



Dr S Chandrasekaran
Senior Partner,
Chandrasekaran Associates
Company Secretaries

Ease of Doing Business

The new Companies Act, 2013

In a company, a “document” that requires authentication must be signed by one or more duly authorised person (s). While the previous Companies Act considered a contract made by or on behalf of the company as a “document”, the new Companies Act, 2013 (the Act) provides for contracts separately, though it has not precisely defined them. It does, however, state that contracts may be oral or written, and only written contracts require authentication. Meanwhile, the Act has expanded the definition of “document” to include forms and registers, including those maintained in electronic mode. The Act has also modified the definition of authorised signatories, including Key Managerial Personnel (KMP) or “officers” of a company, who are duly authorised by its Board of Directors (Board). Further, the term “officer” now specifically includes Chief Executive Officer and Chief Financial Officer.

Proposed amendments...

Currently, a document or contract entered for and, on behalf of a company, must be authenticated by a KMP or an “officer” of the company who is duly authorised by the Board. At a practical level, in an organisation, it is not only officers who should be empowered to approve documents and contracts, but also senior employees. However, now, the Board cannot designate an “employee” as an authorised signatory.

In a report released in February 2016, the Company Law Committee opined that any authorisation to employees would be backed by a board resolution, and the Board can be expected to exercise due care while authorising an employee to authenticate documents and contracts. Accordingly, it recommended an amendment to the relevant section of the Act to empower “any employee of the company duly authorised by the Board” to approve contracts and documents.

Accordingly, to ease the process of authentication, the Companies Amendment Bill 2016 incorporated certain proposals to amend the relevant sections. One, it proposes to amend the phrase “an officer of the company” into “an officer or employee of the company”. Second, in the definition of KMP, the Bill suggests including “such other officer, not more than one level below directors who is in whole time employment, designated as KMP by the Board”, which would widen the definition of who can be regarded as a KMP.

...and their current status

The proposals of the Companies Amendment Bill 2016 were made, inter alia, to include officers one level below whole-time directors as KMP, and to allow

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the Board to empower employees (in addition to officers) to authenticate documents or contracts on behalf of the company. Both these measures are likely to ease processes for companies. At a broader level, they are in alignment with the concept of “ease of doing business”. Regrettably, the Bill has not yet been passed by the Parliament, and things stand unchanged as of now.

Authentication of issue of share certificates

Companies (Share Certificates and Debentures) Rules, 2014 (the Rules) provide that a share certificate issued by a company shall be signed by two directors, one of whom shall be a Managing Director or Whole-time Director, if there is one, and the Secretary or any other person authorised by the Board. The Rules permit that the board can authorise any other person if there is no Secretary to sign the share certificate whereas in relation to authentication of a document or contract such an authority has not been given to the Board.

Conclusion

The Companies Amendment Bill, 2016 proposals were made for an amendment to include officers one level below whole-time directors as KMP and with an objective to include employees for giving authorisation by the Board to authenticate documents or contracts on behalf of the company which would have given some sort of comfort level to companies. The Parliament is yet to pass the Bill. The amendment also falls under the concept of ease of doing business and till the Bill is passed, the companies must continue to authorise only the KMP and Officer of the Company to authenticate documents or contracts. ■