

PROXY PROVISIONS - A PROCEDURAL ANALYSIS

Dear Members,

Please find below a useful article covering some relevant information regarding Proxy in public and private company. For ready reference you may bookmark this page. Hope this article would be off some help in your professional working:

PROXY

Section 176 of the Companies Act, 1956 deals with the provisions related to proxy. According to section 176 any member of company, entitled to attend and vote at a meeting of the company, shall be entitled to appoint any person (whether a member or not) as his/her proxy to attend and vote instead of himself at a General Meeting (GM).

Member's right to appoint proxy

As desired by Section 176(2) there shall appear a statement with the notice of meeting **with reasonable prominence** that a member entitled to attend and vote at the meeting **can appoint a proxy**, to attend and vote in the meeting on his/her behalf.

Persons entitled to appoint proxy for the GM

Following persons are allowed to appoint proxy to attend and vote at the general meetings on their behalf:—

1. Members of a company having a share capital.
2. Members of a company not having a share capital, if authorised by Articles.
3. Representatives of body corporate appointed under section 187 of the Companies Act, 1956 through a board resolution.
4. Representatives of the President and the Governors of the State appointed under section 187A.

Persons disallowed to appoint proxy

Following persons are disallowed by law to appoint proxy:

1. A proxy cannot appoint a proxy.

However, this general **rule has certain exceptions** as mentioned below:

a.) Representatives of body corporate u/s section 187

b.) Representatives of the President and the Governors of the State u/s section 187A

2. A member of a company not having a share capital cannot appoint a proxy. However Articles may provide otherwise.

Number of proxies appointed by a member

As per section 176(1)(b) unless the Articles provide otherwise, a member of a private company is not entitled to appoint more than one proxy.

However, a member of a public company can appoint more than one proxy to attend and vote at a meeting.

It is pertinent to mention here that **only individual can be appointed as a proxy**. An artificial or judicial person cannot be appointed as proxy. Any person whether he is member or not can be appointed as a proxy. In other words to be appointed as a proxy it is not necessary to be a member of the company.

Validity of a proxy

In order to be a valid proxy, the proxy should have been executed in a proper manner. In this regard following points should be taken care off:—

1. A proxy appointed by a representative of body corporate u/s 187A, not bearing company's seal but signed by any of its officers **is invalid**. So it should be under company's official seal.
2. Proxy executed should contain the date of its execution.
3. **Proxies at adjourned meeting:** Proxy sent at the time of original meeting can be used in adjourned meeting also. However, in case a fresh notice is issued for adjourned meeting then lodging of fresh proxies shall be permissible.
4. **Stamping of proxy:** Proxy should be duly executed and it should be properly stamped.

Stamping on proxy

Following are the relevant provisions for stamping of a proxy form:—

1. **A proxy must be stamped with fifteen paise revenue stamp** which must be cancelled before the chairman act upon them. The stamp has been reduced to 15 paise vide Notification No. SO 130(E), dated 28-01-2004 issued by the Department of Revenue. An unstamped proxy shall be invalid and cannot be taken into account.

Deposit of proxy with the company

Proxies to be valid must be deposited with the company or any other person authorised in this behalf not less than 48 hours before a meeting of public company or a private company which is a subsidiary of a public company.

However, Articles can provide for a short period. A longer period than 48 hours cannot be prescribed.

Few general points in relation to proxy which should be kept in mind

1. Proxy does not speak at the meeting.
2. Proxy votes only on poll unless Articles provide otherwise.
3. It is duly signed (Proxy instrument) by the original member and should be under the seal, if appointer is a body corporate u/s 187.
4. Proxies are deposited 48 hours before the meeting if the Article do not provide for such deposition more than 48 hours before any general meeting.

Provisions connected with Revocation of proxy

Proxy can at any time be revoked by the shareholder. The acts and obligations already done in exercise of authority of proxy shall not be invalidated.

The following points should be observed in that matter:—

1. Every proxy in the absence of any contract to the contrary shall be used only if, the original member is unable to attend the meeting.
2. A shareholder appointing a proxy can revoke it, before voting by the proxy.
3. The acts and obligations **already done** in exercise of authority of proxy shall not be invalidated unless intimation in writing of revocation has been received at the office or chairman of the meeting before the vote is given.

4. Revocation of proxy **is to be communicated** to the company and it shall be received by the company at its registered office before the commencement of the meeting. Proxy shall itself be revoked in case of death or insanity of the shareholder appointing the proxy.

5. In case original member appoint or executes valid proxy on a later date and same is submitted with the company within time then that would be equal to revocation of earlier proxy.

6. Presence of shareholder and proxy, both at the meeting will not have the effect of revocation of proxy.

7. Where the revocation was communicated not before the meeting but before the poll then this revocation would not be considered and the vote cast by the proxy will be valid.

Rights of a member having appointed proxy

The Original shareholder who has appointed the proxy can attend the meeting and vote thereat even, if the proxy is present at the meeting and vote given by the member will have preference then the vote, if any, cast by the proxy.

Right of proxies

A proxy, being a representative of a member, cannot participate or speak during the proceedings of meeting unless the Articles otherwise provide. Further he cannot vote on a show of hands.

However, he can vote in case of poll and he can also demand a poll.

Practical aspects of proxies (Also very important from exam point of view)

The following practical aspects of the proxy should be noted carefully:—

1. **Appointment of more than one proxy:** If the shareholder has signs two proxy forms representing the same share and hand over them to two persons then **proxy bearing the later date would be valid.**

In case there is no date on the proxy form the same will be rejected by the company. If both the forms bear the same date then both shall be rejected by the company.

2. **General and special proxy:** A general proxy is in the nature of general power of attorney and is valid for attending all the general meetings of the company. A special proxy is drawn for attending meeting specified therein.

Company cannot be appointed as a proxy

A company, being an artificial person, cannot physically be present at a meeting, vote and speak or demand a poll. Only a natural person can do these. Therefore, a company cannot be appointed as a proxy.

To download few short notes regarding topics like:

1. Basic concepts
2. Prospectus
3. Transfer and Transmission of Shares
4. Forfeiture and re-issuance of shares
5. Provisions related to charges
6. Provisions related to Membership
7. Provisions related to Dividend
8. Company Incorporation

Kindly check the links as mentioned below:

PCC CHAPTER WISE LAW NOTES--PART-I

<http://www.caclubindia.com/forum/pcc-chapter-wise-law-notes-part-i-49519.asp>

PCC CHAPTER WISE LAW NOTES PART-II

<http://www.caclubindia.com/forum/pcc-chapter-wise-law-notes-part-ii-49735.asp>

Sincerely hope that the above article would be of some help for PCC/IPCC Students and professionals.

Best Regards
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