PART V

CHANGE IN NAME, SITUATION, OBJECTS AND CAPITAL

Chapter 1

Change in the name of a Company

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*E-Form No.*
1.	21	Change of name by company.	1B
2.	22	Rectification of name of company.	1B
3.	23	Registration of change of name and its effect.	
4.	24	Change of name by an existing private company.	

The name of a company serves as the identity of the company (Public or Private) in the commercial world, which may be changed with the consent of members of the Company. As per provisions of section 21 of the Companies Act, 1956, a special resolution is required to be passed at the meeting of members of the company along with the approval of the Central Government (Powers have been delegated to the Registrar of Companies).

1. Change in name of an existing company consequent upon conversion from public to private and *vice versa*

If the change in name of a company is only to the extent of addition or deletion of the word 'Private' in the name, consequent upon conversion of the company from public to private or *vice versa*, only special resolution for approval of members is to be passed and an intimation should be given to the ROC for such change in the name. [*Bihari Mills Ltd., In re* (1985) 58 Comp Cas 6 (Guj)].

In all other cases, the approval of Central Government (now, Registrar of Companies) is mandatory.

1.1 Conversion of a Public Limited Company into a Private Limited

Under section 31 of the Companies Act, 1956, any alteration made in the Articles which has the effect of converting a public company into a private company shall not have effect unless such alteration has been approved by the Central Government (powers delegated to the Registrar of Companies). The following actions are required to be taken in respect of conversion of a public company into private company:—

(*i*) The Board of directors of the public company shall consider the proposal of conversion at a meeting and would resolve by means of a resolution that subject to necessary approvals under section 31, the company shall be converted into a private limited company and will include the word "Private" before the word "Limited" in its name (Specimen of Board Resolution given in Appendix 3);

(*ii*) Confirm that the numbers of members are not exceeding fifty;

(*iii*) Give notice in newspapers once in English and local language, where the registered office of the company is situated for conversion of company into private limited for providing opportunity to raise objections, if any, before the Registrar with a copy to the company within a period of 21 days from the date of notice and a copy of the notice be produced before the Registrar alongwith the application (Specimen of the notice has been given in Appendix 3A);

(*iv*) Give notice to all the creditors having secured or unsecured liabilities in excess of Rs.1.00 Lacs by Registered post and proof of delivery of such notice is required to be produced before the Registrar alongwith the application;

(*v*) The Board of directors will authorise calling a general meeting of members by giving notice of at least 25 days before the meeting and will also approve draft notice to be sent to the members enclosing with the Explanatory statement under section 172 of Companies Act, 1956;

(*vi*) The Board of directors will authorise a director and/or the secretary to move an application to the concerned Registrar of Companies for approval after the proposal of conversion in approved at the general meeting of the shareholders by means of a special resolution (Specimen of Special Resolutions given in Appendix 4);

(*vii*) Certified copy of the special resolution along with Explanatory Statements and amended copy of the Memorandum and Articles shall be filed with the Registrar of Companies within 30 days of passing of the resolution in terms of section 192 in e-Form 23;

(*viii*) Make an application in e-Form 1B to the Registrar of Companies concerned, attaching all enclosures required with the application and also fee prescribed under Companies (Fees on Applications) Rules, 1999 as amended;

(*ix*) Apply to the Registrar of Companies for providing a fresh certificate of incorporation consequent upon conversion of a public company into private company;

(*x*) Change the name in all documents of the company by inserting "Private" before the word "Limited".

1.2 Conversion of a Private Limited Company into Public Limited

Whenever it is proposed to convert a private limited company into a public limited company, the following steps are involved:—

(*a*) The Board of directors of such private limited company shall accord their approval to the proposal of such conversion;

(*b*) A General meeting of the shareholders be called to get approval of the members by means of a special resolution to delete the conditions as per section 3(1)(*iii*) of the Companies Act, 1956 in the Articles of Association and also to modify the Articles in other respects and also to delete the word "Private" from the name of such company; (Specimen of Special Resolutions given in Appendix 4)

(*c*) After passing of special resolution by the shareholders in general meeting, a certificate copy of the special resolution together with the explanatory statements and amended copy of the Memorandum and Articles shall be filed with the Registrar of Companies within 30 days of the passing of the said resolution in e-Form 23;

(*d*) Request the Registrar of Companies to delete the word "Private" from the Company's name Upon this, the Registrar of Companies shall issue fresh certificate of incorporation consequent to such conversion;

(*e*) In terms of section 44 of the Companies Act, 1956, if a private company alters its articles in such a manner that they no longer include the provisions under section 3(1)(*iii*) which are required to be included in the articles of in order to constitute it a private company, the company as on the date of the alteration shall cease to be a private company and within a period of 30 days after the said date shall file with the Registrar of Companies either a prospectus or a statement in lieu of prospectus;

(*f*) It has to be ensured that number of members shall be at least seven and directors at least three at the time of conversion.

2. Steps involved for change in the name of a company

The procedure for altering name clause of Memorandum and Articles of Association of the company is being given herein under:

2.1 Decision to be taken for change in name by the Board

The Board of directors of a company should first consider the need and reason for changing name of the company. The decision should be thoughtful and satisfying to the approving authorities. An existing company may change its name by a new name for many reasons like:—

(*a*) the new name is corresponding to a new business which it has proposed to undertake or started undertaking;

(*b*) a company, which has been carrying on its business for a long time and has established a standing in the market, may decide to shorten its name and may like to be known by its abbreviated name as for example "IFCI Ltd." in place of Industrial Finance Corporation of India Ltd., etc. (*see* Department's clarification given in Appendix 1).

2.2 Seeking availability of the proposed new name from the Registrar of Companies

The Board shall authorise the secretary or any of the director of the company to make an application in e-Form 1A along with necessary filing fee of Rs. 500 to the Registrar of Companies for getting his confirmation regarding availability of the proposed new name. Application in respect of addition or deletion of "Private" is required is also required to be submitted electronically in e-Form 1A. E-Form 1A should be filled in the manner as given in Appendix 5. The Registrar shall intimate the applicants about the status of availability of name. The Registrar's confirmation of availability of name shall be valid for six months.

2.3 Approval of members in general meeting

On obtaining confirmation of the Registrar regarding the availability of proposed new name, the Board shall convene a general meeting of members as per the provisions of Companies Act, 1956 for the purpose of obtaining approval by way of special resolution for effecting change in the name of the company u/s 21. (Specimen of special resolution has been placed in Appendix 6).

The resolution so passed shall be subject to approval of the Central Government (powers have been delegated to the Registrar of Companies).

Since the change in name of the company also requires amendment in various documents of the company *viz*., Memorandum and Articles of Association, letter head, invoices, etc., it is advisable to pass special resolutions for alteration of respective clauses of Memorandum and Articles of Association and the Board shall have general authority to make necessary corrections in all the documents wherever it is required to reflect the new name of the company.

2.4 Filing of e-Form 23 to the Registrar

The Company shall also file certified copy of the special resolution and the explanatory statement electronically with the Registrar within 30 days of passing of the resolution pursuant to section 192 in e-Form 23. (See Appendix 7)

2.5 Application to be made in e-Form 1B and approval by the Registrar u/s 21

An application in e-Form 1B u/s 21 of the Act is to be made to the Central Government (powers delegated to the Registrar) electronically for approval of change of name of the company. (Specimen of application has been given in Appendix 8) alongwith fee as per the Companies (Fees on Application) Rules, 1999 either, in cash or by demand draft.

The Registrar of Companies shall consider and scrutinize the application for change in name on various grounds like:—

(*a*) the company has furnished sufficient reasons for change in name and that the proposed change in the name is in consonance with the principal objects of the company;

(*b*) that the proposed name is not undesirable as per the guidelines announced by the Government;

(*c*) that if the company has applied for abbreviated name, the company is well established and has a reputation in the market.

On being satisfied the Registrar shall accord his approval for the change in name and shall issue a certificate of such effect.

3. Powers of the Central Government for rectification of name of an existing company

In case if the name of a company on its registration or on registration with changed name, it has come to the knowledge of the company or if in the opinion of the Central Government the name of the company is identical or closely resembles the name of a company which is already in existence, such company on the knowledge of the facts itself or by the Central Government, may be asked by the Central Government to change the name within 12 months of incorporation or change in the name of the company as the case may be. In either case, all the formalities described earlier shall be taken as under:—

(*a*) apply to the Registrar in e-Form 1A alongwith fee of Rs. 500 for confirmation of availability of name;

(*b*) the Board of directors will accord its approval, subject to other approvals by the RBI/Stock Exchange, etc., to change the name. The Board will also fix the date and time for a general meeting and will approve the notice to be sent to the members. The Board will also authorise the Secretary to take all necessary actions in the matter;

(*c*) after getting the approval of the members by an ordinary resolution, the company shall apply to the Regional Director in e-Form 24A, to whom power is delegated under section 22, for obtaining approval for the change in name. The required fees shall also be paid as per the Companies (Fees on Application) Rules, 1999; (Appendix 9)

(*d*) after receiving the approval from the Regional Director, apply to the Registrar for issuance of a fresh certificate of incorporation.

3.1 Rectification and adoption of name of a company

In case if the name adopted by a new company is not innocent and the name adopted was sufficiently closed to the name under which the existence companies was trading, acquired a reputation and the public at large, likely to be mislead that the existing company's business was the business of new company, the Department may pass an order for a new company to change its name. [*Montari Overseas Ltd.* v *Montari Industries Ltd.* (1996) 20 CLA 313 (Del)].

3.2 Expiry of limitation period

When the limitation prescribed by the statute for rectification of name of company under section 22(1)(*b*), had expired, it would not be open for the Court to extend the same by exercising the powers under article 226 of the Constitution of India. [*Sidhvi Constructions* (*India*) (*P*) *Ltd.* v *Registrar of Companies* (1997) 24 CLA 207 (AP)].

Period covered by order of injunction is liable to be excluded while computing period of 12 months laid down in section 22(1)(*b*). [*Sen and Pandit Electronics* (*P*) *Ltd.* v *Union of India* (2003) 115 Comp Cas 299 (Cal)].

4. Scope of sections 20 and 22

Section 22 has a limited application and the said section must be read along with section 20. In terms of the latter provisions a company may not be registered if in the opinion of the Central Government the name by which a company in existence has been previously registered is identical with or too nearly resembles the name of the applicant. In such an event, refusal to register the name of the company on the part of the Central Government would come within the purview of the element of undesirableness to register the company in such name

Section 22, however, is applicable where such registration has already been made. Thus at the first instance, a company which has already been registered cannot be said to be undesirable for the purposes of registration within the meaning of section 20. By reason of section 22, however, the Central Government has been authorised to rectify its mistake, which might have been committed by it by way of inadvertence or otherwise. [*Kalpana Polytec India Ltd.* v *Union of India* (2001) 106 Comp Cas 558 (Cal)].

In exercise of power u/s 22, since final order passed results into civil consequences, order must be passed by observing principles of natural justice. [*Pino Bisazza Glass* (*P*) *Ltd.* v *Bisazza India* (2003) 43 SCL 666 (Guj)].

Provisions of sections 20 to 22 do not exclude right of a person adversely affected to maintain an action in passing off and adoption of a corporate name by a company is liable to be tested on the same principles as are applied to an action in passing off. Though sections 20 to 22 of the Act make provision for companies not to be registered with the undesirable names, change of name by company and rectification of the name of the company, these provisions do not exclude the right of a person adversely affected to maintain an action in passing off. Such action is founded on civil right of the aggrieved party having been wronged. Wherever there is a wrong, there is a remedy.

A company incorporated in 1993 in the name of *Montari Overseas Ltd.,* entered in the capital market with a public issue. Another company incorporated in 1983 in the name of Montari Industries Ltd., filed suit for mandatory injunction for direction to the defendant company to suitably change its corporate name so as to exclude therefrom the word 'Montari'.

The Court held that the plaintiff had made out a strong prima facie case for the grant of an ad interim injunction. Balance of convenience was in favour of the plaintiff. The plaintiff was sure to suffer an irreparable injury if not protected. It may be difficult to estimate the loss, which the plaintiff may suffer in the absence of ad interim relief. The defendant was restrained during the hearing of the suit for using the word 'Montari' or any other word deceptively similar with or likely to cause confusion that 'Montari' was a part of its corporate name. [*Montari Overseas Ltd.* v *Montari Industries Ltd.* (1996) 7 SCL 102 (Delhi)].

5. Change in the name shall not affect legal proceedings by or against the company

It is provided in section 23 that change of name in the company shall not affect any rights or obligations of the company. Any legal proceedings, which might have commenced in the former name, shall be continued with the new name. [*Pioneer Protective Glass Fibre* (*P*) *Ltd.* v *Fibre Glass Pilkington Ltd*. (1986) 60 Comp Cas 707 (Cal)].

Where a company has power to execute a decree in its old name, it has got a right even after change of name to execute decree in new name. [*D. Srinivasaiah* v *Vellore Varalakshmi Bank Ltd.* (1954) 24 Comp Cas 55 (Mad)] If name of company is changed after a decree is passed, decree can be executed in new name. [*F.S. Abdul Qayum* v *Manindra Land & Building Corpn. Ltd.* (1955) 25 Comp Cas 143 (All)].

6. Imposition of fresh stamp duty by Collector of Stamps

Only because name of lessee company was changed and consequent thereto supplementary lease agreement was executed, it could not be said that company under new name was totally different from company under old name and fresh transaction took place attracting payment of stamp duty. [*Prasad Technology Park* (*P*) *Ltd.* v *Sub-Registrar* (2006) 66 SCL 203 (SC)].

7. Special conditions to be complied with by Non-Banking Financial Company for change in name

As per guidelines issued by the Reserve Bank of India, the Non-Banking Financial Companies are required to seek approval of the Reserve Bank of India for change in their names reflecting to non-banking business to other business activities. Therefore, the Registrar of Companies shall require the "No Objection Letter" from the RBI before confirming availability of name desired by a company seeking change in its name.

Such companies are required to submit an application alongwith reason for change in name, copy of the Board resolution, auditors' certificate that the company has not accepted any deposit from the general public, future business plans, etc., to the Reserve Bank of India at their Regional Office, where the registered office of the company is situated. (Specimen of the application given in Appendix 10)

On obtaining the required "No Objection Letter" from the Reserve Bank of India, the same is required to be submitted to the Registrar for taking suitable decision for availability of name and change in the name of the company thereto.

8. Disclosures requires to be given by Listed Companies on change in name

SEBI *vide* Circular dated 26-4-1999 has provided that listed companies which change their name shall disclose the turnovers and income from such new activities is required to be submitted in quarterly/annual statements. They were further required to make such disclosures for a period of three years. SEBI has by its Circular dated 30-4-2004 (Appendix 2) stated that all listed companies which decide to change their names shall be required to comply with the following conditions:

(*a*) Atleast a period of one year should have elapsed from the last name change.

(*b*) Atleast 50% of its revenue in the last one year should have been accounted by the new activity.

(*c*) The new name alongwith the old name shall be disclosed through the websites of the concerned Stock Exchanges and also through the EDIFAR website for a continuous period of one year from the date of change.

Appendix 1

Department's clarification for use of abbreviated name

Circular No. H/93, dated 31-3-1993 issued by the Department of Company Affairs:

"I am directed to refer to Guideline No. 14A circulated *vide* this Department's Circular No. 27/1/87-CL.III, dated 27-5-1988 and replace the same as under:

"14A. Where the existing companies are stated and found to be well known in the respective fields by their abbreviated names, these companies may be allowed to change their names, by way of the abbreviation, with the prior approval of the Central Government. (power has been delegated to the Registrars of Companies)."

Change in name will also become necessary to delete or add the word "Private" to the name which does not require approval of the Central Government except that the approval of the "Central Government" will first be taken for conversion of a public company into a private company as discussed in the Chapter.

Appendix 2

Frequent Change of Names by Listed Companies[1]

1. Please refer to SEBI Circular No. SMDRP/POLICY/CIR-8/99 dated 26-04-1999 wherein it has been provided that companies which change their names suggesting any new line of business (including software business), shall disclose the turnover and income, etc., from such new activities separately in the quarterly/annual results required to be submitted/published in compliance with these clauses. It was further provided that companies which have changed their names after January 1, 1998 or change the name hereafter shall make such disclosures and shall continue to make these disclosures for a period of 3 years from the date of change in the name.

