

Resolutions

KBG

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 or
 - b. A Special resolution
- 2.) Without a meeting - by signing
 - a. a written resolution signed by 85% of the shareholders
 - b. a unanimous agreement in writing signed by all the shareholders (applicable only for Private Companies)

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”.

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.

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.

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:

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. 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.

Written resolution (section - 144)

As per sec144 (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 sec144 (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.

As per sec144 (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.

As per sec.144 (6)

Where a company fails to comply with this requirement, the company and every officer who is in default shall be guilty of an offence and be liable on conviction to a fine.

A written resolution may be signed under sec. 144 (1) or sec. 144 (2) without any prior notice being given to shareholders.

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.

Notice for Calling Meetings and to Pass Resolutions

- For AGM - 15 working days for both pvt and public cos.
- For EGM - 10 w. d. for public co. and 5 w. d. for pvt co.
- For ordinary resolution - 10 w. d. for public co. and 5 w. d. for pvt co.
- For special resolution - 15 working days for both pvt and public cos.

Provisions as to meetings and votes (section -136)

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

- (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 ;
- (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 the chairman thereof ;
- (e) 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.

Voting

There are two methods of voting.

- 1.) Show of hands
- 2.) Poll

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.

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.

Who can Demand a Poll (Section - 140)

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

As per section 140 (2) a demand by a proxy shall be the same as a demand by the shareholder.

