

PART IV

COMMENCEMENT OF BUSINESS

Chapter 1

Commencement of Business

Synopsis

Important Provisions at a Glance

1. Requirement for obtaining commencement of business certificate
 2. Where a company issues prospectus for public subscription
 3. Certificate to commence business is conclusive evidence
 4. Contracts made before or after incorporation but before obtaining the certificate to commence business
 5. Penalty/consequences on commencing business before obtaining certificate to commence business
 6. Procedure for obtaining certificate of commencement of business
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- Appendix 2 Specimen of e-Form 20
- Appendix 3 Specimen of e-Form 19
- Appendix 4 Specimen of the Board Resolution

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	E-Form Nos.
1.	149	Requirement to obtain certificate to commence business by a company issuing prospectus	19
2	149(2)(c)	Commencement of business by a company not issuing prospectus	20 and Schedule III
2	149(2A)(ii)	Commencement of new business	20A

The date of incorporation of a company may not be the date of commencement of business. A private company and a public limited company not having share capital are not required to comply with any other formalities and may commence its business activities immediately after obtaining the certificate of incorporation from the concerned Registrar of Companies.

A private limited company and a public limited company not having share capital can start its business immediately on its incorporation without any restrictions.

A private limited company, which has converted into public limited company, is also not required to obtain certificate of commencement of business.

1. Requirement for obtaining commencement of business certificate

A public limited company having share capital cannot commence business until it has obtained the certificate to commence business from the Registrar of Companies.

Normally, when a public company is incorporated, it may take sometime before it decides to make a public offer and issue a prospectus. However, a new company will comply with the required formalities

and obtain the commencement of business certificate from the Registrar as soon as possible after formation because it cannot commence any business activities or exercise its borrowing powers without it.

For obtaining a certificate to commence business, the following actions are required to be taken:—

- (i) the company shall file with the Registrar a statement in lieu of prospectus electronically at the portal of the MCA in the form given in Schedule III to Act together with the E-Form 62 and shall pay the prescribed fee by online or offline procedure as per the requirement of Schedule X of the Companies Act, 1956. This will be signed by every director of the company. [See section 70, 149(2)(b) and Appendix 1]
- (ii) the directors should pay the value of the shares to the extent money is payable in cash with application/allotment;
- (iii) a duly certified declaration shall be filed electronically at the portal of the MCA in the E-Form 20 and a stamped copy shall be simultaneously filed with the Registrar signed by a director/secretary or by secretary in practice where there is no secretary, to the effect that the requirements of section 149(2) have been complied with. (Appendix 2);
- (iv) the company shall not allot any share or debenture at least for three days after filing of statement in lieu of prospectus with the Registrar. [Section 70(1)];
- (v) the company shall pay the prescribed filing fee by online or offline procedure as applicable under Schedule X on statement in lieu of prospectus and on e-Form 20 to the Registrar of Companies.

The Registrar of Companies shall then issue the requisite certificate of commencement of business.

A certificate of commencement of business cannot be issued if the company has not complied with the provisions of section 149(1), even though it has issued a statement in lieu of prospectus under section 70. [*Malabar Iron & Steel Works Ltd. v Registrar of Companies* (1963) 33 Comp Cas 813 (Ker)].

2. Where a company issues prospectus for public subscription

Where a company issues a prospectus immediately after its formation, it need not file a statement in lieu of prospectus. The following points have to be ensured in this connection:—

- (i) shares aggregating the amount at least equal to the amount of minimum subscription under section 69 have been allotted. [Section 149(1)(a)];
- (ii) every director has paid to the company, in respect of shares taken or contracted to be taken by them subject to payment in cash, a sum equal to at least the amount payable on application and allotment on the shares offered to public for subscription. [Section 149(1)(b)];
- (iii) application has to be made to the recognised stock exchange for obtaining permission for dealing in shares/debentures;
- (iv) it has filed the following documents electronically with the Registrar of Companies;—
 - (a) prospectus;
 - (b) E-Form 19 declaring that all the conditions as stated in (i) to (iii), *supra* have been duly fulfilled. This form is required to be verified and signed by a director/secretary or by secretary in whole time practice where there is no secretary and stamped copy shall be physically delivered simultaneously to the Registrar. (Appendix 3)
- (v) shall pay the prescribed filing fee under Schedule X on prospectus and E-Form 19 by online or off line system.

The Registrar of Companies shall thereupon issue the requisite certificate of commencement of business.

3. Certificate to commence business is conclusive evidence

The Registrar, on perusal of the declaration in e-Form 19 or 20 and the statement in lieu of prospectus, as may be applicable, shall certify that the company is entitled to commence business and to exercise borrowing powers. The certificate shall be the conclusive evidence that the company is entitled to commence its business. [Section 149(6)]

4. Contracts made before or after incorporation but before obtaining the certificate to commence business

Before obtaining the certificate of incorporation a public company cannot enter into binding contracts with outside parties. The promoters may however, carry out preliminary formalities like, making applications to institutions and banks for financial assistance or start discussions with collaborators, contractors, etc.

