Chapter – 7

MANAGEMENT & ADMINISTRATION

Sec 88 to 95 of Companies Act , 2013

These sections deals with Register of members , Annual Return , Inspection of register etc.

Sec 96 to 122 of Companies Act, 2013

General meetings, Quorum, Notice, Proxy with other topics

This is most important topic in CA INTER Company law.

Meetings as per Companies Act.

General Meetings –

This meetings is called to discuss some issues or financial statements with Shareholders of the company.

For eg – Sec 96 AGM or Sec 100 -EGM

Board Meetings –

is the meeting of the board of directors of the company.

For eg- Sec 173 Board Meeting

Class meeting

is the meeting of special class of persons, like, creditors, preference shareholders, etc.

For eg – Sec 48 Meetings

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Section 96 :- Annual General Meeting

Every company (other than OPC)

Shall → **in each year** *(Calendar year)* **(1st time limit)**

Annual General Meeting (General Meeting)

Clearly specifying in notice

Gap between two Annual General Meeting

does not exceed 15 months (2nd time limit)

Annual General Meeting

1st AGM

Financial year end

9 months

Subsequent AGM (3rd time limit)

6 months → from the end of F.Y.

Relaxation

3 months

if 1st AGM, held as per above provision, then no need to do AGM in the year of incorporation.

Provide that AGM of an unlisted Co. may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

The 3 time limits given above are cumulative. Non-compliance with any of them would constitute an offence. Thus, the last date for holding AGM shall be the earliest of the above 3 time limits.

Time & Place of AGM

Every AGM

Called business hours

(9am to 6pm)

Day (other than national holiday)

place

Registered office or at some other place within same City, town etc.

'National Holiday' means and includes a day declared as National Holiday by CG.

FINANCIAL YEAR [Sec. 2(41)]

Definition

Meaning of 'financial year' [Sec. 2(41)]

Financial year means the period for which the financial statement of the company is made up.

Financial year means the period ending on 31st day of March every year.

In case of a company incorporated on or after 1st day of January, financial year means the period ending on 31st day of March of the following year.

A company existing on the commencement of the Companies Act, 2013 shall, within 2 years from such commencement, align its financial year in accordance with the provisions of Clause (41) of Sec. 2.

Any different period as FY - If a company is a holding company or a subsidiary or associate company of a company incorporated outside India; and it is required to follow a different financial year for consolidation of its accounts outside India, [Sec. 2(41)]

Then CG may, on an application made by such company, allow any period as its FY, whether or not that period is a year.

Exceptions of section 96 -

In case of section 8 company- In Sub-section (2) of Section 96 after the proviso and before the explanation the following proviso shall be inserted ;

Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the Board of Directors having regard to the directions, if any, given in this regard by the company in its general meeting. - Inserted by Notification dated 5th, June 2015.

In case of Government company, in Sub- section (2) of Section 96 for the words "some other place within the city, town or village in which the registered office of the company is situate", the words "such other place as the Central Government may approve in this behalf" shall be substituted. - Notification dated 5th June, 2015.

In case of Government Company - In sub-section (2) of Section 96 for the words " such other place as the Central Government may approve in this behalf', the words "such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf' shall be substituted - Notification Dated 13th June, 2017

Section 97 - Power of Tribunal to call AGM.

If any default is made in holding the AGM of a Co. u/s 96,

the Tribunal may,

on the application of any member of the Co.,

call or direct the calling of,

an AGM of the Company

provided that such directions may include a direction that one member of the Co. present in person or by proxy shall be deemed to constitute meeting.

A General Meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal be deemed to be an AGM of the Co. under this Act.

Section 98 - Power of Tribunal to call meetings of members, etc .

If for any reason it is impracticable to call a meeting of a Co. other than an AGM,

the Tribunal may,

either Suo motto or on the application of any director or member of the Co. who would be entitled to vote at the meeting,

Order a meeting of the Company to be called, held & conducted in such manner as the Tribunal thinks fit;

Give such ancillary directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding & conducting of the meeting.

Provided that such directions may include a direction that one member of the co. present in person or by proxy shall be deemed to constitute a meeting.

Any meeting called, held & conducted in accordance with any order made under sub-section (1) Shall, for all purpose, be deemed to be a meeting of the Co. duly called, held & conducted.

<u>Section 99 - Punishment for default in complying with provisions of sections 96 to 98.</u>

If any default is made in holding a meeting of the company in accordance with

- sec 96, 97 or 98 or
- In complying with any directions of the Tribunal

The company & every officer of the company who is in default shall be punishable with fine which may extend to Rs 1 lacs & in the case of a Continuing default, with a further fine which may extend to 5000 /day during which such default continues.

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Section 100: - Calling of Extraordinary General Meeting.

Boards of Directors may deems fit call extra Ordinary General meeting

shall if requisition is received ,if company is

Having share capital: 1/10 of paid up share capital of the company as on that date carries the right to vote

Not having share capital: 1/10 of the total voting power of all the members having on the said date a right to vote

Any reasonable expenses incurred → reimbursement by Co. and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

Provided that in case of a specified IFCS public Co., the Board may subject to the consent of all the shareholders, convene its EGM at any place within or outside India. This proviso is applicable only to Specified IFCS public or private company.

Time period if the BOD → does not within 21 days from the receipt of a valid requisition Not later than 45 days from the date of receipt of such requisition

The meeting may be called by requisition within a period of 3 months from the date of requisition.

"Provided that an Extraordinary General Meeting of the company, other than of wholly owned subsidiary of a company incorporated outside, India shall be held at a place within India".

Section 101- Notice of meeting – 1st Chart

A general meeting of a company may be called

by giving not less than 21 days (14 days for sec 8 co.)

notice either in writing or through electronic mode

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the member entitled to vote at such meeting.

The notice of every meeting of the Company shall be given to –

- Every member of the Co. , legal representative of any deceased member or the assignee of an insolvent member;
- The auditor or auditors of the Co. ; and
- Every director of the company.

Special point - Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meetings.

‘Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accordance thereto-

1 **In the case of an AGM** by not less than 95% of the member entitled to vote thereat; &

2 **In case of any other general meeting**, by members of the company –

A) holding, if the company has a share capital, majority in number of members entitled to vote & who represent not less than 95% of such part of paid-up share capital of the Co. as gives a right to vote at the meeting or

B) having if the Co. has no share capital, not less than 95% of the total voting power exercisable at that meeting”

Further provided that where any member of a Co. is entitled to vote only on some resolution or resolutions to be moved at a meeting & not on the other, those members shall be taken into A/c for the purposes of this sub-section in respect of the former resolution or resolutions & not in respect of the latter”.

- Section 101 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise.
- Section 101 shall apply to a specified IFCS public company; unless otherwise specified in the articles of the company.

Section 101- Notice of meeting – 2nd Chart

Procedure for notice given by electronic mode

A company may give notice through electronic mode

Meaning of electronic mode

The expression "electronic mode' means any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

Procedure for notice given by e-mail

Modes permitted for sending notice

A notice may be sent -

- ✓ by e-mail as a text; or as an attachment to e-mail; or
- ✓ as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

E-mail to whom

The e-mail shall be addressed to the person entitled to receive such e-mail

- ✓ as per the records of the company; or
- ✓ as provided by the depository.

Opportunity to members to register and update e-mail addresses

The company shall provide an advance opportunity at least once in a financial year, to the members to register their e-mail addresses and to update their e-mail addresses.

Requirements of link or URL

The notice made available on the electronic link or Uniform Resource Locator (URL) has to be readable, and the recipient should be able to obtain and retain copies.

The company shall give the complete Uniform Resource Locator (URL) or address of the website and full details of how to access the document or information.

Section 101- Notice of meeting – 3rd Chart

Procedure for notice given by e-mail

Maintenance of records by the company

i. The company should use a system which produces –
   - ✓ confirmation of the total number of recipients e-mailed; and
   - ✓ a record of each recipient to whom the notice has been sent.

ii. A copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by the company.

Subject line in the e- mail

The subject line in e-mail shall state -

- ✓ the name of the company
- ✓ notice of the type of meeting,
- ✓ place and the date on which the meeting is scheduled.

E-mails through in- house facility or outsourcing

The company may send e-mail through -

- ✓ in-house facility; or
- ✓ its Registrar and transfer agent; or
- ✓ any 3rd party agency providing bulk e-mail facility as may be authorised by the company.

Procedure for notice given by e-mail

Opportunity to members to download software

If notice is sent in the form of a non-editable attachment to e-mail, such attachment shall be -

(i) in the Portable Document Format (PDF); or

(ii) in a non-editable format

together with a 'link or instructions' for recipient for downloading relevant version of the software.

Failure in transmission not to affect company's obligation

- The company's obligation shall be satisfied when it transmits the e- mail.
- The company shall not be held responsible for a failure in transmission beyond its control.
- If a member fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.

Notice to be placed on the website

The notice of GM shall be simultaneously placed on -

(i) the website of the company, if any; and

(ii) such website as may be notified by CG.

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Section 102 - Statement to be Annexed to Notice.

1. Ordinary business

1. At an AGM: Following business shall be ordinary business:

a) Consideration and adoption of financial statements, Auditors Report and Board's Report
b) Declaration of dividend
c) Retirement of directors by rotation and appointment of directors in the place of those retiring
d) Retirement of auditors and appointment of auditors in the place of those retiring, and fixing of remuneration of auditors

2. At any other GM: No business shall be deemed as ordinary business.

Explanatory statement - Explanatory statement is not required for transacting any item of ordinary business.

Punishment for default

Every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of -

(a) Rs. 50,000; or

(b) 5 times the amount of benefit accruing to the promoter, director, manager or other KMP or any of his relatives, whichever is higher.

2. Special business

At an AGM: All business except that specified u/s 102(2)(a) shall be deemed as special business.

At any other GM : All business shall be deemed to be special business.

- ✓ Full text of the resolution must be given in the notice for transacting every item of special business.
- ✓ Explanatory statement shall be annexed to the notice for transacting every item of special business.

Contents of explanatory statement

(a) Material facts

(b) Nature of concern or interest (financial or otherwise) of -

- ✓ every director and manager
- ✓ every other key managerial person
- ✓ relatives of every director, manager and key managerial person.

(c) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(d) If special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and every other KMP shall be disclosed, if the extent of such shareholding is 2% or more of the paid-up share capital of that other company.

(e) If special business refers to any document which is to be considered at the GM, the time and place where such document can be inspected shall be specified in the Explanatory Statement.

Effects of Non-disclosure - If, as a result of non-disclosure or insufficient disclosure in Exp.Statement, any benefit accrues to promoter, director, manager or other KMP or their relatives, such person shall hold such benefit in trust for the company, & shall compensate the company to the extent of benefit derived by him.

Section 103: Quorum of General Meeting

Company

Public co.

If member personally present

On the date of meeting

private co.

2 member personally present

No. of members as on the date of meeting	**Req. Quorum**
Upto 1000	5 members personally present
More than 1000 but upto 5000	15 members personally present
More than 5000	30 members personally present

AOA may provide for a larger no. as the Quorum

In case of adjourned meeting → No Quorum is present

Change of day/place/time

Company → give atleast 3 days

Notice to the members

Individually or publish in newspaper

Circulation in Registered office of the Company.

within half an hour

the members present shall

be quorum.

Quorum not present

if the quorum is not present

with an ½ hour → from the time specified for holding

a meeting of the company

meeting shall stand

adjourned → next week

→ same day

→ same time or

Such other date/time/place

BOD decides.

or

if meeting is called

by requisitions(u/s100)

shall stand cancelled

- ✓ Quorum needs to be present only at the commencement of GM
- ✓ Thus, Quorum is not required at the time of passing each & every resolution
- ✓ Section 103 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification dated 5th June 2015.

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Section 112: Representation of the President & Governors.

If the president or Governor

is a member

in any other company

he may authorise such

person → to act his representative

at any G.M. or class meeting of such Co. .

A person appointed

to exercise the same rights &

power → as if he were a member

of the company.

Section 113: Representation of corporation at meeting Of Companies.

If a body corporate is a member

in any other company

it may by resolution of its Board of

Directors, authorise such person → to

act as its representative

at any G.M. or class meeting of such Companies

A person appointed

to exercise the same rights &

power as if he were a member

of the company.

Chairman of GM – Sec 104

Election by show of hands – Sec 104(1)

Unless the articles of the company otherwise provide,

the members personally present at the meeting

shall elect one of themselves to be the Chairman thereof

on a show of hands.

Poll for election of chairman - Sec 104 (2)

If a poll is demanded on the election of the Chairman,

it shall be taken forthwith in accordance with the provisions of this Act and

the Chairman elected on a show of hands under sub-section (1)

shall continue to be the Chairman of the meeting

until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

Exceptions

In case of private company - section 104 shall apply ,unless otherwise specified in respective sections or the articles of the company provide otherwise. - Notification dated 5th june, 2015.

In case of Specified IFSC Public Company - section 104 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Date 4th January, 2017.

Section 105: - Proxies

Not applicable over a company not having a share capital

Any member → of a company
entitled to attend & vote of a meeting
eligible to appoint proxy → to attend & vote
No right to speak
at the meeting on his behalf

A person
cannot be appointed as
a proxy of not more than
50 number of members
& holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.

Co. having share capital
every notice calling a meeting
clearly shows that members
is entitled to appoint proxy
proxy need not be a member

If default in complying above provision, fine Rs 5000

proxy form should be deposited
48 hours before a meeting
of the Company.

If any invitation to appoint
a person as a proxy → are
issued at expenses of a co.
Yes
every officer → punishable
with fine → Rs 50,000
→ Not punishable, if request is made by member

Instrument appointing a proxy
Shall be in writing & signed by the Appointer or
his duly authorised person in writing.

shall not be questioned
if it does not met any special requirements
required by articles.

Every member
authorised to vote
at a meeting of company
entitle to inspect proxy form before 24-hour time fixed for meeting
till the conclusion of the meeting
provided notice served before 3 days in writing of the intention.

Section 105 shall apply to a private company; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification, dated 5th June 2015.

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Section 106

Restriction on voting rights

AOA of a company

Provides

No member shall exercise

Cum voting rights

On shares registered

On which calls or other sum or co. has exercised

- not paid
- presently payable by him have not been paid
- lien

Section 107

Voting by shares of hands

At any G.M.

a resolution put to vote of the meeting → shall to be decided by shows of hands

if resolution is passed by poll

mention in minutes book

same shall be conclusive evidence

Section 108

Voting through electronic means

the CG may prescribe the classes of companies

& manner in which a member may exercise his

right to vote by the electronic means.

Section 106 shall apply to a private company & IFCS public company ; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification dated 5th June 2015.

Section 107 shall apply to a private company ; unless otherwise specified in respective sections or the articles of the company provide otherwise; vide Notification dated 5th June 2015.

Sec 108 - Voting Through Electronic Means -1st Chart

Purpose

- ✓ 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.

- ✓ Once a resolution is proposed at GM,

  ↓

  it shall not be withdrawn.

Applicability of sec 108

↓

As per Rule 20 of the Companies (Management and Administration) Rules, 2014, the prescribed classes of companies by CG, for this purpose, are -

(i) all companies whose equity shares are listed on a recognized stock exchange; and

(ii) all companies having 1,000 or more members.

