

Companies (Appointment of Sole Agents) Rules, 1975

UNION OF INDIA

India

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Rule

COMPANIES-APPOINTMENT-OF-SOLE-AGENTS-RULES-1975 of 1975

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Companies (Appointment of Sole Agents) Rules, 1975Published vide Notification Gazette of India, G.S.R. 137 (E), 1st March, 1975, Extraordinary, Point 2, Section 3(1) (w.e.f. 1st March, 1975)G.S.R. 137(E), dated 1st March, 1975. - In exercise of the powers conferred by Section 294-AA, read with clause (a) of sub-section (1) of Section 642, of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.

(1)These Rules may be called the Companies (Appointment of Sole Agents) Rules, 1975.(2)They shall come into force on the date of their publication in the Official Gazette.

2. Form of application for seeking approval of the Central Government for appointment of sole agents.

- Every company seeking approval of the Central Government for the appointment of sole selling agents or sole agent for the buying or purchasing of goods on behalf of the company under section 294AA of the Companies Act, 1956 (1 of 1956), shall apply in Form I or Form II, respectively, and furnish the particulars specified therein.

3. Fees to be paid along with the application.

- Every application made by a company under these Rules shall be accompanied by a Treasury Challana in token of payment of the requisite fee as specified in the Companies (Fees on Applications) Rules, 1968.[Form I] [Substituted by G.S.R. 68, dated 1st January, 1979 (w.e.f. 13th January, 1979).]Registration No. of the CompanyThe Companies Act, 1956Form of application for

approval of the Central Government to the appointment of sole selling agents by a company

1. (a) Name of the company:

(b)Address of the registered office:(c)Address of the principal office, if it is different from the registered office:(d)Branches at

2. Management structure of the company (list of Directors/Managing Directors and Manager/Secretary with particulars of other directorships held, if any, by them).

3. Principal business, indicating the main products of manufacture.

4. Details of production during the last three financial years of the kinds of goods or commodities in respect of which sole selling agent(s) are proposed to be appointed:

Yearended	Name(s) of the product(s)	Quantity and value of the goods produced(Separately for each)	Quantity & value of the goods produced(Separately for each)	Closing of the finished goods
1	2	3	4	5

5. Name, nature of organization, address and principal business of the person proposed to be appointed as sole selling agent(s).

6. Structure and size of the organization of the sole selling agents to be utilized for conducting sales for the company.

7. Experience of the persons proposed to be appointed as sole selling agent.

8. Reasons for the appointment of the sole selling agents.

9. (a) Terms of remuneration payable to the sole selling agent(s).

(b)A certified true copy of the proposed agreement to be enclosed.(c)Whether the arrangement is on principal to principal basis? If so, the rates of discount allowable to the sole selling agents may please be indicated.

10. Please indicate which of the following services are rendered by the sole selling agents in respect of each one of them, and if so, give details :

(a)securing the orders;(b)receipt of goods from the company;(c)providing warehousing facilities and re-dispatch of the same to consumers;(d)engaging in sales promotion through participation in exhibitions, etc.(e)engaging in publicity for the promotion of the production of the company through various mass media;(f)whether the sole selling agents receive any payment in respect of the goods supplied by the company from the wholesalers or distributors and pass it on to the company or whether the money is directly sent by the consignees to the company;(g)whether the sole selling agents render any after-sales service? If, so the details of the services rendered by them;(h)whether the sole selling agents carry del credere risk? If so, please indicate whether there has been any occasion during the last three years when the sole selling agents made good any bad debt incurred by the company in respect of any goods supplied to the wholesalers or distributors;(i)any other services rendered by the sole selling agents giving details;(j)whether the sole selling agents employ any staff exclusively for marketing the products of the company? If so, names, length of service and emoluments of the staff employed may be given.

11. (i) The commission earned during the last three years from the company by the sole selling agents whose application is under consideration.