After obtaining certificate of incorporation but before obtaining certificate for commencement of business, the company may, however, enter into provisional contracts subject to the condition that they will be binding only after the company has obtained the commencement certificate.

The liabilities incurred by company before it is entitled to commence business, are not binding and shareholders cannot be asked to contribute towards them in event of winding up without commencing business. [*Merchants Ltd., Lahore, In re* (1932) 2 Comp Cas 407 (Lahore); *Ambica Textiles Ltd., In re* (1950) 20 Comp Cas 160 (Cal)].

5. Penalty/consequences on commencing business before obtaining certificate to commence business

If any public company commences business or exercises borrowing powers without obtaining the commencement certificate, every person who is responsible for the contravention shall, *inter alia*, be punishable with fine of Rs. 5,000 for every day during which the contravention continues, pursuant to sub-sections (2A) and (6) of section 149 of the Companies Act, 1956.

Further section 433(c) provides that a company may be wound up by the High Court [Powers vested with the Tribunal *vide* the Companies (Second Amendment) Act, 2002] if it does not commence business activities within a year from its incorporation or suspends its business activities for a whole year.

6. Procedure for obtaining certificate of commencement of business

In order to obtain certificate of commencement of business, a public limited company shall file the following documents with the Registrar of Companies according to section 149:—

- (1) A prospectus/statement in lieu of prospectus as the case may be to be supported with the following documents:—
 - (a) list of the members of the company with their shareholdings;
 - (b) confirmation for paid up share capital to the extent of Rs. 5,00,000 and proof thereof, viz copy of bank statement etc.;
 - (c) list of Directors, Manager, Secretary, Auditors and changes among them, if any;
 - (d) consent of the Auditors to include their name in the Prospectus/Statement in lieu of Prospectus;
 - (e) copy of the agreements for appointment of Managing Director, Underwriters, contracts entered into by the promoters before incorporation of the company, etc. if any;
 - (f) printed and certified copy of the Memorandum and Articles of Association of the company;
 - (g) details of the preliminary expenses incurred by the company;
 - (h) power of attorney to make corrections in the Prospectus/Statement in lieu of prospectus and to obtain certificate for commencement of business from the Registrar of Companies;
 - (i) certified copy of the resolution passed by the Board for approval of prospectus /statement in lieu of prospectus for filing with the Registrar. [See Appendix 4]
- (2) A duly verified declaration on non-judicial stamp paper that provisions of section 149 of the Act have been complied with, by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole time practice, in form prescribed in Companies (Central Government's) General Rules and Forms, 1956 (e-Form 19/20, in case company has filed prospectus/statement in lieu of prospectus). [See Appendix 1, 2 & 3]

Appendix 1

Specimen of e-Form 62 for submission of Statement in lieu of Prospectus

Form for submission of documents with the Registrar

[Pursuant to sections 44, 60, 77A, 488, 497, 509, 516, 551 and 555 of the Companies Act, 1956, rules 313, 315, 327, 331, 335 of the Companies (Court) Rules, 1959 and rule 10 of the Companies (Acceptance of Deposits) Rules, 1975]

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

1. (a) *Corporate identity number (CIN) of company XXXXXXXXXXXX
- (b) Global location number (GLN) of company
2. (a) Name of the company ABC INDUSTRIES LIMITED
- (b) Address of the registered office of the company 4TH FLOOR,
SILVER ARK PLAZA,
20A, NEW PALASIYA
INDORE (M.P.) 452001
3. *Please indicate the document being filed
 - ☒ Statement in lieu of prospectus as per Schedule IV
 - ☐ Prospectus as per schedule II
 - ☐ Form 4A of the Companies (Central Government's) General Rules and Forms, 1956
 - ☐ Form 149 of the Companies (Court) Rules, 1959
 - ☐ Form 152 of the Companies (Court) Rules, 1959
 - ☐ Form 153 of the Companies (Court) Rules, 1959
 - ☐ Form 154 of the Companies (Court) Rules, 1959
 - ☐ Form 156 of the Companies (Court) Rules, 1959
 - ☐ Form 157 of the Companies (Court) Rules, 1959
 - ☐ Form 158 of the Companies (Court) Rules, 1959
 - ☐ Form 159 of the Companies (Court) Rules, 1959
 - ☐ Return of deposits pursuant to rule 10 of the Companies (Acceptance of Deposits) Rules, 1975
 - ☐ Others
4. If others, then specify
5. (a) Service request number of Form 23 A0123456
- (b) Date of passing special or ordinary resolution 01/01/2007 (DD/MM/YYYY)
- (c) Date of filing Form 23 02/01/2007 (DD/MM/YYYY)
6. Section(s) of Companies Act, 1956 under which the document is being filed
44(2)(b) of the Companies Act, 1956.
7. *Details of the documents being filed
Statement in Lieu of Prospectus for conversion of company into public limited company.

8. Date of event (DD/MM/YYYY)
9. Financial year to which the document relates
- (a) From (DD/MM/YYYY)
- (b) To (DD/MM/YYYY)

Attachment

Copy of Statement in Lieu of Prospectus as per Schedule IV of the Companies Act, 1956.