Exemption - However, a Nidhi, or an enterprise or institutional investor referred to in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

Important terms used for e voting -

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.

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.*

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.

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.

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.

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Sec 108 – 2nd Chart

Modes of sending notice of GM

- By registered post or speed post.
- By courier service.
- Through electronic means, i.e registered e-mail ID of the recipient.
- The notice of GM shall also be placed on the website 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

- ✓ the company is providing facility for voting by electronic means
- ✓ 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
- ✓ 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.

The notice shall also

- ✓ indicate the process and manner for voting by electronic means;
- ✓ indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
- ✓ provide the details about the login ID;
- ✓ specify the process and manner for generating or receiving the password and for casting of vote.

Public notice by way of advertisement

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

- at least once in a vernacular language of the district in which the registered office of the company is situated and
- at least once in English language in an English newspaper having country-wide circulation.

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

The public notice shall specify the following matters:

- ➢ A statement that the business may be transacted through voting by electronic means
- ➢ The date & time of commencement & end of remote e-voting along with cut-off date
- ➢ 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
- ➢ A statement that -
  - ✓ remote e-voting shall not be allowed beyond the said date and time
  - ✓ the manner in which the company shall provide for voting by members present at the GM &
  - ✓ 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
  - ✓ 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.
- ➢ Website address of the company, where notice of GM is displayed
- ➢ Name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means.

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

Sec 108 (3rd Chart)

Remote e-voting important points

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.

Once a member has cast his vote on a resolution,

he shall not be allowed to change it subsequently or cast the vote again.

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.

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.

At the end of the remote e-voting period,

the facility for remote e-voting shall forthwith be blocked.

Voting at GM

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.

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.

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Sec 108 (4th Chart)

Appointment of scrutinizer

The Board of Directors

shall appoint

one or more scrutinizers.

The scrutinizer shall be willing to be appointed.

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.

The scrutinizer shall be available for the purpose of

ascertaining the requisite majority.

The scrutinizer(s) shall maintain

a register to record the

assent or dissent received, mentioning the particulars of members

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.

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.

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Sec 108 (5^{th} Chart)

Declaration of result of voting

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.

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.

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.

The Chairman shall declare the result of the voting forthwith.

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.

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 he Chairman, Scrutinizer or any other person till the votes are cast in the GM.

Section 109 :- Demand for poll

Before or on the declaration
↓
Of result of the voting
↓
On show of hands
↓
A poll may be ordered → on his motion

Valid request received.

- Share capital
  ↓
  Member present
  ↓
  Or proxy
  - 1/10 of the voting
    ↓
    Power
  - or
  - holding shares paid up
    ↓
    Rs 5 lakhs or above
- Any other Co.
  ↓
  1/10 of the total
  ↓
  voting power

The demand for a poll
↓
may be withdraw at any time
↓
by the persons
↓
who made the demand

A poll demanded

- Adjourned or Application of meeting of chairman → Immediately taken
- matter → No → Within 48 hours from the time when the demand was made

Chairman can appoint → other person to check poll process

result of poll
↓
shall be deemed
↓
to be decision of the meeting

Section 109 shall apply to a private & IFSC public company; unless otherwise specified in respective sections or the articles of the company provide otherwise.

Provisions contained in 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 & 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.
m) The Chairman shall counter-sign the scrutinizers' report.
n) 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.

Section 110 :- Passing of Resolution through postal Ballot

Postal ballot is a means of → voting by post or through electronic means within 30 days of despatch of Notice.

ascertaining the views Of the members through posts Since many members may not be in a position to attend the General Meeting & cast their preferences on important matters affecting their interest.

Voting through postal ballot is

Mandatory

- Alteration in object clause
- Alteration in AOA for insertion of Provision defining Private Co.
- Change in Registered Office
- Buy back of shares
- Election of Director.

Optional

Any item of business other than

(a) ordinary business

(b) any business in respect of which Director or Auditor have a right to be heard at any meeting.

Notice → shall be placed on the company website & shall remain on the web till the last date for receive the Postal Ballot from the member.

- sent to all the shareholders by Registered Post/Speed post/ email /courier.
- Notice should also include a prepaid postage envelope for communication of assent or dissent of members.

Exclusion: -

- ✓ OPC & other Companies having member's up to 200 are not required to transacted any business through postal ballot.
- ✓ Ordinary Business at AGM & any business in respect of which Director or Auditor have a right to be heard at any meeting.

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Advertisement

Published atleast once in one Local & one English newspaper Where registered office is established.

If contains :

- Statement that the business is to be transacted ,
- Date of completion of despatch Of Notices,
- Date of commencement of voting,
- Date of end of voting,
- Any vote after the said date will not be valid.

Voting power & Time limit

- Members are required to send their assent or dissent or dissent in writing on a Postal Ballot within a period of 30 days from the date of posting the letter.
- If received after 30 days from the date of issue of Notice shall be treated as if reply from the member has not been received.

Posting ballot counting/scrutiny.

Appointment of Scrutinizer

The Board of Director shall appoint one scrutinizer who is not a employee of the Company & can conduct postal ballot voting process in a fair & transparent manner.

Duties

- postal ballot received basic from shareholder shall be kept in safe custody of the scrutinizer.
- Maintain a Register to record their assent or dissent received mention name, address, client Identity card of the shareholder, Nominal value of Shares.
- shall submit his report as soon as possible after the last date of receipt of postal ballot

  But not later than 7 days thereof.

Result

- Passing of Resolution

  Passing by postal ballot Will be deemed to have been duly passed at a G.M.

- Declaration

  Result shall be declared by placing it, along with scrutinizer report on the company website.

Section 111 : Circulation of Member's Resolution

A company
Shall on requisition
In writing → give Notice
to such No. of members
(Same as Sec 100)
To member of any resolution
+
Statement
Contains (business to be transacted)

properly circulate at a meeting

Default & Co. every officer
Penalty Rs 25000

Company will circulate only if
a copy of requisition
signed by requisitionists
is deposited at the registered office of the Co.

in case of requisition
requiring notice of a resolution
not less than 6 weeks before the meeting

in other case
not less than 2 weeks before the meeting
C.G. can also order
cost incurred by the company
shall be paid to the company by the
requsitionists → irrespective of that fact that they are not
parties to the application

All expenses → also required to deposit → co.
an AGM is called on a date
within 6 weeks after the copy has been deposited

Co. is not bound to circulate any statement
if C.G. is satisfied same is to circulate for
needless publicity.

Ordinary & Special Resolutions (Sec. 114)

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

Special resolution -

(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.

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

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).

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.

Section 115 : Resolution Requiring Special Notice

When required

Any provision contained in the Act.

Any provision contained In the AOA.

May provide that Special Notice shall be required.

Yes

Then, the notice of the intention to more such a resolution → shall be given to the Co. → by such number of members (signed).

or

Holding not less than → 1% of total voting power

Holding shares on which → an aggregate sum of not less than → Rs 5 lacs has been paid up.

send to company Not earlier than 3 months before the date of G.M. but atleast 14 days before the G.M.

Yes

→ company shall give notice

→ to all its members

→ atleast 7 days before the G.M.

Yes → No problem.

to

If it is not practicable the notice shall be published → atleast 7 days before the date of G.M.

in English language

In vernacular language

Provision contained in the Act requiring Special Notice.

→ Section 140(4)

A resolution for appointing a person other than the retiring auditor, as an auditor at the AGM.

→ A resolution for expressly Providing that the retiring auditor shall not be re-appointed at the AGM.

→ Section 169(2)

Removing a director before the expiry of his term of office.

→ A resolution is moved to appoint some other director is appointed.

Section 116: Resolution passed at an Adjourned meeting:-

When a Resolution is passed at an Adjourned meeting of

- The company
- Class of shareholders
- Board

→ the resolution shall be treated as having been passed only on the date on which it was in fact passed.

→ Such Resolution shall not be deemed to have been passed on any earlier date i.e. the date of the original meeting or date of Notice etc.

→ Date of Adjourned meeting at which the resolution is actually passed is taken as the date of the resolution.

Section 117:- Filling of Resolution & agreement with ROC.

A copy of every resolution or any agreement, along with the explanatory statement u/s 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the ROC within 30 days of the passing

The provisions of this section shall apply to -

- ✓ Special resolutions
- ✓ Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- ✓ Any resolution of the board of directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director
- ✓ Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members
- ✓ Resolutions requiring a company to be wound up voluntarily passed in pursuance of ["section 59 of the insolvency and bankruptcy code, 2016"]
- ✓ Resolutions passed in pursuance of sub-section (3) of section 179.

- ✓ If any company fails to file the resolution before the expiry of the period specified therein, such company shall be liable to a penalty of Rs 10000 & in case of continuing failure, with a further penalty of Rs 100 /day for each day after the first during which such failure continues, subject to a max.of Rs 2 lakh &
- ✓ Every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of Rs 10000 & in case of continuing failure, with a further penalty of Rs 100 for each day after the first during which such failure continues, subject to a maximum of Rs 50000.

Section 118:- Minutes of General Meeting etc.

- Every company shall, cause to be prepared,
  Signed & keep minutes of
  - Proceedings of every General Meeting.
  - Proceedings of meetings of any class of shareholders.
  - Proceedings of meetings of any class of creditors.
  - Proceedings of meeting of Board of Directors.
  - Proceedings of meeting of any committee of the Board.
  - Every Resolution passed by Postal Ballot.
- shall be prepared& signed within
  30 days of
  - The conclusion of the meeting
  - or
  - passing of the resolution by Postal ballot.
- Discretion of Chairman
  No matter shall be included in the minutes, if the chairman is of the opinion
  - Defamatory of any person or
  - irrelevant or immaterial or
  - Detrimental to the interest o f the Co.
- Distinct Minutes book for
  each type of meetings.
  - A G.M. of the members.
  - Meetings of the Creditors.
  - Meeting of the Board.
  - Meeting of each of the Committee of the Board.

The Chairman shall exercise absolute discretion with regard to the inclusion of non-inclusion of any matter in the minutes.

Minutes shall contain a fair & correct summary of the proceedings of the meetings.

The section shall not apply to a section 8 co. as a whole except that minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the AOA provide for confirmation of minutes by circulation, vide Notification, dated 5th June 2015.

Provided that in case of a specified IFCS public or private Co., the minutes of every meeting of its Boards of Directors or of every committee of the Board, to be prepared & signed under sub-section (1) at or before the next Board Meeting or Committee Meeting , as the case may be & kept in the books for that purpose.

<u>Section 118 :- (2nd Chart)</u>

Manner of signing of minutes.

- Each page of every minutes book shall be initialled or Signed & the last page shall be dated & signed as follows :-

Notice of Minutes Book	Signed by Whom ?
Board meeting & Committee Meetings.	The Chairman of the same meeting or the chairman of the next meeting.
Minutes of General Meeting	The Chairman of the same meeting within 30 days of conclusion of such meeting. In the event of the death or inability of that Chairman within that period, by a director duly Authorised by the board for this purpose.
Resolution passed by Postal Ballot	The Chairman of the Board If there is no chairman of the Board or In the event of the death or inability of that Chairman within that period by a director duly authorised by the board for this purpose.

Preservation of minutes book :-

- kept at the registered office or other place as approved by the board.

Preserved permanently

kept in the custody of the CS or any director duly authorised by the board.

