

## **Lecture 36**

### **Voting and Demand for Poll**

Generally, initially matters are decided at a general meeting by a show of hands. If the majority of the hands raise their hands in favour of a particular resolution, then unless a poll is demanded, it is taken as passed. Voting by a show of hands operates on the principle of "One Member-One Vote". However, since the fundamental voting principle in a company is "One Share-One Vote", if a poll is demanded, voting takes place by a poll. Before or on declaration of the result of the voting on any resolution on a show of hands, the chairman may order *suo motu* (of his own motion) that a poll be taken. However, when a demand for poll is made, he must order the poll be taken. The chairman may order a poll when a resolution proposed by the Board is lost on the show of hands or if he is of the opinion that the decision taken on the show of hands is likely to be reversed by poll. When a poll is taken, The decision arrived by poll is final and the decision on the show of hands has no effect.

A poll is allowed only if the prescribed number of members demand a poll. A poll must be ordered by the chairman if it is demanded:-

- in the case of a public company having a share capital, by any member or members present in person or by proxy and holding shares in the company-
  - i. which confer a power to vote on the resolution not being less than one-tenth of the total voting power in respect of the resolution, or
  - ii. on which an aggregate sum of not less than fifty thousand rupees has been paid up.
- b. in the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy, if more than seven such members are personally present.
- c. in the case of any other, by any member or members present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution.

### **Motion**

Motion means a proposal to be discussed at a meeting by the members. A resolution may be passed accepting the motion, with or without modifications or a motion may be entirely rejected. A motion, on being passed as a resolution becomes a decision. A motion must be in writing and signed by the mover and put to the vote of the meeting by the chairman. Only those motions which are mentioned in the agenda to the meeting can be discussed at the meeting. However, motions incidental or ancillary to the matter under discussion may be moved and passed. Generally, a motion is proposed by one member and seconded by another member.

### **Amendment**

Amendment means any modification to a motion before it is put to vote for adoption. Amendment may be proposed by any member who has not already spoken on the main motion or has not previously moved an amendment thereto. There can be an amendment to an amendment motion also. A motion must be in writing and signed by the mover and put to the vote of the

meeting by the chairman. An amendment must not raise any question already decided upon at the same meeting and must be relevant to the main motion which it seeks to amend. The chairman has the discretion to accept or reject an amendment on various grounds such as inconsistency, redundancy, irrelevance, etc. If the amendment is adopted on a vote by the members, it is incorporated in the body of the main motion. The altered motion is then discussed and put to vote and if passed, becomes a resolution.

### **Kinds of Resolutions**

Resolutions mean decisions taken at a meeting. A motion, with or without amendments is put to vote at a meeting. Once the motion is passed, it becomes a resolution. A valid resolution can be passed at a properly convened meeting with the required quorum. There are broadly three types of resolutions :-

#### **1. Ordinary Resolution :**

An ordinary resolution is one which can be passed by a simple majority. I.e. if the votes (including the casting vote, if any, of the chairman), at a general meeting cast by members entitled to vote in its favour are more than votes cast against it. Voting may be by way of a show of hands or by a poll provided 21 days notice has been given for the meeting.

#### **2. Special Resolution :**

A special resolution is one in regard to which is passed by a 75 % majority only i.e. the number of votes cast in favour of the resolution is at least three times the number of votes cast against it, either by a show of hands or on a poll in person or by proxy. The intention to propose a resolution as a special resolution must be specifically mentioned in the notice of the general meeting. Special resolutions are needed to decide on important matters of the company. Examples where special resolutions are required are :-

- To alter the domicile clause of the memorandum from one State to another or to alter the objects clause of the memorandum.
- To alter / change the name of the company with the approval of the central government
- To alter the articles of association
- To change the name of the company by omitting "Limited" or "Private Limited". The Central Government may allow a company with charitable objects to do so by special resolution under section 25 of the Companies Act, 1956.

#### **3. Resolution requiring Special Notice :**

There are certain matters specified in the Companies Act, 1956 which may be discussed at a general meeting only if a special notice is given regarding the proposal to discuss these matters at a meeting. A special notice enables the members to be prepared on the matter to be discussed and gives them time to indicate their views on the resolution. In case special notice of resolution is required by the Companies Act, 1956 or by the articles of a company, the intention to propose such a resolution must be notified to the company at least 14 days before the meeting. The company must within 7 days before the meeting give the notice of the proposed resolution to its members. Notice of the resolution is required to be given in the same way in which notice of a meeting is given, or if that is not practicable, the company may give notice by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles, not less 7 days before the meeting.

The following matters requiring Special Notice before they are discussed before the meeting :-

- To appoint at an annual general meeting appointing an auditor a person other than a retiring auditor.
- To resolve at an annual general meeting that a retiring auditor shall not be reappointed.
- To remove a director before the expiry of his period of office.
- To appoint another director in place of removed director.
- Where the articles of a company provide for the giving of a special notice for a resolution, in respect of any specified matter or matters.

Please note that a resolution requiring special notice may be passed either as an ordinary resolution (Simple majority) or as a special resolution (75 % majority).