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* 01/01/2007
(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

DESIGNATION

Director identification number of director or membership number of secretary

ABHA JAISWAL

DIRECTOR

00012345

Declaration

To the best of my/our knowledge and belief, the information given in this form and its attachments is correct and complete. I am/ we are duly authorised to sign and submit this form.

To be digitally signed by

Liquidators of the company

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For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Annexure 1 to Appendix 1

Specimen of Statement in lieu of Prospectus

Schedule III

[See section 70]

Form of Statement in lieu of Prospectus to be delivered to the Registrar by a company which does not issue a Prospectus or which does not go to allotment on a prospectus issued and report to be set out therein.

PART I

Form of Statement and particulars to be contained therein

The Companies Act, 1956

Statement in lieu of prospectus : **XYZ ENTERTAINMENT LTD.**

delivered for registration by : **ABHA JAISWAL, DIRECTOR**

Pursuant to section 70 of the Companies Act, 1956

The nominal share capital of the company

Rs. 5,00,000 (Five Lacs) divided into 50,000 Equity Shares of Rs. 10 each.

Amount (if any) of above capital which consists of Shares of Rs. redeemable preference shares. The earliest date on which the company has power to redeem these shares.

Nil

Names, addresses, descriptions and occupation of—	
(a) Directors or proposed Directors;	List Enclosed as Annexure 1
(b) Managing Director or proposed Managing Director;	Nil
(c) [* * *]	
(d) [* * *]	
(e) Manager or proposed Manager.	Nil
Any provision in the articles of the company or in any context irrespective of the time when it was entered into, to the appointment of and remuneration payable referred in (a), (b) [* * *] and (e) above.	Article Nos. 33 to 40 and 49 are related with the terms and conditions for appointment and remuneration of the directors of the company.
If the share capital of the company is divided into different classes of shares, the right of voting at meeting of the company conferred by, and dividends attached to, the several classes of shares respectively.	The company has only Equity Shares.
Numbers and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	Nil
The consideration for the intended issue of those shares and debentures	Nil
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	Nil
Period during which option is exercisable.	N. A.
Price to be paid for shares or debentures subscribed for or acquired under the option.	N. A.
Consideration for the option or the right to option.	N. A.
Persons to whom the option or right to option is given or, if given to existing shareholders or debentureholders as such, the relevant shares or debentures.	N. A.
Names, occupations and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the Company except where the contract for purchase or acquisition was entered into the ordinary course of business intended to be carried on by the company or the amount of the purchase money is not material.	Nil
Amount (in cash, shares or debentures) payable to each separate vendor.	N. A.
Amount (if any) paid or payable (in cash, shares or debentures) for each such property, specifying amount (if any) paid or payable for goodwill.	N. A.
Short particulars of every transaction relating to each such property which was completed within the two preceding years and in which any vendor to the Company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect.	N. A.
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Nil

Rate of the commission	Nil
The number of shares, if any, which persons have agreed to subscribe for a commission.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of five years immediately preceding the date of this statement, provided that in case of a business which has been carried on for less than five years and the accounts of which have only been made up in respect of only four years, three years, or two years or one year the above requirements shall have effect as if references to four years, three years, two years or one year as the case may be, were substituted for references to five years, and in any such case the statement shall say how long the business to be acquired has been carried on.	Nil
Where the financial year with respect to which the accounts of business have been made-up is greater or less than a year, references to five years, four years, three years, two years or one year, in this paragraph shall have effect as if references to such number of financial years as in the aggregate, cover a period of not less than five years, four years, three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively.	Nil
Estimated amount of preliminary expenses by whom those expenses have been paid or are payable. Amount paid or intended to be paid to any promoter	Rs. 24,870 payable to Shri ABC, Director
Consideration for the payment	Cash
Any other benefit given or intended to be given to any promoter	Nil
Consideration for the benefit:	Nil
Dates of, parties to, and general nature of—	
contract appointing or fixing the remuneration of directors, managing directors or manager; and	Nil
every other material contract (other than (i) contracts entered into the ordinary course of business intended to be carried on by the company, or (ii) entered into more than two years before the delivery of this statement):	Nil
Time and place at which (1) the contracts or copies thereof or (2)(i) in the case of contract not entered into writing, a memorandum giving full particulars thereof, and (ii) in the case of a contract wholly or partially in language other than English, a copy of translation thereof in English or embodying a translation in English of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected.	Nil
Names and addresses of the auditors of company (if any)	M/s AK.Mantri & Associates Chartered Accountants Sunrise Plaza, Kamla Nehru Marg, Freeganj, Ujjain (M.P.)

Full particulars of the nature and extent of interest of every director, or manager in the promotion of or in the property proposed to be acquired by the company, or where the interests of such directors consists in being partner in the firm, the nature and extent of the interest of the firm, with statements of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for the services rendered by him or by the firm in connection with the promotion or the formation of the company.

