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# *Frequently Asked Questions*

*Regarding*

*Delegation of Powers*

*to*

*an Indian Resident Individual by*

*a Foreign Company / Individual*

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### Notes:

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This Guide is an academic exercise. It does not offer any advice or suggestion to any individual or firm or company.

In this Guide, at some places Companies Act, 1956 is referred to while at some other places, Companies Act, 2013 is referred to. In general, whenever the relevant provision of Companies Act, 2013 has not yet been made effective, we have referred to the older Act. Government of India is constantly making parts of the new law effective replacing the corresponding parts of the old law. Please check the position as on date or consult a legal practitioner or company secretary.

## Frequently Asked Questions

regarding

### Delegation of Powers to an Indian Resident Individual by a Foreign Company / Individual

1. We are a company based in Australia. We own majority shares of an Indian company. We have appointed a professional (resident and citizen of India) to act as Managing Director of the Indian company. What are the ways / instruments by which we can delegate powers to the professional acting as Managing Director of the Indian company?

The key question is - what will be the role of the Managing Director (MD) in the Indian Company. (A) The MD will represent the Australian company (B) the MD will carry out activities for the Indian Company (C) he will do both. Let us consider (A) and (B) as independent options which may be carried out simultaneously in case of (C).

#### Case A – The individual representing the Australian Company

There are three ways in which the Australian company can delegate powers to this individual – (a) By an Agreement (b) By Power of Attorney (c) By a resolution of Board of Directors of the Australian company. Typically, an Agreement is a more comprehensive document while Power of Attorney is a brief one. Due to its comprehensive nature (which may include financial aspects), an Agreement is often not shared with third parties. In such a case when the Agreement is confidential, a Power of Attorney may be in addition to the Agreement. So, Power of Attorney is for all and sundry, while Agreement may be strictly between the Australian company and the individual.

We recommend that if an Agreement is executed, it covers the following points carefully:

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- a) Specific activities (subject to such financial limits as may be prescribed) that the individual will be responsible for and have authority without any approval from the Australian company.
- b) Specific activities (or activities beyond prescribed financial limits) that the individual will carry out only after getting written approval from the Australian company. It is important to define who in Australian company will be authorized to grant approval for any specific activity.
- c) Activities that the individual will be forbidden from doing unless specifically ordered in writing by an authorized officer of the Australian company.
- d) Whether and to what extent the individual is permitted to delegate the powers granted to him.
- e) Mode and necessity of reporting to the Australian company about actions and / or decisions taken by the individual.
- f) Reward or compensation to the individual for carrying out the activities that he is authorized by the Agreement to do. Notably, if there is no compensation or consideration the Agreement will become void under section 25 of The Indian Contract Act, 1872. It may be emphasized that if the individual draws a salary from the Indian company and the agreement with Australian company is without consideration, the agreement with Australian company will be void notwithstanding the fact that the individual is being compensated by a subsidiary of the Australian company. However, if the Agreement is fashioned strictly as a principal-agent agreement, there is no requirement for a consideration (section 185 of the Indian Contract Act).
- g) The term of the Agreement should be clearly specified. If the term is linked to some events like his continuing to be Managing Director of Indian company, such events should be described clearly without any ambiguity.
- h) Applicable Law – The applicable law can either be Australian law or Indian law or may also be some other law like UNIDROIT Principles of International Commercial Contracts (2010). It is most preferable for the Australian company to make the agreement subject to Australian law.
- i) It is desirable to have dispute resolution provisions (including Arbitration clause) in the Agreement. Though, an agreement without dispute resolution clauses will be perfectly valid. If the applicable law

is UNIDROIT Principles of International Commercial Contracts (2010), it is highly advisable to have an arbitration clause and to specify the place of arbitration.

- j) Confidentiality provisions – It is desirable that a suitable confidentiality and non-disclosure clause is incorporated in the Agreement. The clause should also state whether the Agreement will be considered as confidential or will be shared with third parties.
- k) Power of Attorney – If it is proposed to issue a Power of Attorney in favor of the individual for sharing with third parties, an enabling clause in the Agreement mentioning the issue of Power of Attorney is desirable. The Power of Attorney proposed to be issued may also be included as a Schedule to the Agreement.

Irrespective of whether an Agreement is executed or not between the Australian company and the individual, the Australian company may issue a Power of Attorney in favor of the individual.

