

Bye-Laws and Rules for Conducting Election through eVoting

BYE-LAWS TO FACILITATE THE NOMINATION OF PANEL REPRESENTATIVES FOR THE PANELS ON THE COMMITTEE OF ADMINISTRATION OF CAPEXIL FOR THE YEAR 2016-17

In exercising of the powers conferred by Article 9 of the Memorandum and Articles of Association of CAPEXIL the Committee of Administration of the Council hereby makes the following Bye-Laws and Rules to facilitate the nomination of the representatives of panels on the Committee of the Council. In terms of Para 2.92 of the Handbook of Procedure (2015-20) as well as subsequent letter no. 12/2/2013- E&MDA dated 7th December, 2015 issued by the Ministry of Commerce & Industry, Govt. of India, Electronic Voting would be mandatory for election to the posts of Executive Committee members with a view to ensuring wider participation.

1. DEFINITIONS:

In these rules, unless the context otherwise requires:

- a. **"Act"** means the Companies Act, 2013 and includes any statutory modification or re- enactment thereof, for the time being in force;
- b. **"Article"** means an Article forming part of Articles of Association of the Council.
- c. **"Auditors"** means person appointed, as such, for the time being by the Council.
- d. **"Chairman"** means the Chairman of the Council.
- e. **"Vice-Chairman"** means Vice-Chairman of the Council.
- f. **"Executive Director"** means the Executive Director of the Council.
- g. **"Secretary"** means the Secretary (if appointed) by the Council.
- h. **"Committee"** means the Committee of Administration of the Council, constituted, as such, under Articles of Association of the Council.
- i. **"Council"** means CAPEXIL, constituted under Memorandum and Articles of Association of the Council.
- j. **"Extraordinary General Meeting"** means an Extra-ordinary general meeting of the members of the Council other than its Annual general meeting referred to in article 16.1.
- k. **"General Meeting"** means a general meeting of the members of the Council.
- l. **"Member"** means a member of the Council.
- m. **"Office"** means the registered office for the time being, of the Council.
- n. **"Panel"** means a panel of the Council (Specified under a group of products, under CAPEXIL) and constituted under Articles of association of the Council.
- o. **"Prescribed"** means prescribed by the Committee, by virtue of a power conferred by these articles.
- p. **"Product"** means any goods or services in regard to which the Council has been recognized for the time being by the Central Government; under the relevant provisions of the Export-Import Policy of the Central Government; as in force for the time being.

- q. **"Regional Committee"** means a Regional Committee constituted under the Articles of Association of the Council.
- r. **"Regional Chairman"** means a Regional Chairman holding office under the Articles of Association of the Council.
- s. **"Rules"** means the rules of the Council, for the time being in force, made under the Articles of Association or under any enactment for the time being in force.
- t. **"Micro Small & Medium Enterprises (MSME)"** means an enterprise so classified by the Central Government, under the Micro, Small and Medium Enterprises Development Act, 2006, as amended from time to time.
- u. **"Election Authority"** means any authority or person entrusted to conduct the election which includes "Election Authority / Returning Officer" appointed either by the Committee of Administration of CAPEXIL or by the Government of India.
- v. **"Ordinary Member"** shall mean Ordinary Member of the Council as defined in article 3.3.
- w. **"Year"** means the financial year beginning with the 1st April and ending with the 31st March of the following year.
- x. **'Email' or 'Email Address'** means E-mail address of the member as provided by the member and available with the CAPEXIL and displayed on CAPEXIL website against the name of the member in the "Electoral Roll."
- y. **'Key No.'** for the purposes of the election shall mean the membership number of the Member displayed on CAPEXIL website against the names of the member in the "Electoral Roll".
- z. **'Electronic Agency'** means the team/ agency appointed by the Council and duly approved and authorized by the Election Authority of the Council to conduct the Voting by Electronic Means under the Election Rules.
- aa. **'Email Password'** – Email Password, which is generated by the member himself/herself to access his/her own e-mail from time to time. The member is responsible for maintaining the secrecy, security and confidentiality of this password.
- bb. **"Competent Authority"** Competent authority means "Committee of Administration". However the Committee of Administration may authorise any designated officer of CAPEXIL to perform the role of competent authority for the purpose of conducting election. In such an event decision taken by the designated officer is final and binding.

