

## PROXIES (Sec. 105)

### Meaning of proxy

- ✚ A person who is appointed by a member to attend and vote at a meeting (in the absence of the member at the meeting) is termed as "proxy". Thus, a proxy is an agent of the member appointing him.
- ✚ The term "proxy" is also used to refer to the instrument by which a person is appointed as a proxy.

### Who can appoint a proxy?

- ✚ Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself.

### Provisions applicable subject to articles

Unless the articles otherwise provide, –

- ✚ a member of a company having no share capital shall not be entitled to appoint a proxy;
- ✚ the provisions relating to proxies shall not apply to a company having no share capital.

### Restrictions on proxy

- ✚ CG may prescribe a class /classes of companies whose members shall not be entitled to appoint a proxy.
- ✚ A member of a company registered u/s 8 (viz. 'Not for Profit Company') shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.
- ✚ A person can act as proxy on behalf of members –
  - not exceeding 50; and
  - holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.
- ✚ A member holding more than 10% of the total share capital of the Company carrying voting rights may appoint a person as proxy, provided that such person shall not act as proxy for any other person or shareholder.

### Disclosures required in notice of GM

- ✚ In every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, to attend and vote instead of himself, and that a proxy need not be a member.
- ✚ If default is made in complying with this provision, every officer of the company who is in default shall be liable to a penalty of Rs. 5,000.

### Deposit of proxy forms

- ✚ Any provision contained in the articles.

- ✚ which specifies or requires a longer period than 48 hours before a meeting of the company, for depositing with the company any instrument appointing a proxy, shall have effect as if a period of 48 hours had been specified in or required by such provision for such deposit.

### **Legal requirements of proxy form**

The proxy form shall be -

- (a) in writing;
- (b) signed by the member.

### **No special requirements in proxy form**

- ✚ An instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.
- ✚ Form No. MGT-11 has been prescribed for appointment of proxy.

### **Disabilities of proxy**

- ✚ A proxy has no right to speak at the meeting.
- ✚ A proxy cannot vote on a show of hands.
- ✚ A proxy is not counted for the purpose of quorum.

### **Rights of proxy**

- ✓ A proxy has the right to attend the meeting.
- ✓ A proxy has the right to vote on poll.
- ✓ A proxy, if eligible u/s 109, has the right to demand a poll.

### **Inspection of proxies**

- ✚ Any member is entitled to inspect the proxies deposited with the company.
- ✚ Inspection can be made only if 3 days' notice is given to the company.
- ✚ Inspection can be made during the period beginning with 24 hours before the commencement of GM and ending with the conclusion of such GM.
- ✚ Inspection can be made only during business hours.

### **Revocation of proxy**

- ✚ If after appointment of proxy, the member himself attends the GM, it amounts to automatic revocation of proxy.
- ✚ Once the proxy has voted, it cannot be revoked.

### **Penalty for issuing invitation for appointing a proxy:**

- ✚ If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to Rs 50000.

- ✚ However , an officer shall not be so liable by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy , or of a list of persons willing to act as proxies , if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

## Questions from Examination – Sec 105



**Q1- K, a member of MNO Limited appoints L as his proxy to attend the general meeting of the company. Later he (K) also attends the meeting. Both K (the member) and L (the proxy) vote on a particular resolution in the meeting. K's vote was declared invalid by the Chairman stating that since he has appointed the proxy, L's vote has been considered as**

**valid. K objects to the decision of the Chairman. Decide, under the provision of the Companies Act, 2013 whether K's objections shall be tenable.**

Ans.

**The appointment of L as proxy is revoked** -when K, the member, himself attends the GM.

**Vote of L, the proxy, is void** -since, when K, the member, himself attends the GM, the proxy is revoked, and so, L has no right to vote

**K's objection is tenable** - since the Chairman has erroneously considered L's vote as valid.

**Q2- A, a shareholder, of a company, appointed B, as a proxy, to attend the general meeting of the shareholders. Later on, A, himself, attended the meeting and voted on a resolution. Decide, whether A can do so?**

Ans.

**The appointment of B as proxy is revoked** - when A, the member, himself attends the GM.

**Vote of A, the member, is valid** - since, when A, the member, himself attends the GM, the proxy is revoked, and so, A, the member, is entitled to vote.

**Q3- Annual General Meeting of a Public Company was scheduled to be held on 15.12.2003. Mr. A, a shareholder, issued two Proxies in respect of the shares held by him in favour of Mr. 'X' and Mr. 'Y'. The proxy in favour of 'Y' was lodged on 12.12.2003 and the one in favour of Mr. X was lodged on 15.12.2003. The company rejected the proxy in favour of Mr. Y as the proxy in favour of Mr. Y was of dated 12.12.2003 and that in favour of Mr. X was of dated 13.12.2003. Is the rejection the company in order?**

Ans.

**Proxy in favour of Y** - dated 12.12.2003, lodged with the company on 12.12.2003.

**Proxy in favour of X** - dated 13.12.2003, lodged with the company on 15.12.2003.

**Proxy in favour of X shall be rejected** - since proxy form appointing X as proxy was not lodged with the company within the prescribed time, i.e. at least 48 hours before the AGM.

**Proxy in favour of Y shall be valid** - and, therefore, the action taken by the company is not valid.

**Q4- A General Meeting was scheduled to be held on 15th April, 2016 at 4.00 P.M. As per the notice the members who are unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2016 was deposited by Mr. Y with the company at Its Registered Office on 11-04-2016. However, Mr. X changes his mind and on 12-04-2016 gives another proxy to Mr. Z and it was deposited on the same day with the company. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2016 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2016. All the proxies viz. Y, Z, M and N were present before the meeting. According to the provisions of the Companies Act 2013, who would be the persons allowed to represent as proxies for members X and w respectively?**

Ans.

