PART XXIX

APPOINTMENT OF SOLE SELLING AND BUYING AGENTS

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*E-Form Nos.*
1.	294	Appointment of sole selling agents requires approval of company in general meeting.	
2.	294A	Prohibition of payment of compensation to sole selling agent for loss of office in certain cases.	
3.	294AA	Central Government's power to prohibit appointment of sole selling agents in certain cases.	
4.	192(4)(*g*)	Filing of copies of terms and conditions of appointment with the Registrar.	23
5.	Rules	The Companies (Appointment of Sole Agent) Rules, 1975.	FORM I/II

1. Definition of 'Sole Selling Agent'

The term "sole selling agent" is not defined in the Act. The term simply means an individual, a firm or a company who/which is entrusted with the function of selling products and services exclusively in an area. These rights are exercisable to the exclusion of all others including the concerned company.

The section 294 provides for the appointment of sole selling or buying agents by a company, in brief, it has been given as under:

Section 294	—	General provisions applicable to all companies, both public and private.
Section 294A	—	Prohibition on payment of compensation to sole selling agents.
Section 294AA	—	Special provision where the proposed appointee has a substantial interest in the company (appointee); and where the company (appointee) has a paid-up capital of at least Rs. 50 lakhs. Sections 294A and 294AA also apply to both public and private companies.

2. Appointment of sole selling agent in a company having paid-up capital of less than Rs. 50 Lakhs

Section 294(2) of the Companies Act, 1956 provides that the Board of a company, whether it is a public or private having paid-up capital of less than Rs. 50 lakhs, may appoint sole selling agents, for a period not exceeding five years at a time subject to the condition for approval of members in first general meeting after such appointment and further condition that the appointment shall cease to be valid if it is not approved by an ordinary resolution passed by the company in the first general meeting held after the date of his appointment.

In view of language employed in section 294(2) the restrictions imposed by the Legislature that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made, is mandatory in nature. [*Kasargod* (*A.V.*) v *Registrar of Companies* (2001) 105 Comp Cas 676/34 SCL 586 (Kar)].

If resolution is not approved at the first general meeting after the appointment of agent the appointment is void and even subsequent approval by the shareholders cannot resuscitate it; 'not approved' includes cases where matter is not placed before general meeting, or if placed, is not considered by meeting. [*Shalagram Jhajharia* v *National Co. Ltd.* (1965) 35 Comp Cas 706 (Cal)].

Section 294(1) provides that a company shall not appoint a sole selling agent for any area for a term exceeding five years at a time.

There can be only one sole selling agent in an area in respect of all the goods dealt with by the company. [*CIT* v *Principal Officer C/o Arkay Wires* (*P*) *Ltd.* (2005) 58 SCL 97 (All)].

3. Appointment of sole selling agent in a company having paid-up capital of Rs. 50 lakhs or more

In terms of provisions of section 294AA(3), if a company is having paid-up share capital of Rs. 50 lakhs or more, the appointment of a sole-selling agent may be made by the Board and it shall require the approval of the members of the company by a special resolution in the general meeting and the approval of the Central Government.

If the appointment has already been approved by general meeting and during the continuance of tenure of appointment, the paid-up share capital of the company increases to Rs. 50 lakhs or more than the approval of the Central Government shall not be required for continuance of such appointment.

4. Guidelines

An application submitted under section 294AA of the Companies Act, 1956 should be in accordance with the Companies (Appointment of Sole Agents) Amendments Rules, 2006 and be accompanied by the following:—

1. Certified copies of Board of Directors resolution/and special Resolution by members approving the proposal to appoint Sole Selling Agent and the terms and conditions of appointment;
2. Copy of previous approval obtained from the Central Government in respect of appointment of the Sole Selling Agents for earlier period, if any;

3. Certificate from the auditor of the sole selling agent certifying the figure of expenditure;
4. Certified copy of the Marketing/Sole Selling Agency Agreement proposed to be entered into with the Sole Selling Agent;
5. Details of the interest of the sole selling agent in the shares of the company;
6. Copy of the particulars of directorship in the company held or controlled by the sole selling agent;
7. Particulars of inter-se relationship to other sole selling agent in other areas for same products of the company;
8. Break-up of sales in respect of each of the last three years (In respect of the product in which the sole selling agent under consideration has been appointed and for the territory for which he has been so appointed;
9. Foreign shareholding in the principal company and the sole selling agent and the profits remitted to the foreign countries on these shareholdings during the last three years;
10. In case the sole selling agent is a partnership firm, details of capital invested in the partnership firm during the last three years and details of the profits earned by the partners during the last three years.