While executing Power of Attorney, the Australian Company must demarcate the extent of powers to be granted to the individual in relation to – (a) Movable Property (b) Immovable Property. Power of Attorney in respect of immovable property must be registered. Section 17 of the Registration Act, 1908 provides for compulsory registration of such instruments. Power of Attorney in respect of movable property need not be registered.

To register a Power of Attorney, you will need to take assistance of an advocate practicing in conveyance and related matters in the area where the immovable property is situated. Registration fee combined with stamp duty can be a substantial sum and varies from state to state of India. So, local assistance from an advocate practicing in the area is essential.

Typically, if a Power of Attorney is to be registered in India and relates to immovable property in India, it is advisable to make the Power of Attorney subject to Indian laws.

In case the Board of Directors of the Australian company passes a resolution delegating powers to the individual resident in India, this is also a valid method of delegation of powers. However, the following points should be noted in this regard:

- i) There should be an acceptance, preferably in writing and under signature (as against email), by the individual concerned indicating that he / she has accepted the powers delegated to him or her. In the absence of such an acceptance, in case of any dispute it will

need to be proved by subsequent actions of the individual that he / she had accepted the delegated powers and role.

- ii) It will be advisable to mention in the resolution of the Board of Directors that the delegation of powers is subject to Australian law and all disputes will be subject to the jurisdiction of the place where the registered office of the Australian company is located.

### Case B – Delegation of powers to the individual by Indian Company

According to section 179 of the Companies Act, 2013 all powers of management of a company vest in the company's Board of Directors. If powers have to be delegated by the Board to an individual, the Board has to pass a resolution to the effect. A certified copy of extracts of minutes of a meeting of Board of Directors is the only proof that an individual needs to submit about his / her authority to do some act on behalf of the company.

The extracts need to be certified as true by any key managerial personnel [Managing Director or Whole-time Director or CEO or CFO or Company Secretary or a Manager (as defined under section 2(53) of the Companies Act, 2013)] or by an officer who has been so authorized by the Board of Directors (section 21 of the Companies Act, 2013).

A person to whom powers are delegated by the Board of Directors need not be a Director of the company.

Resolution of the Board of Directors must specify in clear terms the extent of delegated powers and also whether the powers may be sub-delegated further.

Sample Extracts from Minutes of Board of Directors are given in **Annexure A**.

The relationship between the Indian company and the individual resident in India is a domestic transaction. Hence, the applicable law will be necessarily Indian law.

### Case C – The individual will represent the Australian Company as well as the Indian Company

As mentioned earlier, this is a combination of A and B. So, documents for both should be prepared. Notably, delegation of powers by the Australian company will be independent and simultaneous to the delegation by Board

of Directors of Indian company. Hence, preparing a common document for the two should be avoided.

2. We are an investment company based in Mauritius. We own minority shares in a listed company of India. We wish to appoint a person to act as our agent to sell our shares in the said listed company of India. However, we wish to ensure that the agent confirms with us before finalizing a deal. What sort of instrument should we execute? Do we need to pay any stamp duty on the instrument? Do we need to register the instrument?

For carrying out such a transaction, executing a Power of Attorney (POA) in favor of a resident individual in India, can be a good option.

POA allows the Principal to entrust wide powers to the Agent to act on his behalf. The advantage of executing a POA is that it is easily admitted as evidence in the Indian courts without much doubt on its validity.

A sample Power of Attorney authorizing the agent to sell shares on your behalf is attached as **Annexure B** to this FAQ.

We advise the following points to be noted:

- a) The draft Power of Attorney attached as Annexure B makes the Power of Attorney subject to the laws of the country where foreign company is based. This can be of advantage if the Attorney misbehaves and the matter goes into litigation. Surely, no foreign company wants to get into litigation in India.
- b) Since the Power of Attorney is being executed in a foreign country, the Power of Attorney should not be printed on Indian stamp paper and no stamp duty as per Indian Stamp Act, 1899 ought to be paid on it.
- c) The Power of Attorney should not be registered in India.

3. We are a company based in Singapore. We had executed a Power of Attorney (POA) in Singapore in favor of an Indian Resident Individual for entering into contracts related to sale of goods on our behalf with our Indian clients. Is the POA executed in a foreign country considered valid in India?

The POA executed by you is valid in India.

Since the POA is executed in Singapore, we assume that the POA would have been made subject to Singapore laws. Any dispute between you and your agent would in such case be subject to Singapore laws.

