors. A meeting validly called may be postponed by the chairman by sending notice to that effect subject to the provisions of section 285 of the Act. (Appendix 8)

47. Whether the obligation, duty or right conferred on the Board conferred on them an incidental or ancillary power to postponed the AGM?

In *Rajpal Singh v State of UP* (1968), it was held that it would be an undue restriction on the power of the Board if it were to be held that the Board would not have the implied or the ancillary power to postpone an AGM for which they had issued notice. The company normally act through its Board of directors and if the Board is held to be not even having the power or discretion to take steps or to alter the steps taken to fulfill the statutory obligation of the company within the framework of the statute, it would impede the smooth working of the company. [*John Chandy v Catholic Syrian Bank Ltd.* (1995) (Ker)].

48. Cancellation of Board meeting

There is no ban on cancellation of a Board meeting called by the company, if the purpose for which it was called has no more existence due to operation of law or otherwise. A notice for cancellation of the meeting should be sent to all the directors. (Appendix 9)

Appendix 1

Specimen of Form 22A

Consent by shareholder for shorter notice

[Pursuant to section 171(2)]

To,

The Board of directors
Abha Jaiswal Consultants Ltd.
132, Mahavir Nagar
Indore (M.P.)

I, Pramod Jain S/o Shri Sheel Chand Jain, R/o Bamor Kala, District Shivpuri (M.P.) holding 1,000 equity shares of Rs. 100 each in the company in my own name, hereby give consent, pursuant to section 171(2) of the Companies Act, 1956, to hold the Annual General Meeting on 30th September, 2005 at shorter notice.

Indore
xx.xx.xxxx

Pramod Jain

Appendix 2

Specimen of notice for the Statutory Meeting

NOTICE is hereby given that pursuant to the provisions of section 165 of the Companies Act, 1956, the Statutory Meeting of the members of the company ABC LIMITED will be held on Saturday, the 31st day of August, 2005 at 11.00 A.M., at the Registered Office of the company at 132, Mahavir Nagar, Indore (M.P.).

Copy of the Statutory Report duly certified by the directors and auditors of the company as required under the Companies Act, 1956 is annexed with the notice of the meeting.

Place: Indore
Date:xx.xx.xxxx

By the Orders of the Board
Abha Jaiswal
Company Secretary

Note.—Members entitled to attend and vote may, appoint one or more proxies to attend and vote instead of themselves and a proxy need not be a member. Proxies to be valid must be received at the registered office of the company not less than forty-eight hours before the appointed time of the meeting.

Appendix 3

Specimen of notice for Annual General Meeting

NOTICE is hereby given that the Sixteenth Annual General Meeting of the Members of FORM (INDIA) LTD. will be held on Saturday, 28th day of September, 2006 at 11.00 A.M. at the registered office of the company situated at Niraj Industrial Estate, Mumbai to transact the following business:

I. Ordinary Business:

1. To receive, consider and adopt the Audited Balance Sheet as at 31st March, 2006 and the Profit and Loss Account for the year ended 31st March, 2006 together with the Reports of the Board of directors and Auditor thereon.
2. To declare dividend.
3. To appoint a director in place of Shri KBL who retires by rotation and being eligible offers himself for re-appointment.
4. To appoint Auditors to hold office from conclusion of this meeting until the conclusion of the next Annual General Meeting of the Company and to fix their remuneration.

II. Special Business by Ordinary Resolution:

5. To consider if thought fit, to pass with or without modification(s) if any, the following Ordinary Resolution:

RESOLVED THAT Shri SJM who was appointed as Additional Director by the Board to hold office upto the date of this Annual General Meeting, and in respect of whom a notice under section 257 of the Companies Act, 1956 have been received from a member signifying his intention to propose, Shri SJM as a candidate for the office of the Director be and is hereby elected and appointed as Director of the Company, liable to retire by rotation.

III. Special Business by Special Resolution:

6. To consider and if thought fit to pass the following Resolution with or without modification if any, as a Special Resolution:

RESOLVED THAT pursuant to the provisions of section 198, 269, 302, 309 & 310 read with the provisions of Schedule XIII of the Companies Act, 1956 and other applicable provisions if any of the Companies Act, 1956 (including any statutory modifications or re-enactment thereof for the time being enforce) the consent of the members of the Company be and is hereby granted for revision in the remuneration and benefits payable to Shri KBL, the Whole-time Director of the Company from 1st December, 2006 for the remaining tenure of his appointment, as given herein under.

Category A:

- (a) Salary: from Rs. per month to Rs. per month, with the annual increment of Rs. only.
- (b) Perquisites: Subject to the ceiling of Rs. per annum:
 - (i) Company shall provide rent free residential accommodation or House Rent Allowance shall be paid to him subject to a maximum of 50% of the salary or house accommodation shall be provided by the Company and 10% of salary shall be recovered by way of rent.

Expenditure incurred by the Company on his electricity, water and furnishing shall be evaluated as per Income Tax Rules, 1962 subject to a ceiling of 10% of salary.

- (ii) Re-imbursement of medical expenses of the Executive Director and his family, the total cost of which to the Company shall not exceeding one month salary in the year or three months salary in a block of three years.
- (iii) Leave travel assistance: Expenses incurred for self and family in accordance with the Rules of the Company.
- (iv) Club Fees: subject to a maximum of two clubs this will not include admission and life membership.
- (v) Personal accident insurance premium not exceeding Rs. 4,000 p.a.

Category B:

- (i) Contribution to the Provident Fund, Family Benefit Fund, Superannuation Fund as per Rules of the Company.
- (ii) Gratuity not exceeding half a month salary for each completed year of service.
- (iii) Earned Privilege Leave: As per the rules of the Company subject to the condition that the leave accumulated but not availed of will be allowed to be encashed for 15 days salary for every year of completed services at the end of the tenure.

Category C:

- (i) Car: The Company shall provide a car with driver for the Company's business and if no car is provided reimbursement of the conveyance shall be as per actual on the basis of claims made by him.
- (ii) Telephone: Free use of telephone at his residence provided that personal long distance calls on the telephone shall be billed by the Company to the whole-time Director.

Note.—For the purpose of perquisites stated in Category "A" above, "Family" means the spouse, the dependent children and dependent parents of the appointee.

FURTHER RESOLVED THAT in the event of there being loss or inadequacy of profit for any financial year, the aforesaid remuneration payable to Shri KBL, the Whole-time Director shall be the minimum remuneration payable to him in terms of the provisions of Schedule XIII to the Companies Act, 1956.

RESOLVED FURTHER THAT Shri KBL, the Whole-time Director shall also be entitled for the reimbursement of actual entertainment, travelling, boarding and lodging expenses incurred by him in connection with the Company's business and such other benefits/amenities and other privileges, as any from time to time be available to other senior executives of the Company.

RESOLVED FURTHER THAT the Board of directors of the Company be and is hereby authorised to do all such acts, deeds, matters and things as in its absolute discretion, it may consider necessary, expedient or desirable, and to settle any question, or doubt that may arise in relation thereto and the Board shall have absolute powers to withhold the increments, decide break up of the remuneration within the above said maximum permissible limit, in order to give effect to the foregoing resolution, or as may be otherwise considered by it to be in the best interest of the Company.

7. To consider and if thought fit to pass the following Resolution with or without modification if any, as an Special Resolution:

RESOLVED THAT consent of the Company pursuant to the provisions of section 314(1)(b) and other applicable provisions if any of the Companies Act, 1956, be and is hereby accorded for the appointment of Smt. RS as the Dy. General Manager of the Company w.e.f. 3rd April, 2006 under the pay scale of Rs. 4,000-225-8500-225-10750-250-13250 on the basic of Rs. 7,150 subject to maximum of Rs. 20,000 p.m. who is a relative of directors of the Company and that she will also for the reimbursement of traveling, conveyance and other actual out of pocket expenses as per rules of the

Company as applicable to other executives of the same grade for the attending the works/assignments of the Company.

BY ORDERS OF THE BOARD
FOR, FORM (INDIA) LTD
CHAIRMAN

Place: Indore

Date: 31st Aug., 2006

Notes.—

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member. Proxy in order to be effective must be received by the company not less than 48 hours before the meeting.
2. Register of Members and Share Transfer Book shall remain close from 2006 to ...2006 (both days inclusive).
3. The unpaid dividend for the year 1998-99 lying in the unpaid dividend account will be transferred to the Investors Education and Protection Fund as per the provisions of section 205C of the Companies Act, 1956. Members who have not encashed their dividend warrants for the year 1997-98 and thereafter are requested to lodge their claim with the company immediately. It may be noted that once the unclaimed dividend is transferred to the Investors Education and Protection Fund, as above, no claim shall lie in respect thereof.
4. The dividend, if declared, will be paid on or after 28th September, 2006 to the members so entitled, whose names appear in the register of members as on 28th September, 2006 being the date of Annual General Meeting of the company. In respect of shares held in electronic form, the dividend will be paid to those beneficial owners whose name appears in the statement furnished by the depositories for the purpose.
5. (a) Members are requested to notify immediately any change of address:
 - (i) to their Depository Participants (DPs) in respect of their electronic share accounts; and
 - (ii) to the Company to its Share Transfer Agents in respect of their physical share folios, if any.(b) In case the mailing address on this Annual Report is without the PINCODE, Members are requested to kindly inform their PINCODE immediately.
6. Non-resident Indian Shareholders are requested to inform Share Transfer Agents immediately:
 - (a) the change in the residential status on return to India for permanent Settlement.
 - (b) the particulars of NRE Account with Bank in India, if not furnished earlier.
7. All documents referred to in the accompanying notice are open for inspection at the Registered office of the Company on all working days, except Saturdays between 11.00 a.m. to 1.00 p.m.
8. Members who are holding shares in identical order of names in more than one folio are requested to send to the Company the details of such folios together with the share certificates for consolidating their holdings in one folio. The share certificates will be returned to the members after making requisite changes thereon.
9. Members desirous of obtaining any information concerning accounts and operations of the Company are requested to address their questions in writing to the Company at least 7 days before the date of the Meeting so that the information required may be made available at the Meeting.
10. The Company has connectivity from the CDSL & NSDL and equity shares of the Company may also be held in the electronic form with any Depository Participant (DP) with whom the members/investors are having their depository account. The ISIN No. For the Equity Shares of the Company is In case of any query/difficulty in any matter relating thereto may be addressed to the Share Transfer Agent.

11. As per the provisions of the Companies Act, 1956, facility for making nominations is now available to INDIVIDUALS holding shares in the Company. The Nomination Form-2B prescribed by the Government can be obtained from the Share Transfer Agent or may be down loaded from the website of the Department of Company Affairs.
12. Pursuant to the Clause No.49 of the Listing Agreement, profile of the directors proposed for appointment/re-appointment being given in a statement containing details of the concerned directors is attached hereto.
13. An Explanatory Statement under section 173(2) of the Companies Act, 1956 is annexed hereto.

STATEMENT REGARDING THE DIRECTORS PROPOSED FOR APPOINTMENT

NAME AND DESIGNATION AGE QUALIFICATIONS/ DATE OF OF APPOINTEE YEARS EXPERIENCE APPOINTMENT IF ANY	OTHER DIRECTORSHIPS
Shri KBL (WTD) 50 FCA 03/05/2003 Nil	
Shri SJM (NED) 52 FCS 20/09/2005 Nil	

ANNEXURE TO THE NOTICE

EXPLANATORY STATEMENT IN PURSUANT TO THE PROVISIONS OF SECTION 173 OF THE COMPANIES ACT, 1956 IN RESPECT TO THE SPECIAL BUSINESS

Item No. 5

To broad base the Board of directors and to comply with the requirement of Clause 49 of the listing agreement Shri SJM, was appointed by the Board as an Additional Director in the category of non-executive independent director of the Company w.e.f. 18th September, 2006 to hold office till the date of the ensuing Annual General Meeting.