5. Formalities for obtaining approval of the Central Government

1. The company shall hold a Board meeting for authorising any director or the secretary to make an application in the prescribed e-Form I of the Companies (Appointment of Sole Agents) Rules, 1975 and in case of appointment of sole buying agent in the e-Form II electronically to the Central Government for obtaining requisite approval. (Appendix 1 & 2)
2. After obtaining the said approval, the Board shall approve the notice of a general meeting and explanatory statement to be enclosed with the notice of the meeting for obtaining approval of the members by special resolution.
3. The explanatory statement annexed to the notice for the general meeting must contain all relevant informations. There must be full and frank disclosure of the salient features of the selling/buying agency agreement to the shareholders.
4. Copy of the resolution passed by the company in general meeting approving the appointment of sole selling/buying agent with the explanatory statement shall be filed in e-Form 23 as per section 192(4)(*ee*)(*ii*) alongwith the copy of terms and conditions of appointment of sole selling/buying agent with the prescribed fees as per Schedule X to the Act, electronically with the Registrar within 30 days of passing the resolution in general meeting. (*See* Appendix 3)
5. Under the MRTP Act, 1969, the particulars of appointment was also required to be filed. However, where the agreement does not contain any of the conditions listed in section 33(1) of the said Act, it was not necessary to file copy of the agreement under that Act. With the enactment of Competition Act, 2002, the MRTP Act, 1969 has been repealed. The filing of copy of restrictive agreements under that Act does not therefore arise. However, the rules under the Competition Act when framed may be looked into.

6. Powers of the Central Government u/s 294

Although, the appointment made under section 294 does not need the approval of the Central Government, that government is vested with the power, in the interest of the company to vary the terms and conditions in respect of any appointment made by the Board of directors or to ask the company to terminate the appointment of an agent in an area where the company has appointed more than one agent in that area. The Central Government exercises this power after the perusal of the relevant agreement entered into by the company and filed by it with the Registrar under section 192(4)(*g*).

7. Penalty

Section 294(8) of the Act, provides that if a company fails to submit the information required by the Central Government or failed to produce any books and paper which are in his custody or power or otherwise any assistance which it is reasonably able to give, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 50,000 and a further fine of not less than Rs. 500 for every day during which the default continues.

8. Appointment of sole selling agent in a company in which the proposed sole selling agent holds substantial interest

If the person (individual, firm or a company) proposed to be appointed as sole selling agent holds "substantial interest" by way of shares in the appointing company, then the appointment cannot be made unless such appointment is previously approved by the Central Government. In case, if company is having paid-up share capital of and above Rs. 50 lakhs, such appointment shall be made after obtaining the approval of the members by passing special resolution in the general meeting and getting the approval of the Central Government for the appointment of the sole selling agent having substantial interest in the company.

9. Meaning of substantial interest in a company

The person proposed to be appointed as sole selling agent (individual, firm or company) shall be deemed to hold substantial interest in the shares of the company if the individual, partners in case of the firm or the directors of the company, together with their relatives hold shares in the appointing company, the aggregate paid-up value of which exceeds Rs. 5 lakhs or 5 per cent of the total paid-up share capital, whichever is less.

10. Prohibition on payment of compensation to sole selling agents for loss of office

Section 294A of the Companies Act, 1956 prohibits the payment of compensation to sole selling agents for loss of office in the cases given below:—

1. where the appointment of sole selling agent ceases to be valid by virtue of section 294(2A);
2. where the sole selling agent resigns his office in view of reconstruction of the company or its amalgamation with any other body corporate(s) and is appointed sole selling agent of the reconstructed company or of the body corporate resulting from amalgamation;
3. where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation with any other body corporate(s);
4. where the sole selling agent has been guilty of fraud or breach of trust in relation to or of gross negligence in the conduct of his duty as the sole selling agent;
5. where the sole selling agent has instigated or has taken part directly or indirectly in bringing about, the termination of the sole selling agency.

11. Payment of compensation to the sole selling agent

If the company failed or does not place the matter of his appointment before the first general meeting after his appointment and the appointment ceases to be valid then sole selling agent can claim compensation for loss of office. The compensation to be paid to the sole selling agent shall not be more than the remuneration which he would have earned if he had been in office for the unexpired period of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during the period of three years immediately preceding the date on which his office ceased or was terminated or where he held office for a lesser period than three years, during such period.

But the company will not be liable to give such compensation where sole selling agent has himself brought about non-replacement of the matter of his appointment before the first general meeting.

PROHIBITION ON THE APPOINTMENT OF SOLE SELLING AGENTS

Pursuant to the powers vested with the government *vide* section 294AA(1), the Ministry of Company Affairs for banning the appointment of sole selling agents by companies in the particular industries, if it consider appropriate in the interest of general public and trade and industries in the country.

CLARIFICATIONS ISSUED BY THE CENTRAL GOVERNMENT

12. In case, if the shareholding of the sole selling agent in the company after his appointment increases, whether it shall be considered as substantially interested?

Where the shareholding of the sole selling agent in the company is not in excess of Rs. 5 lakhs or 5% of the paid-up share capital at the time of appointment and during the duration of appointment the said shareholding increases, the Department has clarified that it will not be obligatory on the companies to comply with the provisions of section 294AA(2) for the continuance of the appointment for the remaining duration. (Circular No. 1/78, dated 7-3-1978).