2. RESERVATION: (IN TERMS OF ARTICLES 27.4 OF CAPEXIL):

- 1) At least one-third of the seats for the elected members of the Committee shall be reserved for representatives of small-scale industries.
- 2) In addition, at least one-third of the seats for elected members of the Committee shall be reserved for exporters who fall within the category of export houses, trading houses, star trading houses, and superstar trading houses for the purpose of the Export-Import Policy for the time being in force or who have for the time being similar status under the said policy.
- 3) Where any seat reserved under clause (a) or (b) of this article cannot be filled up by a candidate of the reserved category that seat deemed to be unreserved.

3. ELIGIBILITY TO VOTE AT THE ELECTION:

- 1) Only an Ordinary Members shall have the right to vote and elect representative of the panel member at the Council's Committee of Administration by participation in e-Voting provided they don't have any outstanding membership subscriptions for the previous years and they have also paid their membership subscription for the financial year (i.e. in the year of voting is held) on or before the 30th April in full including applicable taxes thereon and are continuing as members of the Council. In terms of Para 2.92 of the Handbook of Procedure (2015-20) issued by the Ministry of Commerce & Industry, Govt. of India, e-Voting is mandatory.
- 2) The eligibility of Ordinary Members is also subject to fulfillment of Articles 3 and 4 of CAPEXIL.
- 3) Each Eligible Ordinary Member of the Council shall have only one vote for every single representation/seat for the respective Panels.
- 4) An Ordinary member has to furnish their export turnover of CAPEXIL's products for the immediately three preceding financial years (i.e. for the F.Y. 2013-14, 2014-15 and 2015-16) as well as self certified payment particulars of membership subscription for the financial years 2015-16 and 2016-17 specifying Cheque/DD No./NEFT, Date, Amount etc within the stipulated time. Kindly note that in the event of non-receipt of the aforesaid self certified statement, the Council will be compelled not to include their names in the ordinary members list of the Council and they shall not be eligible to participate in the e-Voting process.

4. ELECTORAL ROLL:

The members included in the Lists of Voters are hereinafter referred to as "Voter Members". Once the said Lists of Voters are finalized for the Panels wherein Elections are to take place, the Council shall notify all Ordinary members primarily classified under those Panels, through the Council's Website and / or by sending the message to the e-mail ids' available with the Council that such Lists of Voters have been prepared panel-wise inter alia containing their respective mailing addresses and e-mail ids and the same will be available for inspection in the website and also at Head office of the Council. Only an Ordinary Member of the Council is entitled to vote and no other category of members – Associate, Affiliate and / or Nominated member shall have any voting right for the purpose of election of member of the panel.

Any eligible member not included in the List of Voters or if any change is required in the contact details of an eligible member may, within **3 (Three) days** from the date of the aforesaid notification made in the website of the Council, apply to the Election Commissioner / Returning Officer/ Executive Director/Joint Director / authorised person in the CAPEXIL's Head Office at Kolkata for inclusion in the relevant List of Voters and enclose authentic proof of payment of annual subscription and CA Certificate as aforesaid. The Competent Authority will verify the reasons for such omission and would dispose of the application accordingly within **2 (Two) days** from the date of receipt of such application.

If it is found that the omission is due to a change in the panel classification of the member from the Panel to which the member belonged to, then the matter along with the relevant documents submitted by the eligible member in question for this purpose, would be referred to the Competent Authority, which, in turn, would dispose off such application within **2 (Two) days** from the last date of receiving such application. Upon such disposal, the Competent Authority shall intimate his decision to such concerned member and shall prepare the final Lists of Voters and notify the same on the Council's website for information to the Voter Members. Thereafter no request for changes in the electoral roll will be entertained.

However, the last date for receiving the Nomination will remain the same for that member if it gets included in the Electoral Roll.

