

PART XXVI

DISCLOSURE OF INTEREST AND APPROVAL OF CONTRACTS

Chapter 1

Disclosure of interest by a Director

Synopsis

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2. Disclosure of nature of interest whether direct or indirect
3. Disclosure of interest is applicable to all companies
4. Time for disclosure of concern or interest in a particular contract or arrangement
5. Method of disclosure by a general notice
6. Requirement of general notice of disclosure is not mandatory
7. Disclosure should specify the nature of interest
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Important Provisions at a Glance

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Section 299 casts a duty on a director for disclosure embedded in many provisions of the Companies Act, 1956. Accordingly, every director of a company who is, in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of directors.

1. Object of disclosure of interest

The directors are in a position of trustees under common law and they have a fiduciary relation towards the company and its shareholders, so as to ascertain whether he is acting for his own benefit or in any way prejudice to the interest of the company.

2. Disclosure of nature of interest whether direct or indirect

A director is said to be directly concerned or interested in a contract or arrangement, when he himself has personal interest in a particular contract or arrangement. Whereas a director is said to be indirectly concerned or interested when any of his relatives and associates has got personal interest in the particular contract or arrangement.

3. Disclosure of interest is applicable to all companies

The section is applicable to all companies. Therefore, all directors are required to give the notice of disclosure, in writing. It is equally applicable to the alternate director including the directors appointed by the financial institutions and the Central Government under section 408 of the Act.

4. Time for disclosure of concern or interest in a particular contract or arrangement

Every director of a company, who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of directors. Section 299(2) relates to the time of disclosure, which may be described as under, depending upon the status of contract. (Appendix 1)

In the case of proposed contract or arrangement, the disclosure shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, or if the director was not, at the date of that meeting, concerned or interested in the proposed contract or arrangement, at the first meeting of the Board held after he becomes so concerned or interested. [Section 299(2)(a)]

5. Method of disclosure by a general notice

Section 299(3) deals with the mode of disclosure. A general notice given to the Board by a director, to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made. Following are the important aspects in this regard:—

- (i) *Contents of general disclosure.*—The notice shall specify the following details which he furnishes to the Board of directors of the concerned company:—
 - (a) He is a director of a specified body corporate(s).
 - (b) He is a member of a specified body corporate(s).
 - (c) He is a member of a specified firm. This also includes member of HUF, sole proprietary or charitable concern.
 - (d) He has indirect interest as he is interested through his relatives in specified body corporate(s) or firm.
- (ii) *Validity of general notice.*—Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire. [Section 299(3)(b)]
- (iii) *Giving or reading of general notice at Board meeting.*—Section 299(3)(c) provides that no general notice as described under section 299(3)(a), and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board, or the director concerned takes reasonable steps to secure that it is brought upon and read at the first meeting of the Board after it is given.

(iv) *Include details of relatives' interest.*—It is the responsibility of a director to disclose the nature of interest of his relatives, if any.

(v) *Form for disclosure.*—It should be made in the prescribed Form 24AA. (Appendix 2)

6. Requirement of general notice of disclosure is not mandatory

A director may instead of giving general notice, opt for making a specific disclosure before the Board at the meeting of the Board of directors.

7. Disclosure should specify the nature of interest

Section 299(1) requires disclosure of not only the fact that he is concerned or interested in a particular contract or arrangement but also the nature of concern or interest.

Word 'interest' occurring in sections 299 and 300 means personal interest and not official or other interest.

8. Contract may be oral or written

Contract may be either oral or written. Oral contracts are also valid as per the provisions of the Indian Contract Act, 1872.

9. Burden of proof of non-disclosure of interest

The burden lies on a plaintiff to prove for non-disclosure of interest by director when there is no evidence that the directors are not aware of the interest and that the formal disclosure at the meeting is necessary.

If a director enters into a self-dealing transaction which is challenged, the burden is on him to show that full disclosure was made and that the requirement of the company's article was also complied with. If he fails to ensure that formal disclosure is minute he exposes himself to the risk that after some years he may be unable to show by positive evidence that there was disclosure.

10. Conflicts between duty and interest

Since directors are in a fiduciary position they should not put themselves in a position where a conflict between their duties and personal interest exists. For a fiduciary, it is not permitted that his decision should be biased.

It should be ensured that a director who is in a fiduciary position to the company does not make any secret profit on account of the transactions or business of the company when acting on its behalf. To secure that there shall be no conflict between the personal interest of each of the directors and their duty towards the company without the nature of that interest being disclosed to the directors and the shareholders. If it is borne in mind that the object of the sections is the avoidance of conflicts between duty and interest, it would be apparent that the carrying on of the business of the company for which the directors are appointed cannot give rise to that conflict. The fundamental principle of company law is that the directors are the body entrusted with the task of carrying on the business of the company. Although, the directors as a body, are responsible to the shareholders for the conduct of the company's business, it is undoubted law that they could delegate their powers to one or more of themselves for the purpose of carrying it on more conveniently. Resolutions of the Board of directors of a company authorising some of them to operate bank accounts of the company constitute only a delegation of the power to the Board in the normal course of the management of the company. In these resolutions no element of personal interest is involved so as to give rise to any conflict between such interest and duty towards the company and is not contravened by the passing of such resolutions.

11. Consequences and penalties

The only duty cast upon a director by the provisions of section 299 is to disclose the nature of his interest in the proposed contract at a meeting of the Board of directors. Every director who fails to comply with section 299(1) shall be punishable with fine, which may extend to fifty thousand rupees. Besides a director who acts in contravention of section 299 of the Act is liable to vacate his office by virtue of section 283(1)(i) of the Act. The vacation of office is automatic and does not require any resolution to that effect.