13. In case, if the sole selling agent comes under the purview of section 314, whether approval of members and the Central Government is required separately for each matter?

Where any of the persons mentioned in section 314(1) or 314(1B) is proposed to be appointed as sole selling agent under section 294 or section 294AA then such appointment shall be subject to the approval of the members of the company in general meeting by passing special resolution and also to the approval of the Central Government.

It has been clarified that if an appointment under section 294 or 294AA also attracts section 314, it shall be ensured that the approval of the general meeting shall be taken by passing special resolution and approval of the government shall be taken in e-Form I of the Companies (Appointment of Sole Agents) Rules, 1975. Similarly, the special resolutions passed by the shareholders under section 294AA shall also incorporate section 314. In such cases where the Central Government's approval is necessary under more than one section, the Government is not in favour of receiving multiple applications and hence where sections 294, 294AA and 314 are concerned, the application should be under section 294AA but the special resolution passed shall be pursuant to all the sections concerned.

14. New restrictions on appointment of sole selling agent for Bulk, Drugs and formulations industry

The Department of Company Affairs has issued a Notification No. GSR 130(E), dated 23-2-2004 which states that in exercise of the powers conferred by Sub-section (1) of section 294AA of the Companies Act, 1956 (1 of 1956), the Central Government, being of the opinion that the demand for the category of goods specified in the Table below is substantially in excess of the production or supply of such goods and that the services of the sole selling agents will not be necessary to create a market for such goods, hereby declares that sole selling agents shall not be appointed by any company for the sale of such goods in India for a period of three years from the date of publication of this notification in the Official Gazette.

Table

Every category of "Bulk drugs", "drugs" and "formulations" as defined in the Drugs (Prices Control) Order, 1995, not being,—

(*i*) any *bona fide* preparation included in the Ayurvedic (including Siddha) or Unani (Tibb) systems of medicine; or

(*ii*) any preparation included in the Homoeopathic system of medicine.

Appendix 1

Specimen of e-Form I

Form of application for approval of the Central Government for the Appointment of sole selling agent by the company

[Pursuant to section 294AA of the Companies Act, 1956 and rule 2 of the Companies (Appointment of Sole Agents) Rules, 1975]

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

1. (*a*) * Corporate identity number (CIN) of company — XXXXXXXXXXXXXX
   (*b*) Global location number (GLN) of company
2. (*a*) Name of the company — M CAPS LIMITED
   (*b*) Address of the registered office of the company — MHOW NEEMUCH ROAD, I INDUSTRIAL AREA, PITHAMPUR
   (*c*) *Paid-up capital (Rs. In thousands) — 40000

3. * Shareholding pattern of the applicant company as on 31/03/2006 DD/MM/YYYY)

S. No.	Category	Percentage
1.	Government [Central and State]	
2.	Government companies	
3.	Public financial institutions	
4.	Nationalised and other banks	
5.	Mutual funds	
6.	Venture capital	
7.	Foreign holdings (Foreign institutional investor(s), Foreign companies, Foreign financial institution(s), Non-resident(s) or Overseas corporate bodies)	6.00
8.	Bodies corporate (not mentioned above)	15.00
9.	Directors or relatives of directors	59.00
10.	Other top 50 shareholders (other than listed above)	05.00
11.	Indian public	15.00
12.	Others	

* Total numbers of shareholders (in thousands) 1

4. Shareholding pattern of the sole selling agent, if company as on 31/03/2006 (DD/MM/YYYY)

(*a*) CIN of the company XXXXXXXXXXXXXXXXXXXXX

(*b*) GLN of the company

1.	Government [Central and State]	
2.	Government companies	
3.	Public financial institutions	1.00
4.	Nationalised and other banks	2.00
5.	Mutual funds	
6.	Venture capital	
7.	Foreign holdings (Foreign institutional investor(s), Foreign companies, Foreign financial institution(s), Non-resident(s) or Overseas corporate bodies)	6.00
8.	Bodies corporate (not mentioned above)	10.00
9.	Directors or relatives of directors	59.00
10.	Other top 50 shareholders (other than listed above)	5.00
11.	Indian public	17.00
12.	Others	

Total numbers of shareholders (in thousands) 2

5 *Existing selling arrangements of the company
By the distributors network and sales team of the company, headed by the general manager sales

6. (*i*) Name, nature of organization, address and principal business of the person, firm or company proposed to be appointed as sole selling agent
(*a*) CIN of the company XXXXXXXXXXXXX

(*b*) GLN of the company	
(*c*) *Name	DRUGS SALES LIMITED
(*d*) *Nature of organization	MARKETING

(*e*) * Address	Line I	MAKERS CHAMBERS
	Line II	Nariman Point

City	MUMBAI
State	MAHARASHTRA
Country	INDIA
Pin code	400021
(*f*) *Principal business	MARKETING IN ALL TYPES OF DRUGS
6. (*ii*) Profit sharing ratio (in case of partnership firms)	
(*a*) Name of the partner	
(*b*) Profit share (%)	
(*a*) Name of the partner	
(*b*) Profit share (%)	
(*a*) Name of the partner	
(*b*) Profit share (%)	
(*a*) Name of the partner	
(*b*) Profit share (%)	
(*a*) Name of the partner	
(*b*) Profit share (%)	

7. Shareholding details of the directors of the applicant company and their relatives in the sole selling agent

	Number of shares held in sole selling agent	*Percentage of shareholding*
Applicant company		
Its directors		
Their relatives		

8. (*a*) * Structure and size of the organization of the sole selling agents to be utilized for conducting sales for the company. If the proposed sole selling agent is a company registered under the Companies Act, please furnish the CIN of the company.