**Proxy appointed by Mr X in favour of Mr. Y** -is dated 10.04.2016 and is deposited with the company on 11.04.2016.

**Proxy appointed by Mr. X in favour of Mr. Z** -is dated 12.04.2016, and is deposited with the company on same day viz. 12.04.2016.

**Mr . Z shall be allowed as proxy for Mr. X in the GM** - since proxy form appointing Mr. Z as proxy was signed by the member, Mr. X later in point of time, and it was deposited with the company within the prescribed time, i.e. at least 48 hours before the GM.

**Proxy appointed by Mr. W in favour of Mr. M** -is dated 12.04.2016, and is deposited with the company on same day viz. 12.04.2016.

**Proxy appointed by Mr. W in favour of Mr. N** -is dated 12.04.2016, and is deposited with the company on 14.04.2016.

**Proxy appointed by Mr. W in favour of Mr. N shall be rejected** -since proxy form appointing N as proxy was not deposited with the company within the prescribed time, i.e. at least 48 hours before the GM.

**Mr. M shall be allowed as proxy for Mr. W in the GM** -since, by reason of rejection of proxy form in favour of Mr. N, only one valid proxy form in favour of Mr. M has reached the company within the prescribed time of at least 48 hours before the GM.

**Q5- The Chairman of the meeting of a company received a Proxy 54 hours before the time fixed for the start of the meeting. He refused to accept the Proxy on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. Decide, under the provisions of the Companies Act, whether the Proxy holder can compel the Chairman to admit the Proxy?**

Ans.

**The refusal of the Chairman is not valid**

- ✚ since a proxy lodged with the company 48 hours before the time fixed for commencement of the meeting is valid;
- ✚ since the time limit of 48 hours can be decreased, but cannot be increased.

**Q6 - Annual General Meeting, of MGR Limited is convened on 28th December, 2013. Mr. J, who is a member of the company, approaches the company on 28th December, 2013 and demands inspection of proxies lodged with the company. Explain the legal position as stated under the Companies Act, 2013 in this regard.**

Ans.

**Mr. J is not entitled to inspect proxies**

-since a member who intends to inspect the proxies has to give notice to the company of his intention to do so, at least 3 days before the commencement of the GM

**Q7 - Golden Private Limited in its Articles of Association provides a format of 'proxy form' different from the one prescribed under the Companies (Management and Administration) Rules, 2014. S, a shareholder submits an instrument appointing proxy to the company in the form as prescribed under the Companies (Management and Administration) Rules, 2014. The company rejects the proxy on the ground that it is not in the form as prescribed in Articles of Association of the company. Is the rejection valid under the provisions of Companies Act, 2013? Decide giving reasons.**

Ans.

**The rejection of proxy form by the company is not valid**

-since a company cannot reject a proxy form if it is in the same form as may be prescribed (Form No. MGT-11 has been prescribed for appointment of proxy).

-even though the proxy form used by the member does not comply with any special requirements specified in the articles of the company.

**Q8 - What is the concept of proxy in relation to the meetings of a Company? Decide the appointment and rights of a proxy, under the Companies Act, 2013, in the following cases:**

**(i) When a body corporate is a member in the company.**

**(ii) When a foreign company is a member in the company.**

Ans.

**(i) A body corporate is entitled to appoint a representative**

As per the provisions of Sec. 113, Such representative shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of such body corporate, as if it were an individual member.

**(ii) The foreign company is also entitled to appoint a representative as per Sec. 113**

- since the provisions of Sec. 113 are applicable not only to companies but also to foreign companies;

-since Sec. 113 uses the words "a body corporate (whether a company within the meaning of this Act or not)".

## MCQ's of Sec 105

**1. Statement (1):** The articles of a company may provide that a member of a company having no share capital shall be entitled to appoint a proxy.

**Statement (2):** If the articles of a company do not provide otherwise, the provisions relating to proxies shall not apply to a company having no share capital.

- (a) Only Statement (1) is correct
- (b) Only Statement (2) is correct
- (c) Both the Statements are correct
- (d) None of the Statements is correct



**2. A person can act as proxy on behalf of members not exceeding \_\_\_\_\_**

- (a) 20
- (b) 25
- (c) 50
- (d) 100

**3. A person can act as proxy on behalf of members holding in the aggregate not more than \_\_\_\_\_ the Company carrying voting rights.**

- (a) 5%
- (b) 10%
- (c) 20%
- (d) 25%

**4. Any provision contained in the articles which specifies or requires a \_\_\_\_ period than 48 hours before a meeting of the company, for depositing with the company any instrument appointing a proxy, shall have effect as if a period of 48 hours had been specified in or required by such provision for such deposit.**

- (a) Longer
- (b) Shorter
- (c) Either (a) or (b)
- (d) None of these

**5. An instrument appointing a proxy, if in Form No. \_\_\_\_\_ shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.**

- (a) MGT-10
- (b) MGT-11
- (c) MGT-12
- (d) MGT-13

**6. Statement (1): A proxy has no right to speak at the meeting.**

**Statement (2): A proxy can vote on a show of hands.**

- (a) Only Statement (1) is correct
- (b) Only Statement (2) is correct
- (c) Both the Statements are correct
- (d) None of the Statements is correct

**7. Any member is entitled to inspect the proxies deposited with the company only if.....notice is given to the company.**

- (a) 1 day's
- (b) 2 days'
- (c) 3 days'
- (d) 7 days'

**MCQ's Ans key**

1-c	2-c	3-b	4-a	5-b	6-a	7-c
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### **USE OF VOTES DIFFERENTLY & RESTRICTIONS ON VOTING RIGHT OF MEMBERS (Sec. 106)**

On a poll being taken, a member / proxy need not -

- (a) use all his votes; or
- (b) cast in the same way all the votes he uses.