2. In addition to the above provisions, it has now been decided that all listed companies which decide to change their names shall be required to comply with the following conditions:

2.1 A time period of atleast one year should have elapsed from the last name change.

2.2 Atleast 50% of its revenue in the preceding 1 year should have been accounted by the new activity suggested by the new name.

2.3 The new name alongwith the old name shall be disclosed through the websites of the concerned Stock Exchange/s where the company is listed and also through the EDIFAR website for a continuous period of one year from the date of last name change.

3. The Stock Exchanges are advised to,—

3.1 Make necessary amendments to the relevant byelaws, rules, regulations and the listing agreement for the implementation of the above decision immediately.

3.2 Bring the provisions of this circular to the notice of the member brokers/clearing members and listed companies of the exchange and also the disseminate the same on the website.

3.3 Communicate to SEBI, the status of the implementation of the provisions of this circular in section II, item no. 13 of the Monthly Development Report for the month of May 2004.

4. This circular is being issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Appendix 3

Specimen of Board Resolution for conversion of the Limited Company into a Private Limited Company

RESOLVED THAT pursuant to the provisions of section 31 of the Companies Act, 1956 and subject to the approval of the ROC and the members at the General Meeting the name of the Company be changed from **KW Limited** to **KW Private Limited**.

FURTHER RESOLVED THAT Shri SK, the Managing Director of the Company be instructed to issue a notice of Extra Ordinary General Meeting to the members of the Company and others who are entitled to receive the same in order to obtain their approval for the above matter of conversion.

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1 Circular No. SEBI/MRD/Policy/AT/Cir-20/2004, dated 30-4-2004.

FURTHER RESOLVED THAT Shri SK, the Managing Director of the Company be and is hereby authorised to make an application to make an application to the Registrar of companies in e-Form 1B and to do all such acts, deeds and things as may be required to be done in this regard.

Appendix 3A

Specimen of notice to be published in newspaper

Notice is hereby given that members of the Company at their Extra Ordinary General Meeting held on xx.xx.xxxx, have passed a special resolution for the conversion of the Company **KW Limited** to **KW Private Limited** under the provisions of section 31 of the Companies Act, 1956. Anybody having objection for such conversion may raise their objection with an affidavit and supporting evidences, if any, with the Registrar of Companies Madhya Pradesh & Chhatisgarh with a copy of the same to Company at the Registered Office. The Registrar of Companies will proceed for issuance of certificate for change of name after expiry of 21 days from the date of this notice.

For, KW Limited

Place:
Date: DIRECTOR

Appendix 4

Specimen of Special Resolutions

I. Special resolution for conversion of private limited company into public company

RESOLVED THAT pursuant to the provisions of section 31, 44 and other applicable provisions of the Companies Act, 1956 the status of the Company be and is hereby converted from **PRIVATE LIMITED into PUBLIC LIMITED** Company.

FURTHER RESOLVED THAT pursuant to the provisions of the Companies Act, 1956 the name of the Company be and is hereby changed from **KW PRIVATE LIMITED** to **KW LIMITED** by deletion of the word 'Private' before the word Limited in the name of the Company and necessary corrections in the name Clause of the Memorandum And Articles of Association and all such other papers, documents and matters be made to give effect of the changed name accordingly.

II. Special resolution for adoption of new set of articles

RESOLVED THAT the a new set of Articles of Association incorporating the provisions applicable to the Public Limited Companies as placed before the Meeting be and is hereby substituted and adopted in the place of the existing Articles of Association of the Company.

Explanatory statement

Item No. …. To …

The Company was incorporated on 7th Sept. 1987 as a Private Limited Company which put some restrictions of the Company and limiting its scope for its working. The Board of directors of the Company considered that looking into the expanded business activities the Company should be converted into a Public Limited Company to get confidence of the public as a whole.

As per the provisions of Section 21, 31, 44, and other applicable provisions of the Companies Act, 1956 consent of the Members is required by way of Special Resolution to convert the Company from Private Limited to Public Limited. Therefore your Directors recommend the resolution for approval as a Special Resolution as set out under item no. … to … to of the Notice of the Meeting.

Item No. ….

The existing Articles of Association of the Company are limiting the working of the Company as the Articles includes the clause which are restricting the operations of the Company including therein the restrictive provisions of section 3(1)(*iii*) and other provisions of the Companies Act, 1956. In view of the change in the status of the Company into the Public Limited and to incorporate the provisions of the Companies Act, 1956, your directors proposes to substitute the set of the existing Articles of Association with the new set of the Articles of Association.

As per the provisions of section 31 and other applicable provisions of the Companies Act, 1956 consent of the Members is required by way of Special Resolution to alter or adopt a new set of Articles of Association of the Company. Therefore, your Directors recommend the resolution for approval as a Special Resolution as set out under item….

A copy of the amended Memorandum of Association and new set of Articles of Association along with the existing Articles of Association of the Company is available for inspection, which can be inspected at the Registered Office of the Company during working hours on any working day.

III. Special resolution for change of the status of the company from public limited to private limited

RESOLVED THAT pursuant to the provisions of section 31 of the Companies Act, 1956 and other applicable provisions, if any and subject to the approval of the Central Govt. (Registrar of Companies), the consent of the Company be and is hereby accorded to convert the Company from 'Public Limited' to 'Private Limited' and consequently the name of the company be changed from **KW LIMITED** to **KW PRIVATE LIMITED** by inserting the word 'PRIVATE' before the word 'LIMITED', where as appears in the Articles of Association of the Company.

Explanatory statement

Item No. …

As the members are aware that the Company was originally incorporated on 25th Oct., 1988 as a Private Limited company and thereafter it has converted by passing special resolution passed by the members on 3rd Feb., 1995 as a Public Limited Company and a fresh certificate of registration to that effect was given by the Registrar on 12th Dec. 1996.

Your Board of directors considered that since there is no involvement of public in the shareholding or management of the Company, it would be appropriate to convert the Company again in the original shape as the Private Limited Company to avoid unnecessary formalities and to obtain privileges which are available to the Private Limited Companies which would help the management to carry out its affairs efficiently.

In terms of the provisions of Companies Act, 1956 the conversion may only be made with the approval of the Registrar of Companies. The proposal would involve change in the name of the Company by inclusion of the word 'Private' and incorporation of the restrictive provisions contained in section 3(1)(*iii*) of the Companies Act, 1956 and alteration of the Articles suitably.

The Directors of your company recommend the adoption of the said Special Resolution as set out in Item No. .. of the notice in the best interest of the Company. All the material documents and corrected copies of the Memorandum & Articles of Association of the Company are available for inspection during the business hours till the date of the Meeting.

None of the Directors of your Company are concerned or interested in the proposed resolution except as a Shareholder of the Company.

Item No. ….

The proposal to change the name of the Company would also involve the inclusion of the restrictions stated in section 3(1)(*iii*) of the Companies Act, 1956 in the Articles of Association of the Company.

The alteration in Articles of Association can be done only by passing a Special Resolution in the general meeting. The resolutions set out in item no. .. as Special Resolution for approval by the members in terms of section 31 of the Companies Act, 1956 and the Board thus recommends this Resolution for members approval.

Draft amended copy of the Memorandum and Articles of Association of the Company is available for inspection for members till the date of the meeting.

None of the directors are concerned or interested in this Special Resolution except as a member to the extent of their shareholdings.

Appendix 5

Specimen of e-Form 1A

Application Form for Availability or Change of Name

[Pursuant to sections 20 and 21 of the Companies Act, 1956]

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

1. *Application for

	Incorporating a new company	√	Changing the name of an existing company

Part A : Availability of name

2. (*a*) *Name of applicant
   (*b*) *Occupation
   (*c*) *Address Line I
   Line II
   (*d*) *City
   (*e*) *State
   (*f*) *Country
   (*g*) *Pin code
   (*h*) *e-mail ID
   (*i*) *Phone
   (*j*) *Fax

3. Details of promoters

*(*i*) Name of promoter	
*(*ii*) Name of promoter	
(*iii*) Name of promoter	
(*iv*) Name of promoter	
(*v*) Name of promoter	
(*vi*) Name of promoter	
(*vii*) Name of promoter	

4. *Name of the state in which the proposed company is to be registered

5. *Name of the Registrar of Companies in which the proposed company is to be registered

6. *State whether the proposed company is public or private

	Public		Private

7. Proposed name of the company (Please give 6 names in order of preference)

(*a*)*	AFS PRIVATE LIMITED
(*b*)	AFS MANAGEMENT PRIVATE LIMITED
(*c*)	ARPIT MANAGEMENT SERVICES PRIVATE LIMITED
(*d*)	AFS CONSULTANTS PRIVATE LIMITED
(*e*)	ARPIT CONSULTANTS PRIVATE LIMITED
(*f*)	ARPIT TECHNICAL CONSULTANTS PRIVATE LIMITED

8. State the significance of the key or coined word(s), if any, in the proposed name(s) (in brief)

(*a*)*	AFS = ARPIT FINANCIAL SERVICES
(*b*)	AFS= ARPIT FINANCIAL SERVICES
(*c*)	
(*d*)	AFS= ARPIT FINANCIAL SERVICES
(*e*)	
(*f*)	

9. *Main objects of the proposed company (If the objects include banking, stock exchange, mutual fund, etc., a copy of the in-principle approval of the appropriate authority should be enclosed)

10. *Whether the proposed name(s) is in consonance with the principal objects

√	Yes		No

11. *Whether the proposed company is a government company

	Yes	√	No

12. *Particulars of director(s) (specify information of two directors in case the proposed company is a private company or specify information of three directors in case the proposed company is a public company)

(*i*) *Director identification number (DIN)

Name

Husband's/Father's name

*Nationality		*Occupation	

If already a director or promoter of a company(s), specify corporate identity number (CIN) of such company(s)

Director	Promoter	CIN

* Date of birth (DD/MM/YYYY)		Income-tax permanent account number (PAN)	
Voter identity card number		Passport number	

Others (specify)

Permanent residential address

(*a*) * Address Line I

Line II

(*b*) *City

(*c*) *State

(*d*) *Country

(*e*) *Pin code

(*f*) Phone

(*g*) Fax

(*h*) e-mail ID

Whether present residential address Is same as the permanent residential address		Yes		No

(a)* Address Line I
Line II
(b)*City
(c)*State
(d)*Country
(e)*Pin code
(f)Phone
(g)Fax

(ii) * Director identification number (DIN)

Name

Husband's/Father's name

*Nationality		*Occupation	
If already a director or promoter of a company(s), specify corporate identity number (CIN) of such company(s)			
Director	Promoter	CIN	
* Date of birth (DD/MM/YYYY)		Income-tax permanent account number (PAN)	
Voter identity card number		Passport number	

Others (specify)

Permanent residential address

(a) * Address Line I

Line II

(b) *City

(c) *State

(d) *Country

(e) *Pin code

(f) Phone

(g) Fax

(h) e-mail ID

*Whether present residential address is same as the permanent residential address

	Yes		No

(a) * Address Line I

Line II

(b) *City

(c) *State

(d) *Country

(*e*) *Pin code

(*f*) Phone

(*g*) Fax

(*h*) e-mail ID

(*iii*) *Director identification number (DIN)

Name

Husband's/Father's name

*Nationality		*Occupation	

If already a director or promoter of a company(s), specify corporate identity number (CIN) of such company(s)

Director	Promoter	CIN

* Date of birth (DD/MM/YYYY)		Income-tax permanent account number (PAN)	
Voter identity card number		Passport number	

Others (specify)

Permanent residential address

(*a*) * Address Line I

Line II

(*b*) *City

(*c*) *State

(*d*) *Country

(*e*) *Pin code

(*f*) Phone

(*g*) Fax

(*h*) e-mail ID

*Whether present residential address is same as the permanent residential address

	Yes		No

Permanent residential address

(*a*) * Address Line I

Line II

(*b*) *City

(*c*) *State

(*d*) *Country

(*e*) *Pin code

(*f*) Phone

(*g*) Fax

13. * Proposed authorised capital:

14. (*a*) *Whether the proposed name(s) are based on a registered trade mark or is the subject matter of an application pending for registration under the trade marks Act.

	Yes	√	No

(*b*) If yes, furnish particulars of trademark or application

Part B: In case of change of name

15. (*a*)	*CIN of company	U15205MP1985PTC002105
(*b*)	Global location number (GLN) of company	
16. (*a*)	Name of company	ASN FINANCIAL SERVICES PRIVATE LIMITED
(*b*)	Address of the registered office of the company	30, WAREHOUSE ROAD, INDORE (M.P.)

17. *Reasons for change in name

The Company proposes to change its name to AFS Financial Services to reflect the abrivative names of its promoters in the name of the company; it was advised by the astrologist that if the names of the promoters are incorporated in the name of the company, it can give better financial results.

Attachments

1	In case of change of name of an existing company, a copy of board resolution	Attach
2.	In case there is a logo associated with the trade mark then image of the logo to be attached	
3.	If change is due to a direction received from the Central Government, then a copy of such direction	
4.	Optional attachment(s) - if any.	
	List of attachment	

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete, and the proposed name does not infringe the trademark rights of any entity or person.

I have gone through the provisions of the Companies Act, 1956, the rules and guidelines framed there under in respect of availability of name.

√ I have been authorised by the Board of directors' resolution dated 15/05/2005 DD/MM/YYYY) to sign and submit this application.

- I am authorised by the promoters to sign and submit this application.

To be digitally signed by

Applicant or managing director or director or manager or secretary of the company	**RAJIV TUTEJA**

For office use only:

Digital signature of the authorising officer

This e-Form is hereby approved	
This e-Form is hereby rejected	

Appendix 6

Specimens of Special Resolutions

I. Specimen of special resolution for change in the name of the company

RESOLVED THAT pursuant to the provisions of section 21 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 if any, and subject to the availability of name and the approval of the Registrar of Companies the name of the company be changed from **ASN FINANCIAL SERVICES PRIVATE LIMITED** to **AFS FINANCIAL SERVICES PRIVATE LIMITED** and the Name of Gupta Finvest Private Limited, wherever it appears in the Memorandum, Articles, documents, etc. be substituted by the new name 'SMB Hotels and Resorts Private Limited' in due course.

II. Specimen of special resolution for amendment in Clause No. I of Memorandum of Association for change in the name of the company

RESOLVED THAT Clause I of the Memorandum of Association of the Company be substituted by the following:

'The Name of the company is **AFS FINANCIAL SERVICES PRIVATE LIMITED**'

III. Specimen of special resolution for amendment in Clause No. 3 of Articles of Association for change in the name of company

RESOLVED THAT Clause 3 of the Articles of Association of the company be substituted by the following:

"The Company" means **AFS FINANCIAL SERVICES PRIVATE LIMITED**

Appendix 7

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 | xxxxxxxxxxxxx

   (*b*) Global location number (GLN) of company |

2. (*a*) Name of the company | ASN FINANCIAL SERVICVES PRIVATE LIMITED

   (*b*) Address of the registered office of the company

   30, WAREHOUSE ROAD, 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

   Change in the name of the Company from ASN FINANCIAL SERVICES PRIVATE LIMITED to AFS FINANCIAL SERVICES PRIVATE LIMITED

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

   21

(*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

Amendment in the Clause I of the Memorandum of Association for change in the name of the Company from ASN FINANCIAL SERVICES PRIVATE LIMITED to AFS FINANCIAL SERVICES PRIVATE LIMITED

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

16

(*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

Amendment in the Clause III of the Articles of Association for change in the name of the Company from ASN FINANCIAL SERVICES PRIVATE LIMITED to AFS FINANCIAL SERVICES PRIVATE LIMITED

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

31

(*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	Attach	
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 M/s ASN FINANCIAL SERVICES PRIVATE LIMITED 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 8

Specimen of e-Form 1B

Application for approval of the Central Government for change of name or conversion of a public company into a private company

[Pursuant to section 21 or 31(1) of the Companies Act, 1956]

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

1. * Purpose of application

   ✓ Change of name ○ Conversion of a public company into a private company

2. (*a*) *Corporate identity number (CIN) of company xxxxxxxxxxx

   (*b*) Global location number (GLN) of company

(*c*)	Reference to Registrar of Companies (ROC) regarding approval for availability of name (application in case of change of name)	XXXXXXXXXX
3. (*a*)	Name of company	ASN FINANCIAL SERVICES PRIVATE LIMITED
(*b*)	Address of the registered office of the company	30, WAREHOUSE ROAD INDORE (M.P) 452001
4.	Proposed name of the company	AFS FINANCIAL SERVICES PRIVATE LIMITED

5. *Reason(s) for change of name or conversion of a public company into a private company

The Company proposes to change its name to AFS Financial Services to reflect the abbreviate names of its promoters in the name of the company; it was advised by the astrologist that if the names of the promoters are incorporated in the name of the company, it can give better financial results.

