

### Quorum (for General Meetings - Sec 103)

#### 1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows: “Clause 103.— This clause corresponds to section 174 of the Companies Act, 1956 and seeks to provide that unless the articles of the company provide for a larger number, in case of a public company the quorum shall depend on number of members as on the date of a meeting. In case such number is not more than one thousand, then quorum shall be five members personally present. If such number is more than one thousand but upto five thousand, then quorum shall be fifteen members personally present. If such number exceeds five thousand, then thirty members personally present shall be the quorum. In case of a private company, two members personally present shall be the quorum for a meeting. This clause further provides that if the quorum is not present within half-an-hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board. However, the meeting called by requisitionist shall stand cancelled in the absence of quorum. In case of adjournment or of change of day, time and place of meeting, the company shall give not less than three days’ notice to the members. Where quorum is not present in the adjourned meeting also, the members present shall be the quorum.”

#### 2. Meaning of the term “quorum”

“Quorum” as defined in Secretarial Standard-2, means the minimum number of members whose presence is necessary for holding of a Meeting. Black’s Law Dictionary [9th Edition, Page 1370] defines “quorum” as “the minimum number of members (usu. a majority of all the members) who must be present for a deliberative assembly to legally transact business.” The quorum is the minimum number of members present at the meeting to transact the business validly in the absence of quorum the proceedings of the meeting will be null and void. The quorum shall be present throughout the meeting as provided in para 3.1 of Secretarial Standard-2.

#### 3. Quorum for public companies

As provided in clause (a) of sub-section (1) of section 103, the quorum for public company depends on the number of members. If the number of members on the date of the meeting is not more than one thousand, the quorum shall be five members personally present. If the number of members is one thousand to five thousand, the quorum shall be 15 members personally present. If the number of members is more than five thousand, the quorum shall be of 30 members personally present. The articles of a public company may provide for a

quorum higher than the requirement provided in the Act. In such cases, the quorum requirements of the articles shall be complied with.

#### **4. Quorum for private companies**

The quorum for a private company is two members personally present, as provided in clause (b) of sub-section (1) of section 103. The articles of a private company may provide for a quorum higher than the requirement provided in the Act. In such cases, the quorum requirements of the articles shall be complied with. Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

#### **5. Provisions in articles of association**

As provided in sub-section (1) of section 103, the articles of a company may provide for a higher number of members as quorum. Further, the articles may contain provisions for constitution of quorum as well. Such provisions are witnessed in case of shareholders agreement or share subscription agreements giving affirmative vote or such other rights. As such contracts are agreement between shareholders, to give statutory effect, the same are incorporated in articles. Hence, after inclusion in articles, the same shall be binding statutorily as they are more stringent than the provisions of the Act.

#### **6. Persons to be included in the quorum**

A member personally present is counted to constitute the quorum. Proxies shall be excluded for determining the quorum. Sub-section (2) of section 112 and sub-section (2) of section 113 provides that a duly authorized representative of the President of India or the Governor of a State and a body corporate respectively are deemed to be a member personally present. For the purpose of counting a quorum, joint shareholders will be counted as one. Subject to the provisions of the articles, any one joint-holder present at a meeting will be entitled to exercise voting power and will be counted for quorum. But only one of the several joint-holders will be entitled to exercise voting power. Regulation 52 of the Table F of Schedule I provides that the senior holder shall be able to exercise the voting rights to the exclusion of other joint holders. The seniority is to be decided by the order of names in the register of members.

#### **7. Quorum for the meeting convened by the order of the Court/ Tribunal**

Where the Court/ Tribunal has ordered the calling of a meeting, it may, in exercise of its powers under respective provision, provide for specific quorum. In such cases, such requirements are to be complied with.

#### **8. Effect when quorum is not present**

If quorum is not present a general meeting, other than a requisitioned meeting under section 100, the meeting shall stand adjourned. The adjourned meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a national holiday, or at such other time and place as may be determined by the board. However, in case of a meeting called by requisitionists, if quorum is not present within half an hour from the time appointed for holding a meeting, the meeting shall stand cancelled.

Sub-section (3) of section 103 provides that if quorum is not present within half an hour from the time appointed for an adjourned meeting, the members present will constitute the quorum. Para 15.4 of Secretarial Standard-2 provides that the number of members at adjourned meeting as well shall not be less than two in number. At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered. The views of the Department on this issue are also that a single person cannot by himself constitute a quorum at the adjourned annual general meeting. [Letter No. 8/16(1)/61-PR, dated 19/5/1961]. If any resolutions are passed without the presence of valid quorum, such resolutions may be set aside by the Courts but the parties who have acted on the assurance of these resolutions will be protected by virtue of doctrine of indoor management.

## **9. Notice of adjourned meeting**

The proviso to sub-section (2) of section 103 provides for service of notice in case the board of directors adjourned the meeting to any other date, time or place than the provisions of clause (a) of sub-section (2) of section 103. The company shall give not less than 3 days' notice to the members either individually or by publishing in advertisement in the news papers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

## **10. 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 as regards the adjournment of meeting for want of quorum.

## **11. 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.

*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.*

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