

Proxies (Sec 105) [Part-2]

(Continued from Geeta Saar 47th edition)

10. Proxies in blank and incomplete proxies

Para 6.5 of the Secretarial Standard-2 deals with blank and incomplete proxies. It provides that a proxy form which does not state the name of the proxy shall not be considered valid. Further, an undated Proxy shall not be considered valid.

If a company receives multiple proxies for the same holdings of a member, the proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple proxies shall be treated as invalid.

11. Statement to be included in the notice

Sub-section (2) of section 105 enjoins a duty on a company having share capital or a company whose articles provide for voting by proxy at the meeting. In every notice calling a meeting of such company, a statement shall appear with reasonable prominence that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. However, for section 8 companies, the statement will be restricted to the right of member of appoint proxy or proxies as the case may be.

As provided in para 1.2.4 of Secretarial Standard-2. notice of a company which has a share capital or the articles of which provide for voting at a meeting by proxy, shall prominently contain a statement that a member entitled to attend and vote is entitled to appoint a proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and that a proxy need not be a member. In case of companies where proxy shall be a member under the act, a statement to that effect shall appear in the notice prominently. Further, para 1.2.10 provides that the notice shall be accompanied, by an attendance slip and a proxy form with clear instructions for filling, stamping, signing and/ or depositing the proxy form.

12. Effect of special requirements of the articles

Sub-section (7) of section 105 provides that when an instrument appointing a proxy is executed in form MGT-11 and fulfils the statutory requirements, its validity not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company. This is another provision in addition to time of deposit of proxy where the statutory provisions assume superiority.

13. Invitations to appoint a person as proxy

Soliciting appointment of specific persons as proxy is an offence under sub-section (5) of section 105. If invitations to appoint certain person(s) specified in the invitations as proxy for any meeting of a company are issued at the company's expense to any member who is entitled to receive a notice and to vote at the meeting by proxy, the officer of the company who knowingly issues or wilfully authorises or permits the issue of such invitations shall be punishable with fine which may extend to one lakh rupees. No offence under this section is committed when a list of persons willing to act as proxies is given to a member at his request, provided that the list is available to all members who are entitled to vote upon making a request in writing.

14. Inspection of proxies lodged

Sub-section (8) of section 105 empowers every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat to inspect the proxies lodged for such meeting. The period of inspection begins 24 hours before the time of the commencement of the meeting and ends with the conclusion of the meeting. Such inspection can be made at any time during the business hours of the company after giving not less than three days' notice in writing of the intention to inspect. In case the original meeting is adjourned, fresh requisition is required to be given as provided in para 6.8.3.

15. Record of proxies

Para 6.9 of Secretarial Standard-2 provides for maintenance of record of proxies. It provides that a register shall be maintained by the company where all proxies received by the company shall be recorded chronologically. IN case of rejection of proxy, the reason of rejection shall also be recorded.

16. Revocation of proxy

The provisions regarding revocation of proxies are contained in para 6.7 of Secretarial Standard-2. It covers situations of both express and implied revocation of proxy.

A proxy later in date revokes any proxy/proxies dated prior to such proxy. In case of adjournment of meeting and appointment of fresh proxy for adjourned meeting, the proxy given for the original meeting stands cancelled. A written notice of revocation which has been received by the company before the commencement of the meeting or adjourned meeting revokes the proxy. Such notice shall be dated and shall be signed by the same member (s) who had signed the proxy, in the case of joint membership. A proxy need not be informed about the revocation.

A proxy is automatically revoked when a member appoints a proxy and both the member and proxy attend the meeting.

17. 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 proxies for attending meeting.

18. Secretarial action points

- i. Ensure that the company dispatches the proxy from MGT-11 along with notice of meeting to each and every member of the company.
- ii. Ensure the inclusion of statement about the entitlement of appointment of proxy and voting through the proxy with reasonable prominence at the notice of every general meeting.
- iii. Ensure that the company does at its cost not issue any invitation to members of the company to appoint any person.
- iv. Ensure that the company complies with secretarial standard-2 in relating provisions applicable to proxies.
- v. Ensure that the proper entry at register of proxies made after due verification of validity of proxy from received by the company.
- vi. Ensure that the company provides necessary arrangements to those members who gave requisition for inspection of proxy.
- vii. Ensure that the inspection of forms of proxy lodged is kept open before 24 hours of the commencement of the meeting and during the meeting until conclusion of meeting as well.

19. Punishment and Compoundability

For default in complying with the provisions of sub-section (2) regarding statement to be displayed in the notice, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees. For offence in sub-section (5), the officer of the company who knowingly issues or wilfully authorises or permits the issue of such invitations shall be punishable with fine which may extend to one lakh rupees. The offenses under both sub-sections which are committed by officer of the company, being punishable only with fine, are compoundable under section 441 of the Act.

(Concluded)

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