(ii)Break-up of the expenditure incurred by the sole selling agents during last three years under the following heads in respect of sale of company's products:-(a)Salaries, allowances and perquisites (excluding travelling allowance) to the employees.(b)Expenses on travelling by officers and staff.(c)Rent (office and godowns).(d)Warehousing charges.(e)Freight and transport.(f)Publicity.(g)Commission to sub-agents and brokerage.(h)Interest.(i)Any other item (Please give details).Total Expenses:Notes. - (i) Commission given in Item 11(i) and expenses given in Item 11(ii) should correspond to the same period and preferably coincide with the accounting period of the sole selling agents.(ii)If the sole selling agents are engaged in any other activity apart from acting as sole selling agents of the company, the above expenses should be given on pro-rata basis or on any equitable basis that may be adopted by the sole selling agents.(iii)A certificate from the auditors of the sole selling agents, certifying the figures of expenditure incurred by them may be furnished.(iv)Please indicate whether there is any other relevant factor which should be taken into account in arriving at the profits of sole selling agents in respect of the sales of goods of the company duly supported by facts and figures.

12. Please give the following break-up of sales in respect of each of the last three years. (This information need be furnished only in respect of the product in which the sole selling agents under consideration has been appointed and for the territory for which he has been so appointed.).

I. Sales(a)Direct sales(b)Sales through each sole selling agents.(c)Total sales (a) plus (b).II. Commission paid(a)In respect of direct sales.(b)In respect of sales through sole selling agents.(c)Total commission paid.III. Sales made to Government departments and undertakings

under government control (a) Directly by the company. (b) Through sole selling agents. (c) Total sales to the government departments, etc.

13. (a) Total sales to bulk buyers of 2 per cent or more of the sales during the last three financial years showing separately:-

(i) Direct sales. (ii) Sales through sole selling agents. (b) Amount of sales made to each such bulk buyers during the last three years.

14. Whether the company has a sales department? If so, the expenditure incurred on staff and travelling expenses during the last three years may please be furnished. The justification for the appointment of sole selling agents when the company has a sales department may also be stated.

15. Interest of the sole selling agent(s) in the shares of the company indicating the class and number of shares held, the aggregate amount paid up and the percentage it bears to the total paid-up capital of the company:

(i) if the sole selling agent is an individual, the interest held by such individual and his relatives (with the description of relationship); (ii) if the sole selling agent is firm, the interest of the partners and their relatives (with the description of relationship); (iii) if the sole selling agent is a private company, the interest held by it, its directors and their relatives (with the description of relationship); and (iv) if the sole selling agent is a public company, the interest held by it, its directors and their relatives (with the description of relationship).

16. Particulars of the directorship in the company, held or controlled by the sole selling agents, if the sole selling agent is-

(i) an individual; particulars of the directorship held or controlled by the individual and his relatives (with description of relationship); (ii) a firm: particulars of the directorships held or controlled by the partners and/or their relatives (with description of relationship); (iii) a company: particulars of the directorship held or controlled by its directors or their relatives (with description of relationship).

17. (a) Number(s) and date(s) of the resolution(s), if any, passed for appointment of the sole selling agents. (Copy of special resolution under section 294AA(3) where applicable to be attached).

(b) Compliance of sub-section (2) of section 294 of the Act may be clarified.

18. Whether the proposed sole selling agent(s) had ever acted as the managing agents/secretaries and treasurers of the company after the 15th August, 1960, or had been (an) associate(s) of the managing agents or secretaries and treasurers.

19. (a) Name(s) of other companies where the person(s) proposed to be appointed as sole selling agent(s) is/are acting as sole selling agents, the products handled and the remuneration received therefor.

(b) Amount of commission/discount earned by such person and the expenses incurred in respect of such other companies during the last three years.

20. Foreign shareholding in the principal company and the sole selling agent and the profits remitted to the foreign countries on these shareholding during the last three years.

21. Did the sole selling agent, distributors, dealers, etc. during the last three financial years and if so, the amount incurred in each year by way of commission, etc. in respect of such appointment?

22. Did the company appoint agents (other than the sole selling agents), distributors, dealers, for the same product in other areas?

23. Terms of remuneration to other sole selling agents in other areas for same products of the company.

24. (i) Whether the sole selling agents maintain any current account with the company in respect of the sale of goods by the company? If so, indicate the debit balance in such accounts on the following dates together with interest, if any charged during three previous financial years:

31st. March

30st. June

30st. September

31st. December

(ii) Please indicate whether the sole selling agents give credit to the sub-agents, dealers, stockists, etc. If so, the details may be given.

25. Whether any sales targets have been laid down during the next three years, if so, please furnish details.

26. Is there any price regulation statutorily or by voluntary agreement relating to the sale of the products? If so, please give details.

27. Please indicate briefly how the marketing of the product of the company is done with particular reference to the channels of distribution, the number of intermediaries through which the commodity passes before it reaches the ultimate consumers.

28. Please state whether the goods are sent by the company to the place of business of sole selling agents or sent directly to the consignees on the basis of advice given by the sole selling agents or orders procured by him.

29. Please indicate the nature of the following facilities, if any, provided by the company to the sole selling agents:-

(a) Whether any expenses, incurred by the sole selling agents, are reimbursed by the company? If so, give details for the last three years. (b) Whether the company provides the sole selling agents with order forms or other stationery materials? If so, give details. (c) Whether the sole selling agents avail of the services of the employees of the company? If so, give full details. (d) Whether the company provides at its cost any publicity or other material? (e) Whether the sole selling agent avails of accommodation at the company's premises for his business? If so, whether any rent is paid by the sole selling agent in this regard. (f) Whether the company provides any facilities by way of conveyance, etc., to sole selling agents? (g) Any other facilities at subsidized rates, if any which the company provides to the sole selling agents with full details.

30. (i) In case the company pays any sole selling agency commission for sales to Government departments and companies, give full justification for such payment.

(ii) Whether any commission is paid to sole selling agents in respect of direct sales made by the company. If such direct commission is at the same rates as paid to sole selling agents in respect of sales made through sole selling agents. Justification thereof.

31. Whether the sole selling agents themselves are engaged in the manufacture of the same or similar products as the company is manufacturing?

32. Whether any portion of sole selling agency commission has been disallowed by the Income-tax Department?

33. The names and addresses of the auditors of the company.

34. In case the sole selling agent is a partnership firm, the following details may please be furnished:-

(a) Names of the partners and their shares in the profits. (b) The inter se relationship of the partners and their relationship to the directors of the company. (c) Names of the working partners and whether they are working whole-time or part-time. (d) Whether any salary is paid to the working partners? If so, the details. (e) The capital invested in the partnership firm during the last three years. (f) Profits earned by the partners during the last three years.

35. (a) Names of places where the company has warehouses.

(b) Names of places where sole selling agents have places of business.

36. (a) Whether the sole selling agency agreement has been registered with the Registrar of Restrictive Trade Agreements.

(b) Whether M.R.T.P. Commission has enquired into the agreement and passed any orders.

37. Please give in brief the extent of the competition for the product, bring out in particular the share of the company in the overall market for the product in India during the last three years and the names of the important competitors.

38. How are the accounts to be adjusted between the company and its sole selling agents? Does the company afford credit facilities in any manner? (Please give illustrative details).

39. (a) Does the company call for deposits from sole selling agent(s)? If so, on what basis are such deposits fixed? Whether any interest is payable on deposits? If so, the rate thereof.

(b) Does/Do the sole selling agent(s) call for deposits, from the sub-agents, distributors, stockists, etc.? If so, on what basis are such deposits fixed? Whether any interest is payable on the deposits. If so, the rate thereof?

40. Copies of the annual accounts (balance sheets and profit and loss accounts) of the principal company and the sole selling agents for the last three years.

41. Any other information which the company may like to be taken into consideration.

Dated, this day of 19 [Signature Designation] Form-II (See rule 2) Registration No. of the Company The Companies Act, 1956 Form of application for approval of the Central Government to the appointment of sole agents for the buying or purchasing of goods by a company.

1. (a) Name of the company.

(b) Address of the registered office. (c) Address of principal office, if it is different from the registered office. (d) Branches at

2. Management structure of the company (full list of directors/Managing directors/ Managers/Secretary), with particulars of other directorships, if any, held by them.

3. Principal business indicating main products of manufacture.

4. Particulars of goods/commodities bought during the last three financial years through agents.

Year	Description of goods/ commodities brought (manufactures/semi-manufactures, suitably grouped) and of the raw materials separately	Purchased Quantity	Value	Consumed Quantity	Left Value over stock	Value
1	2	3	4	5	6	7
						8

5. Description, quantity and value of the purchases, if any, made by the sole agent(s) on behalf of the company for the last three financial years their percentage to the total goods purchased by the company, with details of the rate and quantum of commission paid to each agent.

- 6. List of sub-buying agents appointed by the company or by sole-buying agent(s) and the value of purchases made by the sub-agents for the last three financial years. Amount and percentage of commission paid to them should also be indicated for the last three financial years. It should also be indicated whether such commission is paid by the company or by sole-buying agents.**
- 7. List of persons supplying in each of the last three financial years, 5 per cent or more of the purchases and the value of such purchases for the last three financial years.**
- 8. Certified true copies of the last three financial years' annual reports to be enclosed. Any significant change in the financial position since the last balance-sheet to be indicated here in brief.**
- 9. Name, nature, of business organisation, address and principal business of the persons proposed to be appointed as sole-buying agent(s).**
- 10. Structure and size of the organisation of the sole-buying agent(s) to be utilised for conducting purchases for the company.**
- 11. Reasons for the appointment of sole-buying agent(s).**
- 12. Terms of remuneration to other sole-buying agent(s) in other areas for same kind of goods purchased.**
- 13. Terms of remuneration payable to the sole-buying agent(s). A certified true copy of the proposed agreement to be enclosed.**
- 14. Amount of expenditure incurred, if any, in the last three financial years by the sole-buying agents over the organisation of buying arrangements.**
- 15. Interest of the sole-buying agent(s) in the shares of the company. Indicate the class and number of shares held, the aggregate amount paid-up and the percentage it bears to the total paid-up capital of the company :**

(i)if the sole-buying agent is an individual the interest held by such individual and his relatives (with the description of relationship);(ii)if the sole-buying agent is a firm, the interest of the partners and their relatives (with the description of relationship);(iii)if the sole-buying agent is a Private*

company the interest held by the sole agent and/or members; and(iv)if the sole-buying agent is a public* company the interest held by the sole agent its directors and their relative(s) (with the description of relationship).

16. Whether the proposed sole-buying agent(s) had ever acted as the Managing Agent(s)/Secretaries and Treasurers of the company after the 15th of August, 1960, or had been (an) associate(s) of the Managing Agents/Secretaries and Treasurers.

17. Number(s) and date(s) of the resolution(s) passed for appointment of the sole-buying agents. (Copy of special resolution under Section 294-AA(3), where applicable to be attached).

18. Experience of the person(s) proposed to be appointed as the sole-buying agent(s).

19. Existing buying arrangements of die company, and expenditure incurred therein with break-up of the expenditure for the last three financial years, in respect of arrangements:-

(a)through sole-buying agents, if any, and(b)otherwise.

20. Name(s) of other companies where the person(s) proposed to be appointed as the sole-buying agent(s) is/are acting as sole-buying agents, the product, quantum and value of purchases handled and the remuneration received therefor.

21. Particulars of Directorship in the company held or controlled by the sole-buying agents : if the sole agent is-

(i)an individual : Particulars of the individual and his relatives (with description of relationship).(ii)a firm : Particulars of the partners and/or their relatives (with description of relationship).

22. If the proposed sole-buying agent is a private* company, whether its directors of their relatives, or its members are directors of the principal company. If so, names of such persons and their relationship to the directors of the buying agency company to be furnished.

23. If the proposed sole-buying agent is a public* company, whether its directors or their relatives are directors of the principal company. If so, name of such persons and their relationship to the directors of the buying agency company to be furnished.

24. How are the accounts to be adjusted between the company and its sole-buying agent(s)? Does the company afford credit facilities in any manner. (Please give illustrative details).

25. (a) Does the company Call for deposits from the sole-buying agents? If so, on what basis are such deposits fixed? Whether any interest is payable on them? If so, the rate thereof.

(b) Does/Do the sole-buying agent(s) call for deposits from sub-agents, distributors, stockists, etc.? If so, on what basis are such deposits fixed? Whether any interest is payable on the deposits? If so, the rate thereof.

26. If Section 297 is attracted, certified true copies to be enclosed, of the resolution(s) and of the approval of the Central Government, where required. If Section 297 is attracted but Central Government's approval is not required indicate the reasons therefor.

27. Any other information which the company may like to be taken into consideration.

Dated, this day of 197SignatureDesignation]* If the buying agent is a foreign company, particulars may be furnished as are required to be furnished either in respect of a private company or a public company as the agency company may be under the law of the country of its incorporation.