Punishment

Contravention

If any default

- company → penalty → Rs 25000
- every officer → penalty → Rs 5000

Tampering

any person found guilty of tempering

- imprisonment upto 2 year
- fine 25000-1 lacs

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Section 119:- Inspection of Minutes of General Meeting

- Place of keeping Minutes Book.
  - Place → Registered office of the Company.
- Inspection of Minutes Book
  - Time for inspection
    - → Can be made during Business hours
    - Subject to the provision in AOA,
    - So that atleast 2 hours in each business day all allowed.
  - By whom,
    - Any member of the Co. without any changes.
  - copies of Minutes book
    - Copies of the minutes book of any G.M.
      - Shall be made available by the Co. to any member
    - Within 7 days of the request made.
      - on payment of fees → such sum but not exceeding Rs10 per page.
      - Free of cost in call of member has made a request for obtaining soft copy of minutes of any G.M. held during immediately preceding 3 F.Y.
  - Punishment for defaults
    - If inspection is refused
      - Company (Rs 25000) or officer penalty (Rs 5000)
  - Power of Co. law Board
    - If inspection is refused
    - then CLB
    - may direct the Co.
    - to allow immediate
    - Inspection or to send copy forthwith.

Section 120 :- Maintenance & Inspection of Documents in Electronic Form

Any documents, record register etc

- Required to be kept
- Allowed to be inspected
- Copies to be given to any person

May be

Kept /inspected/copies given in electronic form.

Provision contained in Rules :-

Applicability

every listed company

or

Company having _> 1000

shareholders, Debenture holders, other

Security holders.

Manner of maintenance of

electronic documents.

Record can be maintained as the BOD,

Subject to the following conditions:-

- Same format as provided under the Act.
- Information required should be adequately recorded.
- Readable, retrievable etc Dated, Digitally, Signed.

Responsibility for security

(1)Managing Director

(2) Company secretary (CS)

(3) any other Director or

officer as decided by BOD.

Inspection

can be made on

payment of fees

maximum Rs 10 /p.

Section 121:- Report to AGM

Applicability

Every listed Public company.

Rules as to Report contain:

- Contain a fair & correct summary of the proceeding of the meetings.
- Confirm that the Meeting was conveyed held & conducted.
- Business transacted at the Meeting & result thereof.
- Particulars with respect to any adjournment postponement Of meeting.

Signature:

The report shall be signed & dated by,

(a) Chairman of the meeting & (b) CS of the Company.

Or

In case of his inability to sign

By any 2 directors of Co., one of whom shall be the Managing Director, if there is one & CS of the Company

Penalty for Default

if the Company fails to file the Report → before the expiry of the period (u/s 403) then

Co. fine 1 lac

Continuing failure – Rs 500/day

max – Rs 5 lacs

Every officer 25000

Continuing failure – Rs 500/day

max – Rs 1 lac

Report

Report in form No. MGT 15

Shall be filled with ROC.

Report u/s 121 shall be prepared

in addition to the minutes of the G.M.

Applicability of chapter VII to OPC - (sec. 122)

1. Non-applicability of certain sections

The provisions of Sec. 98 and Sec. 100 to 111 (both inclusive) shall not apply to OPC.

2. Manner of passing resolutions in GM

(a) In case of OPC, for the purpose of transacting any business (whether ordinary or special) at any GM (whether AGM or EGM) by means of any resolution (whether ordinary or special), it shall be sufficient if -

(i) the resolution is communicated by the member to the company;

(ii) the resolution is entered in the minutes-book; and

(iii) the minutes books is signed and dated by the member.

(b) The date of signing the minutes-book by the member shall be deemed to be the date of the meeting for all the purposes under this Act.

3. Manner of transacting business required to be transacted in BM

(a) In case there is only one director in OPC, for transacting any business which is required to be transacted at a BM, it shall be sufficient if –

(i) the resolution is entered in the minutes-book; and

(ii) the minutes book is signed and dated by such director.

(b) The date of signing the minutes-book by the director shall be deemed to be the date of the meeting for all the purposes under this Act.

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