If a director has given a general notice to the company in terms of sub-section (3) of section 299, he will not be liable for prosecution under sub-section (4) for non-compliance of sub-sections (1) and (2) provided the general notice under sub-section (3) includes the relevant contract in question.

Consequences of contravention of section 299:—

- (a) Liability to be prosecuted under section 299(4);
- (b) Cessation of office of directorship under section 283(1)(i);
- (c) Liability to be prosecuted under section 283(2A); and
- (d) Liability to refund to the company all remuneration received by the petitioner as director after the cessation of his directorship.

12. Status of contract, where a director has not disclosed his interest before the Board

Nothing contained in section 299 either bars the entering into of a contract by a director with the company in his individual capacity or makes the contract illegal or unenforceable against the company.

A contract between a director and company is not void even when he does not make a disclosure of his interest.

13. Offence u/s 299 is compoundable

The offence under section 299 is compoundable by the Regional Director of the Ministry of Company Affairs in accordance with the provisions of section 621A of the Act.

14. Contracts or arrangements not covered by section 299

Section 299 applies also to contracts other than those entered into at a meeting of the directors. The following types of contracts or arrangements are exempted from the requirement of disclosure of interest by a director:—

- (i) In cases where the contract or arrangement entered into or to be entered into is between two companies and where the interest of any director of one company or two or more of them together does not exceed a shareholding of 2% of the paid-up share capital in the other company. [Section 299(6)]

In other words, where a director singly or together with other directors or all the directors holds not more than 2% of the paid up share capital of the company, directors will not be deemed to be interested or concerned in any contract or arrangement of that company with the company in which they hold the office of director. Section 299 will be attracted only where a director or two or more or all of the directors hold more than 2% of the paid up share capital of another company.

If at the date on which the contract or arrangement is entered into, the holding of a director in the other company exceeds 2% but may fall below 2% on the date of the meeting at which the disclosure is required to be made, holding of shares on the date of contract entered into is relevant for the purpose of disclosure under section 299. (Circular No. 4 [8/16(1)/61], dated 19th May, 1961)

- (ii) Where some directors have been nominated by a company as stewards of another organisation, disclosure of interest by them is not necessary when a contract with that organisation is being considered.

15. Secretarial checklist

1. Disclosures were duly made by all the directors in Form 24AA.
2. General notices of disclosure are duly renewed.
3. Requisite entries are made in the Register of Contracts maintained in accordance with section 301.
4. The notice of interest has been brought before the Board meeting, read thereat and duly recorded in the minutes book.
5. Requisite entries/alterations/modifications are made in the Register of directors.

Appendix 1

Specimen of Board resolution for recording disclosure of interest

I. For specific notice

RESOLVED THAT the declaration given by Shri, a director of the company, that he is also a director of Pvt. Ltd. and Pvt. Ltd. and that he is to be regarded as interested in any contract which the company may make with those companies, be received and recorded.

II. Consideration and take on record the general notice for disclosure of director's interest

The Chairman produced before the Board the general notice of disclosure of directors' interest in Form 24AA tendered to the Board by the directors of the company with a request to take the same on record. The notice was noted and taken on record by the Board in token whereof the following resolution was passed by the Board:

RESOLVED THAT the general notice of disclosure of director's interest received from the directors of the Company, pursuant to section 299(3) of the Companies Act, 1956 as placed before the Board and as read out at this meeting be and is hereby taken on record and that the particulars concerning the same be recorded in the register of contracts maintained pursuant to section 301 of the Companies Act, 1956.

Or

RESOLVED THAT the general notices of interest pursuant to section 299(3) of the Companies Act, 1956 received from the following directors disclosing concern or interest in any contract or arrangement, which may be entered into with such body corporate or firm as per statements brought up and read in this meeting be and are hereby recorded in the Register of Contracts maintained under section 301 of the said Act:

Name of the Directors

Disclosure Dated

1.
2.
3.

Appendix 2

Form 24AA

Specimen of notice by the interested directors

[Pursuant to section 299]

To,

The Board of Directors

ABC Ltd.

Indore (M.P.)

I, XYZ S/O of PQR resident of 1234 MG Road, Indore (M.P.) holding 100 Equity Shares of Rs. 100 (10% of the paid-up capital) in the Company in my name, hereby give notice that I am interested directly/ through my relative(s) in the following companies/firms:

Name of Companies/ Firms	Name of Persons with whom related	Whether person mentioned in (2) is a Relative or Partner, if relative describe relations	Nature of Interest (whether director/ member/partner)	% profit/loss and/or of share holding or stake of Director in the Column (1)	% profit/loss and/ or of share holding or stake of Relative of Director in the Column (1)
(1)	(2)	(3)	(4)	(5)	(6)

Dated the 31st day of March, 2006

Signature

(XYZ)

Director

Chapter 2

Approval of contracts in which Directors are interested

Synopsis

Important Provisions at a Glance

1. Applicability
 2. Scope of section 297
 3. Non-applicability of section 297
 4. Persons covered u/s 297
 5. Exemptions under section 297(2) in certain cases
 6. Approval of contracts by the Board
 7. Non-participation of interested director in proceedings of the Board Meeting
 8. Director should not participate and vote when his near relative is proposed to be appointed as director
 9. Specific consent by the Board at a meeting
 10. Consequences and penalty where consent is not taken
 11. Offence under section 297 is compoundable
 12. Are professional services not within the purview of section 297?
 13. Secretarial checklist
- Appendix 1 Specimen of Board resolution

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	Form Nos.
1.	297	Board's approval is required for certain contracts in which particular directors are interested.	
2.	300	Interested director not to participate or vote in a Board's proceedings.	
3.	301	Register of contracts, firms, companies in which directors are interested.	

