

Company Secretariat Practice

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- The Company Secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented.
- The Companies Act sec. 221(1) provides that every company should have a secretary.
- Further entire companies secretariat practice is in the hands of the Company Secretary.

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Appointment

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The First Secretary

- The first secretary of the company is appointed at the time the company is incorporated.
- That is by Form 1 (Application form for incorporation) and he can act until he ceases to hold office under any provisions of the Companies Act or under any provisions contain in the articles of the company or until he is removed by the directors.

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Subsequent Secretaries

- Subsequent Secretaries are appointed by the directors. Sec. 221(4) provides that unless the articles of the company provides otherwise, the board shall have the power to appoint or remove a secretary of the company.
- As per sec.223, if the board appoints a new secretary that appointment must be notified to the Registrar of Companies within 20 working days of his appointment.

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Subsequent Secretaries

- Sec.221(2) provides that a person who is appointed as a secretary should give his consent in the prescribed form (Form 19) and he should certify that he has necessary qualifications to act as the Secretary in that company. Therefore the first secretary and the subsequent Secretaries should sign form 19 before acting as a Secretary.

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Qualifications of a Secretary

Companies Act 7 of 2007 -Section 222

- Generally a company can have any person as its secretary.
- But if a company has a turnover of Rupees One Million or more or stated capital of Rupees Five Hundred Thousand or more, such a company should have a qualified person as its secretary.

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Qualifications of a Secretary

A qualified person should be a citizen of Sri Lanka and ordinarily resident in Sri Lanka and he should have one or more of the following qualifications;

1. An Attorney at Law of the Supreme Court
2. Member of the Institute of Chartered Accountants of Sri Lanka (ICASL)
3. Member of the Institute of Chartered Secretaries and Administrators of Sri Lanka
4. Member of the Institute of Certified Management Accountant. (CMA Sri Lanka)
5. Member of the Chartered Institute of Management Accountants (CIMA)

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Qualifications of a Secretary

6. Member of an association or institute approved by the minister, which provides a course in Company Law or company secretarial practice; or
7. A person who has obtained any special qualification in relation to company secretarial work from an institution or other body approved by the minister; or
8. A person who, by virtue of his holding or having held any other position, or of his being a member of any other body in the public or private sector for a period of not less than twenty years, appears to the Registrar to be capable of discharging the functions of the secretary of a company; or
9. A person who has on the day immediately prior to the date of coming into operation of the companies act No.17 of 1982 held the office of secretary or deputy secretary or assistant secretary of a company and satisfied the Registrar of his competence to discharge the duties of a secretary.

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Qualifications of a Secretary

Even a company or a partnership may be appointed as the secretary of a Company. In such a case at least one director or a partner must have one of the above qualifications.

Apparent or Ostensible Authority of a Secretary

- A secretary has apparent authority to make administrative contracts on behalf of the company.
- When he makes such a contract the Company is bound by it even though he makes use of that contract for his personal advantage.
- Administrative contracts include purchasing stationeries, hiring or purchasing vehicles for administrative purposes, recruiting employees etc.

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Apparent or Ostensible Authority of a Secretary

However a Secretary does not have Apparent Authority to do the following Activities;

1. Borrow money on behalf of the company
2. Make trading contracts on company's behalf
3. To delete a name from the Register of Members
4. To call for a General meeting on his own authority

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The Functions of a Company Secretary

- A Company Secretary was earlier treated as a clerk or as a servant of a company. He did not have any power or authority to represent the Company. This position was clearly reflected in;

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The Functions of a Company Secretary

Barnett & Company Vs South London Transways Company (1887)

- In this case Lord Esher said “A Secretary is a mere servant, his position is that he should do what he is told to do. No one can presume that he has any authority to represent a company in making contracts”.
- But over the years a Company Secretary became a much more important person. Now he is treated as the Chief Administrative Officer of the company. He is entitled to make administrative contracts on behalf of the company. He is required to possess professional qualifications to function as a Secretary. Even directors or any other officers are not expected to have these qualifications. This shows the importance of the Company Secretary in the modern Company Law.