6. Particulars of filing Form 23 with Registrar of Companies (RoC)

(*a*) * Reference number of Form 23

(*b*) *Date of Passing the special resolution 30/12/2006 (DD/MM/YYYY)

(*c*) *Date of filing Form 23 03/01/2007 DD/MM/YYYY)

7. (*a*) Number of members present at the meeting where the special resolution was passed for change of name or conversion and number of shares held by them

(*i*) *Number of members 7

(*ii*) *Number of shares held by them 10000

(*b*) Number of members who voted in favour of change of name or conversion and number of shares held by them

(*i*) *Number of members 7

(*ii*) *Number of shares held by them 10000

(*c*) Number of members who voted against the change of name or conversion and number of shares held by them

(*i*) *Number of members 0

(*ii*) *Number of shares held by them 0

Attachments

1.	Minutes of the member's meeting	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.

☐√ The company has obtained all the mandatory approvals from the concerned authorities and departments in respect of change of name of the company.

☐ The company has obtained all the mandatory approvals from the concerned authorities, departments and substantial creditors in respect of the conversion of a public company into a private company.

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 | ABC |

CERTIFICATE

It is hereby certified that I have verified the above particulars from the books of account and records of | ASN FINANCIAL SERVICES PRIVATE LIMITED | and found them to be true and correct.

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Appendix 9

Specimen of e-Form 24A

For Approval for Rectification in the Name of a Company

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

XXXXXXXXXXXXXX

(*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 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 XXXXXXXXXXXX

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

6. Date of annual general meeting (AGM) 30/12/2006 (DD/MM/YYYY)

7. (*a*) Service request number of Form 23 A0123456

(*b*) Date of filing Form 23 03/01/2007 (DD/MM/YYYY)

(*c*) Date of passing special or ordinary resolution 30/12/2006 (DD/MM/YYYY)

8. *Details of application

ABC Industries Ltd. is the existing company registered in the year 1990 in the state of Madhya Pradesh, where as another company in the same name has been registered in the state of Gujarat in the year 2005, which is similar and damaging the image of the company in the mind of our valuable customers, banks and other entities.

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 there 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.	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.	
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.	
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.	
14.	Copy of ordinary resolution.	Attach
15.	Copy of Board resolution.	Attach
16.	Optional attachment(s)-if any	

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* (28/11/2006 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

Abha Jaiswal

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 9

Specimen of the Board Resolution for making an application to the Regional Director

RESOLVED THAT the consent of the Board be and is hereby given for making an application before Regional Director, Western Region, Mumbai under section 22 of the Companies Act, 1956 read with the Guidelines for Availability of Name for issuance of necessary orders for change in the name of M/s ABC Industries Limited.

RESOLVED FURTHER THAT Shri Ishan Jain, the Director and/or Ms.Abha Jaiswal the director of the Company be and are hereby severally authorised to appear before the Regional Director, Western Region and to submit application in the Form 24A and to give any, declaration, affidavit, confirmation, statements and to receive necessary orders or directions from the Regional Director for and on behalf of the Company.

Annexure 2 to Appendix 9

Specimen of Resolutions

I. Specimen of General Meeting Resolution for rectification of name of the Company u/s 22

RESOLVED THAT pursuant to the directions of the Central Government (powers delegated to the Regional Director) and in accordance with section 22 of the Companies Act, 1956, the name of the Company be changed from **………… LIMITED to ……… LIMITED** and that consequential amendments be made to the Memorandum of Articles of Association of the company.

Explanatory statement

The company was incorporated on .... *i.e.* six months ago. The Regional Director of the Department of Company Affairs has, vide his letter dated _____ intimated that there is one more company in existence with the name similar to that of our company. Therefore, in accordance with the provisions of section 22 of the Companies Act, 1956 the company has been directed to rectify its name. The availability of the new name as proposed in the resolution has already been confirmed by the Registrar of Companies.

The resolution is recommended for your approval by way of an ordinary resolution.

None of the Directors is in any way concerned or interested in the resolution.

Appendix 10

Specimen of letter to Reserve Bank of India for seeking no objection certificate for change in the name of the company

To,

General Manager
Department of Supervision
(Financial Companies Wing)
Reserve Bank of India
Bhopal (M.P.)

Sub: **Request for providing 'No Objection Letter for submission with the Registrar of Companies in the matter of change in the name and objects of the Company**

Dear Sir,

This has with reference to your letter No. DNBS. BPL. No. XXXX/XX.XX.XXX/01-2006, dated 23rd December, 2006. We would like to inform you that the company had already opted for stopping of NBFC business and deleting the business of NBFC from its main/ancillary objects clause of its Memorandum and Articles of Association.

It also proposes for providing in its main object clauses relating to carry the business of hotel, resorts and real estate business activities.

We are enclosing the followings:

1. A copy of Board resolution to the effect that the company would stop its NBFC business and delete it from its main/ancillary objects clause of its Memorandum and Articles of Association.
2. A certificate from the Statutory Auditor of the company indicating that the company does not hold public deposits.
3. Future business plans of the company.

We therefore request you to please grant us a 'No Objection Letter' and consent to amend the name and objects of the company and to engage in the proposed prospective business activities.

Thanking you
For, **GUPTA FINVEST PVT. LTD.**

DIRECTOR

Encl.: a/a

Annexure 1 to Appendix 10

Specimen of the Auditors' Certificate

CERTIFIED THAT M/S GUPTA FINVEST PVT. LTD. having its Registered Office at **33, Bhoj Marg, Free Ganj, Ujjain (M.P.)** as on the date of this certificate is not holding any public deposits as defined in para 2(1)(*xii*) of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 issued *vide* Notification No. DFC. 118/DG(SPT)-98, dated January 31, 1998 as amended.

For, ABC & ASSOCIATES

CHARTERED ACCOUNTANTS

Place: Ujjain — ABC

Date: 30th December, 2006 — PROPRIETOR

Annexure 2 to Appendix 10

Future Business Plan of the Company

The Company was incorporated on 12th June, 1995 with a main objects to carry on the business of Investment and Finance but it could not commence business activities as such for which the company was incorporated because, as per the requirement of RBI company has failed to apply on stipulated date.

Since the Company is not able to carry this work because of the RBI's guidelines, it has to shift the focus from the investment and finance to hotel, resorts and real estate.

The exercise is being made for the good business prospectus of the company.

For, **GUPTA FINVEST PVT. LTD.**

DIRECTOR

Annexure 3 to Appendix 10

Specimen of Resolution to be passed by the Board of Directors of the Company

I. For winding up the business of NBFC

RESOLVED THAT the consent of the Board of directors of the Company be and is hereby accorded for winding up its NBFC business activities w.e.f. 1st January, 2007.

II. To delete the business of NBFC from its main/ancillary object clause

RESOLVED THAT subject to the approval of the Reserve Bank of India, the Registrar of Companies and the members of the Company, the consent of the Board of directors of the company be and is hereby accorded to amend the Main and Ancillary object clause relating to the investment & finance business activities as covered under the RBI Act for NBFC by replacing it with the new Objects to carry on hotel, resorts and real estate and other activities.

III. For change of income & asset pattern

RESOLVED THAT the confirmation of the Board of directors of the Company be and is hereby given that the company would change its income and asset pattern which indicates Non Banking Financial status within the earliest possible time.

IV. For submission of audited balance sheet to the RBI

RESOLVED THAT the Board of directors of the Company be and hereby undertake and confirm that the company shall submit its Audited Balance Sheet & Profit and Loss Accounts along with the Directors' and the Auditors' Report thereon to the RBI from time to time.

V. Authority to delete the "Finvest" word from the name of the company

RESOLVED THAT subject to the approval of the Reserve Bank of India, the Registrar of Companies and members of the Company, the consent of the Board of directors of the company be and is hereby accorded to change the name of the company by deleting the word 'Finvest' from its name adding other suitable name relating to the proposed new business activities as may be made available by the Registrar of Companies, Madhya Pradesh.

VI. Authority to amend the existing objects and insert new objects

RESOLVED THAT subject to the approval of the Reserve Bank of India, the Registrar of Companies and the members of the Company, the consent of the Board of directors of the company be and is hereby accorded to amend the main and ancillary object clause relating to the Investment & Finance business activities as covered under the RBI Act for NBFC by replacing it with new objects to carry on hotel, resorts & real estate business activities.

VII. Authority to the director to deal with the RBI & ROC

RESOLVED THAT Shri NKG, Director of the Company be and is hereby authorised to submit a certified copy of the above said resolution along with the other relevant details to the RBI and the Registrar of Companies and to do all such acts, deeds and things as he may consider appropriate in the interest of the Company.

Chapter 2

Change in the situation of the Registered Office of a Company

Synopsis

Appendix 6	Specimen of e-Form 21
Appendix 7	Specimen of Board resolution for shifting of a Registered office from one state to another state
Appendix 8	Specimen of Special Resolution
Appendix 9	Specimen of Petition u/s 17(2) for shifting of registered office
Appendix 10	Specimen of the Notice to be published regarding filing of Petition before the Company Law Board/Central Government

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*E-Form Nos.*
1.	17	Special resolution and confirmation by Central Government required for alteration of memorandum.	18, 23 and 21
2.	17A	Special resolution and confirmation by the Regional Director for shifting the registered office within a state from the jurisdiction of one Registrar of Companies to another Registrar of Companies.	18, 23 and 21
3.	18	Alteration to be registered within 3 months	
4.	19	Effect of failure to register.	
5.	146	Registered office of a company.	
6.	147	Publication of name by a company.	

Every business entity has a principal place of business activities, which in case of partnership or other business form, is called its head office and in case of a company it is called its registered office. The address of the situation of the registered office is very important during the life of a company. The registered office indicates the office of the Registrar which keeps the records of the company and enables the law-enforcing authorities and the general public to approach the company at its registered office whenever the authorities or a member of public, anywhere in the world, find the need to contact the company or serve legal notices. A company is governed in accordance with the provisions of the Companies Act, 1956 therefore, it is mandatory for a company to keep the Registrar of Companies informed of the location of the registered office and changes thereto from time to time. The jurisdiction of the court shall also be determined according to the situation of the registered office of the company. Provisions relating to the registered office shall apply to all types of companies.

1. Location of the registered office of a new company

The State in which the registered office shall be situated has to be decided by the promoters at the inception of idea for incorporation of a company, since the application for availability of name is required to be submitted to the Registrar of Companies, in whose jurisdiction, the registered office shall be situated.

Section 146 of the Companies Act, 1956 provides that a company shall have its registered office in the State stated in the Memorandum from the day it begins to carry on business or by the 30th day after the date of its incorporation. The intimation shall be given to the Registrar in e-Form 18 (Appendix 1) alongwith the fees prescribed as per Schedule X to the Companies Act. In e-Form 18 the effective date of shifting/ establishment of the registered office, complete postal address, email address, alongwith name and address of the nearest police station with district and tehsil shall also be indicated properly.

As a general rule of prudence, a company whose shares are held by a large number of persons who are not tied by bonds of kinship, etc., should be located as far as possible in the premises not ordinarily occupied by managing directors or manager.

2. Requirement of submission of intimation for situation of registered office to the registrar

The intimation in e-Form 18 may be filed with the Registrar electronically within 30 days from the date of incorporation of a company. However, in practice the address of the registered office is being submitted along with other documents filed with the Registrar for incorporation of a company. In such case the 'Name availability reference number should be filed up and the address of the registered office cannot be given as the company is not registered as such.

3. Requirements of having a registered office of a company

The Registered Office of a company is an identical address for reorganization of its functions. It has the following purposes to serve:—

(*i*) for service of documents on a company or an officer thereof either personally or by a certificate of posting or by a registered post; [Section 51]

(*ii*) determination of jurisdiction of Court on a company;

(*iii*) determination of domicile of a company for all practical purposes;

(*iv*) determination of applicability of duty as per relevant Stamps Act for stamping on Memorandum of Association, Articles of Association, Share certificates and Debenture certificates, etc.;

(*v*) area limit for holding Annual General Meeting; [Section 166]

(*vi*) inspection of different registers and records as provided under the Companies Act;

(*vii*) place for deposit of proxies and other documents.

4. Service of documents on company at its registered office

Section 51 provides that any document may be served on a company or an officer thereof by sending it to the company or its officers at the registered office of the company by post under a certificate of posting or by registered post or by leaving it at its registered office.

5. Service of documents in the absence of a registered office

If a company has not provided the address of the registered office to the Registrar of Companies as required under the Act, in such situation documents served at an office or place used by the company for its business activities shall be considered as duly served.

6. Name and address of registered office of a company to be indicated on the outside of all its office premises

In terms of the provisions of section 147 of the Companies Act, every company shall have its 'name board' on the outside of its every office and business premises, in English and in the language of that region where such office is situated which shall also contain the address of its registered office. The name of the company and address of the registered office shall also be mentioned in its letterheads, bill heads, share certificates and all other documents used by the company from time to time.

7. Whether registered office in which shareholding is broad based can be located in managing director's residence[1]

In a particular case the registered office of a company was located at the residence of the managing directors. It was alleged that they had easy access to the company's cash balances and made unauthorised use of them. Besides, important registers like the register of members, minute books, transfer registers, etc., were also with easy access of persons-in-charge of the affairs of the company. While, *prima facie*, there is no objection in law to such an arrangement, it was clear from the facts of the case that the arrangements were not justified in locating the office at their residence. For, in this case, suspicion was aroused in the minds of the shareholders, many of whom had no confidence in the management.

As a general rule of prudence, a company whose shares are held by a large number of persons who are not tied by bonds of kinship, etc., should be located as far as possible in the premises not ordinarily occupied by managing directors or manager.

8. Jurisdiction in which case can be filed against company

In the case of *Hanuman Prasad Gupta v. Hiralal*, AIR 1971 SC 206; and *H.S. Jaya Ram v. Indian Credit and Investment Corporation of India Ltd.*, AIR 2000 SC 579, the Hon'ble Supreme Court held that

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1 Extracts from Third Annual Report on Working and Administration of Companies Act, 1956 — year ended 31st March, 1959.

while dealing with company matters, jurisdiction of the Court is to be determined only by examining the territorial jurisdiction of the Court where the Registered Office of the company is situated.

As per the provisions of section 10, the jurisdiction in company matters lies with the High Court where the company has its registered office. It is so necessary also for the reason that directors of a company may be prosecuted at hundreds of places, as in a given case, shareholders of the company may file complaints at different places throughout India. Sub section (3) further provides that for the purpose of jurisdiction to wind up companies, the expression 'registered office' means the place which has longest been the registered office of the company during the six months, immediately preceding the presentation of the petition for 'winding-up. [*Registrar of Companies vs. Kamal Infosys Ltd.* decided on 14.03.2005]

9. Penalty for failure to comply with the requirement

In case if a company commits default in submission of intimation to the Registrar for situation and change thereof in e-Form 18 as required under section 146 or for not keeping the name board as required under section 147 of the Companies Act, the company and its every officer who is in default shall be punishable with fine which may extend to Rs. 500 for every day during which the default continues.

10. Change in situation of Registered Office

The Board of directors of a company (public or private limited) may find it necessary to change the situation of the registered office from time to time in any of the following manners:—

(*a*) from one place to another place within the limits of the same city, town or village.