The directors of a company are in a fiduciary capacity in relation to the affairs of a company in which they are directors. They are therefore not expected to make profits on account of dealing with the company in any way by themselves or through other bodies in which they are directors [*Cook v Deeks* 1916 IAC 554 (PC)]. Hence, the Act provides that a director shall make adequate disclosure of any matter in which they are in any way interested and that in certain cases the prior approval of the Board shall be taken.

The word "interest" occurring in sections 299 and 300 means personal interest. It is limited to financial interest only but may include interest arising out of fiduciary duties and closeness of relationship. In short, the interest should be an "interest" conflicting with duty of a director. [*Makkatukara Catholic Co. Ltd. v Thomas (M. V.)* (1995) 6 SCL 135; (1996) CLA 348 (Ker)].

Sections 297 and 299 regulate the transactions in which the directors are deemed to be interested. Section 297 requires disclosure of interest of a director and previous approval of the Board before the company enters into a contract in which a director may be interested. Section 299 which is extensive and wider in scope, requires disclosure by the director concerned whenever he is concerned directly or indirectly in any contract or arrangement.

1. Applicability

Section 297 is applicable to all companies whether public or private. [*Subhash Chand Agrawal v Associated Lime Stone Ltd.* (1998) 92 Comp Cas 525].

2. Scope of section 297

Section 297 of the Act embodies the principles of good faith and fiduciary relationship of a director and enjoins upon him certain statutory obligations. Section 297(1) states that a company cannot enter into contracts with the specified persons without the consent of the Board. These types of contracts are:—

- (a) sale, purchase or supply of any goods or materials or services;
- (b) underwriting the subscription of any shares in or debentures of the company.

3. Non-applicability of section 297

Section 297 does not apply in the following cases:—

1. Contracts between two public limited companies.
2. Contracts between a company registered under the Companies Act and a company incorporated outside India.
3. Contract between company and a private company of which the relative of a director is a member or a director.
4. Contracts for sale, purchase or lease of immovable property.
5. Contract for employment of a director as managing director or whole-time director.
6. Transaction of a loan made to a director by the company, since it is not a sale or purchase of goods or a contract to render services.
7. The Central Government's approval under the proviso is not applicable to a Government company in respect of contracts with another Government company.
8. Professional services rendered by solicitors/advocates or by firms of solicitors and advocates.
9. Contracts entered into by the company with a dealer on a 'principal to principal' basis, provided the dealer does not acquire the same on agency basis.

4. Persons covered u/s 297

The followings are the persons with whom a company cannot enter into contracts without the consent of the Board of directors and prior approval of the Central Government is required in case if the paid up capital of a company is not less than Rupees One Crore:—

- (i) director of the company;
- (ii) relative of such director;
- (iii) a firm in which such director is a partner;
- (iv) a firm in which relative of such director is a partner;
- (v) any other partner of such firm in which such director is a partner;
- (vi) any other partner of such firm in which relative of such director is a partner;
- (vii) a private company in which such director is a member or director.

5. Exemptions under section 297(2) in certain cases

The prior consent of the Board or Central Government will not be required in the following circumstances:—

- (i) Contract for purchase of goods from the company or sale of goods to the company, which are for cash at prevailing market prices.
- (ii) Contract for sale or purchase of goods and services in which the company or other party regularly does business but upto Rs. 5,000 in a year during the period of the contract.
- (iii) Any transaction of a Banking/Insurance Company in the ordinary course of business of such company with the specified persons.

6. Approval of contracts by the Board

Before the company enters into a contract of the nature stated above with any of its directors or with any other specified persons mentioned above, it must be approved by the Board in the form of a resolution at a Board meeting. — sub-section (4).

However, in such contracts where a director may be deemed to be interested may be entered into in the circumstances of urgent necessity even for value exceeding Rs. 5,000 .in a year without taking, prior consent of Board but such consent shall be obtained within three months of entering into the contract.

7. Non-participation of interested director in proceedings of the Board Meeting

Section 300 of the Companies Act provides that no interested director can take part in the proceedings of the Board or vote on the resolution on that matter.

But in a private company an interested director is under no such disability. Further, this restriction is not applicable in respect of a contract which a private company subsidiary of a holding company enters with the holding company nor to a contract which may be entered into by a public company in which the interest of the director consists in his holding the qualification shares or in his holding not more than 2% of the paid-up share capital.

8. Director should not participate and vote when his near relative is proposed to be appointed as director

The question whether, under the provisions contained in sections 299 and 300, a director can vote on a Board resolution purporting to appoint a relative of such a director as director or additional director of a company has been examined by the Company Law Board and their opinion stands as under:—

"Two different views have been expressed on the question at issue. One view is that the appointment of a director is an arrangement entered into by company and the director whose relative is appointed as a director or additional director is interested in such appointments and, as such, is prevented from voting on resolutions purporting to appoint such relative as a director. The other view held in some quarters is that the word 'arrangement' used in the section is intended primarily to cover transactions in which a director acquires some right or incurs some liability as a result of it and not supposed to cover anything that is likely to have a bearing on the company's affairs. Only a restrictive interpretation should, therefore, be placed on the word "interested" used in the section thus excluding a director who has no pecuniary interest. Where, however, there is a pecuniary advantage, it must be regarded as an "interest" within the meaning of the section. The language of the section contemplates a pecuniary interest, direct or indirect, of the director in the contract or arrangement. Accordingly the relationship of the director with the contracting party will not *per se* make the director concerned or interested in the contract or arrangement.