However, the contracts entered into by your agent on your behalf may be subject to Indian laws and Indian courts depending on the specific conditions contained in the said contracts.

4. We are a company based in United Kingdom (UK). We had executed a Power of Attorney (POA) in UK in favor of Branch Manager managing our Indian Branch. The POA granted to the Manager the power to obtain secured loan from Banks up to the limit of Rs. 50 million. The Branch Manager obtained a loan amounting to Rs. 70 million. Will the UK company be liable for additional liability taken up by the Branch Manager?

The first issue that comes up in such a case is the law applicable in the POA made by you in favor of your Indian agent. If the law applicable is UK law, for any action before UK courts you will need to consult a law firm in UK.

Notwithstanding the applicability of UK or Indian law to the relationship between the UK company and the Branch Manager, the question that will come up before an Indian court will relate to the validity of the agreement of loan between the Indian bank and the UK company. The Agreement, having been executed in India and denominated in Indian Rupees, will be subject to Indian laws and the provisions of the Indian Contract Act, 1872 will apply.

The key issue before the Indian court will be whether the loan agreement is valid even though the person who signed it on behalf of the UK company exceeded his / her authority.

Relevant sections of The Indian Contract Act, 1872 are as follows:



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### **Section 227 - Principal how far bound, when agent exceeds authority**

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When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

#### **Illustration**

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

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### **Section 228 - Principal not bound when excess of agent's authority is not separable**

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Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

#### **Illustration**

A, authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

The key issue that the Indian court will have to examine is whether the loan agreement can be separated into two parts – one less than Rs. 50 million and the other for the balance. Often the loan agreement is tied up with hypothecation of properties and other collateral securities which cannot be separated into two neat bundles. If this is indeed the case, provision of section 228 of The Indian Contract Act will apply and the UK company will have the option of NOT recognizing the transaction. However, if the loan agreement can be separated into two neat bundles as mentioned above, the UK company will be liable for one bundle of Rs. 50 million or less but not for the balance.

5. We are a company based in South Africa. We intend to appoint an agent in India to sell the company's products in India and deal with clients on behalf of the company. Does appointment as an agent require certain specific qualification in India? Will the agency agreement need to be registered in India?

There is no specific qualification required for being an agent. Section 184 of the Indian Contract Act provides that any person who has attained the age of majority i.e. 18 years and does not suffer from any mental incapacity can become an agent.

The relevant section of the Act is as follows:-

**184. Who may be an agent -**

As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent, so as to be responsible to the principal according to the provisions in that behalf herein contained.

Agency agreement for sale of products (which are classified as movable properties) does not need any type of registration in India.

6. We are a Company based in Malaysia. We executed a Joint Venture Agreement with an Indian Company. In addition, a Power of Attorney was executed in favor of one Mr. Arun Kumar, an Indian resident to represent the Malaysian Company and to manage the operations of the Joint Venture Company on behalf of the Malaysian Company in India. In the draft of POA sent to us, we did not notice that the POA was irrevocable. Now, Mr. Arun Kumar is misbehaving and is telling us that we cannot revoke the POA. Please advise whether we can revoke an irrevocable POA under Indian laws.

Under Indian law, a Power of Attorney, even if mentioned to be irrevocable, can be revoked by the person granting the power unless the agent has an interest in the matter. Generally speaking, it will be presumed that a POA is revocable unless the agent is able to show effectively that he / she had an existing interest which will be jeopardized if the agency is revoked.

Typically, if a POA creates an interest in favor of the agent simultaneously with grant of authority, the interest will have to be settled before the POA is revoked. For example, if A gives B the authority to sell his house and B pays A Rs. 5 million as advance for the sale, the POA cannot be revoked till the advance given by B to A is returned.

On the other hand, in the above example if B does not pay any advance and A promises B to pay a commission of 3% of sale value, the promise of payment of commission will not amount to an interest of B. In such a case A will be free to revoke the POA without any obligation to pay to B whole or part of the promised commission.

Relevant sections of The Indian Contract Act, 1872 are as follows:

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## **Section 201 - Termination of agency**

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An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

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## **Section 202 - Termination of agency, where agent has an interest in subject-matter**

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Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

### **Illustration**

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

In the question raised by you, if the POA is subject to Indian laws, the Malaysian company is fully within its powers to revoke the POA given to the Indian resident named Mr. Arun Kumar.