#### **Manner of imposing restrictions**

Express provision in the articles is required to restrict the voting rights of members.

## Grounds imposing restrictions

### Valid grounds

- (i) Calls on shares or any other sum presently payable by the member have not been paid.
- (ii) The company has, and has exercised, any right of lien on shares.

### Any other ground

A company shall not restrict the voting right of any member on any other ground.



**Q1 - C, a member of LS & Co. Ltd., holding some shares in his own name on which final call money has not been paid, is denied by the company voting right at a general meeting on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him. With reference to the provisions of the Companies Act, 2013 examine the validity of company's**

**denial to C of his voting right.**

Ans.

### The decision of the company is valid

- ✚ since the member is restrained from exercising his voting right on one of the grounds specified u/s 106 (viz. Non-payment of calls on shares);
- ✚ since the ground restricting voting right is contained in the articles.

**Q2- The articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. X, a member, of the ABC Limited was holding 200 equity shares of the company. X transferred his shares to Y before one month from the date on which the meeting was due. The name of Y could not be entered in the Register of Members as the application of transfer of shares was pending. X attended the meeting but he was prohibited by the company from exercising his voting right on the ground that he has not hold his shares for specified period as provided in the articles before the date of the meeting. State whether X can exercise his voting right in the meeting? State also the grounds upon which X may be excluded from exercising his voting rights in the meeting of the shareholders.**

Ans.

### X is entitled to vote at the GM

- ✚ since a company cannot restrict the voting rights of a member on any ground other than the grounds specified u/s 106;
- ✚ since the restriction of voting right on the ground that a member has not held his shares for 2 months, is not a specified ground u/s 106.

**Q3- J held 100 partly paid up shares of LKM Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has**

**not paid the calls on the shares held by him. J contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of J is valid.**

Ans.

**The contention of J is not valid**

- ✚ since he is restrained from exercising his voting right on one of the grounds specified u/s 106 (viz. non- payment of calls on shares);
- ✚ since the ground restricting voting right is contained in the articles.

**Q4 - 'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming that Articles of association of the Company do not restrict the voting right of such members.**

Ans.

**The decision of LKM Ltd. Is not valid**

- ✚ since the member can be restrained from exercising his voting right on the ground of non-payment of calls on shares only if the articles of the company contain such a ground;
- ✚ since the ground restricting voting right is not contained in the articles of LKM Ltd.

### MCQ's of Sec 106

**1. Statement (1): On a poll being taken, a member or proxy need not use all his votes.**

**Statement (2): On a poll being taken, a member or proxy need not cast in the same way all the votes he uses.**

- (a) Only Statement (1) is correct
- (b) only Statement (2) is correct
- (c) Both the Statements are correct
- (d) None of the Statements is correct

**2. A company shall not restrict the voting right of any member on the ground that \_\_\_\_**

- (a) Calls on shares payable by the member have not been paid
- (b) The company has, and has exercised, any right
- (c) Either (a) or (b)
- (d) None of these

**3. At a general meeting, a resolution shall be decided on a show of hands, unless \_\_\_\_**

- (a) A poll is demanded



- (b) Voting is carried out electronically
- (c) Either (a) or (b)
- (d) None of these

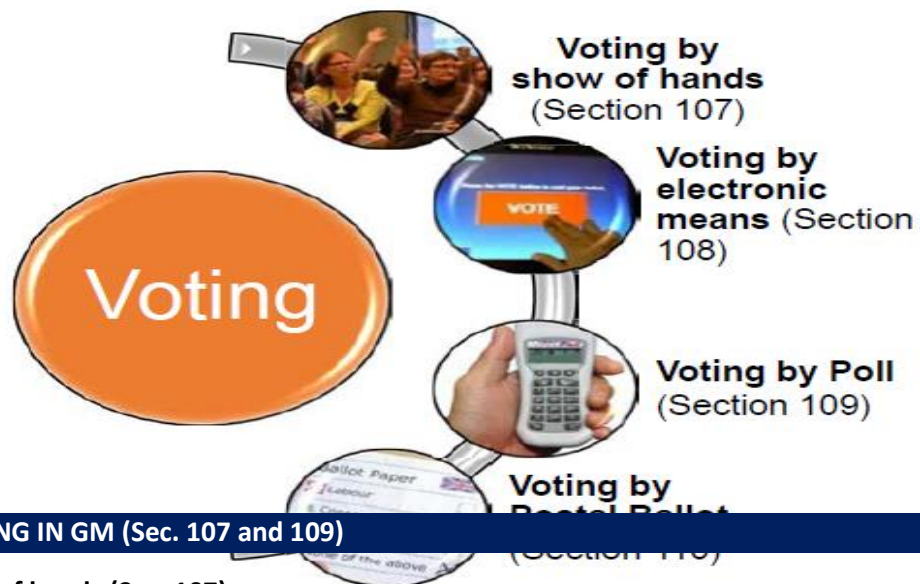
**MCQ's Ans key**

1-c	2-d	3-c
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**VOTING [SECTION 107-109]**

The votes cast by the shareholders play decisive role in the business proposed in General Meetings of a Company. An equity shareholder has the right to vote for every motion. However, as per the Section 47 of the Companies Act, 2013 preference shareholder is entitled to vote only for a resolution pertaining to his rights. The companies Act provides for various modes through which a shareholder can cast his vote. These include–

- ◆ Voting by show of hands – (section 107);
- ◆ Voting by electronic means – (section 108);
- ◆ Voting by demand of poll – (section 109);
- ◆ Voting by Postal Ballot – (section 110).



