Defects in legal language
Resolutions for board and general meetings of companies are as cumbersome to read and burdensome to understand as any other legal document. They possess all defects of archaic legal language, namely –

1. Verbiage: An excess of words beyond those needed to express concisely what is meant; wordiness.

2. Legalese: the conventional language of legal forms, documents, etc., involving special vocabulary and formulations, often thought of as abstruse and incomprehensible to the layman.

3. Long-windedness: Speaking or writing at great length (often tiresome) length; tiresomely long.

4. Circumlocution: Use two or more words where one would be enough and a group of words where a single word would do the job.

5. Jargon: Words or expressions that are used by a particular profession or group of people, and are difficult for others to understand.

6. Archaism: Use of words and phrases that most people are not familiar with and words which have no special legal meaning but have legal flavour or which are pompous and heavy.

7. Passivism: Overuse of the passive voice instead of the active voice.

8. Negativism: Putting ideas in negative language rather than positive.

9. Latinism: Needless use of non-English (mainly Latin) words and phrases.

10. Tautology: Needless repetition of an idea in a different word, phrase, or sentence.

11. Nominalisation: Use verbs instead of nouns.

Look at the following resolution
RESOLVED THAT, subject to the requisite approval of the shareholders of the Company under section 293(1) (e) of the Companies Act, 1956 and such other provisions of that Act as may be applicable or any statutory modifications or re-enactments thereof for the time being in force and also such other approvals, sanctions, permissions as may be necessary, the approval be and is hereby accorded to the company contributing to charitable and other funds not directly relating to the business of the Company or the welfare of its employees, any amounts the aggregate of which will, in any financial year, not exceed Rs. ... (Rupees ...), over and above fifty thousand rupees, or five per cent, of its average net profits as determined pursuant to the provisions of sections 349 and 350 of Companies Act, 1956 during the three financial years immediately preceding, whichever is greater and an extra-ordinary general meeting of the Company be convened to be held on ...., at .... am/pm, at .... and RESOLVED FURTHER that the Company Secretary be and is hereby authorised to issue notice thereof to the members of the Company in accordance with the provisions of the Companies Act, 1956. This mammoth 196-word resolution, flouting all norms of writing in plain language, is a classic example of cumbersome drafting of resolutions. With a few changes, we can make this resolution a bit more readable. Now look at the following rewrite of the above resolution.

The Board approves the proposal of the Company contributing to charitable and other funds not directly relating to its business or the welfare of its employees, upto Rs. … (Rupees …), over Rs. 50,000 or 5% of the Company's average net profits (calculated according to sections 349 and 350 of the Companies Act 1956 ('the Act') during the last three financial years (…), whichever is greater, in any financial year, subject to:-

(a) the Company sanctioning the proposal at a general meeting by an ordinary resolution under section 293(1)(e) of the Act ;

(b) other necessary approvals

The Board also approves the convening of an extraordinary general meeting of the Company to be held on …….., at …. am/pm, at ….. ….. and authorizes the Company Secretary to issue notice of the meeting to the members of the company in accordance with the provisions of the Act and the Articles of Association of the company.

What's happening in the English speaking nations

Legal language is a cause of concern to almost all its readers the world over (including lawyers and judges). The Law Reform Commission of Victoria (Australia) voiced its concern and anguish about the state of legal language, in its report entitled *Plain Language and the Law* (1987), in these words: "The language of the law has long been a source of concern to the community. It has been the subject of continuous literary criticism and satire. Critics have highlighted its technical terms, its convolution and its prolixity. These faults have been noted by judges and by practicing and academic lawyers as well. Calls have regularly been made for the use of a more simple and straightforward style. Some improvements have been made in response to those calls. But legal language remains largely unintelligible to most members of the community. It even causes problems for members of the legal profession. In some cases, the obscurity may arise from the complexity of the law and of its subject-matter. In other cases, however, it is due to the complexity of the language in which the law is expressed. Some lawyers do not take sufficient care to communicate clearly with their audience. Letters, private legal documents and legislation itself are still drafted in a style which poses unnecessary barriers to understanding." While the plain English movement has now taken deep roots in the five English-speaking nations (US, UK, Canada, Australia and New Zealand), in India, regrettably, we write legal language in the same old style that the legal writing has tightly seized for over a century. All these five nations (and all States) have their Legislative Drafting Manuals and they all have one thing in common, that is, emphasis on the use of plain language in legislative drafting. For example, one of the Manuals recommends: "*The most important principle in drafting a bill is that the finished products accurately accomplish the intent of the author. The failure to accomplish the intent of the author is often the result of failing to follow the essentials of good bill drafting. Those principles are: Accuracy, brevity, clarity, and simplicity. The purpose and effect of a bill should be evident from its language. A bill should not be written in legalese, but should be drafted in terms a person without any special education or qualifications should be able to comprehend. Thus, a drafter should use words that are plain and commonly understood and convey the intended meaning to every reader.*"