The Company have received a notice u/s 257 of the Companies Act, 1956 from a member proposing his appointment for the office of the Director of the Company. Shri SJM is having through experience in the field of Finance & Management.

The Board recommended for the appointment of Shri SJM and proposes to pass the resolutions as set out in item No.5 of the Notice as an Ordinary Resolution.

Except, Shri SJM, none of the directors of the Company are interested or concerned in the resolution.

Item No. 6

Shri KBL was re-appointed as the Whole-time Director of the Company w.e.f. 1st May, 2004 for a period of five years on the monthly remuneration of Rs. p.m. Shri KBL, is looking after all the manufacturing activities of the plant situated at Maharashtra and head office administration at Mumbai. Looking into the expanded business activities, and his contribution in the growth and success of the Company, the Remuneration Committee of the Board has considered that the remuneration being paid to Shri KBL is inadequate and recommended for increase in his remuneration w.e.f. 1st December, 2006 for the remaining part of his tenure.

Looking into their involvement and whole efforts for the growth and success of the Company, and the trend for managerial remuneration in the pharmaceutical industries, the Board considered that the remuneration payable to the above said director is still less than generally paid in other similar size companies. Further that in view of the amendments made in the Schedule XIII of the Companies Act, 1956, now the Company may give remuneration upto Rs. 1,25,000 per month to the above said director.

Therefore, your Board of directors recommend for approval for revision in the remuneration payable to Shri KBL as proposed in Item No.6 of the notice by way of special resolution. Except, Shri KBL, being appointee, none of the directors are interested or concerned in the resolution.

Item No. 7

Mrs. RS who is a qualified as BBA and G.G. Diploma in Business Administration was appointed by the Board w.e.f. 1st April, 2006 as the Dy. General Manager of Corporate Affairs of the Company on a monthly remuneration of Rs. 13,214 p.m. Mrs. RS is a young and dynamic professional and having proper exposure to deal with the Corporate Business Affairs of the Company's products.

Since Mrs. RS, is a relative of Shri AJ, the Chairman & Managing Director and Shri SK, the director of the Company any payment by way of salary/remuneration in excess of Rs. 10,000 p.m. requires approval of the Members in General Meeting by way of Special Resolution in terms of the provisions of section 314(1)(b) of the Companies Act, 1956. Looking into her qualification and experience, your directors recommend to pass the special resolution as set out in Item No. 7 of the notice.

Except, Shri AJ, Chairman & Managing Director and Shri SK, the Director being relative no, other directors of the Company are concerned or interested in the Resolution.

BY ORDERS OF THE BOARD
FOR, FORM (INDIA) LTD.
CHAIRMAN

Place: Indore

Date: 3rd Aug., 2006

Appendix 4

Specimen notice of Extraordinary General Meeting

NOTICE is hereby given that an Extraordinary General Meeting of the Members of PQR Limited will be held at the Registered office at 204, Bijali Nagar, Indore (M.P.) on Tuesday the 15th day of August, 2006 at 11.00 a.m. to transact the following special businesses:—

I. SPECIAL BUSINESS BY ORDINARY RESOLUTION:

1. To consider and if thought fit, to pass with or without modification(s) if any, the following resolution as an Ordinary Resolution:

RESOLVED THAT pursuant to provisions of sections 94, 97 and other applicable provisions, if any, of the Companies Act, 1956, the Authorised Share Capital of the company be and is hereby increased from Rs. 6,00,00,000 only (Rs. Six Crores) divided into 60,00,000 (Sixty Lacs) Equity Shares of Rs. 10 (Rs. Ten only) each to Rs. 15,00,00,000 (Rs. Fifteen Crores) divided into 60,00,000 (Sixty Lacs) Equity Shares of Rs. 10 (Rs. Ten only) each and 90,00,000 (Ninety Lacs) 1% (One Percent) Non Cumulative Redeemable Preference Shares of Rs. 10 (Rs. Ten only) each, with a power of company to increase, reduce or modify the capital and to divide all or any of the shares in the capital of the company, for the time being, and to classify and reclassify such shares from shares of one class into shares of other class or classes and to attach thereto respectively such preferential, deferred, qualified or other special rights, privileges, conditions or restrictions as may be determined by the company in accordance with the Articles of Association of the company and to vary, modify or abrogate any such rights, privileges, conditions or restrictions, in such manner and by such persons as may, for the time being, be permitted under the provisions of the Articles of Association of the company or legislative provisions for the time being in force in that behalf.

II. SPECIAL BUSINESS BY SPECIAL RESOLUTION:

2. To consider and if thought fit, to pass with or without modification(s), if any, the following as the Special Resolution:

RESOLVED THAT the existing Clause V of the Memorandum of Association of the Company be and is hereby substituted as under:

V. The Authorised Share Capital of the Company is Rs. 15,00,00,000 (Rs. Fifteen Crores) divided into 60,00,000 (Sixty Lacs) Equity Shares of Rs. 10 each (Rs. Ten only) and 90,00,000 (Ninety Lacs) 1% (One Percent) Non Cumulative Redeemable Preference Shares of Rs. 10 each.

3. To consider and if thought fit, pass with or without modification(s) if any, the following Special Resolution:

RESOLVED THAT the existing Clause 5 of the Articles of Association of the Company be and is hereby substituted as under:

5. The Authorised Share Capital of the Company Rs. 15,00,00,000 (Rs. Fifteen Crores) consisting of 60,00,000 (Sixty Lacs) Equity Shares of Rs. 10 (Rs. Ten only) each and 90,00,000 (Ninety Lacs) 1% (One Percent) Non Cumulative Redeemable Preference Shares of Rs. 10 (Rs. Ten only) each with a power of company to increase, reduce or modify the capital and to divide all or any of the shares in the capital of the company, for the time being, and to classify and reclassify such shares from shares of one class into shares of other class or classes and to attach thereto respectively such preferential, deferred, qualified or other special rights, privileges, conditions or restrictions as may be determined by the company in accordance with the Articles of Association of the company and to vary, modify or abrogate any such rights, privileges, conditions or restrictions, in such manner and by such persons as may, for the time being, be permitted under the provisions of the Articles of Association of the company or legislative provisions for the time being in force in that behalf.

4. To consider and if thought fit to, pass with or without modification(s) if any, the following as the Special Resolution:

RESOLVED THAT the consent, approval and authority of the members of the Company be and is hereby accorded to the Board of directors (hereinafter referred to as "the Board" which expression shall include any committees thereof) in accordance with the provisions of section 81(1A) and other applicable provisions, if any, of the Companies Act, 1956 (including any statutory modification or re-enactment thereof, for the time being in force) and in accordance with the provisions of the Memorandum of Association of the Company and the listing agreements entered into by the Company with the stock exchanges, where the shares of the company are listed and/or the Central Listing Authority and subject to the existing guidelines of the SEBI/RBI/Government of India/Board for Industrial Financial Reconstruction(BIFR) and the Industrial Development Bank of India (IDBI), the Operating Agency, appointed by the BIFR or any other authority as may be necessary for that purposes and subject to all or any consents and permissions as may be required by the law and subject to such conditions and modifications as may be imposed upon and accepted by the Board, to offer and issue up to the 90,00,000 (Ninety Lacs) 1% (One percent) Non Cumulative Redeemable Preference Shares of Rs. 10 (Rs. Ten only) each for otherwise than in cash to the following lender in consideration of their loan liabilities as may be agreed between the Board and the respective lenders and details/disclosures given in the in the Explanatory Statement annexed to the notice on private placement/preferential basis in one or more tranches as may be deemed appropriate by the Board.

Details of the allottees/acquirers for the 1% Non Redeemable Cumulative Preference Shares of Rs. 10 each

S. No.	Particulars of the Proposed Allottees	No. of Shares to be Allotted	Amount (in Rs.
A	Promoters/Directors & their relatives.		
B	Body Corporates/Acquirers		
C	Mutual Funds		
D	Banks		
E	Other Bodies Corporate (i) (ii) (iii) (iv)		
F	NRI/OBCs/Foreign Institutions		
G	General Public		
	Total		

The 90,00,000 (Ninety Lakhs) 1% (One Percent) Non Cumulative Redeemable Preference Shares of Rs. 10 (Rs. Ten only) each, aggregating Rs. 9 Crores (Rs. Nine Crores) at a face value of Rs. 10 (Rs. Ten only) each, carrying dividend @ 1% p.a.(One percent p.a.) for otherwise than in cash to the above

said Bodies Corporate and the same will be redeemable at par after the expiry of 10 years until otherwise determined by the Board with the consent of the preference shareholders.

FURTHER RESOLVED THAT the Board be and is hereby authorised on or before redemption of the said Preference Shares issued pursuant to this resolution, to issue fresh shares up to the nominal amount of the Preference Shares about to be redeemed, as if those shares had never been issued to persons and in a manner and on the terms as may be decided by the Board.

RESOLVED FURTHER THAT the Board be and is hereby authorised to settle all the questions and matters arising out of and incidental to the proposed offer and issuance of the above said Preference Shares to the above said Bodies corporate and to take all steps including, executing all writings, deeds and agreements, which the Board, in its absolute discretion consider necessary, proper or expedient for giving effect to the above resolution.

RESOLVED FURTHER THAT the Board be and is hereby authorised to make on its own accord or to accept such amendments, modifications, variations and alterations as the Government of India, SEBI/RBI/Stock Exchanges and/or Central Listing Authority/BIFR/Operating Agency may stipulate in that behalf.

5. To consider and if thought fit to pass with or without modification(s) if any, following as the Special Resolution:

RESOLVED THAT pursuant to the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 and subject to the consent of the Industrial Development Bank of India (Operating Agency) and any other approval as may be required, the consent of the members of the Company be and is hereby accorded to submit revised proposal/application and/or Rehabilitation Scheme to the Board for Industrial Financial Reconstruction (BIFR) as the Board of directors of the Company considers appropriate in the best interest of the Company.

RESOLVED FURTHER THAT the Board of directors of the Company be and is hereby authorised to settle all the questions and matters arising with the Operating Agency and/or BIFR in relation to the above said revised proposal/scheme and to take all steps including executing all writings, deeds and agreements, which the Board, in its absolute discretion consider necessary, proper or expedient for giving effect to the above resolution.

By Orders of the Board

Place:

Date:

Managing Director

Notes.—

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member. Proxy in order to be effective must be received by the company not less than 48 hours before the meeting.
2. The Company has connectivity from the CDSL & NSDL and equity shares of the Company may also be held in the electronic form with any Depository Participant (DP) with whom the members/investors are having their depository account. The ISIN No. For the Equity Shares of the Company is In case of any query/difficulty in any matter relating thereto may be addressed to the Share Transfer Agent.
3. Explanatory statement as required under section 173 of the Companies Act, 1956, is annexed hereto and forms part of the Notice.

EXPLANATORY STATEMENT

PURSUANT TO SECTION 173 OF THE COMPANIES ACT, 1956

Item No. 1 to 3

The existing authorised share capital of the Company is Rs. 600.00 Lacs (Six Crores) divided into 60,00,000 (Sixty Lacs) Equity Shares of Rs. 10 (Rs. Ten only) each and the Company has already issued 54,50,000 (Fifty Four Lacs Fifty Thousand Equity Shares) of Rs. 10 (Rs. Ten only) each, resulting its issued and subscribed capital has reached to Rs. 545.00 Lacs only (Rs. Five Crores Forty Five Lacs only).