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The Functions of a Company Secretary

Panorama Developments (Guilford) Ltd. Vs Fidelis Furnishing Fabrics Ltd. (1971)

In this case a company secretary hired a car stating it to be for the company purpose. But in fact he used the car for his own private purposes. The company refused to pay for the hire. But court held that the company secretary may hire cars on behalf of the company because it is an administrative contract. Therefore if he has hired a car, the company is liable to pay even though it was used for his own purposes, because the secretary has an apparent authority to make administrative contracts.

Lord Denning in giving the above judgment said that a “company secretary is a much more important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities. This appears not only in the Company’s Act but also by the role he plays in the day to day business of Companies. He is no longer a mere clerk. He is entitled to sign contracts with the administrative side of a company’s affairs”.

The exact responsibilities and the functions of the company secretary depend on the size and nature of the company and there is no statutory definition of what these are, but it generally includes some or all of the following.

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Functions of Secretary

(1). Secretarial functions

- To ensure compliance of the provisions of Companies Law and rules made there-under and other statutes and bye-laws of the company.
- To ensure that affairs of the company are managed in accordance with its objects contained in the articles of association and the provisions of the Companies Law.

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Functions of Secretary

(1). Secretarial functions

- To prepare the agenda in consultation with the Chairman and the other documents for all the meetings of the board of directors.
- To arrange with and to call and hold meetings of the board and to prepare a correct record of proceedings.
- To attend the board meetings in order to ensure that the legal requirements are fulfilled, and provide such information as are necessary.
- To arrange with the consultation of chairman the annual and extraordinary general meetings of the company and to attend such meetings in order to ensure compliance with the legal requirements and to make correct record thereof.

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Functions of Secretary

(1). Secretarial functions

- To carry out all matters concerned with the allotment of shares, and issuance of share certificates including maintenance of statutory Share Register and conducting the appropriate activities connected with share transfers.
- To prepare, approve, sign and seal agreements leases, legal forms, and other official documents on the company's behalf, when authorized by the board of the directors or the executive responsible.
- To engage legal advisors and defend the rights of the company in Courts of Law.
- To have custody of the seal of the company.

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Functions of Secretary

(2). Legal obligations of secretary:

- Filling of various documents/returns as required under the provisions of the Companies Law.
- Proper maintenance of books and registers of the company as required under the provisions of the Companies Law.
- To see whether legal requirements of the allotment, issuance and transfer of share certificates, mortgages and charges, have been complied with.
- To convene/arrange the meetings of directors, on their advice.
- To issue notice and agenda of board meetings to every director of the company.
- To carry on correspondence with the directors of the company on various matters.

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Functions of Secretary

(2). Legal obligations of secretary:

- To record the minutes of the proceedings of the meetings of the directors.
- To implement the policies formulated by the directors.
- To deal with all correspondence between the company and the shareholders.
- To issues notice and agenda of the general meetings to the shareholders.
- To keep the record of the proceedings of all general meetings.
- To make arrangement for the payment of the dividend within prescribed period as provided under the provisions of the Companies Law.

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Functions of Secretary

(3). To maintain the following statutory books:

- the register of transfer of shares;
- the register of buy-backed shares by a company;
- the register of mortgages, charges etc.;
- the register of members and index thereof;
- the register of debenture-holders;
- the register of directors and other officers;
- the register of contracts;

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Functions of Secretary

(3). To maintain the following statutory books:

- the register of directors' shareholdings and debentures;
- the register of local members, directors and officers, in case of a foreign company;
- Minute books;
- Sealing Register of the Company
- Proxy register;
- Register of beneficial ownership;
- Register of director's shareholding; and
- Register of contracts, arrangements and appointments in which directors etc.