The Company Law Board has carefully considered both the above-mentioned viewpoints. It is of the opinion that whatever may be the strictly legal position in this regard; the matter is essentially one to be viewed from the point of view of the development of sound and healthy company practice. It should, therefore, be held to be a clearly unsound company practice if a director, whose near relative is proposed to be appointed to the Board, were to participate in the discussions at the Board meeting and vote on the proposal for such appointment." [Source: Circular Letter No. 8/46/(300)/64-PR, dated 27 January, 1965]

9. Specific consent by the Board at a meeting

The consent under section 297 is a specific, a particular consent and not a general one. This consent should be separately obtained in relation to different contracts. (Appendix 1)

10. Consequences and penalty where consent is not taken

If a contract, which requires consent in advance or subsequently, is entered into without taking the consent, the contract is voidable at the option of the Board.

The section does not provide any penalty for non-compliance. The penalty would therefore, be as per the provisions of section 629A. (Section 629A indicates penalty for such sections of the Companies Act, 1956 for which no penalty has been specifically provided).

Accordingly, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend up to Rs. 500 for every day after the first day during which the contravention continues.

In the case of *First Leasing Company of India Ltd. v Additional Registrar of Companies* (1997) 89 Comp Cas 635 (Mad) it was held that the period of limitation began from the date on which the directors submitted their explanation and not from the date of the inspection report. The Court agreed that *prima facie* limitation begins on the date on which a document is filed with the Registrar of Companies.

11. Offence under section 297 is compoundable

The offence committed under this section is compoundable in accordance with the provisions of section 621A of the Companies Act, 1956.

CLARIFICATIONS IN RESPECT OF SECTION 297

- (a) *Section 297(1) does not apply to the employment as managing director/whole-time director:* The Department has clarified *vide* Circular No. 13 of 1975, dated 5-6-1975 that 'supply of service' is not the same as 'rendering of service' as managing/whole-time director and that there are specific provisions regarding the matter. Hence the proviso to section 297(1) does not apply to the above appointments.
- (b) *Appointment of additional directors:* Appointment of a relative of a sitting director on the post of additional director does not violate the requirements of section 300(1) because such appointment does not amount to any "contract or arrangement".
- (c) *Transactions in respect of immovable property:* The Department has *vide* Letter No. 9/41/90-CL.X, dated 27-3-1990 stated that in view of the fact that the proposal of the subject company related to taking office premises on rental (in which a director of the company was interested), the section is not attracted as the contract is in respect of immovable property.
- (d) *Services of a legal practitioner:* The Department has clarified that services of a legal practitioner are not obtained on the basis of say, lowest tender, but on account of his professional expertise irrespective of the cost involved. Such services cannot be bracketed with a contract for supply of goods or materials. The Department's view is that these services fall outside the scope of section 297 of the Act and the scope of the section does not extend to supply of professional services of the nature given by firms of solicitors and advocates. (Circular No. 13 of 1975, dated 5-6-1975)
- (e) *Contract for services vis-a-vis contract of personal services:* Section 297 applies to contracts for services but not to contract of personal services.

- (i) *Contract for services*

Contract of services includes contract for supply of services. Further, contract for supply of services may also include supply of one's own services or supplying the services of some other person.

However, contract of service is quite different from contract for services. The latter attracts the provisions of section 297 whereas the former has been exempted *vide* Department Circular No. 13/75, dated 5-6-1975, which is dealt separately, hereunder. And in a case where such a person is appointed at a place of profit, it will not only require the compliance of the provisions of section 314 but also the requirements of the proviso to sub-section (1) of section 297 have to be complied with in every such matter because no exemption is provided in this section unlike section 314 in which monthly remuneration of Rs. 10,000 has been prescribed under section 314 (1)(b).

- (ii) *Contract of personal services*

The Department's views in this connection are contained in Circular No. 13/75, dated 5-6-1975 that "section 297(1) provides that consent of the Board of directors of a company shall be necessary for a contract for the sale, purchase or supply of any goods, materials or services entered into by the company with a director of the company or his relative or a firm in which such a director or relative is a partner, etc. The proviso to this sub-section requires that in the case of a company having paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government."

- (f) *Contracts on principal to principal basis*: The Department has expressed its views *vide* Circular No. F.M. 8/Z97/56-PR, dated 2-8-1956 that the provisions of section 297 would not become applicable to contracts entered into by the company with a dealer on a principal to principal basis, unless the contract is in respect of goods which the dealer sells or supplies on an agency basis.

- (g) *Sale or purchase for cash*: Whether includes for cheque also?

The Department has expressed its views *vide* Circular No. 8/2(Misc)/75 CL. V., dated 6 June, 1975 that a cheque may be treated as the equivalent of a cash payment for the purpose of this section.

The term "cash" must be interpreted in a reasonable manner. It would include not only payment in legal tender but also other modes of payment, which are recognised by law or by customary practice as amounting to payment in cash. For example, payment by cheque or through a bill or hundi which is payable on demand would tantamount to payment in cash.

- (h) *Approval of the Central Government in case of multiple requirements of section 297(1), 314(1B), 294AA or 269 of the Act*: The Department *vide* its Circular No. 18 of 1976, dated 29 June, 1976 has expressed the following views:

"I am directed to say that instances have come to notice in which applications were made simultaneously for seeking approval of the Central Government under the proviso to section 297(1) of the Companies Act, 1956 as well as under other provisions *viz*, section 269 or section 294AA or section 314(1B) of the Act in respect of same contracts/transactions. The need for according approval under both the sections of the Act has been examined in the Department. It is felt that the provisions of section 297 are of general nature and those of sections 269, 294AA and section 314(1B) are of special nature. In view of this, it has been decided in the interest of administrative convenience and also to avoid multiplicity of applications that where facts and circumstances of a case require approval of the Central Government under section 269 or section 314(1B) or section 294AA and also under section 297 approval under section 269, section 314(1B) or section 294AA of the Act would be enough and no separate approval under section 297 of the Act is necessary."