The Company is having presence in all the metro cities of the country as well as it is having branch offices at 7 countries in the world. The Company is having expatriation in the marketing of empty gelatin capsules.

(*a*) CIN of the company	XXXXXXXXXXXXX
(*b*) GLN of the company	

9. * Are the sole selling agent re-appointed in the instant case ☐ Yes ☐ √ No

If yes, rate of commission and term of appointment in respect of the previous appointment

(*a*) Rate of commission
(*b*) Terms of appointment

10. Geographical area for which the sole selling agent is appointed

(*a*) Geographical area	Western part of the country and overseas market

(*b*) Terms of commission payable to the sole selling agent

5% of the realization on sales shall be payable to the sole selling agent by the Company

(*c*) Whether the agreement is on principal-to-principal basis

□ Yes □ √ No

If yes, the rates of discount allowed to the sole selling agent may please be indicated

(*a*) Item or product

(*b*) Rates of discount

(*a*) Item or product

(*b*) Rates of discount

(*a*) Item or product

(*b*) Rates of discount

(*a*) Item or product

(*b*) Rates of discount

(*a*) Item or product

(*b*) Rates of discount

(*d*)* Tenure

(*a*) From 01/05/2006

(*b*) To 30/04/2011

11. The commission earned during the last three years from the company and expenditure incurred by the sole selling agents whose application is under consideration

(*a*) Financial year From (DD/MM/YYYY) To (DD/MM/YYYY)

(*b*) Amount of commission earned (in Rs.)

(*c*) Amount of expenditure incurred (in Rs.)

(*a*) Financial year From (DD/MM/YYYY) To (DD/MM/YYYY)

(*b*) Amount of commission earned (in Rs.)

(*c*) Amount of expenditure incurred (in Rs.)

(*a*) Financial year From (DD/MM/YYYY) To (DD/MM/YYYY)

(*b*) Amount of commission earned (in Rs.)

(*c*) Amount of expenditure incurred (in Rs.)

12. *Particulars of resolution passed for appointment of sole selling agent

(*a*) Service request number of Form 23 Z9999999

(*b*) Date of filing Form 23 15/04/2006

(*c*) Date of passing special or ordinary resolution 01/04/2006

13. *Did the sole-selling agent appoint agent, distributors, dealers during last three financial years

□ Yes □ √ No

If so, the amount incurred in each year by way of commission, in respect of such appointment

1. (*a*) Financial year From (DD/MM/YYYY) To (DD/MM/YYYY)
   (*b*) Amount incurred by way of commission (in Rs.)
2 (*a*) Financial year From (DD/MM/YYYY) To (DD/MM/YYYY)
   (*b*) Amount incurred by way of commission (in Rs.)
3. (*a*) Financial year From (DD/MM/YYYY) To (DD/MM/YYYY)

(*b*) Amount incurred by way of commission (in Rs.)

14. *Did the company appoint agents (other than the sole selling agent), distributors and dealers for the same product in other areas □ Yes □ √ No

15. Terms of remuneration to other sole selling agent in other areas for same products of the company

The sales commission shall be payable @ 5% of the sales made by the Agent in the western part of the country and overseas market on the empty gelatin capsule.

16. *Please give in brief the extent of the competition for the product, bringing out in particular the share of the company in the overall market for the product in India during the last three years and the names of the important competitors.

The company is having major competitions from the Associated Capsules and Universal Capsules apart from the other medium size producers of the empty gelatin capsules. Relating information has been given by way of attachment.

Attachments

1.	Certificate from the auditor of the sole selling agent certifying the figure of expenditure.	Attach
2.	*Copy of proposed agreement.	Attach
3.	Details of the interest of the sole selling agent in the shares of the company.	Attach
4.	Copy of the particulars of directorship in the company held or controlled by the sole selling agent.	Attach
5.	Particulars of inter-se relationship to other sole selling agent in other areas for same products of the company.	Attach
6.	Break-up of sales in respect of each of the last three years (In respect of the product in which the sole selling agent under consideration has been appointed and for the territory for which he has been so appointed.	Attach
7.	Foreign shareholding in the principal company and the sole selling agent and the profits remitted to the foreign countries on these shareholdings during the last three years.	Attach
8.	In case the sole selling agent is a partnership firm, details of capital invested in the partnership firm during the last three years and details of the profits earned by the partners during the last three years.	
9.	Optional attachment(s), if any	