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Functions of Secretary

(4). Other duties:

The company secretary usually undertakes the following duties:

- a. Ensuring that statutory forms are filed promptly.
- b. Providing members and auditors with notice of meeting.
- c. Filing of copy of special resolutions on prescribed form within the specified time period.

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Functions of Secretary

(5). Supplying a copy of the accounts to every member of the company, every debenture holder and every person who is entitled to receive notice of general meetings.

(6). Keeping or arranging for the having of minutes of directors' meetings and general meetings. Apart from monitoring the Directors and Members minutes books, copies of the minutes of board meetings should also be provided to every director.

(7). Custody and use of the common seal. Companies are required to have a common seal and the secretary is usually responsible for its custody and use.

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Meetings of a Company

In every company there are two types of meetings.

1. Directors Meetings (Board Meetings)
2. Shareholders Meetings (General Meetings)

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Directors Meetings (Board Meetings)

- Directors meetings can be convened (called) whenever the directors think it is necessary.
- In these meetings decisions regarding the day to day management of the company are made.
- The conduct of board meetings is almost entirely regulated by the Companies Act and the rules for conducting board meetings depend on the company's articles.

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Shareholders Meetings (General Meetings)

There are two classes of General meetings.

- i. Annual General Meeting(AGM)
- ii. Extraordinary General Meeting (EGM)

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Annual General Meetings (Section 133)

- Every company in each calendar year must hold a meeting called its annual general meeting for its shareholders. As per sec.133, it is the board of directors who should call this meeting.
- The annual general meeting must be held not later than six months after the balance sheet date of the company, here the balance sheet date means as per sec.529, the 31st day of March or such other date as the board adopts, i.e. Local Private banks 31st December each year.
- A company is not required to hold its first annual general meeting in the calendar year of its incorporation, but it should hold its first annual general meeting within eighteen months from the date of its incorporation.
- **Subsequent** annual general meetings must be held within fifteen months from the previous Annual General Meeting.

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Consequences if there is a default

1. If default is made in holding the meeting, on the application of any shareholder of the company, the Registrar may call or direct the calling of an annual general meeting of the company and he may give any directions including a direction to the effect that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.
2. Where default is made in holding a meeting of the company or in complying with any directions of the Registrar;
 - a) The company shall be guilty of an offence and be liable on conviction to a fine not exceeding Rupees One Hundred Thousand; and
 - b) Every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding Rupees Fifty Thousand.

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- **Case Law**

- **M. R. De Silva Vs. The Registrar of Companies (1955) 56 NLR 519**

- The directors of a company were charged under section 108 (4) read with section 46 of the Companies Ordinance with having failed to forward to the -Registrar of Companies the annual return for a certain year as required by section 108 (1). The accused pleaded that no general meeting was held during the relevant year and that it was, therefore, impossible to furnish the return. They did not, however, establish that the failure to hold the general meeting was not due to any default on their part.
- **Held**, that the failure to hold the general meeting was due to the default of the accused themselves and that they were not entitled, therefore, to rely on their own default as an answer to the charge.

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- **Case Law**

- According to sec.135 the minimum period of notice for the calling of an Annual General Meeting is 15 working days for both Public and Private Companies.
- However, if it is agreed by all the shareholders entitled to attend and vote at such meeting shorter notice than those specified above is permitted.
- As per sec.144, It shall not be necessary for a company to hold an annual general meeting of shareholders, if everything required to be done at that meeting is done by a resolution in writing signed by not less than eighty-five *per centum* of the shareholders who are be entitled to vote at that meeting.

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Sample Notice of an Annual General Meeting of Samudra (Pvt) limited which is a private Company with 4 directors.

- A notice to be sent by the company secretary to all shareholders of Samudra (Pvt) limited on behalf of the board of directors.
- The date of the notice is in excess of the statutory minimum notice period. The law allows notices in excess of the statutory minimum but will not entertain notices below the statutory minimum unless expressly permitted.
- Provision has been made for a member to vote by proxy.