**1. Voting by show of hands (Sec. 107)**

At a GM, a resolution shall be decided on a show of hands, unless

- (a) a poll is demanded u/s 109; or
- (b) voting is carried out electronically u/s 108.

A declaration of the result of a resolution (that the resolution has been passed or failed, as the case may be) on a show of hands by the chairman and an entry to that effect in the minutes book shall be conclusive evidence of such fact. No proof of number of votes cast in favour of and against the resolution is required.

**Ques - Can an insolvent shareholder vote at the meeting by show of hands?**

Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as member.

**VOTING BY POLL IN THE MEETING (Sec. 109)**

**(A) Provisions of the Act.**

**1. Demand for poll and order for poll**

(a) Discretion to order poll : A poll may be ordered to be taken, by the chairman of his own motion, i.e. without any demand for poll by any member or proxy. In other words, the chairman has suo motu power to order poll.

**(b) Duty to order poll.**

A poll shall be ordered to be taken, by the chairman if a demand for poll is made by-

In case of a company having a share capital	In case of any other company
Any member(s) (present in person or proxy) holding- -1/10th of the total voting power; or -Paid up share capital of not less than Rs. 5,00,000 or such higher amount as may be prescribed.	Any member(s) (present in person or proxy) having 1/10th of total voting power.

**(c) Time of ordering poll**

- Before declaration of the result of voting on a show of hands; or
- On the declaration of such result.

**(d) Withdrawal of demand for poll.**

The demand for poll may be withdrawn at anytime by the person who made it.

**2. Time of taking poll**

Question on which poll is demanded	Time of taking poll
Adjournment of GM Appointment of chairman of GM	The poll shall be taken forthwith.
On any other question	The poll shall be taken at such time as may be directed by the Chairman (but within 48 hours of demand for poll).

### **3. Scrutineers at poll**

- (a) Where a poll is to be taken, the Chairman shall appoint such number of scrutineers, as he may deem fit.
- (b) The scrutineers shall scrutinise the poll process and votes given on the poll.
- (c) The scrutineers shall report to the Chairman in such manner as may be prescribed.

### **4. Chairman's powers**

The Chairman shall have the power to regulate the manner in which a poll shall be taken.

### **5. Result of poll**

The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

### **Rule 21 of the Companies (Management and Administration) Rules, 2014 –**

#### **Procedure for scrutinizing the poll process.**

The Chairman of the GM shall ensure the following:

- (a) The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
- (b) The Scrutinizers are provided with all the documents received by the Company pursuant to Sec. 105, 112 and 113.
- (c) The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting. In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. The Polling paper shall be in Form No. MGT-12.
- (d) The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.
- (e) The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
- (f) The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
- (g) In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
- (h) The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
- (i) The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- (j) Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.

(k) The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

(L) The scrutinizers shall submit a report to the Chairman of the meeting in Form No. MGT-13. The report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer. The Chairman shall counter-sign the scrutinizers' report.

(m) The Chairman shall declare the result of voting on poll. The result may either be announced by him or a person authorized by him in writing.

### **EXEMPTIONS TO PRIVATE COMPANIES**

As per Notification dated 5th June, 2015, the provisions of Sec. 101 to 107 and Sec. 109 shall apply to a private company unless otherwise specified in respective sections or the articles of the company provide otherwise.

### **MCQ's of Sec 109**

**1. In case of a company having a share capital, a poll shall be ordered to be taken by the chairman if a demand for poll is made by any member(s) present in person or proxy holding \_\_\_\_ of the total voting power or paid up share capital of not less than \_\_\_\_ or such higher amount as may be prescribed.**

(a) 1/10th; Rs. 5 lakhs

(b) 1/5th; Rs. 1 lakh

(c) 1%; Rs. 5 lakhs

(d) 1%; Rs. 1 lakh

**2. Statement (1): A poll cannot be taken before declaration of the result of voting on a show of hands.**

**Statement (2): A poll may be taken on declaration of result of voting on show of hands.**

(a) Only Statement (1) is correct

(b) Only Statement (2) is correct

(c) Both the Statements are correct

(d) None of the Statements is correct

**3. The poll shall be taken forthwith if the question on which poll is demanded is \_\_\_\_**

(a) Adjournment of GM

(b) Appointment of chairman of GM

(c) Either (a) or (b)

(d) None of these

### **MCQ's Ans key**

**VOTING THROUGH ELECTRONIC MEANS (Sec. 108)****Voting by electronic means**

Voting by electronic means includes remote e-voting and voting at GM through an electronic voting system which may be the same as used for remote e-voting.

**Applicability**

Sec. 108 shall apply to such companies as may be prescribed by CG. As per Rule 20 of the Companies (Management and Administration) Rules, 2014, the prescribed classes of companies, for this purpose, are -

- (i) Every listed company &
- (ii) all companies having 1,000 or more members.

However, a Nidhi, or an enterprise or institutional investor referred to in SEBI (ICDR) Regulations, is not required to provide the facility to vote by electronic means.