Declaration

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

I have been authorised by the board of directors' resolution dated * 15/04/2006

(DD/MM/YYYY) to sign and submit this form

To be digitally signed by

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

For office use only
Digital signature of the authorizing officer
This e-Form is hereby approved
This e-Form is hereby rejected

Appendix 2
Companies (Appointment of Sole Agents) Rules, 1975

[Notification No. GSR 137 (E), dated March, 1, 1975]

In exercise of the powers conferred by section 294AA, read with clause (*a*) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules namely: —

1. Short title and commencement.— (1) These rules may be called the Companies (Appointment of Sole Agents) Rules, 1975.

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

2. Form of application for seeking approval of the Central Government for appointment of sole agents.— Every company seeking approval of the Central Government for the appointment of sole selling agents or sole agent for the buying or purchasing of goods on behalf of the company under section 294AA of the Companies Act, 1956 (1 of 1956), shall apply in Form I or Form II, respectively, and furnish the particulars specified therein.

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

2B. The electronic-form shall be authenticated by the authorized signatories using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000).

2C. The Forms prescribed in these forms, when filed in physical form, may be authenticated by authorized signatory by affixing his signature manually.

3. Fees to be paid along with the application. —Where application is filed through electronic media or through any other computer readable media, the user may choose any one of the following payment options namely (*i*) Credit Card; or (*ii*) Internet Banking or (*iii*) Remittance at the Bank Counter or (*iv*) any other mode as approved by Central government. The requisite fee as specified in the Companies (Fees on Applications) Rules, 1968 shall be payable through any of the accredited branches of following Banks:—

(*a*) Punjab National Bank
(*b*) State Bank of India
(*c*) Indian Bank
(*d*) ICICI Bank
(*e*) HDFC Bank.][1]

FORM I

Specimen of Form of application for approval of the Central Government for the appointment of sole selling agent by a company has been given in Appendix 1 (not reproduced here)

FORM II

Form of application for approval of the Central Government for the appointment of sole buying agent by a company

[Pursuant to section 294AA of the Companies Act, 1956 and rule 2 of the Companies (Appointment of Sole Agents) Rules, 1975]

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

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1 Inserted *vide* the Companies (Appointment of Sole Agents) Amendments Rule, 2006 issued *vide* Notification No. SO 147(E) dated 08.03.2006.

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

3. Particulars of goods or commodities bought through agents during the last three financial years:

Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw materials separately

Financial Year		*Unit of quantity*	*Purchased quantity*	*Value (in Rs.)*	*Consumed quantity*	*Value (in Rs.)*	*Left over stock quantity*	*Value (in Rs.)*
From (DD/MM/YY)	To (DD/MM/YY)							

Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw materials separately

Financial Year		*Unit of quantity*	*Purchased quantity*	*Value (in Rs.)*	*Consumed quantity*	*Value (in Rs.)*	*Left over stock quantity*	*Value (in Rs.)*
From (DD/MM/YY)	To (DD/MM/YY)							

Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw materials separately

Financial Year		*Unit of quantity*	*Purchased quantity*	*Value (in Rs.)*	*Consumed quantity*	*Value (in Rs.)*	*Left over stock quantity*	*Value (in Rs.)*
From (DD/MM/YY)	To (DD/MM/YY)							

4. Description, quantity and value of the purchases, if any, made by the sole agent(s) on behalf of the company for the last three financial years, their percentage to the total goods purchased by the company, with details of the rate and quantum of commission paid to each agent:

Any purchase made by sole agent in last three years Yes No

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Description of purchases				
Unit of quantity				
Quantity of purchase		Value of purchases (in Rs.)		
Name of the agent				
Details of the rate				
Quantum of commission paid (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Description of purchases				
Unit of quantity				
Quantity of purchase		Value of purchases (in Rs.)		
Name of the agent				
Details of the rate				
Quantum of commission paid (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Description of purchases				
Unit of quantity				
Quantity of purchase		Value of purchases (in Rs.)		
Name of the agent				
Details of the rate				
Quantum of commission paid (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Description of purchases				
Unit of quantity				
Quantity of purchase		Value of purchases (in Rs.)		
Name of the agent				
Details of the rate				
Quantum of commission paid (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Description of purchases				
Unit of quantity				
Quantity of purchase		Value of purchases (in Rs.)		
Name of the agent				
Details of the rate				
Quantum of commission paid (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Description of purchases				
Unit of quantity				
Quantity of purchase		Value of purchases (in Rs.)		
Name of the agent				
Details of the rate				
Quantum of commission paid (in Rs.)				

5. Name, nature of business organization, address and principal business of the person(s) proposed to be appointed as sole buying agent(s) (if buying agent is a company, provide CIN)

CIN of appointed sole buying agent

GLN of appointed sole buying agent

Name

Nature of business organization

Address Line I

Line II

City

State

Country

Pin code

* Principal business of persons proposed to be appointed as buying agent

6. *Structure and size of the organization of the sole buying agent(s) to be utilized for conducting purchases for the company

7. *If this is a case of re-appointment the rate of commission paid and the period of appointment involved in respect of the previous appointment.