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Notice of Meeting

NOTICE IS HEREBY GIVEN that the Annual General Meeting of Samudra (Pvt)Limited a company duly incorporated under the Companies act 7 of 2007 will be held on 30th June Monday 2017 at 9.30 a.m.at Kings Hotel Ward Place Colombo 7.

AGENDA

1. Notice of Meeting.
2. To adopt Audited Accounts for the Financial Year ended 31st March 2017 together with the reports attached thereto.
3. To re-elect Directors retiring by rotation.
4. Approval Rs.10 per share as the final dividend of the Company
5. To re-appoint XY Enterprises as the Company auditors for the next financial year.
6. To approve the donations amounting to Rs74,930 given by the company during the last financial year

By order of the Board
SecretaryColombo
10th June 2017

Note

A member entitled to attend and vote at the Meeting is entitled to appoint a proxy to attend and vote instead of him/her. A Proxy need not be a member of the Company. A Form of Proxy accompanies this Notice. Any Proxy should be sent to the registered address of the Company No 20 Galle road Colombo3, 48 hours prior to the meeting.

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Extra Ordinary General Meeting(EGM)

Extraordinary General Meetings are all the common general meetings (other than the AGM), in a company which are held depending on the requirements where Company is required to obtain shareholders consent.

Convening the EGM

An EGM can be convened by

- the directors
- by the shareholders
- by the court.

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Convening the EGM

- **By the Directors**
 - Optional
 - Compulsory

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By the Directors

Optional

- If articles permit, these meetings may be convened by the directors whenever they think it is necessary.
- Generally to call an EGM in a Private Company Five working days' notice should be given by the directors. In Public Companies Ten working days' notice should be given. However at the EGM if any Special Resolution is going to be passed fifteen working days' notice should be given in both companies.
- However if shareholders holding ninety five percent of the voting rights agree shorter notice than specified above can be given.

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By the Directors

Compulsory

- Under Sec.134, the directors must hold the EGM, if a requisition is made by the shareholders holding not less than ten per centum of the votes.

The requisition shall state the issue or issues to be considered and voted on at the meeting and shall be signed by the applicant and deposited at the registered office of the company. If such a requisition is made

- Within fifteen working days from the date of the deposit of the requisition the directors should give notice regarding the meeting and
- The meeting must be held within thirty working days from the date of the deposit of the requisition.

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Convening the EGM

By the Shareholders

- Where the directors do not give notice to call the meeting within fifteen working days from the date of the deposit of the requisition, the requisitionists or any of them representing more than one-half of the total voting rights may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.
- A meeting convened by the applicant shall be convened in the same manner and as nearly as possible as that is convened by the directors.
- Any reasonable expenses incurred by the applicant shall be repaid to the applicant by the company, out of any sums due or to become due to the directors who were in default.
- As per sec.136, if the articles do not provide otherwise two or more shareholders holding shares which carry not less than ten *per centum* of the votes which may be cast on an issue, may call a meeting to consider and vote on that issue.

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Convening the EGM

By the Court

- According to sec.137 where for any reason it is impracticable to call a meeting in the manner specified by the company's articles or by the Act, the court may either of its own motion or on the application of any director or of any shareholder of the company who would be entitled to vote at the meeting, order a meeting of the company to be called and conducted and may give any direction as it thinks expedient, any such direction may include a direction that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.

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Convening the EGM

Re Opera Photographic Ltd

There were two shareholders in a company called X and Y. X was holding 51% of shares and Y held the balance 49%. As per the articles the quorum for a shareholders meeting was two. X wished to remove Y from the post of director, but Y intentionally avoided the meeting knowing that if he attends the meeting he will be removed from the post of director. When the matter was referred to the court, the court (applying a similar provision as sec.137) held that one shareholder is sufficient to constitute a meeting.