A sample deed for revocation of powers is provided in **Annexure C**.

In case the Power of Attorney is subject to the laws of Malaysia then you should consult a legal practitioner based in Malaysia.

7. We are a textile company based in Indonesia. We hold majority of shares of an Indian company. We authorized one Mr. Ravi Shankar, an Indian resident to manage the distribution channel of the Indian Subsidiary Company in the states of Delhi, Maharashtra and Gujarat. It was found that Mr. Ravi Shankar engaged a Transport Company for carriage of Company's goods to different locations which charged three times the normal freight charged by other transport agencies. We intend to cancel the arrangement entered with Mr. Ravi. How can we do so? Can we take any other action against Mr. Ravi Shankar?

We assume that the delegation of power in favor of Mr. Ravi Shankar clearly gave him the authority to engage transporters. According to Section 212 of the Indian Contract Act, 1872, an agent is bound to apply proper skill and diligence while conducting transactions on behalf of the principal. The

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agent is liable to indemnify the principal for any loss caused to the principal by his actions.

The relevant section of the Indian Contract Act is as follows:-

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### Section 212 - Skill and diligence required from agent

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An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

#### Illustration

- (a) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e.g., by variation of rate of exchange—but not further.
- (b) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.
- (c) A, an insurance-broker employed by B to effect an insurance on a ship omits to see that the unusual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.
- (d) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

The key issue under the above section of Contracts Act is whether the agent acted "*with as much skill as is generally possessed by persons engaged in similar business*". If you can show that the agent acted in a manner where skill and diligence is less than normal for the trade, it is the obligation of the agent to compensate the company for any loss that might have been caused to the company.

The actions of the agent might also constitute a criminal offence depending on the specifics of the case. Generally speaking, however, it should be noted that corruption or behavior as described above on behalf of a person working in private sector is not punishable as a criminal offence under the laws of India. Often, Indian lawyers try hard to book such offenders under various provisions relating to either breach of trust or fraud or some similar offences under Indian Penal Code, 1860.

As mentioned earlier, the Company is within its rights to revoke any powers granted by it. No specific format is prescribed for revocation of powers delegated earlier. For example, if the power was delegated by a resolution of Board of Directors, another resolution of Board of Directors will be sufficient to revoke the power.

8. I am an Indian citizen residing in Hong Kong. My father owned ancestral property in India and appointed an Indian resident as his attorney to manage the properties in India. My father died a month ago. Is the power of attorney executed by my father still valid?

We assume that the power of attorney was subject to the laws of India. The power of attorney shall cease to be effective with death of the person granting the power.

Section 201 of the Indian Contract Act provides that the agency is terminated with the death of either the principal or the agent. The relevant section is as follows:

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### **Section 201 - Termination of agency**

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An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

In your case, the power of attorney issued by your father ceased to have any effect as soon as your father passed away.



9. I am an entrepreneur based in London. I hold certain shares in an Indian Company named XXXXX Sportswear Limited. I asked a relative to execute sale of the aforesaid shares. The said relative wanted a formal mandate letter which I provided. The mandate letter did not provide for engaging any intermediary for affecting the sale. However, my relative routed the sale through a share broker who, I am told, charged a commission of ten percent of sale price of the shares. My relative deducted the said commission from proceeds of the sale and handed me the balance amount. Is my relative legally entitled to deduct the said amount in spite of not having the power to hire other person? Are there any precautions that I can take in such a situation in future?

Under the Indian Contract Act, an agent has the authority to do all the lawful acts that are necessary for him to carry out the task delegated to him. If the shares of XXXXX Sportswear Limited are listed on a stock exchange, it is necessary that the shares are sold only through a stock broker who is a member of the stock exchange where the shares are listed. If this is indeed the case, your relative by appointing a broker has carried out an act that was necessary for selling the shares.

Relevant section of the Indian Contract Act, 1872 is as follows:-

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### **Section 188 - Extend of agent's authority**

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An agent having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

### **Illustration**

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

In case the shares are not listed on a stock exchange, the question whether it was necessary to employ a broker will be answered based on the circumstances of the case. It is likely that a court will decide that it was necessary to use the services of a broker.

