

(i) GENERAL MEETING/WRITTEN RESOLUTIONS

1. What are the changes to the General Meeting Requirements under the new Act?

Answer:

Under the Companies Act 2016, the requirement for Annual General Meeting for private companies has been done away with. This means that a private company is no longer required to hold AGM in every calendar year. All meetings of a private company are known as meeting of members.

However, the requirement for AGM for public companies is maintained.

2. Shifting towards Written Resolution Regimes - What is the new Majority Written Resolution Procedure?

Answer:

Under the Companies Act 2016, the procedures for written resolutions are provided under sections 297–308.

The written resolution procedures are applicable only to private companies. The written resolutions are passed in accordance to the required majority as though it is passed at an actual meeting.

This means that if the written resolution is an ordinary resolution, a simple majority of members who are eligible to vote is sufficient to pass the resolution. Whereas, a special resolution will require 75% or more of members who are eligible to vote to pass the resolution.

3. Section 290(2) states that, resolution of members of a public company shall be passed at a meeting of members, does that mean public company can no longer pass a Members' Circular Resolution? Since there is no provision equivalent to section 147(6) of the Companies Act 1965, for wholly-owned subsidiary's general meeting, will a physical meeting need to be convened? ie notice, attendance list and minutes to be prepared accordingly? *(updated on 9 June 2017)*

Answer:

Yes.

Section 147(6) of the Companies Act 1965 is not adopted under Companies Act 2016 due to the introduction of the single member, single director company concept.

For a private company which is a wholly-owned subsidiary of a public company – such company can pass a written resolution.

But if it is a public company which is wholly owned by a private company then, resolutions cannot be passed via written resolution. There need to be a properly convened 'physical' meeting attended by the corporate representative of the private company who is attending meeting of the public company. Hence, notice, attendance list and minutes are to be prepared accordingly.

(ii) PROXY FORMS *(updated on 18 April 2017)*

1. What is the appropriate timeframe to deposit proxy forms?

Answer:

Subsection 334(3) of the Companies Act 2016 regulates the time period for lodgment of proxy forms or instrument.

For a proxy form or instrument to be valid, it must be deposited not less than 48 hours before the time for holding the meeting or adjourned meeting (48-hour rule) or in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll (24-hour rule).

Subsection 334(3) refers to two different time period:

- (a) The time for holding the meeting or adjourned meeting which *refers to the time as set out in the notice of meeting of when the meeting shall be held;* and
- (b) The time appointed for taking of the poll which *refers to the time fixed by the chairman of the meeting for the purpose of taking the poll.*

The two different time periods refer to two different events and accordingly the different time frame for depositing the proxy forms or instrument would apply accordingly.

When a notice of meeting was given, it contains the date and time for the meeting to take place and does not contain any time appointed for the taking of the poll. Instead the time appointed for taking of the poll will only be decided by the chairman of the meeting during the time when the resolutions are to be put to vote at the meeting after due dealing with the business of the meeting as set out under subsection 332(2) of the Companies Act 2016.

Subsection 332(2) of the Companies Act 2016 sets out the rule relating to when the poll shall be taken. It is provided in the said subsection 332(2) that the poll if duly demanded shall be taken:

- (i) forthwith; or
- (ii) after an interval or adjournment; or
- (iii) otherwise as the chairman directs.

If the poll is taken forthwith after the discussion of the business (there is no time appointed for taking the poll), the members and proxies present shall cast the votes and the meeting is concluded after the poll and the result declared.

However, where the chairman of the meeting decides to hold a poll taking on a later time or date, the time fixed for taking the poll does not constitute an adjournment of meeting but only regarded as "mere enlargement" or "a continuation" of the meeting.

Therefore the 48-hour rule requiring proxy forms or instruments to be deposited before the time for holding the meeting or adjourned meeting does not apply to instances where the chairman of a meeting has decided to hold a poll at a later time/date.

Instead, for members who wish to change proxies to cast the poll at the time appointed for the taking of the poll, the law allows them to deposit the proxy forms or instruments not less than 24 hours before the appointed time.

2. What if the constitution of a company provides that the deposit of proxy form or instrument must be at least 48 hours before the time for the holding of meeting AND the time appointed for the taking of the poll?

Answer:

The 48-hour rule is valid for the deposit of proxy forms or instruments for attendance of the meeting.

However, the company must still observe the 24-hour rule to allow members to deposit proxy forms or instrument if the chairman has decided to hold a poll at a later time/date.