

Voting by show of hands (Sec 107)

1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

“Clause 107.— This clause corresponds to sections 177 and 178 of the Companies Act, 1956 and seeks to provide that at general meeting, a resolution put to vote shall, unless a poll is demanded or the voting is carried out electronically, be decided on a show of hands. A declaration by the Chairman and an entry in the minutes book is conclusive evidence that resolution is passed.”

2. Voting by show of hands

Sub-section (1) of section 107 provides that voting in the first instance shall be done by show of hands unless a poll under section 109 is demanded or voting is to be carried out electronically under section 108. A poll can be demanded under section 109 of the Act without going through the formality of a show of hands.

Regarding the nature of voting by show of hands, it was held in *Re. Horbury Bridge Coal Co. [(1897) 11 Ch. D 109 as quoted in Mahaliram Santhalia vs Fort Gloster Jute Manufacturing Company Ltd. AIR 1955 Cal 132]* that “We will first of all consider what may be termed the common law of the country as to voting at meetings. It is undoubted, and it was admitted that, according to such common law, votes at all meetings are taken by show of hands.”

The Supreme Court of India while dismissing the case *M/s Amarjit Singh vs Chanjiti Singh and Ors [(2004) (1) SCR 397]* made following observations on voting by show of hands;

“Before concluding, we may usefully refer to Blackwell’s of Meetings –9th Edition, page 60. In common law voting at all meetings is by a show of hands. Voting by show of hands means counting the persons present who are entitled to vote and who choose to vote by holding up (raising) their hand. Any person having legal right to be present at the meeting may, at the conclusion of the voting, demand a poll and the chairperson is the proper person to grant or refuse a poll which is in the nature of an appeal by one of the parties dissatisfied with the decision of the Chairperson upon the show of hands. In modern parliamentary usage a motion is carried by acclamation or by show of hands. The Chairman or the Presiding officer asks those present to indicate their vote or choice by holding up their hands. Once the presiding officer records the votes and after counting the votes declares the result, it is conclusive and it can be challenged only by a demand for poll. If the demand is not made, the Chairman’s declaration will stand (see: Shackleton on The Law and Practice of Meetings- 8th Edition, pages 60-62.) Once a motion has been voted upon, it becomes a resolution of the meeting. The results of a vote once announced is final.”

Voting by show of hands at first instance is mandatory requirement. The Chairman cannot deny the voting by show of hands unless a demand of poll is made by requisite number of members prescribed in sub-section (1) of section 109. As per para 7.5.1 of Secretarial Standard 2, every company shall, at the general meeting, put every resolution, except a resolution which has been put to remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.

3. Applicability to all general meetings

This provision applies to all general meetings including a meeting called on requisition of shareholders. In case of listed company or such other company having more than 1000 members which are mandated by section 108 read with rule 20 to conduct voting by electronic means, voting by show of hands is not allowable. This position was clarified in circular no. 20/2014 dated 17.06.2014.

4. Proxy can't vote on show of hands

As para 7.3 of Secretarial Standard 2, a proxy cannot vote on show of hands in any general meeting. However, he can demand poll or join a demand for poll. The entitlement to voting rights of the members is not changed. As provided in article 52 and 53 of Table F of Schedule I of the Act, the senior holder in case of joint holders and committee or legal guardian in case of a member of unsound mind may vote on show of hands.

5. Casting vote of Chairman

Para 7.6 of Secretarial Standard 2 further specifies that the Chairman of the meeting has a casting vote in the event of equality of votes. The casting vote is available on voting by show of hands as well unless otherwise provided in the articles.

6. Applicability of the section to private companies

This section applies to a private company unless its articles provide otherwise. This exemption is 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 method of voting.

7. Conclusive evidence

As provided in sub-section (2) of section 107, when the two conditions of declaration by Chairman whether resolution has been passed or not and entry of same at minutes are satisfied, it shall be a conclusive evidence of the fact that said resolution was either passed or not passed by voting by show of hands.

The Calcutta High Court in case of Dhakeswari Cotton Mills Ltd vs. Nil Kamal Chakravorty and others [AIR 1937 Cal 645 173 Ind Cas 622] observed that “if there is no dispute about the Chairman’s declaration, no difficulty arises, but if there is a dispute, the court has to determine on evidence what the declaration was”

In Indian Zoedone Co [(1884) 26 Ch D 70 (CA)], it was held that if there is a fraud or improper exclusion of votes, the resolution can be struck down as invalid by a court of law.

8. Secretarial Action Points

- i. The Chairman of the meeting shall take the voting by way of show of hands at the first instance on any resolution. He is required to seek choice of the members present ‘for’ and then ‘against’ the resolution.
- ii. The number of members voting for either side shall be counted and noted by the Chairman. He may direct the company secretary to do the same.
- iii. The Chairman after ensuring that there is no demand for the poll, shall declare the outcome of the resolution whether the same was passed or failed to be passed
- iv. Declaration of results of the resolution along with including process of proceedings of the meeting are required to be entered in the minutes of the general meetings. Said results shall be said to be conclusive evidence of the fact the resolution was passed or otherwise.

9. Punishment and Compoundability

This section does not prescribe any penal provision for contravention of the section. Hence, section 450 of the Act will be applicable. Accordingly, the punishment for contravention, the company and every officer of the company who is in default shall be punishable with a fine upto Rs. 10,000, where the contravention is a continuing one then the fine shall be Rs. 1,000 for every day of contravention. The offences committed by company and officer, 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 30th September, 2016.