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The next question is about the brokerage. An agent has a right to retain the amount actually spent by him for carrying out the work that was delegated to him. If the agent has lawfully appointed a broker and the shares have been sold through the broker, the agent has to pay the broker. Any such sum paid to the broker may be deducted by the agent from the sale proceeds.

Extract of Section 217 of the Indian Contract Act, 1872 is as follows:-

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### **Section 217 - Agent's right of retainer out of sums received on principal's account**

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An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

The next issue is about the rate of brokerage. Payment of commission of 10% to a broker seems excessive. It needs to be determined whether this is indeed as per the custom prevailing in the market.

It is pertinent to look at section 211 of Indian Contract Act in this regard.

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### **Section 211 - Agent's duty in conducting principals business**

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An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

#### **Illustration**

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, on its to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

The above section prescribes that in the absence of directions from the principal, an agent is bound to conduct the business "*according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business*". Your agent might have been justified in appointing a broker but he was duty bound to pay the broker only as per the prevailing custom at the place.

If, for example, the custom is to pay 1% brokerage to a share broker and your agent has paid 10%, the agent must pay you 9% which is the loss

incurred by you due to your agent acting against the custom. In such a case, it is not important whether the agent paid 10% to the broker or not. Even if he had paid at the higher rate, he is bound to make good the loss to you.

10. We are a company based in Thailand carrying out manufacturing of sports apparels. We own a branch office in India. The Branch office is meant to dispatch goods to clients against their online orders. The Branch Manager at the branch office has not been given power to enter into contracts on behalf of the company. The Branch Manager falsely represented himself to be agent of the company and entered into a contract to supply some apparels which the company does not manufacture. The Branch Manager got the apparels manufactured in India and branded them with the company's trademark and made a good profit. We are afraid that the goods supplied by him are sub-standard and will lead to long-term loss for the company's reputation and goodwill. What is the action that we can take against the said person?

There are two aspects of the wrong committed by your Branch Manager – (a) Criminal act of falsification of trademark under Trademarks Act, 1999 and (b) civil wrong under Contracts Act.

Relevant section of the Trademarks Act, 1999 is as follows:



103. Any person who---

- (a) falsifies any trade mark; or
- (b) falsely applies to goods or services any trade mark: or
- (c) makes, disposes of, or has in his possession any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying a trade mark or
- (d) applies any false trade description to goods or services or
- (e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address: or
- (f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139 or
- (g) causes any of the things above mentioned in this section to be done.

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Provided that the court may for adequate and special reasons to be mentioned in the judgement impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

In addition to the above provision under Trademarks Act, you may also initiate action against the Branch Manager under section 486 of Indian Penal Code, 1860 which reads as follows:

**486. Selling goods marked with a counterfeit property mark**

2 [Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark] affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves--

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and
- (b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or
- (c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.]

We suggest that you should take up action against the wrong-doer under law related to criminal offence and ignore the civil wrong under Contracts Act.

11. We are a company based in Russia. We buy computers and laptops which are not in a working condition, dismantle them and manufacture new products out of the working parts of the computer. We appointed a person in India to help us buy such computers. After 6 months of the contract we found that the agent bought some computers without the knowledge of the company, and started to produce goods out of those computers at his own end and earned profits. What remedy do we have against the agent?

The question that needs to be answered here is whether the contract entered into between your company and the Indian party prohibited him from entering into the same kind of business in India? If yes then the person can be held responsible for breach of contract and can be sued under the provisions of the Indian Contract Act, 1872, assuming the contract is governed by Indian Law.

Where the contract did not provide for any such provision, generally speaking no action can be taken against the person so appointed.

If the person appointed was an employee or a director, the appointment letter / power of attorney by which he was appointed or by which authority was delegated to him will have to be looked into. Often employment contracts have restrictive clauses preventing employees from taking up business activities while in employment and competing activities after cessation of employment. If such clauses are in the employment contract, you may take action against the person.

12. We are a company based in New York dealing in food products and beverages. We supply products to India also. We appointed a sales manager to manage our operations in India and provide timely delivery of our products in the Indian markets. It is the responsibility of the manager to check the products before supplying and ensure that the product is not an expired one. The manager was authorized to appoint representatives in India for helping him in managing the operations. One of the representative appointed by the manager sold expired products to one of our clients in India. The client filed a suit against the company. Is the company liable for the acts of the representative even though the representative was not directly appointed by the company?