(a) A company to which Sec. 108 is applicable, shall provide to its members facility to exercise their right to vote on resolutions proposed at GMs by electronic means.

(b) Once a resolution is proposed at GM, it shall not be withdrawn.

**Meaning of certain terms****Electronic voting system**

Electronic voting system means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.

**Remote e- voting**

Remote e-voting means the facility of casting vote by a member using an electronic voting system from a place other than venue of a general meeting.

**Secured system**

Secured system means computer hardware, software, and procedure that-

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to perform the intended functions; and
- (d) adhere to generally accepted security procedures.

**Cut-off date**

- Cut-off date means a date not earlier than 7 days before the date of GM for determining the eligibility to vote by electronic means or in GM.

**Cyber security**

- Cyber security means protecting information, equipment, devices, computer, computer resource, communication, modification or destruction.

**Modes of sending notice of GM & Displace of notice at website**

(a) By registered post or speed post or courier.

(b) Through email

The notice of GM shall also be placed on the website, if any, of the company, forthwith, after it is sent to the members.

**Disclosures in notice sent to the members by the company**

The notice shall disclose that -

(a) the company is providing facility for voting by electronic means;

(b) the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;

(c) the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

**Additional disclosures in notice sent to the members by the company**

The notice shall-

(a) indicate the process and manner for voting by electronic means;

(b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;

(c) provide the details about the login ID;

(d) specify the process and manner for generating or receiving the password and for casting of vote.

**Publication of Notice**

(a) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of despatch of notice of GM.

(b) The public notice shall be published at least 21 days before the date of GM.

(c) The public notice shall be published –

(i) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district; and

(ii) at least once in English language in an English newspaper having country-wide circulation.

(d) The public notice shall specify the following matters:

(i) A statement that the business may be transacted through voting by electronic means

(ii) The date and time of commencement of remote e-voting

(iii) The date and time of end of remote e-voting

(iv) Cut-off date

(v) The manner in which persons who have acquired shares and become members of the company after the despatch of notice, may obtain the login ID and password

(vi) A statement that -

(A) remote e-voting shall not be allowed beyond the said date and time;

(B) the manner in which the company shall provide for voting by members present at the GM; and

(C) a member may participate in the GM even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the GM; and

(D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the GM.

(vii) Website address of the company, if any, where notice of GM is displayed

(viii) Name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means.

(e) The public notice shall be placed on the website of the company, if any.

#### **Remote e-voting**

(a) The facility for remote e-voting shall remain open for not less than 3 days and shall close at 5.00 p.m., on the date preceding the date of GM.

you hold the shares of VODAFONE IDEA LIMITED you are entitled to vote on the resolution(s) which requires shareholders' approval. The schedule for the e-Voting is given below:

Sr. No.	Particulars	Details
1	Company Name	VODAFONE IDEA LIMITED
2	Voting Start Date	2021-09-25
3	Voting Start Time	2021-09-25 09:00:00.0
4	Voting End Date	2021-09-28
5	Voting End Time	2021-09-28 17:00:00.0

(b) During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cut-off date, may opt for remote e-voting.

(c) Once a member has cast his vote on a resolution, he shall not be allowed to change it subsequently or cast the vote again.

(d) A member may participate in GM even after exercising his right to vote through remote e- voting, but he shall not be allowed to vote again.

(e) At the end of the remote e-voting period, the facility for remote e-voting shall forthwith be blocked.

#### **Appointment of scrutinizer**

(a) The Board of Directors shall appoint one or more scrutinizers.

(b) The Scrutinizer(s) may be CA, CMA or CS in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner.

(c) The scrutinizer(s) may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system.

(d) The scrutinizer shall be willing to be appointed.

(e) The scrutinizer shall be available for the purpose of ascertaining the requisite majority.

(f) The scrutinizer(s) shall maintain a register to record the assent or dissent received, mentioning the particulars of members

(g) The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutinizer(s) until the Chairman considers, approves and signs the minutes and thereafter, the scrutinizer(s) shall hand over the register and other related papers to the company.

#### **Voting at GM**

(a) During GM, a company may opt to provide the same electronic voting system as used during remote e-voting. In such a case, the members attending the GM and who have not exercised their right to vote through remote e-voting, shall be entitled to vote using the electronic voting system.

(b) At the GM, after conclusion of discussion, the Chairman shall, with the assistance of scrutinizer(s), allow voting on the resolutions, by use of polling paper or by using an electronic voting system for all those members who are present at the GM but have not cast their votes by availing the remote e-voting facility.

#### **Declaration of result of voting**

(a) The scrutinizer(s) shall, immediately after the conclusion of voting at the GM, first count the votes cast at the GM, and thereafter, the scrutinizer(s) shall unblock the votes cast through remote e-voting in the presence of at least 2 witnesses not in the employment of the company.

(b) The scrutinizer(s) shall make, not later than 3 days of conclusion of the GM, a consolidated scrutinizer's report to the Chairman. The report shall contain the total votes cast in favour of, and against, the resolution.

(c) The Chairman shall declare the result of the voting forthwith.

(d) The manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and shall not be available to the Chairman, Scrutinizer or any other person till the votes are cast in the GM.

(e) If the requisite number of votes are cast in favour of the resolution, the resolution shall be deemed to be passed on the date of the relevant GM.

(f) The result declared along with the report of the scrutinizer shall be placed on the website of the company, if any, immediately after the result is declared by the Chairman.