(*b*) to a place outside the local limits of the existing place but within the same State under the jurisdiction of the same Registrar of Companies.

(*c*) to a place from the jurisdiction of one Registrar to that of another Registrar within the same State.

(*d*) to a place in another State in India.

While the decision to shift the registered office of the company to another state being a domestic matter rests with shareholders, the company is the best judge of how to run its business more economically or conveniently or where to locate the registered office for efficient running of the business. [*Satyashree Balaji Wires & Cables* (*P*) *Ltd*., In re: (2006) 71 CLA 231 (CLB)].

10.1 Shifting of the registered office from one place to another place in the same city/town/village

It is a very simple procedure and can be implemented by the Board of directors of the company. (Specimen of the Board resolution given in Appendix 2) An intimation of the change shall be given to the Registrar electronically in e-Form 18 within 30 days of the date of such change.

It has been clarified by the Department of Company Affairs *vide* Circular No. 19, dated 26-6-1972 that where as a result of rapid urbanisation the local limits expand, the term "local limits" referred to above should be taken to mean both the "local limits" and the "postal limits" and where the two do not coincide the wider of the two. Furthermore, Hyderabad and Secunderabad shall be considered as the same place.

10.2 Shifting of the registered office to a place outside the local limits of the existing place, but within the same State under the jurisdiction of the same Registrar

In case if the Board of directors of a company proposes to shift the registered office to a place outside the "local limits" of the existing place within the same State, it shall require the prior approval of the members by passing special resolution in a general meeting of the company. Detailed steps to be taken are being described hereunder:—

(*i*) seek approval of the Board of directors, preferably at a Board meeting. At the same meeting the Board may consider and fix the date, venue and time for holding a general meeting to obtain the approval of the members by special resolution and the Board will also approve the notice of general meeting and explanatory statement to be sent to the members;

(*ii*) hold a general meeting and get the approval of the members by way of special resolution. (Appendix 3) A listed company shall get the approval of shareholders by postal ballot;

(*iii*) file certified copy of the special resolution alongwith the explanatory statement with the Registrar of Companies electronically in the e-Form 23 u/s 192 alongwith the filing fees as per requirement of Schedule X to the Act within 30 days from the date of the meeting;

(*iv*) file e-Form 18 within 30 days of the date of changing the registered office, electronically with the Registrar along with the fees as per the requirement of Schedule X to the Act;

(*v*) send three copies of the notice sent to members for a general meeting to the stock exchanges where the shares of the company are listed;

(*v*) give intimation of change in the situation of registered office to all the concerned and make necessary corrections in the name board, stationery and records of the company wherever it is required.

10.3 Shifting of registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar in the same State

This shifting amounts to shifting the registered office outside the local limits of the existing location and requires the prior approval of the company in general meeting by special resolution. Section 17A of the Companies Act, 1956 provides that the company must seek approval of the Regional Director of the Ministry of Company Affairs. Detailed steps to be taken are being described hereunder:—

(*i*) seek approval of the Board of directors, preferably at a Board meeting. At the same meeting the Board may consider and fix the date, venue and time for holding a general meeting to obtain the approval of the members by special resolution and the Board will approve the notice of general meeting and explanatory statement to be sent to the members;

(*ii*) hold a general meeting and get the approval of the members by way of special resolution subject to confirmation by the Regional Director;

(*iii*) file certified copy of the special resolution alongwith the explanatory statement with the Registrar of Companies in e-Form 23 (Appendix 4) u/s 192 along with filing fees as per requirement of Schedule X to the Act within 30 days from the date of the meeting;

(*iv*) file an application in e-Form 1AD for obtaining confirmation of the Regional Director for change in the situation of registered office of the company within a State from the jurisdiction of one Registrar to the jurisdiction of another Registrar. The application has to be submitted with the prescribed fee as per Rules. The Regional Director shall communicate his confirmation within 4 weeks from the date of receipt of application for such change; (See Appendix 5 for Rules and Appendix 2 of Chapter 2 of Part III for Specimen of e-Form 1AD)

(*v*) file a certified copy of the confirmation order obtained from the Regional Director to the Registrars of Companies in e-Form 21 with the prescribed fee as per Schedule X to the Act, within 2 months from the date of order communicated to the company; (Appendix 6)

(*vi*) file e-Form18 electronically within 30 days of the date of changing the registered office with both the Registrars alongwith the fees as per requirement of Schedule X to the Act;

(*vii*) give intimation of change in the situation of registered office to all the concerned and make necessary corrections in the name board, stationery and records of the company wherever it is required;

(*viii*) the Registrar shall issue a certificate indicating new Corporate Identification No. (CIN) to that effect and thereafter the company shall require to file all the documents with the Registrar of Companies, in whose jurisdiction, the registered office of the company has been situated.

10..4 Shifting of the registered office to another State

A company may, by special resolution, alter the provisions of its Memorandum so as to change the place of its registered office from one State to another so far as may be required to enable it as provided in section 17 of the Companies Act, 1956 as given hereunder:—

(*a*) to carry on its business more economically or more efficiently;

(*b*) to attain its main purpose by new or improved means;

(*c*) to enlarge or change the local area of its operations;

(*d*) to carry on some businesses which under the existing circumstances may conveniently or advantageously be combined with the business of the company;

(*e*) to restrict or abandon any of the objects specified in the Memorandum;

(*f*) to sell or dispose of the whole, or any part, of the undertaking, or of any of the undertakings, of the company; or

(*g*) to amalgamate with any other company or body of persons.

For change in the situation of the registered office from one State to another shall require the confirmation of the Company Law Board [Powers transferred to the Central Government vide the Companies (Second Amendment) Act, 2002] as it shall consider the alteration in the situation of the registered office clause in the Memorandum of Association of the company as per provisions of section 17 of the Companies Act, 1956. A meeting of the Board of directors will be called and held to accord approval to the following action:—

(*i*) seek approval of the Board of directors, preferably at a Board meeting. At the same meeting the Board may consider and fix the date, venue and time for holding a general meeting to obtain the approval of members by special resolution and the Board will approve the notice of the general meeting and explanatory statement to be sent to the members; (Specimen of the Board resolution given in Appendix 7)

(*ii*) hold a general meeting and get the approval of the members by way of special resolution subject to confirmation by the Company Law Board/Central Government; (Specimen of the resolution given in Appendix 8)

(*iii*) file certified copy of the special resolution alongwith the explanatory statement with the Registrar of Companies in e-Form 23 under section 192 alongwith filing fees as per requirement of Schedule X to the Act within 30 days from the date of the meeting;

(*iv*) authorise severally a Director or the Company Secretary to take steps to move a petition to the Company Law Board/Central Government and take all actions in the matter including appointing advocate to assist the company.

11. Objection to the shifting of registered office

In *re, Perfect Refractories* (2005) 68 CLA 72 CLB objections against shifting of the Registered Office unanimously approved by members at the General Meeting raised subsequently and without stating any reason as to how the shifting would be prejudicial to the interest of objecting shareholders.

It was contended that in Annual General Meeting, the approval of shareholders was forcibly taken for shifting of the Registered Office and the reasons given by the company for shifting were not satisfactory. Further, on perusal of the minutes of Annual General Meeting, the Chairman had recorded that proposal to shift the Registered Office was unanimously approved by the shareholders. The objectors neither in their objection memo nor during hearing indicated as to how the shifting of the Registered Office would be prejudicial to the interests of the company or the shareholders. Any reservation on the contents of the Explanatory Statement should have been raised at the time the proposal was considered in the Annual General Meeting.

In accordance with section 194 of the Companies Act, 1956, the minutes of the meeting signed by the Chairman of the said meeting in terms of section 193, shall be the evidence of the proceedings recorded therein. The objectors being the shareholders cannot now object to the shifting of the Registered Office. Accordingly, the objections raised by the Shareholders were liable to be rejected. The Company Law Board confirmed the alteration in the memorandum of Association of the Company to shift the Registered Office of the Company with the condition that the interest of no Employee is adversely affected.

12. Procedure for moving petition before the Company Law Board/Central Government

12.1. Petition to the Company Law Board/Central Government

The Petition in Form 1 shall be prepared as prescribed in CLB Regulations and presented to the Company Law Board/Central Government. The petition shall be in writing, typewritten or printed on one side of full-scale size paper in double space. (*See* Specimen of the Petition in Appendix 9) One copy of the petition u/s 17 shall be served on the concerned Registrar of Companies. In case of petition u/s 17 by a company licensed u/s 25 the copy of the petition shall also be served upon the Regional Director.

12.2. Serve a copy of petition to the concerned Registrar of Companies

A copy of the petition u/s 17 shall be served to the concerned Registrar of Companies and the acknowledgement of the Registrar shall be attached to the petition.

12.3. Requirement of an affidavit

The petition under section 17 shall be accompanied by an affidavit on non-judicial stamp paper of an appropriate value, duly verified before any Court Judge or person lawfully authorised to take and receive affidavits. (*See* section 558 of the Act and Rule 18 of Court Rules).

12.4. Publication of a notice on petition u/s 17

At least one month before presenting a petition u/s 17, the company is required to publish a general notice in a newspaper of the regional language of the State and in English in a daily English newspaper circulating in the State. The notice shall contain the substance of the petition and state that any person whose interest is likely to be affected by the proposed alteration of the Memorandum may intimate to the Company Law Board/Central Government, within 21 days of the publication of the notice, the nature of his interest to be affected by the said petition and the grounds of his opposition with a copy to the company at the registered office. (Appendix 10)

12.5. List of creditors and debenture holders

The petition under section 17 shall contain the number of creditors and the total amount due to them made up to a date within two months before filing the petition supported by an affidavit duly signed by the secretary of the company, if any, and not less than two directors, one of whom shall be the managing director, where there is one and shall file such affidavit to the effect that they have made a full enquiry into the affairs of the company and have formed the opinion that the list of creditors and debenture holders kept for inspection is correct, the debts or claims payable on a contingency as shown in the list are proper estimates of the values of such debts borne out by the books and records of the company and that there are no other debts of or claims against the company to their knowledge. The same shall also be made available at the registered office for inspection.

12.6. Documents to be attached to the petition

The documents that are to be attached to the petition have been enumerated as under:—

(*a*) Certified copy of the amended Memorandum and Articles of Association.

(*b*) Copy of the notice calling for the meeting with explanatory statement.

(*c*) Copy of the special resolution passed by the members of the company.

(*d*) Copy of the minutes of the meeting at which the special resolution was passed.

(*e*) Affidavit verifying the petition.

(*f*) Bank draft/Challan evidencing payment of fee.

(*g*) Memorandum of appearance with copy of the Board resolution or the executed *vakalatnama*, as the case may be.

(*h*) Copy of the latest audited balance sheet and profit & loss account of the company, auditors' and the directors' report.

(*i*) Certified copy of the Creditors' list.

(*j*) Affidavit proving dispatch and service of notice together with newspaper cuttings.

(*k*) Acknowledgement receipt from the Registrar of Companies/Regional Director.

12.7. Fees payable

The fees as per rules to be paid alongwith the petition. The fees payable under existing CLB Regulation is Rs. 1,000 which may be paid by means of a Bank draft drawn in favour of Pay and Accounts officer, Ministry of Company Affairs, New Delhi/Mumbai/Kolkatta/Chennai.

12.8. Consideration of interest of creditors before confirming petition

Before confirming the petition for alteration, the Company Law Board/Central Government is statutorily required to take into account the interest of creditors. The Company Law Board/Central Government will give due attention to objections received from any creditor. The Central Government also has the powers to direct that the consent of creditors should be obtained in writing or his debt or claim should be discharged.

12.9. Consideration of objections of the Registrar of Companies

The Company Law Board/Central Government shall give an opportunity to hear the Registrar of Companies in person and shall give full consideration of his views.

12.10 Serve notice to the Chief Secretary of the State Government or Union Territory

The company shall also serve a notice together with copy of the petition by registered post to the Chief Secretary of the State or Union Territory concerned and the views of the concerned Government authorities will be taken into account by the Company Law Board/Central Government.

12.11 Order of the Company Law Board/Central Government

After hearing the parties including the petitioner, the Company Law Board/Central Government shall take a final decision. The order under section 17 is discretionary and wide power is given to the Company Law Board/Central Government to decide the petition to confirm the alteration.

12.12 Filing of Order with the Registrar of Companies — Section 18

The company shall within three months from receiving the order (the time for obtaining copy of the order does not come within the period of three months, *see* section 640A), file with the Registrar of Companies in e-Form 21 alongwith the prescribed filing fees, the following documents:—

(*i*) Certified copy of the order of the Company Law Board/Central Government.

(*ii*) Printed and certified updated copy of the Memorandum as altered in the e-Form 62 electronically together with the adequate filing fee as prescribed under Schedule X of the Companies Act, 1956.

12.13 Certificate from the Registrar — Section 18

On filing of the order with the Registrar, it shall within one month from the date of filing of the documents, register the same and shall issue a certificate to that effect after registration of order. The certificate shall be conclusive evidence that all the requirements of the Companies Act, 1956 with respect to the alteration have been complied with.

12.14 Extension of time by the Central Government for filing of order with the Registrar

In case if the extension of time is sought for filing of order of the Company Law Board [Powers vested with the Central Government vide the Companies (Second Amendment) Act, 2002] with the Registrar beyond the period of three months, the company shall move the Company Law Board/Central Government before the expiry of three months as per section 18(1)(*b*).

In the case of *Shivalik Steels & Alloys Pvt. Ltd*. v *Registrar* of *Companies* in company petition No. 73-18(H)/91 — Company Law Board, dated 23-9-1991 case, an alteration was approved on 6-5-1986 but the company filed a certified copy of the order only on 1-10-1986. The company filed the other document only on 7-5-1987. At the instance of the Registrar, the company moved the CLB (now the Central Government) for extension of time. The CLB therefore, held that in view of the provisions of section 19(2) read with section 118(4) it was not possible to revive the order and the petition stood dismissed.

The power to grant extension of time can be exercised by the Company Law Board/Central Government only when the company makes an application either before the expiry of three months or before expiry of four months as per section 18 or 19 respectively.

In this connection the Department of Company Affairs *vide* its Circular No. 6616/31/4/78-Cl.V., dated 17-4-1978 conveyed the view that the filing of the order for shifting of registered office comes within the purview of section 18(3) which does not prescribe any time-limit. This view is on the basis that sub-section (3) of section 18 is independent of sections 18(1) and 18(4). However, this view does not take into account the provisions of section 19.

Appendix 1

Specimen of e-Form 18

Notice of situation or change of situation of registered office

[Pursuant to section 146 of the Companies Act, 1956]

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

1. *This form is for ○ New Company ○✓ Existing Company

2. (*a*) *Corporate identity number (CIN) of company or Form 1A reference number | XXXXXXXXXXX

(*b*) Global location number (GLN) of Company |

3. (*a*) Name of company | AFS PRIVATE LIMITED

(*b*) Address of the registered office of the company | 15A, PREM NAGAR, INDORE (M.P.) 452001

4. Notice is hereby given that

(*a*) The address of the registered office of the company with effect from

○√ 01/01/2007 (DD/MM/YYYY) is

○ The date of incorporation of the company is

*Address	Line I	408, SILVER ARK PLAZA
	Line II	20A, NEW PALASIYA
*City		INDORE
*District		INDORE
*State		MADHYA PRADESH
*Country		IN
*Pin code		452001
*E-mail		abc@rediffmail.com

(*b*) The full address of the police station under whose jurisdiction the registered office of the company is situated

*Name		PALASIYA
*Address	Line I	A.B.ROAD
	Line II	NEW CPALASIYA
*City		INDORE
*State		MADHYA PRADESH
*Pin code		452001

Attachments List of attachments

1. 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.

☐ I am authorised 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 M/s

AFS PRIVATE LIMITED

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 2

Specimen of Board resolution for shifting of registered office from one place to another within the same city

RESOLVED THAT pursuant to the provisions of section 146 of the Companies Act, 1956 and any other provisions applicable, if any, the Registered office of the Company be and is hereby shifted from 15, Prem Nagar, Indore (M.P.) to 408, Silver Ark Plaza, 20A, New Palasia, Indore (M.P.).