To meet out the requirement for issuance of 1% Non cumulative Redeemable Preference Shares to Bodies Corporate, your Board proposes to increase the authorized share capital to Rs. 15.00 Crores (Rs. Fifteen Crores only) by addition of 90.00 Lacs (Ninety Lacs) 1% Non Cumulative Redeemable Preference Shares of Rs. 10 (Rs. Ten only) each.

The members are already aware that the Company has incurred net losses in excess of its total net worth has become Sick Company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. In order to increase the net worth of the Company, your directors proposes to issue 1% Non Cumulative Redeemable Preference Shares to the lenders. Therefore, it has become essential to raise the authorized share capital suitably and to alter the Capital Clauses of the Memorandum and Articles of Association of the Company.

The proposal for increase in the authorised share capital and alteration in the Capital Clause of the Memorandum and Articles of Association of the Company requires approval of members in the General Meeting. Therefore, the Board recommends for passing necessary ordinary/special resolutions as set out in the Item No. 1 to 3 of the notice convening the Extra Ordinary General Meeting.

The draft amended copy of the Memorandum and Articles of Association of the Company is available for inspection at the Registered Office of the Company during the business hours till the conclusion of the Extra Ordinary General Meeting.

None of the directors of the Company are concerned or interested in the above said resolutions, except as a member of the Company.

Item No. 4

(1) The Company has obtained unsecured loan from the Bodies corporate from time to time to meet out the short/long term financial requirement of the Company, due to liquidity crunch and the total outstanding amount of these Bodies corporate are Rs..... Lacs carrying interest @../Nil p.a. Due to adverse market scenario, the Company's projected sales and profitability has been effected adversely, and the Company's entire net worth has been wiped off and it has been declared as SICK Company under the provisions of the SICA Act, 1985 and consequently its loan account has become irregular. Therefore, the Company considers to settle the same by issuance of 1% Non Cumulative Redeemable Preference Shares in conversion of their loan liability and has approached to these Bodies corporate to accept the said offer. Looking into the accumulation of heavy losses and critical liquidity crises and financial crunch, the Company has no other suitable remedy to come out with the financial crises. In response to the above said offer, the concerned Bodies corporate has agreed to accept the offer of conversion of their loan amount with the 1% Non-Cumulative Redeemable Preference Shares offered by the Company subject to the terms and conditions as may be imposed by the IDBI (OA) and/or BIFR and other banks and financial institutions. The Board has considered availing the benefits of the opportunity in the best interest of the Company.

By the conversion of such loan liabilities, the Company's loan liability will be substantially reduced without outflow of the funds.

To avail the above said proposed conversion of loan liability, the Company is require to issue new fully paid up 1% Non Cumulative Redeemable Preference Shares to the Bodies corporate in consideration of otherwise then in cash.

(2) The Company is taking necessary steps to obtain the required approvals from the BIFR/IDBI (OA) or any other regulatory agency as may be applicable, for the proposed issuance of securities on private placement basis.

(3) The Company proposes to make allotment of the above said securities with the consent of the BIFR. Since the preference shares neither carry voting rights or will change in the management of the Company as such, the SEBI guidelines for Preferential Issue of Securities and SEBI Substantial Acquisition of Shares and Takeovers) Regulations, 1997 are not applicable to the Company.

(4) The promoters do not intend to increase their own shareholding by way of this issue, rather, the promoters intend to regularise the unsecured loans liabilities in the interest of the Company.

(5) There will be no allotment to any promoter, body corporate, mutual funds, banks, NRIs or general public for existing clause of equity shares, carrying voting rights as such. The Company proposes to issue on Preferential Basis for otherwise than in cash the 1% Non Cumulative Redeemable Preference Shares of Rs. 10 that are totally new class of securities, and has not been issued earlier by the Company.

Details of the allottees/acquirers

S. No.	Particulars of the Proposed Allottees	No. of Shares to be Allotted	Amount (in Rs.)	% of total issue
A	Promoters/Directors & their relatives.			
B	Body Corporates/Acquirers			
C	Mutual Funds			
D	Banks			
E	Other Bodies Corporate (i) (ii) (iii) (iv)			
F	NRI/OBCs/Foreign Institutions			
G	General Public			
	Total			

(6) The Company proposes to avail the benefit of conversion of loan liabilities subject to the terms and conditions as may be imposed by the BIFR. Therefore, there will be no receipt of proceeds to the Company on issuance of these securities as such.

(7) By the above said proposed issue of securities, no change in Board of directors of the Company is envisaged and the above said allotment would not result in change in control over the management of the Company.

(8) The shareholding pattern of the Company before and after the issuance shall be as under:

S. No.	Category of holders	Pre-issue		Percentage		Post Issue		Percentage	
		Equity	Preference	Equity	Preference	Equity	Preference	Equity	Preference

The post allotment holding has been calculated based on the current share holding of the entities as increased by the proposed Preferential Offer.

(9) Consequential changes, if any, in voting rights shall be as under:

S. No.	Category	Voting Rights
1.	Promoter Group	Details same as per the point 8
2.	Public Financial Institution	Do
3.	Mutual Funds	Do
4.	Banks	Do
5.	FII/NRIs/OCBs	Do
6.	Body Corporate	Do
7.	General Public	Do

The voting rights would change in case of default committed by the Company for payment of dividend to the shareholders as per the provisions of the Companies Act, 1956.

(10) In terms of provisions of section 81(1A) of the Companies Act, 1956, conditions of the Listing Agreement the approval of the shareholders of the Company is being sought to issue the shares on preferential basis, other than the existing shareholders of the Company.

(11) None of the directors of the Company, except Shri are concerned or interested in the proposed resolution, may be deemed to be interested to the extent of the securities being allotted to Ltd.

By Orders of the Board

Place:

Date:

Managing Director

Appendix 5

Specimen of notice for Board Meeting

15th July, 2006

To,

Shri AJ, Chairman & Managing Director

Shri SCC, Director

Shri SMK, Director

Shri LND, Director

Shri DKK, Director

Shri KAS, Nominee Director of IFCI

Directors of KBC LTD.

Sub: Notice for Convening of a Board Meeting.

Dear Sir/s,

You are cordially invited to attend the meeting of Board of directors of the company to be held on Friday, the 29th July, 2006 at 1.00 P.M. at the Registered office of the company to transact the businesses as mentioned in the Agenda as under:

You are requested to please make it convenient to attend the meeting.

Thanking you.

Yours faithfully

For, KBC Limited

K.C. Jain

Chief Executive

Encl.: Agenda for the Meeting

Appendix 6

Specimen of Agenda

For the Meeting of the Board of directors of the company to be held on Friday the 29th July, 2006 at 1.00 P.M.

1. To grant leave of absence to the directors from attending the meeting, if any.
2. To confirm minutes of the previous Board meeting held on 29th April, 2006.
3. To take on record minutes of the Audit Committee meeting.
4. To take on record minutes of the meeting of the shareholders grievance committee of the company held on 19.06.2006.
5. To consider and approve the Transfer of Shares.
6. To consider and take on record the Quarterly Report submitted to IDBI (OA)

7. To consider and review the performance of the company.
8. To consider and taken on record the disclosure of interest by the director.
9. To consider and accept the resignation of the director from the directorship of the Company.
10. To consider and take on record the security audit certificate and other compliances made by the company in terms of the various clauses of the listing agreement.
11. To consider the un-audited financial results for the quarter ended 30th June, 2006 and approval of text for advertisement to be published in newspapers.
12. To consider and taken on record the status of directors u/s 274(1)(g).
13. Consideration & approval of the limited review by the auditor for the quarter ended on 30th June, 2006
14. To consider and take on record the compliance report of the compliance officer.
15. To consider, approve and sign the Balance Sheet as at 31st March, 2006 and Profit & Loss Accounts of the company for the year ended 31st March, 2006 and to give authority to sign on behalf of the Board and deliver the same to the auditors for their certification and Report thereon.
16. To consider and approve the Directors' Report and Report on Corporate Governance for the financial year ended 31st March 2006.
17. To approve the remuneration of the Auditors.
18. To consider the businesses to be transacted at the next Annual General Meeting and approve the notice of the Annual General Meeting together with the explanatory statement and to fix the date, time and venue for the Meeting.
19. To consider and approve the book closure.
20. To consider and approve the statement in lieu of advertisement and the text of the same for publication.
21. Authority to open d-mat account with the Sanjay C. Baxi Securities Pvt. Ltd.
22. Authority to deal under the Drugs and Cosmetic Act, 1940 for and on behalf of the company
23. To consider deal in any other businesses, if any, which may be placed before the Board with the permission of the Chairman.

Appendix 7

Specimen of detailed agenda of the Board meeting

**DETAILED AGENDA FOR THE MEETING OF THE BOARD OF DIRECTORS OF KBC LTD.
TO BE HELD ON 29TH JULY, 2006 AT THE REGISTERED OFFICE OF THE COMPANY AT
1.00 P.M.**

PRESENCE IN THE MEETING:

I. DIRECTORS

1. SHRI ON THE CHAIR
2. SHRI DIRECTOR
3. SHRI DIRECTOR
4. SHRI DIRECTOR
5. SHRI DIRECTOR
6. SHRI DIRECTOR

II. INVITEES

1. SHRI
2. SHRI

1. LEAVE OF ABSENCE

Request for leave of absence, if any, from directors who are unable to attend the meeting shall be considered by the Board.

1.
2.

2. CONFIRMATION AND SIGNING OF MINUTES OF THE PREVIOUS BOARD MEETING

Minutes of the previous Board meeting held on 29th April, 2006 is enclosed herewith as Annexure 'A' which shall be placed before the Board for confirmation and shall be authenticated by the Chairman.

3. CONSIDERATION OF THE MINUTES OF THE AUDIT COMMITTEE MEETING

The Chairman of the Audit committee will place before the Board the proceedings of the meeting of the audit committee of the company.

The Board will consider and take on record the said proceedings of the meeting of the Audit Committee.

4. CONSIDERATION OF THE MINUTES OF THE MEETING OF THE SHAREHOLDERS GRIEVANCE COMMITTEE

The Chairman will place before the Board the proceedings of the meeting of the Shareholder Grievance Committee of the company held on 19th April, 2006.

The Board is required to consider the same and take on record the said proceedings of the meeting of the Shareholder Grievance Committee.

5. CONFIRMATION OF TRANSFER AND TRANSMISSION AND SPLIT OF SHARES

Register for transfer/transmission of the Equity Shares as forwarded by the Share Transfer Agent for effecting the transfer/transmission shall be placed before the Board.

The Share Transfer Committee has considered and approved the transfer of Shares from transfer No. 12345 to 12374 for effecting transfer of 4000 Shares. The Board is requested to note the same.

6. CONSIDER AND TAKE ON RECORD THE QUARTERLY REPORT SUBMITTED TO THE IDBI (OA) FOR THE QUARTER ENDED 30TH JUNE, 2006

The Chairman will place before the Board a Quarterly Report for the Quarter ended on 30th June, 2006 submitted to the IDBI (OA) which shall be considered and taken on record by the Board.

7. REVIEW OF PERFORMANCE OF THE COMPANY

A Brief note on the working results of the company upto the month of June, 2006 being enclosed as Annexure 'B'. The Board will discuss over the performance and future plans.