5. ELECTION AUTHORITY/RETURNING OFFICER:

The Committee of Administration of CAPEXIL, in consultation with the Government or otherwise shall appoint any individual, firm or institution, as the Election Authority / Returning Officer to conduct the election of members in the Committee of Administration. The Election Authority / Returning Officer have all the powers related to conduct of election and declaration of result and his decision shall be final and binding.

6. CONDUCT OF ELECTION:

Election shall take place for the following panels as per decision of COA in its 4th COA Meeting (2015-16) held on 20.05.2016 at Mumbai:–

- (1) **Animal By Products Panel,**
- (2) **Auto Tyres & Tubes Panel,**
- (3) **Bulk Minerals & Ores incl. Salt, Coal & Aluminium Metal Panel,**
- (4) **Processed Minerals including Upgraded Ilmenite Ore Panel and**
- (5) **Glass & Glassware Panel**

7. COMMITTEE OF ADMINISTRATION:

The Committee of Administration of CAPEXIL shall consist of the members as detailed in the Article 18 and Article 27.3 of the Articles of Association of the Council.

8. FILING OF NOMINATIONS FOR CONTESTING ELECTION TO THE RESPECTIVE PANELS FOR RECONSTITUTION OF THE COMMITTEE OF ADMINISTRATION:

(i) Nomination

The Election Authority/Returning Officer shall issue notice inviting nomination to the Voter Members as per the final Electoral roll which shall be published in the Council's website along with the mailing addresses and e-mail ids of the voters. The notice inviting nomination along with a Nomination Form of the Election Authority/ Returning Officer as per **Annexure-A** together with its annexures (instructions) hereto, shall be dispatched by Speed Post, Blue Dart as well as by email to all the Voter Members. It is also hosted at CAPEXIL website. Omission

of service of such a notice shall not, however, invalidate the election proceedings. In the notice inviting nomination, the Election Authority/ Returning Officer will also mention about the availability of the Rules of the Election of the Council (2016-17) and the Electoral roll on the Council's Website and also at the Head office of the Council.

(ii) Eligibility criteria for contesting election to the respective panel:

The candidate must satisfy the following conditions namely:

- (a) A candidate must be representative of an entity which is an Ordinary Member of the Council having exports of CAPEXIL's items (FOB value) and services not less than (i) Rs. 25 Lakhs for Small-Scale Industries and (ii) Rs. 1 Crore for Others to his or its credit during the financial year immediately preceding the year for which the election is being held, shall be eligible to contest the respective Panel for election of Panel representative in the Committee of Administration, provided such member appears in the Electoral Roll. For example, if the Election takes place in the financial year 2016- 17, the preceding year for this purpose will be Financial Year 2015-16.
- (b) In term of Article 10, Only the authorized representative shall be considered, whose name is mentioned as such in the Registration-cum-Membership Certificate, or any of the Director or equivalent thereto in case of Company or Co-operative Society or other body corporate, Proprietor in case of Sole proprietorship firm, Karta in case of HUF, Partner in case of Partnership, Designated Partner in case of LLP.
- (c) The nominations shall conform to the proforma prescribed by the Election Authority/Returning Officer.
- (d) A Nomination sent by fax/e-mail to the Election Authority/Returning Officer will be treated as invalid.
- (e) A member can file nomination and contest election for only one post, as a member of respective Panel.

(iii) A valid Nomination

A Nomination to be valid must satisfy and fulfill the following conditions to be supported within the following documents:-

1) The **Original Nomination Form** as per Annexure 'A' has to be filled-up properly in all fields mentioning therein the Director Identification Number (DIN) of the contestant, as stipulated u/s 152(3) of the Companies Act, 2013 has to be submitted.

2) CA Certificate has to be submitted by the contestant as **Annexure A-1,**

The duly filled-up Nomination Form, signed, stamped and completed in all respects along with all the above requisite documents must reach **the Office of Election Authority/ Returning officer** within **10 (Ten) days** from the date of the Notice inviting Nomination. Nomination should also be attested by banker of the Member-organization concerned along with Seal / Rubber Stamp of the Banker.

