

General Meetings

Lesson 12

KEY CONCEPTS

- General Meetings ■ Adjourned Meeting ■ Notice ■ Quorum ■ Agenda ■ Chairman ■ Class Meeting ■ Poll
- Postal Ballot ■ E-voting ■ Minutes ■ Virtual Meetings ■ Secretarial Standard-2

Learning Objectives

To understand:

- Procedure to conduct Annual General Meeting/ Extra-ordinary General Meeting
- Types of Resolutions
- Procedure of voting through show of hands/ postal ballot/ e-voting
- Maintenance of Minutes
- Report on AGM
- Virtual meetings

Lesson Outline

- | | |
|--|---|
| ➤ Introduction | ➤ Virtual Meetings: Technological Advancement in conduct of General Meetings |
| ➤ Annual General Meetings | ➤ Drafting of Notice and Minutes of Annual General Meeting and Extra-Ordinary General Meeting |
| ➤ Extra-ordinary General Meetings | ➤ Lesson Round-Up |
| ➤ Other General Meetings | ➤ Glossary |
| ➤ Types of resolutions | ➤ Test Yourself |
| ➤ Notice, Quorum, Poll, Chairman, Proxy | ➤ List of Further Readings |
| ➤ Meeting and Agenda | ➤ Other References |
| ➤ Process of conducting meetings | |
| ➤ Voting and its types- vote on show of hands, Poll, E-voting, Postal Ballot | |
| ➤ Circulation of Members' Resolution | |
| ➤ Secretarial Standards – 2 | |
| ➤ Duties of Company Secretaries before, during and after General Meetings | |

REGULATORY FRAMEWORK

- The Companies Act, 2013 (Section-96 to 118 and 121)
- The Companies (Management and Administration) Rules, 2014
- SS-2- Secretarial Standard on General Meetings
- The SEBI (LODR) Regulations, 2015

INTRODUCTION

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be at least two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting.

A company is composed of members, though it has its own entity distinct from members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. However, a company, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisions through resolutions passed at validly held meetings. The primary purpose of a meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the meeting to take decisions as per the prescribed procedures.

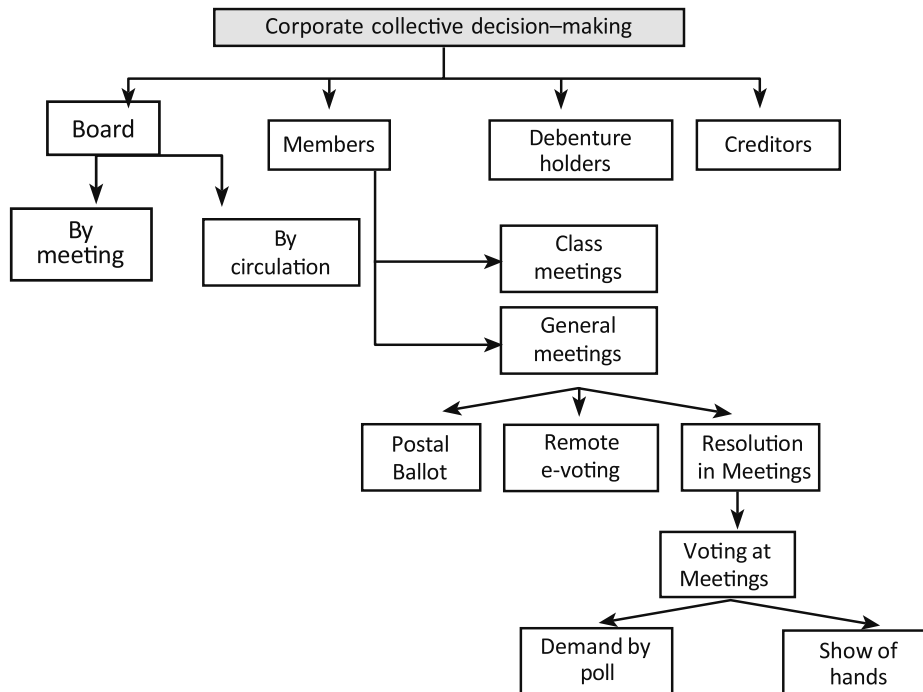
The decision making powers of a company are vested in the members and the directors. They exercise their respective powers through resolutions passed by them. General meetings of the members provide a platform to express their will in regard to the management of the affairs of the company.

The Act mandates holding of Meetings at specified intervals and also prescribes related rules for the same. Such mandate is in recognition of the fact that Meetings play a vital role in the functioning and governance of a company. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures. A company, being an artificial person, can, in respect of matters to be decided at General Meeting, take such decisions through its Members by way of Resolutions passed at validly held Meetings. Meetings of Members are known as General Meetings and determining what constitutes such validly held Meeting is of utmost importance.

Secretarial Standard on General Meetings of companies:

Secretarial Standard on General Meeting (SS-2) issued by the Institute of Company Secretaries of India (ICSI) and approved by central government is to be mandatorily adhered by all companies as per the provision of Section 118(10) of Companies Act, 2013. The objective of secretarial standard is to promote good corporate governance. This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification. The revised version of Secretarial Standard is effective from 1st April 2024.

Corporate Meetings and Collective Decision making

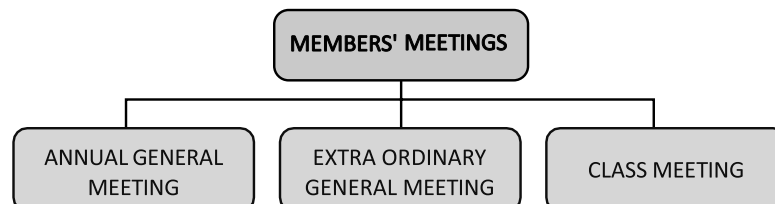


Members' Meetings

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act.

Convening of one such meeting every year is compulsory. Holding of more general meetings is left to the choice of the management or to a given percentage of shareholders to exercise their power to compel the company to convene a meeting. Shareholder democracy, class action suits and protection of interest of investors are the essence and attributes of the Companies Act, 2013.

The meeting to be held annually for seeking approval to certain 'ordinary business' is called Annual General Meeting. A meeting to be held to transact any business other than ordinary business is called extraordinary general meeting. In certain cases, a company may have to hold a meeting of the members of a particular class of members.



1. ANNUAL GENERAL MEETING (SECTION 96)

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year. The importance of the Annual General Meeting arises out of the nature of business transacted at this Meeting. Broadly there are two types of business that are transacted at an Annual General Meeting – Ordinary Business and Special Business. At an Annual General

Meeting, consideration of financial statements & consolidated financial statements, reports of the Board of Directors and the auditors, declaration of dividend, appointment of Directors in place of those retiring and approval of appointment of the Auditors and fixing their remuneration are Ordinary Business. Any other item of business is referred to as Special Business and may also be transacted at an Annual General Meeting.

SS-2 provides that the Board shall, every year, convene or authorize convening of a meeting of its members called the Annual General Meeting to transact items of ordinary business specifically required to be transacted at an annual general meeting as well as special business, if any. If the Board fails to convene its Annual General Meeting in any year, any Member of the company may approach the prescribed authority, which may then direct the calling of the Annual General Meeting of the company. Following are the key provisions regarding the holding of an Annual General Meeting:

Holding of Annual General Meeting

1. Annual general meeting should be held once in each calendar year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the date of closing of the relevant financial year.
4. The gap between two annual general meetings shall not exceed 15 months.

Additional Compliance for listed Companies :-

Additionally, for listed entities, Regulation 44(5) and (6) of SEBI (LODR) Regulations, 2015 provides that for the top 100 listed entities by market capitalization, (omitted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 w.e.f. 31.12.2024), shall hold their annual general meetings within a period of five months from the date of closing of the financial year.

The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

(Omitted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 w.e.f. 31.12.2024.)

Exemption to OPC: As provided in sub-section (1) of section 96, one person company is not required to hold Annual General meeting.

Illustrations:

1. M/s XYZ Limited company was incorporated on 10th December 2018, "financial year" of that company would end on 31st March 2019, in view of sub-section (41) of Section 2 of the Act and therefore the last date for holding the first Annual General Meeting would be 31st December 2019 (9 months from 31st March 2019).
2. If a company was incorporated on 10th April 2018, its first financial year would end on 31st March 2019, only and therefore, the last date for holding the first Annual General Meeting will be 31st December 2019. In this manner, almost 21 months elapse between the date of incorporation and date of first Annual General Meeting. In this case, the company need not hold any Annual General Meeting in the year of its incorporation i.e. 2018.
3. ABC & Co. is incorporated in August 2021. Its first AGM must be held till 31st December, 2022 and it is not compulsory to hold AGM in 2021. The second will be held till 30th September, 2023.
4. M/s STK & Ltd. was incorporated in August 2020. Its AGM for the year 2021-22 will be held till 30th September, 2022.

Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

Test your knowledge:

Question: The gap between two annual general meetings shall not exceed 15 months. Comment.

Answer: According to section 96(1) of the Companies Act, 2013, gap of not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next year. According to third 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 of not exceeding three months.

The company may apply to the Registrar for extension for holding AGM, justifying it as a special reason. The registrar may, after considering it as a special reason, extend the time within which an AGM shall be held which shall be a period not exceeding three months.

Day, Time and Place for holding an Annual General Meeting

An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should 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. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.

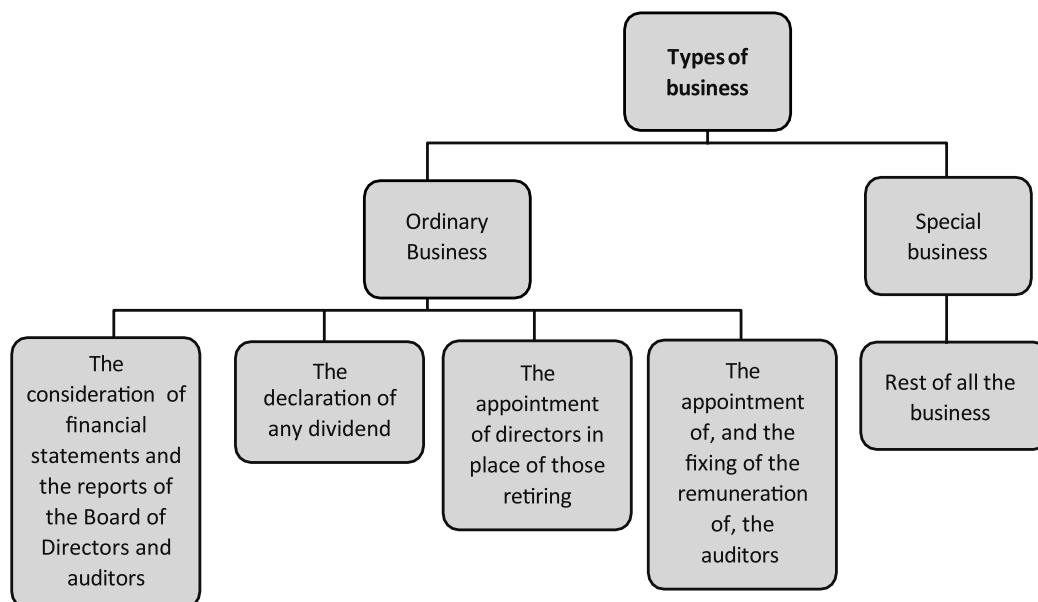
“National Holiday” for this purpose means and includes a day declared as National Holiday by the Central Government. According to SS-2, National Holiday means Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.