8. CONSIDER AND TAKE ON RECORDS THE DISCLOSURE OF INTEREST BY DIRECTOR:

The Chairman informed that in terms of the provisions of section 299 of the Companies Act, 1956, Shri Ramesh Mishra, Director of the Company will submit his disclosure of interest of himself and relative in the Firms, Body Corporate in Form 24AA.

The Board will consider and pass the following resolution:

RESOLVED THAT General Notice for Disclosure of interest pursuant to section 299 of the Companies Act, 1956, received from Shri Ramesh Mishra, Director of the Company in Form 24AA disclosing concern or interest in any contract or arrangements which may be entered into with such body corporate or firm as per the statement brought up and read in this meeting be and is hereby recorded in the Register of Contracts mentioned u/s 301 of the Companies Act, 1956.

9. ACCEPTANCE OF RESIGNATION OF SHRI ATISH GUPTA FROM THE DIRECTORSHIP OF THE COMPANY

The Chairman will place before the Board the resignation received from Shri Atish Gupta, the Director of the Company from the Board of Director, the Board will consider and accept the same and pass the following resolution at the Board Meeting:

RESOLVED THAT the resignation tendered by Shri Atish Gupta from the office of the directors of the Company be and is hereby accepted w.e.f. 29th July, 2006.

FURTHER RESOLVED THAT Shri AJ, the Chairman of the Company be and is hereby requested to file e-Form 32 to the Registrar of Companies and to give intimation of the resignation to stock exchanges and all other concerned authorities for their reference and records.

10. CONSIDERATION AND TAKEN ON RECORD THE SECURITY AUDIT REPORT AND OTHER COMPLIANCE MADE BY THE COMPANY IN TERMS OF THE VARIOUS CLAUSES OF THE LISTING AGREEMENT

The Manager (Finance) will place before the Board a report with detailed information on status of Compliance of various clauses of the Listing Agreement with the Stock Exchanges by the Company viz., Corporate Governance report, distribution schedule, etc., alongwith the Security Audit Certificate will be considered and taken on record by the Board.

11. CONSIDERATION OF THE UNAUDITED FINANCIAL RESULTS FOR THE QUARTER ENDED 30TH JUNE, 2006 AND APPROVAL OF TEXT FOR ADVERTISEMENT

Un-audited Financial Results of the Company for the quarter ending on 30th June, 2006 duly considered by the Audit Committee will be placed before the Board. The Board will consider and approve the same.

Text of the Un-audited (Provisional) Financial Results for the above said period is also required to be submitted to the Stock Exchanges and to publish once, in English & Hindi Newspapers as per clause 41 of the Listing Agreement.

The Board is also required to consider and pass the following resolution:

RESOLVED THAT the Un-audited (Provisional) Financial Results for the quarter ended on 30th June, 2006 as placed before the Board duly initialed by the Chairman for the purpose of identification be and are hereby considered and taken on record.

RESOLVED FURTHER THAT the text for the advertisement for the above said Un-audited (Provisional) Financial Results as placed before the Board and duly initialed by the Chairman for the purpose of identification be and is hereby approved for submission to the Stock Exchanges and publication in the newspapers as per the requirement of the Listing Agreement and the Chairman and/or Managing Director of the Company be and are hereby severally authorised to sign and issue the same for and on behalf of the Board.

12. CONSIDERATIONS AND TAKE ON RECORD THE STATUS OF DIRECTORS U/S 274(1)(g)

In terms of the provisions of sub-section (g) under section 274(1) of the Act, the Company will receive the representation from all the directors regarding their status, which will be considered and taken on record by the Board. The Board will pass the following resolution in the Board Meeting to furnish the same to the Auditors for their comment in the Auditors Report:

RESOLVED THAT pursuant to the provisions of section 274(1)(g) of the Companies Act, 1956, on the written representations received from the directors of the Company and placed before the Board be and are hereby taken on record and the Board be and hereby declares and confirm that none of the director of the company is disqualified in terms of the provisions of section 274(1)(g) of the Companies Act, 1956, for continuance and appointment in the company as a director.

FURTHER RESOLVED THAT a certified copy of the above said resolution be submitted to the Auditors of the Company.

13. CONSIDERATION & APPROVAL OF THE LIMITED REVIEW BY THE AUDITOR

The Chairman will inform that the Company is required to submit to the Stock Exchanges, a limited review report received from the Auditors, M/s J.P. Saraf & Co., on the Un-audited (Provisional) Financial Results for the quarter ended 31st June, 2006.

The Board will have discussion over the matter related to the Limited Review Report in detail.

14. CONSIDERATION AND TO TAKE ON RECORD THE COMPLIANCE REPORT OF THE COMPLIANCE OFFICER

The Manager (Finance) will place before the Board a compliance report and information on status of Compliance of various Rules and Regulations as applicable to the Company, which will be considered and taken on record by the Board.

15. APPROVAL OF BALANCE SHEET AS AT 31ST MARCH, 2006 AND PROFIT AND LOSS ACCOUNTS AND FUND FLOW STATEMENT FOR THE YEAR ENDED 31ST MARCH, 2006 AND AUTHORISE TO SIGN AND HAND OVER TO THE AUDITORS

The Chairman shall place before the Board draft of Balance Sheet as at 31st March, 2006 and Profit and Loss Account and Fund Flow Statement for the year 2005-06 alongwith all the Schedules and Notes thereon have been annexed as Annexure 'C'.

Audit of the books of accounts for the year ended 31st March, 2006 has been completed by the Auditors M/s J.P Saraf & Co., Chartered Accountants. Shri J.P. Saraf, a Partner of the Statutory Auditors has been invited at the meeting.

The Chief Executive Shri K.C Jain, will explain details of accounts and schedules, notes on accounts. Comments of the auditors will also be considered at the meeting.

In terms of the provisions of Companies Act, 1956 the company is required to approve annual accounts and authenticate it before passing to the auditors so that the Audited Accounts may be placed before the annual general meeting for adoption.

Board is required to consider and approve the above said accounts and authorise at least two directors including Managing Director for authentication of the accounts. It is proposed to pass the following resolution at the meeting:

RESOLVED THAT the Balance Sheet as at 31st March, 2006 and Profit & Loss Account and Fund Flow Statement for the period of 1st April, 2005 to 31st March, 2006 as placed before the meeting duly initialed by the Chairman for the purpose of identification be and are hereby approved and Shri Ashok Jain, the Chairman-cum-Managing Director and Shri S. Kothari, the director of the company be and are hereby authorised to authenticate and put signatures thereon.

FURTHER RESOLVED THAT Shri K.C. Jain, the Chief Executive Officer of the Company be and is hereby authorised to submit the approved accounts to the auditors of the company for their certification and Report thereon.

16. CONSIDERATION & APPROVAL OF THE 24TH DIRECTORS' REPORT

A Draft of the 24th Directors' Report on the business and operations and Report on the Corporate Governance pursuant to Clause 49 of the Listing Agreement enclosed along with the Balance Sheet, Profit and Loss Accounts and the Auditors Report thereon for the year ended 31st March, 2006 for circulation to the Members is required to be approved. Shri Ashok Jain, Chairman & Managing Director shall be authorized for signing of the Directors' Report and pass the following resolution:

RESOLVED THAT the 24th Directors Report on the operations of the Company, and Corporate Governance Report pursuant to Clause 49 of the Listing Agreement as placed before the Board duly initialed by the Chairman for the purpose of identification, be and is hereby approved for the circulation to the Members along with the Audited Accounts and Auditors Report thereon and Shri Ashok Jain, the Chairman & Managing Director of the Company be and is hereby authorised to sign the Directors Report on behalf of the Board of directors of the Company.

17. APPROVAL OF REMUNERATION TO THE AUDITORS

The Board has to determine and approve the remuneration of auditors. The company had paid remuneration of Rs. 30,000 and also reimbursed the out of pocket expenses and Service tax applicable for the previous year 2005-06. The Board may consider and approve for payment of remuneration to the auditors Rs. 30,000 *plus* Service Tax and reimbursement of out of pocket expenses on actual basis for the year 2005-06.

Since, the auditors shall also be present in the meeting, they may agree for the remuneration.

18. APPROVAL OF THE NOTICE OF 24TH ANNUAL GENERAL MEETING

As the directors are aware that 24th Annual General Meeting is required to hold in terms of the provisions of section 166 of the Companies Act, 1956, the Company is required to hold its Annual General Meeting within 15 (Fifteen) months from the date of last Annual General Meeting or 6 (six) months from the date of closing of financial year. He proposed that the Annual General Meeting may be called on or before 30th day of September, 2006. It is proposed to hold the said AGM on 30th September, 2006.

The Board is required to approve the date, venue and time for the 24th Annual General meeting and pass the following resolution:

RESOLVED THAT the 24th Annual General Meeting of the Company be called on Saturday the 30th day of September, 2006 at the Registered Office of the Company at 2.00 PM.

19. CONFIRMATION OF THE ANNUAL BOOK CLOSURE

As the directors are aware that the Company is required to close the Register of Members & Share Transfer Books under provisions section 154 of the Companies Act, 1956, every year for the purpose of AGM, for this purpose, the Company has informed to the Stock Exchanges about the declaration of Book Closure from 16th September, 2006 to 30th September, 2006 (both days inclusive).

The Board is required to confirm the action taken by Shri K.C. Jain, Chief Executive of the Company for issuance of notice of Book Closure to various Stock Exchanges as required by the listing agreements and pass the following resolution.

RESOLVED THAT pursuant to the provisions of section 154 of the Companies Act, 1956 and in accordance with the provisions of the Listing Agreement, the Annual Closure of Register of Members and Share Transfer Register of the Company as declared to be closed from 16th September, 2006 to 30th September, 2006 (inclusive both days) be and is hereby ratified and confirmed and Shri K.C. Jain, the Chief Executive of the Company be and is hereby authorised to take all suitable action in this regard as may be required from time to time.

20. CONSIDERATIONS AND APPROVAL OF STATEMENT IN LIEU OF ADVERTISEMENT

In terms of provisions of section 58A of the Companies Act, 1956 read with Companies (Acceptance of Deposit) Rules 1975, the Company's previous Statement in Lieu of Deposit shall expire on 30th September, 2006 on the date of AGM, therefore it is required to approve and file a fresh Statement in lieu of Advertisement with the ROC for acceptance of deposits from directors and members of the Company.

A text of Statement in Lieu Advertisement being enclosed containing all the details which is required to approve by the Board by majority of directors.

The Board is required to considered and approve the same and pass a resolution to that effect as under:

RESOLVED THAT subject to the approval of the IDBI as per their terms and conditions of the Term Loan, if any, the Statement in lieu of Advertisement for acceptance of deposits from the Directors & Members of the Company in terms of Rule 4 of Companies (Acceptance of Deposit) Rules, 1975 read with section 58A of the Companies Act, 1956 (1 of 1956) as placed before the Board, duly initialed by the Chairman for the purpose of identification be and is hereby approved for renewal of deposit subject to a maximum of Rs. 25.12 Lakhs from the directors and shareholders and aggregating not more than Rs. 87.91 Lakhs only outstanding at any one point of time.

FURTHER RESOLVED THAT the Statement in lieu of Advertisement be signed by all the directors of the Company present at the Meeting and the signed copy of the same be filed with the Registrar of Companies, Madhya Pradesh at Gwalior for the purpose of its Registration.