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Company Resolutions

Resolutions mean decisions taken by the Shareholders. Under the Companies Act decisions can be taken by Shareholders

1. At a meeting of shareholders - by passing resolutions. Such a resolution can be

- a) An Ordinary resolution
- b) A resolution that requires Special Notice
- c) A Special resolution
- d) Unanimous Resolution

2. Without a meeting - by way of a written resolution signed by the shareholders

3. Without a meeting - By a unanimous agreement in writing signed by the shareholders (applicable only for Private Companies)

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Ordinary Resolution

- An ordinary resolution is defined by section 529 of the Act as follows,
“An ordinary resolution means a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question”.

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Ordinary Resolution

- All businesses, no matter how important it is, may be done by an ordinary resolution unless the Act or the company's articles require some other form of resolution. Because section 91 states that unless otherwise provided by this Act or in the articles of a company, a power reserved to shareholders may be exercised by an ordinary resolution.
- An ordinary resolution can be passed in a Private Company by giving five working days' notice, but in Public Companies ten working days' notice should be given.
- However if the ordinary resolution is to be passed at an AGM Fifteen working days' notice should be given in both companies.

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Special Resolution

- Sec 143(1) defines a special resolution as follows:
 - A resolution shall be a special resolution when it has been passed;
- a) By a majority of Seventy Five per centum of those shareholders entitled to vote and voting on the question;
- b) At a general meeting of which not less than fifteen working days' notice, specifying the intention to propose the resolution as a special resolution has been duly given:

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Special Resolution

- However, where it is so agreed by the shareholders representing not less than eighty five *per centum* of the total voting rights, a resolution may be proposed and passed as a special resolution at a meeting of which less than fifteen working days' notice has been given.
- A decision at a meeting has to be made by way of a special resolution only if the companies act or the articles require the passing of a special resolution to make that decision.

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Special Resolution

Example: - Section 92 requires passing a special resolution in the following circumstances.

To;

- a) Alter the company's articles
- b) Approve a major transaction
- c) Approve an amalgamation of the company
- d) Reduce the company's stated capital
- e) Resolve that the company be wound up voluntarily
- f) Change the name of a company
- g) Change the status of a company

Within 10 working days after passing the special resolution the company should notify the Registrar by way of Form 39.

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Written Resolution (Section 144)

- As per sec.144(1) subject to the provisions contained in the company's articles, a resolution in writing signed by not less than eighty-five *per centum* of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, shall be as valid as if it had been passed at a meeting of those shareholders.
- As per sec.144(2) Subject to the provisions contained in the articles, any matter that is required by the Act or by the articles to be decided at a meeting of the shareholders may be validly done by way of a written resolution.

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Written Resolution (Section 144)

- As per sec.144(3) It shall not be necessary for a company to hold an annual general meeting of shareholders, if everything required to be done at that meeting (by resolution or otherwise) is done by a written resolution.
- Sec.144(4) provides that *within five working days* of passing a written resolution, the company shall send a copy of the resolution to every shareholder who did not sign the resolution.
- A written resolution may be signed under sec. 144(1) or sec. 144(2) without any prior notice being given to shareholders.

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Written Resolution (Section 144)

- A person who is registered as the holder of parcels of shares having different beneficial owners, may expressly sign a resolution under this section in respect of shares having one beneficial owner and refrain from signing the resolution in respect of shares having another beneficial owner.
- As per sec144(8) Notwithstanding any provision in the Companies Act, where the Secretary to the Treasury is the holder of a share of a company, no written resolution shall be valid unless the consent in writing of the Secretary to the Treasury is also obtained in favor of such resolution.

