

Restriction on Voting Right (Sec 106)

Applicability of this Section: Applicable in cases of all companies except OPC and Private Companies subject to Provisions in Articles of the Company

1. Legislative background

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

“Clause 106. – This clause corresponds to sections 181, 182 and 183 of the Companies Act, 1956 and seeks to provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or on which company has exercised any right or lien. No member can be prohibited from exercising his voting right on any other ground.”

2. Restriction on voting rights in certain cases

Sub-section (1) of section 106 empowers the company to impose restriction on members through its articles to exercise their voting rights in respect of shares registered in his name, where calls are in arrears or other sums are presently payable or the company has exercised its right of lien. The non-obstante clause, with which the sub-section (1) starts, gives an overriding effect to the provisions of this sub-section over other provisions of the Act. The term “voting right” is defined in clause (93) of section 2 of the Act.

The provisions of lien are contained in regulation 9 to 12 of Table F contained in schedule I which give right to a company to sell the shares of a member for any sum due to the company. The provisions for calls and other money due are contained in regulation 55 and 56 of Table F. A call is in arrears only when the call is duly made, notice of call is given to members by specifying the timeframe within which the call money is required to be paid and the member has not paid such call money.

The right of the company conferred under this sub-section also extends to other moneys payable on such shares. For instance, as provided in sub-section (2) section 10 of the Act, all monies payable under the memorandum or articles from any members falls under this category of “other sums payable”. Such sum may include subscription money as well.

The deciding point for these restrictions is the point at which the rights are sought to be exercised. Hence, the rights which are based on holding of certain voting power like calling of extraordinary general meeting of the company will not be available. Further, for all provisions of the Act where certain voting powers are set as criteria for exercise of the rights, such shares will not be considered.

3. No other grounds can prevent the member from exercising voting

As per sub-section (2) of section 106, the company cannot prevent any member from exercising his voting rights on any ground other than those specified in the sub-section (1).

4. Validity of agreements for exercise of voting rights in a certain manner

The agreements entered between the shareholders to exercise the voting rights in a certain manner or desist from exercise of voting rights are inter se covenants between contracting parties. As they are not restrictions imposed by the company, such agreements are not prevented by this sub-section.

5. Differential casting of votes by a member

Sub-section (3) of section 106 provides that a member need not use all his votes in a uniform manner while voting on a poll. It entitles a member to exercise his voting right partly in favour of the motion or partly against or in any other manner as he wishes to exercise. Further, the member need not use all his votes. This right is available in case of poll irrespective of whether the member is casting vote himself or through proxy or through any other person.

This right is not available in case of voting by show of hands as a member gets only one vote irrespective of per cent age of shares held.

6. Applicability of the section to private companies

This section applies to a private company unless its articles provide otherwise. This exemption was 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 exercise of voting rights of members.

7. Secretarial Action Points

- (i) Check whether there is specific prohibitory provision at articles of the company.
- (ii) Check whether the proper notice of call has been served after being duly authorized in a board meeting under section 179.
- (iii) Check whether calls in arrears or such other money on equity shares is payable on date of general meeting.
- (iv) Check whether the members are attending the general meetings either personally or proxy. If yes, such members shall not be allowed to exercise their voting rights.

8. 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.