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Procedure for Increase in Authorise Capital under Companies Act, 2013

Dear All,

As per my understanding procedure for Increase in Authorize share Capital is one of the most frequently searched topics by professionals. An attempt has been made from my side to unlock the provisions of Companies Act, 2013 related to Increase in Authorize share Capital along with requisite secretarial practice w.r.t. to sample Board and Shareholders' resolutions.

Under Companies Act, 2013, the process of Increase in Authorise Capital is governed by Section 61 read with section 13 and 64 of Companies Act, 2013. Procedure in this regard is given below:

Procedure for Increase in Authorize share Capital

1. **Authorisation in Article is must for Increase:** For Increase in Authorise Share Capital, the company has to make sure that its Articles of Association contain a provision authorising it to increase its authorized share capital. Reason being Section 61 of the Companies Act, 2013, mandates that for increasing the Authorised share capital, authorization in Articles of Association is a pre-condition.

In other words Company has to make sure that its Articles of Association contain a provision authorising it to increase its authorised share capital.

So first check whether there is enabling provision in the Articles of Association regarding increase in authorised share capital.

If there is no such provision then the company has to take steps for alteration of its Articles of Association in accordance with the provision of Section 14 of the Companies Act, 2013, so as to insert the clause enabling increase in the Authorised share capital of the Company.

2. **Calling of Board Meeting:** Issue notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors. Main agenda for this Board meeting would be:
 - a. To Get in-principal approval of Directors for Increase in authorised share Capital;
 - b. Fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Ordinary Resolution, for amendment in authorised share Capital clause of Memorandum of Association. This amendment in

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- authorised share Capital clause of Memorandum of Association shall be in accordance with the requirement of section 61 of the Companies Act, 2013;
- c. To approve notice of EGM along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;
 - d. To authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board under clause 2(c) mentioned above.
3. Issue Notice of the Extra-ordinary General meeting (EGM) to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;
 4. **Holding of General Meeting:** Hold the Extra-ordinary General meeting (EGM) on due date and pass the necessary Ordinary Resolution under section 61(1)(a) of the Companies Act, 2013, for increase in authorize share capital of the Company.
 5. **ROC Form filing:** File form **SH-7** within 30 days of passing of Ordinary Resolution with the concerned Registrar of Companies, with prescribed fees and along with following attachments as desired by section 64:
 - a. Notice of EGM;
 - b. Certified True copy of Ordinary Resolution;
 - c. Altered Memorandum of Association.
 6. Concerned Registrar of Companies (ROC) will check the E-forms and attached documents and will approve the increase in authorize share capital.

Notice to be given to Registrar for alteration of share capital.

As per section 64 of the Companies Act, 2013, where a company alters its share capital for increase in authorised share capital in accordance with sub-section (1) of section 61, the company shall file a notice in the prescribed form with the Registrar within a period of **thirty days** of such increase along with a copy of altered Memorandum.

No need to pass Special Resolution for increase in authorised share capital

Some professionals are of the view that for increase in authorised share capital Special Resolution is to be passed, since amendment in Memorandum of Association can be done by way of passing Special Resolution under section 13 of the Companies Act, 2013.

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Kindly appreciate amendment in Memorandum of Association by way of passing Special Resolution is required only when there is a change in particular clause of MOA like alteration in **name clause** or alteration in **registered office clause**, as envisaged in Section 13.

Amendment in capital clause of Memorandum of Association for the purpose of increase in authorised share capital is exclusively governed by Section 61 of the Companies Act, 2013 and section 61 is silent about the nature of shareholders' resolution. So in the above scenario an Ordinary Resolution would be enough for increase in authorised share capital.

SECRETARIAL PRACTICE / DRAFTING

Sample Board Resolution for:

A. Increase in Authorised Share Capital

"RESOLVED THAT pursuant to the provisions of Section 61 and 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed there under, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, to increase the Authorized Share Capital of the Company from existing Rs. 50,00,000 (Rupees Fifty Lacs) divided into 5,00,000 (Five Lacs) Equity Shares of Rs. 10/- each to Rs. 75,00,000 (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of Rs. 10/- each by creation of additional 2,50,000 (Two Lacs Fifty Thousand) Equity Shares of Rs. 10/- each ranking pari passu in all respect with the existing Equity Shares of the Company.

B. Alteration in the Capital Clause of Memorandum of Association

"RESOLVED THAT pursuant to the provisions of Section 13, 61 and 64 and other applicable provisions of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed thereunder, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, for substituting **Clause V** of the Memorandum of Association of the Company with the following clause.

V. The Authorised Share Capital of the Company is Rs. 75,00,000/- (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of face value of Rs. 10/- (Rupees Ten) each."

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Sample Shareholders' Resolution to be passed in the General Meeting:

A. Increase in Authorised Share Capital

SPECIAL BUSINESS

1. To consider, and if thought fit, to pass with or without modification(s), the following resolution as an **Ordinary Resolution**:

"RESOLVED THAT pursuant to the provisions of Section 61 read with Section 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed there under, the consent of the members of the Company be and is hereby accorded to increase the Authorized Share Capital of the Company from existing Rs. 50,00,000 (Rupees Fifty Lacs) divided into 5,00,000 (Five Lacs) Equity Shares of Rs. 10/- each to Rs. 75,00,000 (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of Rs. 10/- each by creation of additional 2,50,000 (Two Lacs Fifty Thousand) Equity Shares of Rs. 10/- each ranking pari passu in all respect with the existing Equity Shares of the Company.

B. Alteration in the Capital Clause of Memorandum of Association

2. To consider, and if thought fit, to pass with or without modification(s), the following resolution as an **Ordinary Resolution**:

"RESOLVED THAT pursuant to the provisions of Section 13, 61 and 64 and other applicable provisions of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed thereunder, the consent of the members of the Company be and is hereby accorded for substituting **Clause V** of the Memorandum of Association of the Company with the following clause.

V. The Authorised Share Capital of the Company is Rs. 75,00,000/- (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of face value of Rs. 10/- (Rupees Ten) each."

For my other Corporate Law Articles on Companies Act, 2013, kindly refer the links mentioned below:

1. [Useful Interpretations about Companies Act, 2013 - Part-1](#)
2. [List of Resolutions to be filed with ROC in Form MGT.14](#)
3. [Procedure for Appointment of Additional Director in CA 2013](#)
4. [Different Monetary Limits under Companies Act 2013](#)
5. [Companies to have Uniform Financial year under CA 2013](#)

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Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am very hopeful that this write up would be of some help to understand the concepts in new Companies Act, 2013.

Thanks

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