

RESOLUTIONS

—Means of Expression of Opinion

The provisions regarding resolutions are contained in section 188 to 192 of the Companies Act, 1956 (hereinafter referred to as “the Act”). These are discussed briefly below:

Members’ Resolution

Section 188 of the Act provides that a company shall, at the requisition of members, holding one-twentieth of the total voting power or 100 shareholders holding shares of value of Rs. 1 lakh or more, give notice and explanatory statement to all shareholders, entitled to receive notice, with respect to the matter referred to in the proposed resolution sought to be moved by the requisitionist members. This section affords an opportunity to the members to avail company’s machinery to get adequate



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publicity for the resolution, which they intend to propose for discussion at a general meeting.

Ordinary and Special resolutions

Section 189 deals with Ordinary and Special resolutions. Resolutions are a means of according approvals. The meeting may be any meeting of shareholders or that of the Board.

Resolutions are of two types. Ordinary resolutions are passed by a simple majority of members present and voting while special resolutions require support of 3/4th of the members present and voting.

A special resolution is required for issues, which could change the course of company’s business or a

Resolution is an expression of opinion of the shareholders regarding the issues that require decision from the owners viz. the shareholders. The Companies Act, 1956 contains provisions to ensure that the management of a company does not impose its will on the company. The shareholders are given opportunity to participate in discussions on all the key issues affecting the company. They can attend all general or extraordinary general meetings, participate in poll/vote and support or oppose any resolution as may be deemed fit by them. This article discusses several types of resolutions and related issues.

major decision is to be taken which could have a bearing on long-term prospects. These could be issues like alteration of main object clause of a company, its registered office, alteration or addition of articles, issue of shares to non-members (section 81(1)) reduction of share capital, to make loans, to wind up the company and many more. The list above is illustrative and not exhaustive.

An explanatory statement is to be enclosed with a Special Resolution stating all material facts concerning each item of business to be transacted at the general meeting.

Amendments to Special and Ordinary Resolutions

The standard language written before any resolution is:

“The members are requested to pass the following resolution with or without amendments, as may be deemed fit as under”. Thereafter the resolution is written.

We may now examine what is an amendment of a resolution. A resolution proposed by the company may be amended to such an



The author is the member of the Institute. He can be reached at sanchoo@vsnl.com

extent as may not substantially go beyond the notice issued. The amendment should not be more onerous than the resolution proposed in the notice and the scope of description of facts circulated under section 173(2). Section 189(2)(a) of the Act also stresses on “the intention to propose the resolution as a special resolution has been duly specified in the notice calling the meeting”.

The Chairman of the meeting has no right to refuse to put an amendment before the meeting. An amendment having no nexus to the motion under consideration or relates to matters unrelated to the motion can be disallowed. Similarly, amendments relating to matters already disposed at a meeting can also be disallowed.

It may happen that a number of amendments may be proposed with respect to a resolution, in which case, the Chairman has to exercise his discretion in allowing the amendments. The amendments should be arranged in a logical order and should be consistent with one another. An amendment accepted by the meeting should not accept another motion or amendment, which may be inconsistent with the prior motion or amendment.

Amendment with the scope of notice already circulated does not mean that amendment may result in just re-writing the original resolution in different words. It should involve some change in pith and substance or the subject matter of the resolution. At the same time special resolution cannot be amended which may be in variance with the explanatory statement annexed to the notice of the meeting.

Insofar as the ordinary resolution are concerned, same rules apply except there may not be any explanatory statement. The explanation or subject matter of resolution may be

explained in the notice itself. In ordinary resolution also, the amendment, which may be proposed, should not be more onerous to the meeting than originally proposed resolution.

General Rules Regarding Amendments

Amendment is to be moved after the original resolution has been seconded and is put up by the Chairman for the meeting. Amendment proposed has to be passed before the resolution. An amendment need not be seconded, although it might be seconded. If the amendment is affirmed, then the amendment is incorporated in the resolution, which is then put to vote/poll. If the amendment is rejected, then the resolution is considered in its original form. If several amendments are proposed, they should all be considered insofar as they relate to original motion.

Resolutions requiring special notice

There are 2 sections, which require special notice to be moved by the members. Section 190 of the Act deals with special notices.

Section 225 (appointment or removal of auditors) and section 284 (removal of directors) are 2 sections in the Act, which require special notice. Such a notice should be moved at least 28 clear days in advance excluding day on which the notice is served on the company and the day on which the meeting is held.

Resolution passed at Adjourned Meeting

Section 191 deals with resolutions passed at the adjourned meeting. A resolution passed at an adjourned meeting of board or of the sharehold-

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ers is deemed to have been passed on the date it is actually passed and not on the date of original meeting.

Registration of Special Resolutions

Section 192 of the Act requires that a copy of every resolution, together with a copy of explanatory statement annexed, under the section 173(2) of the Act, to the notice of the meeting is required to be filed with the Registrar within 30 days of general meeting.

Conclusion

It can be inferred that the law affords good opportunity to shareholders to move resolutions, notice etc. for consideration of any resolution or notice. Similarly, for matters requiring urgent and special attention of members, a special resolution is required to be passed. Members are also given an opportunity to suggest amendments to a resolution within the framework of explanatory statement already circulated, thereby ensuring that amendment should not be more onerous to the original resolution proposed.

Therefore, if any member has any special issues that should be deliberated by the shareholders in a general meeting, he has all the opportunities to propose amendments. For moving a resolution, he should have the support of a requisite number of shareholders or those shareholders holding a certain amount of shareholding. ■