FURTHER RESOLVED THAT Shri Ishan Jain, the Director of the Company be and is hereby authorised to file e-Form 18 with the Registrar of Companies and to take suitable action for the implementation of the above said decision of the Board.

Appendix 3

Specimen of members' special resolution for shifting of Registered Office from one place to another place outside the limit of the city

RESOLVED THAT pursuant to the provisions of section 146 of the Companies Act, 1956 and any other provisions applicable, if any, the Registered office of the Company be and is hereby shifted from Indore (M.P.) to Bhopal (M.P.).

Appendix 4

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	AFS FINANCIAL SERVICVES PRIVATE LIMITED
(*b*) Address of the registered office of the company	15, PREM NAGAR, INDORE (M.P.)

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

4. *Date of passing the resolution 31/12/2006 (DD/MM/YYYY)

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

6. Resolution

(*i*) (*a*) Subject matter of the resolution

Change in the address of the registered office of the Company from Indore (M.P.) to Ujjain (M.P.)

(*b*) Section of the Companies Act, 1956 under which resolution is passed 146

(*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

(*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

(*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	Attach	
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.

Ishan Jain

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of M/s AFS PRIVATE LIMITED

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 5

Rule 4BBA of the Companies (Central Government's) General Rules & Forms

4BBA. Change of registered office within the State.—(1) The company seeking confirmation from the Regional Director for shifting its registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State shall make an application in Form 1AD to the Regional Director alongwith a fee of Rs. 500.

(2) The Regional Director shall pass an order in writing confirming the change after giving necessary opportunity of being heard to the parties within four weeks from the date of receipt of application.

(3) The company shall file a copy of the confirmation order passed by the Regional Director with the concerned Registrar of Companies within two months from the date of the confirmation order and the Registrar shall make necessary changes in the register and transfer the records to the Registrar of Companies under whose jurisdiction the company has shifted its registered office.

Appendix 6

Specimen of e-Form 21

Notice of the Court or the Company Law Board order

[Pursuant to sections 17(1), 17(5), 79, 81(4), 94A (2), 102(1),107(3), 111(5), 141, 155, 167, 186, 391(2), 394(1), 397, 398, 445 and 481 of the Companies Act, 1956]

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

1. (*a*) *Corporate identity number (CIN) or Foreign company registration number of the company	xxxxxxxxxxxxx
(*b*) Global location number (GLN) of company	
2. (*a*) Name of company	ABC CONSULTANTS PVT. LTD.

(*b*) Address of the registered office or of the principal place of business in India of the company

406, 4TH FLOOR, SILVER ARK PLAZA, 20A, NEW PALASIYA, INDORE (M.P.)

3. (*a*) * Name of the court or Company Law Board	WESTERN REGION
(*b*) * Location	MUMBAI

4. * Date of passing the order 28/11/2006 (DD/MM/YYYY)

5. Date of issue of certified copy of order 14/12/2006 (DD/MM/YYYY)

6. (*a*) * Section(s) of the Companies Act under which order passed	17
(*b*) If others, mention	

Attachments

1.	Copy of court order or Company Law Board order.	Attach	
2.	Optional attachment(s) - if any	Attach	

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* 30/12/2006 (DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary (In case of an Indian company) or an authorised representative (In case of a foreign company) ISHAN JAIN

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Appendix 7

Specimen of Board resolution for shifting of a Registered office from one state to another state

The Chairman informed the Board that presently the Company's Registered Office is situated in the state of Madhya Pradesh. He further informed that since two directors of the company are based at Ahmedabad (Gujarat) so to carry on the business activities more economically and efficiently. Further that the Gujarat State is a very advance state in the industrialisation of business; therefore if the Registered Office of the Company is shifted at Gujarat, it shall also help to enlarge the area of its business operations.

The Board considered that in terms of the provisions of section 17 of the Companies Act, 1956, the registered office of the Company may be shifted from one state to another by way of approval of the member with special resolution and confirmation of the Company Law Board [powers being transferred to the Central Government vide the Companies (Second Amendment) Act, 2002].

The Chairman further informed that as the Company's securities are a listed with the recognised stock exchanges therefore, by virtue of section 192A read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, it is required to pass necessary resolution by means of Postal Ballot only. Therefore, it is required to send a notice to all the members along with the draft resolution explaining the reasons thereof, and requesting them to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the letter.

The Board considered and passed the following resolution unanimously:

RESOLVED THAT subject to the provisions of section 17, 146(2), 192A of the Companies Act, 1956 read with the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, and confirmation of the Company Law Board/Central Government, the consent of the Board of directors of the Company be and is hereby accorded for shifting of the Registered Office of the Company from the State of Madhya Pradesh to the State of Gujarat.

FURTHER RESOLVED THAT the notice alongwith the draft resolution and Explanatory Statement for conducting the Postal Ballot u/s 192A of the Companies Act 1956, as placed before the Board duly initialed by the Chairman for the purpose of identification be and is hereby approved and Shri SJ, the Director of the Company be and is hereby authorised to issue the notice as required under the above said Rules as applicable to the Company.

FURTHER RESOLVED THAT Shri SJ, Director of the Company be and is hereby authorised to file a copy of the Board Resolution along with the required calendar of events to the concerned Registrar of Companies as per requirement of the Rules.

FURTHER RESOLVED THAT Shri SJ, Director of the Company be and is hereby authorised for submission of the said notice to the Stock Exchange and for publication of an advertisement in the news papers specifying the date of completion of despatch of Postal Ballots.

Alternative Board resolution for an unlisted company

The Chairman informed the Board that presently the Company's Registered Office is situated in the state of Karnataka. He further informed that the Company's manufacturing and business activities are based at Indore in the state of Madhya Pradesh and all the business functions are carried from the factory premises at 179/2, Pipliya Rao, Indore (M.P.) and from the corporate office at 104, Shreenath Niketan, 29, Snehlataganj, Indore (M.P.) and there are no activities in the state of Karnataka as such where the registered office is situated. Moreover all the directors and members of the Company are also based at Indore (M.P.). Therefore, it is very difficult to co-ordinate the matters from Indore to discharge the statutory obligations related to the registered office.

And since the state of Madhya Pradesh is a very advance state in the industrialisation of business and has a potential market for the Company's product, therefore if the registered office of the Company is shifted to Madhya Pradesh, it shall help to carry on the business activities more economically and efficiently and also help to enlarge the area of its business operations.

The Board considered that in terms of the provisions of section 17 of the Companies Act, 1956, the registered office of the Company may be shifted from one state to another by way of approval of the members with special resolution and confirmation of the Company Law Board/Central Government.

The Board considered the matter and after due discussion passed the following resolution unanimously:

RESOLVED THAT subject to the provisions of section 17, 146(2) and confirmation of the Company Law Board/Central Government, the consent of the Board of directors of the Company be and is hereby accorded for shifting of the registered office of the company from the state of Karnataka to the state of Madhya Pradesh.

FURTHER RESOLVED THAT the notice of the Extra Ordinary General Meeting alongwith the Explanatory Statement as placed before the Board duly initialed by the Chairman for the purpose of identification be and is hereby approved and Shri RS, the director of the Company be and is hereby authorised to issue the notice to the members.

FURTHER RESOLVED THAT Shri RS and Shri VS, the directors of the Company be and are hereby authorised jointly and severally to sign the petition, application, affidavits and such other documents as may be necessary in relation to the said petition.

FURTHER RESOLVED THAT Shri DKJ, Practising Company Secretary, be and is hereby authorised to appear and represent the Company before the Company Law Board/Central Government in the matter of the petition to be filed with the Company Law Board/Central Government for its confirmation to the proposed alteration of the situation Clause of the Memorandum of Association and be and is hereby authorised to make such statements, furnish such information and do such things as may be necessary in relation to the said petition.

Appendix 8

Specimen of Special Resolution

RESOLVED THAT pursuant to the provisions of section 17 read with section 146(2) and section 192A and other applicable provisions, if any, of the Companies Act, 1956 and subject to the confirmation of the Company Law Board/Central Government the consent of the members of the Company be and is hereby accorded to shift the registered office of the Company from the state of Madhya Pradesh to the State of Gujarat.

FURTHER RESOLVED THAT the Clause No. II of the Memorandum of Association of the Company be and is hereby substituted by the following:

I. The Registered Office of the Company shall be situated in the State of Gujarat.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, the Board of Directors of the Company be and is hereby authorised to do all such acts, deeds, matters and things as it may in its absolute discretion deem necessary or desirable for and on behalf of the Company.

Explanatory Statement

The Board of directors at their meeting held on 1st Nov., 2006 has decided to shift the registered office of the Company from the state of Madhya Pradesh to the state of Gujarat. In view of that the majority of the directors of the Company are based at Ahmedabad (Gujarat), so to carry on the business activities of the Company more efficiently and smoothly. Since the Gujarat state is the most developed state in the Industry, trade and commerce, therefore the shifting of the Registered Office shall help in expansion of the business activities and capture the market of Gujarat and Maharashtra also. Therefore as a whole it would be in the interest of the Company, its members and general public to shift the Registered Office of the Company at Gujarat.

As per section 17 and 146(2) of the Companies Act, 1956 the registered office of the Company may be shifted outside the local limits of any city, town or village on the authority of the special resolution passed by the Company and subject to the confirmation of the Company Law Board/Central Government, therefore, it has become necessary to seek your consent by way of special resolution to give effect to such provision.

Your Board recommend to pass the above said resolution through the postal ballot process as per provisions of the section 192A of the Act read with the Companies [Passing of resolution by Postal Ballot] Rules, 2001.

Draft amended copy of the memorandum of Association has been placed at the Registered Office of the Company for inspection during the business hours till the close of the postal ballot process.

None of the Directors of the Company has any interest or concern in the resolution except as members of the company.

Alternative general meeting resolution for an unlisted company

RESOLVED THAT pursuant to the provisions of section 17 read with section 146(2) and other applicable provisions, if any, of the Companies Act, 1956 and subject to the confirmation of the Company Law Board/Central Government the consent of the members of the Company be and is hereby accorded to shift the registered office of the Company from the state of Karnataka to the state of Madhya Pradesh.

FURTHER RESOLVED THAT the Clause No. II of the Memorandum of Association of the Company be and is hereby substituted by the following:

'II. The Registered Office of the Company shall be situated in the State of Madhya Pradesh.'

FURTHER RESOLVED THAT Shri RS and/or Shri VS, the Directors of the Company be and are hereby authorised severally to sign the petition, application, affidavits and such other documents as may be necessary in relation and to file a petition before the Company Law Board/Central Government for and on behalf of the Company.

FURTHER RESOLVED THAT Shri YKJ and/or Shri DKJ, Practising Company Secretaries be and are hereby severally authorised to submit Memorandum of Appearance and to appear and represent the Company before the Company Law Board/Central Government in the matter of the petition u/s 17(2) of the Companies Act, 1956 to be filed with the Bench for their confirmation to the proposed alteration of the situation Clause of the Memorandum of Association and be and is hereby authorised to make such statements, furnish such information and do such things as may be necessary in relation to the said petition.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, the Board of Directors of the Company be and is hereby authorised to do all such acts, deeds, matters and things as it may in its absolute discretion deem necessary or desirable for and on behalf of the Company.

Appendix 9

Specimen of Petition u/s 17(2) for shifting of registered office

Original Petition No .... of 2007

BEFORE THE COMPANY LAW BOARD/CENTRAL GOVERNMENT

WESTERN REGION BENCH, MUMBAI

In the matter of: - The Companies Act, 1956 -- Section 17(2)

And

In the matter of: - ISE LIMITED

(a Company registered under the Companies Act, 1956 and having its Registered office at "Info House", 87, Saket Nagar, Indore, M.P.- 452 001)

.... Petitioner

DETAILS OF PETITION

1. Particulars of the Company:

(*a*) The Company above named, ISE LIMITED (hereinafter referred to as "the Company") was incorporated as a Public Company Limited by shares on 7th Day of February, 1994 (Seventh Day of February, One Thousand Nine Hundred and Ninety Four) under the provisions of the

Companies Act, 1956, by the name of ISE LIMITED. Certificate of Incorporation No. 10-xxxxx of 1994 was obtained from the Registrar of Companies, Madhya Pradesh, Gwalior (M.P.) (Certified True Copy of the Certificate of Incorporation annexed as Annexure – A1)

(*b*) The Registered Office of the Company is presently situated at Saket Nagar Indore-452001 in the state of Madhya Pradesh.

(*c*) Authorised share capital of the Company is Rs. 5,50,00,000 (Rs. Five Crores Fifty Lacs Only) divided into 55,00,000 (Fifty Five Lacs) Equity Shares of Rs.10 (Ten) each. The issued, subscribed and paid-up share capital of the Company is Rs. 2,50,00,000 (Rs. Two Crores Fifty Lacs Only) divided into 25,00,000 (Twenty Five Lacs) Equity Shares of Rs.10 (Ten) each. Out of that Rs. 50,00,000 (Rs. Fifty Lacs Only) due from the Shareholders as a calls in arrear.

(*d*) The main object for which the Company was incorporated are set out in clauses 1 and 2 of clause III of the Memorandum of Association of the Company. A Certified true copy of the Memorandum and Articles of Association of the Company is annexed hereto and marked as Annexure-A2).

(*e*) After incorporation, the Company could not commence its business activities. Due to change its product mix in 1994 and with increased capacity to have economies of scale, the various Government approvals took the Company long then expected and actual implementation could start by January 1995. The Company is presently setting up its project to manufacture dye intermediates such as Beta Napthol, Bon Acid, Gamma Acid, and its bye products with difference capacities.

2. Particulars of the petitioner:

The Company is the Petitioner.

3. Particulars of respondents:

There is no respondent.

4. Jurisdiction of the Bench:

The Registered Office of the Company is situated in the State of Madhya Pradesh. The petitioner declares that the matter of the petition is within the jurisdiction of the Central Government/Company Law Board, Western Region Bench, Mumbai.

5. Limitations:

The Petition is for shifting of the registered Office of the Company from the State of Madhya Pradesh to the State of Gujarat. Section 17 of the Companies Act, 1956 does not provide any time limit for filing the petition.

6. Facts of the case are given below:

(*a*) The Company is presently setting up its project to manufacture dye intermediates such as Beta Napthol, Bon Acid, Gamma Acid and its bye products with different capacities. After setting up the project, the Company is propose to export its 50% (Fifty Percent) of the production. Moreover, in the foreign market there is a very good demand of the Company's product.

(*b*) Since the company has the requisite infrastructure, and managerial capabilities to set up export sales office at Mumbai to manage its total export business as well as procurement of raw material as may be required. It will be convenient and economical to manage the operations of the Company if the Registered Office is shifted to Mumbai, in the State of Maharashtra.

(*c*) The Company has already acquired about 2000 Sq. feet (Two Thousand Square Feet) of office space in N. S. Road, Vile Parle, at Mumbai, in the State of Maharashtra. The office is well equipped with Telephones, Fax, Computers, and inter net communication facilities.

(*d*) The Company has all the requisite infrastructure, technical know-how, orders/agreements, suppliers, ready market for carrying on its business in the State of Maharashtra.

(*e*) Since the area of Administration functions of the Company will be mainly situated in the State of Maharashtra, it would be necessary and desirable to change its local area of its Administrative Office as well as Registered Office from the State of Madhya Pradesh to the State of Maharashtra, to carry on its business more economically and more efficiently, under the existing circumstances.

(*f*) A special resolution was duly passed in accordance with the provisions of Section 17 of the Companies Act, 1956 by means of Postal Ballot u/s 192A after due notice thereof as provided for in the Companies Act, 1956. (A certified true copy of the notice sent to the members along with Explanatory Statement is annexed hereto and marked as Annexure-A3.) The said special resolution is reproduced herein below:

> **RESOLVED THAT** pursuant to Section 17(1) of the Companies Act, 1956 and subject to the confirmation of the Company Law Board/Central Government the Clause II of the Memorandum of Association of the Company be amended with a view to change the Registered Office of the Company from the State of Madhya Pradesh to the State of Gujarat.

A certified true copy of the aforesaid resolution is annexed hereto as Annexure-A4.