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.

- In case of a Government company, the Annual General Meeting (AGM) shall be held at its registered office or some other place within the city, town or village in which the registered office of the company is situated or at any other place with the approval of the Central Government.

Accordingly, there is no need of Central Government approval, if a Government Company is holding its AGM within the city, town or village in which registered office of the company is situated.

- In case of Section 8 Company, the time, date and place of each AGM are decided upon before-hand by the Board having regard to the directions, if any, given in this regard by such company in the general meeting.
- Further, MCA vide its Notification(s) dated 13th June, 2017 issued in respect of Government Companies, Private Companies, and Section 8 Companies placed a restriction that such exemptions shall be applicable to those companies which have not committed a default in filing its Financial Statements or Annual Return with the Registrar of Companies.

Business to be transacted at Annual General Meeting: [Section 102(2)(a)]

Section 102(2)(a) provides that all other businesses transacted at an Annual General Meeting except the following are special business:

- (i) the consideration of financial statements and the reports of the Board of Directors and auditors;
- (ii) the declaration of any dividend;
- (iii) the appointment of directors in place of those retiring;
- (iv) the appointment of, and the fixing of the remuneration of, the auditors.

Accordingly, above mentioned four businesses are ordinary business rest shall be deemed to be special business. Explanatory statement is not required for transacting any item of ordinary business. All business except specified above shall be deemed as special business at an AGM.

In case of meeting other than AGM, all business shall be deemed to be special. Explanatory statement must be annexed to the Notice for transacting every items of special business. In case of non-disclosure or insufficient disclosure in Explanatory Statement being made by a promoter, director, manager or other key managerial personnel, any benefit accrues to such promoter, director, manager or other key managerial personnel or their relatives, such person shall hold such benefit in trust for the company, and shall compensate the company to the extent of benefit derived by him.

Without prejudice to the above mentioned provisions, if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.

CASE LAWS

1. Where directors of company had failed to hold Annual General Meeting (AGM) of company for several years i.e. from 2015-2016 to 2018-2019, and thus, failed to comply provisions of section 96, penalty was to be imposed on said directors for alleged non-compliance. [*Sulochana Gupta v. RBG Enterprises (P.) Ltd. held by National Company Law Tribunal, Kochi Bench (2021)*]

2. Where there was non-compliance of certain provisions of the Companies Act, 2013 in conducting Annual General Meeting of the company, same amounted to an act of oppression or mismanagement. [*Held by National Company Law Tribunal, Chandigarh Bench in the case of Ramprasad Dalmia v. Board of Directors (2017)*]
3. Where company stated that due to server crash at registered office in India which was linked to main server in US, Applicant Company's account could not be finalized and therefore, the company's Annual General Meeting could not be held on time and ROC stated that this violation could be compounded by levying compounding fee. The Tribunal directs the company and the directors to pay the compounding fees. [*Held by National Company Law Tribunal, Bangaluru Bench (2016)*]

Penalty for default in holding the Annual General Meeting [Section 99]

Section 99 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in case of continuing default, with a further fine which may extend to five thousand rupees for each day during which such default continues.

Section 97 provides that if any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Every listed entity, under Regulation 30 of SEBI (LODR) Regulation, 2015, is required to disclose the proceedings of annual & extraordinary general meeting to the Stock Exchange where its securities are listed within 12 hours of the occurrence of such event.

CASE LAW

It is well settled that the annual general meeting must be called, whether or not the annual accounts are ready for consideration at the meeting. "There is a clear statutory duty on the directors to call the meeting whether or not the accounts the consideration of which is only one of the matters to be dealt with at an Annual General Meeting are ready or not." [*Re. El Sombrero Ltd. (1958) 3 All ER 1 at 6 (1958) 28 Com Cases 619 (Ch D)*].

CONVENING OF A VALID GENERAL MEETING

The business at a meeting is said to have been "validly transacted" if the members of the organisation or body concerned, whether or not they were present, are bound by the decision made thereat. They cannot be so bound unless the meeting is validly held. The essentials of a valid meeting are that the meeting should be:

- (a) Properly convened:
 - (i) The meeting must be called by proper authority; and
 - (ii) Proper notice must be served in the manner specified under Section 101 and 102 of the Act.

CASE LAW

Service of notice of AGM by hand, under certificate of posting and by publication in newspaper is considered as deemed service of notice [*Held in Ganesh Commercial Co. Ltd. v. Arun Kumar Mohata (2013) by High Court of Calcutta*]

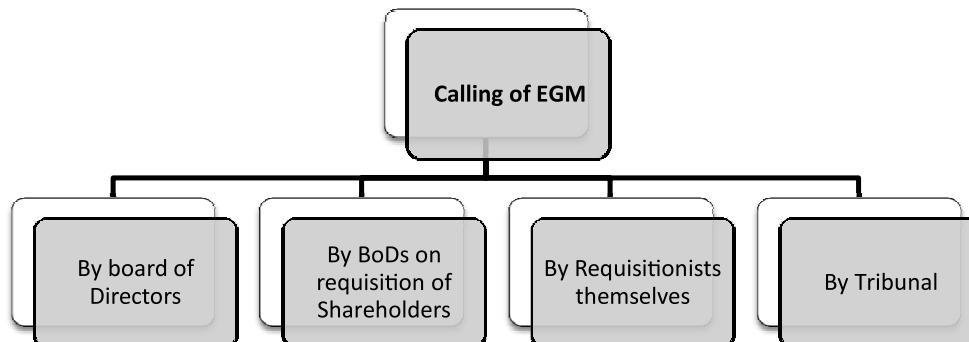
- (b) Properly constituted:
 - (i) Proper quorum must be present in the general meeting (Section 103 of the Act);
 - (ii) Proper chairman must preside the meeting (Section 104 of the Act);
- (c) Properly conducted:
 - (i) The business must be validly transacted at the meeting i.e. resolutions must be properly moved and passed, and voting by show of hands and on poll and/or by electronic means before and/or during the meeting;
 - (ii) Proper minutes of the meeting must be prepared (Section 118 of the Act).

CASE LAW

Typographical/inadvertent error in recording of the minutes of the meeting, which is rectified subsequently cannot be termed as an offence, under provisions of Companies Act. [*Held in Usha Martin Telematics Ltd. v. Registrar of Companies (2021) by High Court of Calcutta*]

2. EXTRA-ORDINARY GENERAL MEETING (SECTION 100)

There are so many matters relating to the business of a company, which require approval or consent of members in general meeting. It is not always possible for consideration of such matters to wait until the next annual general meeting. The articles of association of the company make provisions for convening general meeting other than the annual general meeting. All general meetings other than annual general meeting are called extra-ordinary general meetings (EGM). According to SS-2, all items of business other than ordinary business, may be considered at an EGM or by means of a postal ballot, if thought fit by the Board. This means that all the transactions dealt upon in an EGM shall be special business.



Following are the key provisions, regarding calling and holding of an extraordinary general meeting:

(1) By the Board Suo motu [Section 100 (1)]

The Board may, whenever it deems fit, call an EGM of the company. An extraordinary general meeting of the company shall be held at any place in India. An extraordinary general meeting of a company which is wholly owned subsidiary of a company incorporate outside India, may be held outside India.

(2) By the Board on requisition of members [Section 100 (2)]

The Board shall call an extraordinary general meeting on receipt of the requisition from the following number of members:

- (a) in the case of a **company having a share capital**: members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

- (b) in the case of a **company not having a share capital**: members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote.

Matters set out for consideration in requisition: The requisition made as above, 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.

Time period for calling the meeting: The Board is required to proceed to call a meeting within 21 days from the date of receipt of a valid requisition, to convene a meeting which should be held within 45 days of such deposit of the requisition with the company.

CASE LAW

No Court or Tribunal can restrain holding of an EGM as long as requisition of shareholders in that behalf is compliant with procedural and numerical requirements of section 100. [*Held in Invesco Developing Markets Fund v. Zee Entertainment Enterprises Ltd. (2022) by High Court of Bombay*]

(3) By requisitionists [Section 100(4)]

- (1) 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. However, in such case, the meeting should be held within a period of 3 months from the date of the requisition.

Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

Requisition for convening of EGM by members: The members may requisition convening of an extraordinary general meeting, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.

Reimbursement of expenses in calling a meeting: Reasonable expenses incurred by the requisitionists in calling such a meeting shall be reimbursed by the company to the requisitionists. The company in turn recovers such expenses from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled. [Section 103(2)(b)]

CASE LAW

Where a shareholder (respondent) of appellant company had filed petition before NCLT for holding of Extraordinary General Meeting of appellant as soon as possible and the Tribunal by impugned order granted only two days to appellant to file its reply to said petition, NCLT had committed an error in not granting reasonable and sufficient time for filing a reply. [*Held in Zee Entertainment Enterprises Ltd. v. Invesco Developing Markets Fund (2021) by National Company Law Appellate Tribunal, New Delhi*].

- (2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. A Meeting called by the requisitionists 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. Such meeting shall be held on any day except national holiday.

- (3) If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.
- (4) **Notice to be signed:** The notice shall be signed by all the requisitionists or by a requisitionists duly authorized in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- (5) **No explanatory statement annexed to the notice:** No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
- (6) **Serving of notice of the meeting:** The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
- (7) **No meeting convened:** Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition.
- (8) **Mode of giving notice:** The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by any member shall not invalidate the proceedings of the meeting.

Case Law: A company cannot be restrained from holding and convening an Extra Ordinary General Meeting where shareholders have right to exercise their vote in a democratic manner. [Held in *N. Thirumurthy v. Sree Pavithra Steels (P.) Ltd. (2013)* by Company Law Board, Chennai Bench]

(4) **By Tribunal [Section 98]**

Section 98 provides that if for any reason it is impracticable to call a meeting of a company or to hold or conduct the meeting of the company, other than an annual general meeting, the Tribunal may, either *suo-moto* or on the application of any director or member of the company who would be entitled to vote at the meeting:

- (a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
- (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company.

Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting. Meeting held pursuant to such order shall be deemed to be a meeting of the company duly called, held and conducted.