12. Are professional services not within the purview of section 297?

In *Bhagwati Developers vs. Peerless General Finance & Investment Co.* (2005) (5) Comp LJ 377 (SC), the Supreme Court has remarked that the circulars issued by the DCA do not have any mandatory effect; these circulars are merely advisory in character, as a matter of fact, these circulars are read, followed and applied (many times by deriving a general principle of universal nature from the language used or illustrations given in the circular) by millions of people of this country as interpretation of the law, something similar to court rulings.

Accordingly the effect of the above circular is that many companies and professional exclude all types of professional services from the purview of section 297, whether legal or those given by chartered accountants, tax consultants, company secretaries, cost accountants, engineers, architects, etc.

13. Secretarial checklist

Check whether exempting provisions contained in section 297(2) of the Companies Act, 1956 were not applicable? If not, check that:—

1. Consent of the Board of directors was obtained by a resolution passed at a meeting for entering into contracts in which directors were interested.
2. Prior approval of the Central Government (Regional Director) has been obtained, if the paid up share capital of the company is not less than Rs. One Crore.
3. The particulars of the contract were entered in the Register of contracts, in accordance with the provisions of section 301.
4. The requisite resolutions were recorded in the minutes of Board meetings.

Appendix 1

Specimen of Board resolution

I. For approval of contracts in which directors are interested

RESOLVED THAT the following transactions in which certain directors of the company may be deemed to be interested be and hereby approved:

<i>Name of the Concern</i>	<i>Transactions No. and Date</i>	<i>Description of contract</i>	<i>Value (Rs.)</i>	<i>Name of the Interested Directors</i>

FURTHER RESOLVED THAT the particulars of the above said contracts be entered in the Register of contracts in which directors are interested kept in accordance with the provisions of section 301 of the Companies Act, 1956.

II. For ratification of contracts in which directors are interested

The Chairman placed before the Board the Register of Contracts in which directors are interested. The Board considered that the formal consent for payment of the same has already been approved by the Board. The Board considered the consolidated amount paid to the concerning parties for the year 2004-05 and ratified the following contracts for the year 2004-05:

RESOLVED THAT pursuant to the provisions of section 297 read with section 300 and 301 of the Companies Act, 1956 the approval of the Board of Directors of the Company be and is hereby accorded for the contracts in which the directors of the Company are interested and the register of contracts described the following contracts as placed before the Board be and is hereby ratified and approved.

<i>Nature of contracts</i>	<i>Amount</i>	<i>Name of the Party in which directors are interested</i>
Payment of Rent of office building		Shri KDJ, Director and Shri KAJ, Relative of Director
Hire Charges of Maruti Gypsy MXXXXXXXXX		Mrs. SJ, Relative of Director
Interest on unsecured loan		Shri KDJ, Director and Shri KAJ, Relative of Director

Chapter 3

Approval of the Central Government for contracts in which Directors are interested

Synopsis

Important Provisions at a Glance

1. Requirement for prior approval of the Central Government
2. Form of application
3. Delegation of power to Regional Director
4. Types of contracts and persons involved
5. Government approval under proviso to section 297(1) *vis-a-vis* exempted contracts
6. No requirement of approval in case of change in the circumstances
7. Guidelines for providing approvals
8. Secretarial checklist
9. Enclosures required to be submitted with the application
10. Consequences and penalty where consent is not taken
11. Offence under section 297 is compoundable
12. Consequences where previous approval of Central Government has not been obtained
13. Requirement to give comments in the Compliance Certificate under section 383A
14. Exemption to Government companies

Appendix 1 Specimen of e-Form 24A

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	E-Form Nos.
1.	297	Previous approval of the Central Government is required if the paid up capital of the company is not less than Rupees One Crore.	24A

1. Requirement for prior approval of the Central Government

In the case of a company having a paid-up share capital of Rupees One Crore or more, all contracts of the nature referred below other than the exempted contracts can be entered into only after they are approved by the Central Government as per the proviso under section 297(1):—

- (a) sale, purchase or supply of any goods or materials or services;
- (b) underwriting the subscription of any shares in or debentures of the company.

2. Form of application

The application shall be made electronically in e-Form 24A (Appendix 1) prescribed by the Notification No. GSR 58(E) dated 10th Feb., 2006 alongwith the fee prescribed in Companies (Fees on Applications) Rules, 1999.

3. Delegation of power to Regional Director

The power under the said proviso is delegated to the Regional Directors at Mumbai, Kolkata, Kanpur and Chennai for providing approval by the Offices of Regional Directors located in their Regions.

4. Types of contracts and persons involved

Both previous consent of the Board of directors and of the Central Government are needed when any of the following persons intends to enter into any contract with the company having a paid up share capital of Rupees One Crore or more for contracts specified above:—

- (i) a director of the company or his relative;
- (ii) a firm in which a director or relative is a partner;

- (iii) any other partner in the firm at (ii) above; and
- (iv) a private company in which a director is a member or director.

5. Government approval under proviso to section 297(1) vis-a-vis exempted contracts

Pursuant to the proviso under section 297(1), a company (public or private) having not less than Rupees One Crore share capital shall not, without the previous approval of the Central Government, enter into contracts with the persons specified in which a director is deemed to be interested. However, the said government approval is not necessary in respect of contracts, which are exempted under sub-section (2). But the extension of time of three months for taking the consent of the Board under sub-section (3) will not apply to a company having paid-up capital of at least Rupees One Crore.

6. No requirement of approval in case of change in the circumstances

If at the time of entering into the contract, no approval of Central Government is required then no subsequent approval is to be obtained though section 297 becomes applicable due to any of the following reasons:—

- (a) The company's paid up share capital is enhanced to Rupees One Crore or more.
- (b) The contracting person occupies any of the position stated above.
- (c) The public company is converted into a private company. If the companies between which contract is entered into are public companies and later on one or both the companies are converted into private companies.