Nil

ABC
Date:

JAI PRAKASH SARAF

ABHA JAISWAL

PART II

Reports to be set out

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—
 - (a) the profits or losses of the business in respect of each five financial years immediately preceding the date of delivery of statement to the Registrar; and N. A.
 - (b) the assets and liabilities of the business as at the last date to which the accounts of the business were made-up. N. A.
2. (1) Where it is proposed to acquire shares in body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection thereof will become a subsidiary of the company, a report made by the accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the body corporate in accordance with sub-clauses (2) and (3) of this clause, as the case may require, indicating how profits and losses of other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowances would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired . N. A.
- (2) If other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall—
 - (a) so far as regards profits and losses, deal with the profits and losses of the body corporate in respect of each five financial years immediately preceding the delivery of the statement to the Registrar; and N. A.
 - (b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of body corporate were made up. N. A.
- (3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall—
 - (a) so far as regards profits and losses, deal separately with other body corporate's profits or losses as provided by sub-clause (2) and in addition deal either—
 - (i) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of other body corporate; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses of other body corporate, and, so far as they concern members of other body corporate, with the combined profit and losses of the subsidiaries; and N. A.

- (b) so far as regards assets and liabilities, deal separately with other body corporate's assets and liabilities as provided by sub-clause (2) and, in addition, deal either—
- (i) as a whole with the combined assets and liabilities of subsidiaries, with or without the other body corporate's assets and liabilities; or
- (ii) individually with the assets and liabilities of each subsidiary; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowances to be made for the persons other than the members of the company. N.A.

ABC
Date:

JAI PRAKASH SARAF

ABHA JAISWAL

PART III

Provisions applying to Parts I and II of this Schedule

(1) In this schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule II.

(2) Clause 31 of Schedule II shall apply to the interpretation of Part II of Schedule II.

If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made-up in respect of such four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

Any report required by Part II of the Schedule shall either—

- (a) indicate by way of note any adjustments as respects to the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary; or
- (b) make those adjustments and indicate that adjustments have been made.

Any report by accountants required by Part II of this Schedule—

- (a) shall be made by accountants qualified under this Act for appointments as auditors of a company; and
- (b) shall not be made by any accountant who is an officer or servant, or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause the expression 'officer' shall include a proposed director but not an auditor.

ABC
Date:

JAI PRAKASH SARAF

ABHA JAISWAL

Annexure 2 to Appendix 1

List of Directors, Manager, Secretary and Auditors

S. No	Name	Address	Occupation
Directors:			
1.	ABC	408, Silver Ark Plaza, 20/1, New Palasiya, Indore (M.P.)	Profession
2.	Jai Prakash Saraf	66, Mahavir Nagar, Indore (M.P.)	Profession
3.	Abha Jaiswal	132, Mahavir Nagar, Indore (M.P.)	Profession
Manager:		Nil	
Secretary:			

S. No	Name	Address	Occupation
4.	Sonal Porwal	Freeganj Ujjain (M.P.)	Profession
5.	A.K.Mantri & Associates . ,	Auditors: Sunrise Plaza, Kamla Nehru Marg Freeganj, Ujjain (M.P.)	Practising C.A.

For, XYZ ENTERTAINMENT LTD.

ABHA JAISWAL
DIRECTOR

Appendix 2

Specimen of e-Form 20

Declaration of compliance with the provisions of section 149(2)(b) of the Companies Act, 1956

[Pursuant to section 149(2)(c) of the Companies Act, 1956]

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

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

*I, residing at

- * (Present residential Address) Line I
- Line II
- *City
- *State
- *Pin code

*Being ☒ a Director ☐ the Secretary of

☐ a Company Secretary (in while-time practice), do solemnly and sincerely declare

- (i) That the amount of the share capital of the company offered to the public for subscription is Rs.
- (ii) that the Company has not issued a prospectus inviting the public to subscribe for its shares, and that it has filed with registrar a statement in lieu of prospectus.
- (iii) That shares held subject to the payment of the whole amount thereof in cash has been allotted to the amount of Rs.
- (iv) ☐ That every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion (payable on application and allotment on the shares payable in cash) except for the following directors, namely who has or have not taken or contracted to take shares, for which he is or they are liable to pay in cash.

☒ That no director of the company has taken or contracted to take any shares for which he is liable to pay in cash.

- (v) The statement in paragraphs i to iv above are true to my knowledge and those in the remaining paragraphs are true to the best of my information and belief.

Attachments

1.	Copy of prospectus.	Attach	
2.	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 * 01/01/2007
(DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Director or secretary or company secretary (in whole time practice)

ABHA
JAISWAL

For office use only

This e-Form is hereby registered

Digital Signature

Appendix 3

Specimen of e-Form 19

**Declaration of compliance with the provisions of section 149(1)(a), (b)
and (c) of the Companies Act, 1956**

[Pursuant to section 149(1)(d) of the Companies Act, 1956]

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

1. (a) *Corporate identity number (CIN) of company	Xxxxxxxxxxxxxxx
(b) Global location number (GLN) of company	
2. (a) Name of company	CROWN HOTELS LIMITED
(b) Address of the registered office of the company	2A, KANCHAN BAGH, INDORE (M.P.) 452001
*I, Harish Dagar residing at	
* (Present residential Address) Line I	14, RAJGRAH KOTHI
Line II	
*City	INDORE
*State	MADHYA PRADESH
*Pin code	452001

*Being ☒ a Director ☐ the Secretary of CROWN HOTELS LTD.

