

Circulation of Members Resolutions (Sec 111)

1. Legislative background

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

Clause 111.— This clause corresponds to section 188 of the Companies Act, 1956 and seeks to provide that a company shall, on requisition in writing of certain number of members, give notice or circulate statement to members on proposed resolution intended to be moved in the meeting. The statement need not be circulated if the Central Government declares that the right conferred is being abused to secure needless publicity for defamatory matters. If default is made the company and every officer of the company shall be punishable with fine.”

This Section corresponds to section 188 of Companies Act, 1956. The right to make a requisition to the company has been linked with calling of extraordinary general meeting on requisition.

2. Right of shareholders to requisition the moving of a resolution

While the board enjoys the primacy in setting the agenda of the meetings, the members are given a right under section 111 to propose resolutions for consideration at the general meetings. The number of members required to make a requisition under subsection (1) of this section are as required to requisition a general meeting in sub-section (2) of section 100. The prescribed number is as follows:

In the case of company having share capital	Member(s) holding on the date of receipt of the requisition 10% or more of the paid up share capital carrying voting rights in regard to the subject matter of the resolution which it is intended to be proposed
In the case of company not having share capital	Member(s) holding on the date of receipt of the requisition 10% or more of the voting power in regard to the subject matter of the resolution which it is intended to be proposed

Sub-section (2) of section 100 uses the words “such number of members”. However, as provided by section 13 of the General Clauses Act, 1897, the words in the singular shall include the plural, and vice versa unless there is anything repugnant in the subject or context. Further, it was held in *S. Varadarajan v Venkateshwara Solvent Extraction (P) Ltd* [[1994] 80 Comp Cas 693 (Mad)] that “Though section 169 uses the expression “such number of member of the company” in the plural, yet the requirements of the provisions would be satisfied even if one member holding the requisite number of shares or voting rights makes the requisition. It is also well settled that words in the plural include the singular.”

3. Prerequisites of a valid requisition

Black's Law Dictionary [9th Edition, Page 1420] defines the term "requisition" as "an authoritative, formal demand". The prerequisites for a valid requisition prescribed in sub-section (2) of section 111 are as under:

- a) The person(s) making requisition shall fulfil the criteria prescribe under sub-section (2) of section 100.
- b) It must be made in writing and signed by all the requisitionists. Two or more copies of the said requisition may contain signature of all requisitionists.
- c) It must be deposited at the registered office of the company not less than six weeks before the meeting in the case of a requisition requiring notice of a resolution. In case of other resolutions, the same is to be deposited not less than two weeks before the meeting.
- d) A sum reasonably sufficient to meet the company's expenses in giving effect to proposing the resolution is deposited or tendered. When the money is tendered, no payment is made but an unconditional offer is made to pay money.

The proviso to sub-section (2) of section 111 provides that the time period provided above need not be complied with in case an annual general meeting is called on a date within six weeks after the copy has been deposited. The copy of requisition, in such a case, shall be deemed to have been properly deposited for the purposes thereof although not deposited within the time required by this sub-section.

The company is not duty bound to circulate the notice of the resolution when the prerequisites are not complied with. It was held in *Pedley V. Inland waterways Association Ltd.* [(1977) 1 All ER 209; 1978 Tax LR 2218 (Ch D). as quoted in *Ernakulam Financiers and Kuries Private Limited v. Joseph Chandy And Ors* 1998 93 Comp Cas 275 CLB] that "Unless a single member was able to rely on (English) Section 140 or a provision in the articles of association of a particular company the member had no right to compel the inclusion of such a resolution in the agenda."

4. Duty of the company

Upon valid receipt of requisition, sub-section (1) of section 111 mandates a company to

- a) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and
- b) circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

Hence, any statement may be given by the members requisitioning the resolution. However, it was held in *S. Varadarajan v Venkateshwara Solvent Extraction (P) Ltd*[[1994] 80 Comp Cas 693 (Mad)] that "When a requisitionist calls for an extraordinary general meeting under section 169, there is no obligation on the

requisitionist to annex an explanatory statements to the notice of the meeting. There is in my view no warrant for imposing such an obligation on the requisitionists.”

5. No circulation of the statement

Sub-section (3) of section 111 empowers Central Government to exempt circulation of any statement as required by clause (b) of sub-section (1) of section 111 by declaring that the same is intended to secure needless publicity for defamatory matter. Such application to Central Government may be made either by the company or any other person who claims to be aggrieved. This power of Central Government is delegated to Regional director vide notification no. SO 1352(E), dated 21.05.2014.

6. Defraying the costs of the company

The order made by the Regional Director in sub-section (3) may also direct that the cost incurred by the company for circulation of resolution and statement shall be paid to the company by the requisitionists whether or not they are parties to the application. Such payment of costs is in addition to the amount deposited or tendered at the time of requisition.

7. Punishment and Compoundability

The company and every officer of the company who is in default in complying with any provision of this act, shall be punishable with fine which may extend to Rs. 25,000. 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.