FURTHER RESOLVED THAT Shri Ashok Jain, the Chairman & Managing Director of the Company and/or Shri K.C. Jain, the Chief Executive and/or Shri D.K. Jain, Company Secretary, in Whole Time Practice be and are hereby jointly and severally authorised to make correction/additions/deletions/amendments in the approved the Statement in lieu of Advertisement as may be required by the Registrar of Companies and to do all such acts, deeds and things to implement the Scheme of the Fixed Deposit for and on behalf of the Company.

Comment [a1]: Is there any form for SLA

21. AUTHORITY TO OPEN D-MAT ACCOUNT WITH THE SANJAY C. BAXI SECURITIES PVT. LTD.

The Chairman will put a proposal before the Board to make investment in the shares and securities and for that purposes, to open a D-Mat Account in the name of the Company. The Board will consider the same and will thereafter, pass the following resolution unanimously.

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 Sanjay C. Baxi Securities Pvt. Ltd., Indore and Shri Ashok Jain, Chairman and/or Shri S. Kothari, 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.

FURTHER RESOLVED THAT M/s Sanjay C. Baxi 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.

FURTHER RESOLVED 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 Ashok Jain, the Chairman of the Company.

22. AUTHORITY TO DEAL UNDER THE DRUGS AND COSMETIC ACT, 1940 FOR AND ON BEHALF OF THE COMPANY

The Chairman will inform the Board that for the compliance of the various provisions of the Drugs and Cosmetic Act, 1940 including section 34 of the said Act, the Company is required to give authorities and responsibilities to comply with the requirements for and on behalf of the Company. The Board will consider the same and thereafter will pass the following resolution unanimously:

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 Gaya Prasad Saxena : Manager Quality Control
4. Dr.Brajesh K.Sharma : Asstt. Manager

FURTHER RESOLVED 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.

FURTHER RESOLVED 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.

23. TO DEAL IN ANY OTHER BUSINESS WHICH MAY BE PLACED BEFORE THE BOARD WITH THE PERMISSION OF THE CHAIRMAN

Appendix 8

Specimen of notice for Postponement of a Board Meeting

16th August, 2006

To,

Shri AJ, Chairman & Managing Director
Shri SCC, Director
Shri SMK, Director
Shri LND, Director

Shri DKK, Director
Shri KAS, Nominee Director of IFCI
Directors of KBC LTD.

Sub: Notice for postponement of the Board Meeting called on 25th August, 2006

Dear Sir/s

Kindly take notice that the Board meeting which was to be held on 25-8-2006, at 11.00 A.M. stands postponed on 31-8-2006, at 11.00 A.M. at the registered office of the Company. The necessary agenda papers have already been sent to you alongwith the notice of Board meeting earlier scheduled to be held on 25-8-2006.

Kindly make it convenient to attend the meeting.

We sincerely regret for the inconvenience caused to you.

Yours faithfully,

For, KBC Ltd.

ISHAN JAIN

Company Secretary

Appendix 9

Specimen of notice for cancellation of a Board Meeting

To,

Shri AJ, Chairman & Managing Director

Shri SCC, Director

Shri SMK, Director

Shri LND, Director

Shri DKK, Director

Shri KAS, Nominee Director of IFCI

Directors of KBC LTD.

Sub: Notice for cancellation of Board Meeting called on 2nd January, 2007

Dear Sir/s

Notice is hereby given that a Board meeting which was scheduled to be held on Monday, the 2nd day of January, 2007 at Hotel Sinecure, Garden Road, Jodhpur stands cancelled.

Notice of fresh Board meeting along with agenda will be sent to you in due course.

For, XXX Ltd.

Abha Jaiswal

Company Secretary

Chapter 2

Quorum, Proxy and Chairman for Meetings

Synopsis

Important Provisions at a Glance

1. Quorum to consist of members personally present at the general meeting
2. Joint shareholders will be regarded as one member for the purpose of quorum
3. Quorum implies plural number of members
4. Preference shareholders shall not be counted for quorum
5. Quorum must be present at the commencement of the meeting
6. Status of a director in the general meeting
 - I. *Quorum for Board Meeting*
 7. Quorum for Board or Governing Body meetings of a section 25 company
 8. Quorum required throughout the meeting
 9. Quorum for a Board meeting in the case where directors are interested
 10. Where all directors except one are interested
 11. Whether resolution passed in a meeting where no adequate quorum is present is valid?
 - II. *Quorum for General Meeting*
 12. Articles may provide for larger quorum
 13. Whether presence of preference shareholders would count for quorum?
 14. Corporate members
 - III. *Adjournment of Meeting*
 15. Adjournment of a Board meeting for want of quorum
 16. If quorum is not present within half an hour, the meeting shall stand adjourned
 17. Quorum at adjourned meeting of the members
 18. Deemed re-appointment of retiring director
 19. Effect for outsiders
 - IV. *Proxy*
 20. Notice of general meeting to state member's right to appoint proxy with reasonable prominence
 21. Penalty for default
 22. Who can appoint proxy for the general meeting?
 23. Who cannot appoint Proxy for a meeting?
 24. Appointment of number of proxies by a member
 25. Only individual can be appointed as a proxy
 26. Signing of proxy in the case of jointholders
 27. Instrument of proxy
 28. Validity of a proxy
 29. Rejection of a proxy
 30. Acceptance of a blank proxy
 31. Stamping on proxy
 32. Acceptance of unstamped proxies by the chairman
 33. Deposit of proxy with the company
 34. Check points in relation to proxy at a general meeting
 35. Revocation of proxy by the appointer
 36. Change of instruction
 37. Rights of a member having appointed proxy
 38. Right of proxies

39. Canvassing for proxy is prohibited
40. Inspection of proxies lodged with the company
41. Practical aspects of proxies
42. Verification of specimen signatures
43. Company cannot be appointed as a proxy
44. Register of proxy

V. Chairman of Meeting

45. Absence of the Chairman at the meeting
 46. Position and responsibility of Chairman
 47. Detailed agenda and guidance note for the Chairman
 48. Declaration of result by the Chairman
 49. Discretion of chairman for recording proceedings of the meeting
- Appendix 1 Specimen of a Proxy
- Appendix 2 Specimen format of Register of proxy
- Appendix 3 Specimen format of Register of invalid Proxy rejected by the Company

Important Provisions at a Glance

<i>Sl. No.</i>	<i>Sections</i>	<i>Matters dealt with</i>	<i>Form Nos.</i>
1.	170	Application of sections 171 to 186 to different companies.	
2.	167	AGM called by CLB/Tribunal — Even one member may form Quorum.	
3.	174	Quorum for general meetings.	
4.	175	Chairman of the meeting.	
5.	186	General Meeting other than AGM called by Central Government — Even one member may form Quorum.	
6.	Article 49	Presence of quorum is a condition precedent to transaction of business.	
7.	187	Inclusion of representatives of Bodies Corporate while reckoning quorum.	
8.	187A	Inclusion of representatives of President or Governor of the State while reckoning quorum.	
9.	286	Quorum for Board Meetings.	

Quorum means a certain minimum number of persons who shall be personally present at a meeting, so that the said meeting can be adjudged as valid and items of business can be transacted therein.

1. Quorum to consist of members personally present at the general meeting

Section 174(1) state that only members personally present can be counted and not proxies. Members who cannot vote at the meeting are not counted towards quorum.

The word 'personally present' include:—

1. Representatives of a body corporate appointed u/s 187 of the Act:—
Corporate member of a company, may, by a resolution of its Board of directors, authorise a person named in the resolution to attend a general meeting of the company in which it is a member. Such representative shall be deemed to be a member personally present and where necessary he can appoint a proxy to attend the meeting.
2. Where two or more bodies corporate are represented by a single individual, each of the bodies corporate will be treated as personally present by that individual. If a person is present in the company in his personal capacity as well as in the representative capacity of a trust, he will be counted as two for the quorum.

3. Representatives of the President and Governors of the State appointed u/s 187A of the Companies Act:—

The representatives of the President and Governors of the State appointed u/s 187A shall be deemed to be a member personally present and will be counted for the quorum.

2. Joint shareholders will be regarded as one member for the purpose of quorum

Any joint shareholder present at the meeting will be entitled to exercise his/her voting power and will be counted for the quorum as one shareholder.

These representatives have all the rights of members including right to vote by proxies.

3. Quorum implies plural number of members

There shall be at least two persons to constitute a meeting. A single member holding proxies or representations of more than one member or being a member both in his personal capacity and as a trustee for another does not constitute a meeting unless somebody else is present there or the Statute or the CLB/Tribunal authorised by, specifically providing therefor.

Exceptions:

A single member, whether present by himself or by proxy, can constitute quorum in following exceptional cases:

1. If the Annual General Meeting is called by the Central Government:—
According to section 167(1), the Central Government may call an Annual General Meeting on the application of any member of the company and give such directions as it may think fit. Directions may include that one member of the company present in person or proxy shall be deemed to constitute a meeting.
2. If a general meeting other than the Annual General Meeting is called by the CLB/Tribunal:—
According to section 186, the CLB/Tribunal has the power to call a meeting other than the Annual General Meeting, if the Annual General Meeting of the company has not been held due to some reason and give such directions as it may think fit. Directions may include that any one member of the company present in person or proxy shall be deemed to constitute a meeting.
3. In other special situation:—
In certain circumstances, if it seems that quorum cannot be reached, an application shall be made to the CLB/Tribunal for an order that a meeting should be called and even if one member present in person or by proxy, should constitute a quorum.
4. If all members but less than quorum present at meeting:—
If the numbers of members of the company is reduced below minimum required quorum for the meeting, than all those who are members, can personally attend the meeting and question of quorum will not arise.
5. In the case of class meetings:—
If all the class shares of a company are held by one shareholder than single member present by himself or by proxy will constitute a quorum for such class meeting.

4. Preference shareholders shall not be counted for quorum

The holders of preference shares cannot be counted for quorum, unless they have the right to participate in the meetings due to their dividend not having been paid for the period stated in section 87 of the Act.

5. Quorum must be present at the commencement of the meeting

It has been held that the quorum should be present at the time when the meeting begins to transact its business but it need not be present throughout or at the time of taking the vote on any resolution. In this connection, regulation 49 in Table 'A' also provides that no business shall be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to do business.

6. Status of a director in the general meeting

Unless the articles provides otherwise, a director need not hold any qualification shares, therefore a director may or may not be a member of a company. In the case of a general meeting, it has the following effects:—

1. If a director is a member of the company, than he can express his views on internal management of the company, without loosing the right to discuss as a shareholder and member. He can vote at the meeting and his presence will be counted for the purpose of quorum.
2. If a director is not a member of the company, than he cannot propose or discuss on a resolution at the meeting as a shareholder and member. His presence will not be counted for the quorum.

I. QUORUM FOR BOARD MEETING

Section 287 provides that the quorum for a Board meeting shall be one-third of its total strength of directors who are in office or two directors, whichever is higher. Any fraction arising will be rounded off as one. For example, in a Board having seven directors, the quorum shall be of three directors. Quorum implies directors who are competent to vote on the business before the Board.

7. Quorum for Board or Governing Body meetings of a section 25 company

As per the Notification, dated 8-7-1961 *vide* No. SO 1578 issued by the Central Government, in the case of a section 25 company, the quorum fixed shall be either eight members or one-fourth of the total strength of the Board, whichever is less, but not less than two directors.

8. Quorum required throughout the meeting

The provisions relating to quorum for meeting are mandatory and meetings of board of directors not having required quorum are non est and void and resolutions passed and decisions taken in such meetings are void. It has been held that the required quorum should be present throughout the Board meeting. However, Regulation 75 of Table 'A' provides that where the number of directors fall below the necessary quorum, the continuing director(s) may act for the purpose of increasing the number of directors to that fixed for the quorum or for calling a general meeting of the company and for no other purpose.