## MCQ's of Sec 108

**1. Statement (1): The provisions relating to voting through electronic means apply to all companies whose equity shares are listed on a recognized stock exchange.**

**Statement (2): The provisions relating to voting through electronic means apply to all companies having 5,000 or more members.**

- (a) Only Statement (1) is correct
- (b) Only Statement (2) is correct
- (c) Both the Statements are correct
- (d) None of the Statements is correct

**2. Statement (1): Remote e-voting includes voting by electronic means.**

**Statement (2): Remote e-voting means voting at a general meeting through an electronic voting system.**

- (a) Only Statement (1) is correct
- (b) Only Statement (2) is correct
- (c) Both the Statements are correct
- (d) None of the Statements is correct

**3. Cut-off date means a date not earlier than \_\_\_\_\_ before the date of general meeting for determining the eligibility to vote by electronic means or in general meeting.**

- (a) 3 days
- (b) 5 days
- (c) 7 days
- (d) 10 days

**4. The facility for remote e-voting shall remain open for not less than \_\_\_\_\_ and shall close at..... on the date preceding the date of general meeting.**

- (a) 2 days; 5 pm
- (b) 2 days; 6 pm
- (c) 3 days; 5 pm
- (d) 3 days; 6 pm

**5. During a general meeting, a company \_\_\_\_\_ to provide the same electronic voting system as used during \_\_\_\_\_**

- (a) Is bound; remote e- voting
- (b) May opt; remote e- voting
- (c) Is bound; postal ballot



(d) May opt; postal ballot

**6. In case the provisions relating to voting through electronic means apply to a company, the scrutinizer(s) shall make, not later than \_\_\_\_ of conclusion of the general meeting, a consolidated scrutinizer's report to the Chairman.**

(a) 3 days

(b) 5 days

(c) 7 days

(d) 10 days

### MCQ's Ans key

1-a	2-d	3-c
4-c	5-b	6-a

## PASSING OF RESOLUTIONS BY POSTAL BALLOT (Sec. 110)

### 1. Applicability

The provisions relating to passing of resolution by postal ballot are contained in Sec. 110 read with Rule 22 of the Companies (Management and Administration) Rules, 2014.

### 2. Postal ballot mandatory for certain business

-Every company shall transact such items of business by postal ballot, as CG may, by notification, declare to be transacted only by means of postal ballot.

-However, any item of business which is to be mandatorily transacted by postal ballot, may be transacted at a GM by a company which is required to provide the facility to members to vote by electronic means u/s 108.

### 3. Postal ballot optional for certain business

Any company may use postal ballot for transacting any item of business, other than-

(a) ordinary business; and

(b) any business in respect of which directors or auditors have a right to be heard at the meeting.

### 4. Manner of transacting business by postal ballot

-The manner of transacting business by postal ballot shall be such as may be prescribed by CG.

-Where any business is transacted by postal ballot, such business shall not be transacted at GM.

### 5. Resolution deemed to be passed in GM

- If a resolution is assented to by the 'requisite majority' by means of postal ballot, it shall be deemed to have been duly passed at GM convened in that behalf.

### 6. Meaning of 'Postal ballot

'Postal ballot' means voting by post or through any electronic mode (Sec. 2(65)].

**(B) Provisions w.r.t. postal ballot as contained in Rule 22 of the Companies (Management and Administration) Rules, 2014 – Procedure for passing resolution by postal ballot :**

**1. Postal ballot mandatory for certain business**

The following items of business shall be transacted only by means of voting through a postal ballot:

- (a) Alteration of the Object Clause of MOA
- (b) Alteration of articles for insertion or removal of provisions defining a private company
- (c) Change in place of Registered office outside the local limits of any city town or village
- (d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised u/s 13(8).
- (e) Issue of shares with differential rights as to voting or dividend or otherwise
- (f) Variation in the rights attached to a class of shares or debentures or other securities
- (g) Buy-back of own shares by the company
- (h) Election of a 'Small Shareholders' Director's u/s 151.
- (i) Sale of the whole or substantially the whole of an undertaking u/s 180(1)(a).
- (j) Giving loans, or extending guarantees or providing security in excess of the limits specified u/s 186(3).

-However, the above items of business may be transacted at a GM by a company which is required to provide the facility to members to vote by electronic means u/s 108, in the manner provided in that section.

-Following companies are not required to transact any business through postal ballot:

- (i) One Person Companies
- (ii) All other companies having members upto 200.

**2. Notice to be sent by the company**

The company shall send to all the shareholders, notice of postal ballot containing -

- (i) draft resolution;
- (ii) reasons for passing the resolution by postal ballot;
- (iii) a request to the shareholders to send to the company their assent or dissent in writing on a postal ballot within 30 days.

**3. Mode of sending documents**

The notice of postal ballot shall be sent by -

- (i) Registered post or speed post; or
- (ii) through electronic means like registered e-mail id; or
- (iii) through courier service

#### 4. Issue of advertisement

- a) The company shall cause an advertisement to be published stating that the ballot papers have been despatched.
- b) The advertisement shall be published –
  - (i) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district; and
  - (ii) at least once in English language in an English newspaper having a wide circulation in that district.
- c) The advertisement shall be published at least 5 days before the date of beginning of the voting period.
- d) The advertisement shall specify the following matters:
  - ✚ A statement that the business is to be transacted by postal ballot
  - ✚ The date of completion of despatch of notices
  - ✚ The date of commencement of voting through postal ballot
  - ✚ The date of end of voting through postal ballot
  - ✚ A statement that any postal ballot received after the date of end of voting shall not be valid
  - ✚ A statement that the members, who have not received postal ballot forms, may apply to the Company and obtain a duplicate thereof
  - ✚ The contact details of the person responsible to address the grievances connected with the voting by postal ballot.