CASE LAW

Relief under section 186 of 1956 Act (Section 98 of Companies Act, 2013) cannot be given in a case where shareholders are present and it is not impracticable to call meeting, more especially in a case where shareholders express their willingness to attend meeting. [*Held in VIL Ltd. v. Raibareilly Allahabad Highway (P.) Ltd. (2016) by Company Law Board, New Delhi Bench*]

3. CLASS MEETINGS

Meetings of members of a company fall into two broad divisions, namely, general meetings and class meetings. Class meetings are meeting of shareholders holding a particular class of shares, which are held to pass a resolution which will bind only the members of the class concerned. Only members of the class concerned may attend and vote at meeting. Usually, the rules to voting apply to class meetings as they govern voting at general meetings. These class meetings must be convened whenever it is necessary to alter or change the rights or privileges of that class as provided by the articles. For effecting such changes, it is necessary that these are approved at a separate meeting of the holders of those shares and supported by a special resolution. Under section 48 of the Companies Act, 2013 (variation of shareholders' rights) class meeting of the holders of different classes of shares shall be held if the rights attaching to these shares are to be varied. Similarly, under Section 232 (Merger and Amalgamation of Companies), where a scheme of arrangement is proposed, meeting of several classes of shareholders and creditors are required to be held. Details of meetings of members or class meetings are required to be mentioned in the Annual Return as per Section 92(1)(f). Such Meetings are required to be convened when it is proposed to vary the rights of the holders of a particular class of shares. Provisions which govern General Meetings are *mutatis mutandis* applicable to such Meetings.

4. MEETINGS OF DEBENTURE HOLDERS, CREDITORS, ETC.

Such Meetings are held to transact business by way of passing Resolutions which bind the debenture holders or creditors, as the case may be, of the company. The debenture holders or creditors, as the case may be, can attend such Meetings and speak as well as vote thereat. Provisions which govern General Meetings are *mutatis mutandis* applicable to such Meetings.

Members of a company can exercise their powers and can bind the company when they act as a body at a validly convened and held Meeting. They should act collectively and not individually. A Member or shareholder, irrespective of his shareholding, cannot bind a company by his individual act.

ADJOURNED MEETING

If the 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 such other time and place as the Board may determine.

Notice of an adjourned meeting- Where the meeting stands adjourned to the same day in the next week at the same time and place, or to such other day, not being a National Holiday, or at such other time and place as the Board may determine, the company shall give at least 3 days' notice to the members either individually or by publishing an advertisement in 2 newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

No quorum in an adjourned meeting- 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, being not less than two in numbers, will constitute the quorum.

PROCEDURE FOR HOLDING ADJOURNED MEETING

Para 15.1 of SS-2 provides that a duly convened Meeting shall not be adjourned unless circumstances so warrant. The Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.

Meetings shall stand adjourned for want of requisite Quorum. The Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.

Para 15.2 provides that if a Meeting is adjourned *sine-die* or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.

Para 15.3 provides that if a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

Para 15.4 provides that if a Meeting, other than an Annual General Meeting and a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, or at such other time and place as may be determined by the Board.

Illustration:

Question: The articles of association of XYZ Ltd. having 700 members as on cutoff date, prescribe for physical presence of 7 members to constitute quorum of general meetings. Following are the status of persons present in a general meeting of XYZ Ltd to consider the appointment of MD. Check the quorum of the meeting.

- (a) Mr. A, the representative of Governor of Maharashtra.
- (b) Mr. B & Mr. C are preference shareholders.
- (c) Mr. D representing ABC Ltd. and SKY Ltd.
- (d) Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders.

Hint:

- (a) Since Mr. A is the representative of the Governor of Maharashtra, shall be treated as a member personally present (Section 112).
- (b) Preference shareholders can vote only in relation to such matters which directly affect their rights. In this case, meeting was called to take decision on appointment of MD, which does not affect their rights. Therefore, Mr. B & Mr. C are not members personally present.
- (c) Since Mr. D represents two body corporates, he would be treated as two members personally present. (Section 113)
- (d) Since Mr. E, Mr. F, Mr. G and Mr. H are proxies of shareholders and members are not personally present. They are not considered while counting quorum.

From the above analysis, it can be concluded that only 3 members are personally present and they do not constitute proper quorum as fixed by the company.

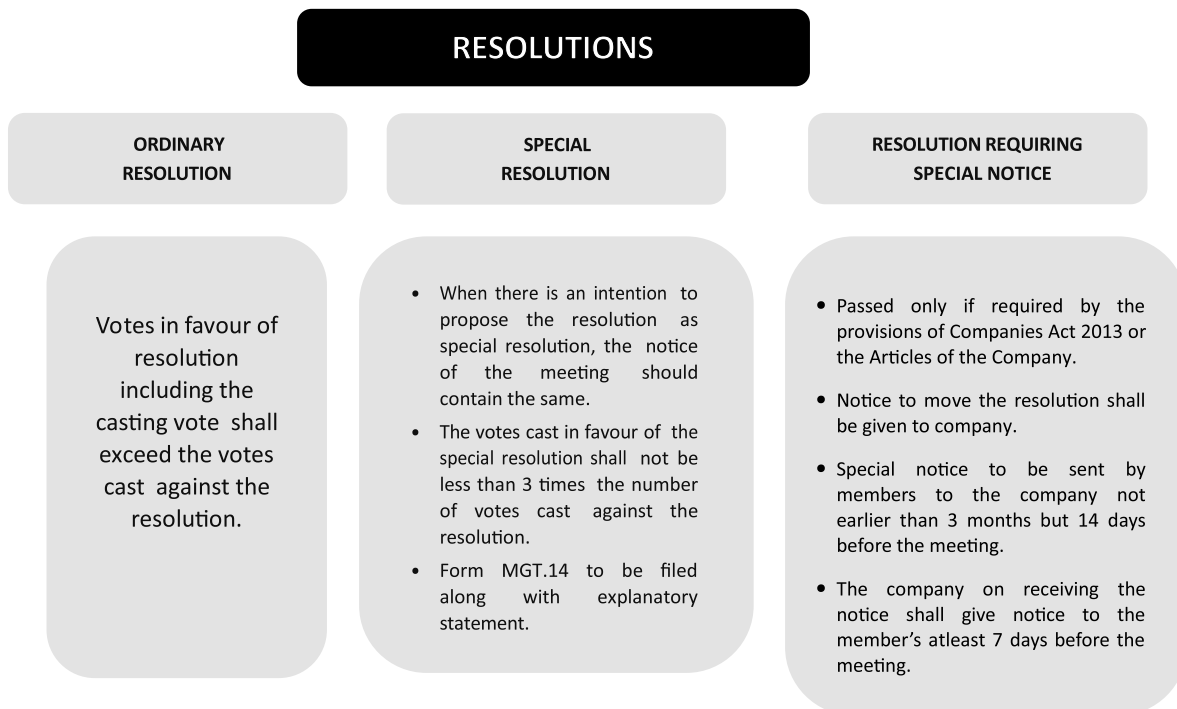
Note: The quorum required in respect of general meeting of a public company is 5 members personally present (in case total number of members is less than 1000) and the quorum can be increased by the articles of the company.

Resolution passed at adjourned meetings

As per Section 116 where a resolution is passed at an adjourned meeting of a company; or the holders of any class of shares in a company; or the Board of Directors, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

Para 15.6 of SS-2 provides that at an adjourned Meeting, only the unfinished business of the original Meeting shall be considered. Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

TYPES OF RESOLUTIONS



Ordinary and Special Resolutions

Section 114 relates to Ordinary and Special Resolution:

Ordinary Resolution

A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting. The method of voting might be through show of hands, electronic voting, poll or any other permitted method or postal ballot. The number of votes of only the members who are 'entitled and voting' are to be counted. Hence, the persons who abstain from voting or are not allowed to vote are not to be counted. Wherever a provision of the Act or articles simply provides for passing a resolution by the company or authority given by the company in general meeting or approval of the company without mentioning the nature of the resolution to be passed, an ordinary resolution is required to be passed. Further, the notice required to be given may be given either by the company or the member proposing the resolution.

Following business are transacted through Ordinary Resolution:

- Appointment of Auditors;
- Declaration of Dividend;
- Consideration of the financial statements, reports of Board and Auditors; and
- Appointment of director in place of those retiring etc.

Special Resolution

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, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

If the notice convening the meeting (where at special business will be transacted) does not state the nature of the special business, the meeting would be deemed to have been convened irregularly. Consequently, that special business cannot be dealt with at the meeting.

The method of voting might be through show of hands, electronic voting, poll or any other permitted method or postal ballot. The number of votes of only the members who are 'entitled and voting' are to be counted. Hence, the persons who abstain from voting or are not allowed to vote (whether under the provisions of this Act or otherwise) are not to be counted. Further, the notice required to be given may be given either by the company or the member proposing the resolution.

For example, following business are transacted through Special Resolution:

- Making change in name of the company;
- Change in Articles of Association; and
- Changing a Private Company to Public Company etc.

RESOLUTIONS REQUIRING SPECIAL NOTICE (SECTION 115)

Section 115 provides that 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 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/-, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.

The matters in respect of which special notice is required are:

- (a) A resolution for appointment of a person as auditor at the annual general meeting other than the retiring auditor or providing expressly that the retiring auditor shall not be re-appointed [Section 140(4)];
- (b) A resolution for removing a director before the expiry of the period of his office and appointing someone in the place of the director so removed [Section 169(2)].

Procedure for special notice: [Rule 23 of the Companies (Management and Administration) Rules, 2014]

- (a) **Signing of special notice:** A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.
- (b) **Sending of notice to the company:** Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
- (c) **On receipt of notice by the company:** The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.
- (d) **Publication of notice:** Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

CASE LAW**7/11/2017*****Jai Kumar Arya v. Chhaya Devi******Delhi High Court*****Facts of the case:**

The Company received a requisition, from its shareholders, for convening of an Extra Ordinary General Meeting (hereinafter referred to as “EGM”) on 26th May 2017, with the following proposals: “(i) removal of the plaintiff (Chhaya Devi) as Director/Managing Director of the Company, (ii) setting aside a notice, earlier issued, for approval of an agenda item, dated 31st of May 2014, to terminate the directorship of the defendants, and (iii) appointment of Defendant No. 1 (Rukmini Devi) as Managing Director of the Company.”

On receiving the said requisition, the plaintiff (Chhaya Devi) responded, on 25th April 2017, alleging that the requisition was not in accordance with Section 169, read with Section 115 of the Companies Act, 2013 (hereinafter referred to as “the Act”), in as much as no Special Notice had been served, by the shareholders, on the Company and, instead, the Company had simply been requested to serve notice under Section 169.

This Appeal is against order of restraining other directors from acting upon notice and for convening Board meeting for removal of managing director.

Notice only called for a meeting of Board to decide whether an EGM should be convened or not—Where managing director filed an interlocutory application for restraining other directors of the company from acting upon notice dated 8-8-2017 for convening board meeting on 26-8-2017 for her removal, and the same was allowed by Single Judge on the ground that there was no proper requisition of shareholders for holding EGM for removal of the MD, but the said notice did not itself convene an EGM, it only called for a meeting of the Board to decide whether an EGM should be convened or not, therefore, the impugned order was to be set aside and the notice dated 8-8-2017 would stand revived.

The court observed that no specific form or format of a “requisition” is prescribed in the Act, or in any cognate legislation, so that any document issued by the requisite number of members of the Company as specified in Section 100(2) of the Act (which calls for convening of an EGM) would be eligible to be styled as a “requisition”.

Judgement: The court held that there was no obligation to disclose the reasons for removing a person from the directorship of the company prior to the EGM where such proposal was to be considered.