However, any modification is made in the terms of contract or it is renewed after the expiry of its original period, previous approval of the Central Government would become necessary.

7. Guidelines for providing approvals

1. Previous approval must be obtained by all types of companies where the paid up capital is not less than Rs. 1 Crore at the time of entering into a contract.
2. No approval is necessary in case of providing professional services and contact with the Managing or Whole-time directors for their appointment and for supply or procuring of goods on cash at the prevailing market price or contract between the company and any such director related firms, partner or private company sale, purchase or supply of any goods, materials and services in which either the company of the concerned parties regularly trade or does business.
3. Where the proposal requires the approval under section 269 or 314(1B) or 294AA and also under sections 297, approval under section 269 or 314(1B) or 294AA would be enough and there is no need to file e-Form 24A electronically for seeking separate approval under section 297.
4. The cheques and demand drafts will be treated equivalent to cash payment (Letter 8/2 (Misc.)/75-CLB, dated 6th June, 1975. The term "cash" must be interpreted in a reasonable manner. It would include not only payment in legal tender but also other modes of payment, which are recognised by law or by customary practice as amounting to payment in cash. It should be considered that the relations of debtors or creditors should not be established for such transaction to consider the transactions have been for cash. It is also advisable to realise the amount of cheques or demand drafts in routine course.
5. The approval under section is required separately for each and every contract. However, the company may enter into a contract on certain agreed terms and conditions for a specific period.
6. The section does not prohibit a contract between a private company and a public company having common share holders, in case, if the director himself is not a member or director of such private company.
7. The section does not apply in case of two public companies.
8. The section does not apply for transactions for sale, purchase and leasing, rental agreement for the immovable assets. The Department has *vide* Letter No. 9/41/90-CL.X, dated 27-3-1990 stated that in view of the fact that the proposal of the subject company related to taking office premises on rental (in which a director of the company was interested), the section is not attracted as the contract is in respect of immovable property.

9. Section 297 applies to contracts for services but not to contract of personal services.
10. Section do not apply to contracts between a company registered under the Companies Act, 1956 and a foreign company.
11. Section does not apply to contract between company and a private company of which the relative of a director is a member or a director.
12. Section does not apply to the transaction of a loan made to a director by the company.
13. The Central Government's approval under the proviso is not required to be obtained by a Government company in respect of contracts with another Government company.
14. The section do not apply to the contracts entered into by the company with a dealer on a 'principal to principal' basis, provided the dealer does not acquire the same on agency basis.

8. Secretarial checklist

Check whether exempting provisions contained in section 297(2) of the Companies Act, 1956 were not applicable? If not, check that:—

1. Consent of the Board of directors was obtained by a resolution passed at a meeting for entering into contracts in which directors were interested.
2. Prior approval of the Central Government (Regional Director) has been obtained, if the paid up share capital of the company is not less than Rs. One Crore.
3. The particulars of the contract were entered in the Register of contracts, in accordance with the provisions of section 301.
4. The requisite resolutions were recorded in the minutes of Board meetings.

9. Enclosures required to be submitted with the application

E-Form 24A has to be submitted with following enclosures:

- (1) Copy of agreement containing particulars of contract.
- (2) Copy of board resolution and proceedings of meeting.
- (3) Detailed application should be filed as an optional attachment containing details relating to the following;
 - (a) Whether the terms of the contract conform to the prevailing market rates.
 - (b) Whether the company has entered into any contract with any other person in respect of sale, purchase or supply of the same kind of goods, materials or services and whether the terms of such contract are similar to the terms of the proposed contract(s). Reasons for variation in rates, if any should be indicated
- (4) Certified copy of the latest amended Memorandum and Articles of Association;
- (5) Certified copy of the audited Balance Sheet and Profit & Loss Account for a last three years;
- (6) Certified copy of the Minutes of the General Meeting at which the proposal was approved, if in case of the non availability of the quorum of disinterested director in a public company.

10. Consequences and penalty where consent is not taken

If a contract, which requires consent in advance or subsequently, is entered into without taking the consent, the contract is voidable at the option of the Board.

The section does not provide any penalty for non-compliance. The penalty would therefore be as per the provisions of section 629A. (Section 629A indicates penalty for such sections of the Companies Act, 1956 for which no penalty has been specifically provided)

Accordingly, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend up to Rs. 500 for every day after the first day during which the contravention continues.

In the case of *First Leasing Company of India Ltd. v Additional Registrar of Companies* (1997) 89 Comp Cas 635 (Mad) it was held that the period of limitation began from the date on which the directors submitted their explanation and not from the date of the inspection report. The Court agreed that *prima facie* limitation begins on the date on which a document is filed with the Registrar of Companies.

Where the prior approval of Central Government is required to be obtained and if it is not obtained then failure to obtain such previous approval will make the contract void and illegal, provisions of sub-section (5) of section 297, which makes the contract voidable at the option of the Board of directors being applicable only to the cases where only the consent of the Board of directors is required to be obtained.

The CLB observed in case of *Otto Burlington Mail Order Pvt. Ltd.* (1980) that where such contracts were required to be entered into, the company must obtain prior approval of the Central Government. Since the Act had not provided for any penalty under section 297, section 621A read with section 629A would come into play and monetary penalty to the extent of Rs. 5,000 with a fine of Rs. 500 per day for each day of default could be imposed in case of continuing offence. While considering compounding financial position of company as well as continuous nature of default should also be taken into account in quantified the amount of fee to be paid by defaulter.

11. Offence under section 297 is compoundable

The offence committed under this section is compoundable in accordance with the provisions of section 621A of the Companies Act, 1956.