Whether it is re-appointment, ☐ Yes ☐ No

If yes,

(*a*) Period of appointment From (DD/MM/YYYY)

To (DD/MM/YYYY)

(*b*) Rate of commission paid

8. Terms of remuneration to other sole buying agent(s) in other areas for same kind of goods purchased

9. *Amount of expenditure incurred, if any, in the last three financial years by the sole buying agents over the organization of buying arrangements ☐ Yes ☐ No

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name				
Expenditure (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name				
Expenditure (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name				
Expenditure (in Rs.)				

10. Amount of remuneration paid to the buying agents during the last three financial years

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name				
Amount of remuneration (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name				
Expenditure (in Rs.)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name				
Expenditure (in Rs.)				

11. *Particulars of resolution passed for appointment of sole selling agent
(*a*) Service request number of Form 23
(*b*) Date of filing Form 23
(*c*) Date of passing special or ordinary resolution

12. Existing buying arrangements of the company, and expenditure incurred therein with break-up of the expenditure for the last three financial years, in respect of arrangements
(*a*) through sole buying agents, if any, and
(*b*) otherwise

Existing buying arrangements of the company:
Details of expenditure

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name of sole buying agent				
Expenditure (Rs. in thousands)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name of sole buying agent				
Expenditure (Rs. in thousands)				

Financial year From		(DD/MM/YY) To		(DD/MM/YY)
Name of sole buying agent				
Expenditure (Rs. in thousands)				

13. Name(s) of other companies where the person(s) proposed to be appointed as the sole buying agent(s) is or are acting as sole buying agents, the product, quantum and value of purchases handled and the remuneration received therefore

Name of the company
CIN of company
GLN of company
Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw material separately
Amount (in Rs.) Unit of quantity
Quantity of purchases Value of purchases (in Rs.)
Remuneration (in Rs.)

Name of the company
CIN of company
GLN of company
Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw material separately
Amount (in Rs.) Unit of quantity
Quantity of purchases Value of purchases (in Rs.)
Remuneration (in Rs.)

Name of the company
CIN of company
GLN of company
Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw material separately
Amount (in Rs.) Unit of quantity
Quantity of purchases Value of purchases (in Rs.)
Remuneration (in Rs.)

Name of the company

CIN of company
GLN of company
Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw material separately
Amount (in Rs.) Unit of quantity
Quantity of purchases Value of purchases (in Rs.)
Remuneration (in Rs.)
Name of the company
CIN of company
GLN of company
Description of goods or commodities bought (manufactured or semi-manufactured; suitably grouped) and of the raw material separately
Amount (in Rs.) Unit of quantity
Quantity of purchases Value of purchases (in Rs.)
Remuneration (in Rs.)

Attachments

1.	Copy of certificate from the auditor of the sole buying agent certifying the figure of expenditure.	Attach	
2.	*Copy of proposed agreement.	Attach	
3.	Details of the interest of the sole buying agent in the shares of the company.	Attach	
4.	Copy of particulars of directorship in the company held or controlled by the buying agent.	Attach	
5.	Details of persons and their relationship to the director of the buying agency.	Attach	
6.	Optional attachment(s), if any.	Attach	

Declaration

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

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

To be digitally signed by

Managing director or director or manager or secretary of the company

For office use only

Digital signature of the authorizing officer

This e-Form is hereby approved

This e-Form is hereby rejected

Appendix 3

Specimen of General meeting resolutions for appointment of sole selling agent

I. Approval of appointment of sole selling agent at the Annual General Meeting

RESOLVED THAT in accordance with the provisions of section 294 and other applicable provisions of the Companies Act, 1956, the Company hereby approves and accords its consent to the appointment of such persons as the Board of Directors may deem fit, as Wholesalers of the Company's products, for a period not exceeding three years with effect from the date of expiry of their existing agreements with the Company on the terms and conditions mentioned in the specimen draft letter of appointment placed before the meeting and initialled by the Chairman for the purposes of identification, with authority to the Board of Directors to vary the terms and conditions of the appointment from time to time.

FURTHER RESOLVED THAT the Board of Directors be and is hereby authorised to appoint such other additional parties as Wholesalers of the Company's products on the existing terms and conditions as approved aforesaid and as may be varied as provided aforesaid.

Explanatory Statement

The company has appointed Wholesalers and Distributors for the sale of its products. Section 294 of the Companies Act, 1956 prescribes that an appointment of the Sole Selling Agent would cease to be valid if it is not approved in the First Annual General Meeting held after such appointment. However, as no territories are being allocated to the wholesalers whom the Company has appointed and proposes to appoint by way of renewal of arrangements with the existing parties or appointment of new parties on the following terms and conditions, the appointment would not strictly attract the provisions of the Companies Act, 1956. However, by way of abundant caution, it is proposed to get these terms and conditions governing the appointment of Wholesalers, both present and future, approved by the Members of the Company in terms of the proposed Ordinary Resolution.