Further that, the notice dated 8-8-2017 was itself only a notice for fixing a meeting of the Board of the company. It did not itself convene an EGM, but only calls for a meeting of the Board to decide whether an EGM should be convened or not. Therefore, question of requisition of the shareholders for holding the EGM would not arise. Further that, in the proposed Board meeting, no decision of removal of the MD from the company was to be taken. Hence, the impugned order was to be set aside and the notice dated 8-8-2017 would stand revive.

CASE LAW

In re. Godrej Industries Limited (2014), honorable judge G.S. Patel of Bombay High Court observed the importance of discussions and deliberations at general meeting of members:

The court observed that the heart of corporate governance lies transparency and a well-established principle of indoor democracy that gives shareholders qualified, yet definite and vital rights in matters relating to the functioning of the company in which they hold equity. Principal among these, to my mind, is not merely a right to vote on any particular item of business, so much as the right to use the vote as an expression of an informed decision. That necessarily means that the shareholder has an inalienable right to ask questions, seek clarifications and receive responses before he decides which way he will vote. It may often happen that a shareholder is undecided on any particular item of business. At a meeting of shareholders, he may, on hearing a fellow shareholder who raises a question, or on hearing an explanation from a director, finally make up his mind. In other cases, he may hold strong views and may desire to convince others of his convictions. This may be in relation to matters that are not immediately obvious to the shareholder merely on receipt of written information or a notice. The right to persuade and the right to be persuaded are, of vital importance. In an effort for greater inclusiveness, these rights cannot be altogether defenestrated. To say, therefore, that no meeting is required and that the shareholder must cast his vote only on the basis of the information that has been sent to him by post or email seems to be completely contrary to the legislative intent and spirit to the express.

CASE LAW

Where special notice issued by respondent for removal of chairman of petitioner company was nothing but to secure needless publicity and defaming company and amounting to abuse the process of law, petitioner company was exempted from publication, circulation, or reading out such notice at forthcoming AGM. [*Held in BSE Ltd. V. Sureshchandra V. Parekh (2014) by Company Law Board, Mumbai Bench*]

PROCESS OF PASSING THE RESOLUTIONS

The resolution is proposed as a 'motion'. A motion becomes a resolution only after the requisite majority of members have adopted it. A motion should be in writing and signed by the mover and put to the vote at the meeting by the chairman. In case of company meetings, only such motions are proposed as are covered by the agenda. However, certain motions may arise out of the discussion and may be allowed where no special resolution is mandated in the Act. Para 7.1 of Secretarial Standard-2 provides that every resolution shall be proposed by a member and seconded by another member.

The motion being discussed may undergo an amendment in the course of discussion. An amendment is any alteration to the main motion proposed by a member before it is voted upon and adopted. Amendment may

be proposed by any member who has not already spoken on the main motion or has not previously moved an amendment, but a formal motion cannot be amended. Like the main motion, an amendment should ordinarily be in writing, signed by the mover. The terms of the amendment should be definite and in the affirmative and it should not raise any question already decided upon at the same meeting. It should be relevant to and in keeping with the main motion which it seeks to amend and must not merely negate the main motion or introduce entirely a new subject.

The Chairman has the absolute discretion to accept or reject an amendment on various grounds such as inconsistency, redundancy, irrelevance etc. When an amendment has been moved, admitted and seconded discussion on the main motion ceases and discussion on the amendment starts. Any one may speak on the amendment even if he has already spoken on the main motion, but no one is allowed to speak twice on the same amendment. After the amendment has been thoroughly discussed, it is put to vote. If the amendment is carried, it is incorporated in the body of the main motion. The altered motion which is known as “substantive motion” is then put before the meeting. If the amendment is lost, discussion on the main motion is resumed, but if the substantive motion is put to vote and lost, the original motion cannot be revived.

Any number of amendments to the main motion can be moved. An amendment to alter another amendment can also be moved, but an amendment can be amended only once. When a large number of amendments to the main motion have been moved, the original motion may be withdrawn by common consent and a new motion incorporating all the amendments may be taken up. The Chairman has the discretion to decide in what order the various amendments should be taken up for consideration.

RESOLUTIONS AND AGREEMENTS TO BE FILED WITH THE REGISTRAR

Section 117 provides that a copy of every resolution or the agreement in respect of matters specified therein together with the explanatory statement shall be filed in **Form No. MGT.14** with the Registrar, within thirty days of its passing or making thereof. The Registrar shall register the same.

Exceptions:

Specified IFSC Public company/Specified IFSC Private Company can file a copy of every resolution or the agreement in respect of matters specified therein together with the explanatory statement in Form No. MGT.14 with the Registrar, within sixty days of its passing or making thereof.

In case the company fails to file the resolution or the agreement before the expiry of the specified period of thirty days, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.

Resolutions and agreements to be filed with the Registrar are as under:

- (a) special resolutions;
- (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;
- (c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

- (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;
- (e) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code 2016;
- (f) resolutions passed in pursuance of sub-section (3) of section 179. However, no person shall be entitled under Section 399 to inspect or obtain copies of such resolutions.

(i) Nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,—

- (a) a banking company;
- (b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;
- (c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and

(ii) Filing of resolutions passed in pursuance of sub-section (3) of section 179 with the Registrar is not applicable to private companies vide exemption notification no GSR 464(E) dated 5th June, 2015 and Specified IFSC Public Company *vide Notification Dated 4th January, 2017*.

- (g) any other resolution or agreement as may be prescribed and placed in the public domain.

Test your knowledge:

Question: At a General meeting of a company, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favor of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 member 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?

NOTICE OF MEETING (SECTION 101)

The Notice should be in writing, though no form has been prescribed for this purpose. Oral intimation that it is proposed to have a General Meeting is not a Notice at all and consequently if any Meeting is held, it will be invalid.

Length of notice of meeting

A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

In case of section 8 company, 14 days' clear notice is required instead of 21 days.

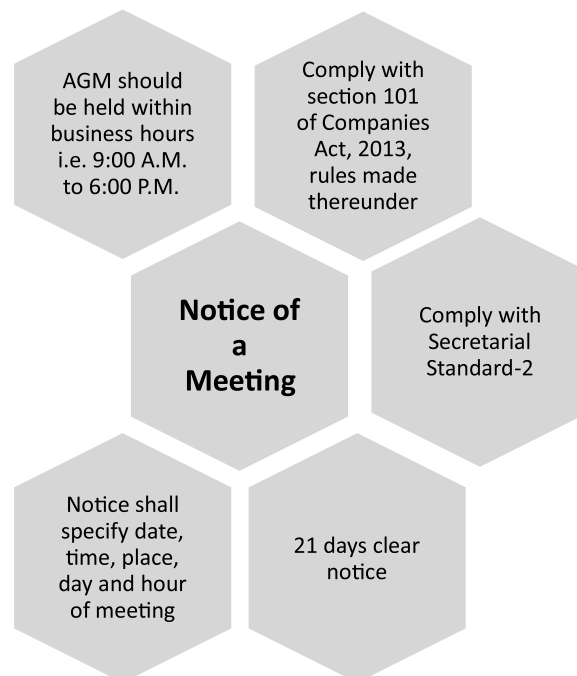
The expression "twenty-one clear days", means that the date of service of Notice and the date of the Meeting are to be excluded when calculating the period of twenty-one days [*N.V.R. Naggappa Chettair v. Madras Race Club (1949) 19 Comp. Cas. 175 (Mad)*].

Further, fractions of days are not to be taken into account i.e. part of the day after the hour at which the Notice is posted cannot be combined with the part of the day before the Meeting commences, to form one day. Each of these days should be a full or a calendar day [*Bharat Kumar Dilwali v. Bharat Carbon & Ribbon Mfg. Co. Ltd. (1973) 43 Comp. Cas. 197 (Del)*]. Intervening holidays are counted within the period of Notice.

Where a notice of general meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted (Rule 35(6) of the Companies (Incorporation) Rules, 2014). Each of the 21 days must be full or complete days. The day on which the notice is deemed to be served on the member, and the day of the general meeting have to be in addition to the 21 days.

In case a valid special notice under the Act has been received from Member(s), the company shall give Notice of the Resolution to all its Members at least seven days before the Meeting, exclusive of the day of dispatch of Notice and day of the Meeting, in the same manner as a Notice of any General Meeting is to be given.

Where this is not practicable, the Notice shall be published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district, at least seven days before the Meeting, exclusive of the day of publication of the Notice and day of the Meeting. In case of companies having a website, such Notice shall also be hosted on the website. (Para 1.2.6 of SS-2)



Illustration

Question: ABC Ltd. issued a notice on 1st August, 2020 to hold its AGM on 24th August, 2020. Check the validity of the notice referring to the provisions of the relevant act, in case it is sent by post.

Answer: Date of holding AGM: 24th August, 2020; Date of dispatch of notice: 1st August, 2020; Days to be excluded:

- (a) Day of holding AGM i.e 24th August, 2020.
- (b) Day of dispatch of notice i.e. 1st August, 2020.
- (c) 2 additional days for service of notice i.e 2nd & 3rd August, 2020 (SS-2 Para 1.2.6) Number of days' notice given: 20 days.

Number of days' notice required under section 101 of the Act is 21 days. Therefore it is not a case of valid notice. However, shortfall of 1 day can be condoned if consent is given for such shorter notice by at least 95% of the members entitled to vote at such AGM.

Service of notice of AGM by hand, under certificate of posting and by publication in newspaper is considered as deemed service of notice. [*Held in the case of Ganesh Commercial Co. Ltd. v. Arun Kumar Mohata (2013) by High Court of Calcutta*]

Shorter notice

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

As per Section 101 read with Secretarial Standard-2, a general meeting may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto—

- (i) in the case of an annual general meeting, consent by not less than ninety-five per cent of the members entitled to vote at such meeting;

However, the Financial Statements and other documents required to be annexed thereto may be given at a shorter period of time if the requisite consent of Members in writing, by physical or electronic means, is accorded thereto:

- (a) if the company has a share capital, consent by the 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) if the company has no share capital, consent by the members having not less than ninety-five per cent. of the total voting power exercisable at that meeting;
- (ii) In case of any other General Meeting-
 - (a) if the company has a share capital, consent by the majority in number of members entitled to vote and 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;
 - (b) if the company has no share capital, consent by the Members having not less than ninety-five per cent of the total voting power exercisable at such Meeting.

The request for consenting to shorter Notice and accompanying documents shall be sent together with the

Notice and the Meeting shall be held only if the requisite consent of Members as stated above is received prior to the time fixed for the Meeting.

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 other, then vote of the Member with respect to shorter notice shall only be counted for the purpose of the resolution on which the Member can vote.

In addition, the company shall ensure compliance of provisions relating to appointment of Proxy unless all the Members entitled to vote at such Meeting, consent to holding of the General Meeting at shorter Notice.

In case of a private company, consent for shorter Notice shall be obtained from such number of Members as specified in this paragraph, unless otherwise provided in the Articles.

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 in respect of the former resolution or resolutions and not in respect of the latter.

Illustration 1:

Say, a company XYZ Ltd. wish to hold its General Meeting at a shorter notice, immediately after the Board Meeting on same day and the required consent from 95% of the Members entitled to vote at the Meeting is received before the time fixed for commencement of Meeting. Although in such a case the consent of 95% Members entitled to vote at the meeting is received, still the proxy requirements need to be complied with by the Company.