☐ a Company Secretary (in whole-time practice), do solemnly and sincerely declare

- (i) That the amount of the share capital of the company offered to the public for subscription is Rs.
5,00,00,000

- (ii) That the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II of the Companies Act, 1956 is Rs.
- (iii) That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs.
- (iv) ☒ That every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription except the following directors, namely who has or have not taken or contracted to take shares, for which he is or they are liable to pay in cash.
- ☐ That no director of the company has taken or contracted to take any shares for which he is liable to pay in cash.
- (v) That no money is, or may become, liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reasons of any failure to apply, or to obtain, permission for the shares or debentures to be dealt in on any recognized stock exchange.
- (vi) The statement in paragraphs above are true to my knowledge and those in the remaining paragraphs are true to the best of my information and belief.

Attachments

1.	Copy of prospectus.	Attach	
2.	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 * (DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Director or secretary or company secretary (in whole time practice)

HARISH DAWRA
DIRECTOR

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Appendix 4

Specimen of the Board Resolution

RESOLVED THAT the draft of the Statement in Lieu of Prospectus made in accordance with the provisions of Schedule III of the Companies Act, 1956, Parts I, II and III, as placed before the Board duly initialed by the Chairman for the purpose of identification be and is hereby approved and that the same be signed by all the directors of the company and delivered to the Registrar of Companies, Madhya Pradesh & Chhatisgarh for obtaining the Certificate of Commencement of Business.

FURTHER RESOLVED THAT Ms. AJ, Director of the Company be and is hereby authorised to sign and file e-Form 20 to the Registrar of Companies, Madhya Pradesh & Chhatisgarh.

FURTHER RESOLVED THAT the directors of the company be and is hereby authorised to give Power of Attorney in favour of Ms. AJ, the Director and/or Shri Sanjay Sharma, Advocate to do all such acts, deeds and things for filing of the above said Statement in Lieu of Prospectus and to make any additions, corrections, alterations, etc. for and on behalf of the Board of directors of the company as may be required or directed by the Registrar of Companies for taking on record and to issue the certificate for Commencement of Business.

Chapter 2

Carrying out new objects

Synopsis

Important provisions at a Glance

1. Carry out new business as stated in the object clause of the Memorandum by a company existing prior to 15-10-1965
2. Carry out new business as stated in the object clause of the memorandum by a company incorporated after 15-10-1965 carrying out main objects
3. Carrying out new business activities covered under the other object clauses
4. Inclusion of a new business clause in the Memorandum of Association
5. Certificate for confirmation is a conclusive evidence of compliance for alteration in the Memorandum of Association of the company

Appendix 1 Specimen of Special Resolution

Appendix 2 Specimen of e-Form 23

Appendix 3 Specimen of the Explanatory Statement

Appendix 4 Specimen of e-Form 20A

Important provisions at a Glance

Sl. No.	Sections	Matters dealt with	E-Form No.
1.	149(2A)	Commencement of new business	20A
2.	149(2B)	—do—	

The provision in section 13, including the object clause apply to both public and private limited companies. The Object Clause of a company shall be divided into three categories viz;—

- (i) main objects;
- (ii) objects incidental or ancillary to the attainment of the main objects; and
- (ii) other objects.

The commencement of any objects listed in other objects calls for passing special resolution and completion of certain other formalities.

1. Carry out new business as stated in the object clause of the Memorandum by a company existing prior to 15-10-1965

In terms of section 13, companies incorporated prior to 15-10-1965 were not required to arrange their objects into three categories as referred above and all the objects that the company was authorised to undertake were contained in one consolidated clauses in the Memorandum.

Therefore, the company which is in existence immediately before 15-10-1965, having share capital, shall not at any time commence any new business in relation to any of the objects stated in its memorandum in pursuance of section 13(1)(c) unless it has completed the following requirements:—

- (i) the company has approved of the commencement of any such business by a special resolution passed in that behalf at the general meeting;
- (ii) there has been filed electronically e-Form 20A together with e-Form 23 and an stamped copy of the e-Form 20A simultaneously filed with the Registrar a duly verified declaration by any one of the directors or the secretary or where the company has not appointed a secretary, a secretary in whole time practice, in the prescribed e-Form 20A and 23; and
- (iii) has paid the adequate filing fees on e-Form 20A and 23 as per Schedule X of the Act.

2. Carry out new business as stated in the object clause of the memorandum by a company incorporated after 15-10-1965 carrying out main objects

As soon as a company is incorporated, a public company cannot start its business or exercise borrowing powers unless it obtains the certificate to commence business from the Registrar, which is explained in Chapter 1. A private company can, however, commence its business as soon as it is registered.

After obtaining certificate for commencement of business from the Registrar, if required, the company may commence any business activities as stated in the main object clause of the Memorandum of Association of the company, without complying with any other formalities.