(*a*) In pursuance of regulation 36(1)(*i*) of the Company Law Board Regulations, 1991, the Company has published the General Notices in Two newspapers viz., in Dainik Bhaskar, a Hindi daily in Hindi Language and in Free Press Journal, an English Daily, and Newspaper. (Copy of the news papers marked and annexed as Annexure-A5 & A6)

(*b*) Pursuant to regulation 36(1)(*ii*) of the Company Law Board Regulations, 1991, the Company has sent Notices to all its creditors as on .... As per the books and records of the Company, the total amounts due to.. (...) creditors, as on that date amounts to Rs. .... (A certified true copy of the list of Creditors is annexed hereto and marked as Annexure- A7.) An affidavit, verified by two Directors of the Company, in this regard, is annexed hereto and marked as Annexure-A8. An affidavit proving the dispatch of notice and publication of general notices along with the newspaper cuttings is also annexed hereto and collectively marked as Annexure-A9.

(*c*) In the premises, the Company states and submits that the Hon'ble Company Law Board/Central Government may be pleased to allow the shifting of the Registered Office of the Company from the State of Madhya Pradesh to the State of Gujarat.

(*d*) The instant application would not in any manner prejudicially affect the rights and interests of the shareholders and creditors of the Company.

(*e*) In the facts and circumstances of the instant case, it is just and equitable that the Company be allowed to shift its Registered Office from the State of Madhya Pradesh to the State of Gujarat, as prayed for.

(*f*) This petition is made bona fide and in the interest of justice.

7. Matters not previously filed or pending with any other court

The petitioner declares that it has not previously filed any application, writ petition or suit regarding the matter in respect of which this petition is being made before any Court of law or any other authority or any other Bench or Board and no such application, writ petition or suit is pending before any of them.

8. Relief(s) sought

In view of the facts mentioned in paragraph 6 (Six) above, the Petitioner prays for the following relief(s):

(*a*) That the alteration of the Memorandum of Association of the Petitioner Company, sought to be made by the Special Resolution set out in paragraph 6 (Six)(*f*) hereinabove, passed by means of Postal Ballot u/s 192A, so as to change its Registered Office from the State of Madhya Pradesh to the State of Gujarat, be confirmed.

(*b*) Such other or further Order or Orders be made as to this Hon'ble Bench of Company Law Board may deem fit and proper. The grounds for the aforesaid prayer have been fully explained in the paragraph 6 (Six) hereinabove.

Legal Provision:

Under section 17(2) of the Companies Act, 1956 shifting of Registered Office of the Company from one State to another State has been prayed for in this petition.

9. Interim Order, if any, prayed for:

None.

10. Particulars of the demand draft evidencing payment of fee for the petition made:

Demand Draft No. ... dated ... 2007 for Rs. ... (Rupees .... Only) drawn in favour of "Pay and Accounts Officer, Department of Company Affairs, ", payable at Mumbai is enclosed.

11. List of enclosure:

1. Certified true copy of the Certificate of Incorporation annexed as Annexure - A1.
2. Certified true copy of the Memorandum and Articles of Association of the Company is annexed hereto and marked as Annexure-A2.
3. Certified true copy of the notice for conducting the Postal Ballot along with draft special resolution and Explanatory Statement is annexed hereto and marked as Annexure-A3.
4. Certified true copy of the special resolution sanctioning the alteration in the Memorandum of Association is annexed hereto as Annexure-A4.
5. Copy of the newspapers marked and annexed as Annexure-A5 & A6.
6. Certified true copy of the list of Creditors is annexed hereto and marked as Annexure-A7.
7. Affidavit for verifying the list of Creditors.

Appendix 10

Specimen of the Notice to be published regarding filing of Petition before the Company Law Board/Central Government

BEFORE THE COMPANY LAW BOARD/CENTRAL GOVERNMENT

In the matter of section 17(4) of the Companies Act, 1956

AND

In the matter of ISE LTD.

having its registered office at 214, Chetak Center, Indore (M.P.)

(Petitioner)

Notice is hereby given that a petition under section 17 of the Companies Act, 1956, will be filed before Company Law Board/Central Government by the petitioner company for seeking confirmation of the alteration of Registered Office Clause *i.e.* clause II of the Memorandum of Association of the Company in terms of the special resolution passed on .... at the extraordinary general meeting of the petitioner Company to enable it to change the place of its registered office from the State of Madhya Pradesh to the State of Gujarat. Any person whose interest is likely to be affected by the proposed alteration in the Memorandum may intimate to the Company Law Board/Central Government within 21 days of the date of publication of this notice, the nature of interest and grounds of opposition, if any, to the petition. Objections, if any, should be supported by an affidavit and should be sent in original to the said Bench Officer, with a copy to the Petitioner at the registered office of the Company mentioned below.

Dated ....

For **ISE LTD.**

DIRECTOR

Registered Office

214, Chetak Center, Indore (M.P.)

Chapter 3

Alteration in the object clause

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*E-Form No.*
1.	13(1)(*d*)	Stating objects in Memorandum of Association.	
2.	17	Special resolution required for alteration in Object Clause for certain purposes.	
3.	18	Filing of special resolution passed and copy of the Memorandum of Association for alteration.	23
4.	19	Conditions to be fulfilled for commencement of any business stated in other objects by a company having share capital.	

As already introduced the object clause of the Memorandum of Association sets out the objects of the company and is the most important of all clauses. It indicates the extent of company's power and the sphere of its activities. It defines the limit of operations to be carried on by the company.

It is required to state separately the main objects, which the company will undertake on incorporation and the incidental or ancillary objects for the attainment of the main objects.

This implies that any business carried on by the company should be stated in the Memorandum of Association and the business activities not mentioned in the object clause of the Memorandum shall be *ultra vires* and therefore, void. (Doctrine of *Ultra Vires*). The object clause in the Memorandum should be stated in the following manner:—

(*a*) the main objects of the company to be pursued by the company on its incorporation;
(*b*) objects incidental or ancillary to the attainment of the main objects;
(*c*) other objects not included in (*a*) or (*b*) above.

1. Alteration in object clause

The Companies (Amendment) Act, 1996 has liberalised the procedure for alteration in the Object Clause of the Memorandum of Association of a company. Alteration in objects may be done by way of special resolution passed in a general meeting of the members of the company for the following purposes:—

(*a*) to carry on its business more economically or more efficiently;
(*b*) to attain its main purpose by new or improved means;
(*c*) to enlarge or change the local area of its operations;
(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
(*e*) to restrict or abandon any of the objects specified in the Memorandum;
(*f*) to sell or dispose of the whole, or any part, of the undertaking, or any of the undertakings of the company; or
(*g*) to amalgamate with any other company or body of persons.

Therefore, the alteration in object clause does not require confirmation of the Central Government. (Specimen of special resolution placed in Appendix 1).

2. Registration of Alteration of Memorandum

Section 18(1) of the Companies Act, 1956 provides that a company shall file a special resolution passed by the company in e-Form 23 electronically along with a certified copy of the altered Memorandum of Association and explanatory statement sent to the members for alteration in object clause within one month from the date of such resolution, with the Registrar of Companies.

The Registrar shall register the same and issue a certificate to that effect under his hand within one month from the date of filing of such document.

3. Certificate issued by the Registrar is conclusive evidence

As per provisions of section 18(2) of the Companies Act, 1956, the certificate issued by the Registrar to that effect shall be conclusive evidence that all the requirements of this Act with respect of alteration have been complied with and the Memorandum so altered shall be the Memorandum of Association of the company.

4. Consequences for failure to register the resolution

Consequences of failure to get the resolution for alteration registered with concerned Registrar of Companies are as under:—

1. Any alteration in the Memorandum of Association under section 17 shall not have any effect until it has been duly registered in accordance with the provisions of section 18. [Section 19(1)]
2. If the documents required to be filed with the Registrar of Companies under section 18 are not filed within the time allowed under that section, such alteration shall, at the expiry of such period, become void and inoperative. [Section 19(2)]

Appendix 1

Specimen of Special Resolutions for alteration in objects clauses

I. For alteration in the object clause

RESOLVED THAT subject to the provisions of section 17 of the Companies Act, 1956 and confirmation of the Registrar of Companies, the Clause III (A)1, 2, 3 and 4 of the Memorandum of Association of the Company be shifted to other Object Clause III(C) after the existing Clause 30 as Clause 31, 32, 33 and 34 of the Memorandum of Association.

II. For replacement of main object Clause No. III(A)

RESOLVED THAT subject to the provisions of section 17 of the Companies Act, 1956 and confirmation of the Registrar of Companies, Clause III(A)(II) of the Memorandum of Association of the Company be and is hereby replaced and substituted by the following new Clause 1 & 2.

CLAUSE III(A)

1. To carry on the business of hotel, restaurant, flight kitchen, café, tavern, beer house, refreshment room and lodging house, proprietors, dramatic and musical, publishers and printers, theatrical agents, box office keepers, concert room proprietors, licenced victualers, wine, beers and spirit merchant, brewers, masters, distillers, importers and manufacturers of aerated mineral and artificial water and other drinks purveying caterers for public amusements generally and proprietors, job masters, farmers, dairymen, poultry, ice merchants, importers and brokers good of live and dead stock and colonial and hair dressers, dressers, perfumers, chemists, proprietors of clubs, baths, dressing rooms, libraries, construction of all kinds, tobacco and cigar merchants, agents for railway and shipping companies carriers, theaterical and opera box office proprietors, enterprises and general agents.
2. To carry on the business of organising dances, musical and other entertainment shows of all kinds, organisers of games and sports, both indoor and outdoor, managers of cinema houses, theaters, concert balls, picture places, studios, amusement park, Health Resorts, Water Park, Theme Park,

Club, Sports Club, Adventure sports, Skiing, Tracking, photo safaris, Water sports, to work as manufacturer of the equipment for Water Park, Amusement Park, film apparatus, and other allied product, to act as Tour operator, Travel agents, Advisors, Consultants, Manager & Middlemen in the travel and tourism sector and service operator, Licenced Stockist and Distributor of Alcoholic, non-alcoholic Beverages and Food products and all allied products and services in the Tourism, Holiday Resorts and to carry on business of letting or subletting the use of cinema hall, amusement park, theaters, picture place, studios or other machinery, apparatus, building, structure of the Company for the purpose of use, exhibition, display of films, dramatic or theatrical performances, concerts or other entertainments or amusements, and to provide for production, direction, exhibition, representation, display, whether by mechanical means or otherwise of plays, open air or other theatrical performances, appears, vaude villes, ballets, pantomimes, juggling, mesmeric, yogic, hypnotic, spectacular pieces, mushairas, symposiums, and other musical and dramatic, athletic and similar performances for amusement or entertainment both in public and private.

III. For insertion of additional object Clause No. III(A)

RESOLVED THAT pursuant to Section 17 (1) of the Companies Act, 1956 and other applicable provisions of the Act, if any, the Objects Clause IIIA (Main Objects) of the Memorandum of Association of the Company be and is hereby altered by inserting the following New Objects 3 and 4 and renumber accordingly:

3. To carry on the business of research and development, design, production, creation, manufacturing, marketing, trading, providing, transferring exporting, importing, buying and selling all types of Computer Software Technology including, applications software, development software, computer programs, algorithms, statements, source codes, packages etc., in areas like e-commerce, web page design and development, web enabled applications, Internet services, Intranet, Enterprise Resource Planning (ERP), Data Base Management Systems, Operating Systems, Distributed Computing, Open Systems, Multi Media, Computer Aided Designing (CAD), Computer Aided Manufacturing (CAM, Computer Graphics, Computer Animation, Document Management Systems, Management Information Systems, Bio informatics, Mobile Communication, Mobile Commerce and all such areas relevant to Scientific, Financial, Industrial, Telecommunications, Satellite Communications, Domestic, Administrative, Agricultural, Medical and all other Software Technology applications.
4. To establish and run business of electronic data processing, Remote Processing including Call Centers, Medical Transcription, Content Development, Insurance Claims Processing, Data Conversion, Back Office Operations, Depositing Summary Geographical Information, Systems, and to provide Software Consultancy, training placement, design and development of management information systems and to carry out techno economic feasibility studies of projects'.

Explanatory Statement to the above resolution

In view of encouraging measures taken by the Central Government to liberalize the Economy and in order to diversify into certain new business ventures, Your Directors have been considering various proposals for diversifying the company's activities into other activities like Software Technology and related activities etc.

The alteration in the Objects Clause of the Memorandum of Association as set out in the Resolution is to facilitate diversification. This will enable the company to carry on its business economically and efficiently and the proposed activities can be, under the existing circumstances, conveniently and advantageously combined with the present activities of the company. This will also enlarge the area of operations of the company.

Pursuant Section 17(1) of the Act, the above said proposal requires only the consent of the Members by way of Special Resolution.

The Directors recommend this Resolution for approval of the shareholders by Postal Ballot.

None of the Directors of your company is concerned or interested in this Resolution.

Chapter 4

Alteration of Share Capital

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*E-Form Nos.*
1.	94	Powers of a limited company to alter its share capital.	
2.	94A	Share capital to stand increased where an order is made under section 81(4) by the Central Government.	21
3.	95	Notice for consolidation of share capital, conversion of shares into stock, etc.	5 and 23
4.	96	Conversion of Shares into Stock.	5 and 23
5.	97	Notice for increase in share capital or members.	5 and 23
6.	100	Reduction of share capital.	5, 21 and, 23

A company may alter its share capital Clause by any of the following ways:—

(*i*) Increase in the authorised share capital;

(*ii*) Increase in the share capital in accordance with the orders of the Central Government;

(*iii*) Consolidation and division of share capitals;

(*iv*) Conversion of fully paid-up shares into stock;

(*v*) Re-conversion of stock into fully paid-up shares;

(*vi*) Sub-division of shares or any of them into smaller amount;

(*vii*) Cancellation or diminution of share capital;

(*viii*) Reduction in share capital;

(*ix*) Redemption of any redeemable preference shares.

See Appendix 1 for general meeting resolutions

1. Notice to the Registrar of Companies for alteration of share capital

Section 95 of the Companies Act, 1956 provides that a company having share capital shall give notice to the Registrar of Companies for alteration in share capital in e-Form 5 electronically within a period of 30 days from the date of the resolution passed by the company for alteration in share capital. (Appendix 2 & 3)

Simultaneously, the company shall submit stamped copy of e-Form 5 with the Registrar in physical Form.

Any increase in the authorized share capital would come into effect immediately on passing of any valid resolution in this behalf, and filing of the requisite Forms 5, 23, being a ministerial act and procedural in nature, would not influence the date of increase of the authorized share capital. [*Kobian* (*P*) *Ltd.* v *Kobian India* (*P*) *Ltd. and Others* (2005) 64 CLA 281 (CLB)].

Subsequent cancellation of the resolution to increase the share capital or adoption of the resolution to reduce the share capital could not absolve the petitioners from their liability to file e-Form 5 notice alongwith the prescribed fee before the Registrar of Companies within 30 days of adoption of the resolution to increase the share capital. [*Amison Foods Ltd.* v *Registrar of Companies* (1999) 19 SCL 82 (Ker)].

2. Resolution for increase in authorized share capital passed contrary to articles

Where a specific articles of association prescribes that the Board would take decision by a simple majority with a provision that certain decisions, like increasing share capital of the capital of the company, could be taken only if both the plaintiff and the defendant or their nominees had voted in favour of the resolution, a resolution for increasing share capital passed without consent of the plaintiff or his nominee director shall be contrary to the said article. [*Tony Francis Guinees* v *Indekka Software* (*P*) *Ltd. & ORS* (2006) 73 CLA 163 (BOM) 02.02.2005] .

When sections 81(1) and (2), specifically provide the manner in which further issue of capital is to be made and the procedure for such further issuance, the entire procedure of further issue of capital is governed by the said statutory provision and the company is bound to follow the said procedure. When the very section says that the procedure prescribed therein is not applicable to a private company, the company is under no obligation to follow the said procedure in the matter of issue of further capital. In other words, insofar as further issuance of capital is concerned, a private company is not under an obligation to follow the procedure prescribed u/s 81(1) and (2). That does not mean that the Board of Directors of the company can adopt any procedure they like. In the absence of any specified statutory power, they are governed by sections 291, 292 and the memorandum and articles of association. [*I.T. Cube India* (*P*) *Ltd.* v *I.T. Cube Inc.* (2006) 69 SCL 319 (Kar) 13.03.2006] .

