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**(Section 88 to 122) & The Companies (Management and Administration) Rules, 2014**

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91	Power to close register of members or debenture-holders or other security holders
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94	Place of keeping and inspection of registers, returns, etc.
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<b>Note: Sec. 93 has been omitted by the Companies (Amendment) Act, 2017, and so, it has not been included in this Book.</b>	

## Chapter VII

# Management and Administration

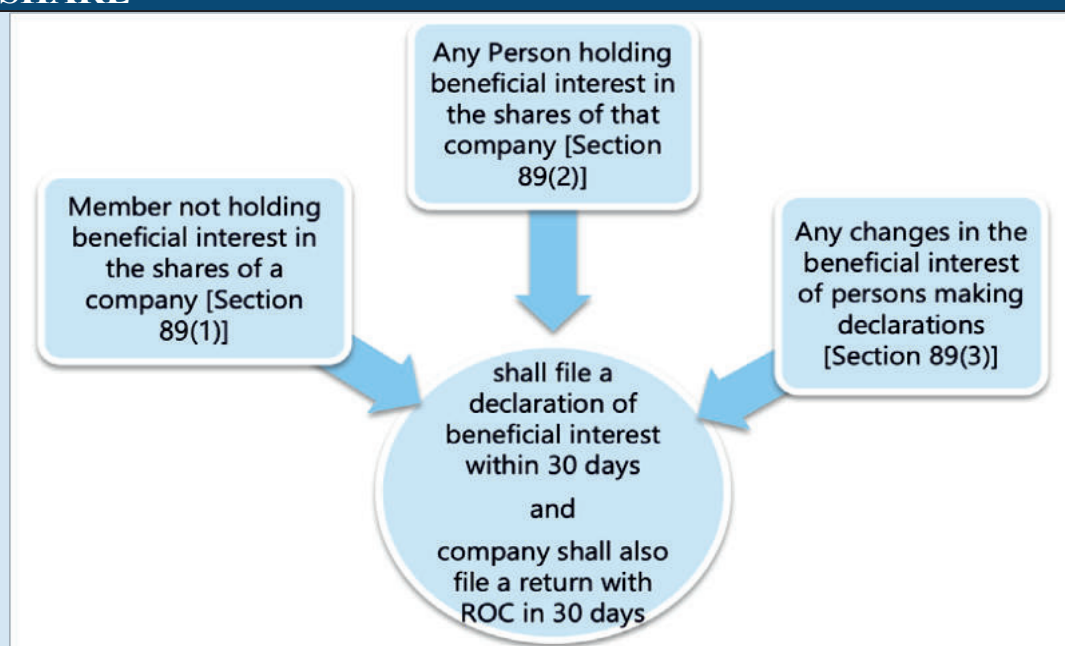
## PART - A (REGISTERS & ANNUAL RETURN)

(Sec 88) - Register of Members	
Registers Required to be maintained by a Company	<p>Every company shall keep and maintain the following registers—</p> <p>a) <b>Register of Members</b> indicating separately for each class of <b>Equity</b> and <b>Preference</b> shares held by each member <b>residing in or outside India</b>; [MGT — 1]</p> <p>b) Register of <b>Debenture-Holders</b>; and [MGT— 2]</p> <p>c) Register of any <b>Other Security Holders</b>. [MGT — 2]</p>
	<p><b>Exemption: Listed Company</b></p> <p>The register and index of beneficial owners maintained by a <b>DEPOSITORY</b> (NSDL) on behalf of Listed company shall be deemed to be the corresponding register and index for the purposes of this Act.</p>
Indexing of Names in Register	<p>Every register maintained as detailed above shall include an index of the names included therein. necessary in case the number of members is <b>50 or more</b></p>
Foreign Register [Register of Foreign Members]	<p>A company <b>may</b>, if so authorised by its articles, keep in any country outside India, called "Foreign Register" [MGT-1] containing the names and particulars of the-</p> <ul style="list-style-type: none"> <li>✓ Members, Debenture holders, Other security holders, Beneficial owners</li> <li>✓ residing outside India</li> </ul>
	<p>The Company may keep its Register of Foreign Members at Foreign Branch and inform the exact address of Foreign Branch to ROC in <b>Form MGT-3</b>.</p>

Contents OF ROM	<p>a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;</p> <p>b) date of becoming member;</p> <p>c) date of cessation;</p> <p>d) amount of guarantee, if any;</p> <p>e) any other interest if any; and</p> <p>f) instructions, if any, given by the member with regard to sending of notices etc:</p>
Entry	within <b>7 days</b> after the Board of Directors APPROVES the ALLOTMENT or TRANSFER of shares, debentures or any other securities.
Maintained at	<p>at the <b>registered office</b> of the company unless a <b>SPECIAL RESOLUTION</b> is passed in a general meeting authorising the keeping of the register at:-</p> <p>a) any other place <b>within the city, town or village</b> in which the registered office is situated or</p> <p>b) any other place in India in which <b>more than 1/10th of the total members reside.</b></p>
<p>M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.</p> <p>(i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.</p> <p>(ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members? (MAY 2018)</p> <p>Hint -</p> <p>(i) So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.</p> <p>(ii) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return <b>can be done by members, debenture-holders, other security holders or beneficial owners of the company.</b></p>	
Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.	

Foreign Register	<ol style="list-style-type: none"> <li>1. The company shall, within <b>30 days</b> from the date of the opening of any foreign register, file with the Registrar notice of the situation of the foreign office in <b>Form No.MGT.3</b>.</li> <li>2. The company shall— <ol style="list-style-type: none"> <li>a) transmit to its registered office in India a copy of every entry in any foreign register within <b>15 days</b> after the entry is made; and</li> <li>b) keep at such office a <b>duplicate register</b> of every foreign register duly entered up from time to time.</li> </ol> </li> </ol>
<p>The paid-up share capital of Golden Shoes Limited is ₹ 25,00,000 divided into 2,50,000 equity shares of ₹ 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office. (RTP Nov 23)</p>	
<p style="text-align: center;"><b>Authentication (Verifying &amp; Signing) of entries:</b></p>	<ol style="list-style-type: none"> <li>1. The entries in the registers and index shall be authenticated by the:- <ol style="list-style-type: none"> <li>a) company secretary [CS] of the company or</li> <li>b) any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.</li> </ol> </li> <li>2. The entries in the FOREIGN register shall be authenticated by the :- <ol style="list-style-type: none"> <li>a) company secretary [CS] of the company or</li> <li>b) person authorised by the Board.</li> </ol> </li> </ol>
<p><b>Refer the concept clarity sheet at the end of the chapter on RULE 7 - FOREIGN Registers 88(4)</b></p>	
Note	<ul style="list-style-type: none"> <li>• <b>Minors</b> names <b>cannot be entered</b> in the register of members and if minor is shareholder <b>its guardians name should appear</b> in register</li> <li>• <b>Joint holders</b> of shares <b>may request</b> the company to enter their names on the register in a <b>certain order</b>, or execute transfers to have their holding split, with the result that part of the holding is entered showing the name of one holder and part showing the name of another. However, the condition that only the name of his 1 should appear in the register as a member <b>CANNOT</b> be catered to</li> </ul>

## (Sec 89) - DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE



Meaning of a beneficial interest	For the purposes of Section 89 and 90, <b>BENEFICIAL INTEREST</b> in a share includes the right of a person to—  (i) <b>exercise</b> any or all of the <b>rights attached</b> to such share; or (ii) <b>receive dividend</b> or other distribution in respect of such share.	
Registered Shareholder but no beneficial interest	A <b>registered shareholder who does not hold beneficial interest</b> in such shares shall make a declaration in <b>MGT — 4 within 30 days</b> to the company specifying the name of the <b>beneficial shareholder</b> .	
Beneficial Shareholder	Every <b>beneficial shareholder</b> who holds or acquires a beneficial interest in share of a company shall make a declaration in <b>MGT— 5 within 30 days</b> to the company specifying the nature of his interest, particulars of the <b>registered shareholder</b> .	
Change in the beneficial interest	Where any change occurs in the beneficial interest in such shares, the <b>registered shareholder</b> and <b>beneficial shareholder</b> shall make a declaration to the company in <b>MGT— 4 &amp; 5 within 30 days</b> from the date of such change.	
Penalty for Non-Compliance CAA- 2020	The concerned person shall be punishable as follows:	
	Minimum Penalty	50,000
	Continuing Penalty	200 for each day
	Maximum Penalty	5,00,000

Intimation by the Company to ROC	Where any declaration under this section is made to a company, the company shall make a note of such declaration in the <b>Register concerned [MGT — 1]</b> and shall file a return with ROC in <b>MGT - 6</b> within <b>30 days</b> from the date of receipt of declaration by it.	
Penalty for Non-Compliance CAA- 2020	Punishment for contravention:-	
	On Company	Rs 1,000 for each day during which such default continues, subject to a <b>maximum of 5,00,000.</b>
	On officer in default	1,000 for each day during which such default continues, subject to a <b>maximum of 2,00,000.</b>
Exemptions by CG	<p>The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, if it is considered necessary to grant such exemption in the public interest.</p> <p>Following Class of Companies have been exempted:-</p> <ol style="list-style-type: none"> <li>1. <b>Government Company.</b></li> <li>2. <b>Trust</b>, which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. These entities need not file the declarations as envisaged under this section.</li> </ol>	

#### **Section 89 – Declaration in respect of Beneficial Interest**

- **MGT- 4** - Member (RH) but not BH to Company within 30 days from the date his name is entered in the register.
- **MGT- 5** - BH but not RH to Company within 30 days of acquiring such beneficial interest.
- MGT- 4 and MGT- 5 to be filed with the company in case of any change in the above.
- **MGT- 6** – Company on receiving such declarations - Return to ROC within 30 days.
- If not filed then BH not entitled to any rights but Dividend payment by company is unaffected.
- Exemption to – No need for such MGT declaration by Mutual Fund, VC Fund.

## (Sec 90) - REGISTER OF SIGNIFICANT BENEFICIAL OWNERS [SBO] IN A COMPANY

Definition of SBO	<ul style="list-style-type: none"> <li>Individual (alone/together/through trust) holding <math>\geq 25\%</math> (or such other percentage – 10%) beneficial interest in shares or exercising significant influence/control.</li> </ul>
SBO as per Rule 2(1)(h)	<ul style="list-style-type: none"> <li>Individual who directly or indirectly (alone/together):               <ol style="list-style-type: none"> <li>Holds <math>\geq 10\%</math> shares</li> <li>Holds <math>\geq 10\%</math> voting rights</li> <li>Receives <math>\geq 10\%</math> dividend</li> <li>Exercises significant influence/control</li> </ol> </li> </ul>
Direct Holding	<ul style="list-style-type: none"> <li>Shares in name of individual</li> <li>Beneficial interest under Sec 89(2) &amp; declared</li> </ul>
Indirect Holding (via)	<ul style="list-style-type: none"> <li>Body Corporate</li> <li>HUF</li> <li>Partnership</li> <li>Trust</li> <li>Pooled investment vehicle</li> </ul>
Declaration by SBO	<ul style="list-style-type: none"> <li>BEN-1 within 30 days of acquisition/change to Company</li> </ul>
Return by Company	<ul style="list-style-type: none"> <li>BEN-2 to Registrar within 30 days of receiving BEN-1</li> </ul>
Register of SBO	<ul style="list-style-type: none"> <li>Form BEN-3 Inspection allowed for 2 hours/day on working days by members (max ₹50/inspection)</li> </ul>
Company's Duty to give notice (person has to reply in 30 days)	<ul style="list-style-type: none"> <li>Give BEN-4 notice to persons (whether or not members):-               <ul style="list-style-type: none"> <li>Likely SBOs</li> <li>Likely to know SBO</li> <li>Past SBOs in last 3 years not registered</li> </ul> </li> </ul>
Tribunal Application [Sec 90(7)]	<ul style="list-style-type: none"> <li>If person:-               <ul style="list-style-type: none"> <li>Fails to respond within 30 days</li> <li>Gives unsatisfactory info → Apply to Tribunal within 15 days</li> </ul> </li> </ul>
Restrictions / suspension via Tribunal within 60 days	<ul style="list-style-type: none"> <li>Transfer</li> <li>Dividend</li> <li>Voting</li> <li>Other rights</li> </ul>

Lifting of Restrictions	<ul style="list-style-type: none"> <li>• Aggrieved party may apply to lift restrictions within 1 year.</li> <li>• If not, shares transferred to IEPF Authority.</li> </ul>
Non-applicability [Rule 8]	<ul style="list-style-type: none"> <li>• SBO Rules not applicable to shares held by:-</li> <li>• IEPF Authority</li> <li>• Holding company (details in BEN-2)</li> <li>• Govt/local authority</li> <li>• Govt-controlled entity</li> <li>• Mutual funds/AIFs</li> <li>• RBI/IRDA/PFRDA-regulated entities</li> </ul>
Penalties – SBO and Co.	<ul style="list-style-type: none"> <li>• ₹50,000 + ₹1,000/day (max ₹2 lakh) for continuing failure</li> <li>• Company: ₹1 lakh + ₹500/day (max ₹5 lakh) Officer in default: ₹25,000 + ₹200/day (max ₹1 lakh)</li> <li>• Wilful defaulters - False info/suppression → Punishable under Sec 447 (Fraud)</li> </ul>

### (Sec 91) - POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE HOLDERS OR OTHER SECURITIES HOLDER

<p><b>Time Period for which Register can be closed by a company</b></p>	<p>A company may close the</p> <ul style="list-style-type: none"> <li>• Register of Members or</li> <li>• Register of Debenture holders or</li> <li>• Register of other Security holders</li> </ul> <p>for any period not exceeding in the aggregate <b>45 days</b> in each year, but not exceeding <b>30 days at any one time</b>, subject to giving of previous notice of at least <b>7 days</b></p>
<p><b>Penalty for Non- Compliance of the Provision</b></p>	<p>The Company and every officer in default shall be punishable as follows:</p> <p><b>Punishment</b></p> <p><b>5,000 per day during which the register is kept closed upto a maximum of 1,00,000</b></p>

### Section 91 - Closure of Registers

- Co. may close - 30 days at once and 45 days/yr.
- Pvt Co = Giving 7 days notice to members.
- Others = Ad in 2 NW/websites of Co / CG (Pvt co is exempted from this provided 7 days notice is given)
- Penalty = Co & OID - 5000/day - 1 lacs

### (Sec 92) - ANNUAL RETURN

Topic	Detailed Explanation
<b>Contents of Annual Returns to be submitted by companies</b>	Every company shall prepare an annual return in the <b>MGT- 7</b> containing following particulars as they stood <b>on the close of the financial year</b> regarding— a) <b>Principal Activities &amp; Group Companies:</b> Its principal business activities, particulars of its holding, subsidiary and associate companies;
	b) <b>Shareholding Pattern:</b> Its shares, debentures and other securities and shareholding pattern;

	<p>c) <b>Its indebtedness;</b></p> <p>d) <b>Membership &amp; Debenture holders:</b> Its members and debenture-holders along with changes therein since the close of the previous financial year;</p> <p>e) <b>Management:</b> Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;</p> <p>f) <b>Meetings:</b> Meetings of members or a class thereof, board and its various committees along with attendance details;</p> <p>g) <b>Managerial Remuneration:</b> Remuneration of directors and key managerial personnel;</p> <p>h) <b>Punishment Imposed:</b> Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;</p> <p>i) <b>Certification of compliances, disclosures:</b> Matters relating to certification of compliances, disclosures as may be prescribed;</p> <p>j) <b>Foreign Institutional Investors:</b> Details, as may be prescribed, in respect of shares held by or on behalf of the foreign institutional investors; and</p> <p>k) Such other matters as may be prescribed.</p> <p><b>Authentication (Signing) of Annual Return</b></p> <ol style="list-style-type: none"> <li>1. It shall be signed by a director <b>and</b></li> <li>2. It shall be signed by the CS, or where there is no CS, by a CS in practice.</li> </ol>
<p><b>As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it. (MAY 2018)</b></p>	
<p><b>Abridged Form of Annual Return MGT- 7A</b></p>	<p><b>Special Provision for One Person Company &amp; Small Company</b></p> <p>Central Government has prescribed <b>Abridged Annual Return (MGT- 7A)</b> for :-</p> <ol style="list-style-type: none"> <li>1. One Person Company.</li> <li>2. Small Company.</li> </ol> <p>In relation to <b>One Person Company, Small Company and Start-up private company</b>, the annual return shall be signed by:-</p> <ol style="list-style-type: none"> <li>1) The CS, where there is a CS <b>or</b>,</li> <li>2) The DIRECTOR of the company, where there is no CS.</li> </ol>

<b>Companies for which CS Certification of Annual Return is required</b>	<p>The annual return, filed by a</p> <ol style="list-style-type: none"> <li>1) A Listed company or,</li> <li>2) A company having paid-up capital <math>\geq</math> 10 crores or,</li> <li>3) A company having turnover <math>\geq</math> 50 crores,</li> </ol> <p>shall be certified by a CS in practice in the <b>MGT - 8</b>, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.</p>		
<b>Annual Return to be place on website</b>	<p>Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.</p>		
<b>Time limit for Filing of Annual Return with the Registrar</b>	<p><b>Case 1: - When the AGM is held</b></p> <p>Within 60 days from the date on which the AGM is held.</p> <p><b>Case 2: - When the AGM is NOT held</b></p> <p>Within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM.</p>		
<p>Enumerate the provisions of the Companies Act, 2013 in respect to the following:</p> <ol style="list-style-type: none"> <li>(i) Time limit for filing of annual return when Annual General Meeting is held.</li> <li>(ii) Time limit for filing of annual return when Annual General Meeting is not held.(5 Marks) (MTP July 24)</li> </ol>			
<p>Wills Pvt. Ltd. convened its Annual General Meeting (AGM) with the intention of presenting financial statements for approval by the shareholders. However, due to the absence of the required quorum, the meeting had to be cancelled. Subsequently, the company's directors forgot to submit the annual return to the RoC. The directors held the belief that the 60 days time frame for filing return from the AGM's date would not apply, since the AGM itself was cancelled. Has the company violated the stipulations outlined in the Companies Act, 2013 ? In case, if the company has breached the provisions of the Act, what are the potential penalties it might face? 4 M (Nov 23)</p>			
<b>Penalty CAA-2020</b>	<p>The Company and every officer in default shall be punishable as follows: <b>New Penalty [The Companies (Amendment) Act, 2020]</b></p>		
	<b>On Company</b>	<b>Minimum Penalty</b>	<b>10,000</b>
		<b>Continuing Penalty</b>	<b>100 per day</b>
		<b>Maximum Penalty</b>	<b>2,00,000</b>
	<b>Officer in Default</b>	<b>Minimum Penalty</b>	<b>10,000</b>
		<b>Continuing Penalty</b>	<b>100 per day</b>
<b>Maximum Penalty</b>		<b>50,000</b>	
<b>Penalty on CS [CAA-2020]</b>	<b>Punishment</b>		<b>2,00,000</b>

## (Sec 94) - PLACE OF KEEPING & INSPECTION OF REGISTERS, RETURNS, ETC

<b>Maintenance of Registers and Returns</b>	at the <b>registered office</b> of the company.
<b>Keeping Registers and Returns in any other place[Special Resolution]</b>	Such registers or copies of return may also be kept at any other place in India in which <b>more than 1/10th of the TOTAL. NUMBER OF MEMBERS</b> entered in the register of members reside, if approved by a <b>SPECIAL RESOLUTION</b> passed at a general meeting of the company.
<b>Preservation of Registers and Returns</b>	<ol style="list-style-type: none"> <li>1) <b>Register of Members</b> — Permanently</li> <li>2) <b>Foreign Register of Members</b> — Permanently</li> <li>3) <b>Register of Debenture holders or any other Security Holders</b> — 8 years from the date of <b>redemption of debentures or securities</b></li> <li>4) <b>Annual Returns</b> — 8 years from the date of filing with the ROC.</li> </ol>
<b>Inspection facility for Registers and Returns</b>	<p>The registers and their indices, except when they are closed u/s 91, and the copies of all the returns shall be open for inspection by</p> <ol style="list-style-type: none"> <li>1) Any member, debenture-holder, other security holder or beneficial owner, during business hours (not less than 2 per day) without payment of any fees. [<b>FREE</b>]</li> <li>2) Any other person (outsiders) on payment of such fees not exceeding Z 50 for each inspection. g <b>501</b></li> </ol>
<b>Copies of Registers and Returns</b>	<p>Any such member, debenture-holder, other security holder or beneficial owner or any other person may—</p> <ol style="list-style-type: none"> <li>a) <b>Take EXTRACTS</b> from any register, or index or return without payment of any fee; or <b>FREE</b></li> <li>b) <b>Require a COPY</b> of any such register or entries therein or return on payment of fees not exceeding Z <b>10 per page</b>. Such copy or entries or return shall be supplied within 7 days of deposit of such fee. [<b>10 per page</b>]</li> </ol>
<b>Not available</b>	Provided that SUCH PARTICULARS of the register or index or return as may be prescribed shall NOT be available for inspection or for taking extracts or copies.