3. Carrying out new business activities covered under the other object clauses

Where an existing public limited company proposes to take up a new business, which is covered in the "other objects" of the Memorandum in the case of a company formed on or after 15-10-1965 or covered in the object clause of a company formed before 15-10-1965, the said business can be undertaken by the company only after the proposal is approved by the members by a special resolution.

The said business will be considered as a new business, in the case of a company existing prior to 15-10-1965 only when the new business is not germane to the business, which the company was carrying on at that time.

For the purpose of obtaining approval by way of special resolution the following steps have to be taken by the company:—

- (i) hold a Board meeting to consider the matter and approve the proposal for carrying specified business activities as they may consider appropriate. The Board shall check the exact wording of the other objects proposed for take up and shall also fix the date, time and place for holding a general meeting, approve the notice of the general meeting and explanatory statement and authorise to any director or secretary for issuance of notice to the members as per the requirement of the Act.
- (ii) the proposal to start the new business will have to be approved by the members by way of a special resolution.

Where the special resolution could not be passed at the general meeting, the company is required to be approved the proposal by passing an ordinary resolution. In that event the company shall require to make an application to the Central Government explaining the position and requesting for according permission to the commencement of new business. As no Form is prescribed for such purposes, the company may apply on simple paper stating with full ground and justification along with the fees as in Companies (Fees on Applications) Rules, 1999. After receipt of the approval of the Government, file the declaration in e-Form 20A electronically to the Registrar of Companies.

- (iii) File e-Form 23 electronically containing the certified copy of the special resolution with explanatory statement and with the fees as per Schedule X of the Act, to the Registrar of Companies. (See Appendix 2 & 3)
- (iv) File a declaration in e-Form 20A electronically and a stamped copy be submitted simultaneously to the Registrar of Companies on the non-judicial stamp paper of adequate value to the effect that the provisions of section 149(2A) sub-clause (i) have been complied with. (Appendix 4)

However, section 149 does not apply to a private company.

4. Inclusion of a new business clause in the Memorandum of Association

In case if the proposed new business activities are not covered by any of the objects included in the Memorandum of Association, the company has to first amend its object clause of the Memorandum of Association by inclusion of the proposed object in its Main Objects or Other Objects of the company as it consider appropriate.

The company shall comply with the requirement of sections 17 and 18 of the Companies Act, 1956 for amendment in the Object Clause of the Memorandum. Special care in this respect should be taken by the company as discussed below:—

- (i) hold a Board meeting to consider the matter and approve the proposal for carrying specified business activities as they may consider appropriate. The Board shall check the exact wording of the objects proposed for inclusion in the Object Clause of Memorandum and shall also fix the date, time and place for holding a general meeting, approve the notice of the general meeting and explanatory statement and authorise to any director or secretary for issuance of notice to the members as per the requirement of the Act;
- (ii) the proposal to amend the object clause of the Memorandum will have to be approved by the members by way of a special resolution. (Appendix 1);
- (iii) File e-Form 23 electronically containing the certified copy of the special resolution with explanatory statement and with the fees as per Schedule X of the Act, to the Registrar of Companies;
- (iv) File a declaration in e-Form 20A electronically and a stamped copy be simultaneously submitted to the Registrar of Companies on the non-judicial stamp paper of adequate value to the effect that the provisions of section 149(2A), sub-clause (i) have been complied with;
- (v) It is absolutely necessary to get the certificate of registration of the special resolution from the Registrar of Companies pursuant to section 18(1) of the Act within one month of filing.

5. Certificate for confirmation is a conclusive evidence of compliance for alteration in the Memorandum of Association of the company

The certificate issued by the Registrar of Companies shall be the conclusive evidence that all the requirements regarding the alteration in the Memorandum of Association have been complied with and the Memorandum of Association so altered shall be the Memorandum of the company.

Appendix 1

Specimen of Special Resolution

I. For authority under section 149(2A) of the Companies Act, 1956 to carry on the other businesses as given in the other objects clause of the Memorandum of Association of the company:

RESOLVED THAT pursuant to the provisions of section 149(2A) of the Companies Act, 1956, the consent of the members of the company be and is hereby accorded to carry on the business activities as covered under the Other Objects Clause No. III(A) 55 to 59 of the memorandum of association of the company and the Board of directors of the company be and is hereby authorized to take all such effective steps to implement the decision of the members of the company as they may consider appropriate in the interest of the company and to do all such acts, deeds and things from time to time for and on behalf of the company.

OR

RESOLVED THAT pursuant to the provisions of section 149(2A) and other applicable provisions, if any, of the Companies Act, 1956, the approval of the members of the company be and is hereby given for commencing and undertaking the new business as stated in the new inserted Clause 4 of the Objects Clause III(A) of the Memorandum of Association of the company upon the said Clause becoming effective.

FURTHER RESOLVED THAT the Board of directors of the company be and is hereby authorised to do all such acts, deeds, matter and things as they may consider appropriate to commence new business activities for and on behalf of the company.