3. Filing of altered Memorandum and Articles of Association ine-Form 23 for registration of resolutions with the Registrar

The company is required to file resolutions electronically alongwith e-Form 23 with the Registrar of Companies alongwith the adequate filing fees as per provisions of Schedule X to the Companies Act, 1956 within a period of 30 days from the date of passing resolution.

On receipt of e-Form 5, 23 and the altered Memorandum and Articles the Registrar shall register these documents and the altered Memorandum and Articles shall be the Memorandum and Articles of Association of the company.

4. Stamping on e-Form 5 and fee payable to the Registrar on increased authorised share capital

As per provisions of section 97 of the Companies Act, 1956, the notice for increase in authorised share capital shall be given to the Registrar of Companies in the prescribed e-Form 5 which shall be duly stamped as per the Stamp Act of the concerning State, where the Registered office of the company is situated. E-Form 5 shall be filed electronically alongwith prescribed requisite fee under Schedule X to the Companies Act for the increased amount of the nominal share capital within 30 days from the date of resolution passed by the members in general meeting for increase in authorised share capital of the company. However, stamped original copy shall be simultaneously delivered at the Registrar office physically.

The Ministry of Company Affairs has clarified that the fees on the increased share capital shall be paid by a company on the basis of the amount payable on the increased nominal share capital less amount payable on the existing nominal share capital.

Illustration

The amount of fees payable on increase in authorised share capital on e-Form 5 may be calculated as under:—

Existing nominal share capital	:	Rs. 10.00 lacs divided into 1 lac equity share capital of Rs. 10 each.
Increased nominal share capital	:	Rs. 50.00 lacs divided into 5 lacs equity share capital of Rs. 10 each.
Addition in authorised share capital	:	Rs. 40.00 lacs divided into 4 lacs equity share capital of Rs. 10 each.
Fees payable on the increased authorised share capital of Rs. 50.00 lacs		Rs. 1,06,000
Less Fees payable on the existing authorised share capital of Rs. 10.00 lacs		Rs. 26,000
Fees payable on Form 5	:	Rs. 80,000

It is worthwhile to mention here that the amount of fees payable on the existing share capital shall be calculated on the basis of the fees payable on that amount as per provisions of Schedule X to the Act, on the date of passing resolution, irrespective, that the company has paid less amount of the fees at the time of incorporation or otherwise.

Further that the amount of fees payable shall be calculated by the Registrar of Companies, as due on the date of filing of e-Form 5 irrespective of that the authorised share capital has been increased in such a period (*i.e.*, before 1st May, 2000 before revision of Schedule X to the Act) when the amount of fees under Schedule X was not revised or less than the present amount payable.

5. Reduction of paid up share capital by the sanction of the High Court/Tribunal

Section 100 stipulates that a limited company having share capital or a company limited by guarantee and having share capital may if so authorised by its Articles of Association, reduce its paid up share capital by passing special resolution in general meeting subject to obtaining consent of the High Court [Powers being given to the Tribunal as per the Companies (Second Amendment) Act, 2002]. The Articles must provide the powers for reduction of share capital of the company otherwise these will have to be altered so as to vest power to the company. The resolution passed by a company to reduce its paid up share capital shall be subject to the confirmation of the High Court/Tribunal. (Appendix 4)

A company may reduce its share capital in the following circumstances:—

(*a*) Capital is in excess of its needs:—

- (*i*) by reduction of liability of its members in respect of uncalled or unpaid share capital;
- (*ii*) by extinguishments of liability of members in respect of uncalled or unpaid amount of share capital;
- (*iii*) by paying back or reducing the paid up share capital;
- (*iv*) by payment of part of the paid up share capital on the conditions that it may be called again.

(*b*) Suffering of loss of capital by company.

Surrender of shares amounts to reduction of capital; it is open neither to shareholder to surrender shares, nor to company to accept such surrender. [*Collector of Moradabad* v *Equity Insurance Co. Ltd*. (1948) 18 Comp Cas 309 (Oudh)].

6. Reduction of paid up share capital without sanction of the High Court/Tribunal

All types of reduction of paid up share capital are not within the purview of the provisions of section 100 of the Companies Act, 1956. The following categories of reduction of paid up share capital are out of the ambit of the provisions of section 100 and need not follow the procedure therein and reduction may take place in such cases without obtaining sanction of the High Court/Tribunal:—

(*a*) Forfeiture of partly paid-up shares;

(*b*) Redemption of redeemable preference shares;

(*c*) Cancellation of shares neither issued nor committed;

(*d*) Purchase of shares by a company on order of the High Court/Tribunal;

(*e*) Buy back of Securities from its members. [Section 77A]

If a company in voluntary liquidation, after repaying its preference and ordinary share capital is revived with fresh share capital, which is less than earlier capital, it does not amount to reduction of capital. [*Mcleod & Co.* v *S.K. Ganguly* (1975) 45 Comp Cas 563 (Cal)].

When the capital is reduced by canceling any paid-up share capital, which is lost or is otherwise unrepresented by available assets, it is not mandatory to follow the procedure prescribed in sub-section (2) of section 101 unless the Court so directs. [*Maneckchowk & Ahmedabad Mfg. Co. Ltd*., *In re* (1970) 40 Comp Cas 819 (Guj)].

If an amount received by a company was not towards share capital, but was wrongly shown as such in balance sheet, provisions of sections 100 to 103 are not attracted when that amount is repaid. [*Rupak Ltd.* v *Registrar of Companies* (1984) 56 Comp Cas 206 (Pat)].

7. Petition to the High Court/Tribunal

A petition to confirm reduction of share capital of a company shall be presented before the High Court/Tribunal as per rules that may be notified and shall be accompanied by a summons for Directions. Till now Rule 46 of the Companies (Court) Rules, 1959 applied and Forms 18 & 19 are relevant.

7.1 Compliance with procedure u/s 101(2)

As per the direction of the Court/Tribunal, the company will prepare the list of creditors and also publish a notice to creditors to give opportunity to the creditors not entered in the list to prove their claims. The Court/Tribunal may, if satisfied, dispense with the requirement of the section.

On being satisfied that the creditor, who objected to the reduction, has given his consent or his debt or claim has been discharged or has been secured, the Court/Tribunal may make an order confirming the reduction on such terms it thinks fit.

Very nature of proceeding u/s 101 indicates that it does not contemplate a full fledged trial of creditor's claim and while exercising powers under section 101, Court is not entitled to pay over amount to creditors but only to secure their claim. [*Hindustan Dorr Oliver Ltd*., *In re* (2002) 40 SCL 521 (Bom)].

As per the practice obtaining so far, the Court/Tribunal may, for any special reason, direct the company that for such period as is specified in its order it should add in its name as the last words "and reduced".

The Court/Tribunal may also require the company to publish the reasons for reduction or such other information as the Court/Tribunal may think expedient. The Court/Tribunal may cause a minute to be given to the company certifying the capital as altered.

Words 'any other case' in section 101(2) must be so read as to cover all such categories in the interest of the creditors which are vitally affected by any process of reduction in share capital and only in that event, the Court is empowered to direct the company to follow the procedure provided for u/s 101(2). Where there was no diminution of liability or payment to any shareholder of any paid-up share capital and reduction in share capital was only for set-off of accumulated losses against capital redemption reserve account and share premium account, interest of creditors was not likely to be affected and, therefore, it was not necessary to comply with procedure prescribed under section 101(2). [*Rallis India Ltd*., *In re* (2005) 59 SCL 219 (Bom)].

Where all secured creditors have signified their consent to the proposed reduction, Court can dispense with the drawing up of list of creditors and notice to such secured creditors. [*Parrys Confectionery Ltd*., *In re* (2004) 56 SCL 34 (Mad)].

7.2 Responsibility of Court/Tribunal

The Court may confirm reduction of capital where the entire paid-up capital is lost due to accumulated losses; for this purpose prima facie evidence of loss of capital is sufficient. [*Hindusthan Commercial Bank Ltd.* v *Hindusthan General Electrical Corpn.* (1960) 30 Comp Cas 367 (Cal)].

Where proposed scheme of reduction was likely to improve the financial resources of the company and to increase the share of profit available for expansion and growth and said proposal did not involve diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up share capital, Court should confirm reduction. [*Essar Steel Ltd.*, *In re* (2005) 59 SCL 457 (Guj)].

In reduction of capital where no diminution of unpaid capital, or no repayment of paid-up capital is involved, the creditor must make out a strong case before a Court can give direction. [*Muex's Brewery Co. Ltd*., *In re* (1919) 1 Ch. 28].

A scheme for reduction of capital may provide for extinguishment of part of shares of the same class held by different shareholders; but the Court must scrutinise it narrowly to ensure that it is not just or inequitable to minority shareholders. [*British & American Trustee & Finance Corpn.* v *Couper* (1891-94) All. ER 667 (HL)].

7.3 Order of Court/Tribunal

Financial condition of a company is a relevant factor while deciding whether an order under section 101(3) is warranted. [*Hindustan Dorr-Oliver Ltd*., *In re* (2002) 40 SCL 521 (Bom)].

Even where a list of creditors is settled under section 101(2)(*b*), it is not necessary that Court/Tribunal must pass an order u/s 101(2)(*c*) in favour of each of creditors whose name is entered in list and Court/Tribunal u/s 101(2)(*c*) is required to pass an order for payment of security only in respect of those creditors who do not consent to reduction. [*Hindustan Dorr- Oliver Ltd*., *In re* (2002) 40 SCL 521 (Bom)].

Where in spite of publication of notice in newspapers and Gazette none of shareholders or creditors appeared to oppose petition under section 101, reduction of share capital as resolved and effected by resolution by the company was to be confirmed. [*Om Metals & Minerals Ltd., In re* (2003) 43 SCL 381 (Raj)].

Where scheme of amalgamation involving reduction of share capital was not adverse to interest of shareholders and creditors and all of them had approved scheme, Court should have confirmed reduction. [*Highway Cycle Industries Ltd*., *In re* (2003) 115 Comp Cas 260 (Punj & Har)].

Where reduction in securities premium account was not prejudicial to the interest of the creditors, as there was no reduction in the amount payable to them and proposed adjustment would not adversely affect ordinary operations of the company or the liability to honour its commitments or pay its debts in the ordinary course of the business, Court should confirm reduction. [*Parrys Confectionery Ltd*., *In re* (2004) 56 SCL 34 (Mad)].

As soon as the Court/Tribunal has given its order confirming the reduction of share capital, the company shall electronically file the following alongwith e-Form 21 to the Registrar of Companies:—

(*a*) Order of the Court/Tribunal confirming the reduction;

(*b*) A Certified copy of the order and a minute approved by the Court/Tribunal showing in respect of the capital of the company as altered, the following:—

  (*i*) amount of share capital;

  (*ii*) number of shares it is to be divided;

(*iii*) amount of each share; and

(*iv*) amount, if any, deemed to be paid on each share.

The Registrar shall register the above documents and grant a certificate to the company confirming the registration. This certificate shall be conclusive evidence that all the requirements have been complied with and only thereafter the order shall take effect. Notice of the registration shall be published in the manner directed by the Court/Tribunal.

8. Buy back the minority non-promoters' shares in a scheme of capital reduction without giving option to reject the offer?

In the case of *Mihir H Mafatlal* v *Mafatlal Industries Ltd.* (1996), the High Court held that where there are two distinct groups in the sense belonging one belonging to the promoters and other of non-promoters group, the meeting ought to have been convened separately for the non-promoters group otherwise the meeting would be rather absurd and would result in injustice. It was further held that the minority non-promoters shareholders should be given the option for acceptance or rejection of proposal otherwise the proposal was highly inequitable, unjust, unfair, in the sense that the minority shareholders will have to leave the company.

In *Sandvik Asia Ltd.*, *In re* (2004) 121 Comp Cas 58 (Bom), it was held that the general rule is that the prescribed majority of shareholders are entitled to decide whether there should be a reduction of capital, and if so, in what manner and to what extent it should be carried into effect. The powers of shareholders must be exercised so as to safeguard the rights of creditors, the just and equitable treatment of shareholders and the interest of investing public.

9. Objection raised for the first time at the stage of final hearing is not bona fide

It was held in the case of *Zee Telefilms Ltd*., *In re* (Bom) Company Petition No. 274 of 2004 connected with Company Application No. 115 of 2004, that while sanctioning the scheme of reduction of share capital, full opportunities are given for inspection of documents which included details, requisite and essential materials which are necessary for the purpose of holding the meetings under the provisions of the Companies Act. All the shareholders even otherwise under the scheme of the Companies Act, in such cases always had full opportunities and rights to inspect the documents at the relevant time. Once the company had complied with the formalities of proper notice, there is no question of providing all such detailed documents at the instance of one objector for the first time in the Court/Tribunal.

The objection raised for the first time at the stage of final hearing is not bona fide and could not be said to be in the interest of the companies in which the objectors held shares. Once a unanimous decision is taken by a company based on the experts' opinion, persons like the objector at this stage need not be allowed to interfere with the unanimous decision taken. If the company had taken a particular decision within the framework of law which is not illegal or contrary to public policy there is no reason to interfere with such a decision taken by the experts. The obligations of the shareholders and their rights as contemplated under the Companies Act should have been exercised at the relevant time. The shareholders had full right to inspection as admittedly the notices are issued and published with details and requisite materials along with explanatory notes as contemplated under the law.

10. Conversion of equity share capital into preference share capital and *vice versa*

The share capital clause of the Memorandum of Association may be altered for un-issued equity shares and it may create preference shares or *vice versa* if it is provided in the Memorandum and Articles of the company.

In case of the issued equity share capital such conversion will amount to an arrangement with the members as per section 390 of the Act, and provisions of sections 390 to 393 shall apply.

11. Cancellation of resolution increasing authorised share capital and requirement for filing of notice with the Registrar

Once the resolution has been passed by members at general meeting for increase in authorised share capital, it is obligatory on the company to file with the Registrar, the notice for alteration of share capital in Form 5 with stipulated filing fee within a period of thirty days from the date of alteration.

In case, if such company on subsequent date passes a further resolution for cancellation of the earlier resolution, by which it has increased the authorised share capital, it can not escape from its obligation for filing of notice in e-Form 5 for increase in authorised share capital and the company shall be liable to pay fee with fine as prescribed under the Act. [*Amision Foods Ltd.* v *Registrar of Companies, Kerala* (*HC*) 1999)].

12. Consequences of non-filing of Form 5 with the Registrar

If default is committed in sending notice to the Registrar in e-Form 5 within the stipulated time embodying necessary particulars therein then the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 500 per day during which default continues.

Further that the company shall also be liable to pay additional amount of fee @ 2.00% p.m. for a period upto 1 year and 2.50% p.m. thereafter for the period of defaults on the amount payable on notice on its increased capital.

Appendix 1

Specimen of General meeting resolutions

I. Sub-division of shares

> **RESOLVED THAT** subject to the provisions of section 94 and all other applicable provisions, if any, of the Companies Act, 1956 and the provisions of Article __ of the Articles of Association of the Company, each of the existing issued Equity Shares of Rs. 100 each in the issued, subscribed and paid-up capital of the Company, be and is hereby sub-divided into 10 (ten) Equity Shares of the face value of Rs. 10 each paid-up.
>
> **RESOLVED FURTHER THAT** each of the existing unissued Equity Shares of Rs. 100 in the authorised capital of the Company be and is hereby sub-divided into 10 (ten) Equity Shares of the face value of Rs. 10 each and that consequential amendments be made to Clause V of the Memorandum of Association and Article __ of the Articles of Association of the Company.

Explanatory statement

The Board of directors of the company is planning to make a public issue of equity shares for augmenting long-term working capital requirements of the company.

Since company is not very old, as per SEBI guidelines, the offer will have to be made at par. At present equity capital of the company is divided into equity shares of Rs. 100 each. Existing shares are proposed to be divided into equity shares of Rs. 10.