<b>Penalty for Non- Compliance of the Provision</b>	<p>If any inspection or the making of any extract or copy required under this section is refused, the Company and every officer in default shall be punishable as follows:</p> <p><b>Punishment 1,000 per day during which the refusal or default continues upto a maximum of 1,00,000</b></p> <p>Also, the Central Government may, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.</p>
<b>Refer the concept clarity sheet at the end of the chapter on Section 92 - Annual Return</b>	

### **(Sec 95) - REGISTERS, ETC. TO BE EVIDENCE**

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorized to be inserted therein by or under this Act.

Majboot Cement Ltd. (MCL) is known for its hassle free and home building solutions. Its unique products tailor made for Indian climate conditions and sustainable operations. MCL was incorporated in July 2000 with an authorized capital of 1,000 crores. According to financial statements as on 31st March, 2023, paid-up capital of company was 600 crores and free reserves were 650 crores. Registered Office of the company situated in New Delhi, but around 15% of total members are resident of Faridabad (Haryana). Company wants to place its Register of Members at its branch office in Faridabad.

MCL is planning to expand its existence throughout the country. For this purpose, Company has taken 200 crores term loan and 125 crores of Working Capital loan from Banks on 18th June, 2023. Charge was created on all the assets of company on that day for above loan of 325 crores, but company failed to register the charge with the registrar of companies within the prescribed time. The Registrar granted a grace period of further 30 days to MCL in respect of application filed by it for the same, however, still it failed to register the charge within the grace period. Finally, the application for registration of charge was furnished on 18th August, 2023.

MCL wants to convene its 23<sup>rd</sup> AGM on 10th September, 2023 at the registered office of the company. Notice for the same was served on 22<sup>nd</sup> August, 2023. 78% of members have given their consent to convene AGM at shorter notice due to urgent need of funds for the expansion plan.

With reference to provisions of Companies Act, 2013, answer the following questions :

- (i) Company wants to maintain its Member's Register at Faridabad, advise whether the decision of company is valid ?
- (ii) Which type of Charge was created by Company on 18th June, 2023 ? Whether application filed by company on 18th August, 2023 was in compliance with provisions of Registration of Charge of Companies Act, 2013 ?

(iii) Whether the notice given to convene AGM at shorter notice was in compliance of Companies Act, 2013 ?

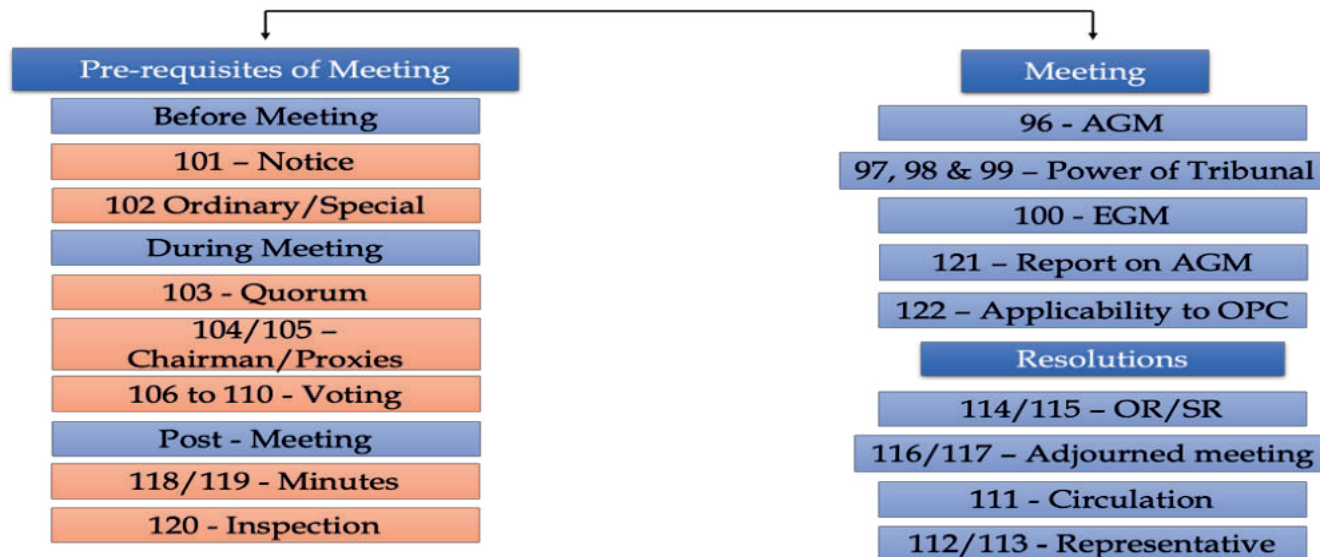
(Nov 23)

### **MGT Forms covered Till now**

- ❖ **MGT 1** - Register for Members
- ❖ **MGT 2** - Register for others - DH / Other securities
- ❖ **MGT 3** - In case of location of Foreign register and any change
- ❖ **MGT 4** - Registered Holder to ROC in 30 days
- ❖ **MGT 5** - Beneficial Holder to ROC in 30 days
- ❖ **MGT 6** - Return to be filed by Company to ROC

## PART - B (MEETINGS & RELATED SECTIONS)

### Overview of the Chapter – PART B



### Requisites of a Valid Meeting (3C)

#### **Pre-requisites of meetings –**

- ❖ Properly call = Proper authority and notice (Sections 101/102)
- ❖ Properly convened = Quorum and chairman (Sections 103,104) and
- ❖ Properly conducted = Business must be validly transacted through resolutions and minutes and follow the ACT. (Various sections and 118/119)

#### **Types of meetings**

- ❖ General meeting – Meeting of Shareholders
- ❖ Board meeting – Meeting of BOD and
- ❖ Class meetings – Meeting of special class of persons like creditors, PSHs etc

Meetings and General Meeting	
<b>Meaning of Meeting</b>	A meeting may be defined as the gathering, assembly or coming together of two or more persons for transacting any lawful business.
<b>General Meeting (GM)</b>	The meetings of <b>all</b> the members (shareholders) of a company are referred to as general meetings.
<b>Purpose</b>	Decision making

## [Sec. 96] - ANNUAL GENERAL MEETING (AGM)

<b>Meaning</b>	<ul style="list-style-type: none"> <li>General Meeting (GM) held once every year is termed as AGM.</li> <li>As per section 96(1), every company shall hold an AGM every year except <b>One Person Company</b>.</li> </ul>	
<b>1<sup>st</sup> AGM [Sec. 96(1)]</b>	<b>Time Limits</b>	<ul style="list-style-type: none"> <li>1<sup>st</sup> AGM to be held within 9 months from the date of closing of 1<sup>st</sup> F.Y.</li> <li>It is not necessary for the company to hold any AGM in the year of its incorporation if 1<sup>st</sup> AGM is duly held.</li> </ul>
	<b>No Extension</b>	The Registrar shall not grant any extension for holding the 1 <sup>st</sup> AGM.
<b>Subsequent AGM [Sec. 96(1)]</b>	<b>Time Limits</b>	<p>the last date for holding AGM shall be earliest of the below 3 time limits:</p> <ul style="list-style-type: none"> <li>(i) Within 6 months from the closure of the F.Y.</li> <li>(ii) Gap between previous AGM and the next AGM does not exceed 15 months i.e. AGM is to be held within 15 months of last AGM.</li> <li>(iii) AGM is to be held in each calendar year. (i.e upto 31<sup>st</sup> Dec.)</li> </ul>
	<b>Extension</b>	The Registrar may, for any special reasons, extend the time for holding the AGM for any period not exceeding 3 months.
	<ul style="list-style-type: none"> <li>✓ <b>First AGM = Within 9 months from the closing first FY (April to March)</b></li> <li>✓ <b>Subsequent AGMs –</b> <ul style="list-style-type: none"> <li>✓ Within 6 months from the closing FY.</li> <li>✓ AGM to be held in each Calendar Yr.</li> <li>✓ Gap between two AGMs shall not be more than 15 Months</li> </ul> </li> <li>✓ When co is holding its first AGM then no need to hold AGM in its year of incorporation.</li> <li>✓ Extension of time = 3 months only for subsequent but not for the first AGM.</li> </ul>	
<b>Time, Place &amp; Day of holding AGM [Sec. 96(2)]</b>	<b>Time of AGM</b>	AGM shall be held during business hours i.e between 9 am and 6 pm.
	<b>Day of AGM</b>	<ul style="list-style-type: none"> <li>AGM shall not be called on a day of National Holiday.</li> <li>'National Holiday' means and includes a day</li> </ul>

		declared as National Holiday by the C.G.
	<b>Place of AGM</b>	AGM shall be held at the: (i) Registered office of the company; or (ii) Some other place within the city, town or village in which the registered office is situated. However, AGM of an <b>unlisted company</b> may be held at any place in India if consent is given in advance either in writing or by electronic mode by all the members.
<b>Other Imp points</b>	<ul style="list-style-type: none"> <li>• The C.G may exempt any company from the provisions of Sec. 96(2) subject to conditions as it may impose.</li> <li>• Section 8 Company may hold its AGM at such time, date and place as decided upon before-hand by the Board of Directors having regard to the directions, if any, given by the shareholders in its general meeting.</li> <li>✓ <b>Government Companies: Section 96(2) - Place for holding AGM</b> Government Company may hold its AGM at :-</li> <li>• such other place within the city, town or village in which the registered office of the company is situate or</li> <li>• such other place as the Central Government may approve in this behalf.</li> </ul>	
<p><b>1. Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6<sup>th</sup> Annual General Meeting at 3 PM on 22<sup>nd</sup> August, 2019 at Hintal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Hintal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6<sup>th</sup> AGM at Jaipur, will your answer differ. (RTP NOV 2019)</b></p> <p><b>2. Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant. Please advise the company regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. (5 Marks)(MTP M 21)</b></p>		

**Hint** - Thus, the first AGM of Infotech should have been held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit for the first AGM of the company.

**3. Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:**

- (i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
- (ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held. (MTP Mar. 22)(4 Marks)

**4. Kedar Limited, an unlisted company, registered in the state of Haryana with 100 shareholders want to organize the Annual General Meeting of the company for the financial year 2023-2024 as under:**

- (i) The meeting shall be held on 28th September 2024 which happens to be Rakshanda, a declared as holiday by the Haryana Government.
- (ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 100 shareholders, 98 have given their consent in writing for conducting the meeting in Lonavala.

**Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013.(5 Marks) (MTP Dec 24) 4 M (Nov 23)**

In the instant case,

Kedar Limited, an unlisted company, can hold its AGM on 28th September, 2024 which happens to be a holiday declared by Haryana Government because this is not a national holiday.

Kedar Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 98 members out of 100 have given their consent for conducting the meeting in Lonavala

## [Sec. 97] - POWER OF TRIBUNAL TO CALL AGM

Member to apply to Tribunal	If any default is made in holding the AGM, any member may make an application to the Tribunal.
Powers of the Tribunal	<ul style="list-style-type: none"> <li>(a) The Tribunal may call a GM or direct the calling of a GM, which shall be deemed to be an AGM of the company.</li> <li>(b) The Tribunal may give ancillary or consequential directions as it may think fit, including a direction that 1 member present in person or proxy shall be the quorum.</li> </ul>

	<b>Section 97 — Power of NCLT to call AGM</b>	<b>Section 98 - Power of NCLT to call EGM</b>
<b>Ground</b>	There is DEFAULT in holding AGM.	It is IMPRACTICABLE to call EGM.
<b>Who applied to NCLT</b>	Any Member may apply to NCLT.	<ul style="list-style-type: none"> <li>• NCLT suo-moto</li> <li>• Any Member</li> <li>• Any Director</li> </ul>

1. ABC Ltd. held its AGM for the financial year 201718 on 9th June, 2018. The company held its AGM for the following financial year on 30th September, 2019. With regard to the provisions of Companies Act, 2013, which of the following statement is correct?
  - a. The AGM for financial year 2018-2019 is valid since it is held 6 months from the date of closing of the financial year.
  - b. The AGM for financial year 2018-2019 is valid since it is held 9 months from the date of closing of the financial year.
  - c. The AGM for financial year 2018-2019 is not valid since more than 15 months have elapsed from the date of meeting of previous year.
  - d. None of the above.
  
2. The Annual General Meeting of XYZ Ltd., for the financial year ending 31-3-2019 was held on 27-9-2019. However, the audited accounts of the company are yet to be received from its auditors. Therefore, the meeting was held on due date to conduct the remaining business and it was adjourned and finally held on 31-1-2020 at which the audited financial statements were adopted. The AGM of previous year was held on 30-9-2018.

With regard to the provisions of Companies Act, 2013, which of the following statement is correct?

- a. The meeting held on 31-1-2020 is valid since not more than 15 months have elapsed from the date of meeting of previous year.
  - b. The meeting held on 31-1-2020 is invalid since the AGM, including any adjournment thereof, must be held not later than 6 months from date of closing of the Financial Year.
  - c. The meeting held on 31-1-2020 can be validated by taking the approval from Registrar.
  - d. The meeting held on 31-1-2020 is invalid since there is no provision in law for adjournment of an AGM.
- 
3. The Annual General Meeting of an unlisted company may be held:
    - a. At the Registered Office of the company.
    - b. At some other place within the City, Town or Village in which the Registered Office of the Company is situated.
    - c. Any place in India if consent is given in writing or by electronic mode by all the members in advance.
    - d. Either of above

## [Sec. 99] - PUNISHMENT FOR DEFAULT IN COMPLYING WITH SEC. 96, 97 & 98

Applicability of Sec. 99	<ol style="list-style-type: none"> <li>1. If default is made in holding AGM u/s 96 or 97 or EGM u/s 98.</li> <li>2. If default is made in complying with any directions of the Tribunal.</li> </ol>
Punishment	<p>Company &amp; officer-in-default:</p> <ul style="list-style-type: none"> <li>• Fine upto Rs. 1 lakh</li> <li>• Fine Rs. 5,000 per day in case of continuing default.</li> </ul>

1. ABC Ltd. is a company incorporated in India and holds 100% shares of EFG GmbH, a company incorporate in Germany. An Extraordinary General Meeting of ABC Ltd. can be held:
  - a. At the Registered Office of ABC Ltd. or some other place within the City, Town or Village in which the Registered Office of the Company is situated.
  - b. At any place in India.
  - c. At any place outside India.
  - d. Either of above.
2. ABC Ltd. is a wholly owned subsidiary of EFG GmbH, a company incorporated in Germany. An Extraordinary General Meeting of ABC Ltd. can be held:
  - a. At the Registered Office of ABC Ltd. or some other place within the City, Town or Village in which the Registered Office of the Company is situated.
  - b. At any place in India.
  - c. At any place outside India.
  - d. Either of above.
3. The Board of Directors of ABC Ltd. include two Directors representing financial institutions, which together hold more than 20% of the equity capital of the company. The financial institutions served a requisition under Section 100 of the Companies Act for calling an extraordinary general meeting for removal of Managing Director of the company. However, they refused to give any reasons for the removal of Managing Director. The company refused to convene the meeting on the ground that the requisition is not accompanied by a proper explanatory statement. Decide which of the following statement gives the correct state of law.
  - a. The stand taken by company is correct, since as per Section 102 of Companies Act, an explanatory statement is required to be annexed in respect of every item of special business.
  - b. The requisitionists are under no obligation to attach the explanatory statement to the requisition.
  - c. The requisitionists an extraordinary general meeting of the company can be given by natural persons and no body corporate can call for an EGM.
  - d. None of the above.

4. If the Board does not call a meeting requested by required number of members, the meeting may be called and held by the requisitionists themselves within a period of:
  - a. 60 days from the date of receipt of such requisition by the company.
  - b. 90 days from the date of receipt of such requisition by the company.
  - c. 3 months from the date of the requisition.
  - d. 6 months from the date of the requisition.
  
5. Under Section 98 of the Companies Act, the Tribunal may order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit and give such ancillary or consequential directions as it considers expedient. The order under Section 98 may be made by the Tribunal:
  - a. On its own motion.
  - b. On the application of any Director of the Company.
  - c. On application of any member entitled to vote at the meeting.
  - d. Either of above.
  
6. In case of one person company, if any item is required to be transacted at an AGM or EGM of the company by an ordinary or special resolution, it shall be passed:
  - a. By the member himself along with the Director or Secretary of the company.
  - b. By means of communication of resolution by the member to the company and entering in the Minutes Book is required to be maintained and signed under the Act.
  - c. By means of communication of resolution by the member to the Registrar.
  - d. Either of above.

## [Sec. 121] - REPORT ON AGM

Applicability [Sec. 121(1)]	Applicable only to listed public companies.
Legal Requirements	<ol style="list-style-type: none"> <li>1. The report shall confirm that the AGM was convened, held and conducted as per the provisions of this Act and rules.</li> <li>2. File the copy of report with ROC <b>within 30 days</b> of conclusion of AGM in Form No. <b>MGT-15</b>, along with the fee. [Sec. 121(2) and Rule 31(3)]</li> <li>3. The report shall be prepared in addition to minutes of GM.</li> </ol>
Signing of the report	<p>The report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by –</p> <ol style="list-style-type: none"> <li>(a) any 2 directors of the company, one of whom shall be the Managing Director, if there is any; and</li> <li>(b) the company secretary of the company;</li> </ol>

<p>Contents of the report</p>	<p>(i) the day, date, hour and venue of the AGM;  (ii) confirmation with respect to appointment of Chairman of the meeting;  (iii) number of members attending the meeting;  (iv) confirmation of quorum;  (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;  (vi) business transacted at the meeting and result thereof;  (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and  (viii) any other points relevant for inclusion in the report</p>
<p>Punishment [Sec. 121(3)]</p>	<p>If the company fails to file the report within the prescribed period-</p> <p><b>Company:</b> Penalty of Rs. 1 lakh and Rs. 500 per day for continuous default after the 1<sup>st</sup> default; subject to a maximum of Rs. 5 lakh.</p> <p><b>Officer in default:</b> Penalty of at least Rs. 25,000 and Rs. 500 per day for continuous default after the 1<sup>st</sup> default; subject to a maximum of Rs. 1 lakh.</p>
<p style="text-align: center;"><b><u>Section 121 - Report on AGM (For every Listed public Co)</u></b></p> <ul style="list-style-type: none"> <li>• Form MGT-15 To ROC in 30 days that AGM was held as per Rule 31 and provisions of the Act.</li> <li>• Report is in addition to minutes.</li> <li>• Signed and dated by – <ul style="list-style-type: none"> <li>• Chairman of the meeting or If not then 2 directors (1MD) And Company Secretary</li> </ul> </li> </ul> <p><b><u>Fine</u></b> - Co = 1 Lakhs and 500/day to 5 Lakhs &amp; Officer = 25k and 500/day to 1L</p>	
<p>Pristine Limited, a listed public company, conducted its Annual General Meeting on 31<sup>st</sup> August, 2020. However, 10 days have passed since 31<sup>st</sup> August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?(RTP MAY 2021)</p>	

1. Every listed company shall file with the Registrar a copy of the report on each annual general meeting within of the conclusion of the annual general meeting.
  - a. 15 days
  - b. 30 days
  - c. 60 days
  - d. 90 days

2. The Annual General Meeting of Yellow Limited was held on 25th June 2022. According to the provisions of Companies Act, 2013, till what date the company should submit report on AGM to the registrar? (2 Marks) (MTP Sep. 22)
  - a. 30.06.2022
  - b. 10.07.2022
  - c. 24.07.2022
  - d. 25.07.2022

## [Sec. 100] - EXTRAORDINARY GENERAL MEETING

Meaning	<ul style="list-style-type: none"> <li>▪ All GM other than AGM is an Extraordinary General Meeting (EGM).</li> <li>▪ If there is any matter of urgent or special nature arising between two AGMs, an EGM may be held.</li> <li>▪ Every business transacted at such a meeting is <b>special business</b>.</li> </ul>	
<p><b><u>Who can call an EGM ?</u></b></p> <ul style="list-style-type: none"> <li>• By Board (Suo Motu) – At any place in India (Except for wholly owned SC incorporated o/s India) – 100(1)</li> <li>• By Board on requisition by Eligible members = SC and without SC = 10% of PSC or voting power 100(2)</li> <li>• If Board fails then Requisitionists will call on their own – 100(4)</li> <li>• By Tribunal – Section 98 (In the same manner)</li> </ul>		
By Board	BOD may call EGM whenever it deems fit.	
BOD may call EGM on Requisition being raised by the shareholders	Requisition By Whom?	<p><b>(a)</b> in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, <b>not less than 1/10th of Equity shares;</b></p> <p><b>(b)</b> in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, <b>not less than 1/10th of the total voting power.</b></p>
	Essentials of a valid requisition	<ol style="list-style-type: none"> <li>1. The requisition shall specify the <b>matters</b> for the consideration of which EGM is to be called.</li> <li>2. The requisition shall be valid even if it does not <b>specify the reasons</b> for the matters.</li> <li>3. shall be <b>SIGNED</b> by the requisitionists and</li> <li>4. sent to the <b>REGISTERED OFFICE</b> of the company.</li> </ol>
	Action by Board	<p>On receipt of a valid requisition</p> <ul style="list-style-type: none"> <li>• the Board shall <b>within 21 days</b> issue notice</li> <li>• within <b>45 days</b> conduct EGM</li> </ul>

Verma Limited has Equity Share Capital of 20,000 shares @ ₹10 each. The Company has received a requisition from Mr. Jai and Mr. Narayan each holding 3,000 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionists desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.(5 Marks) (MTP Nov 24)

Hint - In the given case, meeting called by requisitionists to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. Jai and Mr. Narayan holding 60,000 (each holding ₹ 30,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

<p><b>By requisitionists themselves</b> [Sec. 100(4)]</p>	<ol style="list-style-type: none"> <li>1. If the Board fails <b>to call EGM within 45 days</b>, it may be called by requisitionists themselves.</li> <li>2. The EGM shall be held <b>within 3 months</b> from the date of deposit of the requisition.</li> <li>3. The requisitionists shall call the EGM in the <b>same manner</b> in which a meeting is called by the BOD [Sec. 100(5)].</li> <li>4. All reasonable expenses incurred by the requisitionists in calling an EGM shall be reimbursed to them by the company.</li> </ol>
<p><b>Time, place, day for holding EGM</b></p>	<ol style="list-style-type: none"> <li>1. The requisitionists should convene the EGM on <b>any day except National Holidays</b>.</li> <li>2. The requisitionists should convene the EGM at the registered office or in the same city or town in which the registered office is situated.</li> <li>3. <b>However, the EGM of a wholly owned subsidiary of a company incorporated outside India shall be held within or outside India.</b></li> <li>4. In case of Specified IFSC Private/Public Company, EGM may be held within or outside India on consent of all the shareholders.</li> </ol>

Refer the concept clarity sheet at the end of the chapter on Extra Ordinary General Meeting – Sec.