In other words, in the above case the Board Meeting and General Meeting can't be held on the same day.

Illustration 2:

Considering the above illustration, if the consent of all the Members (i.e. 100%) entitled to vote at such Meeting is received before the time fixed for commencement of the Meeting, the proxy requirements need not be complied with. In other words, in such a case the Board Meeting and General Meeting can be held on the same day.

CONTENTS OF NOTICE

Section 101(2) provides that every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

Place of meeting (Section 96)

The notice should state the place where the general meeting is scheduled to be held. In case of an annual general meeting, the place of the meeting has to be either the registered office of the company or some other place within the city, town or village in which the registered office of the company is situated. Explanation to Rule 17(2) of Companies (Management and Administration) Rules, 2014 states that requisitionists should convene meeting at Registered Office or in the same city or town where the Registered Office is situated and such meeting should be convened on any day except national holiday.

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.

The Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

In case of Government Company, AGM may be held at registered office of the company or such other place within the city, town or village in which the registered office of the company is situated or such other place as the central government may approve in this behalf.

Para 1.2.4 of SS-2 provides Annual General Meetings 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, whereas other General Meetings may be held at any place within India.

Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark for easy location except in case of –

- (i) a company in which only its directors and their relatives are members;
- (ii) a wholly owned subsidiary.

Day of meeting (Section 96)

The day and date of the meeting should be clearly stated in the notice. An annual general meeting and a meeting called by the requisitionists shall be called on a day that is not a National Holiday. .

Explanation – For the purposes of this sub-section, “National Holiday” means and includes a day declared as National Holiday by the Central Government.

As explained earlier National Holiday means Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.

Time of meeting [Section 96(2)]

Exact time of holding the meeting should be given in the notice. An annual general meeting and a meeting called by the requisitionists can be called during business hours only, i.e. between 9:00 a.m. and 6:00 p.m. There is no restriction of timings in case of an extraordinary general meeting.

In case of Section 8 Company, the time, date and place of each AGM are decided upon before-hand by the directors having regard to directions, if any, given in this regard by the company in its general meeting.

CASE LAW

Where company convened its Annual General Meeting for financial year ending 31.03.2015 belatedly and, thus, contravened provisions of section 96, since it made reasonable ground for compounding of alleged offence, Tribunal has in exercise of its power conferred under section 441 could grant permission for compounding of such offence [Held in *Uttarakhand Parvatiya Aajeevika Sanvardhan Co., In re* by National Company Law Tribunal, Allahabad Bench (2018)].

Agenda (Section 102)

A statement of the business to be transacted at the general meeting should be given in the notice. In case, the meeting is to transact a special business, an explanatory statement should be attached about such item.

Proxy clause with reasonable prominence [Section 105(2)]

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Regulation 44(4) of SEBI (LODR) Regulations, 2015: The listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution.

NOTICE OF THE MEETING (RULE 18 OF COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES 2014)

According to Rule 18 of the Companies (Management and Administration) Rules, 2014, the company may serve the notice in electronic mode in following manner:-

- (1) A company may give notice through electronic mode. The expression “electronic mode” shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.
- (2) A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.
- (3) (i) The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company or as provided by the depository:

The company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and changes therein and such request may be made by only those members who have not got their email ID recorded or to update a fresh email ID and not from the members whose e- mail IDs are already registered.

- (ii) The subject line in e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.
- (iii) If notice is sent in the form of a non-editable attachment to e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a ‘link or instructions’ for recipient for downloading relevant version of the software.
- (iv) When notice or notifications of availability of notice are sent by e-mail, the company should ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as “proof of sending”.
- (v) 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.
- (vi) If a member entitled to receive 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.
- (vii) The company may send e-mail through in-house facility or its registrar and transfer agent or authorise any third party agency providing bulk e-mail facility.
- (viii) The notice made available on the electronic link or uniform resource locator has to be readable, and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.
- (ix) The notice of the general meeting of the company shall be simultaneously placed on the website of the company if any and on the website as may be notified by the Central Government.

Secretarial Standard on issuance of notice:

Para 1.2.2 of SS-2 provides that Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means. 'Electronic means' means any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the Member.

Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

- (a) if the company provides the facility of e-voting;
- (b) if the item of business is being transacted through postal ballot.

If a Member requests for delivery of notice through a particular mode, other than one of those listed above, he shall pay such fees as may be determined by the company in its Annual General Meeting and the Notice shall be sent to him in such mode.

Notice shall be sent to Members by registered post or speed post or email if the Meeting is called by the requisitionists themselves and where the Board had not proceeded to call the Meeting.

PERSONS ENTITLED TO RECEIVE NOTICE

In terms of Section 101(3), notice of every meeting of the company must be given to:

- (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
- (b) the auditor or auditors of the company; and
- (c) every director of the company.

A private company, which is not, a subsidiary of a public company may prescribe, by its Articles, persons to whom the notice should be given.

It does not always follow that all the members of a company are entitled to receive notice of meetings of the company; the Articles frequently provide that preference shareholders shall not be entitled to receive notice of and vote at general meeting of the company, except in certain circumstances. There is a statutory obligation to send notice to preference shareholders when their dividend is in arrears for more than a certain period [Section 47(2)]. This obligation arises from the fact that preference shareholders whose dividends are in arrears are entitled to attend and vote at the meeting.

The non-receipt of notice or accidental omission to give notice to any member shall not invalidate the proceedings in the meeting [Section 101(4)]. However, omission to serve notice of meeting on a member on the mistaken ground that he is not a shareholder cannot be said to be an accidental omission [*Musselwhite vs. C.H. Musselwhite & Sons Ltd. (1962) 32 Comp. Cas 804*]. 'Accidental omission' means that the omission must be not only not designed but also not deliberate [*Maharaja Export vs. Apparels Exports Promotion Council (1986) 60 Comp. Cas 353*].

Notice to Directors, Auditors & other specified persons under Secretarial Standard-2

Para 1.2.1 of SS-2 provides that notice in writing of every meeting shall be given to every member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons. Court may

direct issuance of Notice to some other persons such as Court-appointed Chairman or observers or persons whose entitlement is under challenge. Considering that Preference Shareholders are Members of the company, Notice of general meetings should also be given to them.

In case of a Nidhi company, Notice may be served individually only on Members who hold shares of more than one thousand rupees in face value or more than one percent of the total paid-up share capital of the company, whichever is less. For other Members, Notice may be served by a public notice in newspaper circulated in the district where the Registered Office of the company is situated and by displaying the same on the Notice Board of the company.

In the case of Members, Notice shall be given at the address registered with the Company or depository. In the case of shares or other securities held jointly by two or more persons, the Notice shall be given to the person whose name appears first as per records of the Company or the depository, as the case may be. In the case of any other person who is entitled to receive Notice, the same shall be given to such person at the address provided by him.

Para 1.2.1 of SS-2 provides that where the company has received intimation of death of a Member, the Notice of Meeting shall be sent as under:

- (a) where securities are held singly, to the Nominee of the single holder;
- (b) where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;
- (c) where securities are held by more than one person jointly and all the joint holders die, to the Nominee appointed by all the joint holders;
 - (i) In the absence of a Nominee of member or joint members, the notice shall be sent to the legal representative of the deceased Member or joint members.
 - (ii) In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.
 - (iii) In case the Member is a company or body corporate which is being wound up, Notice shall be sent to the liquidator.

Thus, notice shall be given to:

- (a) Every member of the Company.
- (b) Nominee/Legal representative of any deceased member.
- (c) Assignee of an insolvent member.
- (d) The auditor or auditors of the company.
- (e) Every director of the company.
- (f) Debenture trustee.
- (g) Liquidator in case the company is being bound up.
- (h) To other specified persons.

The other recipients of the Notice may include-

- (i) in the case of a Listed Company, the stock exchanges on which the shares or other securities of the company are listed;

- (ii) financial institutions, pursuant to a covenant in the agreement entered into with them for availing financial assistance;
- (iii) foreign collaborator(s), if the agreement with them provides for sending of such Notices;
- (iv) In case shares of the company are held in dematerialised form, NSDL and CDSL, and in case the company has issued GDRs / ADRs / FCCBs, then to such Depository (ies);
- (v) Holders of Stock Options of the company; and
- (vi) Any other recipient to whom the company has agreed to give Notice (say, as per the terms of an agreement with any party).

In addition, a Court may direct issuance of Notice to some other person's such as Court-appointed Chairman or observers. In such case the Notice should be given accordingly.

Irregular Notice:

Some instances of irregular Notice are as under:

- (1) When the Notice of General Meeting is issued without authorization by the Board.
- (2) When the Notice is issued by an invalidly constituted Board.
- (3) When the appointment of a Director who has signed the Notice is void and the Notice gets issued even after discovery of invalidity.
- (4) When the Notice is not in accordance with the Act.

STATEMENT TO BE ANNEXED TO NOTICE – EXPLANATORY STATEMENT (SECTION 102)

Section 102 requires that a statement detailing the material facts of the businesses to be transacted as special business be annexed to the notice of the general meeting.

Secretarial Standard on annexure to notice of General Meeting:

Para 1.2.5 of SS-2 requires that notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of ordinary business, resolutions are not required to be stated in the Notice except where the auditors or directors to be appointed are other than the retiring auditors or directors, as the case may be.

CASE LAW

Where applicant had received notice of EGM, he was at liberty to attend meeting and raise his voice, if any and no order to restrain holding of meeting on ground of violation of section 102 was to be passed. [*Held in Yatin Chandulal Davda v. Iberchem India Ltd. (2018) by National Company Law Tribunal, Ahmedabad Bench.*]

Contents of Explanatory Statement:

In case of special business items to be transacted at a general meeting, a statement setting out the following material facts, shall be annexed to the notice calling the meeting:

- (i) (a) the nature of concern or interest, financial or otherwise, if any, in respect of each item of:
 - (i) every director and the manager, if any;

- (ii) every other key managerial personnel and relatives of every director, manager and key managerial person.
- (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.

- (a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—
 - (i) the consideration of financial statements and the reports of the Board of Directors and auditors;
 - (ii) the declaration of any dividend;
 - (iii) the appointment of directors in place of those retiring;
 - (iv) the appointment of, and the fixing of the remuneration of, the auditors; and
- (b) in the case of any other meeting, all business shall be deemed to be special.

Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than 2% of the paid-up share capital of that company, also be set out in the statement.

- (ii) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the explanatory statement.

Effect of non-disclosure: Where as a result of the non-disclosure or insufficient disclosure in any statement referred as above, being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

Penalty: If any default is made in complying with the provisions of section 102 of the Companies Act, 2013, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.

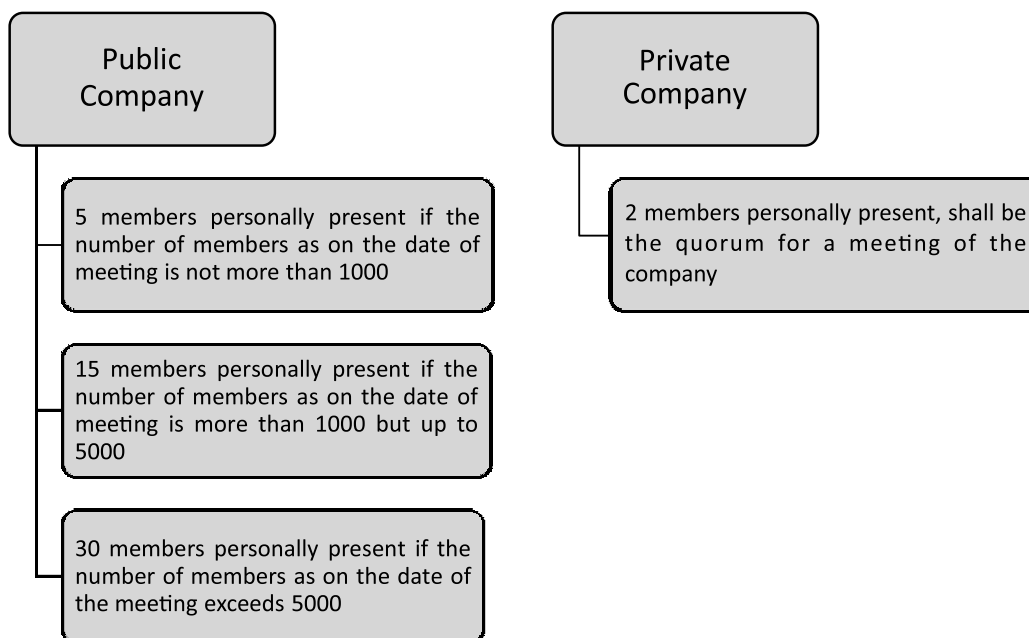
As per regulation 17(11) of SEBI (LODR) Regulations, the statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.

If the explanatory statement is vague and tricky, or insufficient and misleading, the resolution passed, is bad in law. [*Central Industrial Alliance Ltd. vs. Pravin Kantilal Vakil* (1985) 57 Com. Cases 12 (Bom)].

Explanatory statement need not be annexed to the Notice of an Extra-Ordinary General Meeting convened by the requisitionists and the requisitionists may disclose the reasons for the Resolution(s) which they propose to move at the Meeting.

QUORUM FOR MEETINGS (SECTION-103)

Quorum refers to the minimum number of members required to constitute a valid meeting. Following are the minimum numbers provided in section 103, for various categories of companies. However, the Articles of Association of the company may provide for a higher number.



Secretarial Standard on Quorum:

Para 3.1 of SS-2 provides Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement. Members need to be personally present at a Meeting to constitute the Quorum. Proxies shall be excluded for determining the Quorum.

Illustration:

Consider a company where the number of Members was originally large, say 500, and the Quorum fixed by the Articles was 100 Members present. Subsequently, 450 Members sold their shares which were acquired by some of the remaining 50 Members. Here, proceedings will be valid if all Members are present in person. In the given case, if less than 50 Members are present, there shall be no Quorum.

Para 3.2 of SS-2 provides that a duly authorized representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.

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 present in person for the purpose of quorum. However, to constitute a meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than 1000 members with a quorum requirement of five members, an authorized representative of five bodies corporate cannot form a quorum by himself but can do so if at least one more member is personally present.

This is so because a single Member present cannot by himself constitute a Meeting. There are a number of decisions by which it is now firmly settled that as a general rule a single person cannot constitute a Meeting. Few such cases include *Sharp v. Dawes* (1876) 2 QBD 26 (CA), *Awadhoot v. State of Maharashtra* AIR 1978 Bom 28, etc.

The words, personally present exclude proxies. Thus Proxies shall be excluded for determining the quorum. However, the representative of a body corporate appointed under Section 113 or the representative of the President or a Governor of a State under Section 112 is a member 'personally present' for purpose of counting a quorum [*Re. Kelantan Coconut Estate Ltd.*, 1920 W.N. 274].

A person who represents two different bodies is supposed to act in accordance with the instructions of his principals. Therefore, such representative theoretically carries with him two sets of opinions on the Resolutions.

If two or more bodies corporate, who are Members of a company, are represented by a single individual, each of the bodies corporate should be treated as personally present through that individual representing such bodies corporate. For instance, if a representative represents three bodies corporate, his presence should be counted as three Members being present in person for purpose of Quorum [*Maclead (Neil) & Sons Ltd., Petitioners*, 1967 *Scottish Law Times* 46].

Members who have voted by remote e-voting have the right to attend the General Meeting and accordingly their presence shall be, counted for the purpose of quorum.

A member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of quorum.

The stipulation regarding the presence of a quorum does not apply with respect to items of business transacted through postal ballot.

One-Man Meeting

It has been clarified by the Department of Company Affairs [now Ministry of Corporate Affairs] that a single Member present cannot, by himself, constitute a Quorum [Circulars and Clarifications Co. Law & SEBI, P1 198 vide File No.8/16/ (1)/61-PR]. Such general rule against a one-man Meeting has also been settled through judicial decisions.

There are, however, some exceptions to this general rule which permit a Meeting to be constituted of only one Member. These are:

- Where a person holds all the shares of a class, that person may constitute a class Meeting.
- Where default is made in holding an Annual General Meeting in accordance with Section 96 of the Act, the Tribunal while ordering the convening of the Meeting, may direct that one Member present in person or by proxy will constitute the Quorum [Proviso to sub-section (1) of Section 97 of the Act].
- Where it is impracticable to call a Meeting in the manner prescribed by the Act or the Articles, the Tribunal may order a Meeting to be held and direct that one Member present in person or by Proxy shall be deemed to constitute a Meeting [Proviso to sub-section (1) of Section 98 of the Act].

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

Donee of a general power of attorney not deemed as Proxy:

If any Member of a company has given a general power-of-attorney in favour of some other person to make investments on his behalf and to attend to all matters incidental and consequential thereto including attending General Meetings of companies in which investments are so made and if at General Meetings of such companies, the donee is present, then it would be deemed, by virtue of the provisions of Section 3 of the Powers-of-Attorney Act, 1882, that the donor is personally present and the donee will not be deemed to be a Proxy of the donor [*Cf. Tata Iron & Steel Co. Ltd., In Re., AIR 1928 Bom. 80*].

Chairman of Meetings (Section 104)

Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

1. In case of private company - Section 104 shall apply ,unless otherwise specified in respective sections or the articles of the company provide otherwise. - Notification dated 5th June, 2015.
2. In case of Specified IFSC Public Company - Section 104 shall apply, unless otherwise specified in the articles of the company. Notification Date 4th January, 2017.

Secretarial Standard on appointment and role of Chairman:

Para 5 of SS-2 provides that the Chairman of the Board shall take the chair and conduct the Meeting.

If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.

If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act and the Chairman elected on a show of hands shall continue to be the Chairman of the Meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the Meeting.

The Chairman shall ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the Notice is transacted. The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act.

Para 5.2 of SS-2 requires that the Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.

The Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.

Para 5.3 of SS-2 provides that in case of public companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.

If the Chairman is interested in any item of business, without prejudice to his Voting Rights on Resolutions, he shall entrust the conduct of the proceedings in respect of such item to any dis-interested Director or to a Member, with the consent of the Members present, and resume the Chair after that item of business has been transacted.

Para 4.1.1 of SS-2 provides that if any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.

Para 4.1.2 of SS-2 requires that Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman. The Company Secretary shall assist the Chairman in conducting the Meeting.

PRESENCE OF STATUTORY AUDITOR AND SECRETARIAL AUDITOR

Section 146 of the Act requires the presence to Auditors in general meetings unless otherwise exempted, either himself or through his authorized representative, who shall also be qualified to be an auditor and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor. Para 4.2 of SS-2 also requires the same.

Similarly, para 4.3 of SS-2 requires the secretarial auditor, unless exempted by the company shall, either by himself or through his authorized representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.

The Chairman may invite the Secretarial Auditor or his authorised representative to attend any other General Meeting, if he considers it necessary.

The authorized representative who attends the General Meeting of the company shall also be qualified to be a Secretarial auditor.

The authorised representative of the Secretarial Auditor attending the General Meeting on behalf of the Secretarial Auditor should be a person who is a member of the Institute of Company Secretaries of India (ICSI) and eligible for appointment as Secretarial Auditor of the company.

PROXIES (SECTION 105)

A person who is appointed by a member to attend and vote at a meeting in the absence of the member at the meeting is termed as proxy. Thus, proxy is an agent of the member appointing him. The term 'proxy' is also used to refer to the instrument by which a person is appointed as proxy. Section 105 of the Companies Act, 2013 provides that a member, who is entitled to attend and to vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf. This section also provides the manner of appointing proxy. The provisions are as follows.

- 1. Who can appoint a proxy:** Any member of a company who is 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.

The SS-2 added that where allowed, a member can appoint one or more proxies, to attend and vote instead of himself and a Proxy need not be a Member.

A Proxy shall be a Member in case of companies with charitable objects etc. and not for profit registered under the specified provisions of the Act (a company registered under section 8).

A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder.

If a Proxy is appointed for more than fifty Members, he shall choose any fifty Members and confirm the same to the company before the commencement of specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty proxies received as valid.

In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

If default is made in complying with above provision, every officer of the company who is in default shall be liable to penalty of five thousand rupees.

- (2) **Disabilities of proxy:** A proxy shall not have the right to speak at the meeting. A proxy cannot vote on a show of hands. A proxy is not counted for the purpose of quorum.
- (3) **Rights of proxy:** A proxy has the right to attend the meeting. A proxy has the right to vote only on a poll. A proxy, if eligible under section 109, has the right to demand a poll.
- (4) **Restriction on proxy:** A member of a company registered under section 8 (Not for Profit Company) shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

A person appointed as proxy shall not act as proxy on behalf of more than fifty members and members holding in the aggregate more than ten percent of the total share capital of the company carrying voting rights.

A member holding more than 10% of the total share capital of the company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.

- (5) **Time limit for deposit of proxy forms:** The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

In case of a private company, the proxy shall be deposited with the company in accordance with Section 105, unless otherwise provided in the Articles.

In case of listed companies providing e-voting facilities, there is no need to appoint proxy to vote at the meeting. Further, till the permission is in place and the Companies conduct their shareholders meeting through video conferencing or other audio visual means, a person who will log-in the meeting through provided credentials, he will be deemed to be personally present. Therefore, the system of Proxy is not relevant in the event of virtual meetings of shareholders.

- (6) **The prescribed form for appointing a proxy is Form No. MGT-11:** It needs to be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument should be under its seal or be signed by an officer or an attorney duly authorised by the body corporate. An instrument appointing a proxy, if in **Form MGT-11**, shall not be questioned on the ground that it fails to comply with any special requirement specified for such instrument by the article of a company.

Other provisions in Secretarial Standard w.r.t. proxies (Para 6):

1. **Deposit of proxies:** Para 6.6.1 of SS-2 provides that proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.
2. **Records of proxies:** All Proxies received by the company shall be recorded chronologically in a register kept for that purpose. In case any Proxy entered in the register is rejected, the reasons therefor shall be entered in the 'remarks' column.