12. Consequences where previous approval of Central Government has not been obtained

Where the prior approval of Central Government is required to be obtained and if it is not obtained then failure to obtain such previous approval will make the contract void and illegal, provisions of sub-section (5) of section 297, which makes the contract voidable at the option of the Board of directors being applicable only to the cases where only the consent of the Board of directors is required to be obtained.

The CLB observed in case of *Otto Burlington Mail Order Pvt. Ltd.* (1980) that where such contracts were required to be entered into, the company must obtain prior approval of the Central Government. Since the Act had not provided for any penalty under section 297, section 621A read with section 629A would come into play and monetary penalty to the extent of Rs. 5,000 with a fine of Rs. 500 per day for each day of default could be imposed in case of continuing offence. While considering compounding financial position of company as well as continuous nature of default should also be taken into account in quantified the amount of fee to be paid by defaulter.

13. Requirement to give comments in the Compliance Certificate under section 383A

As per Para No. 9 of the Companies (Compliance Certificate) Rules, 2001, the Company Secretary while issuing compliance certificate is required to certify whether the company has duly complied with the provisions of section 297 of the Act in respect of contracts specified in that section.

14. Exemption to Government companies

Government companies have been exempted from the requirement of proviso to section 297(1) in relation to their contracts with other Government Companies only. (Notification No. GSR 233, dated 31-1-1978)

Appendix 1

Specimen of e-Form 24A

For Approval of Contracts in which Directors are Interested

Form for filing application to the Central Government (Regional Director)

[Pursuant to sections 22, 25, 224(3), 224(7) and 297 of the Companies Act, 1956]

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	AAA FOODS LIMITED
(b) Address of the registered office of the company	123, SATI DARWAJA UJJAIN (M.P.) 456001

3. * Please indicate the purpose of the application

- ☒ Approval for entering into contract under section 297
☐ Appointment of auditors under section 224(3)
☐ Issue of license under section 25
☐ Removal of auditors under section 224(7)
☐ Rectification of name
☐ Others

4. If others, then specify

5. (a) CIN of company against which the application for rectification of name is being made

(b) GLN of company against which the application for rectification of name is being made

6. Date of annual general meeting (AGM) (DD/MM/YYYY)

7. (a) Service request number of Form 23

(b) Date of filing Form 23 (DD/MM/YYYY)

(c) Date of passing special or ordinary resolution (DD/MM/YYYY)

8. *Details of application

Application for approval of contracts with Shri XYZ, Director of the Company for transportation of goods for a period of 3 years w.e.f. 1st July, 2006 as per the contents given in the application form.

Attachments

1.	Memorandum of Association (MoA).	Attach	
2.	Articles of Association (AoA).	Attach	
3.	Declaration as per Annexure V of Companies Act, 1956		
4.	Future annual income and expenditure estimates.		
5.	Assets and liabilities statement with their estimated value as on seven days before Making the application.		
6.	Declaration by advocate of Supreme Court or High Court, attorney or pleader entitled to appear before a High Court, or a company secretary or chartered accountant in whole time practice that the MoA and AoA have been drawn in conformity with the provisions of the Act.		
7.	Details of the promoters and of the proposed directors of the company.		
8.	A list of the names, addresses, description and occupations of its directors and of its managers or secretary, if any, together with the names of companies, associations and other institutions, in which the directors of the applicant company are directors or hold responsible positions, if any with the descriptions of the positions so held.		
9.	If association is already in existence, then last two years' accounts, balance sheet and report on working of the association as submitted to the members of the association.	Attach	

10.	Statement of brief description of the work, if already done by the association and the work proposed to be done.		
11.	Statement of the grounds on which application is made.	Attach	
12.	If any of the above documents not in English or Hindi, then a translation of such document in English or Hindi.		
13.	Copy of agreement containing particulars of contract.	Attach	
14.	Copy of ordinary resolution.	Attach	
15.	Copy of Board resolution.		
16.	Optional attachment(s) — if any.	Attach	Copy of the minute book of the general meeting.

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* 06/04/2006 (DD/MM/YYYY) to sign and submit this application.

☐ I am duly authorised to sign and submit this application.

To be digitally signed by

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

ASHOK

For office use only

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Annexure 1 to Appendix 1

Specimen of Board Resolution requiring approval of the Central Government

RESOLVED THAT subject to the approval of the Central Government (Regional Director) as required under section 297 of the Companies Act, 1956, the approval of the Board be and is hereby given to the contract (a copy of which was placed before the meeting and initialed by the Chairman for the purpose of identification) for the period from 1st April, 2006 to 31st March, 2009 for the supply of/for rendering of services of the value of Rs. per year proposed to be entered into between the company and Shri, a director of the Company/Shri, a relative of Shri, a Director of the Company/Messers, a firm in which Shri, a relative of Shri, a Director of the Company, is a partner in (P) Ltd., of whom Shri, a Director of the Company, is a member/director.

RESOLVED FURTHER THAT Shri XYZ Director and/or Shri Ishan Jain., the Company Secretary be and is hereby authorised to make an application in the prescribed e-Form 24A to the Central Government (Regional Director, Western Region Mumbai) for seeking approval and to make necessary entries in the Register of Contracts maintained under section 301 of the Companies Act, 1956 and to comply with all other statutory requirements in this regard.

Chapter 4

Register of Contracts

Synopsis

Important Provisions at a Glance

1. Applicability and scope of the section
 2. Form of the Register to be maintained
 3. Entries in the Register
 4. Time for making entries in the Register of contracts
 5. Placement of Register before Board meeting and signature on the same
 6. Location of the Register to be kept
 7. Inspection of Register
 8. Penalty
 9. Requirement to give comments in the Compliance Certificate under section 383A
 10. Offence under section 301 is compoundable
 11. Secretarial Practice
- Appendix 1 Specimen of Register of Contracts
- Appendix 2 Specimen of resolutions for approval of Register of Contracts
- Appendix 3 Specimen of Register of disclosure by interested directors

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	Form Nos.
1.	301	Register of contracts, firms, companies in which directors are interested.	