II. For amendment in object clause

RESOLVED THAT pursuant to the provisions of section 17 and all other applicable provisions, if any, of the Companies Act, 1956 and subject to confirmation of the Registrar of Companies, Madhya Pradesh and Chhatisgarh, the Object Clause of the Memorandum of Association of the company be and is hereby amended in inclusion of the following new object clause as 4 in the Main Objects Clause III(A) of the Memorandum of Association of the company after existing Clause No. 3:

4. To carry on the business at its own or in association with any Indian or foreign agency, individual, firm, company or Government undertaking either in India or abroad for trading, designing, manufacturing, purchasing, selling, import, export and deal all type of metals, gold, silver, jewellery and jewel of any metal, precious stones, diamonds.

Alternate Special Resolution

RESOLVED THAT pursuant to the provisions of section 17 and all other applicable provisions, if any, of the Companies Act, 1956 and subject to confirmation of the Registrar of Companies, Madhya Pradesh and Chhatisgarh, the Object Clause of the Memorandum of Association of the company be and is hereby amended in inclusion of the following new object clauses as 3 to 4 in the Main Objects Clause III(A) of the Memorandum of Association of the company after existing Clause No. 2:

3: GENERAL TRADERS AND COMMISSION AGENTS:

To carry on the business of general trading, marketing, selling, purchasing, stocking, re-selling, repurchasing, importing, exporting and dealing in agricultural, food grains, automobile, industrial engineering, electric/ electronic, medicinal, consumer, portable products, items and goods which are required/necessary for human/animal consumption and use and to carry on the business of Trader, Sellers, Purchasers, importers, exporters, commission agents, clearing agents, forwarding and advertising agents, dalal for agricultural, food grains, automobile, industrial, engineering, electric/ electronic, medicinal, consumer, potable products, items and goods which are required/necessary for human/animal consumption and use, and to take Agency/distributorship, stockistship, of all the above items and to open/establish/run business/branches, contact offices all over the world.

4: CONSTRUCTIONS & INFRASTRUCTURE:

To carry on all or any of the business of constructing buildings, roads, bridges, dam, ports and working as builders and contractors, architects, decorators and manufacturers and processors of and dealers in all kinds of building materials including bricks, tiles, marbles granites, hardware, cement, sanitary goods, road making materials and of acting as estate agents, brokers managers of estates and properties and of acquiring premises on lease and giving them on sublease.

Alternate Special Resolution

RESOLVED THAT subject to the confirmation by the Registrar of Companies, Madhya Pradesh, and Chhatisgrah, the Clause III (A) of the Memorandum of Association of the Company be and is hereby altered by insertion of sub clause 4A after sub class 4 as under:

4A. To carry on the business of manufacturers, producers, processors, re-processors, jobbers, including doing job work for others and getting job work done from others, traders importers, exporters, buyers, commission agents, dealers of all types of plastics, PVC, HYPE, LOPE, Polk propylene, nylon, ABE, polyester LLDPE, PVT, PET, Plastics, styrlene acrylic, thermoplastics, fibers, paper, rubber, aluminum foils, HDPE woven, sacks and any other materials, allied products, by-products, wastes, and substitutes for all or any of them and to treat and utilise and trade in waste arising from any such manufacture, production, process or re-process.

Appendix 2

Specimen of e-Form 23

Registration of resolution(s) and agreement(s)

[Pursuant to section 192 of the Companies Act, 1956]

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

1. (a) *Corporate identity number (CIN) of company

XXXXXXXXXXXXXX

(b) Global location number (GLN) of company

2. (a) Name of the company

ABC CONSULTANTS PVT. LTD.

(b) Address of the registered office of the company

4TH FLOOR, SILVER ARK
PLAZA, NEW PALASIYA,
INDORE (M.P.)

3. *Date of dispatch of notice 28/11/2006 (DD/MM/YYYY)

4. *Date of passing the resolution 30/12/2006 (DD/MM/YYYY)

5. *Registration of ☒ Resolution(s) ☐ Agreement(s)

6. Resolution

(i) (a) Subject matter of the resolution

Amendment in the Clause III(C) of the Memorandum of Association of the company by inclusion of new Clause No.....

(b) Section of the Companies Act, 1956 under which resolution is passed

17(1)

(c) Indicate the authority passing or agreeing to the resolution ☐ Board of directors
☐ Shareholders ☐ Class of shareholders ☐ Creditors

(d) Whether ordinary or special resolution or with requisite majority ☐ Ordinary resolution
☒ Special resolution ☐ Requisite majority

(ii) (a) Subject matter of the resolution

Powers to the Board of directors to carry on new business activities from time to time under the Clause No. III (c) of the Memorandum of Association of the Company.