Motions and resolutions

A major part of company secretarial drafting consists of resolutions for various occasions and different subjects, to be proposed at various types of meetings. Those who are supposed to read, or who are likely to be affected by, the resolutions, almost always turn away from them. Most resolutions flout all plain language rules; they all have all the defects of cumbersome legal language that have been mentioned above. Resolutions are set out in two documents: (1) notices or agendas of meetings; and (2) minutes of meetings. Motion is a proposal formally put before a meeting for discussion; a formal proposal to be discussed and voted on at a meeting. Usually members of a company who attend a meeting of the company receive notice of a motion. Generally, a motion relates to some action to be taken or issue of policy to be decided. It is 'moved' or 'proposed', ie put forward for consideration and discussion of the meeting. It is then discussed and put to vote. If the motion is finally passed, it becomes a 'resolution' (because the meeting so 'resolves' or decides). A resolution, then, is a motion which has been carried. Resolution means a formal expression of opinion or intention made, usually after voting. It is a binding decision made by the members of a company. Resolution arises from a motion moved at a meeting. If the motion is passed by a required majority of the members of the company, it becomes a resolution. If the meeting decides to amend the motion, the amended motion, known as the substantive motion, is then discussed and voted upon. If a motion is put before the members of a company at a general meeting and the required majority vote in favour of it, the motion is passed and becomes a resolution. In the Companies Act, the term 'resolution' is also used to denote a motion; the Act does not make a distinction between the two terms. That is why in all respects in relation to board or general meetings, it is customary to use the term 'resolution' even at the stage prior to the moving of a proposal, e.g., in the notice of a general meeting or agenda of a Board meeting. Even at a general meeting, what is proposed is a resolution and not a motion though at that stage it is in the nature of a motion.

Style of writing minutes

The term 'minutes' (used in plural) denotes an official record of what was said and done at a meeting, convention, etc; the official record of the proceedings at a meeting; a summarized record of the proceedings at a meeting. It denotes records of business transacted at general meetings, board meetings, and meetings of committees of directors. Minutes contain record of proceedings of meetings, including decisions taken and resolutions passed at it.

Every company is required, under section 193 of the Companies Act, to keep minutes of all proceedings of-

- every meeting of the Board ;
- every meeting of every Committee of the Board ; and
- every general meeting.

Section 193 of the Companies Act requires the minutes of each meeting to contain a fair and correct summary of the proceedings thereat. The Act does not give any guidance as to the style of drafting minutes. Conventionally, there are two styles of minutes: (1) minutes of resolutions; and (2) minutes of narration. It is often useful and appropriate to combine elements of the two. A resolution included in the notice or agenda of a meeting is a proposal (to be considered in the future) whereas a resolution recorded in the minutes is decision taken (in the past). Traditionally, a resolution written in both these documents is the same though one is for the future and the other is of the past. Both are written in the present tense. The difference is only in the preamble. For example, in the notice of a Board meeting, it is usually written: "The following resolution shall be (or 'will be') placed before the Board." And in the notice of a general meeting it is written: "To consider and pass the following resolution as an ordinary resolution." After the meeting, the minutes usually state: "The following resolution was passed unanimously (or 'by majority')." So, the text of the resolution as stated in the notice/agenda and as recorded in the minutes is the same. In *The Law and Practice of Meetings* by Sheckleton, 8th edition, it is stated at page 76: "The past tense should be used to record events at the meeting, *e.g.* "It was reported