(iii) Clearance of doubts, rejection and publication of valid Nominees

- 1) In case the Election Authority/Returning Officer has any reason to doubt the veracity of any of the particulars / information contained in any Nomination Form received by him, he may call for particulars / information from the designated officer of the Council. He will also be at liberty to call for the export performance of the member concerned as per the record of the Council, from the designated officer of the Council.
- 2) The Election Authority, upon receiving nominations, shall enter the names of the nominees in a Register and after due scrutiny prepare a list of valid nominations received and also a list of invalid nominations received, thereafter display the same on the Notice Board placed in the office of the Election Authority. Election Authority shall also send copies thereof to the Council for arranging display in the Website and also its offices across India.
- 3) With regard to the invalid nominations, the Election Authority/ Returning Officer shall cite the reason for rejecting the same.
- 4) Last date /day for filing of objection regarding the lists of nomination before the Election Authority/Returning Officer is **3(Three) days** from the date of display of lists and the Election Authority/Returning Officer will dispose of the objections so received within **2(Two) days** there from.

(iv) Withdrawal of Nominations: Nomination can be withdrawn by the candidate and/or person who had signed the nomination form by a letter within a period of **5 (Five) days** from the date of aforesaid display of the list of valid nominations by the Election Authority/Returning Officer. Withdrawal of nominations by e-mail/fax will not be considered or accepted. Once the Nomination is withdrawn, no subsequent request for rescinding such withdrawal shall be entertained by the Election Authority/Returning Officer.

9. NO CHANGE IN PANEL AND/ OR ADDRESS REGISTERED WITH COUNCIL DURING ELECTORAL PROCESS

No member shall be permitted to change their Panel and/ or their address registered with the Council for the purpose of membership after the publication of final electoral rolls and until the declaration of results of the elections.

10. MODE OF ELECTION

- i. As directed by the Ministry of Commerce & Industry, vide letter dated 22nd February 2012, and as per the provisions of the Foreign Trade Policy, 2015-2020 the Council's election process will be conducted in electronic format. The system of Electronic Voting will be audited by independent third party Security Auditor(s)/ Scrutinizer(s) appointed by the Council, at the time of election process in order to ensure inter alia that the voting process has been properly implemented and is free of errors, that secrecy is maintained in voting process and that the entire process is secure and that sufficient safeguards such as encryption etc. have been incorporated in the voting process to prevent any manner/ mode of manipulation/mischief such as hacking etc.

- ii. In case only one valid nomination is received from a particular panel, there will be no election for that panel and the nominee will be declared as elected unopposed from the said panel.
- iii. Each Voter Member in the Electoral Roll shall follow the procedure of Electronic Voting as specified in the Instruction to the Notice to cast its vote. All Voter Member in the Electoral Roll shall be entitled to cast their respective votes online as per prescribed procedures during a period of **3 (Three) days**.
- iv. The electronic votes cast by the members shall be stored in a secure server. Only the Election Authority/ Returning Officer or Scrutinizer(s) shall be allowed access to the said votes.
- v. The person receiving the highest number of votes from each Panel will be declared as elected from the respective Panels, as the case may be. In the case of a tie, the result will be determined by draw of lots by the Election Authority/ Returning Officer. The Election Authority/Returning Officer shall declare the election result stating the names of elected candidates from each Panel. The decision of the Election Authority/Returning Officer in this regard shall be final and binding to all concerned. The Election results will be displayed on the Notice Board maintained at the office of the Election Authority/ Returning Officer and shall be communicated to the Council. The Election Authority/Returning Officer shall declare the panel wise result in the following manner:-
 - (a) Total number of Votes received;
 - (b) Number of Votes rejected/ invalid;
 - (c) Number of Votes secured by the contesting candidates;
 - (d) The name of candidate securing the highest number of votes and declared elected.
- vi. The Election Authority/Returning Officer shall arrange to communicate to all contesting members of the Council, the results of Elections and also notify the same to the Council.

13. ARBITRATION/DISPUTES

All disputes with regard to any matter arising out of the election of the Committee of Administration of the Council shall be subject to the jurisdiction of the Courts at Kolkata.