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Resolutions requiring special notice(Section 145)

Where by any provision contained in the Companies Act, special notice is required of a resolution, the resolution shall not be effective unless;

- notice of the intention to move it has been given to the company not less than twenty eight days before the date of the meeting at which it is to be moved, and
- the company shall give its shareholders notice of any such resolution at the same time and in the same manner as it gives notice of the meeting, or
- if that is not practicable, shall give them notice thereof either by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the company's articles, not less than fifteen working days before the date of the meeting:

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Resolutions passed at adjourned meetings

- Where after the appointed date, a resolution is passed at an adjourned meeting, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

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Some Important provisions regarding meeting and votes (Sec.136)

- The following provisions shall have effect in so far as the articles of the company do not make other provisions in that behalf;

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Some Important provisions regarding meeting and votes (Sec.136)

(a) Notice of the meeting of a company shall be served on every shareholder of the company in the manner in which notices are required to be served under the provisions of the model articles; as per the model articles notice should be given to

- every shareholder
- every director and
- the auditor

(b) two or more shareholders holding shares which carry not less than ten *per centum* of the votes which may be cast on an issue, may call a meeting to consider and vote on that issue ;

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Some Important provisions regarding meeting and votes (Sec.136)

- c) in the case of a private company two shareholders, and in the case of any other company three shareholders, present in person or by an authorized representative shall be a quorum
- d) Any shareholder elected by the shareholders present at a meeting may be chairman thereof;
- e) no shareholder shall be entitled to vote at any general meeting, unless all calls or other sums then payable by him in respect of shares in the company have been paid;
- f) Where voting is by show of hands, each shareholder shall have one vote and on a poll every shareholder shall have one vote in respect of each share held by him.

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Voting at meetings

There are two methods of voting.

1. Show of hands
2. Poll

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Voting at meetings

Show of hands

- Unless the articles provide otherwise, the common law rule is that a resolution put to the meeting is decided in the first instance by a show of hands.
- As per sec.136, where voting is by show of hands, each shareholder shall have one vote.

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Voting at meetings

Poll

- There is a common law rule that on the declaration of the result of voting on a show of hands, a poll may be demanded.
- On a poll every shareholder shall have one vote in respect of each share held by him.

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Voting at meetings

Who can demand a poll (Sec.140)

1. By not less than five shareholders having the right to vote at the meeting; or
2. By a shareholder or shareholders representing not less than one-tenth of the total voting rights.

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Voting at meetings

- As per section 140(2) a demand by a proxy shall be the same as a demand by the shareholder. According to section 140(1) a company by its articles cannot exclude the right to demand a poll, if there is such a provision in the articles, it will be void. But by the articles the right to demand a poll can be excluded for two purposes;
 1. To elect the chairman of the meeting or
 2. To adjourn the meeting

Sec.141 provides that on a poll, a shareholder entitled to more than one vote need not use or cast all his votes in the same way.

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Proxies (Sec139)

(1) Any shareholder of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a shareholder or not) as his proxy to attend and vote instead of him. A proxy so appointed shall have the same right as the shareholder to vote on a *show of hands* or on a poll and to speak at the meeting:

Provided that unless the articles otherwise provide, a shareholder shall not be entitled to appoint more than one proxy to attend on the same occasion.

(2) where the Secretary to the Treasury is the holder of more than ten *per centum* of the shares, the Secretary to the Treasury shall be entitled to appoint another person as his proxy for every ten *per centum* or part thereof of the shares held by the Secretary to the Treasury:

Provided where the Secretary to the Treasury is a holder of a golden share in a company in terms of its articles, the Secretary to the Treasury as the golden shareholder thereof shall be entitled to appoint not more than three other persons as his proxies to attend on the same occasion.

Proxies (Sec139)

(3) In every notice calling a meeting there should be a statement that a shareholder entitled to attend and vote, is entitled to appoint a proxy to attend and vote instead of him and that a proxy need not also be a shareholder.

(4) In order to make the appointment effective, a proxy form should be received by the company at least forty-eight hours before a meeting or adjourned meeting.

When a company is a shareholder

- As per sec.138, where a company is a shareholder of another company, it may by a resolution of its directors authorize such a person as it thinks fit to act as its representative at any meeting of the company.
- A person who is authorized shall be entitled to exercise the same power on behalf of the company as if the company were an individual shareholder.

