Chairman of the (General) Meeting [Sec 104]

1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

"Clause 104.— This clause corresponds to section 175 of the Companies Act, 1956 and seeks to provide that members shall elect one among themselves to be the chairman by show of hands. The clause further provides that if a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll."

2. Election of Chairman

Secretarial Standard-2 defines the term "Chairman" as "the Chairman of the Board or the Chairman appointed or elected for a Meeting".

Sub-section (1) of section 104 provides that unless the articles otherwise provide, the members present in person at a meeting shall elect one of themselves to be the Chairman on a show of hands.

3. Poll for election of Chairman

Sub-section (2) of section 104 provides that if after the election of a Chairman on a show of hands, poll is demanded, it must be taken forthwith. The Chairman elected by show of hands will exercise the powers of Chairman till the poll is taken. If a different person is elected as Chairman on a poll, then he will be the Chairman for the rest of the meeting

4. Other modes of appointment of Chairman

As provided in sub-section (1) of section 104, the articles of the company may provide for a different method for appointment of Chairman. Such method shall prevail over election by show of hands.

Regulation 45 to 47 of Table F contained in Schedule I of the Act deal with the election of Chairperson. It provides that the Chairperson of the board, if any, shall preside as chairperson at every general meeting of the company. Where there is no such Chairperson, or if he is not present within 15 minutes after the time appointed for holding the meeting, or is unwilling to act as Chairperson of the meeting, the directors present shall elect one of directors to be Chairperson of the meeting. If at any meeting no director is willing to act as Chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of themselves to be Chairperson of the meeting. The clause 5.1 of Secretarial Standard-2 also provides for similar mode for election of the Chairman.

Similar provisions were contained in Table A of the Companies Act, 1956. The companies which have not adopted Table A or Table F may provide any other method of electing the Chairman of the meeting. The shareholders are not given the power to elect a person other than a member as Chairman in Table F. However, the articles of a company may provide "otherwise" and may permit a person other than a member to be the Chairman.

It should be noted that where another person takes over as Chairman due to absence of Chairman of board in 15 minutes and such Chairman of board presents himself after 15 minutes, the person who has taken over the Chair may vacate the same.

5. Casting vote of Chairman

Casting vote means the right to cast a second vote in case of equality of votes cast in favour and against the resolution. Para 7.6 of Secretarial Standard 2 provides that the Chairman of the meeting has a casting vote in the event of equality of votes unless otherwise provided in the articles. This right is available in voting by show of hands or electronic voting or voting on a poll.

6. Role and responsibility of Chairman

The role, responsibility and powers of the Chairman are primarily centered on the proper conduct of meeting. Other managerial or executive powers are not vested in the Chairman by virtue of any provisions of the Act.

The Chairman's position assumes great importance, as he is responsible for the successful conduct of a meeting. The Chairman has a duty to keep order, to see that the business is properly conducted and to ensure that the sense of the meeting is properly ascertained in regard to any question before it. The role of Chairman is rightly encapsulated in para 5.1 of Secretarial Standard-2 in the following manner:

"The Chairman shall ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the notice is transacted. The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act."

Para 5.1 of Secretarial Standard-2 provides clarity for this role and states that the Chairman has powers to adjourn a meeting in the event of disorder or other like causes, when it becomes impossible to conduct the meeting and complete its business. Hence the powers of adjournment shall be exercised duly. If he declares the meeting closed prematurely and leaves the chair, the members may resolve to proceed with the meeting and elect another Chairman and continue with the business for which it was convened.

Para 5.2 of Secretarial Standard-2 "The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting. The

Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted."

In order to fulfil his duty properly, he must observe strict impartiality, even though he may be personally strongly opposed to any matter. He must give a reasonable chance to the members present to discuss any proposed resolutions, and ensure that all views are adequately aired. It this point was discussed in Wall v. London and Northern Assets Corporation *[11898 2 Oh. 469, para quoted in Parshuram Dattaram Shamdasani vs The Tata Industrial Bank Limited (1924) 26 BOMLR 987]*. "There the Court of Appeal had to consider the effect of a closure applied by the chairman of a meeting. With reference to that the observations of the Master of the Rolls and of Chitty L.J. are practically to the same effect. It is pointed out that the majority must not refuse to listen to the speech of a member in reasonable terms for a reasonable time, and having regard to the circumstances of that case the Court was satisfied that the closure was properly applied and that even if it resulted in negativing the right of speech to a particular member, it did not vitiate the resolution."

Para 5.3 of Secretarial Standard provides that in case of public companies, the Chairman shall not propose or conduct the proceedings for the resolution in which he is interested. He shall entrust his chair to any dis-interested director or member with consent of the members and shall resume chair only after that item is transacted.

In Nagappa Chettiar v. Madras Race Club [*(1949) 19 Com Cases 175, 197 (Mad)*]74, one of the disputes related to the election of 12 members of the Managing Committee of the Race Club. There were 24 nominations and 19 actually contested the election. Objections were raised at the meeting on the applicability of a certain rule and the Chairman gave a ruling in favour of the validity of the nominations including his own. The Chairman of the meeting was himself a candidate for election to the Managing Committee. The High Court held that "No man can preside at his own election & return himself. See 'The Queen v. White', (1867) 2 Q B 557 at p. 581: (36 L J Q B 267). These principles are well established, & it is unnecessary to deal with them elaborately. In fact, the resps' advocate does not dispute the propositions, but contends that those principles apply to meetings other than the meetings of a Co. Under the Articles provision is made for the appointment of a chairman, & he continues to preside at the meeting whether the meeting is one for transacting ordinary business or passing a special resolution or for the election of members to the board & the mere fact that the chairman is also a candidate for a committee or a board of management will not vitiate the proceedings. So ran the argument. No authority in support of this distinction was placed before us & we do not see any reason for making a distinction between meeting of Co. & other meetings. The principles above referred to are elementary & are of universal application."

Chairman enjoys certain other powers like powers to exclude certain matter from minutes of the meeting under sub-section (5) of section 118. The Chairman is given

powers to invite the secretarial auditor to any extraordinary general meeting vide para 4.3 of Secretarial Standard-2.

7. Removal of Chairman

The Chairman appointed at the meeting may be removed by the meeting. Shackleton on the Law and Practice of Meetings *[8th Edition, page 51 quoted in Smt. Krishna Jaiswal vs State Of U.P. And Ors. 2005 (2) AWC 1732]* states that "It is clear that a chairman who has been elected by the meeting can be removed by the meeting, Booth v. Arnold (1895) 1 QB 571. The usual procedure would be for a member to propose a vote of no confidence in the chair, and for this to be seconded. In such event, the chairman would normally have a right of reply; if he loses the vote he should relinquish the chair." The said case operated on the principle that the power to appoint includes power to remove as well. Where the company's articles appoints the Chairman, the meeting cannot remove him unless it is due to bad faith, impartiality or abuse of authority.

8. Applicability of the section to private company

This section applies to a private company unless its articles provide otherwise. This exemption was is given by the notification no. G.S.R. 464 (E) dated 05.06.2015. Hence, the articles of the private company may exclude the applicability of this section and make its own regulations as regards the election of Chairman.

9. Punishment and Compoundability

This section does not prescribe any penal provision for contravention of the section. Hence, section 450 of the Act will be applicable. Accordingly, the punishment for contravention, the company and every officer of the company who is in default shall be punishable with a fine upto Rs. 10,000, where the contravention is a continuing one then the fine shall be Rs. 1,000 for every day of contravention. The offenses committed by company and officer, being punishable only with fine, are compoundable under section 441 of the Act.

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.