(b) Section of the Companies Act, 1956 under which resolution is passed 149(2)(a)

(c) Indicate the authority passing or agreeing to the resolution ☐ Board of directors ☐ Shareholders ☐ Class of shareholders ☐ Creditors

(d) Whether ordinary or special resolution or with requisite majority
☒ Ordinary resolution ☐ Special resolution ☐ Requisite majority

(iii) (a) Subject-matter of the resolution

(b) Section of the Companies Act, 1956 under which resolution is passed

(c) Indicate the authority passing or agreeing to the resolution ☐ Board of directors ☐ Shareholders ☐ Class of shareholders ☐ Creditors

(d) Whether ordinary or special resolution or with requisite majority ☐ Ordinary resolution ☐ Special resolution ☐ Requisite majority

7. Agreement

- (i) (a) Subject matter of the agreement
(b) Reference to section of the Companies Act, 1956 (if applicable)
(c) Date of the agreement (DD/MM/YYYY)
(d) Indicate the authority adopting the agreement ☐ Board of directors
☐ Shareholders ☐ Class of shareholders ☐ Creditors
- (ii) (a) Subject matter of the agreement
(b) Reference to section of the Companies Act, 1956 (if applicable)
(c) Date of the agreement (DD/MM/YYYY)
(d) Indicate the authority adopting the agreement ☐ Board of directors ☐ Shareholders ☐
Class of shareholders ☐ Creditors
- (iii) (a) Subject matter of the agreement
(b) Reference to section of the Companies Act, 1956 (if applicable)

(c) Date of the agreement (DD/MM/YYYY)
(d) Indicate the authority adopting the agreement ☐ Board of directors ☐ Shareholders ☐
Class of shareholders ☐ Creditors

Attachments

1	Copy of resolution along with copy of explanatory statement under section 173.	Attach	
2	Memorandum of association	Attach	
3	Articles of association		
4	Copy of agreement		
5	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. It is also certified that copy of the resolution(s) or agreement(s) filed herewith is or are a true copy(s) of the original.

I have been authorised by the board of directors' resolution dated* 28/11/2006
(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.

Abha Jaiswal

Certificate

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

Chartered accountant or cost accountant or company secretary (in whole-time practice)

D.K.Jain

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Appendix 3

Specimen of the Explanatory Statement
Pursuant to the provisions of section 173(2) of the Companies Act, 1956 in
respect to the special business

Item No. 1

In view of the liberalized Government Policy for import of Gold and Silver, your directors envisage very good business opportunity in the export-import business of the Gold, Silver, Diamonds and Jewelleries through its own network or otherwise.

Your director proposes for amendment in the object clause by inserting new clause No. 4 after the existing clause No. III(A)3, which shall empower the company to enter into a new business field.

As per the provisions of section 17 of the Companies Act, 1956 the Objects of the company may only be amended after the consent of the members by way of Special Resolution subject to confirmation of the Registrar of Companies.

Your directors recommend to pass necessary resolutions as set out in Item No. 1 of the notice as Special Resolution.

Amended copies of the Memorandum of Association may be inspected during the business hours at the registered office of the Company.

None of the directors of the company are concerned or interested in the resolutions except as members of the company.

Item No. 2

In order to validate the commencement of new business the company is required to obtain the approval of members by way of a special resolution.

Keeping in view the amendment made in the Objects clause of the Memorandum of Association of the company, it is necessary for the members to give their consent to the company under section 149(2A) by way of a special resolution for commencing the business as set out in the newly inserted Clause No. ...

Your directors recommend to pass necessary resolution as set out in Item No. 2 of the notice as special resolution.

None of the directors of the company are concerned or interested in the resolutions except as members of the company.

Appendix 4

Specimen of e-Form 20A
Declaration of compliance with the provisions of section 149(2A) or section 149(2B)
[Pursuant to section 149(2A)(ii) of the Companies Act, 1956]

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

1. (a) *Corporate identity number (CIN) of company

XXXXXXXXXX

(b) Global location number (GLN) of company

2. (a) Name of company

XYZ ENTERTAINMENT
LIMITED

(b) Address of the registered office of the company

4th FLOOR, SILVER ARK
PLAZA, 20A, NEW
PALASIYA INDORE
(M.P.) 452001

*I, residing at

* (Present residential Address) Line I

Line II

*City

*State

*Pin code

Country

*being ☒ a Director ☐ the Secretary of

☐ a Company Secretary (in while-time practice), do solemnly and sincerely declare

(i) *That the company has, by a special resolution passed at the general meeting held on (DD/MM/YYYY) approved of the commencement of:

☐ New business not germane to the business which it was carrying on at the commencement of the Companies (Amendment) Act, 1965 (XXXI of 1965).

☒ Business in relation to object(s) other than the main object(s) incidental or ancillary thereto as specified in its memorandum of association.

☐ *That whereas at the general meeting held on (DD/MM/YY), no special resolution was passed in regard to the commencement of-

☐ New business not germane to the business which it was carrying on at the commencement of the Companies (Amendment) Act, 1965 (XXXI of 1965).

☐ Business in relation to object(s) other than the main object(s) incidental or ancillary thereto as specified in its memorandum of association,

but the votes cast on a show of hands or poll in favour of the proposal to commence any business contained in the resolution moved at the meeting (including the casting of vote by the chairman) by members who being entitled so to do voted in person or exceeded the votes cast against the proposal by members who by proxy being entitled and voting, the board of directors made an application to the Central Government to allow the company to commence such business and the Central Government has in its letter number dated (DD/MM/YY) granted the necessary permission.

(ii) The statement made above is true to the best of my knowledge.

Attachments

1.	Copy of special resolution or approval letter from the Central Government.	Attach	
2.	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* (DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Director or secretary or company secretary (in whole-time practice)

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer