



UNIT 10

COMPANY LAW AND SECRETARIAL PRACTICE



28 CHAPTER

COMPANY SECRETARY

அறனறிந்து ஆன்றமைந்த சொல்லான்எஞ் ஞான்றுந்
திறனறிந்தான் தேர்ச்சித் துணை.

– குறள் 635

COUPLET

He is the best helper (of the king) who understanding the duties, of the latter, is by his special learning, able to tender the fullest advice, and at all times conversant with the best method (of performing actions).



Learning Objectives

To enable the students to understand the

- Meaning and Definition of company secretary
- Qualifications of the Secretary
- Appointment and Dismissal
- Functions of Company secretary
- Rights and Liabilities
- Company Meetings –Meaning and Types
- Resolutions – Meaning and Types
- Voting – Meaning and Methods

Chapter Synopsis

- 28.01 Company Secretary
- 28.02 Qualifications of Company Secretary
 - 28.02.01 Statutory Qualifications
 - 28.02.02 Other Qualifications
- 28.03 Appointment of Company Secretary
- 28.04 Functions/ Duties of Company Secretary
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 - 28.08.03 Special Meeting
- 28.09 Resolution
 - 28.09.01 Kinds of Resolution
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28.01 Company Secretary

A company is an artificial being, though a company is a legal entity; it has no physical personality such as neither a mind nor body of its own. Though not visible, company having an image or appearance exists only with its rules and by laws. Any company cannot act by itself; it needs one or group of people to operate it. Besides operating the company there are numbers of functions holding responsibility and need to take care such as directing the work force towards productivity, managing the smooth functioning, supervising the overall performance of the company. The person who is responsible for the general performance of an organization is called company secretary. The Key Managerial Personnel (KMP) who run a company is called with different titles viz, directors, managers, or secretary.

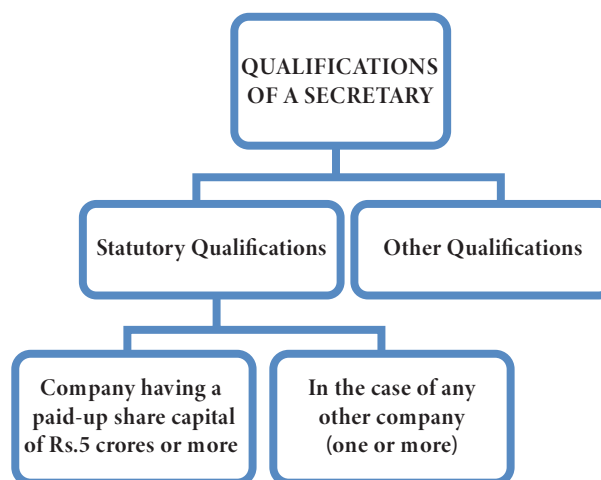
The word secretary has originated in Latin. The Latin word 'Secretarius' which means secret. As we know secret refers to something, which is not disclosed and kept as confidential. Some Information should be kept very confidential in all the companies. Hence, a person is appointed to perform activities which are confidential in nature and manage the day-to-day business of the company. The person who steers the company holding the administrative, financial, and overall performance of the company is called company secretary.

According to Section 2(24) of the Companies Act, 2013 defines "Company Secretary" or "Secretary" means any individual possessing the prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties".

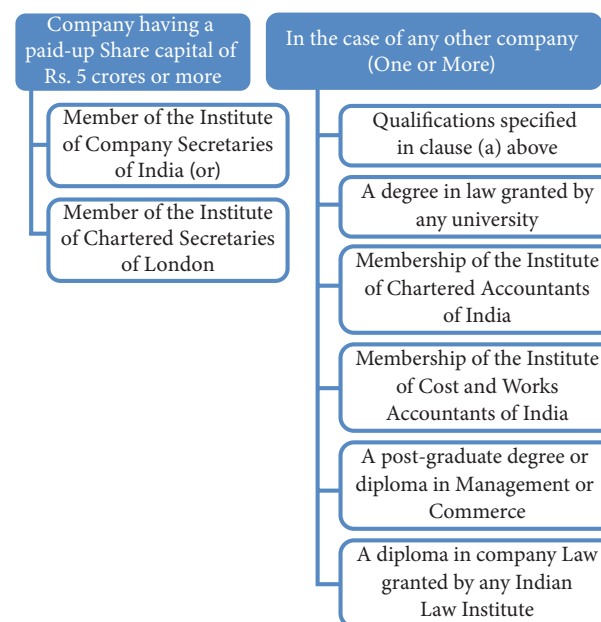
According to explanation from Oxford Dictionary, "a secretary is a person who is employed to conduct correspondence on behalf of an individual or a company and also to execute filing, documentation and administrative functions".

28.02 Qualifications of Company Secretary

Since the amendment of the Companies Act in 1994, only a person having prescribed qualifications can be appointed secretary of a company. Apart from the statutory qualifications, he should also have other qualifications as may be necessary to conduct the affairs of the company.



28.02.01 Statutory Qualifications

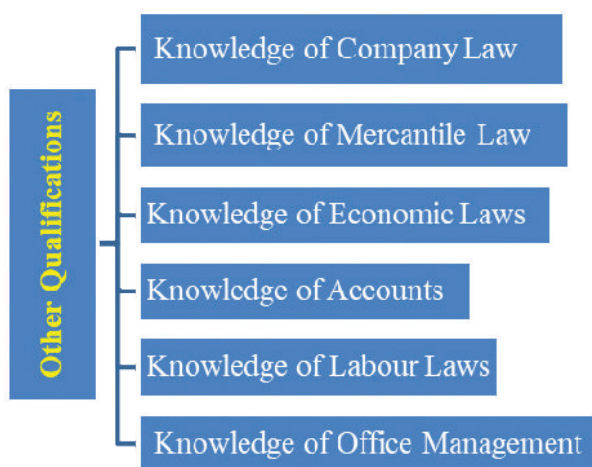


According to Section 2(45) of the Companies Act 2013, a Company Secretary must possess the qualifications prescribed by the Central Government from time to time. The qualifications prescribed by the Companies Secretary's Qualifications) Rules 1975, for the Secretary of a Company are:

- A (i) In case of a company having a paid-up share capital of ₹5 crore or more, the Secretary must be a member of the Institute of Company Secretaries of India incorporated under the Companies Act, 1956, and licensed under Sec. 25 of that Act.
- (ii) A person who is a member of the Institute of Chartered Secretaries of London shall also be eligible for appointment as Secretary of such a company.
- (B) In the case of any other company, one or more of the following qualifications shall have to be possessed by the Secretary:
- Qualifications specified in clause (a) above;
 - A degree in law granted by any university.
 - Membership of the Institute of Chartered Accountants of India.
 - Membership of the Institute of Cost and Works Accountants of India.
 - A post-graduate degree or diploma in Management or Commerce granted by any university or the Indian Institute of Management.
 - A diploma in Company Law granted by any Indian Law Institute.

28.02.02 Other Qualifications

The Secretary also hold the following qualifications.



28.03 Appointment of Company Secretary

As per section 2(24), 203, 204 of Companies Act 2013 the provisions regarding appointment of company secretary are Every listed Company must have full-time Company Secretary.

Every unlisted company and every private company having a paid up capital of ₹5 crore or more must also have a full time secretary.

Only an individual who is a member of institute of company secretaries of India can be appointment as a company secretary.

a) By the Promoters: The first secretary of a company is appointed by the promoters at pre-incorporation stage and such name is mentioned in the Articles of Association.

b) By the First board of Directors: After the company has been registered, the first board of directors appoints the secretary at the first board meeting. The board of directors can continue the existing secretary appointed by promoters or can appoint a new company secretary.

28.04 Functions/ Duties of Company Secretary

Functions of the Company Secretary may be discussed under two headings:

- Statutory Functions or Duties and
- Non-statutory Functions or Duties.



28.04.01 Statutory Functions

As the principal officer of the company, the secretary must observe all the legal formalities in respect of the provisions of the Companies Act and other laws (e.g., Income-tax Act, Stamp Act, Sales-tax Acts, etc.) which have a bearing on the activities of the company.

According to Companies Act 2013

- (i) To sign document and proceedings requiring authentication by the company
- (ii) To maintaining share registers and register of Directors and of contracts
- (iii) To give notice to register for increase in the share capital
- (iv) To deliver share certificate of allotment within 2 months after transfer
- (v) To sign and send annual return
- (vi) To make a statutory declaration for receiving certificate of commencement of business
- (vii) To send notice of general meeting to every member of the company
- (viii) To make statutory books
- (ix) To prepare minutes of every general meeting and board meeting within 30 days
- (x) To file a resolution with the registrar
- (xi) To assist in preparing the statement of affairs in a winding up

Under the Income-tax Act: He is responsible for deduction of requisite income tax from salaries of employees, dividends and interests payable. He has to ensure that the tax deducted is deposited at government treasury. Secretary has to submit and verify various forms for timely filing of income tax returns to the authorities in accordance with the law. He has to see that the certificate of Tax Deducted at Source (TDS) is issued to every employees and shareholders.

Under Indian Stamp Act: The company secretary has to ensure that whether proper

stamps are affixed on the company's documents like letter of allotment and share certificate or not. He is also complying with Minimum Wages Act, Industrial Disputes Act, Employee State Insurance Act etc.

Under the Sales-Tax Act: He must ensure timely submission of tax returns to the Sales-tax authorities and payment of tax.

Under Other Acts: He must see that the provisions of any other Act applicable to the company, e.g., Foreign Exchange Regulation Act, Industries (Development and Regulation) Act, and Rules, are also complied with. Where the company is carrying on manufacturing business, he must also comply with the provisions of the Factories Act, Payment of Wages Act, Industrial Disputes Act and other labour laws.

28.04.02 Non-Statutory Functions

Secretary has to discharge non-statutory functions in relation to directors, shareholders and office and staff. These functions are briefly mentioned.

- (1) Functions as agent of directors;
- (2) Functions towards shareholders;
- (3) Functions towards office and staff.

1. Functions in Relation to Directors

A company secretary acts under the full control of the board of directors and carry out the instructions of the directors. The secretary provides necessary advice and information to the board to formulate company policy and arrive at decisions. It is the secretary's duty to implement the decisions taken by the board of directors.

The duties of the secretary includes arranging board meetings, issuing notice and preparing agenda of such meetings, recording the attendance of the directors and the minutes and resolutions of the meeting in consultation with the Chairman. He maintains all important correspondence, files, documents and records in the board office.



2. Functions in Relation to Shareholders

The company secretary must serve in the best interests of the shareholders. He also must safeguard the shareholders' interest. Under the Companies Act 2013, secretary should act as link between the board of directors and the shareholders and also ensure that the shareholder's rights are violated. He has to arrange the issue allotment letters, call letters, letters of regret, share certificates, share warrants to Shareholders. Besides he has to issue notices and agenda of all meeting of shareholders and also send replies to the inquiries and complaints of the shareholders on behalf of the board of directors.

3. Functions in Relation to Office and Staff

The Secretary is the kingpin of the whole corporate machinery. He is responsible for smooth functioning of the office work. He exercises an overall supervision, control and co-ordination of all clerical activities in the office.

28.05 Powers and Rights of Company Secretary

A Company secretary is a high level officer. He enjoys certain rights and power as per contract made with the company, which are as follows:

- a) **Supervision and Control:** As a head of the office, a company secretary has the rights to supervise, direct and control all office activities of subordinate offices.
- b) **Signing authority:** Being a principal officer, a company secretary can sign contracts, proceedings of the company meeting, files and documents on behalf of the company.
- c) **Exercising power:** He has the right to exercise powers as granted by board of directors.
- d) **Issuing testimonial:** A company secretary can issue testimonials to employees on behalf of the company.
- e) **Claiming salary and damages:** As per contract, he has the right to claim his salary and other allowances. He can also take legal action against the company if there is any

breach of contract. Before his services are terminated, he can demand a reasonable notice and claim damages for his wrongful dismissal.

- f) **Preferential creditor:** During winding up of a company, company secretary can claim his legal dues on a preferential basis.
- g) **Attending meeting:** He has the right to be physically present in the meetings of the shareholders and board of directors.

28.06 Removal / Dismissal of Company Secretary

In accordance with the law governing relationship between a master and servant, company secretary may be dismissed like an ordinary servant of a company. The Board of directors of a company has absolute discretion to remove a company secretary or to terminate his services at any time for any reason or without any reason. Generally secretary may be terminated under the following situations:

- 1. when his term of appointment has expired;
- 2. when he is given a proper notice of dismissal as per the terms of agreement of employment;
- 3. when he makes a secret profit;
- 4. when he misconducts himself ;
- 5. where he is found to be guilty of moral turpitude, negligence, disobedience, incompetence.
- 6. where he suffers from permanent mental and physical disabilities.

28.07 Company Meetings

A company meeting must be convened and held in perfect compliance with the various provisions of the Act and the rules framed thereunder. It is essential that the business dealt with at the meetings, should be validly transacted and not liable to be questioned later due to any irregularity.

28.08 Kinds of Company Meetings

Under the Companies Act, 2013, Company meetings can be classified as under:

1. Meetings of Shareholders:

- (a) Statutory Meeting
- (b) Annual General Meetings (AGM)
- (c) Extraordinary General Meetings (EGM)

2. Meetings of the Directors

- (a) Board meetings
- (b) Committees meetings

3. Special Meetings

- (a) Class Meetings.
- (b) Creditors and of Debenture/bond holders meetings

The following picture shows the different types of company meetings



28.08.01 Shareholders Meetings

The meeting held with the shareholders of the company is called shareholders meeting. The shareholders meeting can be classified as statutory meeting, annual general meeting and extra ordinary general meeting.

a) Statutory Meeting

According to Companies Act, every public company, should hold a meeting of the shareholders within 6 months but not earlier than one month from the date of commencement of business of the company. This is the first general meeting of the public company is called the Statutory Meeting.

This meeting is conducted only once in the lifetime of the company. A private company or a public company having no share capital need not conduct a statutory meeting. The company gives the circular to shareholders before 21 days of the meeting.

b) Annual General Meeting [AGM]

Every year a meeting is held to transact the ordinary business of the company. Such meeting is called Annual General Meeting of the company (AGM). Company is bound to invite the first general meeting within eighteen months from the date of its registration. Then the general meeting will be held once in every year. The differences between two general meetings should not be more than fifteen months. Every Annual General meeting shall be held during business hours, on a day which is not a public holiday, at the Registered Office of the company or at some other place within the town or village where the Registered Office is situated. AGM should be conducted by both private and public Ltd companies.

c) Extra-Ordinary General Meeting

Both Statutory meeting and annual general meetings are called as ordinary meetings of a company. All other general meetings other than statutory and annual general meetings are called extraordinary general meetings. If any meeting conducted in between two annual general meeting to deal with some urgent or special or extraordinary nature of business is called as extra-ordinary general meetings.

28.08.02 Meeting of the Directors

Since the administration of the company lies in the hands of the board of directors, they should meet frequently for the proper conduct of the business and to decide policy matters of the company.

a) Board Meetings

Meetings of directors are called Board Meetings. Meetings of the directors provide a platform to discuss the business and take formal decisions. First meeting of directors should be convened within 30 (Thirty) days from the date of incorporation of the company.

b) Committee Meetings

Every listed company and every other public company having paid up share capital of ₹10 crore is required to have audit committee. This committee should meet at least four times in a year. In case of other companies, the board of directors shall nominate a director to play the role of audit committee which is functioning as a vigil mechanism.

28.08.03 Special Meeting

a) Class Meeting (Meetings of Particular Share or Debenture Holders)

Meetings, which are held by a particular class of share or debenture holders e.g. preference shareholders or debenture holders is known as class meeting. The debenture holders of a particular class conduct these meetings. These meetings are held according to the rules and regulations laid by the Trust Deed or Debenture Bond, from time to time, where the interests of the debenture holders play vital role at the time of re-organisation, reconstruction, amalgamation or winding-up of the company.

b) Meetings of the Creditors

Strictly speaking, these are not meetings of a company. Unlike the meetings of a company, there arise situation in which a company may wish to arrive at a consensus with the creditors to avoid any crisis or to evolve compromise or to introduce any new proposals.

28.09 Resolution

As per the Companies Act 2013, for taking any decision or executing any transaction, the consent of the shareholders, the Board of Directors and other specified is required. The decisions taken at a meeting are called resolutions. In other words a motion, with or without the amendments which is put to vote at a meeting and passed with the required quorum becomes resolution.

28.09.01 Kinds of Resolution

There are broadly three types of resolutions, namely ordinary resolution, special resolution and resolution requiring special notice.

a) Ordinary Resolution:

An ordinary resolution is one which can be passed by a simple majority. i.e. if the members of votes cast by members, entitled to vote in favour of the resolution is more than the votes cast against the resolution.

Ordinary Resolution is required for the following Matters

- (i) To change or rectify the name of the company
- (ii) To alter the share capital of the company
- (iii) To redeem the debentures
- (iv) To declare the dividends
- (v) To approve annual accounts and balance sheet
- (vi) To appoint the directors
- (vii) To increase or decrease the number of directors within the limits prescribed
- (viii) To remove a director and appoint another director in his place
- (ix) To make inter corporate investment, within the limits
- (x) To approve voluntary winding up if the articles authorise
- (xi) To fill up the vacancy in the office of liquidator, etc.,



b) Special Resolution

A special resolution is the one which is passed by a not less than 75% of majority. The number of votes, cast in favour of the resolution should be three times the number of votes cast against it. The intention of proposing a resolution as a special resolution must be specifically mentioned in the notice of the general meeting.

Special Resolution is required for the following Matters

- (i) To change the registered office of the company from one state to another
- (ii) To change the objectives of the company
- (iii) To change the name of the company
- (iv) To alter the Articles of Association
- (v) To reduce the share capital subject to the confirmation of the court
- (vi) To commence any new business
- (vii) To appoint the auditor for the company
- (viii) To appoint the sole selling agents in specified cases
- (ix) To determine the remuneration of the Director and the Managing Director

c) Resolution requiring Special Notice:

There are certain matters specified in the Companies Act, 2013 which may be discussed at a general meeting only if a special notice is given at least 14 days before the meeting. The intention to propose any resolution must be notified to the company. The following matters require special notice before they are discussed in the meeting:-

- (i) To appoint an auditor, a person other than a retiring auditor
- (ii) To provide expressly that a retiring Auditor shall not be reappointed
- (iii) To remove a director before the expiry of his period of office
- (iv) To appoint a director in the place of a director so removed

28.10 Voting

The word 'Vote' originated in Latin word 'Votum' indicating one's wishes or desire. By casting his vote one formally declaring his opinion or wish in favour of or against a proposal or a candidate to be elected for an office. The proposals passed across the table of any company depend mainly on the votes cast by the board of directors. Every motion or proposal is subject to the approval of the majority of the members or shareholders can cast their votes only on the occasions in which they want establish their rights according to the section 47 of the company Act, 2013.



Procedures of Voting

There are two distinct procedures of voting viz., Open and Secret procedures.

I. Open Procedure

This type of voting has no secrecy as the all the members assembled can see voting. There are two popular methods of open voting namely voice voting and voting by show of hands.

(a) By Voice:

Voice voting is a popular type of voting in which the chairman allows the members to raise their voice in favour or against an issue 'Yes' for approval and 'No' for rejection. Chairman announces the result of voice voting on the basis of strength of words shouted. It is an unscientific method. It cannot be employed for deciding complex issue.



(b) By Show of Hands:

Under this method the chairman, requests the members to raise their hands of those who are in favour of the proposal or candidate and then requests those are against. Then the chairman counts the number of hands raised for Yes and No respectively can announce the result on the basis of hands counted.

II. Secret Procedure

Secret procedure is adopted to decide certain vital issues. It is a popular voting method that could maintain the secrecy of the voter.

a) By Ballot

Under this system, ballot paper bearing serial number is given to the members to record their opinion by marking with the symbol or Shareholders have to cast their vote in a secret chamber and put the ballot paper into the ballot box. The chairman opens the ballot box in the presence of tellers or scrutinizers and counts the votes. He rejects the defective or wrongly marked ballot papers. The votes are counted and the results are announced.



b) Postal Ballot

Big companies or big associations having members scattered all over the country follow this method of voting. Under this method serially numbered ballot papers are sent by post in sealed covers to the members, who, living at a distant place, are unable to attend the meeting physically. The members or voters fill in the ballot papers and return them in sealed covers which are opened when the ballot box is opened for counting the votes.



QUORUM

There is another requirement of quorum. A single person does not contain a meeting so it has to be seen that the required number of people are present. Requisite number of person at the meeting is called as quorum.

PROXY

Proxy means a person being the representative of a shareholder at the meeting of the company who may be described as his agent to carry out which the shareholder has himself decided upon. Proxy can be present at the meeting and he cannot vote.

Key Words

Secretary	Meetings	Committee
Motion	Resolution	



For Future learning

1. Study the websites which are related to company functions
www.bseindia.com



Case Study

1. Mr R, as the secretary of the Muraliviki Co., signed a letter to its bank, forwarding a 'resolution' of the board of directors. The resolution named three directors and instructed the bank to pay cheques signed by any two of them and countersigned by the secretary. Specimen signatures were attached. The instruction was entirely in accordance with the company's memorandum and articles. However, there had never been any proper appointment of directors or a secretary by the company. Those who had formed the company had assumed their roles. Following the letter, the bank had honoured cheques in accordance with the instructions contained in the letter. The question was, whether, the company was bound by the cheques. Comment.



2. A contract between Muthumani Ltd and Mr. V, one of its director is referred to a general meeting for its approval. At the meeting, Mr. V voted for the resolution and all others against it. But as V held majority of shares and was entitled to majority of votes, the resolution was passed. Is the contract binding on the company?



Stakeholders of the company include shareholders, employees, customers, suppliers, financiers, governments and the society.



Exercise



I. Choose the Correct Answer:

1. **Mention the status of a Company Secretary in a company.**
a) A member b) A director
c) An independent contractor d) An employee
2. **Who can become a secretary for a company?**
a) Individual person b) Partnership firm
c) Co-operative societies d) Trade unions
3. **Which meeting will be held only once in the life time of the company?**
a) Statutory b) Annual General
c) Extra - ordinary d) Class General
4. **Who is not entitled to speak at the annual general meeting of the company.**
a) Auditor b) Shareholder
c) Proxy d) Directors

5. **From the date of its incorporation the First Annual General Meeting is to be conducted within _____ months.**

- (a) Twelve (b) Fifteen
(c) Eighteen (d) Twenty one

Answers:

1	d	2	a	3	a	4	c	5	c
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II. Very Short Answer Questions:

1. Who is a Secretary?
2. What is meant by Meeting?
3. Write short note on 'Proxy'?
4. What is Voting?

III. Short Answer Questions:

1. What is Special Resolution?
2. What do you mean by Statutory Meeting?
3. Give any three cases in which an ordinary resolution need to be passed.

IV. Long Answer Questions:

1. Briefly state different types of company meetings.
2. Explain different types of open and secret types of voting.

References

Company Law and Secretarial Practice Dr. G.K. Varshney -SahityaBhawan Publications.

1. Company Meetings - KR Chandratre LexisNexis India Publications.
2. Company Law and Secretarial Practice by J. Santhi - Margham Publications.
3. Secretarial Practice - M C Kuchhal – Vikas Publishers.
4. Company Law - Dr. S.R. Myneni - Asia Law House Publishers.



Specimen Notice of Statutory Meeting
NITHILAN MANUFACTURING LIMITED

Regd. Office Address

Notice is hereby given that the statutory meeting of the company will be held at the registered office of the company at _____ on _____ 2018 at _____ a.m./p.m. for considering the statutory report and for conducting any other business which ought to be considered at that meeting.'

Please find enclosed a copy of the statutory report.

By order of the board
for Nithilan Manufacturing Limited

Date:

Place

Note:

A member entitled to attend and vote at the meeting is entitled to appoint one or more proxies to attend and vote instead of him and a proxy need not be a member. The instrument appointing a proxy should be deposited at the registered office of the company not less than 48 hours before the commencement of the meeting.

Specimen of Resolution for Appointment of Secretary

“Resolved that the appointment of ShriJayabharathi who possesses the requisite qualifications under the Companies (Appointment and Qualifications of Secretary) Rules, 2013 be and is hereby, confirmed as secretary of the company; on a salary of Rs. 55,000 per month exclusive of allowances, the appointment being subject to three months’ notice of termination on either side.

Specimens of some Special Resolutions of General Meetings

1) Alteration of the name of the company.

“RESOLVED that the name of the Company be, and is hereby, altered from Vijaiya Limited to Vijayalakshmi Limited and that the Central Government be Informed accordingly to secure its consent to such alteration.”

2) Reduction of share capital.

“RESOLVED that the capital of the Company be reduced from ₹1,00,000 divided into 1,000 fully paid Equity Shares of ₹100 each to ₹50,000 divided into 5000. Shares which have been subscribed and by reducing the nominal value of each share of ₹100 each to ₹10 each fully paid.”



Specimen of Proxy form

ABISHNAVI COMPANY LTD
Registered Office: 45 Cuddalore Road, Chidambaram

I/We _____ of _____ in the district of _____ being a member/members of the above named Company hereby appoint-----in the district of-----or failing him_____of_____in the district of_____as my/our proxy to vote for me/us on my/our behalf at the 25th Annual General Meeting of the Company to be held at 3 p.m. on Monday, the 12th July 2018 and at any adjournment thereof.

1 Rupee
Revenue
Stamp

Signed this _____ day of _____ 2018

Signature _____

Address _____

N.B. (i) The proxy need not be a member.

(ii) The proxy form duly signed and stamped should reach the Company's office at least 48 hours before the time of the meeting.