#### 5. Notice to be placed on website

- ✚ The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members.
- ✚ Such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

#### 6. Appointment of scrutinizer

- ✚ The Board of directors shall appoint one Scrutinizer.
- ✚ A person who is in the employment of the company shall not be appointed as a Scrutinizer.
- ✚ The Scrutinizer must be a person who can conduct the postal ballot voting process in a fair and transparent manner.
- ✚ A person shall be appointed as a Scrutinizer only if he is willing to be so appointed.
- ✚ The Scrutinizer must be available for the purpose of ascertaining the requisite majority.

#### 7. Register to be maintained by the Scrutinizer

- a) The scrutinizer shall maintain a register either manually or electronically.
- b) The register shall contain, with respect to voting by shareholders by postal ballot,
  - (i) his assent or dissent received;
  - (ii) his name, address, folio number or client ID;

(iii) number of shares held by him, nominal value of such shares and whether the shares have differential voting rights;

(iv) details of postal ballots which are received in defaced or mutilated form;

(v) details of postal ballot forms which invalid.

#### **8. Safe custody of register and other papers**

-The postal ballot received back from the shareholders and all other papers relating to postal ballot including voting by electronic means, shall remain in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes.

-Thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

#### **9. Report of the scrutinizer**

-The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than 7 days thereof.

-The assent or dissent received after 30 days from the date of issue of notice shall be treated as if reply from the member has not been received.

#### **10. Prohibition on destroying postal ballot**

-No person shall deface or destroy the postal ballot papers received back from the shareholders.

-No person shall declare the identity of any shareholder who has recorded his assent or dissent on the postal ballot.

#### **11. Display of result on the website**

The company shall place on its website

(i) result of postal ballot; and

(ii) scrutinizer's report.

#### **12. Resolution deemed to be passed at GM**

-If a resolution is assented to by the 'requisite majority' by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at GM convened in that behalf.

#### **13. Applicability of Rule 20**

-The provisions relating to voting by electronic means (as contained in Rule 20) shall apply, as far as applicable, in respect of the voting by postal ballot.

### **Past Examination Question**

**Q1 - As a Corporate Professional advise your client company whether the following matters can be transacted by getting a resolution passed through Postal Ballots:**

**(i) Issue of shares with differential voting-rights;**

**(ii) Sale of whole of the undertaking of a company;**

**(iii) Buy-back of own shares by the company.**

Ans.

**(i) Issue of shares with differential voting-rights**

- shall be transacted by passing a resolution by postal ballot;
- unless the company is OPC or the number of members of the company is upto 200.

**(ii) Sale of whole of the undertaking of a company;**

- shall be transacted by passing a resolution by postal ballot;
- unless the company is OPC or the number of members of the company is upto 200.

**(iii) Buy-back of own shares by the company**

- shall be transacted by passing a resolution by postal ballot;
- unless the company is OPC or the number of members of the company is upto 200.

**MCQ's Question**

**1. A company cannot use postal ballot for transacting \_\_\_\_**

- (a) Any ordinary business
- (b) Any business in respect of which directors or auditors have a right to be heard at the meeting
- (c) Both (a) and (b)
- (d) Any special business

**2. \_\_\_\_are not required to transact any business through postal ballot.**

- (a) One Person Companies
- (b) Companies having member's upto 200
- (c) Both (a) and (b)
- (d) Unlisted companies

**3. The company shall cause an advertisement to be published stating that the ballot papers for voting by postal ballot have been despatched. The advertisement shall be published at least \_\_\_\_ before the date of beginning of the voting period.**

- (a) 3 days
- (b) 5 days
- (c) 7 days
- (d) 14 days

**4. The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than \_\_\_\_ thereof.**

- (a) 3 days
- (b) 5 days

- (c) 7 days
- (d) 14 days

**5. In case of voting by postal ballot, the assent or dissent received after \_\_\_\_\_ from the date issue of notice shall be treated as if reply from the member has not been received.**

- (a) 7 days
- (b) 15 days
- (c) 30 days
- (d) 45 days

**Ans key:**

<b>1 (c)</b>	<b>2 (c)</b>	<b>3 (b)</b>	<b>4 (c)</b>	<b>5 (c)</b>
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**CIRCULATION OF MEMBERS' RESOLUTIONS (Sec. 111)**

**1. Members eligible to make requisition u/s 111**

A company shall be bound to act on the requisition of such number of members as are eligible to call an EGM u/s 100, as given hereunder:

**Company having a share capital**

Member(s) holding  $\geq 1/10$ th of paid up equity share capital.

**Company having no share capital**

Member(s) holding  $\geq 1/10$ th of total voting power.

**2. Rights of requisitionists u/s 111**

(a) The requisitionists are entitled to propose any resolution to the company and require the company to move such resolution at the ensuing AGM. When a resolution is so proposed, the company shall be bound to give notice of such resolution to all its members.

(b) With respect to any matter referred to in the notice of a GM, which is to be dealt with at that GM, the requisitionists are entitled to prepare any statement with respect to such matter, and require the company to circulate such statement to all the members.

**3. Legal requirements for a valid requisition**

**Signed** - by the requisitionists

**Place of Deposit** - Registered office

**Deposit of money**

A sum reasonably sufficient to meet the company's expenses must be deposited by the requisitionists along with the requisition.

**Time limit for deposit**

**Where requisition proposes a resolution**

- The requisition shall be valid only if it is deposited at least 6 weeks before the AGM.