The following are the material terms and conditions of appointment:—

(*a*) The appointment will be for a period of three years.

(*b*) The wholesalers would be eligible for a trade discount of 25% on the listed price.

(*c*) They will be entitled for cash discount of $2^1/_2$% on net price, if deliveries are effected on "payment against delivery".

(*d*) The wholesalers would be entitled to 5% commission on net price for supplies affected directly to customers introduced by them.

(*e*) The period of trade credit will not exceed 30 days.

(*f*) The appointment can be terminated by giving 30 days' notice in writing by either party.

None of the Directors of the Company is concerned or interested in the said Resolution.

II. Appointment of sole selling agent having substantial interest in company

RESOLVED THAT pursuant to the provisions of sections 294 and 294AA and all other provisions, if any, of the Companies Act, 1956, and subject to the approval of the Central Government, the Company hereby approves the appointment of ABC Ltd., which has a substantial interest in the Company by virtue of its holding shares in the Company which is equal to 6% of the paid-up share capital, as the sole selling agents of the Company for the sale of the products of the Company's Soap and Detergent Division in the territory comprising of the States of Madhya Pradesh for a period of 5 years commencing from 1st January, 2005 on the terms and conditions contained in the draft agreement to be entered into between the Company and the sole selling agents, submitted to this meeting (initialed by the Chairman hereof for purposes of identification) and that the Board of directors of the Company be and is hereby authorised to effect such modifications in the terms and conditions of the said draft agreement as may be approved by the Central Government and agreed to by the Board and ABC Ltd.

Explanatory statement

At the meeting of the Board of directors held on 26th December, 2005 the directors appointed ABC Ltd. as the sole selling agents in the state of Madhya Pradesh for the soap and Detergent products for a period of 5 years from 1st January, 2006.

Under the agreement entered between the Company and ABC Ltd. dated 26th December, 2005 the commission at the rate of 5% is payable on net realised sales effected by the said sole selling agents. Section 294 of the Companies Act, 1956 provides that the. Appointment of sole selling agent will cease to be valid if it is not approved by the Company at the first general meeting. Therefore, to tenable the continuance of the appointment of the said sole selling agent to be effective, approval of the Company is necessary.

Further, section 294AA(2) of the Companies Act, 1956 provides that 'Company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the Company, as sole selling agent unless such appointment has been previously approved by the Central Government. The partners and their relatives of the said sole selling agents hold beneficial interest in the shares of the Company the aggregate amount paid-up on which exceeds Rs. 50 lakhs.

Accordingly, approval of the Company as well as the Central Government is being sought.

Copy of the sole selling agency agreement is open for inspection at the registered office of the Company during business hours on any working day.

None of the directors of the Company is interested in the resolution.

III. Appointment of sole selling agent in a company having a paid-up share capital of Rs. 50 Lakhs or more

RESOLVED THAT pursuant to the provisions of sections 294 and 294AA and all other provisions, if any, of the Companies Act, 1956, and subject to the approval of the Central Government, the Company hereby approves the appointments of the following as sole selling agents of the Company for a period not exceeding five years commencing from the dates of appointments and for the products and the areas respectively set out against each in the table appended below on the terms and conditions recorded in the relative draft agreement submitted to this meeting and initialed by the Chairman hereof for purposes of identification, and that the Board of directors be and is hereby authorised to effect such modification in the terms and conditions of the said draft agreements as may be approved by the Central Government and agreed to by the Board and the said sole selling agents:

Name of the Agent	*Areas*	*Period*	*Products*	*Commission*

Explanatory statement

At the meeting of the Board of directors held on 26th December, 2004 the directors appointed several parties as the sole selling agents of the Company for a period not exceeding 5 years commencing from the dates of appointments and for the products and the areas respectively set out against each in the table appended at the end of resolution on the terms and conditions recorded in the relative draft agreement. The material terms of the agreement entered into with the sole selling agents are as under:

[Set out the terms and conditions]

Section 294AA(3) of the Companies Act, 1956, provides that no Company having a paid-up share capital of Rs. 50 Lacs or more shall appoint a sole selling agent except with the consent of the Company accorded by special resolution and approval of the Central Government. Therefore, to enable the continuance of the appointment of sole selling agents by the said agreements to be effective, approval of the Company by special resolution is being sought. Necessary application has already been made to the Central Government for obtaining its approval. The directors recommend that the resolution be passed.

Copies of the said draft agreements with the various sole selling agents may be inspected at the registered office of the Company during business hours on any working day.

None of the directors is interested or concerned in the appointment of the sole selling agents.