The instrument of Proxy shall be signed by the appointer or his attorney duly authorized in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorized by it.

An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.

It is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.

The Proxy-holder shall prove his identity at the time of attending the Meeting.

An authorized representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.

The Proxy form which does not state the name of the Proxy shall not be considered valid. Also undated proxy shall not be considered valid.

If a company receives multiple proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies shall be treated as invalid.

Let us remember: The prescribed proxy form is Form No. MGT 11

Illustration:

Assume that the General Meeting of a company is scheduled on 22nd September 2020 and company has received 4 proxies for the same holdings of a Member dated with 5th, 12th, 10th and 20th September 2020. The proxy dated last should be considered valid i.e. 20th. However, if the proxies received are not dated or bear the same date without mention of time, all proxies should be treated as invalid.

3. **Inspection of proxy:** Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, is entitled to inspect the proxies lodged with the company, if at least 3 days' notice in writing is given to the company. Such notice shall be received at least three days before the commencement of the Meeting. Such inspection can be taken during the period beginning 24 hours before the time fixed for the commencement of the meeting, during the business hours of the company, and ending with the conclusion of the meeting. Such inspection should be allowed between 9:00 am and 6:00 pm during such period.

A fresh requisition confirming to the above requirements, shall be given for inspection of Proxies in case the Original Meeting is adjourned.

4. **Revocation of proxy:** If after appointment of proxy, the member himself attends the meeting, it amounts to automatic revocation of proxy. But once the proxy has voted, it cannot be revoked.

Para 6.7.1 provides that if a Proxy had been appointed for the original meeting and such meeting is

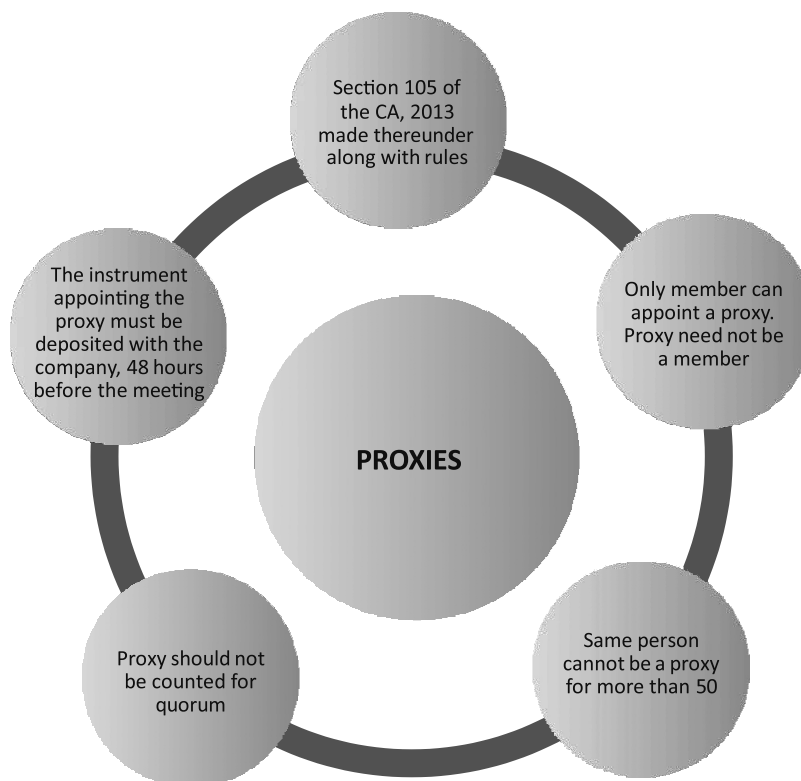
adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

Para 6.7.2 provides that a proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

Para 6.7.3 provides that a Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.

An undated notice of revocation of Proxy shall not be accepted. A notice of revocation shall be signed by the same Member (s) who had signed the Proxy, in the case of joint Membership.

A Proxy need not be informed of the revocation of the Proxy issued by the Member.



Illustrations:

Question: Annual General Meeting of a Public Company was scheduled to be held on 15.12.2020. Mr. A, a shareholder, issued two Proxies in respect of the shares held by him in favor of Mr. 'X' and Mr. 'Y'. The proxy in favor of 'Y' was lodged on 12.12.2020 and the one in favor of Mr. X was lodged on 15.12.2020. The company rejected the proxy in favor of Mr. Y as the proxy in favor of Mr. Y was of dated 12.12.2020 and in favor of Mr. X was of dated 15.12.2020. Is the rejection by the company in order?

Hint: As per Section 105 of the Companies Act, 2013 a proxy should be deposited 48 hours before the time of the meeting. In the given case, the proxies should have, therefore, been deposited on or before 13.12.2020 (the date of the meeting being 15.12.2020). Mr. X deposited the proxy on 15.12.2020.

Therefore, proxy in favour of Mr. X has become invalid. Thus, rejecting the proxy in favour of Mr. Y is unsustainable. Proxy in favor of Mr. Y is valid since it is deposited in time.

Question: The Chairman of the meeting of a public company received a Proxy 54 hours before the time fixed for the start of the meeting. He refused to accept the Proxy on the ground that the Articles of the company provided that a Proxy must be filed 60 hours before the start of the meeting. Decide, under the provisions of the Companies Act, 2013 whether the Proxy holder can compel the Chairman to admit the Proxy?

Hint: As per Section 105 of the Companies Act, 2013 proxy shall be deposited with the company within 48 hours before the meeting.

Any provisions contained in the Articles of a company that requires a longer period than 48 hours before a meeting of the company for depositing a proxy shall be void. Thus, contention of Mr X is valid.

Question: Mr. A, a member of XYZ Limited, appoints Mr. B as his proxy to attend the general meeting of the company. Later he (Mr. A) also attends the meeting. Both Mr. A (the member) and Mr. B (the proxy) voted on a particular resolution in the meeting. Mr. A's vote was declared invalid by the chairman stating that since he has appointed the proxy and Mr. B's vote has been considered as valid. Mr. A objects to the decision of the Chairman. Decide, under the provisions of the Companies Act, 2013 whether Mr. A's objection shall be taxable.

Hint: Decision by Chairman is invalid. Since Mr. A i.e. a member himself attended a meeting and voted on resolution, it will amount to revocation of proxy. Thus, any vote put by Mr. B i.e. proxy shall be invalid.

Question: (1) Mr. A holds 10% of the total share capital of the Company and appoints Mr. B as the proxy holder. Can Mr. B accept appointment as proxy by any other shareholder?

Hint : Mr. B cannot accept appointment as proxy by any other shareholder.

(2) Mr. C has been appointed as the proxy holder by 48 members. Mr. D, Mr. E and Mr. F are also interested in appointing Mr. C as their proxy. Can they do so?

Hint : Mr. C cannot be appointed as proxy by more than 50 members and hence he can accept appointment only by 2 members out of the three (i.e. Mr. D, Mr. E and Mr. F). However, the aggregate shareholding of the 50 members should not exceed 10% of the total share capital of the Company.

PROCESS OF CONDUCTING MEETING

The procedure for conducting the Annual General Meeting is explained in detail below:

A. Before the General meeting:

1. Conduct a Board Meeting (section 173): The board Meeting will be conducted:

- a) To consider and discuss the report of Audit Committee, if any on the Annual accounts.
- b) To approve the accounts and authorize signing of accounts.
- c) To secure Auditor's report on the accounts.
- d) To approve the draft of the Board's Report in compliance with the provisions of Section 134 of the Companies Act, 2013 and to authorise the Chairman/Director to sign the Report on behalf of the Board.
- e) To consider the payment of Dividend/ Record Date, if any, in case it is to be declared in the Annual General Meeting.
- f) To fix the day, date, time, place and agenda for the Annual General Meeting.
- g) To approve the draft notice of AGM along with explanatory statement.
- h) To fix period of book closure.

- i) To authorize Company Secretary or any other officer to issue notice of General Meeting to every member or to every person entitled to receive this notice.
- j) The Companies which provide remote e-voting facility shall pass the below mentioned resolutions also:
 - To appoint scrutiniser for e-voting;
 - To appoint an agency for remote e- voting;
 - To decide the cut-off date for the purpose of reckoning the names of members who are entitled to voting rights;
 - To authorise the Chairman or in his absence, any other director to receive the Scrutinizer's register, report on e-voting and other related papers with requisite details.

[prior intimation of at least two working days in advance, excluding the date of the intimation and date of the meeting, to stock exchange about the meeting of the board of directors in which any of the proposals is due to be considered i.e. financial results viz. quarterly, half yearly, or annual, as the case may be; declaration/ recommendation of dividend [Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

- 2. Notice of General Meeting:** Issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting and where it is to be sent by post, it should be posted 48 hours still earlier in terms of section 101. In case of section 8 companies, 14 clear days' notice is sufficient for general meeting.

- ✓ Notice shall have (complete address of the venue, date, time and agenda of the meeting) including documents such as:
- ✓ Attendance slip, Proxy form, Route map, Explanatory statement.
- ✓ Directors Report + all Annexure.
- ✓ Statutory Auditors Report.
- ✓ Financial Statement (including Balance Sheet +Profit & Loss Statement + Cash Flow Statement + Notes to Accounts+ Schedules).
- ✓ A statement setting out the material facts concerning each item of the special business to be transacted at a general meeting shall be annexed to the notice.

As per regulation 17(11) of SEBI (LODR) Regulations, the statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders alongwith the rational on each of the specific items. In case of companies having a website, such Notice shall simultaneously be hosted on the website.

[The listed entity shall send Notice of AGM to stock exchange as soon as reasonably possible and not later than twelve hours from the dispatch of notice to shareholders (Regulation 30 of the SEBI (LODR) Regulations, 2015)].

The listed entity shall send copy of the annual report sent to the shareholders along with the notice of the annual general meeting on or before the commencement of dispatch to its shareholders (Regulation 34 of the SEBI (LODR) Regulations, 2015).

Regarding Annual Report- The listed entity shall submit to the stock exchange and publish on its website, a copy of the annual report sent to the shareholders along with the notice of the

annual general meeting not later than the day of commencement of dispatch to its shareholders. In the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting. (Regulation 34 of the SEBI (LODR) Regulations, 2015).

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

3. **Shorter Notice:** Annual General Meeting may be called after giving shorter notice than that specified if consent, in writing or by electronic mode, is accorded thereto, by not less than 95% of the members entitled to vote thereat.
4. **Sending of Notice:** Notice shall be sent by hand delivery/ ordinary post /speed post/ registered post /courier/ facsimile/ email or by any other electronic means. The Notice in case of e-voting should not be served through hand delivery or ordinary post. Notice shall be given to:
 - ✓ Every Member of the company (legal representative of deceased member or assignee of an insolvent member);
 - ✓ All Directors of the Company;
 - ✓ Auditors of the Company;
 - ✓ Debenture Trustees, if any; and,
 - ✓ Wherever applicable or so required, to other specified persons.

5. **Advertisement:**

In case company is required to pass the resolution through E-Voting an advertisement to be published, immediately on completion of dispatch of notices for the meeting but at least 21 clear days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation.