that," and the past perfect tense for events prior to the meeting, *e.g.* "Mr. X reported that he had completed this survey." On the use of the words 'Resolved That' in a resolution, Horsely's *Meetings-Procedure, Law and Practice*, 4th edition. At page 211 states: "The term 'minutes of resolution' is self-explanatory. Such minutes are confined to the actual words of the resolutions which have been passed. This is often all that is necessary. The precise words of each resolution are preceded by two opening words, namely, 'Resolved that'. The word 'Resolved' is often emphasised, for example, it is all in capital letters, underlined or italics. This emphasis ensures that the resolution is brought immediately to the attention of each person who reads the minutes, including anyone absent from the meeting, that these decisions were made, each having a consequential effect, some of them involving action to be taken; ..." Thus, there is no legal significance or special reason for the use of the words 'Resolved That'. It is merely a manner of style and the style can be changed for the better. Therefore, the omission of these words wouldn't result in an illegality and or render the resolution invalid or ineffective.
At page 216 of Horsely's *Meetings- Procedure, Law and Practice*, it is stated: "When a meeting resolves to take a certain action which is carried into effect immediately, for example, to elect a person to office, this needs to be made clear in the minute, which should read, for example, '... be, and is hereby, elected', or '... rate of subscription be, and it is hereby, increased from ... to ... '. This form of wording is used only when the transaction is entirely completed upon the resolution being passed."
The practices of recording resolutions in the minuets, as exemplified in text books and precedents, differ. For example, some books suggest that the resolutions should begin with the words 'It was resolved that' instead of 'Resolved that'.1 Some books omit the word 'Resolved' and begin with only 'That'.2 Some authors don't use the phrase 'be and is hereby', others do use it. Thus while the law is silent on the style of drafting resolutions, the practices differ and there is no single style that can be called an ideal one. The ICSA Meetings and Minutes Handbook3 states: "Thus, although certain conventions are normally followed, the presentational style can be tailored. The preferences of the chairman will usually be the most influential. What can never be compromised, however, is the principle that the minutes should contain an accurate record of the decisions taken." While minutes contain a record of a past event, the narration of the proceedings has to be in the past tense, but the text of the resolutions as passed ought to be in the present tense. In other words, while the narration should be in the indirect (or reported speech) the text of the resolutions to be recorded should be in the direct speech. It is, therefore, justifiable to frame the resolutions in the present tense, active voice and plain English. For example, there is nothing wrong if the text of the resolution as placed before the Board's meeting states, "*The Board authorizes the Secretary to* ...", instead of "*The Secretary be and is hereby authorised to* ...." Likewise, if a resolution for the appointment of a director would be perfectly in order if it written thus: *"The Board/Company appoints Mr. ... as a director of the Company"* instead of "*RESOLVED THAT Mr. ... be and is hereby appointed as a director of the Company.*" The words 'be and is/are hereby' seem to be employed to indicate that resolution is in the nature of both proposal and decision; the words "be ..." (e.g. 'be ... hereby appointed') indicate that there is a proposal to be moved at the meeting and the words "is ..." (eg 'is appointed') indicate that it is decision taken at the meeting. It is thus a short-cut. Absurdly, however, the wording indicating both proposal and decision remains unchanged in both versionsone written in the notice or agenda and the other written in the minutes. To be precise, it should be different- 'be appointed' in the notice or agenda (the future action) and 'is appointed' in the minutes (the past action). On the contrary, if the resolution is worded like *The Board/Company appoints Mr. ... as a director of the Company,* in the notice/agenda it will be preceded by the words *The following resolution will be considered at the meeting* and in the minutes they will be preceded by the words *The following resolution was passed at the meeting.* The word 'hereby' makes no contribution in any writing, including resolutions. It only adds to wordiness. Hereby means at this moment, with these means, as a result of this statement. In the context of resolutions, it means nothing more than 'at this meeting' or 'by this

resolution'. There is no need to say that. When you include a resolution in the notice or agenda and record it in the minutes of a specific meeting, it goes without saying that the resolution was passed at that meeting and not at any other meeting. There is no justification in writing resolutions in the traditional complicated language. If one wishes to make resolutions readable without causing any harm to the essence or substance of the resolution, one should follow the plain language guidelines besides the specific guidelines mentioned below. If you follow the general guidelines of plain English, your resolution will become a readable, intelligible and digestible piece of writing and people will appreciate it; that will enhance your image in the organization as Company Secretary, or as Practising Company Secretary, and will have a positive impact on yourposition and career. Try it! And get rid of the notion that resolutions ought to be written in a complicated way and that a resolution written in plain and simple English is invalid or ineffective. Finally it is desirable that the Institute of Company Secretaries of India initiates action for changing the style of drafting resolutions, and consider bringing out either a Secretarial Standard or a Guidance Note on "Drafting Resolutions and Minutes in Plain Language."

General guidelines for drafting in plain language

1. Use plain words and phrases that most people are familiar with.

2. Keep sentences short, not more than 15-20 words.

3. Avoid verbiage. Eliminate words which are superfluous.

4. Prefer single word instead of a group of words.
5. Replace legalese (words which have no special legal meaning but have legal flavour) by simple, familiar words.

6. Prefer active voice unless passive voice is more effective.

7. Avoid non-English (mainly Latin) words and phrases.

8. Avoid archaic, outdated, old-fashioned words and phrases.

9. Do not use two or more words where one would be enough.

10. Use verbs instead of nouns.

Specific guidelines for drafting resolutions in plain language

(1) Don't use the phrase *be and is/are hereby.* Instead, use just *is/ are.*

(2) Don't use legalese, such as *hereby, herewith, hereof, thereof, notwithstanding, whereas, the said, aforesaid, accorded*, etc.

