

## Demand for Poll (Sec 109)

### 1. Legislative background

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

“Clause 109.— This clause corresponds to sections 179, 180, 184 and 185 of the Companies Act, 1956 and seeks to provide that before or on declaration of result of the voting on any resolution by a show of hands, the Chairman of the meeting on his own or on demand made by specified members order for a poll. This clause further provides that the demand for poll may be withdrawn by the persons who made the demand. The Chairman of the meeting shall appoint scrutinizer for observing the poll process and votes given on poll and to report thereon. The result of the poll shall be deemed to be the decision of the meeting on the resolution. The Chairman shall regulate the manner in which poll shall be taken.”

### 2. Demand for poll and its withdrawal

Sub-section (1) of section 109 seeks to provide that before or on declaration of result of the voting on any resolution by a show of hands, the Chairman of the meeting may on his own or shall on demand made by specified members order for a poll. Such power to order poll is discretionary when exercised suo motu. This discretion is taken away once the demand is made by the specified number of members. The number of members required to make a demand for poll are:

- (a) in the case a company having a share capital, by the members present in person or by Proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

Hence, a demand for poll may be made by a proxy as well. Further, demand for poll can be made by a single member holding required voting power or shares on which required amount is paid up who is holding voting power or shares in the paid up share capital of the company as prescribed/specified above.

Sub-section (2) further provides that the demand for poll may be withdrawn by the persons who made the demand. It may be assumed that any business, other than the business for which a poll is pending (as demanded), can be proceeded without waiting the result of such business of poll demanded.

The voting rights of a member on poll are in proportion to his share in the paid-up equity capital of the company as provided in clause (b) of sub-section (1) of section 47. However, this provision is subject to section 43 and sub-section (2) of section 50.

There are three items for which the poll may be demanded at the meeting:

- a. For appointment of chairman which should take place immediately to have chairman selected for meeting to proceed.
- b. For adjournment of the meeting, a poll may be demanded by the members or proxies which should also take place immediately to know whether to proceed meeting or adjourn.
- c. For passing any other resolution, a poll may be demanded by the members or proxies

### 3. Time of conducting the poll

Whenever a poll is demanded for adjournment of the meeting or appointment of Chairman of the meeting, the poll shall be taken forthwith. For any other question, it shall be taken within 48 hours of the demand for poll as the Chairman may direct.

Para 9.2 of Secretarial Standard-2 provides that if the date, venue and time of taking the poll cannot be announced at the meeting, the Chairman shall inform the members, the modes and the time of such communication, which shall in any case be within 24 hours of closure of the meeting.

Where the articles provided for a poll to be taken “immediately”, it was held that the word ‘immediately’ meant as soon as practicable as held in *Jackson v. Hamlyn* [(1953) 1 All ER 887; (1953) 2 WLR 709]. A member who did not attend the meeting can participate and vote in the poll in such cases.

### 4. Appointment of scrutinizer

The Chairman of the meeting shall appoint scrutinizer for observing the poll process and votes given on poll and to report thereon. The result of the poll shall be deemed to be the decision of the meeting on the resolution. The Chairman shall regulate the manner in which poll shall be taken. As provided in para 9.4 of Secretarial Standard-2 provides that the scrutiniser (s) may be a company secretary in practice, a chartered accountant in practice, a cost accountant in practice, or an advocate or any other person of repute who is not in the employment of the company and who can, in the opinion of the board, scrutinise the e-voting process or the ballot process, as the case may be, in a fair and transparent. Such scrutiniser may take assistance of a person who is not in employment of the company.

Further, at least one of the scrutinisers shall be a member who is present at the meeting, provided such a member is available and willing to be appointed.

Each resolution put to vote by poll shall be put to vote separately. One ballot paper may be used for more than one item as provided in para 9.3 of Secretarial Standard-2.

Once a valid demand for a poll has been received [sub section (2) gives this facility that those who presented the demand may withdraw it at any moment] the result of voting by show of hands becomes irrelevant and have no effect. *Anthony V. Seger*

(1789) Hagg Cons at 13. Therefore, the effect of withdrawal is that the earlier passing of the resolution on show of hands also become nullified. R. V. Cooper, (1870) LR 5 QB 457.

A poll when validly demanded shall be taken, even if the Chairman had refused to grant the poll. Consequently, if a valid demand for poll is refused by the Chairman, the Meeting shall either be re-convened or a new Meeting should be convened to hold the poll or to consider the item in respect of which the valid demand for poll was not granted, as the case may be. [M. K. Srinivasan and Others v. W. S. Subrahmanya Ayyar and Others (1932) 2 Comp. Cas. 147].

One ballot paper may be used for more than one item. Each Resolution on which a poll is demanded should be put to the vote separately and the result announced shall indicate the number of votes cast in favor of and against each Resolution. All the Resolutions may, however, be included on one sheet of paper, to be separately marked by the voters. Each Resolution shall deal with a single item of business.

## 5. Powers of Chairman to regulate the manner

Sub-section (6) of section 109 provides that a Chairman has powers to regulate the manner in which poll is to be taken. This power is subject to other provisions in the section. As per para 9.2 of Secretarial Standard-2, he has powers to permit any member to be present at counting of votes.

## 6. Powers of the scrutinisers

It is the duty of the Chairman that the scrutinisers shall be provided with the register of members, specimen signatures, attendance register and register of proxies and proxy and representation documents. The Scrutinisers shall arrange for polling papers in form MGT-12. The empty polling boxes shall be sealed in presence of members and proxies which are to be opened only after voting process, in presence of two witnesses.

## 7. Result of the poll

The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken. The scrutinisher shall within seven days of poll submit the report in form MGT-13 to the Chairman. Based on the scrutinisher's report, the Chairman shall declare the result of the poll within two days of the submission of report by the scrutinisher, with details of the number of votes cast for and against the resolution, invalid votes and whether the resolution has been carried or not.

The scrutinishers shall submit the report to the Chairman who shall counter-sign the same or in his absence, any other authorised director. The result shall be announced by the Chairman or any other person authorised by the Chairman in writing for this purpose.

The result of the poll with details of the number of votes cast for and against the resolution, invalid votes and whether the resolution has been carried or not shall be displayed on the notice board of the company at its registered office and its head

office as well as corporate office, if any, if such office is situated elsewhere, and in case of public companies having a website, shall also be placed on the website.

The results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members; In case of public companies result shall also be displayed on the website of the company.

## **8. Provisions not relevant in case of electronic voting**

General Circular no. 20/2014 provides that the provisions relating to demand for poll are not relevant for the companies which are providing voting through electronic means as provided under section 108 read with rule 20. This clarification is issued as both at poll and at voting through electronic means follow the proportion principle.

## **9. Applicability of the section to private company**

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.

## **10. Punishment and Compoundability**

10.1 Contravention of section 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.

10.2 Contravention of rules As per rule 30 of Companies (Management and Administration) Rules, 2014 contravention of rules made under this section, the company and every officer of the company who is in default are punishable with a fine upto Rs.5,000, where the contravention is a continuing one then the fine shall be rupees 500 for every day of contravention. The offenses committed under this section and rule 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 30<sup>th</sup> September, 2016.*