According to the provisions of section 94 of the Act, approval of the shareholders by way of Ordinary Resolution is required for sub-division of shares. Hence the resolution needs to be passed by the members.

None of the directors is concerned or interested in the resolution.

Alternate Resolution

> **RESOLVED THAT** pursuant to section 94 of the Companies Act, 1956 (including any modification or re-enactment thereof) and other applicable provisions, if any, and subject to approvals, consents, permissions and sanctions as may be necessary from the concerned Statutory Authorities, the Authorised Share Capital of the Company comprising of 6,25,00,000 (Six Crore Twenty Five Lac) equity shares of the face value of Rs. 4 each aggregating to Rs. 25,00,00,000 (Rupees Twenty Five Crore Only) be and is hereby sub-divided into 25,00,00,000 (Twenty Five Crore) equity shares of the face value of Re. 1 each, with effect from the 'Record Date' to be determined by the Board of Directors (hereinafter referred to as “the Board” which expression shall be deemed to include any duly authorized committee thereof).
>
> **RESOLVED FURTHER THAT** the issued, subscribed and fully paid-up Equity Share Capital of the Company, comprising of 5,64,61,019 (Five Crore Sixty Four Lac Sixty One Thousand Nineteen)

equity shares of the face value Rs.4 each aggregating to Rs. 22,58,44,076 (Rupees Twenty Two Crore Fifty Eight Lac Forty Four Thousand Seventy Six only) be subdivided into 22,58,44,076 (Twenty Two Crore Fifty Eight Lac Forty Four Thousand Seventy Six) equity shares of the face value Re.1 each, as on the Record Date that may be fixed by the Board.

RESOLVED FURTHER THAT the Board be and is hereby severally authorised to do all such acts, deeds, matters and things and execute all such documents, instruments and writings as may be required in the said connection and to delegate all or any of the powers herein vested in them to give effect to the above.

Explanatory Statement

The Equity Shares of the Company are listed on the Bombay Stock Exchange Ltd. (BSE) and the National Stock Exchange of India Ltd. (NSE) and are actively traded. In order to improve the liquidity of the Equity Shares with higher floating stock in absolute numbers and to make the Equity Shares more affordable to the investors, the Board of Directors of the Company, at its meeting held on April 26, 2006, has recommended sub-division of the face value of equity shares of the Company from Rs. 4 each into 4 (Four) shares of the face value of Re. 1 each.

Consequent to the above sub-division it is necessary to alter the Capital Clause of the Memorandum and Articles of Association of the Company.

The Ordinary Resolution in Item No. … and Special Resolution in Item No…. seeks to make corresponding amendments in Clause V of the Memorandum of Association and Article 3 of the Articles of Association of the Company to give effect to the sub-division of shares which is proposed in the Ordinary Resolution mentioned in Item No. …….

The Board of Directors is of the opinion that the aforesaid sub-division of the face value of Equity Shares, is in the best interest of the Company and the investors and hence recommends the passing of the above resolutions.

A copy of the Memorandum and Articles of Association of the Company showing proposed alterations is available for inspection at the Registered Office of the Company from 10.00 a.m. to 12.00 p.m. on any working day upto the date of the Annual General Meeting.

The Directors of the Company may be deemed to be concerned or interested in the resolutions at item …… only to the extent of their respective shareholding, if any, in the Company to the same extent as that of every other member of the Company.

II. Consolidation of share capital

RESOLVED THAT in accordance with the provisions of Section 94 and other applicable provisions, if any, of the Companies Act, 1956 and Article ____ of the Articles of Association of the Company every _____ shares in the existing issued Equity Shares of Rs. ____ each in the issued, subscribed and paid-up capital of the Company, be and is hereby consolidated into one equity share of Rs. _____.

RESOLVED FURTHER THAT each of the existing unissued Equity Shares of Rs. _____ each in the authorised capital of the company be and is hereby consolidated into _____ equity share of the face value of Rs. ______ each and that consequential amendments be made to Clause V of the Memorandum of Association and Article

RESOLVED FURTHER THAT the Board of Directors of the Company be and are hereby authorised to do all such acts, deeds and things necessary for the purpose of giving effect to this resolution.

Explanatory statement

The Board of directors of the Company is planning to make a public issue of equity shares for augmenting long-term working capital requirements of the Company.

Since Company is not very old, as per SEBI guidelines, the offer will have to be made at par and that the value of share shall not be in a fraction of rupee. At present equity capital of the Company is divided into equity shares of Rs. 2.50 each. Existing shares are proposed to be consolidated into equity shares of Rs. 10.

According to the provisions of section 94 of the Act, approval of the shareholders by way of Ordinary Resolution is required for consolidation of shares. Hence the resolution needs to be passed by the members

None of the directors is concerned or interested in the resolution.

III. Cancellation of shares not taken up (diminution of share capital)

RESOLVED THAT pursuant to the provisions of section 94 and other applicable provisions, if any, of the Companies Act, 1956 and Article ___ of Articles of Association of the Company, ____ equity shares of Rs. ___ each out of authorised share capital which have not been agreed to be taken up by any person, be cancelled and accordingly authorised share capital of the Company be diminished from ______ divided into ___ equity shares of Rs. ___ each to Rs. _____ divided into ____ equity shares of Rs. ___ each.

Explanatory statement

The Company was incorporated in 1985 with the authorised share capital of Rs. 10.00 crores divided into one crore equity shares of rupees ten each only while the paid up capital as of today is Rupees Four Lacs divided into forty thousand equity shares of rupees ten only. As per Company business plan, there is no need of equity capital over and above the present level.

As per Schedule X to the Act, the filing fee for every document is based on company's authorised share capital. Due to higher amount of authorised capital, the Company ends up paying higher amount towards filing fee every time any document is required to be filed with the Registrar of Companies. Therefore, authorised capital is proposed to diminished by cancellation of ____ equity shares. Your approval for the proposed diminution requires approval by way of ordinary resolution but consequent alterations in the memorandum as well in the articles of association require approval by way of special resolution. Therefore, instead of separate resolutions, one special resolution is sufficient.

None of the directors may be regarded as concerned or interested in the resolution.

IV. Creation of reserve capital

RESOLVED THAT in accordance with the provisions of section 99 and other applicable provisions, if any, of the Companies Act, 1956, approval be and is hereby accorded for setting apart the uncalled amount of Rs. ______ per share as reserve capital.

RESOLVED FURTHER THAT the aforesaid reserve capital shall not be called by the Board of Directors except in the event of and for the purpose of winding up of the Company.

RESOLVED FURTHER THAT the Board of Directors of the Company be and are hereby authorised to do all such acts, deeds and things necessary for giving effect to this resolution.

Explanatory statement

The shareholders are aware that the Company's factory is operating at more than 100% capacity utilisation and the condition of the plant and machinery is satisfactory. Written down value of the plant and machinery has already reduced to almost negligible value and there is no dues of any financial institution and or banks. Even the working capital limits sanctioned by the bankers to the Company are not being utilised. The Company is in very healthy condition.

Therefore the Board of directors of the Company is of the opinion that the existing share capital of the company is enough for the Company's current requirement and that the uncalled portion of capital be set apart as reserve capital capable of being called only in the event of the Company being wound up. Section 99 of the Companies Act, 1956 provides for creation of reserve capital by passing a special resolution. The resolution is recommended for your approval as a special resolution.

None of the Directors is concerned or interested in the proposed resolution.

Appendix 2

Specimen of resolutions for increase in Authorized share capital

I. For increase in authorised share capital

RESOLVED THAT pursuant to provisions of sections 94, 97 and other applicable provisions, if any, of the Companies Act, 1956, the Authorised Share Capital of the company be and is hereby increased from Rs. 5,00,000 (Rupees Five Lacs only) divided into 50,000 (Fifty Thousand) Equity Shares of Rs. 10 (Rupees Ten Only) each to Rs. 12,00,000 (Rupees Twelve Lakhs only) by creation of 70,000 (Seventy Thousand) Equity Shares of Rs. 10 (Rupees Ten only) each, with a power of company to increase, reduce or modify the capital and to divide all or any of the shares in the capital of the company, for the time being, and to classify and reclassify such shares from shares of one class into shares of other class or classes and to attach thereto respectively such preferential, deferred, qualified or other special rights, privileges, conditions or restrictions as may be determined by the company in accordance with the Articles of Association of the company and to vary, modify or abrogate any such rights, privileges, conditions or restrictions, in such manner and by such persons as may, for the time being, be permitted under the provisions of the Articles of Association of the company or legislative provisions for the time being in force in that behalf.

II. Alteration in the Clause No. V of the Memorandum

RESOLVED THAT the existing Clause V of the Memorandum of Association of the Company be altered and substituted by the following new Clause:

V: The Authorised Share Capital of the company is Rs. 12,00,000 (Rupees Twelve Lakhs only) divided into 1,20,000 (One Lakh Twenty Thousand) Equity Shares of Rs. 10 (Rupees Ten only) each.

III. Alteration in the Clause No. 5 of Articles

RESOLVED THAT pursuant to section 31 of the Companies Act, 1956, Article No. 5 of the Articles of Association of the Company be altered by substituting it with the following new clause:

5. The Authorised Share Capital of the company is Rs. 12,00,000 (Rupees Twelve Lacs only) divided into 1,20,000 (One Lakh Twenty Thousand) Equity Shares of Rs. 10 (Rupees Ten only) each, with a power of company to increase, reduce or modify the capital and to divide all or any of the shares in the capital of the company, for the time being, and to classify and reclassify such shares from shares of one class into shares of other class or classes and to attach thereto respectively such preferential, deferred, qualified or other special rights, privileges, conditions or restrictions as may be determined by the company in accordance with the Articles of Association of the company and to vary, modify or abrogate any such rights, privileges, conditions or restrictions, in such manner and by such persons as may, for the time being, be permitted under the provisions of the Articles of Association of the company or legislative provisions for the time being in force in that behalf.

Appendix 3

Specimen of e-Form 5

Notice of consolidation, division, etc. or increase in share capital or increase in number of members

[Pursuant to section 95, 97 or 94A(2) or 81(4) of the Companies Act, 1956]

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

1. (*a*)	*Corporate identity number (CIN) of company	XXXXXXXXXXXXX
(*b*)	Global location number (GLN) of company	
2. (*a*)	Name of company	ABC PRIVATE LIMITED
(*b*)	Address of the registered office of the company	4TH FLOOR, SILVER ARK PLAZA 20A, NEW PALASIYA INDORE (M.P) 452001

3 * Purpose of the Form

☐ Consolidation or division, etc.

☐ Increase in number of members

√☐ Increase in share capital independently by company

☐ Increase in share capital with Central Government order

4. * Notice is hereby given that

(*i*) In accordance with section 95 of the Companies Act, 1956 that the company has

(*a*) ☐ Consolidated ○ Equity ○ Preference shares of Rs. each into shares of Rs. each

(*b*) ☐ erted shares of Rs. each into stock of Rs. ☐

(*c*) ☐ Reconverted the stock of Rs. into shares of Rs. each

(*d*) ☐ Subdivided ○ Equity ○ Preference shares of Rs. each into shares of Rs. each

(*e*) ☐ Redeemed redeemable preference shares of Rs. each

(*f*) ☐ Cancelled ○equity ○ preference shares of Rs. each.

(*ii*) In accordance with section 97 of the Companies Act, 1956, that by ☑ Ordinary ○ Special Resolution at the meeting of the members of the company held on 30/12/2006 (DD/MM/YYYY)

Service request number (SRN) of related Form 23 Z999999999

(*a*) The authorised share capital of the company has been increased from

Existing (in Rs.)	500000
Revised (in Rs.)	1200000
Difference (addition) (in Rs.)	700000

(*b*) The number of members in the company has been increased from

Existing	
Revised	
Difference (addition)	

5. (*a*) In accordance with sub-section (3) of section 94(A) of the Companies Act,1956, the authorised share capital of the company has been increased from Rs. ☐ by addition of Rs. ☐ consequent upon an order dated. ☐ (DD/MM/YYYY) of the Central Government under sub-section (4) of section 81 or sub-section (2) of section 94A of the Act upon an application made to it by

(Enter the name of the financial institution)

☐

for conversion of ○ debentures ○ loans into shares.

(*b*) A copy of the aforesaid order was received by the company from the Central Government on ☐ (DD/MM/YYYY)

6. The additional capital is divided as follows

(*a*) Number of equity shares 70000

Number of equity shares		70000
Nominal amount of each share	(in Rs.)	10
Total amount	(in Rs.)	700000

(*b*) Number of preference shares		
Nominal amount of each share	(in Rs.)	
Total amount	(in Rs.)	
Grand total	(in Rs.)	700000

7. The conditions (*e.g.* voting rights, dividend rights, winding-up rights, etc.) subject to which new shares have been issued, are as follows:

Attachments

1.	Proof of receipt of Central Government order		
2.	Altered Memorandum of Association	Attach	
3.	Altered Articles of Association	Attach	
4.	Certified true copy of the resolution passed in general meeting		
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.

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 ABC

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of ABC Private Limited 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 4

Specimen of resolutions for Reduction of share capital

RESOLVED THAT subject to the confirmation of the High Court/Tribunal, consent of the Company be and is hereby given to the reduction of share capital of the company from Rs 20,00,000 divided into 2,00,000 shares of Rs 10 each to Rs 15,00,000 divided into 2,00,000 shares of Rs 7.50 each and the said reduction be effected by extinguishing the liability on these Equity shares in respect of share capital not called up and paid up.

RESOLVED FURTHER THAT the corresponding amendments are made in Clause V of the Memorandum of Association and Article 6 of the Articles of Association of the Company.

RESOLVED FURTHER THAT the Board of directors of the Company be and is hereby authorised to take steps for obtaining the High Court/Tribunal's Order, delegate powers to Managing Director, finalise the scheme of reduction, effecting modifications as per the order of Court/Tribunal, finalise the terms and conditions of debenture issue and to do all such acts, deeds and things necessary for the purpose of giving effect to this resolution.

Explanatory statement

The Companies Act, 1956 provides for reduction of share capital under section 100-104. The companies activities have been reduced due to take over of import trade by the Governmental Agency. So the need of capital as felt before is not at present there. It would not be advisable to make further calls, as no dividend has been paid by the Company for the last few years. Since the Company has no outside creditors, it may receive the Court/Tribunal sanction. None of the directors is interested in the resolution.

Alternate Resolution

RESOLVED THAT subject to confirmation by the Hon'ble High Court at Calcutta, the paid-up capital of the company be reduced from Rs. 40,00,000 divided into 4,00,000 Equity Shares of Rs. 10 each to Rs. 11,04,160 divided into 3,31,248 Equity Shares of 31/3rd of a Rupee each by canceling 68,752 Equity Shares of Rs. 10 each fully-paid-up held by the .... Ltd., in the company in terms of the proposed Scheme of Amalgamation of .... Ltd. with the company and by further canceling a sum of 62/3rd of a Rupee per share on 3,31,248 equity shares of Rs. 10 each, which capital has been lost and is unrepresented by the available assets."

RESOLVED FURTHER THAT on such reduction the said 3,31,248 equity shares of 31/3rd of a rupee each be consolidated and divided into 11,042 equity shares of Rs. 100 each fully paid-up by consolidating thirty equity shares of 31/3rd of a rupee each into one equity share of Rs. 100 each fully paid-up and by issuing and allotting 4 equity shares of Rs. 10 each to the shareholders as may be required to enable consolidation of their holdings into shares of Rs. 100 each for cash at par and that the Board may be authorised to sell the shareholdings of any shareholders not having the reduced shares in lots of thirty shares each on such consolidation and allotment of further shares and to pay the net sale proceeds to the shareholder concerned.

RESOLVED FURTHER THAT consequential amendments be made in the capital clause of the Memorandum of Association of the Company after such reduction and consolidation becomes operative and effective.

RESOLVED FURTHER THAT on such further reduction and consolidation becoming operative and effective, every member of the company do surrender to the company his old share certificate(s) in respect of the share(s) held by him and thereupon the company shall issue fresh share certificate(s) to the said shareholder and/or pay the net sale proceeds to which he may be entitled to as aforesaid.