9. Quorum for a Board meeting in the case where directors are interested

In the case of a Board meeting of a public company, the presence of the interested director(s) shall not be counted for the purpose of quorum. Further that in case of a Board meeting, there shall be proper quorum throughout the Board meeting.

Where the interested directors exceed or equal two-thirds of the total strength, the number of remaining disinterested directors present at the meeting being not less than two shall be the quorum.

10. Where all directors except one are interested

Where all the directors except one are interested in a matter, the only way to resolve the matter is to call a general meeting and get the approval of the members to the matter in question. Another way is to appoint more directors on the Board who are not interested. [*Rajan Nagindas Joshi v British Burma Petroleum Co. Ltd.* (1972) 42 Comp Cas 197 (Bom)]

The Department of Company Affairs has also observed the situation in such case regarding quorum for meetings of the Board of directors where all the directors are interested and has issued clarification *vide* Letter No. 8/16(1)/61-Pr, dated 9-5-1961 providing that where all the directors are deemed to be interested, the remedy in such cases seems to be to increase the strength of the Board of directors by appointing disinterested directors or by appointing additional directors if so authorised by the Articles who are not interested in the contract. If this is not found to be practicable it would be desirable to place the proposed contract or business before the general meeting for consent.

In case of a private company, presence of directors interested in a contract, by or on behalf of company, cannot be excluded for purposes of quorum.

11. Whether resolution passed in a meeting where no adequate quorum is present is valid?

Under the provision of section 287, one third of the total numbers of directors formed the quorum. It was the total strength rather than full strength that really mattered. Admittedly the directors who attended

the meeting formed the requisite quorum. In any event if the absent directors ratify the resolution, it can be said to have been adopted by a validly constituted Board of directors. [*Pradip Kr. Banarjee v Union of India* (2002) 108 Comp Cas (Cal)].

II. QUORUM FOR GENERAL MEETING

In the case of a public company, five members personally present and in the case of a private company, two members personally present, shall form a quorum for a general meeting.

12. Articles may provide for larger quorum

Articles of Association of a company may provide for larger number of members personally present as quorum, rather than 5 or 2 members personally present in case of public and private company respectively but it cannot be less than the minimum number of quorum required for the meeting.

It has been held in *Hartly Bird Ltd.* (1955) Ch, 143 that the quorum should be present at the time when the meeting begins to transact its business but it need not be present throughout or at the time of taking the vote on any resolution. In this connection, regulation 49 in Table 'A' also provides that the quorum shall be present at the time when the meeting proceeds to do business.

13. Whether presence of preference shareholders would count for quorum?

If business proposed to be transacted at a general meeting does not include any item or resolution proposed to be passed, which directly affects the rights of the preference shareholders, their presence should not be taken into account for purposes of determining the quorum but where the subject-matter includes any resolution in which the rights of preference shareholders are directly affected, their presence should be taken into account for the purpose of the quorum.

However, a single member present cannot by himself constitute a quorum but a single member quorum is valid if such a direction has been issued by the CLB/Tribunal under section 167 or 186.

14. Corporate members

Corporate members of a company may by a resolution of its Board of directors authorize a person to attend a general meeting of the company in which it is a member. Such representative shall be deemed to be a member personally present and where necessary he can appoint a proxy to attend the meeting.

III. ADJOURNMENT OF MEETING

15. Adjournment of a Board meeting for want of quorum

Section 288 of the Act, provides that if a Board meeting called for a certain day could not be held for want of quorum, action should be taken as per the Articles. If the Articles has no provision, the meeting shall be adjourned till the same day, next week, at the same time and place and if that day is a public holiday, till the next day which is not a public holiday. The provision of section 285 to hold Board meeting once in three months will not be deemed to have been contravened when a Board meeting called in compliance of the said provision could not be held for want of quorum.

16. If quorum is not present within half an hour, the meeting shall stand adjourned

Section 174(3) of the Act, provides that if within half an hour from the time appointed for holding a meeting, the quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day or such other time and place, as the Board may determine. This means that the Board of directors has an option, unless the articles otherwise provide, to issue another notice by giving the required advance period of 21 clear days if the company proposes to hold the adjourned meeting at a time other than the same day and time next week:

Provided if the general meeting is called upon the requisition of members and the required quorum is not present within half an hour from the time appointed for the meeting, in such situation the meeting shall stand dissolved.

17. Quorum at adjourned meeting of the members

According to section 174(5), if at the adjourned meeting quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be the quorum.

18. Deemed re-appointment of retiring director

Section 256(4)(a) provides for automatic adjournment of AGM if vacancy of retiring directors is not filled at that meeting. Section 256(4)(b) provides for deemed re-appointment of retiring director, if no appointment is made at such meeting. However, a director would not be treated as deemed re-appointed if there is no quorum at the adjourned meeting.

19. Effect for outsiders

Any act done, creating rights in favour of third parties, at a meeting, without the quorum being present, would not affect the rights of such third parties, provided they had no notice of irregularity.

IV. PROXY

Section 176 of the Companies Act, 1956 provides that any member of company entitled to attend and vote at a meeting of the company shall be entitled to appoint any person (whether a member or not) as his proxy to attend and vote instead of himself.

20. Notice of general meeting to state member's right to appoint proxy with reasonable prominence

Section 176(2) states that in every notice calling a general meeting of a company which has a share capital, or the Articles of which provide for voting by proxy at the meeting, there shall appear a statement with notice with reasonable prominence that a member entitled to attend and vote at the meeting can appoint a proxy or if allowed to appoint one or more proxies, to attend and vote in the meeting on his behalf.

Entitlement to appoint a proxy may be given as a footnote to the notices of general meeting in capital or in bold letters or in capital as well as bold letters so that it remain distinct from the remaining contents of the notice. The note may be given in the following manner:

"Members entitled to attend and vote may appoint one or more proxies to attend and vote instead of themselves and a proxy need not be a member. Proxies to be valid must be received at the registered office of the company not less than forty-eight hours before the appointed time of the meeting."

21. Penalty for default

If default is made in complying with any of the provisions of section 176(2) with respect to any meeting, every officer of the company who is in default shall be punishable with fine upto Rs. 5,000.

22. Who can appoint proxy for the general meeting?

Proxy can be appointed by the following persons to attend and vote at the general meetings instead of themselves:—

1. Members of a company having a share capital.
2. Members of a company not having a share capital, if Articles of a company provides so.
3. Representatives of body corporate appointed under section 187 of the Companies Act, 1956.
4. Representatives of the President and the Governors of the State appointed under section 187A.
5. Power of Attorney holder of a member may vote by proxy, if authorised by such power of attorney.

23. Who cannot appoint Proxy for a meeting?

The following persons cannot appoint proxy to attend a general meeting of the company:—

1. A proxy cannot appoint a proxy. However, this general rule has certain exceptions as mentioned above.
2. A member of a company not having a share capital cannot appoint a proxy if the Articles does not provide otherwise.
3. Members of an independent private company unless the Articles provide otherwise. Section 176 does not apply to independent private company and consequently, this aspect will be regulated by the Articles of the concerned company.

24. Appointment of number of proxies by a member

Section 176(1)(b) state that unless the Articles provide otherwise, a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion. However, a member of a public company can appoint more than one proxy to attend and vote at a meeting instead of himself.

The person who has been authorised by the creditor company to attend a meeting of debtor company, he need not hold proxy on behalf of the creditor company and he himself can nominate a representative to vote by proxy.

25. Only individual can be appointed as a proxy

Any person whether he is member or not can be appointed as a proxy. He must be individual capable of attending and voting, at the meeting. There is no restriction in law about who can be appointed as proxy. Even the existing or proposed chairman of the company, director, secretary or any employee can be appointed as proxy. Even minor is capable of to be appointed as proxy as such appointment does not incur or undertake any liability or burden.

An artificial or judicial person cannot be appointed as proxy.

26. Signing of proxy in the case of jointholders

A proxy may be signed by the following persons:—

- (a) In the case of jointholders, all of them have equal rights as members and, therefore, unless otherwise provided, proxy forms should be signed by all the jointholders;
- (b) By the individual sole member of a company;
- (c) Power of attorney holder of a member of a company;
- (d) Authorised representative of a body corporate;
- (e) By receivers/liquidators and/or executors of a member.

27. Instrument of proxy

An instrument appointing proxy can be in any of the forms set out in Schedule IX to the Act. An instrument appointing a proxy, if in any of the forms set out in Schedule IX shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the Articles.

As per section 176(6) of the Act, proxy, which is required for enabling a person to cast his vote only is to be in the form set out in Schedule IX to the Act. (Appendix 1)

In the case of *Gharda Chemicals Ltd. v Jer Rutton Kavasmaneck* (2005) 63 SCL 222 (Bom), although, Schedule IX of the Companies Act sets out the general form of proxy, Article 62 of the Schedule I to the Companies Act provides as follows:

"62. An instrument appointing a proxy shall be as near as practicable in the form set out in the Schedule IX of the Act or a form as near thereto as circumstances admit".

Therefore, the proxy form as set out in Schedule IX is not mandatory. So long as any instrument contains all the requisite particulars set out in the form in Schedule IX it can be treated as a proxy. If an instrument like power of attorney contains all the requisite particulars, as set out in the Schedule IX to the Companies Act then such an instrument can be treated as a proxy. Proxy is acting for another.

In *Gharda Chemicals Ltd. v Jer Rutton Kavasmaneck* (2005) 63 SCL 222 (Bom), the power of attorney executed by the applicant contains all the particulars set out in the form in Schedule IX and on being satisfied, the company has issued the voting slips in favour of the power of attorney holder. The High Court held that the power of attorney is a proxy and so the appeal was dismissed with no order as to costs.

28. Validity of a proxy

In order to be a valid proxy, the proxy should have been executed in a proper manner and the following points should be observed carefully:—

1. *Mistake in proxy affecting voting right*: Any mistake in a proxy, which affects the exercise of voting right in any way, will affect the validity of the proxy.

2. *Proxy not bearing company's seal*: A proxy appointed by a representative of body corporate, not bearing company's seal but signed by any of its officers is invalid. [*Vide Firestone Tyre & Rubber Co. v Synthetics & Chemicals Ltd.* (1971) 41 Comp Cas 377 (Bom)].

3. *Dating of Proxy*: Proxy executed should contain the date of its execution. However, an undated proxy lodged within the prescribed time is valid. Proxy which bears the latest date whether it is filed up by the appointee shall be considered as valid.

4. *Proxies at adjourned meeting*: Proxy sent at the time of original meeting can be used in adjourned meeting also. However, in case a fresh notice is issued for adjourned meeting then lodging of fresh proxies shall be permissible.

5. *Stamping of proxy*: Proxy should be duly executed and it should be properly stamped.

29. Rejection of a proxy

A question relating to validity of a proxy may be raised in the general meeting of a company. The following points should be noted in this respect:—

- (a) Any question relating to validity of a proxy must be decided by the chairman and his decision shall be final unless influenced by fraud or bad faith.
- (b) If a company rejects an unsigned proxy, the shareholders should be informed.

30. Acceptance of a blank proxy

When a blank proxy is signed and appointee or other agent fills it before lodging with the company, the company cannot object its validity. However, shareholder can raise objection against the proxy as his right. Even the company secretary is empowered to fill up such Blanks as "membership number" or the "date of the meeting". Therefore, there is nothing against law in collecting blank forms bearing the shareholder's signatures. However, other particulars of the forms, such as name of the proxy and the date of the meeting, etc., can be filled later on by any person authorised by the shareholder in this behalf.