Appendix 4

Specimen of agreement between a Company and Sole Selling Agent

THIS AGREEMENT made on this ……. day of……….between ABC Ltd. (hereinafter referred to as the Company) having its registered office and factory at Industrial Area, Ujjain (M.P.) of the One Part and XYZ Ltd., carrying on business at Aruna Asif Ali Marg, New Delhi (hereinafter called the sole selling agents) of the Other Part.

WHEREAS the Company is engaged in the manufacture of cotton and textiles polyester fibre yarn suitings and shirtings.

AND WHEREAS the sole-selling agents are the whole-sale traders in suitings and shirtings and other textile goods in North India with headquarter at Delhi.

AND WHEREAS the Company in its general meeting held on 26th December, 2005 has decided to appoint XYZ Ltd. as the sole-selling agents for Northern India for whole-sale business of the Company's manufactured suitings and shirtings and the Central Government has also approved the appointment of the said sole-selling agents vide Letter No. xxxxxxxx dated xxxxxxxx.

AND WHEREAS it is agreed between the parties that the Company shall appoint XYZ Ltd. as the sole selling agents for the suitings and shirtings manufactured by the Company and the said XYZ Ltd. has agreed to act as the sole-selling agents for the Company.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

(1) That the Company appoints XYZ Ltd., New Delhi as the sole-selling agents for the North India including the States of Uttar Pradesh, Uttranchal for the suitings and shirtings manufactured by the Company and the said sole-selling agents will have the exclusive right and authority to sell whether in cash or on credit and procure the orders for sale of the said product of the Company in any manner in the territories mentioned above.

(2) The appointment of sole-selling agents shall take effect from ...... day of …………, and shall operate for a period of five years from the said date without prejudice to the right of reappointment but subject to the approval by the Company in general meeting and also subject to the approval by the Central Government as required under section 294 of the Companies Act, 1956, and Rule 2 of the Companies (Appointment of Sole Agents) Rule, 1975.

(3) The sole-selling agents shall have the right to operate in the entire territories of North India as mentioned above either directly or through their branch offices, associates or sub-agents for giving effect to this Agreement.

(4) The sole-selling agents in consideration their selling and procuring orders for the sale of the Company's products shall be paid a commission at a rate not exceeding 30% but determinable by the mutual Agreement of the parties at the commencement of every year on sales effected by them at agreed intervals of time on the amount actually collected by them in accordance with the incentive rates on the amount collected, agreed to, and described in the Schedule hereinafter annexed.

(5) The sole-selling agents hereby covenant:

(*i*) That they will exclusively engage in the sale of the Company's products to the best of their efforts and shall not engage in the sale of similar or identical products of other manufactures;

(*ii*) That they will protect preserve and maintain patents and trade mark of the Company's products sold by them in all possible manner at their own cost and will never allow others to use the same unauthorisedly'

(*iii*) That they will keep and maintain the full and complete accounts of the sale of the Company's products, area-wise and region-wise and submit quarterly reports of sale, stock in hand, realisation of credit bills and any other information as may be desired by the Company at any time or from time to time;

(*iv)* That they will not create any obligation involving payments either in cash or king on behalf of the Company and shall not assign the interest, rights and obligations arising out of these presents to any third party;

(*v*) That they shall keep the Company will informed of the demands of the Company's products arising in the territories of their operation from time to time.

(6) The Company also hereby covenants as under:

(*i*) That it shall provide the sole-selling agents complete catalogue, instruction books, circulars for promoting sales of its products and publish advertisements in local and regional newspapers for promoting sales of the Company's products;

(*ii*) That it shall execute orders placed by the sole-selling agents with all reasonable dispatch;

(*iii*) That it shall not entertain and execute direct orders from the territories assigned to the sole-selling agents and in case any orders are received by it the same shall be passed on to the sole-selling agents and they will be paid commission 20% on such orders.

(7) The parties hereto hereby agree as under:

(*i*) That nothing contained herein shall prejudice the rights of the Company to appoint another selling agents in any of the aforesaid States or to open its own retail shop in writing where it is found necessary to promote public distribution system or to execute any special programme of the Government of India. However, so the Company shall obtain prior consent in writing of the sole-selling agents in that behalf;

(*ii*) That the retail price of the product shall always be determined by the Company in consultation with the sole-selling agents;

(*iii*) That the Agreement is renewable subject to mutual consent of the parties hereto on the expiry of five years.

(*iv*) That the Agreement may be terminated by either party on giving six months, notice in advance to the other party in writing but by registered post.

(*v*) That any dispute arising between the parties hereto shall be referred to the sole arbitrator Shri DKJ, the Managing Director of ABC Ltd. and the decision/award of such arbitrator shall be binding upon the parties hereto.

(*vi*) That the Delhi Courts will have the sole and exclusive jurisdiction of decide the issues in dispute between the parties hereto.

IN WITNESS WHEREOF the parties hereto have signed this Agreement on the day and year first written above.

SCHEDULE REFERRED TO ABOVE xxxxxxxxxxxxxxxxxxx

For, **XYZ Ltd.**
Managing Director

For, **ABC Ltd.**
Managing Director

Witness:
1.
2.