

Proxies (Sec 105) [Part-1]

1. Legislative background

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

“Clause 105 - This clause corresponds to section 176 of the Companies Act, 1956 and seeks to provide that a member who is entitled to attend and vote can appoint another person as a proxy to attend and vote at the meeting on his behalf. However, proxy shall not have the right to speak at a meeting and shall not be entitled to vote except on poll. The members of prescribed class of companies shall not be entitled to appoint proxy. A person appointed as proxy shall act on behalf of prescribed number of members not exceeding fifty and prescribed number of shares. The clause also provides for the manner of appointing proxy.”

2. Meaning of the term “proxy”

The term “proxy” has been used to denote both the instrument and the person appointed through the instrument. The term is not defined in the Act. Secretarial Standard-2 defines the term as follows:

“Proxy” means an instrument in writing signed by a Member, authorising another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also where the context so requires, the person so appointed by a Member.

Black’s Law Dictionary [9th Edition, Page 1346] defines the term “proxy” as “1. One who is authorized to act as a substitute for another; esp., in corporate law, a person who is authorized to vote another’s stock shares. 2. The grant of authority by which a person is so authorized. 3. The document granting this authority.”

3. Right of member to appoint a proxy

Sub-section (1) of section 105 enables a member, who is entitled to attend and vote to appoint another person as a proxy to attend and vote at the meeting on his behalf. However, a proxy so appointed cannot speak at a meeting though he may vote on poll. A member may appoint one or more proxies to vote in respect of the different shares held by him or he may appoint one or more proxies in the alternative, so that if the first named proxy fails to vote, the second one may do so, and so on.

Second proviso to sub-section (1) provides that the said sub-section does not apply to a company not having share capital unless the articles otherwise provide. In other words articles of a company not having share capital may entitle a member to appoint a proxy to attend, speak and vote on behalf of himself. Alternatively, the articles of such company may restrict the right of the member to appoint proxy.

Third proviso to sub-section (1) empowers Central Government to prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

Dealing with the question of whether a company can be appointed as proxy, it was held in *Re United Western Bank Limited [(2002) 38 SCL 34; (CLB)]* that “we find that neither the term ‘person’ nor ‘proxy’ has been defined in the Act and, therefore, we have to construe this term ‘person’ with reference to the object with which the same has been used in section 176(1). This section authorizes a member, who is unable to attend a general meeting of a company, to appoint another through an authorisation known as a proxy to attend and vote instead of the shareholder himself. Further, the section also says that the proxy shall not have any right to speak. As a rule, a proxy can demand a poll. No company, being an artificial entity can be present, vote and speak or demand a poll. Only a natural person/individual could do all the above. Therefore, the term ‘person’ used in the section means only a natural person/individual and the definition of the General Clauses Act cannot be applied in respect of the term ‘person’ as is used in Section 176.”

4. Proxy in case of adjourned meeting

Secretarial Standard provides for validity of proxy instrument in case of adjournment of meeting as well as appointment of fresh proxy at the adjourned meeting. Para 6.2.2 provides that proxy instrument duly filled, stamped and signed, is valid for the meeting to which it related including any adjournment thereof. Para 6.6.2 provides that a member who has not appointed a proxy at the original meeting may appoint a proxy for any adjourned meeting if the articles provide for the same. Such proxy needs to be appointed not later than 48 hours before the time of such adjourned meeting.

5. Maximum number of members to be represented by a proxy

Fourth proviso of sub-section (1) of section 105 read with rule 19 (2) prescribes restriction on total number of members and total number of shares a proxy may represent. It provides that a person cannot act as proxy on behalf of more than 50 members and cannot hold in aggregate more than 10 percent of the total share capital of the company carrying voting rights. In case where a member holds more than 10 percent of the total share capital carrying voting rights, a single person may be appointed as proxy who shall not act as proxy for any other person or shareholder.

It should be noted that the restriction of number of shares is placed on the basis of voting power. Hence, in case where the company has issued shares with inferior voting rights, more than 10% of total paid-up capital may carry lesser voting rights.

Para 6.1 of Secretarial Standard - 2 clarifies that if a proxy is appointed for more than 50 members, he shall choose any 50 members and confirm the same to the company before the commencement of specified period for inspection. In case, the proxy fails to do so, the company shall consider only the first fifty proxies received as valid.

6. Limitation on right of member of section 8 company

Rule 19 (1) provides that a proxy shall be a member of the company in case of companies registered under section 8 of the Act.

7. Instrument of appointment of proxy

Sub-section (6) read with rule 19 (3) provides that the instrument of appointment of proxy shall be in the Form No. MGT.11. Such instrument shall be in writing and be signed by the appointer or his attorney duly authorised in writing. Where the appointer-member is a body corporate, such instrument shall be signed under its seal, if any, or by an officer or an attorney duly authorised by the body corporate.

Where the name in the register of members is as attorney, executors, administrator or guardian, the relevant documents showing the authority to sign a proxy should accompany the proxy.

8. Deposit of proxy instrument

Sub-section (4) of section 105 read with SS-2 clause 6.6.1 provides that the proxies shall be deposited with the company either in person or through post. The proxies are to be deposited not later than 48 hours before the commencement of the meeting in relation to which they are deposited. A proxy shall be accepted on a holiday if the last date by which it could be accepted is a holiday.

Any provision in the articles of a company which specifies or requires a longer period for deposit of proxy than 48 hours before a meeting of the company shall have effect as if a period of forty-eight hours had been specified in or required for such deposit. Hence, the provisions of the Act will override the provisions of the articles.

9. Stamping of proxies

An instrument of proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped proxies or proxies upon which the stamps have not been cancelled are invalid. The stamp has been reduced to 15 paise vide Notification No. SO 130(E), dated 28-01-2004 issued by the Department of Revenue.

In the case of *Firestone Tyre & Rubber Co. v. Synthetics and Chemicals Ltd* [1971 41 CompCas 377 Bom] it was held that proxies executed by shareholders in a State though bearing the stamps of another State are valid. Further, in case of *Saudagar Singh And Ors. vs Gurdip Singh Gill And Ors* [(1979) 81 PLR 515] it was held that in case of proxies executed outside India, a revenue stamp of appropriate value has to be affixed and cancelled within three months of its receipt in India as per the provisions of Section 18 of the Indian Stamp Act, 1899.

(To be continued...)

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