100

1. Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following: (RTP MAY 2019)
- (i) EGM be held in India
  - (ii) EGM be held in Netherlands

**Conclusion** - In the light of the above provisions:

- (i) The Board of Directors can call the EGM in India.
- (ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

**Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:**

The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.

Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting.(6 Marks) (MTP Oct. 23)

## [SEC. 101] - NOTICE OF MEETING

Meaning	Intimation of time, place, date and agenda of the meeting to the members and invitation to attend the meeting.
Who can give notice?	<ol style="list-style-type: none"> <li>1. A general meeting has to be called by the <b>Board</b>.</li> <li>2. An individual director has no authority to call a GM.</li> <li>3. BOD can delegate its powers to secretary, manager, etc.</li> <li>4. If secretary or other issue notice without the sanction of the Board, notice will be invalid. However, it can be ratified by the BOD.</li> </ol>
	<p style="text-align: center;"><b><u>Proper authority to call a meeting</u></b></p> <ul style="list-style-type: none"> <li>• <b>Board</b> – Common power but individual director or MD can't. Sanction of board is required otherwise notice is invalid. Can be delegated to Secretary, MGR etc. If without permission then BOD can ratify.</li> <li>• <b>Members</b> – If Board fails to call then members who fulfils the requirement</li> <li>• <b>Tribunal</b> – In few cases</li> </ul>

<p>Who are entitled to receive notice? [Sec. 101(3)]</p>	<p>The notice of every meeting of the company shall be given to –</p> <ul style="list-style-type: none"> <li>(a) Every member of the company, or</li> <li>(b) Legal representative of any deceased member, or</li> <li>(c) Official assignee of an insolvent member; and</li> <li>(d) Auditor of the company, and</li> <li>(e) Every director of the company;</li> <li>(f) In case of joint holding, notice is to be given to First named joint holders.</li> </ul>
<p>Enumerate the persons who are entitled to receive the Notice of the General Meeting, as per the provisions of the Companies Act, 2013. (5 Marks) (MTP July 24)</p>	
<p>Time limit (Length of notice) [Sec. 101(1)]</p>	<ol style="list-style-type: none"> <li>1. Notice shall be sent <b>at least 21 clear days</b> before the meeting.</li> <li>2. A <b>section 8</b> company may give notice <b>atleast 14 clear days</b> before the meeting provided no default has been made in filing F.S u/s 137 or annual return u/s 92 with the Registrar.</li> <li>3. The following days are not counted in 21 clear days:- <ul style="list-style-type: none"> <li>a. Day of Dispatch = 1 day.</li> <li>b. Deemed Postage Duration u/s 20 = 2 Days (48 Hours)</li> </ul> </li> <li>4. Date of meeting = 1 day.</li> </ol>
<div style="border: 1px solid black; padding: 10px; background-color: #e0f0ff;"> <div style="background-color: #003366; color: white; padding: 5px; display: inline-block; border-radius: 10px;"><b>Valid Notice Requirement</b></div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="border: 1px solid black; border-radius: 15px; padding: 10px; background-color: #ffe0b0; width: 45%;"> <p style="text-align: center;"><b><u>Notice of a meeting</u></b></p> <ul style="list-style-type: none"> <li>❖ To call a GM length of a notice shall be at least <b>21 CLEAR DAYS</b> to <b>101(3)</b> – <ul style="list-style-type: none"> <li>• Every member</li> <li>• Legal representatives of a deceased person</li> <li>• Assignee of insolvent members</li> <li>• Auditor(s) and directors</li> <li>• In writing or electronic mode</li> </ul> </li> <li>❖ A section 8 co may call a GM by giving 14 days notice</li> </ul> </div> <div style="border: 1px solid black; border-radius: 50%; padding: 10px; background-color: #fff9c4; width: 45%; text-align: center;"> <p style="text-align: center;"><b><u>Clear days</u></b></p> <p style="text-align: center;">Date of sending a notice and receiving a notice is excluded and Company can't curtail the requirement of 21 clear days by its AOA</p> </div> </div> </div>	
<p>Chetan Ltd. issued a notice for holding its Annual general meeting on 7<sup>th</sup> November 2019. The notice was posted to the members on 16<sup>th</sup> October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:</p> <ol style="list-style-type: none"> <li>(i) Whether the meeting has been validly called?</li> <li>(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?</li> <li>(iii) Can the delay in giving notice be condoned? (RTP NOV 2020) (MAY 2019)</li> </ol>	

Omission [Sec. 101(4)]	<p><b>Accidental Omission</b> 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 <b>not</b> invalidate the proceedings of the meeting.</p> <p><b>Deliberate Omission</b> shall invalidate the meeting.</p>						
Shorter Notice [Proviso to Sec. 101(1)]	<p>A GM may be called after giving shorter notice than that of 21 clear days, if consent, in writing or by electronic mode, is given:</p> <table border="1" data-bbox="604 544 1517 871"> <tr> <td data-bbox="612 544 788 592"><b>AGM</b></td> <td data-bbox="788 544 1517 592"><b>Not less than 95% of the members (ESH) entitled to vote.</b></td> </tr> <tr> <td data-bbox="612 592 788 769"><b>EGM</b></td> <td data-bbox="788 592 1517 769"> <p><b>Case 1: If the company has a share capital</b></p> <p><b>A. Majority in number of members (ESH) entitled to vote</b> <b>AND</b></p> <p><b>B. who represent 95% of ESC.</b></p> </td> </tr> <tr> <td data-bbox="612 769 788 871"><b>EGM</b></td> <td data-bbox="788 769 1517 871"> <p><b>Case 1: If the company has no share capital</b></p> <p><b>Members holding atleast 95% of the total voting power.</b></p> </td> </tr> </table>	<b>AGM</b>	<b>Not less than 95% of the members (ESH) entitled to vote.</b>	<b>EGM</b>	<p><b>Case 1: If the company has a share capital</b></p> <p><b>A. Majority in number of members (ESH) entitled to vote</b> <b>AND</b></p> <p><b>B. who represent 95% of ESC.</b></p>	<b>EGM</b>	<p><b>Case 1: If the company has no share capital</b></p> <p><b>Members holding atleast 95% of the total voting power.</b></p>
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<b>EGM</b>	<p><b>Case 1: If the company has no share capital</b></p> <p><b>Members holding atleast 95% of the total voting power.</b></p>						
Contents of the Notice [Sec. 101(2)]	<p>A valid notice must state:</p> <ol style="list-style-type: none"> <li>1. Time, day, date, place of the meeting.</li> <li>2. Agenda (business) of the meeting.</li> <li>3. Documents accompanying notice: <ol style="list-style-type: none"> <li>(i) AGM ☑ Financial Statement, Auditors Report, Directors Report, Admission Slip, Proxy Form.</li> <li>(ii) EGM ☑ Explanatory Statement, Admission Slip, Proxy Form.</li> </ol> </li> </ol>						
Serving of Notice	<ol style="list-style-type: none"> <li>1. As per Sec. 20 of the Act; notice may be served on any member by: <ol style="list-style-type: none"> <li>(a) Post or registered post or speed post; or</li> <li>(b) Courier; or</li> </ol> </li> </ol>						
	<ol style="list-style-type: none"> <li>(c) Personal delivery; or</li> <li>(d) Electronic mode; or other as prescribed.</li> </ol> <ol style="list-style-type: none"> <li>2. However, if the Articles prescribe the mode of delivery of notice, it should be given accordingly.</li> <li>3. A member may request delivery through a particular mode on payment of fees as determined by the company in its AGM.</li> </ol>						
<p>Vijay, a member of Mayur Electricals Ltd. gave in writing to the company that the notice for any general meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Vijay did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide:</p> <ol style="list-style-type: none"> <li>(i) Whether the contention of Vijay is valid.</li> <li>(ii) Will your answer be the same if Vijay remains in London for two months during the notice of the meeting and the meeting held?(RTP NOV 2020)(MTP April 22)</li> </ol>							

<p><b>Manner of giving Notice</b> [Sec. 101(1)]</p>	<p>The notice shall be given-</p> <ul style="list-style-type: none"> <li>(i) In writing; or</li> <li>(ii) By electronic mode, in manner as per Rule 18.</li> <li>(iii) Oral not allowed</li> </ul>
<p><b>Notice through electronic mode</b> [Rule 18]</p>	<p><b>Meaning of electronic mode</b></p> <p>Any communication sent secured computer programme which is capable of producing confirmation and keeping record of it</p> <p><b>Notice given by e-mail</b></p> <p>Notice may be sent through e-mail as a –</p> <ul style="list-style-type: none"> <li>▪ Text; or attachment to e-mail; or</li> <li>▪ Notification providing electronic link or Uniform Resource Locator for accessing such notice.</li> </ul> <p><b>E-mail to whom?</b></p> <p>Addressed to the person entitled to receive such e-mail-</p> <ul style="list-style-type: none"> <li>(a) As per records of the company; or</li> <li>(b) As provided by the depository.</li> </ul> <p><b>Register and update e-mail</b></p> <p>The company shall provide an advance opportunity atleast once in a F.Y, to the members to register their e-mail addresses and to update their e-mail addresses.</p> <p><b>Download Software</b></p> <p>If notice is sent in the form of a non-editable attachment, such attachment shall be –</p> <ul style="list-style-type: none"> <li>(i) In the Portable Document Format (PDF); or</li> <li>(ii) In a non-editable format together with a ‘link or instructions’ for recipient for downloading relevant version of the software.</li> </ul>

	<p><b>Failure in Transmission</b></p> <p>(i) The company's obligation shall be satisfied when it transmits the e mail.</p> <p>(ii) The company shall not be held responsible for a failure in transmission beyond its control.</p> <p>(iii) 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.</p> <p><b>Notice to be paced on website</b></p> <p>The notice of GM shall be simultaneously placed on-</p> <p>(i) the website of the company, if any; and</p> <p>(ii) such website as may be notified by CG</p>
<p>P Limited had called its Annual General Meeting on 30<sup>th</sup> August 2019. Mr. Pawan has filed a complaint against the company, that he could attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email. In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.(4 Marks) (MTP M 21)</p> <p><b>Hint</b> - In the light of the above provisions of the Act, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Hence, the company has not erred in serving notice of Annual General Meeting to Mr. Pawan.</p>	

1. DBSL convene its 7th AGM on 10th September 2020 at the registered office of the company. Notice for same was served on 21st August 2020. 78% of members gave consent to convening AGM at shorter notice due to ambiguity and possibility of another lockdown starting from 11th September 2020 on account of the second wave of COVID-19. Considering the provision relating to length of Notice for AGM, pick out the right option: (RTP MAY 2021)

- a. Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by all the members entitled to vote at AGM.
- b. Notice served by DBSL is not valid, because notice given within a shorter duration has to be consented to by at-least 95% of members entitled to vote thereat.
- c. Notice served by DBSL is valid because the shorter length has been consented to by 75% of members entitled to vote thereat.

- d. Notice served by DBSL is not valid, because notice given within a shorter length duration needs to be by at least 50% of the members entitled to vote at AGM that too in writing.
2. Annual general meeting need to be called by giving 21 days' clear notice. However it can be called on a shorter notice if members entitled to vote in that meeting give their consent in writing or by electronic mode. In such case, how many members have to give their consents? (MTP MAY 2019)
- 75% of members entitled;
  - 90% of members entitled;
  - 91% of members entitled;
  - 95% of members entitled;
3. The AGM needs to be called by giving 21 days clear notice. However, it can be called on shorter notice if members entitled to vote in that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?
- 75% of members entitled
  - 90% of members entitled
  - 91% of members entitled
  - 95% of members entitled
4. A general meeting of a company can be convened by giving a notice not less than clear days before the date of the meeting.
- 14
  - 21
  - 30
  - 45
5. A general meeting of a company licensed under Section 8 of the Companies Act, 2013 can be convened by giving a notice not less than clear days before the date of the meeting.
- 14
  - 21
  - 30
  - 45
6. The notice of a general meeting of a company can be given:
- Orally
  - In writing or electronically
  - By publishing as an advertisement in the newspaper
  - All of the above
7. The auditor of a company complains that he was not given notice of an ensuing general meeting of the company. The Secretary of the company contends that as no part of the business of that meeting concerned the auditor, no notice was required to be given to him. In view of the provisions of Companies Act, 2013, which of the following statements is correct?
- The notice of general meeting must be given to the Auditor of company, irrespective of the fact that any matter therein concerns him or not.
  - The Secretary of the company is correct and if in the proposed agenda, there is nothing concerning the Auditor, the notice is optional.
  - No notice of general meeting, other than Annual General Meeting, is required to be given to the Auditor of the company.
  - None of the above.

8. In case of shares held jointly by more than one shareholder, the notice of the general meeting shall be given to:
- a. To every joint holder whose name appears in the records of the company.
  - b. To the first joint holder i.e. person whose name appears first as per records of the company.
  - c. To any joint holder which shall be deemed as notice to all.
  - d. None of the above.

### [Sec. 102] - ORDINARY BUSINESS AND SPECIAL BUSINESS

<b>Ordinary Business</b> [Sec. 102]	<ol style="list-style-type: none"> <li>1. <b>At an AGM</b>            Following business shall be ordinary business:           <ol style="list-style-type: none"> <li>(i) Consideration and adoption of Financial Statements, Auditor's Report and Board's Report.</li> <li>(ii) Declaration of Dividend.</li> <li>(iii) Appointment &amp; Removal of directors</li> <li>(iv) Appointment, Reappointment and Removal of auditors and fixing of remuneration of auditors.</li> </ol> </li> <li>2. <b>At EGM</b>            No business is ordinary.</li> </ol>
<p>Referring to the provisions of the Companies Act, 2013 state the matters relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company. (MTP MAY 2017)</p>	
<b>Special Business</b>	<ol style="list-style-type: none"> <li>1. <b>At an AGM</b>            All business except those specified u/s 102(2)(a) shall be deemed as special business.</li> <li>2. <b>At EGM</b>            All business shall be deemed to be special business.</li> <li>3. <b>Explanatory Statement</b>            Explanatory statement shall be annexed to the notice of transacting every item of special business.</li> </ol>
<b>Other point</b>	<p>Ratification at every AGM in case of Appointment of auditor is an ordinary business only.</p>

**In case of Non or insufficient disclosure** In Explanatory statement and any benefit accrues P/D/MGR/KMPs or their relatives and shall compensate the co. to the extent derived by them – Section 102(4)

<p>Contents of explanatory statement [Sec. 102(1)]</p>	<p>Contents of explanatory statement</p> <ol style="list-style-type: none"> <li>1. All <b>material facts</b> concerning each item of business to enable members to take decisions.</li> <li>2. The nature of concern <b>or interest</b> (financial or non-financial) of:             <ol style="list-style-type: none"> <li>(i) Every director and manager;</li> <li>(ii) Every other key managerial person;</li> <li>(iii) Relatives of (i) and (ii) above.</li> </ol> </li> <li>3. If any item of the special business <b>affects any other company</b>, then the <b>extent of shareholding</b> of <b>every director and manager</b> in that company in case their shareholding interest is <b>atleast 2% of the paid up share capital</b> of the other company [Proviso to Sec. 102(2)]</li> <li>4. If special business refers to any document which is to be considered at the GM, <b>the time and place where such document can be inspected</b> shall be specified in the Explanatory Statement. [Sec. 102(3)]</li> </ol>
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**Penalty for contravention of this section - 102(5)**

**Every Promoter/Director/Manager or other KMPs in default shall be punished 50k or 5 times the Amt. of benefit whichever is higher**

1. ABC Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Raj, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?(5 Marks) (MTP Nov 24)  
  
Hint - the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013
2. M. H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail. (RTP May 2015) (MTP NOV 2017)

Hint – Notice invalid as E.S do not specify all material facts regarding special business  
Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

Resolution to increase the Authorised share capital of the company.

Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

3. A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.(NOV 2019)
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.(MAY 2018)

**Conclusion** - Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

1. Which one of the following requires ordinary resolution? (MTP MAY 2020)
  - a. to change the name of the company
  - b. to alter the articles of association
  - c. to reduce the share capital
  - d. to declare dividends.
2. Which of the following is not an ordinary business at the Annual General Meeting of the company:
  - a. Consideration of Financial Statements and the reports of the Board of Directors and Auditors.
  - b. Buy-back of shares
  - c. Declaration of Dividend
  - d. Appointment of Directors
3. Under Section 102(1) of Companies Act, 2013, where any item of special business relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager, KMP is required to be disclosed, if the extent of such shareholding is:
  - a. Not less than 2% of the Paid-up share capital of that other company.
  - b. Not less than 5% of the Paid-up share capital of that other company.
  - c. Not less than 10% of the Paid-up share capital of that other company.
  - d. Not less than 20% of the Paid-up share capital of that other company

**[Sec. 103] - QUORUM FOR MEETINGS**

<b>Meaning</b>	<p>minimum number of members who must be present in order to constitute a valid meeting.</p> <div style="border: 2px solid black; padding: 10px; text-align: center; background-color: #003366; color: white; margin: 10px auto; width: fit-content;"> <b>No. of minimum members to be present to constitute a valid meeting WHO ARE ENTITLED TO VOTE</b> </div>								
<b>Quorum Required</b> <b>[Sec. 103(1)]</b>	<p>(i) <b>Private Company:</b> 2 members shall be personally present as quorum.</p> <p>(ii) <b>Public Company:</b></p> <table border="1" data-bbox="586 827 1534 1066" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #008000; color: white;"> <th style="text-align: center;">No. of members as on the date of meeting</th> <th style="text-align: center;">Required quorum</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Upto 1,000</td> <td style="text-align: center;">5 members personally present</td> </tr> <tr> <td style="text-align: center;">More than 1000 but upto 5000</td> <td style="text-align: center;">15 members personally present</td> </tr> <tr> <td style="text-align: center;">Exceeds 5000</td> <td style="text-align: center;">30 members personally present</td> </tr> </tbody> </table> <p>However, articles may provide for larger numbers as the quorum in both private and public company.</p>	No. of members as on the date of meeting	Required quorum	Upto 1,000	5 members personally present	More than 1000 but upto 5000	15 members personally present	Exceeds 5000	30 members personally present
No. of members as on the date of meeting	Required quorum								
Upto 1,000	5 members personally present								
More than 1000 but upto 5000	15 members personally present								
Exceeds 5000	30 members personally present								
<b>Counting of Quorum</b>	<p><b>The following shall be counted as quorum:</b></p> <ol style="list-style-type: none"> <li>1. Members personally present.</li> <li>2. Representative of: <ol style="list-style-type: none"> <li>(a) President</li> <li>(b) Governor of States</li> <li>(c) Body corporate</li> <li>(d) A donee of a power of attorney.</li> </ol> </li> <li>3. Person in more than one capacity is counted as such for quorum. One person can be an authorized representative of more than one body corporate. In such a case, he is treated as more than one member for the purpose of quorum.</li> <li>4. Joint members are considered as one member for counting as quorum.</li> </ol> <p><b>The following shall not be counted as quorum:</b></p> <ol style="list-style-type: none"> <li>1. Proxy is not counted as quorum.</li> <li>2. Preference shareholders are not counted for quorum except for business which affects their rights.</li> </ol>								

Discussed later also:

**Section 112 – Representations of President of India and Governor of a State**

These people can appoint such person as their representatives at GM and can exercise same rights and powers.

**Section 113 – Representations of Corporations (Applicable to Foreign cos as well)**

By a BR they can also appoint and shall exercise same rights and powers.

1. The Articles of Association of Ajad Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:
  - (i) A, the representative of Governor of Uttar Pradesh.
  - (ii) B and C, shareholders of preference shares,
  - (iii) D, representing Y Ltd. and Z Ltd.
  - (iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting? (RTP MAY 2020) (MTP Sep. 22)

2. Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India. Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting? (MAY 2019)
 

Hint - In the instant case, the quorum for the public company will be 5 members personally present.

3. The Annual General Meeting of KMP Limited was held on 30<sup>th</sup> April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman's decision. (MAY 2015)
 

Hint - In the instant case, KMP Limited is a public company with total number of 2750 members, hence at least 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting. Decision of chairman valid

<p><b>If No Quorum Present [Sec. 103(2)]</b></p>	<p>If the quorum is not present within half-an-hour from the time decided for holding a meeting of the company, then:</p> <ul style="list-style-type: none"> <li>(i) The EGM, if called by requisitionists u/s 100; the meeting shall stand cancelled.</li> <li>(ii) In other cases; <ul style="list-style-type: none"> <li>(a) The meeting shall adjourn to such day, time and place as may be determined by the Board.</li> <li>(b) However, if it is not determined by the Board, the meeting shall automatically adjourn to same day, time and place in the next week.</li> <li>(c) Atleast 3 days' notice of adjourned meeting shall be given to the members either individually or by publishing in advertisement in 2 newspapers (1 in English and 1 in vernacular language).</li> <li>(d) If at the adjourned meeting also, quorum is not present; members present will form the quorum.</li> </ul> </li> </ul> <p><b>Rule:</b> But there should be at least 2 members; hence, quorum of a meeting cannot be 1 member.</p> <p>However, there are exceptions to the above rule:</p> <ul style="list-style-type: none"> <li>(a) Where 1 person holds all the shares of a particular class, he alone can constitute a meeting of that class.</li> <li>(b) Where the meeting is called by an order of Tribunal u/s 97 or 98, it may direct that 1 member present in person or by proxy shall constitute a valid meeting.</li> </ul>
<p><b><u>Lack of Quorum (Quorum shall be present within half an hour) -</u></b></p> <ul style="list-style-type: none"> <li>• If meeting adjourned was u/s 100 i.e EGM then it stands cancelled.</li> <li>• Meeting shall be adjourned to such DTP as decided or if not then same DTP next week.</li> <li>• Minimum 3 days notice of adjourned meeting to be given to all members.</li> <li>• If at adjourned also members not present then present members will be considered as quorum (&gt;1) except in case of class meeting where only one person holds all the shares and when Tribunal calls for the meeting under 97 &amp; 98.</li> </ul>	

1. **KMN Ltd. scheduled its annual general meeting to be held on 11<sup>th</sup> March, 2018 at 11:00 A.M. The company has 900 members. On 11<sup>th</sup> March, 2018 following persons were present by 11:30 A.M.**

1 P1, P2 & P3 shareholders

2 P4 representing ABC Ltd.

3 P5 representing DEF Ltd.

4 P6 & P7 as proxies of the shareholders

**(a) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.**

**(b) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?**

**(c) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.**

**(d) What happens if there is no Quorum in the Adjourned meeting?(NOV 2018)**

**Hint –**

(i) quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

(ii) Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

(iii) In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

(iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

2. **PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11 :00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place.**

**On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.**

**What would be your answer in the above case, if PQ Limited is a Private company?(Nov 2020)**

**Hint -** In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103.

Hence, the AGM conducted by PQ Limited after adjournment is valid.

As per the provisions of section 103(1)(b), in case of a private company, two members personally present, shall be quorum for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

3. **Examine the validity -The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company. (RTP NOV 2018) (4 Marks) (MTP M 21)**

**Hint** - if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

**Other Important Points**

1. If all the members are present, it is immaterial that the quorum required is more than the total number of members.
2. Quorum must be present throughout the meeting and not just at the time of commencement.
3. The quorum is required even if some members have already cast their votes through E-voting facility; such members shall have right to attend the GM and shall be counted for quorum.

**Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:**

- (a) **Quorum for the general meeting if the company has 800 members.**
- (b) **Quorum for the general meeting if the company has 6500 members.**
- (c) **Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.**

**(April 22) (5 Marks)**

**Hint - Thus,**

- (a) If the company has 800 members, quorum shall be 5 members personally present.
- (b) If the company has 6500 members, quorum shall be 30 members personally present.
- (c) If the company has 5500 members, quorum shall be 30 members personally present.

However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

1. Red Flag Ltd., which has its registered office at Delhi and having 12500 members is holding its Annual General Meeting in Ashoka Hotel. Despite swanky arrangements most of the members did not turn up and quorum was not present within half an hour of the schedule time of the meeting, as a result meeting was adjourned. However, due to heavy booking schedule, hotel authorities could not make available, for adjourned meeting, sufficient space in the same hall where meeting was originally called but allowed conduct of meeting in a different hall on a different floor next week at same time. Please advise the option available to board: (RTP NOV 2020) (Nov 23)
  - a. The meeting stands adjourned automatically to the same place and time next week as per provisions of law. There is no alternate but to hold meeting in the same hall.
  - b. As same banquet hall is not available meeting can be held at different place as may be decided appropriate by the Board.
  - c. As the same hall is not available to conduct meeting after one week, a fresh notice of 21 days is needed for a different location.
  - d. As the same hall is not available to conduct the meeting, the company needs to conduct meeting electronically through internet and give sufficient notice to shareholders.
  
2. The Articles of ABC Ltd. having 998 members, provide that the quorum for its general meeting shall be 7 members personally present. With regard to provisions of Companies Act, 2013, decide what will be the quorum for its general meeting.
  - a. Five members personally present.
  - b. Seven members personally present.
  - c. Two members personally present.
  - d. Whatever number of members greater than two that are present at the meeting.
  
3. According to the Register of Members of ABC Ltd., it has 998 members. In the general meeting of the company, four members are personally present and three proxies are present on behalf of other members. Which of the following statement is correct?
  - a. The quorum of company which has not more than 1000 members as on the date of meeting is 5 members. Since there are seven members present either in person or by proxy, the quorum is complete for the general meeting.
  - b. The quorum of company which has not more than 1000 members as on the date of meeting is 5 members personally present. Since there are only four members present in person, the quorum for the general meeting is not there.
  - c. The quorum of company which has not more than 1000 members as on the date of meeting is 2 members personally present. Since there are four members present in person, the quorum is complete for the general meeting.
  - d. None of the above.
  
4. The Articles of Association of X Ltd. require the personal presence of seven members to constitute quorum of general meetings. At an EGM called by the company, the following persons were present at the time of commencement of the meeting:
  1. Mr. G, being representative of Governor of Punjab.

2. Mr. A and Mr. B, preference shareholders
3. Mr. L and Mr. M, equity shareholders
4. Mr. R, representing 3 member companies P Ltd., Q Pvt. Ltd. and R Ltd.  
Mr. E, Mr. F, Mr. G and Mr. H, who were proxies of shareholders. Which of the following statement is correct in respect of the quorum at the EGM?
  - a. Number of members personally present are six. Therefore, the quorum is not complete.
  - b. Number of members personally present are eight. Therefore, the quorum is complete.
  - c. Number of members personally present are 10. Therefore, the quorum is complete.
  - d. Number of members personally present are 12. Therefore, the quorum is complete.
5. In which of the following case(s), a single member present can constitute valid meeting:
  - a. Where one person who holds all the shares of a particular class, is present at the Class meeting.
  - b. Annual General Meeting convened as per directions of Tribunal under Section 97, if it directs that one member can constitute valid meeting.
  - c. Extraordinary General Meeting convened as per directions of Tribunal under Section 98, if it directs that one member can constitute valid meeting.
  - d. All of the above.
6. If the quorum is not present within half an hour from the time appointed for holding a general meeting of the company (other than that called by requisitionists under Section 100), the meeting:
  - a. Shall stand adjourned to the same day in the next week at the same time and place, or such other date and such other time and place as the Board may determine.
  - b. Shall stand cancelled.
  - c. Shall stand postponed indefinitely.
  - d. None of the above.

### [Sec. 104] - CHAIRMAN OF MEETINGS

Who is Chairman?	'Chairman' is the person who has been <b>designated or elected to preside over</b> and conduct the proceedings of a meeting.
Election of Chairman by members [Sec. 104(1)]	If the articles do not provide manner of election of the Chairman, the members personally present at the meeting shall elect one of themselves to be the Chairman by <b>show of hands</b> .
Demand of poll [Sec. 104(2)]	If a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman until some other person is elected as Chairman as a result of poll.

<p><b>Table F of Schedule I (Regulation 45, 46, 47) (If Company adopts Table F)</b></p>	<ul style="list-style-type: none"> <li>• If the BOD have appointed a Chairperson, that Chairperson, if present, will preside as Chairperson of the meeting.</li> <li>• If there is no such Chairperson, or is not present within 15 minutes after the time fixed for holding meeting, or is unwilling to act as chairperson; the directors present shall elect one of themselves as Chairperson of the meeting.</li> <li>• If at any meeting, no directors is willing to act as Chairperson or if no director is present within 15 minutes after the time fixed for holding the meeting, the members present shall choose one of themselves as chairperson.</li> </ul>
<p><b>Casting Vote</b></p>	<p>It means that in event of equality of vote ( tie ) on a particular business being transacted at the meeting, the Chairman shall have a right to cast a vote.</p>
<p><b>Powers and Duties of Chairman</b></p>	<ol style="list-style-type: none"> <li>1. To maintain order and decorum of the meeting.</li> <li>2. Execute the minutes of the meeting, post meeting. To ensure that the meeting is properly convened and constituted (required quorum is present).</li> <li>3. To adjourn the meeting.</li> <li>4. To declare the result of voting by show of hands.</li> <li>5. To appoint scrutinizers to scrutinize the votes given on the poll and to report to him.</li> <li>6. To see that the proceedings of the meeting are conducted according to rules and the business is discussed in order set out in agenda.</li> </ol>
<p><b>Chairman of Adjourned Meeting</b></p>	<ol style="list-style-type: none"> <li>1. The Chairman of the original meeting should be the Chairman of the adjourned meeting, since an adjourned meeting is a continuation of the original meeting.</li> <li>2. However, if such chairperson is unable or unwilling to act or is validly removed at the meeting, the procedure of election of Chairperson should be followed to elect a new Chairman to preside at the adjourned meeting.</li> </ol>

## [Sec. 105] - PROXIES

<p><b>Meaning</b></p>	<ul style="list-style-type: none"> <li>• A person who is appointed by a member to represent themselves to attend the meeting and vote on their behalf.</li> <li>• A proxy is an agent of person appointing him.</li> <li>• The form in which proxy is appointed is called as proxy form.</li> </ul>	
<p><b>Who can appoint a proxy?</b> [Sec. 105(1)]</p>	<p>Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether member or not) as his proxy to attend and vote on his behalf.</p>	
<p><b>Who can be appointed as proxy?</b> [Rule 19]</p>	<ol style="list-style-type: none"> <li>1. Any person member or non-member can be appointed as a proxy. However, in case of a Section 8 Company, a member cannot appoint a non-member as a proxy.</li> <li>2. A person can act as proxy on behalf of member-             <ol style="list-style-type: none"> <li>(i) <b>Not exceeding 50;</b></li> <li>(ii) Holding in the aggregate not more than <b>10%</b> of the total <b>share capital</b> of the company <b>carrying voting rights</b>.</li> </ol> </li> </ol> <p>Note - However, a member holding more than 10% of the total share capital of the company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.</p>	
<p><b>Proxy Form</b></p>	<p><b>Time to Deposit</b> [Sec.105(4)]</p>	<ol style="list-style-type: none"> <li>(i) The instrument appointing proxy needs to be deposited with the company at least 48 hours before the meeting.</li> <li>(ii) Articles may specify lesser period but not more than 48 hours.</li> <li>(iii) If articles specify more than 48 hours, it shall have effect as if a period of 48 hours had been specified.</li> </ol>
	<p><b>Inspection</b> [Sec. 105(8)]</p>	<ol style="list-style-type: none"> <li>(i) Any member can inspect the proxy form; at any time during the business hours.</li> <li>(ii) However, at least <b>3 days notice</b> in writing to inspect must be given to the company.</li> <li>(iii) Inspection can be done during the period <b>beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.</b></li> </ol>
	<p><b>Requirements of Proxy form</b></p>	<ol style="list-style-type: none"> <li>1. Company can send its own proxy form or can straightaway use Form No. MGT-11.</li> <li>2. Same applies to person appointing proxy form</li> </ol>

	Rights of proxy	<ol style="list-style-type: none"> <li>1. A proxy has the right to attend the meeting.</li> <li>2. A proxy has the right to vote on poll.</li> <li>3. A proxy, if eligible u/s 109, has the right to demand a poll.</li> </ol>
	Limitations of a proxy	<ol style="list-style-type: none"> <li>1. A proxy has no right to speak at the meeting.</li> <li>2. A proxy cannot vote on a show of hands.</li> <li>3. A proxy is not counted for the purpose of quorum.</li> <li>4. A proxy cannot appoint another person as his proxy.</li> </ol>

Refer the concept clarity sheet at the end of the chapter on Section 105 – Proxies

Other Imp Points regarding Proxy :

1. The proxy can be revoked by the member at any time.
2. If after appointment of proxy, the member himself attends the GM, it is automatic revocation of proxy.
3. Once the proxy has voted, it cannot be revoked; the member cannot recast his vote.
4. In case of joint holders, holder whose name is first in the register of members should sign proxy form.
5. Proxy will be valid for original meeting as well as adjourned meeting.
6. If more than one proxy is appointed by the same member, the proxy received later in time shall be considered provided it has been duly received by the company 48 hours before the meeting.

1. A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a 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 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. 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 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, 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? (RTP MAY 2021) (MTP MAY 2019) (May 23) (MTP Dec 24)

Hint - Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

2. Sekhar, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)?(MTP MAY 2017)

Hint - In the given case, Sekhar has given proper notice. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sekhar can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

1. A proxy appointed by a member of the company shall not have:
  - a. Right to speak at a meeting.
  - b. Right to vote except on a poll.
  - c. Both (a) and (b)
  - d. None of the above.
2. With regard to the provisions of Companies Act, 2013, which of the following statement is correct:
  - a. A member who has already cast his vote through remote E-Voting may appoint a proxy to attend the meeting instead of himself, but such proxy will not be able to cast his vote at the meeting.
  - b. A member who has already cast his vote through remote E-Voting cannot appoint a proxy to attend and vote at the meeting.
  - c. A member who has already cast his vote through remote E-Voting may appoint a proxy to attend the meeting instead of himself, and such proxy can cast his vote at the meeting.
  - d. None of the above.
3. Mr. P was duly appointed as proxy by Mr. M, a member of XYZ Ltd, to attend the AGM and vote on his behalf. Mr. M died and Mr. P attended and voted in a poll at the AGM. Decide which of the following statement is correct with regard to the vote cast by Mr P.
  - a. If the company becomes aware of the death of Mr. M before the meeting, the proxy stands cancelled.
  - b. The vote cast by Mr. P shall be valid, if the company has no notice of death of Mr. M.
  - c. Both (a) and (b).
  - d. None of the above.
4. A person can act as proxy on behalf of members not exceeding and holding in the aggregate not more than of the total share capital of the company carrying voting rights.
  - a. 10,0%
  - b. 50, 5%
  - c. 20, 20%
  - d. 50, 10%
5. A member holding more than of the total share capital of the company carrying voting rights may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder.
 

a. 5%	b. 10%
c. 20%	d. 50%

6. A member of shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company
- Government Company
  - Unlimited Company
  - Section 8 Company
  - Private Company
7. A member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled to inspect the proxies received by the company, provided he gives notice to the company in writing of the intention so to inspect, minimum days before the meeting.
- 3
  - 5
  - 7
  - 10
8. The inspection of proxies lodged can be made at any time during the business hours of the company, during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with:
- 12 hours before the meeting.
  - The commencement of the meeting.
  - The conclusion of the meeting.
  - 24 hours after the conclusion of the meeting.
9. Mr. M after, appointing Mr. P as proxy, himself attends the AGM of ABC Ltd. Decide which of the following statement is correct.
- Both Mr. M and Mr. P can attend and vote at the meeting.
  - Only Mr. M can vote in person and the proxy stands revoked.
  - Both Mr. M and Mr. P can attend but only Mr. P, the proxy can vote at the meeting.
  - None of the above.

<b>VOTING [Sec. 106-109]</b>	
<b>Meaning</b>	Voting is a method by which the meeting decides whether it approves or disapproves the resolution.
<b>Types of voting</b>	<div style="background-color: #ffffcc; padding: 10px; border: 1px solid #ccc; border-radius: 10px; text-align: center;"> <input type="checkbox"/> <b>Voting by Show of Hands (Sec. 107)</b>  <input type="checkbox"/> <b>Voting by Electronic means (Sec. 108)</b>  <input type="checkbox"/> <b>Voting by Demand of Poll (Sec. 109)</b>  <input type="checkbox"/> <b>Voting by Postal Ballot (Sec. 110)</b> </div>

## [Sec. 106] - RESTRICTION ON VOTING RIGHTS

Provision in Articles	An express provision in the articles is required to restrict the voting rights of members.
Grounds for imposing restrictions	A company may restrict the voting rights of members if : [Sec. 106(1)] <b>(i)</b> Calls on shares or any other sums payable by the member have not been paid. <b>(ii)</b> The company has exercised any right of lien on shares.
Other imp Points	<ul style="list-style-type: none"> <li>• A company shall not restrict the voting right of any member on any other ground. [Sec. 106(2)]</li> <li>• If there is no provision contained in the articles, then a member cannot be prevented from voting, even though, calls or other sums remain unpayable to the company or the company has exercised right of lien on such shares.</li> </ul>

Section	Voting Methods	Vote count
107	Voting by Show of Hands	1 member = 1 vote
108	Voting through Electronic Means	1 share = 1 vote
109	Demand for Poll	1 share = 1 vote
110	Postal Ballot	1 share = 1 vote

1. Mr. John held certain partly paid up shares of Ltd. company. 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. John contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of John is valid. (RTP May 2015) (MTP NOV 2017)

Hint - In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. John's contention is not valid.

2. '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. (NOV 2018)

Conclusion - In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members. On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

3. 'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013. (RTP Nov. 22)

Hint - 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

Explain the provisions of e-voting in an Annual General Meeting (AGM) in the following cases as per the Companies Act, 2013:

4. 'A' and his wife 'B' has joint Demat Account in Brown Investment Limited. In such a case, who will cast the vote in e-voting system?

If an AGM is going to be held on 7<sup>th</sup> September, 2023, what will be the e-voting period and the time of closing? (4 Marks) (MTP Oct. 23)

Hint – Thus, in the given case, 'A' or his wife 'B', whosoever names appear first in chronological order in the register of members/ shareholders shall be entitled to vote.

Thus, if the Annual General Meeting is going to be held on 7<sup>th</sup> September 2023, the facility for remote e- voting shall open on 4<sup>th</sup> September 2023 and close at 5.00 p.m. on 6<sup>th</sup> September 2023.

1. A company by its Articles may provide that no member shall exercise any voting right in respect of any shares registered in his name.
  - a. On which any calls or other sums presently payable by him have not been paid.
  - b. In regard to which the company has exercised any right of lien.
  - c. Both (a) and (b).
  - d. None of the above.
  
2. Mr. S, a member of KKR & Co. Ltd., holding shares in his own name on which final call money has not been paid is denied voting right at a general meeting. The Articles of the company are silent about this matter.

With regard to the provisions of the Companies Act, 2013, decide what is correct position of law?

- a. Section 106 of Companies Act, 2013 provides that a member can be prohibited from exercising his voting rights if his calls are in arrears.
- b. If the Articles of company do not provide for restriction of voting rights on shares on which calls etc. are not paid, the company cannot prohibit any member from exercising his voting right.
- c. The Board of Directors of company can impose any restriction on voting rights of any member.
- d. The voting rights of a member cannot be restricted in any case.

3. Mr. A, a member of XYZ Ltd., who purchased and registered the shares of company few weeks before its AGM, is denied voting right at the meeting on the grounds that company's Articles prohibit a member from voting if he has not held the shares for minimum 3 months. With regard to the provisions of the Companies Act, 2013, decide what is correct position of law?
- a. A company cannot by its Articles, prohibit any member from exercising his voting right on any ground except

- if his calls/other sum due is in arrears or if the shares are under lien.
- b. A company can by its Articles provide for grounds on which a member can be prohibited from exercising his voting rights.
- c. The Board of Directors of company can impose any restriction on voting rights of any member.
- d. The voting rights of a member cannot be restricted in any case.

### [Sec. 107] - VOTING BY SHOW OF HANDS

<b>Basics</b>	At a GM, a resolution shall be passed by show of hands, unless: (a) A poll is demanded u/s 109; or (b) Voting is carried out electronically u/s 108.
<b>Other imp Points</b>	<ul style="list-style-type: none"> <li>● Proxy cannot vote by show of hand</li> <li>● Here every member present in person shall have 1 vote; and [1 member = 1 vote]</li> </ul>

### [Sec. 108] - VOTING BY ELECTRONIC MEANS (READ WITH RULE 20)

<b>Applicability</b>	<p>The prescribed classes of companies for this purpose, are: [Rule 20(2)]</p> <p>(i) Every listed company. (ii) All companies having members <math>\geq 1000</math>.</p> <p><b>Exception:</b></p> <p>A Nidhi or an enterprise or institutional investor referred in SEBI Regulations, 2009 is not required to provide the facility to vote by electronic means.</p>
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<p><b>Notice of the meeting</b></p>	<p><b>Contents of Notice:</b> The notice of the meeting shall clearly state:</p> <ul style="list-style-type: none"> <li>(a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;</li> <li>(b) that 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;</li> <li>(c) that 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;</li> </ul> <p><b>Additional content of notice:</b> The notice shall indicate:</p> <ul style="list-style-type: none"> <li>(a) the process and manner for voting</li> <li>(b) time period during which the votes may be cast by remote e-voting;</li> <li>(c) details about the login ID;</li> <li>(d) process and manner for generating or receiving the password and for casting of vote in a secure manner.</li> </ul>
<p><b>Display of Notice on website</b></p>	<p>The notice shall also be placed on the website, if any, of the company and of the agency immediately after it is sent to the members.</p>
<p><b>Advertisement</b></p>	<ol style="list-style-type: none"> <li>1. The company shall issue public notice by way of an advertisement on completion of dispatch of notices, but <b>at least 21 days before the date of GM.</b></li> <li>2. The advertisement shall be published in following manner: <ul style="list-style-type: none"> <li>(i) At least once in a vernacular newspaper of the district in which the registered office is situated, and having a wide circulation in that district; and</li> <li>(ii) At least once in English newspaper having country wide circulation.</li> </ul> </li> <li>3. The advertisement shall contain all details of E-voting</li> </ol>
<p><b>Voting Rules</b></p>	<ul style="list-style-type: none"> <li>(i) The facility for remote e-voting shall remain <b>open for at least 3 days.</b></li> <li>(ii) The facility shall <b>close at 5.00 pm</b> on the date preceding the date of the GM.</li> <li>(iii) Once voted , it cannot be changed</li> </ul>

Scrutinizer	<p>I. <b>Appointment of Scrutinizer</b> : Appointed by BOD</p> <p>II. <b>Who can be appointed:</b></p> <p>(a) CA in practice; or</p> <p>(b) Cost Accountant in practice; or</p> <p>(c) Company Secretary in practice; or</p> <p>(d) An Advocate; or</p> <p>(e) Other person not in employment of the company, authorised by the Board.</p> <p>III. <b>Duties and Rights of Scrutinizer:</b></p> <p>1. count the votes</p> <p>2. Unlock the in the presence of at least 2 witnesses not in the employment of the company.</p> <p>3. make a consolidated scrutinizer's report to the Chairman within 3 days of conclusion of the GM.</p>
Declaration of Result	<p>1. The Chairman shall declare the result of the voting.</p> <p>2. 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.</p> <p>3. 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.</p> <p>4. In case of listed companies, the company shall, simultaneously, forward the results to the concerned stock exchange and such stock exchange shall place the results on its website.</p> <p>5. A resolution proposed to be considered through voting by electronic means shall not be withdrawn.</p>
Other imp points	Quorum should be present in the Physical GM otherwise e-votes will be lost.
<b>Refer the concept clarity sheet at the end of the chapter on Sections 108 - Voting by electronic means</b>	
<p>1. Explain the concept of 'electronic voting system' as provided by the Companies Act, 2013. (4 Marks) (May 2015)</p> <p>2. If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy?(MAY 2019)</p> <p><b>Conclusion</b> - In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.</p>	

## [Sec. 109] - VOTING BY DEMAND OF POLL

<p><b>When Poll can be demanded?</b></p> <p>[Sec. 109(1)]</p>	<p>Poll can be demanded at any time before or on the declaration of the result of the voting on any resolution on show of hands.</p>		
<p><b>Who can Demand Poll?</b></p> <p>[Sec. 109(1)]</p>	<p>Poll can be demand by:</p> <p>(i) Chairman – Suo moto; or</p> <p>(ii) On Request of Required number of members:</p>		
	<p><b>Company has a in share capital</b></p>	<p><b>Demand shall be made by members present person or by proxy</b></p>	
	<p>YES</p>	<p>➤ Members having 1/10th of the total voting power or</p> <p>➤ Members holding shares of Rs 5,00,000 PUSC.</p>	
<p>NO</p>	<p>➤ Members having 1/10 of the total voting power.</p>		
<p><b>Withdrawal of Poll</b></p>	<p>The demand for a poll may be withdrawn at any time before declaration of results by Poll.</p>		
<p><b>Time for taking Poll</b></p>	<p><b>Case 1</b></p>	<p>If Poll is demanded for: -</p> <p>a) Adjournment of GM</p> <p>b) Election of Chairperson</p>	<p>Forthwith (immediately)</p>
	<p><b>Case 2</b></p>	<p>Poll for any other matters</p>	<p>48 Hours</p>
<p><b>Process or Procedure in case of Poll</b></p> <p>[Rule 21]</p>	<p><b>Appointment of Scrutinizers</b></p>	<p>The Chairman shall appoint scrutinizer to report on result on poll. [Sec. 109(5)]</p>	
	<p><b>Distribution of Polling Papers</b></p>	<ul style="list-style-type: none"> <li>The scrutinizers shall arrange for polling papers and distribute them to the members and proxies present at the meeting.</li> <li>The polling papers shall be in <b>Form MGT-12</b>.</li> </ul>	
	<p><b>Counting of vote and Scrutinizer's Report</b></p>	<ul style="list-style-type: none"> <li>The scrutinizer shall count the votes cast on poll and prepare a report on it, addressed to the Chairman, in the <b>Form No. MGT-13</b>.</li> <li>The report shall be submitted by them to the Chairman <b>within 7 days</b> from the date the poll is taken.</li> </ul>	

1. (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll. (MTP Nov 24)
- Hint - In the given question, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. Hence, the contention of the Chairman is not valid.
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. (RTP May 2016) (RTP NOV 2018) (MTP NOV 2017) (MTP MAY 2020)

## [Sec. 110] - VOTING BY POSTAL BALLOT

Read with Rule 22 of Companies (Management & Administration) Rules, 2014.

<b>Meaning of Postal Ballot</b> [Sec. 2(65)]	Postal Ballot means voting by post or through any electronic mode.	
<b>Applicability of Postal Ballot</b>	Following companies are <b>not required</b> to transact any business through postal ballot: <ul style="list-style-type: none"> <li>(i) One Person Company;</li> <li>(ii) All other companies having members upto 200.</li> </ul>	
<b>Businesses Mandatorily transacted through Postal Ballot</b> [Rule 22]	The following businesses shall be transacted <b>only</b> by means of voting through a postal ballot: [Mnemonic – A <sup>2</sup> B C <sup>2</sup> D E F G]	
	<b>A</b>	Alteration of the Object Clause of MOA.
	<b>A</b>	Alteration of articles for insertion or removal of provisions defining a private company.
	<b>B</b>	Buy-back of own shares by the company.
	<b>C</b>	Change in place of registered office outside the local limits of any city, town or village.
	<b>C</b>	Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of money so raised.
<b>D</b>	Issue of shares with (DVR) differential rights as to voting or dividend or otherwise.	

	<b>E</b>	Election of a small shareholders' director u/s 151.
	<b>F</b>	For variation in the rights attached to shares or debentures or other securities.
	<b>G</b>	Giving loans; or extending guarantees or providing security in excess of the limits specified u/s 186(3).
<b>Procedure for Postal Ballot [Rule 22]</b>		<ol style="list-style-type: none"> <li>1. The Board shall appoint a scrutinizer.</li> <li>2. The Board shall pass BR for postal ballot.</li> <li>3. The company shall send a notice to all the shareholder along with a draft resolution and requesting them to send their assent or dissent, <b>within period of 30 days</b> from the date dispatch of notice.</li> <li>4. The scrutinizer shall submit his report as soon as possible but not later than 7 days.</li> </ol> <p><b>Note:</b> The other provisions as to notice, advertisement, Register and its custody with scrutinizer as u/s 108, shall apply mutatis mutandis to section 110/Rule 22.</p>
<b>Declaration of Result</b>		<ul style="list-style-type: none"> <li>• The result of postal ballot along with scrutinizer's report shall be placed on website of the company.</li> <li>• The resolution if assented by the requisite majority by means of postal ballot, it shall be deemed to have been duly passed at GM convened in that behalf.</li> </ul>
<b>Refer the concept clarity sheet at the end of the chapter on Sec. 110 – Voting by Postal Ballot</b>		
<ol style="list-style-type: none"> <li>1. SV Technologies Limited is proposing to convene a General Meeting of its members. Briefly explain the provision of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the general meeting through "postal ballot". (8 Marks) (Nov 2016)</li> <li>2. XYZ Energy Ltd. Set up with the object of setting up a windmill project, raised money from public through prospectus and still has unutilized amount out of the money raised. XYZ Energy Ltd. Proposes to be obtained by passing a special resolution by Postal ballot. Explain the procedure to be followed for transacting the business of the general meeting of members of a company through postal ballot of passing special resolution. (8 Marks) (Nov 2018 )</li> <li>3. SV Technologies Limited is proposing to convene a General Meeting of its members. Explain briefly the provision of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the general meeting through "postal ballot".(NOV 2016)</li> </ol>		

1. Decide which of the following statement is correct in respect of any member who has participated in electronic voting.
  - a. A member may participate in the general meeting even after voting electronically but shall not be allowed to vote again.
  - b. A member after voting electronically shall not be allowed to participate and vote in the general meeting.
  - c. A member may participate in the general meeting even after voting electronically and can be allowed to vote again.
  - d. None of the above.
2. A Chairman of a general meeting may order a poll:
  - a. On his own motion.
  - b. On demand made in that behalf by members present in person or proxy, having not less than 10% of the total voting power.
    - c. On demand made in that behalf by members present in person or proxy, holding shares on which not less than narrow- in aggregate is paid-up.
    - d. Either of above.
3. The demand for poll made at a general meeting can be withdrawn at any time by:
  - a. The persons who made it.
  - b. The Chairman of the meeting.
  - c. The members present at the meeting.
  - d. None of the above — a demand for poll cannot be withdrawn.
4. A company may transact any business by means of postal ballot, except:
  - a. Any item of ordinary business.
  - b. Any business in respect of which directors or auditors have a right to be heard at any meeting.
  - c. Both (a) and (b)
  - d. None of the above.

### [Sec. 111] - CIRCULATION OF MEMBERS' RESOLUTION

Number of members needed	A company shall be bound to act on the requisition of such number of members as are <b>eligible to call an EGM u/s 100</b> : [1/10th of ESC or VP]
Rights of Requisitionists [Sec.111(1)]	Members may requisition u/s 111 to: <ol style="list-style-type: none"> <li>(i) Include a business and move such resolution at the GM.</li> <li>(ii) Circulate to members any statement w.r.t. matters referred to in proposed resolution or business to be dealt with at that meeting.</li> </ol>
Time limit	<ol style="list-style-type: none"> <li>a) A copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company—               <ol style="list-style-type: none"> <li>(i) in the case of a requisition requiring notice of a resolution, <b>at least 6 weeks</b> before the meeting;</li> <li>(ii) in the case of any other requisition, <b>at least 2 weeks</b> before the meeting</li> </ol> </li> </ol>

Exception from circulation of any statement	<p>(i) The company shall not be bound to circulate any statement, if CG on application by company or person aggrieved; is satisfied that rights u/s 111 are abused.</p> <p>(ii) CG may also order that the requisitioner shall pay to the company the cost incurred by the company in making application to CG.</p>
Refer the concept clarity sheet at the end of the chapter on Section 111 - Circulation of Member's Resolution	

### [Sec. 112 & 113] - TO ACT AS A REPRESENTATION OF THE PRESIDENT & GOVERNOR AND FOR BODY CORPORATES

President & Governor [Sec. 112]	Representative of The President of India or the Governor of a State shall be deemed to be a member of such company and shall be entitled to exercise the same rights and powers including the right to vote by proxy and by postal ballot, as the President or Governor could exercise as a member of the company.
Body Corporates [Sec. 113]	<b>REPRESENTATIVE</b> shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

### [Sec. 114] - ORDINARY & SPECIAL RESOLUTION

Basic Requirements	<ol style="list-style-type: none"> <li>1. The notice required under this Act has been duly given</li> <li>2. The votes may be cast by a show of hands, or electronically or on a poll, or by postal ballot and include the casting vote, if any, of the Chairman.</li> </ol>
Ordinary Resolution [Sec. 114(1)]	The votes cast in favour of the resolution, are required to exceed the votes cast against the resolution. (VF > VA )
Special Resolution [Sec. 114(2)]	The votes cast in favour of the resolution, are required to be at least 3 times the number of votes cast against the resolution.

### Characteristics of Special Resolution

1. Specified Majority - 3 times of the number of votes cast against
2. Resolution shall be set out in the notice
3. Proper notice of 21 days is given for holding the general meeting
4. Explanatory Statement should be annexed to the notice for conducting special business

Counting of Votes	The votes will be counted only of members present, whose votes are valid and are not abstained to vote.		
Resolution	Formula 1	Formula 2	Percentage
Ordinary Resolution	$VF > VA$	$VF > \frac{1}{2}$ of Total Votes	$> 50\%$
Special Resolution	$VF \geq 3VA$	$VF \geq \frac{3}{4}$ of Total Votes	$\geq 75\%$
<b>Section 114 - OR and SR</b>			
<ul style="list-style-type: none"> <li>❖ <b>BASIC CONDITION</b> for both – Proper notice (Clear 21 days) of GM has been duly given.</li> <li>❖ <b>OR</b> = Majority i.e. favour ones are <math>&gt;</math> against ones.</li> <li>❖ <b>SR(2)</b> = Favour ones are 3 times (75%) and Intention of SR in notice is given.</li> <li>❖ Copy of every SR to ROC in 30 days with explanatory statement</li> <li>❖ <b>Manner</b> – 106 to 110 and proxies are also counted. Casting vote of chairman shall be included.</li> </ul>			
<ol style="list-style-type: none"> <li>1 Give the points of distinction between ordinary resolution and special resolution. (5 Marks) (May 2019 )</li> <li>2 Give the points of distinction between ordinary resolution and special resolution. (MAY 2019)</li> </ol>			

1. Supertech Computers Pvt. Ltd has 120 members. It sends notice to all of them. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting. Advice the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution? (MTP MAY 2019)
  - a. 60 Votes
  - b. 80 Votes
  - c. 41 votes
  - d. 20 votes
2. A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than --- the number of votes, if any, cast against the resolution. (1 Mark) (mtp M 21)
  - a. Twice
  - b. Three times
  - c. One third
  - d. One fourth

3. A resolution shall be a special resolution when:
- a. The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution.
  - b. The notice required under this Act has been duly given.
  - c. The votes cast in favour of the resolution, are required to be not less than three times the number of the votes cast against the resolution.
  - d. All of the above.

## [SEC. 115] - RESOLUTION REQUIRING SPECIAL NOTICE

<p><b>When is a special notice required?</b></p> <p>[Sec. 115]</p>	<p><b>Special Notice by Members to Company is required in only 4 cases:</b></p> <p><b><u>Matters :</u></b></p> <ul style="list-style-type: none"> <li>❖ 140(4) = Appointment of auditor other than retiring auditor</li> <li>❖ 140(4) = Resolution for retiring shall not be appointed</li> <li>❖ 169(2) = Removing a director before expiry and appointment on its place.</li> <li>❖ 169(2) = Resolution to appoint another person in place of director who is removed in the same meeting</li> <li>❖ Or any other matter provided in AOA</li> </ul>
<p><b>By whom?</b></p>	<p>The notice of the intention to move a resolution shall be given to the company <b>by members-</b></p> <ol style="list-style-type: none"> <li>(a) Holding <b>atleast 1% of the total voting power</b>; or</li> <li>(b) Holding shares on which aggregate sum does not exceed <b>Rs. 5 lakh paid-up.</b></li> </ol>
<p><b>Time Limits</b></p> <p>[Rule 23(2)]</p>	<p>The notice shall be sent by members-</p> <ol style="list-style-type: none"> <li>(a) At least 14 days before the GM (minimum time);</li> <li>(b) But not before 3 months from the GM (maximum time).</li> </ol> <p>The day of sending of notice and the day of the GM shall be excluded.</p>
<p><b>Reply by the Company</b></p> <p>[Rule 23(3)]</p>	<p>The company shall immediately after the receipt of notice, give notice of the resolution to its members at least 7 days before the meeting.</p>
<p><b>Publication of Notice</b></p>	<ol style="list-style-type: none"> <li>1. Where it is not practicable to give the notice in the same manner as given in any GM, the notice shall be published in both English and vernacular newspapers. Such notice shall also be posted on the website, if any, of the company. [Rule 23(4)]</li> <li>2. The notice shall be published at least 7 days before the meeting, exclusive of the day of publication of the notice and day of the meeting. [Rule 23(5)]</li> </ol>

1. Briefly explain the law relating to "Resolutions requiring Special Notice under the Companies Act, 2013. Mention the resolutions that require "Special Notice" under the Act. (4 Marks) (May 2016) (May 2017)
2. Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.(NOV 2018)

**Conclusion** - According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

1. Where, by any provision contained in this Act or in the Articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than \_\_\_ of total voting power or shares on which an aggregate sum of not less than \_\_\_ has been paid up on the date of notice.
  - a. 1%; 1,00,000/-
  - b. 1%; 5,00,000/-
  - c. 5%; 5,00,000/-
  - d. 10%; 10,00,000/-

### [Sec. 116] - RESOLUTION PASSED AT ADJOURNED MEETING

<p><b>Date of passing of Resolution</b></p>	<p>Where a resolution is passed at an adjourned meeting of –</p> <p>(a) a company; or</p> <p>(b) the holders of any class of shares in a company; or</p> <p>(c) the BOD of a company;</p> <p>The resolution shall be deemed to be passed on actual date of passing and not on any earlier date.</p>
<p><b>Example</b></p>	<p>The general meeting of the company was due to be held on 13rd August 2022. However, due to want of quorum, the meeting was adjourned to a later date on 1st sep 2022 and 3 resolutions were passed on that date.</p> <p><b>Answer</b></p> <p>Now, as per section 116 of the Companies Act, 2013, the said 3 resolutions shall be deemed to have been passed on the <b>adjourned date</b> of meeting,</p> <p>i.e. 1st Sep 2022 and not on the earlier date.</p>

- Resolutions passed at adjourned meeting at GM, BM or any class of shareholders.
- Date of passing of such resolution shall be –
  - Actually passed date (Actual or adjourned meeting date) and
  - Not the earlier one

**Example**

The extra-ordinary general meeting of the company, Purple Cosmetics Private Limited was due to be held on Thursday, 1st August, 2024. However, due to want of quorum, the meeting was adjourned to a later date on Thursday, 8th August, 2024 and two resolutions were passed on that date.

According to section 116 of the Companies Act, 2013, the said two resolutions shall be deemed to have been passed on the adjourned date of meeting, i.e. Thursday, 8th August, 2024 and not on the earlier date.

1. Where a resolution is passed at an adjourned meeting of members, the resolution shall, for all purposes, be treated as having been passed:
  - a. On the date on which it was actually passed in the adjourned meeting.
  - b. On the date of original meeting.
  - c. On the date on which the minutes of the general meeting are signed by the Chairman.
  - d. None of the above.

## [Sec. 117] - RESOLUTIONS AND AGREEMENTS TO BE FILED

<b>Filing with ROC</b> [Sec. 117(1)]	(i) The company shall file with ROC the copy of- <ol style="list-style-type: none"> <li>(a) Every resolution or agreement specified u/s 117(3); and</li> <li>(b) Explanatory statement u/s 102, if any, annexed to the notice calling the meeting;</li> </ol> within 30 days of passing of such resolution or making of such agreement in Form No. MGT-14 along with fees.
	(ii) In case of specified IFSC Public or Private Company, MGT-14 shall be filed within 60 days from date of passing or making resolution or agreement. (iii) Every resolution, which has the effect of altering the articles, and every agreement which is required to be filed u/s 117(3) shall be embodied in the articles; or annexed to the articles.

<p><b>Resolutions and Agreements Required to be filed u/s 117(3)</b></p>	<p>(a) Special Resolutions</p> <p>(b) 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</p> <p>(c) Any resolution of the BOD or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation in terms of appointment, of a managing director.</p> <p>(d) 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.</p> <p>(e) Resolutions for voluntary winding up of the company.</p> <p>(f) Resolutions passed in pursuance of section 179(3). However, no person shall be entitled u/s 399 to inspect or obtain copies of such resolutions. Exception: This Clause shall not be applicable to:</p> <p>(i) Banking company, any class of NBFC or housing finance company under NHB, in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans u/s 179(3) in the ordinary course of its business.</p> <p>(ii) Private company which has not defaulted in filing its F.S u/s 137 or annual return u/s 92 with the Registrar.</p> <p>(iii) Specified IFSC Public Company.</p> <p>(g) Any other resolution or agreement as may be prescribed and placed in the public domain.</p>
<p align="center"><b>Refer the concept clarity sheet at the end of the chapter on Sections 117 - Resolutions and Agreements to be filed</b></p>	

### [Sec. 118] - MINUTES (READ WITH RULE 25)

<p><b>Meaning</b></p>	<p>1. Minutes means a <b>fair and correct summary</b> of the proceeding of the meeting.</p> <p>2. It is <b>official record</b> of the company and it helps us in understanding decision taken at the meeting.</p>
<p><b>Applicability</b> [Sec. 118(1)]</p>	<p>(a) Every company shall prepare and sign minutes of Proceeding of -</p> <p>(b) every GM;</p> <p>(c) Class meeting;</p> <p>(d) Every Board Meeting</p> <p>(e) Every resolution passed by postal ballot.</p>

	<b>Note - A Section 8 company is not required to have minute book provided it has not defaulted in filing its F.S. u/s 137 an annual return u/s 92 with the Registrar.</b>	
<b>Manner of Signing of minutes</b> [Rule 25]	Each page of every minute book shall be initialled or signed, and the last page shall be dated and signed, as follow:	
	<b>Type of minutes book</b>	<b>Signed by</b>
	<b>Minutes of Board meetings and committee meetings</b>	<ul style="list-style-type: none"> <li>▪ The chairman of the same meeting or the chairman of the next meeting.</li> </ul>
	<b>Minutes of GM</b>	<ul style="list-style-type: none"> <li>▪ The chairman of the same meeting, within 30 days.</li> <li>▪ In the event of the death or inability of that chairman, by a director duly authorised by the Board for this purpose.</li> </ul>
	<b>Resolutions passed by postal ballot</b>	<ul style="list-style-type: none"> <li>▪ The chairman of the Board, within 30 days.</li> <li>▪ If there is no chairman of the Board or in the event of the death or inability of the chairman of the Board, by a director duly authorised by the Board for this purpose.</li> </ul>
<b>Power of Chairman</b>	<ol style="list-style-type: none"> <li>1. The Chairman shall exercise absolute discretion as to inclusion or non-inclusion of any matter in the minutes on the grounds specified in section 118(5).</li> <li>2. No matter shall be included in the minutes, if the Chairman is of the opinion that it is – [Sec. 118(5)] <ol style="list-style-type: none"> <li>(a) Defamatory of any person; or</li> <li>(b) Irrelevant or immaterial; or</li> <li>(c) Detrimental to the interests of the company.</li> </ol> </li> </ol>	
<p><b>In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013? (RTP MAY 2018) (MTP NOV 2019)</b></p> <p><b>Conclusion</b> - Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.</p>		

<b>Preservation and custody</b>	<p>(a) The minutes book of GM shall be kept at the registered office of the company, and shall be preserved permanently.</p> <p>(b) It shall be kept in the custody of the CS or any director duly authorised by the board. [Rule 25(1)(e)]</p> <p>(c) The minutes books of the Board and committee meetings shall be kept in the registered office or such place as Board may decide. [Rule 25(1)(f)]</p>
<p><b>Exemption to Section 8 Company</b></p> <p><b>Section 118 do not apply to Sec 8 co as a whole except the minutes may be recorded within 30 days of the conclusion of every meeting (Rule).</b></p>	
<p><b><u>Penalty for contravention</u></b></p> <ul style="list-style-type: none"> <li>• <b><u>In case of Default - Company</u></b> - Liable for 25000 and every officer 5000</li> <li>• <b><u>In case of Tampering with the minutes</u></b> – By any person then liable for 25000 to 1,00,000 and imprisonment may extend to 2 years</li> </ul>	

## [Sec. 119] - Inspection of Minutes of GM

<b>Place and Time</b>	<p>(a) The minutes book shall be kept at the registered office of the company.</p> <p>(b) Inspection can be done during business hours subject to reasonable restrictions imposed by articles or a resolution passed in GM. However, at least 2 hours in each business day shall be allowed for inspection.</p> <p>(c) Inspection can be done by any member without any charges.</p>
<b>Copies of minute book</b>	<p>(a) The copies of the minute book of any GM shall be made available by the company to any member, within 7 working days of the request made.</p> <p>(b) Payment of fees as specified in the AOA, but it shall not exceed Rs. 10 per page or part of any page.</p> <p>(c) However, if the member has made a request for soft copy of minutes of any GM held during immediately preceding 3 FYs, it shall be free of cost.</p>
<b>Punishment</b>	<p>If inspection is refused or copy is not furnished,</p> <p style="text-align: center;">Company: Penalty of Rs. 25,000 } for each refusal Officer in default : Penalty of Rs. 5,000</p>
<b>Power of Tribunal</b> [Sec. 119(4)]	<p>If inspection is refused or copy is not furnished, the Tribunal may direct the company to allow immediate inspection or direct the company to immediately send the copy.</p>

**Section 119 – Inspection of Minutes of GM & Postal Ballot**

- Inspection and copies allowed to any member
- Subject to reasonable restriction as per AOA
- **Fees:-**
  - **Inspection** – Without fees and in 7 days (Min 2 hours)
  - **Copies** – Lower of AOA or 10 rupees/page and free of cost if soft copies for GM held in 3FY
- If refused by co then same penalty as section 118 for each refusal

1. The opinion of one of the director, Mr. K was that minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be prepared and entered in minutes book of meeting of Board of Directors of GHWX Private Limited by the end of October, 2018 is incorrect. The opinion of Mr. K is incorrect because:
  - a. Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within thirty days of the conclusion of meeting on 7 September, 2018. (RTP MAY 2020)
  - b. Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within sixty days of the conclusion of meeting on 7 September, 2018.
  - c. Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within ninety days of the conclusion of meeting on 7 September, 2018.
  - d. Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within one twenty days of the conclusion of meeting on 7 September, 2018.
2. The minute book of General meetings of Alpha Limited will be kept at: (RTP MAY 2020)
  - a. That place where members of Alpha Limited will decide.
  - b. That place where all employees of Alpha Limited will decide.
  - c. Registered office of the company Alpha Limited.
  - d. That place where senior officials of Alpha Limited will decide.
3. Awareness Limited's General Meetings are held at its registered office situated in Delhi. The minute book of General meetings of Awareness Limited will be kept at: (Mar. 22) (1 Mark)
  - a. That place where members of Awareness Limited will decide.
  - b. That place where all employees of Awareness Limited will decide.
  - c. That place where all employees of Awareness Limited will decide.
  - d. That place where senior officials of Awareness Limited will decide.

4. The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM. (2 Marks) (MTP Oct. 22)
- Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
  - No, the signing is not in order as only the Chairman is authorised to sign the report
  - Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
  - No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company
5. The minutes of general meeting shall be signed by:
- Chairman of the same meeting within period of 30 days of the conclusion of the meeting.
  - Chairman of the next general meeting.
  - Either (a) or (b)
  - None of the above.
6. In the event of the death or inability of the Chairman of a general meeting to sign the minutes within period of 30 days of the conclusion of the meeting, the minutes can be signed by:
- Chairman whenever he is able to do so.
  - Chairman of the next general meeting.
  - A Director duly authorised by the Board for the said purpose.
  - None of the above.
7. The Chairman has absolute discretion to exclude from the minutes, any matter:
- Which is or could reasonably be regarded as defamatory of any person?
  - Which is irrelevant or immaterial to the proceedings of the meeting?
  - Which is detrimental to the interests of the company?
  - All of the above.
8. The minutes book of general meetings of a company shall be preserved:
- For a period of 5 years
  - For a period of 7 years
  - For a period of 10 years
  - Permanently

## [Sec. 120] - Maintenance and Inspection of Documents in Electronic Form

<b>Scope of Sec. 120</b>	<p>Any document, record, register, minutes etc. :</p> <p>(a) required to be kept by a company, may be kept in electronic form:</p> <p>(b) allowed to be inspected by any person, may be inspected in electronic form;</p>
	<p>(c) copies to be given to any person by a company, may be given in electronic form.</p>
<b>Companies Prescribed [Rule 27(1)]</b>	<ol style="list-style-type: none"> <li>1. Following classes of companies may maintain their records in electronic form:             <ol style="list-style-type: none"> <li>(a) Every listed company</li> <li>(b) A company having at least 1,000 shareholders, debenture holders and other security holders</li> </ol> </li> <li>2. In case of existing companies, data may be converted from physical mode to electronic within 6 months from the date of notification of provisions of Sec. 120.</li> </ol>
<b>Manner of maintenance of records</b>	<p>The records shall be maintained in electronic form in such manner as the BOD of the company may think fit, provided that -</p> <ol style="list-style-type: none"> <li>(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules.</li> <li>(b) the information as required under the provisions of the Act or the rules should be adequately recorded for future reference:</li> <li>(c) the records must be capable of being readable, retrievable and reproducible in printed form:</li> <li>(d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules.</li> <li>(e) the records, once dated and signed digitally, shall not be capable of being edited or altered;</li> <li>(f) the records shall be capable of being updated, according to the provisions of the Act or the rules, and the date of updating shall be capable of being recorded on every updation.</li> </ol> <p>Explanation: For the purpose of this rule, the term 'records' means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made thereunder to be kept by a company</p>

<b>Security of Records maintained in Electronic form</b> <b>[Rule 28]</b>	<p>Following persons shall be responsible for the maintenance and security of electronic records:</p> <ul style="list-style-type: none"> <li>(i) The Managing Director</li> <li>(ii) Company Secretary</li> <li>(iii) Any other director or officer of the company as the Board may decide.</li> </ul>
<b>Inspection and Copies of records maintained in electronic form.</b> <b>[Rule 29 ]</b>	<ul style="list-style-type: none"> <li>(i) The records maintained in electronic form shall be made available for inspection by the company in the electronic form.</li> <li>(ii) Copies of the records maintained in electronic form shall be provided by the company in the electronic form on payment of not exceeding Rs. 10 per page.</li> </ul>

## [Sec. 122] - APPLICABILITY OF THIS CHAPTER TO OPC

<b>Non-applicability</b> <b>[Sec. 122(1)]</b>	<p>The provision of Sec. 98 and Sec. 100 to 111 shall not apply to OPC.</p>
<b>Manner of passing of resolution in GM</b> <b>[Sec. 122(3)]</b>	<ul style="list-style-type: none"> <li>(i) 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 <ul style="list-style-type: none"> <li>a) the resolution is communicated by the member to the company;</li> <li>b) the resolution is entered in the minutes-book; and</li> <li>c) the minutes-book is signed and dated by the member.</li> </ul> </li> <li>(ii) The date of signing the minutes-book by the member shall be deemed to be the date of the meeting for all the purposes of this Act.</li> </ul>
<b>Business required to be transacted in BM</b> <b>[Sec. 122(4)]</b>	<ul style="list-style-type: none"> <li>(i) 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 <ul style="list-style-type: none"> <li>a) the resolution is entered in the minutes-book; and</li> <li>b) the minutes book is signed and dated by such director.</li> </ul> </li> <li>(ii) The date of signing the minutes-book by the director shall be deemed to be the date of the meeting for all the purposes of this Act.</li> </ul>

**Section 98 – Power of Tribunal to call EGM (Neither 96,97 and 98)  
and  
Section 100 to 111 (Both inclusive) is NA to OPCs**

**Manner of passing resolutions**

For passing OR/SR or transacting OB/SB in AGM/EGM it shall be sufficient if :

- Resolution is communicated by the members to the co
- Resolution is entered in the Minutes books and
- The same is signed and dated by the member.
- Same is applicable in case of BM resolutions also (When only 1 Director)

**Date of signing in minute book by the member shall be deemed to be date of meeting for the purpose of the Act.**

## Section 92 - ANNUAL RETURN AND RELATED SECTIONS

- ❖ Annual return = Annual statement to be filed by every co to ROC on the close of FY in
- ❖ Form MGT 7 – Other Companies  
Form MGT 7A (Abridged) – OPC and Small Company
- ❖ Provisions are contained in Rules 11 and 12.
- ❖ Penalty in 92(5) – 10k – 100/day - 2 lakhs and 50k for officers

**Time limit**

Shall be filed with ROC within 60 days of AGM and if no AGM held then 60 days from the date AGM should have been held and a statement with reasons

**Signing of AR**

- By Director & CS (If no CS then CS in Practice)
- In case of Small, OPC and Start ups – CS and if no CS then a director.

**Certification of AR**

- MGT – 8 By CS in practice
- Every listed co and PSC>10cr OR T/O>50cr
- CS who sign can't certify the AR.
- Penalty on CS – 2 Lakhs

**Content (Particulars) of Annual Return**

- Address of RO
- Principle business activities of CASH
- Share, debentures and SH pattern
- Members and DH also changes.
- Promoters, directors and KMPs and also changes
- Meetings of every class and committees with attendance details
- Remuneration details of directors and KMPs
- Penalty and punishments imposed on Co, Directors, officers
- Certification of compliances and disclosures
- Details of shares held by FII
- Other matters

## RULE 7 - FOREIGN REGISTERS 88(4)

Yes, all registers can be maintained o/s India showing the holding of persons residing o/s but as per AOA

- In MGT-3 a notice for location of such office to ROC in 30 days of opening of the foreign register and in case of any change or discontinuance.
- In same format and shall be as Principle register.
- Entries only after Board approval and within 15 days of any entry copy to RO in India.
- A duplicate FR - Maintained in India.
- Discontinuance – TRF. entry to some other FR o/s India or to the Principal register

Penalty = Co/Officer – 3 Lacs & 50k

## EXTRA ORDINARY GENERAL MEETING - Sec. 100 and 98

### Who can call an EGM ?

- By Board (Suo Motu) – At any place in India (Except for wholly owned SC incorporated o/s India) – 100(1)
- By Board on requisition by Eligible members = SC and without SC = 10% of PSC or voting power 100(2)
- If Board fails then Requisitionists will call on their own – 100(4)
- By Tribunal – Section 98 (In the same manner)

### A valid Requisition

- Specify the matter/business & valid even if does not specify the reason for matter
- Signed by all or 1 (authorised person)
- Placed at RO before CLEAR 21 days in writing or E-mode.

### Time period :

- Board shall proceed to call EGM within 21 days and MAX 45 days (From the Receipt of Requisition letter).

### If Board fails to call in Max 45 days:

- Members can call in 3 months (From the date of Requisition)
- Rights : To get list of all members and changes from 21<sup>st</sup> day to 45th day.

### Day and place –

- On a working day at RO or such place in the city where RO is and except National holiday.

### Notice

- To all with business mentioned and
- If resolution to be proposed as SR then notice as 114(2)
- No explanatory statement is required with the notice
- Accidental omission to give notice to any member and non receipt by any shall not invalidate the proceedings of EGM.

### Expense to call meeting –

- Board shall reimburse to all the members because of Board failure (To be deducted from Director's remuneration as per Section 197)

## Section 105 - Proxies

### Section 105 – Proxies

- A member or non member can be appointed by a member to attend meeting and vote on its behalf
- Proxies provisions are NA to Co's with no SC unless AOA provides

### Restrictions on proxy (Rule 19)

- CG - prescribe class of co who can't appoint proxies
- Member of u/s 8 co – Only member as a proxy.
- 1 proxy = For 50 members (who holds <10% of SC)
- Proxy of a member holding >10% of SC shall be proxy only for him and not for other members.

### Right and disabilities of a proxy

Right to attend the meeting and vote on poll (demand a poll) but Can't speak and vote of show of hands, not counted for quorum and can't appoint his own proxy.

**As per Rule 19(3)** – Form for appointment of proxy is MGT 11. Proxy received 48 hrs before the meeting shall be valid even if AOA provides for more (less is okay)

**Inspection Period** – Starts 24 hrs before the meeting's commencement, during and till conclusion of the meeting (in business hours) but 3 days prior notice required

**Disclosure** in the notice shall appear with prominence that a member can appoint one or more proxy. If not then (Penalty = Up to 5000)

**Revocation of proxy** - If after appointment members himself attends the meeting – Revoked but once the proxy has voted it cannot be revoked.

## Section 108 - VOTING BY ELECTRONIC MEANS

- Applicable to Listed co and others who has 1000 or more members
- Not compulsory for = Nidhi co, Listed on SME SE platform and Institutional trading platform
- Once resolution is passed can't be withdrawn
- Safe and secure system – Vote from venue and other than venue as well which is remote e-voting.

BOD may appoint one or more scrutinizers for e-voting (CA/CS/CMA) IN PRACTICE or person who is not in employment with his written consent

## Sections 108 - VOTING BY ELECTRONIC MEANS

### Public notice (21 days) –

- Members, directors and auditors and
- By way of Ad in 2 newspapers
- On the website as well
- Disclosure in notice – Process and manner, login id, time schedule etc. related to electronic means and at website also.

### Time Limits –

- Cut off date – Not earlier than 7 days of GM
- Remote e-voting – Will be open for 3 days prior and
- Closes at 5 pm on a previous day.
- Scrutinizer – Results (e-vote + polling + meeting votes)

Consolidated Report to the chairman with 2 witnesses not later than 3 days of conclusion of the meeting

## Section 110 - VOTING BY POSTAL BALLOT

- ✓ PB = Means by post or electronic mode, Instead of transacting such items in GM
- ✓ Amendment - But may be in GM by electronic mode u/s 108 for whom e-voting is compulsory.
- ✓ If assented by majority by PB = Deemed to be duly passed in GM.

### Notice

- ✓ Notice with draft resolution and reasons for PB to all members with prepaid postal ballot
- ✓ All members shall reply in 30 days. (Invalid after 30 days)

### Issue of Advertisement

- ✓ In 2 newspapers and on website.
- ✓ At least 5 days before of voting starts.
- ✓ It shall contain :
  - ✓ DOC of despatch of PB, Start and end of voting.
  - ✓ Statements like : PB receives after such date will be invalid; who has not received may apply to co.

### Scrutinizer

- ✓ BOD will appoint one non employee person for managing the process with his consent  
He shall maintain the register and PB in his safe custody. Report to the chairman in 7 days.

## Section 110 - VOTING BY POSTAL BALLOT

### **Businesses for which PB is Optional**

Ordinary Businesses and Removal of Auditors/Directors (where they have right to be heard).

### **Businesses for which PB is mandatory**

- ✓ Section 13 and 18 - Alterations in object clause in MOA and AOA (Conversion of Pvt to Public / VV)
- ✓ Section 12 - Change in the place of RO o/s local limits
- ✓ Change in object for which money has already been raised from the public
- ✓ Section 43 - Issue of DVRs
- ✓ Section 48 - Variations in the rights of a class of SH
- ✓ Section 151 - Election of Director appointed by Small Shareholder
- ✓ Section 180 - Sale of Undertaking
- ✓ Section 181 - Giving L/G/S in excess of limits of 186
- ✓ Section 68 - BB of shares

**Provided that OPC and Co which has < 200 members (May be Public and Pvt both) – Not compulsory**

## Section 111 - CIRCULATION OF MEMBER'S RESOLUTION

### Members can introduce resolutions for considerations

- In next AGM
- For circulation of statements in EGM

#### Eligible members

As per section 100 – Having SC and no SC = 10% of ESC and voting power respectively.

#### Legal requirements

- In writing and Signed by all requisitionists and placed at RO.
- Deposit of money sufficient to meet the expenses by the co.

#### Time limit

- Not less than 6 weeks before at AGM (When requisition requiring notice of resolution) and if AGM called before 6 weeks then requisition deemed to be valid.
- Not less than 2 weeks – in case of other resolutions.
- Co shall not be bound to circulate any statement if there is any abuse of power and CG may also order the same.
- On such written request - Co. shall move the notice to members of any resolution which may be moved (or intended)
- Effects of default – 25,000 to the Co and every officer.

## Section 117 - RESOLUTIONS AND AGREEMENTS TO BE FILED

**Every agreement & resolution (Explanatory statement) to be filed - ROC - 30 days - MGT-14.**

### Agreement and Resolution to be FILED :

1. SR
2. Unanimous Resolution
3. Resolution or Agreement for App/Reapp./Renew/Variation of terms of appointment of MD.
4. Resolution of class of SH
5. Resolution for Co to be wound up voluntarily under section 59 of IBC
6. Resolution passed as per Sec 179(3) viz BOD by means of a resolution passed at GM to make calls, borrow money, BB, Invest, Amalgamation etc. But -
  - No inspection allowed of resolutions u/s 399.
  - Exceptions –
    - Banking, NBFC and HFC who has passed resolution to provide loan/security under this section in ordinary course of business
    - Private company (With no default) and Specified IFSC company
7. Any other resolution or agreement as may be prescribed and placed in the public domain

#### Penalty

Co – 10k + 100 day to 2L  
Officer – 10k + 100 day to 50k

## Problem Kya Hai? Question Bank

### ICAI Module Descriptive Questions

#### Section 88 Register of Members

1. As a matter of fact, the usual time allowed for making entries in the register of members or register of debenture-holders or register of other security holders is seven days after the Board of Directors or its committee grants its approval. There are certain events, on the happening of which the entries can be made even after seven days. Which are those events?

**Solution:**

In this respect Rules 5 (7) and 5 (8) of the Companies (Management and Administration) Rules, 2014 are relevant.

Rule 5 (7) specifies that in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.

According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company, have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

Thus, in the above two cases, it is permitted for the listed companies to make entries relating to pledge, charge, lien or hypothecation in the registers within fifteen days from the happening of such an event.

#### Section 90 Significant Beneficial Owners

2. There are certain entities to which the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable. List them.

**Solution:**

Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:

- (a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
- (b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
- (c) the Central Government, State Government or any local authority;
- (d) (i) a reporting company; or
  - (ii) a body corporate; or
  - (iii) an entity,

controlled wholly or partly by the Central Government and/ or State Government(s);

- (e) Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) regulated by SEBI;
- (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

### Section 92 Annual Return

3. The paid-up share capital of Disha Home Appliances Limited is ₹ 8 crore divided into 80 lakh shares of ₹ 10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice.

#### Solution:

In respect of certification of Annual Return by a company secretary in practice, the directors of Disha Home Appliances Limited are advised to refer Section 92 (2) of the Companies Act, 2013 and also Rule 11 (2) of the Companies (Management and Administration) Rules, 2014 which state that the Annual Returns of following companies shall be certified by a company secretary in practice:

(i) a listed company; or

(ii) a company having paid-up share capital of ₹ 10 crore or more or turnover of ₹ 50 crore or more.

Accordingly, if Disha Home Appliances Limited gets listed or in case its paid-up share capital is increased to ₹ 10 crore or more or its turnover becomes ₹ 50 crore or more, it shall be required to get its Annual Return certified by a company secretary in practice. The certificate given by the company secretary in practice shall be in Form No. MGT-8. The certificate, inter-alia, shall state that the Annual Return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

### Section 92

4. Super Mart Limited called its AGM in order to lay down the financial statements for the approval of the shareholders. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the opinion that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

**Solution:**

According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the opinion of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is not correct.

In the above case, the annual general meeting of Super Mart Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92 (5) of the Act.

**Section 92**

5. Tulip Gardens Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants to keep the register of members at Kolkata.
- (i) Keeping in view the provisions of the Companies Act, 2013, explain whether Tulip Gardens Ltd. can keep the Registers and Returns at Kolkata.
  - (ii) Whether Mr. Rich, a director holding only 400 shares of worth ₹ 4000, has the right to inspect the Register of Members?

**Solution:**

- (i) Maintenance of the Register of Members etc.: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

- (ii) As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

### Section 96 Annual General Meeting

6. Infotech Ltd. was incorporated on 1.4.2022. No General Meeting of the company has been held till 30.4.2024. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

#### **Solution:**

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first Annual General Meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2022 to 31st March 2023, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2023.

The section further provides that the Registrar may, for any special reason, extend the time within which any Annual General Meeting, other than the first Annual General Meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech Ltd. should have been held on or before 31st December, 2023. Further, in case of first AGM, the Registrar of Companies does not have the power to grant extension of any time limit.

### Section 101 Notice of Meeting

7. With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ₹ 30 crore divided into 3 crore shares of ₹ 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.

Normally, general meetings are to be called by giving at least 21 clear days' notice as required by Section 101 (1) of the Companies Act, 2013.

**Solution:**

As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto—

- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the 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 and who represent not less than ninety- five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
  - (b) having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at that meeting.

Second proviso to Section 101 (1) clarifies that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.

In view of the above provisions, Shilpkkaar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice.

Hence, the opinion of Nilesh that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

**Section 101**

8. Madurai Bakes Ltd. issued a notice for holding of its Annual General Meeting on 7th September, 2024. The notice was posted to the members on 16th August, 2024. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:
- (i) Whether the meeting has been validly called?
  - (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
  - (iii) Can the delay in giving notice be condoned?

**Solution:**

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected- in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting).

Therefore, the meeting was not validly called.

- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

**Section 102 Explanatory statement**

9. M. H. Mechanics Company Limited served a notice of General Meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Mechanics Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Mechanics Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.

**Solution:**

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1) a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and

- (b) 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.

Thus, the objection of the member is valid since the complete details about the issue of sweat equity were required to be sent with the notice of meeting. The notice is, therefore, cannot be said to be a valid one when the provisions of Section 102 of the Companies Act, 2013 are considered.

## Section 102

10. Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

### Solution:

Under section 102 (2) (b) of the Companies Act, 2013, in the case of any general meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
- (i) every director and the manager, if any;
  - (ii) every other key managerial personnel; and
  - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) 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.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

## Section 103 Quorum for meetings

11. The Articles of Association of DJA Water Tanks Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary general meeting to consider the appointment of Managing Director:

- (i) A is the representative of Governor of Uttar Pradesh.
- (ii) B and C are preference shareholders,
- (iii) D is representing Y Ltd. and Z Ltd.
- (iv) E, F, G and H are proxies of shareholders.

Could it be said that the quorum was present in the meeting?

**Solution:**

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purpose of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further, the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights.

D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but proxies representing the members.

Thus, it can be said that the requirement of quorum has not been met and the composition shall not constitute a valid quorum for the meeting.

**Section 103**

12. Examine the validity of the following situation with reference to the relevant provisions of the Companies Act, 2013:

The Board of Directors of Shreya Transporters and Logistics Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

**Solution:**

According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition made by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

**Section 103**

13. KMN Cables Ltd. scheduled its Annual General Meeting to be held on 15th September, 2024 at 11:00 A.M. The company has 900 members. On the scheduled date of AGM following persons were present by 11:30 A.M.

1. P1, P2 & P3 shareholders
2. P4 representing ABC Ltd.
3. P5 representing DEF Ltd.
4. P6 & P7 as proxies of the shareholders

- (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
- (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
- (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.

What happens if there is no Quorum at the adjourned meeting?

**Solution:**

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.

(i)

- (1) P1, P2 and P3 will be counted as three members.
- (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
- (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted as constituting quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Cables Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the requirement of quorum and he reaches after 11:30 A.M. (i.e. after half an hour from the starting time of the meeting), the meeting will be adjourned as provided above.

- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103 of the Companies Act, 2013.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

- (iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

### Section 105 Proxies

14. A General Meeting was scheduled to be held on Friday, 15th April, 2024 at 3.00 P.M. As per the notice the members who are unable to attend a 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 09-04-2024 was deposited by Mr. Y with the company at its registered Office on 11-04-2024. 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 12-04-2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2024. All the proxies viz., Y, 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?

#### **Solution:**

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf in his absence. As per the provisions of section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company.

Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permissible time.

However, in the case of Member W, the proxy M (and not Proxy N) would be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

#### Section 105

15. Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position in respect of demand for inspection of proxies by Surya as per the provisions of the Companies Act, 2013

**Solution:**

Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Surya has given a proper notice. Therefore, validity of notice cannot be denied.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

In view of above provision, Surya can undertake the inspection only during the above-mentioned period and not two days prior to the meeting.

#### Section 105

16. What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013.

**Solution:**

A proxy is an instrument in writing executed by a shareholder authorising another person to attend a meeting and to vote thereat on his behalf in his absence. The term also applies to the person so appointed and in such case a proxy is a person appointed by a member of a company, to attend the general meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy are contained in section 105 of the Companies Act, 2013. They are as under:

1. Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
5. Under section 105 (7) 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 of a company.

**Section 109 Demand for Poll**

17. Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.
- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
  - (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

**Solution:**

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands.

Accordingly, section 109 (1) lays down as under:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (a) In the case of a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand for poll: According to section 109 (2), the demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll subject to the provisions contained in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawal of the demand for poll.

### Section 118 Minutes

18. Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2024. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2024, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

#### Solution:

Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration ) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the

death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any other director also who is authorized by the Board.

### Section 118

19. Shikhar Cement Limited passed two resolutions by means of postal ballot. Keeping in view the relevant provisions of the Companies Act, 2013, you are required to advise the directors of the company regarding the provisions applicable for making entries in the minutes book including the time limit within which the entries must be made.

#### **Solution:**

Section 118 of the Companies Act, 2013 requires a company to make entries of resolutions passed by means of postal ballot in the minutes book.

Rule 25 (1) (b) (ii) of the Companies (Management and Administration) Rules, 2014 states that in case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Accordingly, the directors of Shikhar Cement Limited are advised to keep following points under consideration while entering resolutions passed by means of postal ballot in the minutes book of general meetings:

- (i) there should be entered a brief report on the postal ballot conducted including the resolution proposed.
- (ii) there should be entered the result of the voting made by the shareholders in respect of resolution.
- (iii) there should be entered the summary of the scrutinizer's report.
- (iv) there should be entered the date of making entry.

Further, the directors must ensure that the entries in respect of resolutions are made within thirty days from the date of passing of resolution by means of postal ballot.

### Section 118

20. In a General meeting of Alpha Software Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?

**Solution:**

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) of section 118.

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

**Section 121 Report on AGM**

21. Prince Auto-parts Limited, a listed company, has recently concluded its Annual General Meeting. As a statutory requirement, it is obligatory on its part to file with the jurisdictional Registrar of Companies a copy of the Report on its AGM.

- (i) State within how much time it is required to file the said Report.
- (ii) In case Prince Auto-parts Limited fails to file the Report on its AGM within the specified time, state the penalty to which the company and also its every officer who is in default shall be liable for such failure.

**Solution:**

- (i) In terms of Section 121 (2) of the Companies Act, 2013, Prince Auto- parts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.
- (ii) In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which fails to file with the jurisdictional Registrar of Companies a copy of the Report on its Annual General Meeting within the specified time limit, shall be liable to the following penalty:
  - **Company:** ₹ one lakh and in case of continuing failure, with a further penalty of ₹ five hundred for each day after the first during which such failure continues subject to a maximum of ₹ five lakh.
  - **Every officer who is in default:** Minimum ₹ twenty-five thousand and in case of continuing failure, with a further penalty of ₹ five hundred for each day after the first during which such failure continues subject to a maximum of ₹ one lakh.

Accordingly, if Prince Auto-parts Limited fails to file a copy of the report on its Annual General Meeting within the specified time limit of thirty days, it shall be liable to the above stated penalty which may go maximum up to ₹ five lakh in case of continuing default. In addition, its every officer who is in default shall also liable to the penalty maximum of which will be ₹ one lakh in case of continuing failure.

## RTP, MTP and PYQ Descriptive Questions

### Section 88 Foreign Register

1. The paid-up share capital of Golden Shoes Limited is ₹ 25,00,000 divided into 2,50,000 equity shares of ₹ 10 each. Some of the shareholders holding 2,500 equity shares are residents of London for whom a foreign register of shareholders is opened thereat on November 1, 2022. Advise Golden Shoes Limited, within how much time after opening of 'foreign register', it is required to file with the Registrar of Companies, a notice of situation of the London office.

**(RTP Nov 23)**

**Solution:**

**Law:** Section 88 (4) of the Companies Act, 2013, permits a company to keep in any country outside India, a part of the register of members, called 'foreign register', containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India.

Rule 7 of the Companies (Management and Administration) Rules, 2014 requires that the company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office along with the fee where such Register is kept.

**Conclusion:** Accordingly, Golden Shoes Limited is required to file with the jurisdictional Registrar of Companies a notice of situation of the London office within 30 days from November 1, 2022 (i.e. the date on which the 'foreign register' is opened) along with requisite fee.

### Section 92 Annual Return

2. Explain the following as per the provisions of the Companies Act, 2013:
  - (i) Abridged Form of Annual Return
  - (ii) Signing of Annual Return(5 Marks) (MTP April 24)

**Solution:**

- (i) Abridged Form of Annual Return

In terms of Second Proviso to Section 91(1) of the Companies Act, 2013, the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

As per Rule 11 (1) One Person Company and small company shall file the annual return in Form No. MGT-7A.

- (ii) Signing of Annual Return

The annual return shall be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.

In relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

**Section 92**

3. ABC Pvt. Ltd. is a One Person Company (OPC) incorporated in 2024. The company has not appointed a company secretary due to its small scale of operations. At the end of the financial year 2024-25, the company needs to file its annual return. The director in state of dilemma, consulted the company law expert whether they need to submit a full- fledged annual return or an abridged version and who should sign the document.

Based on the provisions of the Companies Act, 2013, advise on the following:

- (i) What form should ABC Pvt. Ltd. use to file its annual return?
- (ii) Who is authorized to sign the annual return?

**(RTP May 25)**

**Solution:**

**Law :** Law same like above question

**Conclusion :** Accordingly, following are the advise given by the expert:

- (i) As per Section 92 and Rule 11(1), since ABC Pvt. Ltd. is a One Person Company (OPC), it should file its annual return in Form MGT-7A (abridged form) for the financial year 2024-25.
- (ii) In the absence of a company secretary, the annual return should be signed by the sole director of the company as per the provisions applicable to One Person Companies

**Section 92**

4. Enumerate the provisions of the Companies Act, 2013 in respect to the following:
1. Time limit for filing of annual return when Annual General Meeting is held.
  2. Time limit for filing of annual return when Annual General Meeting is not held.

**(5 Marks) (MTP Sep 24)**

**Solution:**

Time limit for Filing of Annual Return

- (i) A copy of annual return shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the Annual General Meeting ('AGM') is held.
- (ii) Where no annual general meeting is held in any year, it shall be filed with the Registrar of Companies (RoC) within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.

**Section 92**

5. Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30th September, 2017. The company has not filed the annual financial statements, or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct.

**(NOV 2018)**

**Solution:**

**Law :** As per the provisions of Section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year, within 60 days from the date on which the annual general meeting should have been held, together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed

**Conclusion :** In the given question, even in the case of not holding of Annual General Meeting, the company shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held. Hence, the contention of directors is not correct.

**Section 92**

6. Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?

**(MAY 2018) (MTP NOV 2020) (Nov 23)**

**Solution:**

**Law :** According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, within the time specified under section 403.

Sub-section (5) of Section 92 also states that if a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

**Conclusion:** In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect.

In the above case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

**Section 92**

7. As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it.(MAY 2018)

**Solution:**

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
11. Such other matters as may be prescribed

**Section 94 Maintenance and Inspection Of Register of members**

8. M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.
- (i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
  - (ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members?

**(MAY 2018)**

**Solution:**

Maintenance of the Register of Members etc.:

- (i) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

- (ii) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture- holders, other security holders or beneficial owners of the company.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

**Section 96 AGM**

9. Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Hintal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Hintal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ.

**(RTP NOV 2019)**

**Solution:**

**Law :** As per sec 96 of companies act, 2013, AGM shall be held at the:

- (i) Registered office of the company; or  
 (ii) Some other place within the city, town or village in which the registered office is situated.

However, AGM of an unlisted company may be held at any place in India if consent is given in advance either in writing or by electronic mode by all the members.

**Conclusion:** In present case ,

- (i) Opposition of members of Rijwan Ltd of taking AGM at hintal plaza is not tenable as AGM of listed company can be held not only in registered office of company but some other place within the city, town or village in which the registered office is situated. And therefore can be held in hintal plaza in Rajasthan.
- (ii) If Rijwan Ltd is unlisted company , it can hold AGM anywhere in India including Jaipur as AGM of an unlisted company may be held at any place in India if consent is given in advance either in writing or by electronic mode by all the members

**Section 96**

10. Shambhu Limited was incorporated on 1.4.2018. The company did not have much to report to its shareholders, so no general meeting of the company has been held till 30.4.2020. The company has recently appointed a new accountant. The new accountant has pointed out that the company required to hold the Annual General Meeting. The company has approached you a senior Chartered Accountant.

Please advise the company regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

**(5 Marks)(MTP M 21)**

**Solution:**

**Law:** According to Section 96 of the Companies Act, 2013,

- (i) every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.
- (ii) Registrar does not have the power to grant extension to time limit for the first AGM of the company.

**Conclusion:** In Present case, The first financial year of Shambhu Ltd is for the period 1st April 2018 to 31st March 2019, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2019. Further, the Registrar does not have the power to grant extension to time limit for the first AGM of the company

**Section 96**

11. Pran Limited is an unlisted company, having its registered office at Agartala. The company scheduled its Annual General Meeting (AGM) on 31st July, 2024 in Goa. The meeting commenced at 3:00 PM and concluded at 6:00 PM. It is also provided that by 1st July, 2024, the company had obtained written consent from all members via email, agreeing to hold the AGM at this out-of-state location. As per the Companies Act, 2013, evaluate whether the AGM was validly conducted.

**(RTP Jan 25)**

**Solution:**

**Law:** According to Section 96 of the Companies Act, 2013,

- (i) every annual general meeting shall be called during business hours, that is, between 9 AM and 6 PM on any day that is not a National Holiday
- (ii) It shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

**Conclusion:** In the given question, Pran Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (by 1st July, 2024). Also, the meeting was started well within the prescribed time i.e. at 3.00 PM. Hence, the meeting was validly called.

**Section 96**

12. Kedar Limited, an unlisted company, registered in the state of Haryana with 100 shareholders want to organize the Annual General Meeting of the company for the financial year 2023-2024 as under:

- (i) The meeting shall be held on 28th September 2024 which happens to be Rakshanda, a declared as holiday by the Haryana Government.
- (ii) The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 100 shareholders, 98 have given their consent in writing for conducting the meeting in Lonavala. Advise the company on the feasibility of the above with reference to the provisions of the Companies Act, 2013.

**(5 Marks) (MTP Jan 25)**

**Solution:**

**Law :** Section 96(2) of the Companies Act, 2013, states that every Annual General Meeting (AGM) shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

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

Explanation—For the purposes of this sub-section, ‘National Holiday’ means and includes a day declared as National Holiday by the Central Government.

**Conclusion:** In the instant case

- (i) Kedar Limited, an unlisted company, can hold its AGM on 28th September, 2024 which happens to be a holiday declared by Haryana Government because this is not a national holiday.
- (ii) Kedar Limited cannot hold its AGM in Lonavala, a hill resort in Maharashtra because consent for this has to be given by all the members in advance and here only 98 members out of 100 have given their consent for conducting the meeting in Lonavala.

**Section 96**

13. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of a company. Also, state the power of the Registrar to grant extension of time for the First Annual General Meeting. Explain with the help of an example.

**(5 Marks) (MTP Mar. 24)**

**Solution:**

First Annual general meeting

- (i) According to section 96 of the Companies Act, 2013, every company shall be required to hold its first Annual General Meeting within a period of 9 months from the date of closing of its first financial year.

- (ii) No extension of time can be granted by the Registrar for the holding of the first annual general meeting.
- (iii) Example: ABC Limited was incorporated on 1.4.2021. No General Meeting of the company was held till 30.4.2023. The first financial year of ABC Ltd is for the period 1st April 2021 to 31st March 2022, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2022.

### Section 96

14. Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

- (i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.
- (ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held.

**(Mar. 22)(4 Marks)**

#### Solution:

- (i) According to section 96 of the Companies Act, 2013, first annual general meeting of the Company should be held within nine months from the closing of the first financial year. Hence, the statement that the first Annual General Meeting (AGM) of a company shall be held within a period of six months from the date of closing of the first financial year is Incorrect.
- (ii) According to proviso to section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, Shall be held, by a period not exceeding three months. Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

### Section 100 EGM

15. Verma Limited has Equity Share Capital of 20,000 shares @ ₹10 each. The Company has received a requisition from Mr. Jai and Mr. Narayan each holding 3,000 equity shares to call an Extraordinary General Meeting to remove Managing Director of the company who has been found to be involved in some malpractices. The company failed to call the said meeting. The requisitionist desires to call the meeting by themselves to pass the resolution to remove the Managing Director. Explain the validity of such resolution passed in the said meeting referring the provisions of the Companies Act, 2013.

**(5 Marks) (MTP Jan 25)**

**Solution:****Law:**

- (i) As per section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.
- (ii) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.
- (iii) The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.
- (iv) If the Board does not, within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub-Section 4].
- (v) Sub-section (5) of Section 100 provides that the requisitionists shall call and hold the meeting in the same manner in which the meeting is called and held by the Board.
- (vi) Sub-section (6) of Section 100 any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company 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.

**Conclusion:** In the given case, meeting called by requisitionists to pass the resolution to remove the Managing Director in the said meeting can be said to be valid as the requisition moved from Mr. Jai and Mr. Narayan holding 60,000 (each holding ₹ 30,000) equity share capital (1/10th of 1,00,000) is in compliance with the legal requirement and will be binding on the company, its officers and members provided if all the conditions for a valid meeting are satisfied.

**Section 100**

16. The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.

**(3 Marks) (MTP Oct. 23)**

**Solution:****Law:**

- (i) As per section 100(2) of the Companies Act, 2013, read with Rule 17 of the Companies (Management and Administration) Rules, 2014, the Board shall on the requisition of, in the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting, shall call for the meeting.
- (ii) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.
- (iii) No explanatory statement need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists need not disclose the reasons for the resolution(s) which they propose to move at the meeting.(Rule 17)

**Conclusion:** Hence, the Board of Directors cannot refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given the explanatory statement i.e reason for holding meeting for the resolution proposed to be passed at the meeting..

**Section 100**

17. Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis. Advise the Board of Directors on the following:

- (i) EGM be held in India
- (ii) EGM be held in Netherlands

**(RTP MAY 2019)****Solution:**

**Law :** According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at any place within India.

**Conclusion:** In the light of the above provisions:

- (i) The Board of Directors can call the EGM in India.
- (ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

**Section 101 Notice of Meeting**

18. Enumerate the persons who are entitled to receive the Notice of the General Meeting, as per the provisions of the Companies Act, 2013.

**(5 Marks) (MTP Sep 24)**

**Solution:**

Persons entitled to receive the Notice of the General Meeting

According to section 101(3) of the Companies Act, 2013, the notice of every meeting of the company shall be given to:

- (1) every member of the company, legal representative of any deceased member or the assignee of insolvent member;
- (2) the auditor or auditors of the company;
- (3) every director of the company.

**Section 101**

19. Madurai Bakes Ltd. issued a notice for holding of its Annual General Meeting on 7th September, 2024. The notice was posted to the members on 16th August, 2024. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:

- (i) Whether the meeting has been validly called?
- (ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
- (iii) Can the delay in giving notice be condoned?

**(Module) (RTP NOV 2020) (MAY 2019)**

**Solution:**

**Law :** According to section 101(1) of the Companies Act, 2013,

- (i) A general meeting of a company may be called by giving not less than clear twenty- one days' notice either in writing or through electronic mode in such manner as may be prescribed.
- (ii) Also, it is to be noted that 21 clear days mean exclude that the date on which notice is served and the date of meeting
- (iii) Further in case of delivery by post, such service shall be deemed to have been effected- in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

**Conclusion:** Hence, in the given question:

- (i) In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned. However, company may take prior consent to give shorter notice to avoid invalidation of meeting.

### Section 101

20. With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesch is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is ₹ 30 crore divided into 3 crore shares of ₹ 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice

**(Module).**

**Solution:**

**Law:**

- (i) Normally, general meetings are to be called by giving at least 21 clear days' notice as required by Section 101 (1) of the Companies Act, 2013.
- (ii) As an exception, first proviso to Section 101 (1) states that a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto—
  - (A) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
  - (B) in the 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 and who represent not less than ninety- five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
    - (b) Having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at that meeting.

**Conclusion:** In view of the above provisions, Shilpkar Constructions Limited is permitted to call the requisite general meeting by giving a shorter notice. However, the members holding at least ninety-five per cent of the paid-up share capital of the company which gives them a right to vote at the meeting must consent to the shorter notice. Hence, the opinion of Nilesch that there shall be contravention of relevant provisions attracting penalty if a general meeting is called at shorter notice than usually required is not correct.

### Section 101

21. Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide, as per the provisions of the Companies Act, 2013:

- (i) Whether the contention of Amar is valid.
- (ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held?

**(April 22)(5 Marks)**

#### **Solution:**

**Law:** According to section 20(2) read with sec 101 of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting

**Conclusion:** Accordingly, the questions as asked may be answered as under:

- (i) The contention of Amar shall be tenable, for the reason that the notice was not properly served. However company may claim accidental omission to preserve notice from making invalid
- (ii) In the given circumstances, the company is bound to serve a valid notice to Amar by registered post at his residential address at Kanpur and not outside India.

### Section 101

22. P Limited had called its Annual General Meeting on 30th August 2019. Mr. Pawan has filed a complaint against the company, that he could not attend the meeting as the company did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Pawan, inviting him to attend the annual general meeting of the company. Mr. Pawan alleged that he never received the email. In the light of the provisions of the Companies Act, 2013, advise the whether the company has erred in serving the notice of Annual General Meeting to Mr. Pawan.

**(4 Marks) (MTP M 21)**

**Solution:**

**Law:** As per Rule 18 of the Companies (Management & Administration) Rules, 2014, read with sec 101 of companies Act, 2013, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice 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.

**Conclusion:** Hence, the company has not erred in serving notice of Annual General Meeting to Mr. Pawan.

**Section 102 Business and Explanatory Statement**

23. Referring to the provisions of the Companies Act, 2013 state the matters relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company.

**(MTP MAY 2017)**

**Solution:**

Ordinary Business [Sec. 102]

At a AGM Following business shall be ordinary business:

- (i) Consideration and adoption of Financial Statements, Auditor's Report and Board's Report.
- (ii) Declaration of Dividend.
- (iii) Appointment & Removal of directors
- (iv) Appointment, Reappointment and Removal of auditors and fixing of remuneration of auditors.

**Section 102**

24. Om Ltd. served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

- (i) Resolution to increase the authorised share capital of the company.
- (ii) Appointment and fixation of the remuneration of Mr. Pramod as the statutory auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.

**(RTP Sep 24) (5 Marks) (MTP sep 24)**

**Solution:****Law:**

1. At a AGM Following business shall be ordinary business:
  - (i) Consideration and adoption of Financial Statements, Auditor's Report and Board's Report.
  - (ii) Declaration of Dividend.
  - (iii) Appointment & Removal of directors
  - (iv) Appointment, Reappointment and Removal of auditors and fixing of remuneration of auditors.
2. At EGM - No business is ordinary.

3. Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.
4. Following are contents of explanatory statement
  - (a) All material facts concerning each item of business to enable members to take decisions.
  - (b) The nature of concern or interest (financial or non-financial) of:
    - (i) Every director and manager;
    - (ii) Every other key managerial person;
    - (iii) Relatives of (i) and (ii) above.
  - (c) If any item of the special business affects any other company, then the extent of shareholding of every director and manager in that company in case their shareholding interest is atleast 2% of the paid up share capital of the other company [Proviso to Sec. 102(2)]
  - (d) 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. [Sec. 102(3)]
5. Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

**Conclusion:** In present case,

- (i) Part (i) of the question relating to increase in the Authorized Capital falls under special business and The information about the amount is a material fact with reference to the proposed increase of authorized share capital ,hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.
- (ii) Part (ii) is an ordinary business and hence explanatory statement is not required. However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.
- (iii) The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013

### Section 102

25. Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

**(5 Marks) (MTP sep 24) (5 Marks) (MTP Jan 25)**

**Solution:**

**Law:** Same as above question

**Conclusion:** Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed i.e information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013.

**Section 103 Quorum**

KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2024 at 11:00

26. A.M. The company has 900 members. On 11th March, 2024 following persons were present by 11:30 A.M.

- (1) P1, P2 & P3 shareholders
- (2) P4 representing ABC Ltd.
- (3) P5 representing DEF Ltd.
- (4) P6 & P7 as proxies of the shareholders
  - (i) Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.
  - (ii) What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?
  - (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
  - (iv) What happens if there is no Quorum in the Adjourned meeting?(5 Marks) (MTP sep 24)

**Solution:****Law:**

- (i) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if the number of members is not more than 1000
- (ii) The following shall be counted as quorum:
  1. Members personally present.
  2. Representative of:
    - (a) President
    - (b) Governor of States
    - (c) Body corporate

3. Person in more than one capacity is counted as such for quorum. One person can be an authorized representative of more than one body corporate. In such a case, he is treated as more than one member for the purpose of quorum.
  4. Joint members are considered as one member for counting as quorum.
- (iii) The following shall not be counted as quorum:
1. Proxy is not counted as quorum.
  2. Preference shareholders are not counted for quorum except for business which affects their rights.

**Conclusion:**

- (i) (1) P1, P2 and P3 will be counted as three members.  
 (2) P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.  
 (3) P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors. Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.
- (iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103. In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.
- (iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum

**Section 103**

27. The Articles of Association of ABC Limited require the personal presence of 7 members to constitute quorum of General Meetings. The company has 870 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

- (i) A, the representative of Governor of Karnataka.
- (ii) B and C, shareholders of preference shares,
- (iii) D, representing Green Limited and Blue Limited
- (iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

**(6 Marks) (MTP Sep. 22)**

**Solution:**

**Law:** Same like above

**Conclusion:** Calculation of Quorum u/s 103

Particulars Counting u/s 103

- (i) A, the representative of Governor of Karnataka.     1
- (ii) B and C, shareholders of preference shares,     0
- (iii) D, representing Green Limited and Blue Limited     2
- (iv) E, F, G and H as proxies of shareholders.     0

In view of the above there are only three members personally present however quorum required is 7 .

Thus, it can be said that the requirement of quorum has not been met and it shall not constitute a valid quorum for the meeting.

**Section 103**

28. The Board of Directors of ABC Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. In the light of the provisions of the Companies Act, 2013, the Board of directors on the decision to adjournment of the meeting.

**(5 Marks) (MTP sep 24)**

**Solution:**

**Law:** As per section 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled

**Conclusion:** Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper and valid.

**Section 103**

29. Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:

- (a) Quorum for the general meeting if the company has 800 members.
- (b) Quorum for the general meeting if the company has 6500 members.
- (c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

**(April 22) (5 Marks)**

**Solution:**

**Law:** According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

- (1) five members personally present if the number of members as on the date of meeting is not more than one thousand,
- (2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,
- (3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

**Conclusion:** Thus,

- (a) If the company has 800 members, quorum shall be 5 members personally present.
- (b) If the company has 6500 members, quorum shall be 30 members personally present.
- (c) If the company has 5500 members, quorum shall be 30 members personally present. However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

**Section 103**

30. The Annual General Meeting of KMP Limited was held on 30th April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman's decision.

**(MAY 2015)**

**Solution:**

**Law:**

- (i) Section 103 of the Companies Act, 2013 provides that fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (ii) CONSEQUENCES OF NO QUORUM: If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company –
  - a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or

- b) to such other date and such other time and place as the Board may determine; or
- c) the meeting, if called by requisitions (under section 100 ), shall stand cancelled.

**Conclusion:** In the instant case, KMP Limited is a public company with total number of 2750 members, hence atleast 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting.

Thus, the meeting shall automatically stand adjourned to the same day in the next week at the same time and place, if the quorum is not present within half –an-hour from the time appointed for holding a meeting of the company. Further, the Board of Directors may decide for such other date and such other time and place, which they may deem fit. Section 103 of the said Act itself provides for automatic adjournment of the meeting to the same day in the next week at the same time and place, rather the Chairman obviating to take a decision on the matter of the meeting. The question of validity of Chairman’s decision does not arise.

### Section 103

31. PQ Limited is a public company having its registered office in Mumbai. It has 3680 members. The company sent notice to all its members for its Annual general Meeting to be held on 2nd September 2019 (Monday) at 11 :00 AM at its registered office. On the day of meeting there were only 12 members personally present upto 11:30 AM. The Chairman adjourned the meeting to same day in next week at the same time and place. On the day of adjourned meeting only 10 members were personally present. The Chairman initiated the meeting after 11:30 AM and passed the resolutions after discussion as per the agenda of the meeting given in the notice. Comment whether the AGM conducted after adjournment is valid or not as per the provisions of section 103 of Companies Act 2013 by explaining the relevant provisions in this regard.

What would be your answer in the above case, if PQ Limited is a Private company?

**(2 + 2 = 4 Marks) (Nov 2020)**

#### Solution:

#### Law:

- (i) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, fifteen members personally present may fulfil the requirement of quorum, if the number of members as on the date of meeting is more than one thousand but up to five thousand.
- (ii) If the specified quorum is not present within half an hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and place as the Board may determine.
- (iii) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

**Conclusion:** In the instant case, there were only 12 members personally present on the day of meeting of PQ Limited upto 11:30 AM. This was not in compliance with the required quorum as per the law. In the adjourned meeting also, the required quorum was not present but in the adjourned meeting, the members present shall be considered as quorum in line with the provisions of section 103.

Hence, the AGM conducted by PQ Limited after adjournment is valid.

As per the provisions of section 103(1)(b), in case of a private company, two members personally present, shall be quorum for the meeting of a company. Therefore, in case, PQ Limited is a private company, then only two members personally present shall be the quorum for AGM and there was no need for adjournment.

### Section 105 Proxy

32. A General Meeting of ABC Private Ltd was scheduled to be held on 15th April, 2024 at 3.00 P.M. As per the notice, the members who will be unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company, so that the company can receive it within time. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2024 was deposited by Mr. Y with the company at its registered office on 11-04-2024. 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 12-04-2024 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2024. All the proxies viz., Y, 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?

**(5 Marks) (MTP Jan 25) (RTP MAY 2021) (MTP MAY 2019)**

#### **Solution:**

**Law:** A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of section 105 of the Companies Act, 2013,

- (i) every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy.
- (ii) Section 105(4) provides that a proxy received 48 hours before the meeting will be valid.
- (iii) If more than one proxy is appointed by the same member, the proxy received later in time shall be considered provided it has been duly received by the company 48 hours before the meeting.

**Conclusion:** Thus, in case of member X, the proxy Y will be permitted to represent as proxy on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of member W, the proxy M will be permitted to represent as the proxy. Whereas submission of form authorizing N to represent as proxy was deposited in less than 48 hours before the meeting, so N will not be allowed to represent W.

**Section 105**

33. Sekhar, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)?

**(MTP MAY 2017)****Solution:**

**Law:** Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

**Conclusion:** In the given case, Sekhar has given proper notice. However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sekhar can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

**Section 106 Voting**

34. Mr. John held certain partly paid up shares of Ltd. company. 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. John contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of John is valid.

**(RTP May 2015) (MTP NOV 2017)****Solution:**

**Law:** Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

**Conclusion:** In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. John's contention is not valid.

**Section 106**

35. '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.

**(NOV 2018)****Solution:**

**Law:** According to the Section 106 of companies act , 2013:

1. Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.
2. A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

**Conclusion:** In the given question, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

**Section 108 E-Voting**

36. Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e-voting period and the time of closing of remote e-voting.

**(RTP Nov. 22)****Solution:**

**Law:** Sec 108 read with Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:

1. Every company which has listed its equity shares on a recognised stock exchange and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

2. The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

**Conclusion:** In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

### Section 108

37. If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy?

**(MAY 2019)**

**Solution:**

**Law:** According to sec 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that 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.

**Conclusion:** In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

### Section 109 Poll

38. Examine the validity of the following decision of the Board of Directors with reference to the provisions of the Companies Act, 2013:

In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

**(5 Marks) (MTP Jan 25)**

**Solution:**

**Law:** Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (i) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (ii) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power

**Conclusion:** In the given question, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. Hence, the contention of the Chairman is not valid.

### Section 109

39. 'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.

**(RTP Nov. 22)**

#### **Solution:**

**Law:** According to sec 109 read with Rule 21 of the Companies (Management and Administration) Rules, 2014

- (i) The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register
- (ii) 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.

**Conclusion:** Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

### Section 111 Members Resolution

40. Prakash and some of his friends are members of Focus Limited, a company with a paid- up share capital of ₹ one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

- (i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.
- (ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

**(RTP May24)**

**Solution:****Law:**

In terms of section 111 of the Companies Act, 2013, the members of a company are given a statutory right to propose resolutions for consideration at the general meetings. According to sub-section (1), the number of members required to make a requisition for moving resolution shall be same as required to requisition a general meeting as per section 100 (2). The requirement is as under:

“In case of a company having share capital, such number of members who hold minimum 1/10th of the paid-up share capital that carries right of voting shall be eligible to make a requisition for moving a resolution at the general meeting.”

**Conclusion:**

- (i) Accordingly, Prakash and his friends must hold minimum 1/10th of paid-up share capital (i.e. ₹ 10 lakh worth of share capital carrying right to vote) of Focus Limited in order to be eligible for moving a resolution at the general meeting.
- (ii) The other requirements as per section 111 for making a requisition to move a resolution at the general meeting which Prakash and his friends should keep in mind are as under:
  - a) Two or more copies of the requisition are required to contain signatures of all the requisitionists i.e. Prakash and friends.
  - b) The requisition must be deposited by them at CP where the registered office of Focus Limited is situated.
  - c) In the case of a requisition requiring notice of a resolution, it needs to be deposited by them not less than six weeks before the meeting.
  - d) In case of any other resolution, the same is to be deposited by them not less than two weeks before the meeting.
  - e) A sum reasonably sufficient to meet the expenses to be incurred by Focus Limited in giving effect to proposing the resolution shall also be deposited by Prakash and his friends along with the requisition.

**Section 114 Ordinary and special resolution**

41. At a General meeting of a XYZ Limited, 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.

**(MTP NOV 2019)**

**Solution:****Law:**

- (i) As per Section 114(2) of the Act, a resolution shall be a special resolution, when—
  - (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
  - (b) The notice required under this Act has been duly given; and
  - (c) The votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting
- (ii) Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution.
- (iii) Abstentions or invalid votes, if any, are not to be taken into account.

**Conclusion:** Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order

**Section 114**

42. Give the points of distinction between ordinary resolution and special resolution.

**(MAY 2019)**

**Solution:**

- (i) Meaning - Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it. Whereas As per Section 114(2) of the Act, a resolution shall be a special resolution, when—
  - (d) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
  - (e) The notice required under this Act has been duly given; and
  - (f) The votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting
- (ii) Matter – Special resolution are required on more critical matters as compared to matters requiring ordinary resolution
- (iii) Filing with ROC- Copy of every special resolution is filed with ROC within 30 days in MGT-14 whereas only in some cases required by law , ordinary resolution need to be file with ROC

**Section 115 Special Notice**

43. Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request.

**(NOV 2018)****Solution:**

**Law:** Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding ₹ 5,00,000/- has been paid-up.

**Conclusion:** According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

**Section 118 Minutes**

44. Enumerate the provisions of the Companies Act, 2013 in respect to the following:

- (i) Matters not to be included in the minute, as per the opinion of the Chairman.
- (ii) Maximum time allowed for entering minutes of proceedings.

**(5 Marks) (MTP April 24)****Solution:**

As per sec 118 of companies Act,2013

- (i) What to include or exclude in minutes is solely at discretion of Chairman . There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting—
  - a) is or could reasonably be regarded as defamatory of any person; or
  - b) is irrelevant or immaterial to the proceedings; or
  - c) is detrimental to the interests of the company.
- (ii) Maximum time allowed for entering minutes of proceedings: The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 30 days of the conclusion of the meeting.

**Section 118**

45. In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013?

**(RTP MAY 2018) (MTP NOV 2019)**

**Solution:**

**Law:** Under Section 118 (5) of the Companies Act, 2013, chairman can exclude certain matters in Minutes of a meeting, which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

**Conclusion:** Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

**Section 121 Report on AGM**

46. Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?

**(RTP MAY 2021)**

**Solution:**

- (i) every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder.
- (ii) A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee.

**Conclusion:** Since, Pristine Ltd. is a listed company, hence it has to file a copy of report of AGM with the Registrar within 30 days from 31st August, 2020.