(3) Use plain alternatives for trite words and phrases.

(4) Prefer active voice, unless passive voice is desirable or necessary; eg instead of *approval be and is hereby accorded*, say *the Board approves*.

(5) Keep sentence length limited to 20-25 words. Use lists with numbers or bullets to break long sentences.

(6) Don't use the phrase *For the purpose of considering, and if thought fit, passing, with or without modification(s), the following resolution as an Ordinary Resolution* (or its twin *To consider, and, if thought fit, to pass, with or without modification(s), the following resolution as an Ordinary Resolution.* This wordy phrase is a needless appendage without meaningful contribution and not legally required. Firstly, the words *for the purpose of considering, and if thought fit* have no useful purpose to serve because it goes without saying that a resolution proposed at a meeting is for the purpose of considering before it is passed. The act of passing inevitably contemplates consideration of the resolution; so there is no need to say all that. Secondly, it has been a well settled principle about company meetings (or any other formal meetings) that those who are entitled to pass a resolution also have the right to modify it (subject to certain limitations with regard to special resolutions); so, there is no need to say that.

(7) Don't use "RESOLVED THAT". This archaic phrase is misleading when used in the agenda or notice because the word "resolved" is the past tense of 'resolve'; when you include a resolution in the agenda or notice, it is in a draft stage yet to be considered by the board/committee/general meeting. Just start with the main verb and write the whole sentence in the active voice. This makes it possible to avoid the passive construction which is a common (but evil) feature of resolutions.

(8) Don't use phrases like FURTHER RESOLVED THAT, ALSO RESOLVED THAT. Instead, divide the text in sub-paragraphs and number them after IT IS RESOLVED THAT at top.

(9) Don't use such archaic phrases as *Subject to the approval of the Company by a special resolution at a general meeting and confirmation of the Company Law Board under section 17 of the Companies Act, 1956, Subject to necessary approvals, permissions, consents, … etc.* This is unnecessary as it is axiomatic that every decision of the board, a committee or the company in general meeting is subject to (conditional on) the necessary compliances or approvals, permissions, etc., that may be required under the Companies Act, other Act, Rules, Regulations, Listing Agreement, agreements with other parties (eg financial institutions, etc.), articles of association, etc. It need not be a part of the resolution. It is absurd to say that a resolution is invalid if the above (and similar other) phrase is used.

(10) Omit all unnecessary words, phrases and sentences which contribute nothing to the substance of the resolution. For example, after "the Companies Act, 1956" the words *(including any statutory modification(s) or re-enactment thereof for the time being in force)* contributes nothing. At the most say *the Companies Act, 1956 or the new Act, if enacted in its place.*

(11) Avoid the phrase "*The Board of Directors be and is hereby authorised to do and perform all such other acts, deeds and things as may be necessary or desirable to give effect to this resolution*." This is unnecessary as when you authorize the Board or any other person, other acts, deeds and things are incidental or ancillary and are implied in the general authority conferred. At the most, write "*The Board is also authorised to do everything that may be necessary to implement this resolution*."

(12) Prefer plain words and phrases to the conventional heavy words.

(13) Avoid separating the parts of a sentence, clause or phrase, or the parts of a compound verb, by inserting another verb, clause or phrase.

(14) Use minimum capital letters; don't use capital letters for general words, such as annual general meeting, extraordinary general meeting, ordinary resolution, director, chairman, etc., used in the text of the resolution.

(15) Prefer *is/are* to *be,* unless *be* is necessary where it is used for an action that would take place in future, e.g., *It is resolved that an agreement be entered into*; or *It is resolved that Equity Shares of the Company be de-listed*.

(16) Use one-word alternatives rather than a group of words, such as *directorship* for *office of director*.

(17) Give details which are nothing but formal appendages, which contribute nothing to the substance of the resolution, separately, even below the resolution with asterisk or note, or in the preamble or explanatory statement such as *the agreement a copy of which duly initialed by the chairman was placed on the table*; *in respect of whom the company has received a notice under section 257 of the Companies Act*, etc.

(18) Use acronyms and abbreviations, for the words and phrases which occur repeatedly in the resolution, such as the Companies Act, 1956, annual general meeting, memorandum and articles of association, etc.

(19) Get rid of the notion that a short resolution is a crime or that it is invalid and that a resolution has always to be clumsy, involved and unintelligible piece of writing.