-However, if after the requisition is deposited with the company, an AGM is called on a date within 6 weeks of the date of deposit of the requisition, the requisition shall be deemed to have been properly deposited.

**Where requisition requires circulation of a statement**

- The requisition shall be valid only if it is deposited at least 2 weeks before the date of GM.

**4. Check on abuse of Sec. 111**

- The company shall not be bound to circulate any statement, if CG is satisfied that the rights conferred u/s 111 are being abused to secure needless publicity for defamatory matter.

-CG may also order that the requisitionists shall pay to the company the cost incurred by the company in making application to CG, notwithstanding that the requisitionists were not a party to the application.

**5. Effects of default**

-The company and every officer of the company who is in default shall be liable to a penalty of Rs. 25,000.

**MCQ's Question**

**1. In case of a company having a share capital, one or more members holding \_\_\_\_\_ or more of the paid up share capital of a company are eligible to propose any resolution to the company and require the company to move such resolution at \_\_\_\_\_.**

- (a) 1/10th; any general meeting
- (b) 1/5th; any general meeting
- (c) 1/10th; ensuing AGM
- (d) 1/5th; ensuing AGM

**2. A requisition proposing any resolution to the company shall be valid only if it is deposited at least \_\_\_\_\_ before \_\_\_\_\_.**

- (a) 2 weeks; the AGM
- (b) 6 weeks; the AGM
- (c) 2 weeks; any general meeting
- (d) 6 weeks; any general meeting

**3. A requisition requiring a company to circulate any statement with respect to any matter to be dealt with at shall be valid only if it is deposited at least \_\_\_\_\_ before such \_\_\_\_\_.**

- (a) 2 weeks; general meeting
- (b) 6 weeks; general meeting

(c) 2 weeks; AGM

(d) 6 weeks; AGM

**4. The company shall not be bound to circulate any statement with respect to any matter to be dealt with at any general meeting, if \_\_\_\_ is satisfied that the rights conferred under section 111 are being abused to secure needless publicity for defamatory matter.**

(a) The Central Government

(b) The Tribunal

(c) The Court

(d) None of these

#### **MCQ's Question**

<b>1 (c)</b>	<b>2 (b)</b>	<b>3 (a)</b>	<b>4 (a)</b>
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### **ORDINARY AND SPECIAL RESOLUTIONS (Sec. 114)**

#### **1. Ordinary resolution - Conditions**

(a) The notice of the GM has been duly given.

(b) The votes cast in favour of the resolution are required to exceed the votes cast against the resolution.

#### **2. Special resolution - Conditions**

(a) The notice of the GM has been duly given.

(b) The intention to propose the resolution as a special resolution has been duly specified in the notice of GM or other intimation given to the members.

(c) The votes cast in favour of the resolution are required to be not less than 3 times the votes cast against the resolution.

#### **3. Manner of casting votes**

##### **Votes may be cast by way of -**

(a) show of hands;

(b) poll;

(c) electronically; or

(d) postal ballot.

##### **Votes may be cast by -**

- (a) members present in person; or
- (b) proxies (where proxies are allowed)

Votes cast shall include the 'casting vote' of the Chairman, if any.

#### 4. Filing of special resolution

A copy of every special resolution (together with explanatory statement) is to be filed with the Registrar within 30 days of passing the special resolution (Sec. 117).

#### 5. Use of 'casting vote'

- The articles of a company may empower the Chairman to use the 'casting vote'.
- The chairman may cast the 'casting vote' only in case of equality of votes.
- The Chairman has the discretion, whether to cast the casting vote' or not.
- 'Casting vote' is also termed as "second vote'.



**Ques 1 - At a general meeting of a company a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed.**

**With reference to the provisions of the Companies Act, 2013 examine the validity of the Chairman's declaration.**

Ans.

**Votes cast in favour - 20**

**Votes cast against the resolution - 5**

**Invalid votes - 5**

**Members abstained from voting - 10**

**SR is passed, and therefore Chairman's declaration is valid**

-since votes cast in favour of the resolution (viz. 20) are not less than 3 times the votes cast against the resolution (viz. 5).

-since votes cancelled, absent members and members abstaining from voting are ignored.

**Ques 2- For a special resolution in a Company's general meeting, 10 voted in favour, 2 against and 4 abstained. The chairman declared the resolution as passed. Is it a valid resolution as per the provisions of the Companies Act, 2013?**

Ans.

**Votes cast in favour - 10**

**Votes cast against the resolution - 2**

**Members abstained from voting - 4**

**SR is passed**

-since votes cast in favour of the resolution (viz. 10) are not less than 3 times the votes cast against the resolution (viz.

-since members abstaining from voting are ignored.

**Ques 3- Developers Ltd. held a General Meeting of shareholders for passing a special resolution regarding alteration of Articles of Association. Out of the members present in the meeting 20 voted in favour, 4 against and 8 members did not vote and abstained from voting. The Chairman of the meeting declared the resolution as passed. Is it a valid resolution as per the provisions of the Companies Act, 2013?**

Ans.

**Votes cast in favour - 20**

**Votes cast against the resolution - 4**

**Members abstained from voting - 8**

**SR is passed**

-since votes cast in favour of the resolution (viz. 20) are not less than 3 times the votes cast against the resolution (viz. 4).

-since members abstaining from voting are ignored.

**Ques 4- Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions.**

Ans.

Moving a single resolution for 9 businesses (including two business for appointment of 2 directors) is not valid.

-since it is prohibited as per the provisions of Sec. 162.