



**BYE-LAWS & RULES  
FOR CONDUCTING  
ELECTION THROUGH  
E-VOTING FOR THE  
YEAR 2020-21.**

# FOR FIVE PANEL CHAIRMEN / REPRESENTATIVES IN THE COMMITTEE OF ADMINISTRATION OF CAPEXIL FOR THE YEAR 2020-21

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 persons having requisite qualification and eligibility as prescribed under the Companies Act 2013 and includes any statutory modification or re-enactment thereof for the time being in force appointed, as such, for the time being by the Council;
- d. **“President”** means the President of the Committee and including Chairman of the Committee as per the definition of the existing AoA of the Council;
- e. **“Vice-President”** means Vice-President of the Committee and including Vice-Chairman of the Committee as per the definition of the existing AoA of the Council;
- f. **“Executive Director”** means the Executive Director of the Council and includes any officer of the Council performing the functions of Executive Director;
- g. **“Secretary”** means the Secretary by the Council and includes any officer of the Council performing secretariat functions;
- h. **“Committee of Administration”** or **“Committee”** means the Committee of Administration of the Council, constituted, as such, under Articles of Association of the Council.
- i. **“Council”** means CAPEXIL;



- j. **“Extraordinary General Meeting”** means an extraordinary 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 for the time being whose name has been duly entered on the Register of Members in accordance with these Articles and who has not ceased to be a member;
- 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 industry so specified by the Central Government, in its policy on the subject, as announced from time to time and tiny cottage industries so specified in such policy;
- u. **“Election Authority”** means any authority or person entrusted to conduct the election 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):**

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a. At least one-third of the seats for the elected members of the Committee shall be reserved for representatives of MSMEs.

b. 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 / FTP for the time being in force or who have for the time being similar status under the said policy.

c. 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:**

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1) Only an Ordinary Members of the respective Panel shall have the right to vote and elect Panel Representative/Panel Chairman in 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 and are continuing as members of the Council.

However, in view of OM F. No. J/8/2020-E&MDA-DoC dated 24<sup>th</sup> September, 2020, the Competent Authority has decided to take all members *who have paid their membership fees for the F.Y. 2020-21 on or before 30<sup>th</sup> September, 2020 and* followed other requisite criterion in finalising the list of Ordinary Members/ Voters for taking part in the Election process for the year 2020-21.

2) The eligibility of Ordinary Members is also subject to fulfilment 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. 2017-18, 2018-19 and 2019-20) as well as self certified payment particulars of membership subscription for the financial years 2019-20 and 2020-21 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 (as per ANNEX-1) or on-line submission of Export Return for the immediately three preceding financial years (i.e. for the F.Y. 2017-18, 2018-19 and 2019-20), 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 communication 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 **2 (Two) days** from the date of the aforesaid notification made in the website of the Council, apply to the Election Authority/Competent Authority 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 Election Authority/Competent Authority will verify the reasons for such omission and would dispose of the application accordingly within **1 (one) day** 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 **1 (One) day** 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.

#### **5. ELECTION AUTHORITY:**

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

#### **6. 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.

## 7. CONDUCT OF ELECTION:

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Election shall take place for the following panels as per decision of COA vide Resolution by Circulation:

- 1) Books, Publications & Printing Panel,
- 2) Glass & Glassware Panel,
- 3) Manufactured Products of Carbon Graphite, Explosives and Accessories Panel.
- 4) Paints, Printing Ink & Allied Products Panel and
- 5) Rubber Products Panel.

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

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### (i) Nomination

The Election Authority 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 as per Annexure-A together with its Annexure (instructions) hereto, shall be sent through email only 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 will also mention about the availability of the Bye Laws & Rules of the Election of the Council (2020-21) 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. 50 Lakhs for MSMEs and (ii) Rs. 2 Crores 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 2020-21, the preceding year for this purpose will be Financial Year 2019-20.
- (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 as prescribed by the Election Authority.
- (d) 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 **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**,
  - 3) Undertaking for DEL status on the letter head as **Annexure A-2**.
- Company in DEL list will not be considered.**

The scanned copy of duly filled-in Nomination Form, (signed, stamped and completed in all respects) along with all the above requisite documents **must be forwarded in JDGFT email id in the wake of COVID- 19 as pandemic within 12 (Twelve) 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. However, nominee may submit Original/Scanned Nomination form along with Annexures to the Office of Joint DGFT, Kolkata (Election Authority) and the same should be received within aforesaid stipulated time in case they have not submitted these documents via email.

**(iv) Clearance of doubts, rejection and publication of valid Nominees**

- 1) In case the Election Authority 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 competent authority 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 competent authority 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 its offices across India.
- 3) With regard to the invalid nominations, the Election Authority 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 is **2 (Two) days** from the date of display of lists and the Election Authority will dispose of the objections so received within **1 (One) day or days** as per direction of the Election Authority there from.

**(v) 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 **2 (Two) days** from the date of aforesaid display of the list of valid nominations by the Election Authority as stated in point no 8 (iv) 2. Withdrawal of nominations by e-mail in JDGFT email id will be considered or accepted in the wake of COVID as pandemic. Once the Nomination is withdrawn, no subsequent request for rescinding such withdrawal shall be entertained by the Election Authority.

**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 and there is no need to issue letter for withdrawal.
- 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 or days** as per direction of the **Election Authority / Competent Authority**.
- iv. The electronic votes cast by the members shall be stored in a secure server. Only the Election Authority 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. The Election Authority shall declare the election result stating the names of elected candidates from each Panel. The decision of the Election Authority 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 and shall be communicated to the Council. The Election Authority 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;
  - (e) the result of the election shall be declared on the basis of valid vote received during the election process irrespective of number of vote caste
- vi. The Election Authority shall arrange to communicate to all contesting members of the Council, the results of Elections and also notify the same to the Council.

## 11. ARBITRATION/DISPUTES

All disputes with regard to any matter arising out of the election of the five Panel Chairmen / Representatives in the Committee of Administration of CAPEXIL for the year 2020-21 shall be subject to the jurisdiction of the Courts at Kolkata.