Every company, whether private or public, shall keep a Register and enter therein particulars of all contracts or arrangements to which section 297 or 299 applies including contracts which are exempt under the provisions as under:—

- (a) the date of the contract/arrangement;
- (b) the name of the parties with whom the contract entered into;
- (c) the principal terms and conditions thereof;
(For example when interested contracts covered by section 297 did not need the consent of the Board, the answer against this column may be "For cash at market prices")
- (d) the date on which the contracts were placed before the Board;
- (e) the names of directors voting in favour or against the contract or arrangement and name of those remaining neutral.

However, particulars of following contracts or arrangements need not be entered in the Register of contracts in which directors are interested:—

1. Any contract or arrangement for the sale, purchase or supply of any goods, materials or services if the value does not exceed Rs. 5,000 in the aggregate in any year;
2. Any contract or arrangement by a banking company for the collection of bills in the ordinary course of its business or to any transaction referred to therein;
3. Any transaction by a banking or insurance company in the ordinary course of business of such company with any director, relative, firm, partner of the firm referred to in section 297(2)(c) of the Act;
4. In the case of a company registered under section 25 of the Act, the Register is required to be maintained only in respect of contracts to which section 297(1)(3) apply.

1. Applicability and scope of the section

This section applies to all types of companies registered under the Act. The Register should be in compliance of the provisions of sections 297, 299 and 300 of the Companies Act, 1956.

2. Form of the Register to be maintained

The Companies Act or Rules thereunder has not prescribed any format of the Register to be maintained under this section. A specimen of the Register which could be maintained has been given in Appendix 1.

3. Entries in the Register

The following particulars, to the extent they are applicable in each case, must be included in the Register:

- (a) the date of the contract/arrangement;
- (b) the names of the parties with whom the contract entered into;
- (c) the principal terms and conditions thereof;
- (d) the date on which the contracts were placed before the Board;
- (e) the date on which it was placed before the Board;
- (f) the names of directors voting in favour or against the contract or arrangement and name of those remaining neutral.

Register must also specify, in relation to each director of the company, the names of the bodies corporate and firms in which notice has been given under section 299 for disclosure of interest.

It should be noted that even if a contract is eligible for exemptions under section 297(1) of the Act by virtue of the exemption contained in the proviso to clause (b) of sub-section (2) of section 297 of the Act, particulars thereof will have to be entered in the Register if the aggregate value of the contract in any year exceeds Rs. 5,000.

4. Time for making entries in the Register of contracts

Particulars of every such contract or arrangement shall be entered in the register within the stipulated time as under:—

- (i) Within 7 days, exclusive of Public Holidays, of the Board meeting at which the contract or arrangement is approved.
- (ii) In case of contracts not requiring Board approval, particulars shall be entered in the Register of contracts within 7 days of the receipt at the registered office of the company of the particulars of such other contract or arrangement or within 30 days of the date of such other contract or arrangement, whichever is later.

5. Placement of Register before Board meeting and signature on the same

The Register maintained under section 301 of the Act shall be placed before the board meeting, held after the particulars are entered in the Register. All the directors present at the meeting must sign it including directors interested in the contracts. Since the Register is required to mention the "names of the directors voting for, against and those remaining neutral" and is also required to be placed before the next Board meeting after the contracts and arrangements are recorded, the usual practice is to place the Register before every Board meeting and mention the name of the directors present and take their signatures on the Register. (Specimen of resolution given in Appendix 2)

6. Location of the Register to be kept

The Register of contract shall be kept at the registered office of the company. If the Register of contract is required to be removed from the registered office for placing before the Board meeting, it is required to pass special resolution in the general meeting, authorising to remove the Register of contract for placing before the Board meeting from time to time and a Form 23 alongwith prescribed fee should be filed with the Registrar of Companies.

Appendix 2

Specimen of resolutions for approval of Register of Contracts

RESOLVED THAT all the directors do sign Register of contracts as submitted to their meeting containing the particulars relating to contracts entered into since the last Board meeting in which the directors are interested.

OR

RESOLVED THAT the Register of contracts containing the particulars relating to contracts entered into since the last Board meeting in which the directors are interested was placed before the Board meeting and all the directors present at the meeting signed thereon.

Appendix 3

Specimen of Register of disclosure by interested directors

Under section 301(3) of the Companies Act, 1956

Name of Director:

<i>Nature of interest of the director</i>	<i>Names of firms/bodies corporates in respect of which general notice of disclosure under section 299(3) has been received</i>	<i>Date of Notice to the Board</i>	<i>Date of the Board Meeting before which the notice is placed</i>	<i>Signatures of the Chairman/ Authorised Signatory</i>	<i>Re-marks</i>
Public Ltd. companies in which the director is a member has more than 2% of the paid up share capital.	1. 2. 3.				
Name of Private companies in which the director is a member.	1. 2.				
Name of Private companies in which the director is a director.	1. 2.				
Firm in which director is a partner and % of his profit/loss sharing.	1. 2.				
Firm in which relatives of director are partners. Name of relatives and his relation with them.	1. 2. 3.				
HUF firm in which the director is a Karta.	1. 2.				
HUF firm in which relative/ partners of director is a Karta, the name of the Karta and relation with director.	1. 2. 3.				
Name of concerns in which director is a Proprietor.	1. 2.				
Name of concerns in which relatives/ partner of director is proprietor.	1. 2.				