Indian courts accept the principle of vicarious liability of employer in respect of wrongs done by an employee. In common man language, if I keep a monkey and the monkey does some mischief, I am liable for all wrongs done by the monkey.

A person who is indirectly employed by a company is no different from a direct employee of the company for most legal matters. Whether the monkey is under a direct contract or under an indirect contract is irrelevant matter when the monkey does mischief.

Under section 27 of Food Safety and Standards Act, 2006 (Act No. 34 of 2006), manufacturer, wholesaler, distributor and seller of an expired food product are liable. The section does not provide for any protection in case of employee negligence. Hence, you will be liable under the said section even though the fault is entirely on account of some indirect representative.

**Annexure A**

**EXTRACTS OF MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS  
OF ..... (Name of Indian Company) **HELD ON**  
..... (Day and date of the meeting) **AT**  
..... (Location of the Board Meeting)**

**“Delegation of Powers to The Managing Director**

RESOLVED THAT the Managing Director of the Company be and is authorized to do any and all of the following acts in connection with the business of the Company:-

1. To develop business plans, budgets and company strategies for consideration by the Board of Directors;
2. To implement the plans, budgets and strategies as approved by the Board of Directors;
3. To purchase raw materials, consumables, packing materials and such other goods and materials required for use in production at the company's factory;
4. To purchase furniture, fittings, furnishings and office equipment as required from time to time;
5. To purchase capital goods (other than the ones mentioned in 4 above) as per expansion plans or budgets approved by the Board of Directors;
6. To sell goods, bye-products manufactured by the Company and also to sell any waste products or scrap as may be generated;
7. To take steps for maintenance of company properties including buildings, plant & machinery, electrical installations, vehicles etc.
8. To engage consultant(s), legal practitioner(s), chartered accountant(s) and such other service providers;

## *FAQ about Delegation of Powers*

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9. To recruit and terminate employees, staff and officers as well as to do all that may be required in connection their employment including taking disciplinary action;
10. To execute and sign agreements and contracts in connection with any of the above on behalf of the Company;
11. To delegate any of the above powers to any staff or officer of the Company.

The Managing Director was further authorized to provide a copy of the relevant extracts of minutes of the meeting of Board of Directors containing this resolution to any person or organization or authority, as may be required from time to time.”

Certified to be a true copy of the minutes of the meeting of Board of Directors of the company as recorded in the Minutes Book

For ..... (name of the company)

..... (signature of the person certifying)

..... (name and designation of the person certifying)

**Annexure B**

**POWER OF ATTORNEY**

(Authorizing an Individual to sell Indian shares / securities held by a foreign company)

This Power of Attorney (hereinafter referred to as “**the POA**” or “**this POA**”) is made on ..... day of the month of ..... of the year ..... by ..... (name of the foreign company) registered under the laws of ..... (name of the foreign country where the foreign company is incorporated) bearing identification number ..... and having its registered office at ..... (hereinafter referred to as “**the Company**”) in favor of Mr. .... S/o..... aged about .....years, resident of....., India (hereinafter referred to as “**the Attorney**”), to execute and do all or any of the acts mentioned herein below, which the Attorney has agreed to do.

WHEREAS, the Company is the owner of the Indian shares / securities described in Schedule to this Agreement (hereinafter referred to as “**the Specified Securities**”) and that there are no encumbrances on the Specified Securities;

AND WHEREAS, the Company wishes to appoint and authorize a person to act as its constituted attorney and agent to sell the Specified Securities;

And WHEREAS, the Attorney is willing to act as constituted attorney and agent of the Company to sell the Specified Securities.

NOW THEREFORE, the Company hereby appoints the Attorney and the Attorney agrees to act as its constituted attorney and agent to sell the Specified Securities subject to the following mutually agreed terms and conditions:

- 1) The Attorney will be free to sell the Specified Securities either through a share broker or directly to any buyer.

