INCREASE IN THE NUMBER OF DIRECTORS

As per the provision of section 252 of the Companies Act, 1956, every public company shall have minimum of three directors and every other company, i.e. private company, shall have minimum of two directors. The Articles may provide a higher number to be the minimum strength of the Board. Every company must have minimum number of directors from the date of its incorporation.

INCREASE IN NUMBER OF DIRECTORS TO REQUIRE GOVERNMENT SANCTION [SECTION 259]

In the case of a public company or a private company which is a subsidiary of a public company, any increase in the number of its directors, except-

(a) in the case of a company which was in existence on the 21st day of July, 1951, an increase which was within the permissible maximum under its articles as in force on that date, and

(b) in the case of a company which came or may come into existence after that date, an increase which is within the permissible maximum under its articles as first registered,

shall not have any effect unless approved by the Central Government; and shall become void if, and in so far as it is disapproved by that Government:

[1][Provided that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve.]

Case Laws:

1. The increase or decrease in the number of directors must be within the limits fixed by the articles. Where a company intends to increase its number beyond the limit fixed by the articles, a special resolution shall be necessary to first amend the articles. {*Ram Kissendas Dhanuka v. Satya Charan Law (1950) 20 Comp Cas 133}*
2. It has been held in *{Laljibhai C. Kapadia v. Lalji B. Desai (1973) 43 Com cas 17}* that it is not necessary to pass a separate specific resolution for increasing the number of directors before appointing the increased number of directors within the maximum limits specified in articles. Increase is implies in the fact of appointment of new director.
3. In *{Ravi Shankar Taneja v. Motherson Triplex Tools (P) Ltd. (2001) 44 CLA 130(CLB)}*, the Company Law Board has held that, it is only the Board of Directors which has the power to propose to the general body of the shareholders any increase or reduction in the number of directors. In view of this provision, a shareholder cannot make such a proposal through a requisition. The rationale for this view is that it is the Board which would be in a position to decide the number of directors, taking into consideration the business needs.
4. In *{Life Insurance Corporation of India v. Escort Ltd. (1986) 59 Comp Cas 548 (SC)}*, the Supreme Court has observed that it is one of the rights of the shareholders to elect directors and thus, to participate in the management of the company through them. Therefore, shareholders having the requisite numerical minimum for introducing resolutions at general meeting of the companies or by requisitioning the convening of extra ordinary general meeting can propose the increase in the maximum number of directors of a company.

PROCEDURE FOR INCREASING NUMBER OF DIRECTORS

Following is the procedure for increase in the number of directors:

1. A Board Meeting shall be convened to consider the proposal for the increase in number of directors and to approve the draft notice of the General Meeting.
2. The general Meeting shall be held to pass an Ordinary Resolution for increasing the number of directors. Since the increase in number of directors is beyond the limit fixed by the articles, Articles of Association shall also be altered by passing of Special Resolution.
3. A public notice shall be issued to the members regarding the application to be made to the Central Government for increase in number of directors at least once in the principal language of the district in which the registered office of the company is located and at least once in English in an English newspaper circulating in that district. [Section 640B].
4. An application shall be made to the Central Government in e-Form-24.
5. A copy of the application along with the copy of the documents attached to the application shall be forwards to the concerned ROC.
6. After CG approval, a Board Meeting shall be convened for appointment of person(s) as additional director (s) beyond 12 in number.

BOARD RESOLUTION FOR INCREASE IN NUMBER OF DIRECTORS

"**RESOLVED THAT** pursuant to section 259 of the Companies Act, and subject to the consent of the shareholders in General Meeting and subject to the approval of the Central Government, the number of directors of the company be increased from 9 to 14.

RESOLVED FURTHER THAT a General Meeting of the Company be convened at……………..on…………..at………….to secure the consent of the Members in this regards and the director of the company be and is hereby authorized to send the notice with relevant explanatory statement as per the draft placed before this meeting and approved for issuance.

RESOLVED FURTHER THAT any director or company secretary of the company be and is hereby authorized to submit the application to the Central Government and other authority to comply with necessary formalities in this regards."

GENERAL MEETING RESOLUTION FOR INCREASE IN NUMBER OF DIRECTORS

"**RESOLVED THAT** pursuant to section 258, 259 and all other applicable provisions, if any, of the Companies Act, 1956 and subject to the approval of the Central Government, the number of directors of the company for the time being in the office be increased from 9 to 14.

RESOLVED FURTHER THAT pursuant to section 31 and all other applicable provisions, if any, of the Companies Act, 1956, existing article…..of the Articles of Association of the company shall deleted and the following shall stand substituted in its place with effect from the date of Central Government's approval in accordance with the provisions of the Companies Act, 1956.

Article No…………………..

"Unless otherwise determined by the Company in General Meeting, the number of directors shall not be less than 5 (five) and shall not be more than 14 (Fourteen).

RESOLVED FURTHER THAT the Board be and is hereby authorized to take all such steps as may necessary, proper or expedient to give effect to the resolution.

EXPLANATORY STATEMENT

To meet the new challenges, it is important that the company's Board be strengthened. The Company accordingly needs to have set of directors with appropriate qualifications, skills, experiences and for background in diverse or related fields.

In view of the above and to comply with the mandatory corporate governance requirements and other applicable provisions of law, it is proposed to increase the total number of directors from the time being in office from 9 to 14.

Consequently article……… of the Articles of Associations of the Company is sought to be amended in the manner set out in the resolution.

In terms of section 259 of the Companies Act, 1956, the aforesaid amendments requires approval of Central Government besides obtaining approval of the shareholders by passing Special Resolution.

Your directors recommended the resolution for your approval. None of the Directors of the Company in any way concerned or interested in the said resolution.

PUBLIC NOTICE UNDER SECTION 640B

Notice is hereby given pursuant to section 640B of the Companies Act, 1956, that application is being made to the Central Government for its approval under section 259 to increase the number of directors from 9 to 14 which is outside the permissible maximum under the company's Articles of Associations.

By Order of the Board of Directors
For **………….Limited**

Sd/-
Director/Company Secretary

Date:
Place: