

SNo 1

GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)

No.2018/JV Cell/Apptt. of Ind. Directors

New Delhi, dated 09.05.2018

Secretary,
Ministry of Corporate Affairs,
Government of India,
Shashtri Bhawan,
New Delhi- 110001

Sub: Appointment of Independent Directors in Joint Venture Companies
between State Government and Government of India.

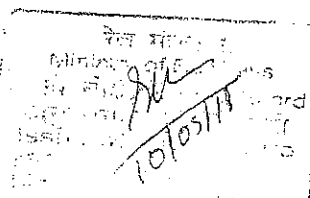
Ref: MoCA's General Circular No. 09/2017 dt. 05.09.2017

1. Ministry of Railways(MoR) has signed Joint Venture Agreements (JVA) with 11 State Govts. for formation of Joint Venture Companies (JVC). Accordingly, JVCs have been incorporated by the States of Chhattisgarh, Gujarat, Kerala, Maharashtra, Odisha and Haryana. Andhra Pradesh, Jharkhand and Madhya Pradesh are in the process of incorporating the Joint Venture Companies. The shareholding pattern of these JVCs is 51:49 between State Govt: MoR.
2. The role of the JVC is to undertake project development works which will include surveys, preparation of Detailed Project Report (DPR), obtain requisite approvals / sanctions and incorporate project specific companies (Project SPV). It will also arrange financial support and resources from various stakeholders of the project.

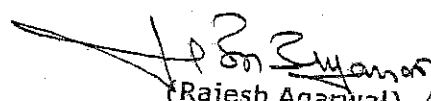
The Project SPV shall be responsible for execution of the project. The SPV(s) shall be formed between the JVC and one or more Companies/stakeholders on a case to case basis.

3. Appointment of two Independent Directors in the JVC has been provided in the Joint Venture Agreements signed with State Governments and in the Articles of Association of the JVC (extracts attached for reference).

As per Rule 4 (2) of the Companies (Appointment and Qualification of Directors) Rules, 2014, it is understood that appointment of Independent Directors shall not be required in Projects SPVs. However, clarification of MoCA is sought on whether appointment of Independent Directors is required or not in JVCs which are purely between State Govt. and GoI (through MoR).



O/C


(Rajesh Agarwal)
Executive Director/M.T.P.
Railway Board
011-23386944

EXTRACTS OF AOA OF KERALA RAIL DEVLPT. CORPORATION LTD (KRD)
A JVC OF GDI (MOR) AND GOK

case the Chariman is unavailable for a meeting, any one of the Directors present at that meeting may be elected by the Board as the chairman for that particular meeting. The chairman will not be entitled to any emoluments and fees.

Voting at General Meetings

44. Resolutions at Board Level and General Meeting

Subject to the provisions of Article 6 of this Agreement, all resolutions of the Board of Directors shall be adopted by simple majority and in case of equality of votes, the chairman shall have a second or casting vote.

Minutes of General Meetings and inspection of minutes book

45. The minutes of the General Meeting of the Board shall be such manner as may be prescribed by the Board.

Board constitution and Board Meeting

46. BOARD OF DIRECTORS

Constitution, Appointment and Nomination

- a) Subject to the terms of the Agreement and the memorandum and Articles of Association, the Board will be responsible for the overall direction and management of the Company, its Business, operations and affairs and the scope of each of them
- b) There will be a maximum of twelve (12) Directors to the Board. Unless otherwise agreed by and amongst the parties to this Agreement, the number of Directors of each party will be in proportion to its investments in equity share capital and subordinated debt.
- c) The board will consist of a maximum of twelve (12) Directors [on the closing date] the Board will be constituted as follows
 - (i) one chairman of the Board
 - (ii) one Managing Director (a whole time director of the JVC) [who will be selected by a committee comprising of the representatives of MOR and GOK in equal numbers]
 - (iii) 2 (two) whole time directors with each of GOK and MOR having the right to appoint one whole time director;
 - (iv) 6 (Six) non-whole time directors (A) 2 (two) non-whole time directors being nominated by each of GOK and MOR; and (B) 2 (two) independent directors drawn from private or public sector or education institutions who will be experts in their respective fields.
- d) The directors will not be required to hold any qualification shares in the company

Meetings of the Board

- a) The board shall meet at least once in every quarter, at such times and circumstances as may be required and in accordance with the provisions of the Act, for the purpose of taking decisions on all policy matters and on
- b) for determination of issues regarding the buiseness of the company.
- c) The Directors may, in accordance with Applicable Law, participate in the board meetings through videb-conferencing or any other audio-visual menas as may be set out in the notice of the meeting.
- d) the quorum for the meeting of the Board or any adjournment thereof shall require the presence of one third (1/3) of the Directors in office or at least two (2) Directors, whichever is higher, for the time being. No such quorum shall be deemed to be complete unless at least one Director representing each of MOR and GOK is present at such meeting. In case the quorum is not present, the meeting shall be adjourned to the same day in the following week or if such day is a holiday the next Business Day thereafter. At any meeting of the Board

EXTRACTS OF JVA WITH STATE GOVT OF KERALA

lenders of the Company.

3.2 Pre-emption Rights

After the issue and allotment of Shares pursuant to Articles 2.4 and 2.5 of this Agreement, except in accordance with the provisions of the Act, the Company shall issue and allot additional Shares, to the existing Shareholders in proportion to their shareholding as mentioned in Article 2.7. Such offer to the existing Shareholders shall be in accordance with the provisions of the Act.

3.3 Lock-in Period

None of the Parties shall Transfer any part of the Shares acquired by them pursuant to the provisions of this Agreement for a period of 5 (five) years from the Closing Date.

4 SHAREHOLDER'S RIGHT TO SELL AND TRANSFER SHARES

4.1 Subject to the provisions of this Agreement relating to the lock-in period:

- (a) In case MOR desires to dilute its shareholding in the Company, then GOKL shall have the right of first refusal to acquire the Shares proposed to be sold by MOR and/or to require MOR to sell or otherwise Transfer such Shares to a nominee of GOKL as the Transferee
- (b) In case GOKL desires to dilute its shareholding in the Company, then MOR shall have the right of first refusal to acquire the Shares proposed to be sold by GOKL and/or to require GOKL, to sell or otherwise Transfer such Shares to a nominee of MOR as the Transferee;

4.2 The price at which the Shares shall be sold, transferred or acquired by any of the Parties shall be at a price as may be mutually agreed to by the transacting Persons.

4.3 Subject to the provisions of this Agreement, no Transfer of any Shares shall be made to any Third Party unless such Third Party shall have agreed in writing to be bound by the provisions of this Agreement by executing the Deed of Adherence.

5 BOARD OF DIRECTORS

5.1 Constitution, Appointment and Nomination

- a) Subject to the terms of the Agreement and the memorandum and Articles of Association, the Board will be responsible for the overall direction and management of the Company, its Business, operations and affairs and the scope of each of them
- b) There will be a maximum of 12 Directors to the Board. Unless otherwise agreed by and amongst the parties to this Agreement, the number of Directors of each party will be in proportion to its investments in equity share capital and subordinated debt.
- c) The board will consist of a maximum of 12(twelve) Directors. On the closing date, the Board will be constituted as follows
 - i. one chairman of the Board
 - ii. one Managing Director (a whole time director of the JVC) [who will be selected by a committee comprising of the representatives of MOR and GOKL in equal numbers]
 - iii. 2 (two) whole time directors with each of GOKL and MOR having the right to appoint one whole time director;
 - iv. 6 (Six) non-whole time directors (A) 2(two) non-whole time directors being nominated by each of GOKL and MOR and (B) 2 (two) independent