31. Stamping on proxy

Following are the relevant provisions for stamping of a proxy form:—

1. A proxy must be stamped with fifteen paise revenue stamp which must be cancelled before the chairman act upon them. The stamp has been reduced to 15 paise vide Notification No. SO 130(E), dated 28-01-2004 issued by the Department of Revenue. An unstamped proxy or where the stamp is not cancelled shall be invalid and cannot be taken into account. Where the stamp appears over the signature then it cannot be said to be duly stamped.
2. A proxy on which stamp have been affixed but not cancelled, is an unstamped proxy and is not enforceable in law.
3. A proxy executed outside India must be properly stamped within 3 months after it has been received in India.

32. Acceptance of unstamped proxies by the chairman

The chairman of a meeting is entitled to accept unstamped proxies. If the company wants to use them in evidence, it may have then stamped. If the chairman decides to reject the proxies, he does not have to allow time for them to be stamped.

On this ground, where the chairman accepted unstamped proxies, and objection was taken several days after the meeting, it was not sustainable and that the votes cast by the proxy holders were validly accepted.

33. Deposit of proxy with the company

Proxies to be valid, must be deposited with the company or any other person authorised in this behalf not less than 48 hours before a meeting of public company or a private company which is a subsidiary of a public company. However, Articles can provide for a short period. It can provide that the proxies to be valid, must be received by the company not less than 36 hours before the meeting. However, if the Article provide for longer period than 48 hours for deposit of proxy then such period shall have effect as if a period of 48 hours before the meeting had been specified therein. In computation of 48 hours, Sunday and other public holiday shall be excluded.

The instrument of proxy should be deposited with the company at least 48 hours before a meeting is scheduled to be held. A longer period than 48 hours cannot be prescribed.

34. Check points in relation to proxy at a general meeting

The Company Secretary is advised to check following points in relation to proxy:—

1. Proxy does not speak at the meeting.
2. Proxy votes only on poll unless Articles provide otherwise.
3. Instrument of proxy is in form set out in Schedule IX and is in writing. It is duly signed by the appointer and under the seal, if appointer is a body corporate.
4. Proxies are deposited 48 hours before the meeting if the Article do not provide for such deposition more than 48 hours before any general meeting.
5. Where any member has given 3 days notice to inspect the proxies then, it should be ensured that proxies were open for inspection during 24 hours before the time of the meeting during business hours of the meeting.

35. Revocation of proxy by the appointer

Proxy can at any time be revoked by the shareholder but the acts and obligations already done in exercise of authority of proxy shall not be invalidated. The following points should be observed in that matter:—

1. Every proxy in the absence of any contract to the contrary shall be used only if, the appointer is unable to attend the meeting.
2. A shareholder appointing a proxy can revoke it, before voting by the proxy.
3. The acts and obligations already done in exercise of authority of proxy shall not be invalidated unless intimation in writing of revocation has been received at the office or chairman of the meeting before the vote is given.
4. Revocation of proxy is to be communicated to the company and it shall be received by the company at its registered office before the commencement of the meeting. Proxy shall itself be revoked in case of death or insanity of the shareholder appointing the proxy.
5. Revocation of earlier proxy would be implied, if the appoint or executes valid proxy on a latter date and same is submitted with the company within time.
6. Presence of shareholder and proxy, both at the meeting will not have the effect of revocation of proxy.
7. Where the revocation was communicated not before the meeting but before the poll then this revocation would not be considered and the vote cast by the proxy will be valid.

The proxy shall stand revoked if a member, who has given the proxy, attends the meeting personally. [*Cousins v International Bricks Co. Ltd.* (1932) 2 Comp Cas 108 (CA)].

36. Change of instruction

Instruction or change of instruction given by the shareholder to the proxy may be written and formal or informal. However, instructions should be in writing to avoid any dispute and proxies should take care of last instruction received by them.

37. Rights of a member having appointed proxy

The following rights are available with a member who has appointed a proxy:—

1. He can attend the meeting and vote thereat even, if the proxy is present at the meeting and vote given by the member will have preference then the vote, if any, cast by the proxy.
2. If the proxy has wrongly utilised the voting right, the appointer of proxy can object to it.
3. All shareholders even those who were not present at the meeting but voted by proxy, can challenge proceedings of a meeting by a common action.

38. Right of proxies

A proxy, being a representative of a member, cannot participate in the proceedings or speak unless the Articles otherwise provide. He cannot vote on a show of hands. He can, however, vote if a poll is demanded. He can also demand a poll.

39. Canvassing for proxy is prohibited

Section 176(4) prohibits any invitation to appoint as proxy to any person or one of a number specified in any invitations which may be issued at the company's expenses to any member entitled to have a notice of the meeting and to vote thereat by proxy. Any officer of the company who contravenes the provision of the given section shall be fined upto Rs. 10,000. However, directors may issue proxy papers and list of persons who are willing to be appointed as proxy on company's cost or may ask members to vote in person.

40. Inspection of proxies lodged with the company

Any member entitled to vote at the meeting or on resolution to be moved thereat, shall be entitled to inspect the proxies deposited with the company. Such inspection may be made during the period beginning 24 hours before the meeting and ending with the conclusion of the meeting provided not less than 3 days notice in writing is given to the company by him for such inspection. The right of the inspection is not given to proxies, however, directors of the company has the right to inspect proxies registered with the company.

41. Practical aspects of proxies

The following practical aspects of the proxy should be noted carefully:—

1. *Multiple proxy*: If the shareholder has signs two proxy forms representing the same share and hand over them to two persons then proxy bearing the later date would be valid. Proxy form not bearing any date will be rejected by the company. If both the forms bear the same date then both shall be rejected by the company.
2. *Alternative proxies*: The alternative proxies may be appointed by a single instrument of proxy specifying the alternative proxies in case of absence of first mentioned proxy.
3. *General and special proxy*: A general proxy is in the nature of general power of attorney and is valid for attending all the general meetings of the company. A special proxy is drawn for attending meeting specified therein.
4. *Proxies in special cases*: Proxies and voting on a poll by proxy at the meeting called by the Central Government under section 167 or a meeting called by the CLB/Tribunal under section 186 or 391 shall be considered as the special case in which proxies shall be appointed.

42. Verification of specimen signatures

Its purpose and object is to ensure that voting on shares is exercised by or on behalf of a shareholder. In the case of a proxy since the shareholder would not be present in person, verification would become necessary to ensure that the proxy really represents the shareholder. Where a member is personally present and has identified himself as the right person holding the shares neither non-availability of specimen signature nor difference in signature would affect his right to attend and vote. Verification of signature is not with the object of denying the right to vote but to ensure that the entitled person exercises his right to vote. [*United Western Bank Ltd., In re* (2002) 38 SCL 34 (CLB)].

43. Company cannot be appointed as a proxy

A company, being an artificial entity, cannot physically be present at a meeting, vote and speak or demand a poll. Only a natural person can do these. Therefore, the term 'person' meant only a natural person. Proxy is a personal representative of the shareholder and the relation between the shareholder and the proxy is that of a principal and agent. Since the proxy holder is a personal representative of a shareholder, the principle of delegates non-protest delegatus would apply. This clearly showed that the proxy should be an individual and not a company. A company cannot be appointed as a proxy. [*United Western Bank Ltd., In re* (2002) 38 SCL 34 (CLB)].

44. Register of proxy

The company should maintain a register of proxy for future reference and record. All the proxy forms received within the stipulated time appointed for deposit of proxy should be entered in order of their receipt. The Register may contain two parts viz, valid proxy register and rejected proxy register. (Appendix 2 & 3).

On receipt of a proxy, the details shown therein like name of the shareholder(s), ledger folio number, number of shares held and signature of members should be verified from the relevant register of members and specimen signature card.

The Register for valid proxy form received should be closed before 48 hours of the meeting and it should be authenticated by the chairman of the meeting.

V. CHAIRMAN OF MEETING

The Board of directors normally appoints one of the directors as the chairman for the meetings of the Board of directors and also for the general meetings of the company. The Articles also provide that the chairman of the Board shall be the chairman for general meeting of the company.

45. Absence of the Chairman at the meeting

When the chairman of the company is not able to attend a general meeting, the Articles generally provide that in the absence of the chairman, one of the directors who is present at the time and willing, be appointed as the chairman of the meeting. If there is no such provision, the members personally present at the meeting shall elect one of themselves to be chairman thereof on a show of hands. [Section 175(1)]

If a poll is demanded on the election of the chairman, it shall be taken forthwith and the chairman elected on a show of hands shall exercise all the powers of the chairman and conduct the poll. [Section 175(2)]

If some other person is elected chairman as a result of the poll, he shall be the chairman for the rest of the meeting. [Section 175(3)]

46. Position and responsibility of Chairman

The chairman is having authority to conduct the business of the meeting in terms of the notice. Accordingly, he has to carry out the following duties:

- (i) With the permission of chairman, each item of business will be moved for the consideration of the members.
- (ii) He will give enough time to members to discuss and express their opinion and views on each of the proposal under consideration.
- (iii) He has powers to close the discussion if sufficient time has been spent.
- (iv) He has the powers to admit or reject an amendment to a resolution.
- (v) Where there is a serious disorder, he has an inherent power to adjourn the meeting. However, he cannot arbitrarily close or adjourn a meeting.
- (vi) He shall arrange for voting on every resolution and declare the result.
- (vii) If the Articles give authority to the chairman to exercise a casting vote, he can cast a second vote in case of a tie as he consider appropriate.

47. Detailed agenda and guidance note for the Chairman

At every general meeting, it is a practice to prepare a draft detailed agenda, which will be given to the chairman and the directors present at the meeting to enable the chairman to conduct the meeting in a proper manner.

48. Declaration of result by the Chairman

A declaration by the chairman that on a show of hands, a resolution has or has not been carried unanimously or by a particular majority and an entry to that effect set in the minutes book, shall be conclusive evidence of the fact without proof of the number or proportion of the votes cast in favour of or against the resolution.

49. Discretion of chairman for recording proceedings of the meeting

The chairman has the power to exclude from the minutes any matter which, in his opinion is regarded as defamatory of any person; is irrelevant or immaterial to the proceeding or is detrimental to the interest of the company.

Appendix 1
Specimen of a Proxy

XYZ LIMITED
67, Aradhana Nagar, Kotra Sultanabad,
BHOPAL (M.P.)

I, ABC of Jaipur in the district of Jaipur being a member of the above named Company hereby appoint DEF of Jaipur or failing him GHI of Jaipur as my proxy to vote for me on my behalf at the 27th Annual General Meeting of the Company to be held on Friday, the 22nd day of September, 2006 and at any adjournment thereof.

Signed this 19th day September, 2006

Ledger Folio No.:

DP ID No.