- 2) The Attorney will make his best efforts to get the highest possible price for the Specified Securities.
- 3) The Attorney will not sell any of the Specified Securities at a price less than the minimum price mentioned in the last column of the Schedule to this Agreement.
- 4) Notwithstanding this POA, any transaction(s) negotiated and finalized by the Attorney will be subject to confirmation by the Company in writing.
- 5) After receiving the confirmation from the Company in writing and after ensuring that the consideration for the sale is transferred by the Purchaser(s) to the bank account of the Company, the Attorney will execute on behalf of the Company Sale Deed, Transfer Form and such other documents as may be required for giving effect to the sale; and will also hand over to the Purchaser the share certificate(s) or other documents evidencing title to the Specified Securities.
- 6) The Attorney will take the consent of the Company in advance about any commission and / or other expenses that are required to be paid to any broker or third person in connection with the sale. After receipt of consideration for sale of the Specified Securities, the Company will promptly pay the agreed commission and / or other expenses.
- 7) This POA will be valid from the date of its execution and will be valid for a period of ninety (90) days from the date of its execution.
- 8) This POA is irrevocable and will not be revoked by the Company during its validity.
- 9) All acts lawfully done by the Attorney in terms of this POA shall be construed as acts done by the Company and the Company undertakes to ratify and confirm the acts done by the Attorney lawfully by virtue of the power hereby given under this POA.

## *FAQ about Delegation of Powers*

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- 10) The Attorney will share a copy of this POA with any and all third parties with whom he has any dealing(s) in respect of the Specified Securities.
- 11) The POA and all matters arising from it will be subject to the laws of the ..... (name of the foreign country where the foreign company is incorporated) and will be subject to the jurisdiction of the courts of the city of ..... located in the said country.

IN WITNESS WHEREOF, this POA is executed by the authorized representative of the Company and duly accepted by the Attorney on the day and date first above written.

.....

For the Company

.....

Attorney



**SCHEDULE**

<b>S. No.</b>	<b>Description of Securities to be Sold including Name of Issuer and Type of Securities (Equity share / Preference Share / Debenture)</b>	<b>Face Value Per Security</b>	<b>No. Of Securities</b>	<b>Minimum Sale Price Per Security</b>

**Annexure C**

**REVOCATION OF POWER OF ATTORNEY**

This Revocation Deed (hereinafter referred to as “**this Deed**” or “**the Deed**”) is made on ..... day of the month of ..... of the year ..... by ..... (name of the foreign company) registered under the laws of ..... (name of the foreign country where the foreign company is incorporated) bearing identification number ..... and having its registered office at ..... (herein after referred to as “**the Company**”).

**WHEREAS** a Power of Attorney dated ..... (date of execution of Power of Attorney) (herein after referred to as “**the Power of Attorney**”) was executed by the Company in favour of Mr./Mrs./Ms. .... (name of the attorney) S/o or d/o..... aged about .....years, resident of....., India (hereinafter referred to as “**the Attorney**”);

**AND WHEREAS** the Attorney was responsible for representing the Company in Indian Markets and manage the operations of the Company in India;

**AND WHEREAS** the Company intends to revoke the powers granted to the Attorney;

NOW THEREFORE the Deed hereby witnesses as follows:

1. The Company hereby revokes the Power of Attorney executed in favour of the Attorney.
2. The Attorney is not henceforth authorized to enter into any contract in the name of the Company or on behalf of the Company.
3. The Attorney is hereby directed to stop all dealings and interactions, direct or indirect, with the existing clients of the Company.

4. The Attorney is further directed to not disclose any confidential information about the Company, in his possession to any third party including past, present or future clients of the Company.
5. The Company shall be free to publish a notification in such newspaper(s) as the Company may deem fit about the Attorney not being associated with the Company after the date of this Deed.

**IN WITNESS WHEREOF**, this deed is executed by the authorized representative of the Company on the day and date first above written.

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For the Company

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# *Anil Chawla Law Associates LLP*

*Business Lawyers and Strategic Advisors*

Helps you with

Strategic Advice at all stages of business life-cycle  
Adviser and Facilitator for Business Relationships  
Design of Global Structures for Businesses  
Guiding all types of associations & collaborations  
Research to help understand Indian laws, rules and regulations  
Simplifying and solving complex legal issues  
International Treaty Related Disputes  
International Arbitration

We are a law firm that takes an entrepreneur's perspective on every issue. We do not make money by pushing clients through the arduous process of courts. We think the way you do.

We can be your trusted aide in India.



## *Anil Chawla Law Associates LLP*

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Cell: (+91 / 0) 94250 09280 (Anil Chawla)

**Note:** This Guide is Free. However, generally speaking, we do not provide free legal advice. Kindly consult your advocate for assistance / advice on any specific matters.

We follow a transparent system for fees. Please look at our **Indicative Rates** (<http://www.indialegalhelp.com/files/indicativerates.pdf>) before contacting us.

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