Number of Shares held:

Stamp
Signature

Appendix 2
Specimen format of Register of proxy

NAME OF THE COMPANY : XYZ LIMITED
DATE & TIME OF THE GENERAL MEETING : 22ND SEPTEMBER, 2006 AT 11.00 A.M.
NATURE OF THE MEETING : 27TH ANNUAL GENERAL MEETING
PLACE OF THE MEETING : 67, ARADHANA NAGAR, KOTRA, BHOPAL

Sl. No.	Date & time of receipt	Name of Member	L. F. No./ DP ID No.	Number of shares held	Name of Proxy	Signature of proxy	Remarks

Date & Time

CHAIRMAN

Appendix 3
Specimen format of Register of invalid Proxy rejected by the Company

NAME OF THE COMPANY : XYZ LIMITED
DATE & TIME OF THE GENERAL MEETING : 22ND SEPTEMBER, 2006 AT 11.00 A.M.
NATURE OF THE MEETING : 27TH ANNUAL GENERAL MEETING
PLACE OF THE MEETING : 67, ARADHANA NAGAR, KOTRA, BHOPAL

Sl. No.	Date & time of receipt	Name of Member	L. F. No./ DP ID No.	Number of shares held	Name of Proxy	Reason for rejection	Remarks

Date & Time

Chapter 3

Voting

Synopsis

Important Provisions at a Glance

1. Definition of 'voting'
 2. Types of voting in a general meeting
Voting in General Meeting by Show of Hands
 3. Vote by show of hands
 4. One member one vote by show of hands
 5. Proxies cannot vote by show of hands
 6. Directors cannot participate at meetings unless they are having voting rights as a member of the company
 7. Chairman's declaration of result in case of vote by show of hands is conclusive, unless the poll is demanded or ordered by the chairman
Voting in General Meeting by Poll
 8. Voting by poll
 9. Time for demand for a poll
 10. Criteria for valid demand of a poll
 11. Withdrawal of demand for poll
 12. Time for taking poll [Section 180]
 13. Procedure for conduct of poll
 14. Validity of votes
 15. Right of members to vote differently on the same motion
 16. Pooling agreement
 17. Poll in the case of a private company
 18. Restriction on voting if calls are not paid by a member
 19. Passing of resolutions by postal ballot instead of a general meeting
 20. Applicability
 21. Shares with differential rights as to dividend, voting or otherwise
- Appendix 1 Specimen of Poll Paper

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	Form Nos.
1.	177	Voting to be by show of hands in first instance.	
2.	178	Chairman's declaration of results of voting by show of hands to be conclusive.	
3.	179	Demand and voting for poll, etc.	
4.	176(1)(c)	Proxies not entitled to vote on a show of hands unless articles provides otherwise.	
5.	180	Time of taking poll.	
6.	175(2)	Time for taking poll in the matter of appointment of chairman.	
7.	181	Restrictions on exercise of voting rights of members who have not paid calls, etc.	
8.	182	Restrictions on exercise of voting rights in other cases to be void.	
9.	183	Right of member to use votes differently.	

<i>Sl. No.</i>	<i>Sections</i>	<i>Matters dealt with</i>	<i>Form Nos.</i>
10.	184	Appointment of scrutinisers at poll.	
11.	185	Manner of taking poll and result thereof.	
12.	86(a)(ii)	Shares with differential rights as to dividend, voting or otherwise.	
13.	192A	Passing of resolution by postal ballot.	

1. Definition of 'voting'

Voting denotes a method by which a person express his wish or opinion in an authorised formal way or a mechanism through which the wishes of persons are ascertained in relation to a particular matter. It reflects the mood of the meeting on a particular matter. If a motion gets support of the required members in a meeting, it becomes resolution.

2. Types of voting in a general meeting

Types of voting may be divided into three categories viz;—

1. Voting by show of hands
2. Voting on poll
3. Voting by postal ballot

VOTING IN GENERAL MEETING BY SHOW OF HANDS

3. Vote by show of hands

Section 177 states that at every general meeting, a resolution put to the vote of the meeting, shall be decided on the basis of voting by show of hands at the first instance, unless a poll is demanded. In voting by show of hands proxies cannot vote unless the articles provide therefore.

4. One member one vote by show of hands

In the case of voting by show of hands, every member has right to cast only one vote, irrespective of the number of shares holds. Therefore, the voting by show of hands is not a value based because it does not differentiate between the members having more or less shares in the company.

5. Proxies cannot vote by show of hands

In the case of voting by show of hands, only members who are personally present can exercise the voting. The proxies do not have such rights unless the articles specifically provides for that.

6. Directors cannot participate at meetings unless they are having voting rights as a member of the company

Directors present at general meetings cannot participate at the general meetings unless they are members themselves and having a right to vote. But with the permission of the chairman, they can answer queries raised by the members.

7. Chairman's declaration of result in case of vote by show of hands is conclusive, unless the poll is demanded or ordered by the chairman

In a voting by show of hands, the chairman at the time of putting a motion for voting, asks the members, who are in favour of the motion, to raise their hands. The number of such persons will be counted. Similarly, the chairman will further ask the members, who are against the motion, to raise their hands and their number will also be counted. If the number of persons voting in favour is more than the number of persons voting against, the motion will be deemed to have been carried and the chairman will accordingly announce the result. [Section 178]

If a poll is demanded on or before the declaration of result of voting by show of hands or the chairman feels that the opinion on the show of hands does not reflect the will of the members properly in view of their voting rights, he may order for poll. In such situation the result of the motion shall be considered on the basis of the poll.

VOTING IN GENERAL MEETING BY POLL

8. Voting by poll

Voting by poll means a system in which ballot papers are distributed among the members present at the meeting, in person or by proxy, to participate in the voting. All the members in person or by proxy at a meeting have the voting right in a poll in proportion to the number of shares held by each of them.

Therefore, the voting by poll is adopted to find out the true opinion of the meeting when several members have spoken in favour and against the proposal.

9. Time for demand for a poll

According to the provisions of section 179 of the Act, a poll may be demanded either, before or on the declaration of the result of voting by show of hands. However, the chairman has power to order for a poll at his own motion.

10. Criteria for valid demand of a poll

Section 179(1) states that the chairman shall order for a poll, when a demand is made by members specified below:—

- (a) In the case of a public company having share capital, by any member or members (present in person or proxy) and holding shares for a paid up value of Rs. 50,000 or members having voting right of not less than 1/10th of the total voting power.
- (b) In the case of a private company, any one member having the right to vote on the resolution and present in person or by proxy, if not more than seven members were personally present and by two members present in person or by proxy, if more than seven members were personally present.
- (c) In the case of any other company, any member or members holding not less than 1/10th of the total voting power have a right to demand a poll.

11. Withdrawal of demand for poll

The person or persons who demanded a poll may withdraw the demand at any time, with the permission of the chairman.

12. Time for taking poll [Section 180]

On valid demand or on the order of the chairman at his own for poll, the poll shall be taken as under:—

- (i) a poll demanded for election of chairman and adjournment of a meeting, may be taken forthwith;
- (ii) a poll demanded on any other matter, shall be taken at such time within 48 hours from the time, when the demand was made as the chairman may decide.

13. Procedure for conduct of poll

As soon as the demand for a poll is agreed, the secretary is required to assist properly the chairman for conduct of poll as per provisions of the Act. The following steps are required in that matter:—

- (a) The chairman shall appoint two scrutinisers to scrutinize the votes given on the poll and to submit report thereon to him. One of the scrutinisers shall always be a member (not being an officer of the company) provided he is willing to act as a scrutiniser.
- (b) Poll paper is required to be distributed to all the members and proxies, in which the text of the resolution is reproduced on which the voting of the shareholder is required. There will be columns in the poll paper to show the number of shares held and whether the person has voted in favour or against, ledger folio number and signature of the member/proxy. (Appendix 1)
- (c) Make proper arrangement to put the poll paper on the box kept for the purpose.
- (d) The scrutinisers will collect all the poll papers and verify and prepare a report indicating how many votes have been cast in favour and how many against. The report will be submitted to the chairman who will then announce the result.
- (e) In case of any question on the validity of the ballot papers, the scrutinisers shall submit their report on that to the chairman and decision of the chairman shall be final and binding.

14. Validity of votes

In construing whether a resolution is passed by three-fourths majority present and voting, what is to be taken into consideration in calculating majority is not number of persons present and voting, but number of valid votes polled in such meeting which includes only votes which are indicating mind of voter for or against resolution. [*Kirloskar Electric Co. Ltd., In re* (2003) 43 SCL 186 (Kar)].

Voting is formal expression of will or opinion by person entitled to exercise right on subject or issue in question which has to be either in affirmative or negative, and any writing on ballot paper suggesting condition or reservation cannot be said to be an expression of will or opinion either for or against proposition and those votes have to be necessarily treated as invalid or void as such votes are no votes leading either way. [*Arvind Mills Ltd., In re* (2002) 37 SCL 660 (Guj)].

15. Right of members to vote differently on the same motion

Section 183 provides that when a poll is taken, a member is free to use some of his votes in favour of the proposal and some against the motion and he may even leave out some votes. In other words, he need not use all his votes in the same way.

16. Pooling agreement

Pooling agreement is an agreement between two or more shareholders which generally provides that in exercising any voting rights, the shares held by the shareholders shall be voted as provided therein; it is a contract to the effect that the shares held by them shall be voted as one single unit.

In a pooling agreement, each shareholder retains sole ownership of shares binding himself only to vote for a specific person or in a certain way. These agreements are enforceable because the right to vote is a proprietary right. The right to vote may be aided and effectuated by a contract. Generally, pooling agreements are thought of in relation to control of private companies and smaller public companies. A pooling agreement may be utilised in connection with the election of Directors and shareholders' resolutions where shareholders have a right to vote. [*Rolta India Ltd. v Venire Industries Ltd.* (2000) 24 SCL 13/100 Comp Cas 19 (Bom)].

17. Poll in the case of a private company

In the case of private company, its articles may provide as to who can demand a poll. If the articles do not have a suitable provision, then in such a company, the provisions of section 179 quoted above, will apply, unless section 179 is excluded in that company.

18. Restriction on voting if calls are not paid by a member

In terms of the provisions of section 181 of the Act, the articles of a company may contain a provision to the effect that no member shall exercise any voting right in respect of the shares held by him on which any call or other money presently payable has not been paid.

Any regulation made which restrict the right of a shareholder to vote at general body meetings on the basis of his shareholding cannot be imposed. [*Tamal Kumar Majumdar v Union of India* (2000) 38 CLA 44 (Kol)].

19. Passing of resolutions by postal ballot instead of a general meeting

Section 192A of the Companies Act, provides a mechanism for passing of resolution by postal ballot instead of a general meeting. This provision will provide opportunity to such members who are not able to appoint proxy or not able to attend the general meetings personally. Therefore, it will give all the shareholders equal chance to give their opinion on proposals referred to them under the system.

20. Applicability

Presently the system is applicable to listed companies and the matters which will be decided by postal ballot has been prescribed by the Central Government by the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 (Refer Chapter 1 of Part XV).

21. Shares with differential rights as to dividend, voting or otherwise

Section 86(a) provides that the equity share capital may be issued with differential voting rights as to dividend, voting rights or otherwise in accordance with such rules and subject to such conditions as may be prescribed.

The Central Government has issued the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001 which has come into force w.e.f. 9th March, 2001. (Refer Chapter 1 of Part IX).

Appendix 1

Specimen of Poll Paper

EXTRAORDINARY GENERAL MEETING OF PQR LTD. HELD ON XX.XX.XXXX

My votes on the poll in respect of the following resolution are as indicated below:

Resolution No. as per notice dated

- | | |
|--|---|
| 1. Name of the member/proxy, if any | : |
| Name of representative where a | : |
| body corporate is a member (where shares are held jointly, | |
| the names of all joint-holders shall be given). | |
| 2. DP ID/Ledger Folio number | : |
| 3. Number of equity share held | : |
| 4. Votes cast for the resolution | : |
| 5. Votes cast against the resolution | : |

Signature of member/proxy holder