The listed entity shall send a copy of Advertisement to stock-exchange as soon as reasonably possible and not later than twelve four hours from the publication. (Regulation 30 of the SEBI (LODR) Regulations, 2015).

In case of book closure, at least 7 days previous notice shall be given, by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.

Note: The above provision shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders. The listed entity shall give notice in advance of at least three working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date.

6. **Remote e-voting and ballot at the Meeting:** Remote E-voting has to remain open for at least three days and should close by 5 p.m. preceding the date of AGM.

7. Proxy Register: Ensure the proxy forms are received by the Company at least 48 hours before the time fixed for holding the AGM (including major shareholders and representation letters from financial institutions) and shall be recorded chronologically in a register kept for that purpose. In case, any Proxy entered in the Register is rejected, the reasons therefor shall be entered in the Remarks column.

8. Documents for Inspection at AGM:

- ✓ Register of Contracts or Arrangements in which Directors are interested shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.
- ✓ Register of Directors and KMP
- ✓ Proxies can be inspected from 24 hours before AGM time till AGM conclusion time
- ✓ All docs referred to in Notice of AGM/Statutory Registers.

B. Convene a General Meeting:

1. Documents to be made available at the venue: Ensure that the copy of Financial Statements, copies of Notice of the Meeting, Ballot Form, Register of Members, Proxy register, Attendance Slips, Attendance Register, Memorandum & Articles of Association of the Company, Annual Report, AGM /EGM Minutes Book, etc. are to be kept ready at the meeting.

2. Presence of Quorum: Check the presence of Quorum for convening the meeting. Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

- ✓ Private Company -2 members personally present
- ✓ Public Company –
 - 5 members personally present - not more than 1000 members;
 - 15 members personally present - more than 1000 but up to 5000 members;
 - 30 members personally present - if the number of members as on the date of the meeting exceeds 5000.

3. Chairman: The Chairman of the Board shall take the Chair and conduct the Meeting. If the Chairman is not present within fifteen Minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles. The chairman's overall job is to ensure the GM is held in a fair and legal manner. In case of equality of votes, he has a casting vote. The Chairman of the Audit Committee is present at annual general meeting to provide any clarification on matters relating to audit and to answer shareholder queries; for listed entities, the Chairperson of the Stakeholders Relationship Committee shall also be present at the annual general meetings to answer queries of the security holders.

4. Matters to be transacted in the meeting: Hold AGM to transact the following business:

Ordinary Business [Section 102(2)]:

- ✓ Consideration of financial statements and reports of the Board of Directors and the Auditors.

- ✓ Declaration of dividend.
- ✓ Appointment of Directors in place of those retiring.
- ✓ Appointment of and Fixation of the remuneration of the auditors.

Special Business [Section 102(b)]: Apart from the above businesses, the rest are deemed to be a Special business, transacted during the AGM.

5. **The qualifications, observations or comments made by the Auditors [SS-2]:** The qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Statutory Auditor's Report shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.
6. **Voting:** Where e-voting is not provided, every resolution in the notice shall be put to vote by way of show of hands unless a poll is demanded under section 109.

Where e-voting is provided, every resolution in the notice shall be put to vote by way of electronic ballot or voting. Members who have already voted on that resolution can attend the meeting but cannot vote again.

[The listed entity shall submit to the stock exchange, within 2 working days of conclusion of its Annual General Meeting, details regarding the voting results in the format specified by the Regulation 44 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

7. The top 100 listed entities shall provide one-way live webcast of the proceedings of the Annual General Meetings under Regulation 44(6) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

[Omitted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 w.e.f. 31.12.2024].

C. After the Meeting:

1. **Preparation of Minutes:** The Minutes of proceedings of AGM should be entered in the books maintained for that purpose within 30 days from the date of conclusion of AGM along with the date of such entry. Minutes to be signed by the Chairman or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose within 30 days of AGM.
2. **Appointment/Reappointment of Auditors:** Filing of Form ADT- 1 within 15 days of AGM (in case of appointment/re-appointment of auditors).
3. **Appointment/Reappointment of Directors:** Send an intimation to ROC in case of appointment/re-appointment of directors by filing form DIR-12 within 30 days from the appointment.
4. **Filing of Financial Statements & Annual Return:** File the balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting in Form AOC-4 within 30 days of the meeting. In case of companies covered under XBRL filing, it should be ensured that the annual accounts are filed in XBRL format. Ensure that a copy of Secretarial Audit Report obtained from a Secretary in whole time practice as required under Section 204(1) of the Act, if any, is filed with Registrar of Companies within 30 days from the date of annual general meeting and filing Form MGT 7 within 60 days of AGM (Annual Return).
5. **Filing of Resolutions:** Filing of Special/Board Resolutions in Form MGT 14 as applicable within 30 days of passing the Resolution.

6. **Report of AGM:** In the case of listed companies, a report of the annual general meeting in form MGT-15 should be submitted to ROC within 30 days of the conclusion of the annual general meeting.
7. **Reporting under SEBI (LODR) Regulation, 2015:** As provided in regulation 30 read with Schedule III Part A of SEBI (LODR) Regulations, 2015, every listed company is required to disclose the proceedings of annual general meeting to the stock exchange where its securities are listed within 12 hours of the event.

VOTING

Restriction on Voting Rights (Section 106)

The articles of a company may provide that a member shall not 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 on which company has exercised any right or lien. No member can be prohibited from exercising his voting right on any other ground.

Voting by Show of Hands (Section 107)

At any general meeting, a resolution put to the vote of the meeting shall in the first instance be decided on a show of hands, unless-

- (a) A poll is demanded under section 109 of the Act.
- (b) Voting is carried out electronically under section 108 of the Act.

A declaration by the Chairman of the meeting of the passing of a resolution (that the resolution has been passed or failed, as the case may be) on show of hands and an entry to that effect in the minutes book shall be conclusive evidence of the fact of passing of such resolution. No proof of numbers of votes casts in favor of and against the resolution is required.

In case of private company – Section 107 shall apply, unless otherwise specified in respective sections or the articles of the company provide otherwise – Notification dated 5th June, 2015

Voting through Electronic Means (Section 108)

General meetings of companies are held at their registered offices and it is not possible for every member specially members holding minor shares to travel up to the registered office of the company and participate in the general meetings of the company.

To eliminate this type of difficulty and to enhance the participation of minority members, concept of e-voting has been introduced by the Companies Act 2013. Now, a member can cast his vote easily through electronic mode without physically attending the general meeting.

E-voting do not eliminate members right to physically attend and vote at the general meeting. However, member can cast his vote through one mode only. A member after casting his vote through e-voting can go and attend the general meeting but cannot cast vote in that general meeting.

The facility of Remote e-voting does not dispose with the requirements of holding a General Meeting by the company.

Applicability: Section 108 of the Act r/w Rule 20 of the Companies (Management and Administration) Rules, 2014 shall apply to such companies as may be prescribed by the Central Government. The prescribed class of companies, for this purpose, are-

- (i) All companies whose equity shares are listed on a recognized stock exchange; and
- (ii) All companies having 1000 or more members.

However, the provisions of section 108 shall not apply to a Nidhi, or an enterprise or institutional investor referred to in chapter XB (Companies listed on SME exchange) or chapter XC (Companies listed on institutional trading platform without IPO) of the SEBI (Issue of Capital and Depository Receipt) Regulations, 2009.

Following companies are out of ambit of mandatory e-voting:-

- (i) Companies whose debenture/preference shares only are listed.
- (ii) Companies listed on SME trading platform.
- (iii) Companies listed on institutional trading platform.

Legal Requirement:

- (a) A company to which section 108 is applicable, shall provide to its members facility to exercise their right to vote on resolution proposed at general meetings by electronic means.
- (b) a resolution proposed to be considered through voting by electronic means shall not be withdrawn.

Voluntary Applicability of Rule 20 (i.e. Voting by Electronic Means)

A member may exercise his right to vote through voting by electronic means in resolutions referred to in Rule 20 (2) of the Companies (Management and Administration) Rules, 2014 and the company shall pass such resolutions in accordance with the provisions of this rule. If a company voluntarily opts or decides to give its shareholders the e-voting facility, in such a case, the whole of procedure specified in rule 20 shall be applicable to such a company. This is necessary so that any piece-meal application does not prejudice the interest of shareholders.

Companies voluntarily adopting Rule 20 of the Companies (Management and Administration) Rules, 2014 dealing with Voting by Electronic Means should follow the procedure wholly and not in piecemeal.

Key Words w.r.t. E-Voting:

- (i) **'agency'** means the National Securities Depository Limited, the Central Depository Services (India) Limited or any other entity approved by the Ministry of Corporate Affairs subject to condition that the National Securities Depository Limited, the Central Depository Services (India) Limited or such other entity has obtained a certificate from the Standardisation Testing and Quality Certification Directorate, Department of Information Technology, Ministry of Communications and Information Technology, Government of India regard to compliance with parameters relating to secured system;
- (ii) **'cut-off date'** means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting;
- (iii) **'cyber security'** means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction;
- (iv) **'electronic voting system'** means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security;
- (v) **'remote e-voting'** means the facility of casting votes by a member using an electronic voting system from a place other than venue of general meeting;

- (vi) **'secured system'** means computer hardware, software, and procedure that-
 - (a) are reasonably secure from unauthorised access and misuse;
 - (b) provide a reasonable level of reliability and correct operation;
 - (c) are reasonably suited to performing the intended functions; and
 - (d) adhere to generally accepted security procedures;
- (vii) **'voting by electronic mean'** includes "remote e-voting and voting" at the general meeting through an electronic voting system which may be the same as used for remote e-voting.

Procedure of E-Voting

The Board shall:

(a) Appoint one or more scrutinisers for e-voting or the ballot process:

The scrutiner(s) may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, or an Advocate or any other person of repute who is not in the employment of the company and who can, in the opinion of the Board, scrutinise the e-voting process or the ballot process, as the case may be, in a fair and transparent manner.

The scrutiner(s) so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system. The scrutiner shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

Prior consent to act as a scrutiner(s) shall be obtained from the scrutiner(s) and placed before the Board for noting.

(b) Appoint an Agency – NSDL, CDSL or other such agency:

The agency shall be appointed for providing and supervising the electronic platform for voting.

(c) Decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights:

The cut-off date for determining the Members who are entitled to vote through Remote e-voting or voting at the meeting shall be a date not earlier than seven days prior to the date fixed for the Meeting.

Only Members as on the cut-off date, who have not exercised their Voting Rights through Remote e-voting, shall be entitled to vote at the Meeting.

SS-2 provides that every company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialised form.

(d) Authorise the Chairman or in his absence, any other Director to receive the scrutiner's register, report on e-voting and other related papers with requisite details:

- (i) The scrutiner(s) is required to submit his report within a period of three days from the date of the meeting.
- (ii) The Chairman or any other director so authorized shall countersign the scrutiner's report so received.

(e) Notice:

A company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure, namely:-

- (i) the notice of the meeting shall be sent to all the members, directors and auditors of the company either:-
 - (a) by registered post or speed post ; or
 - (b) through electronic means, namely, registered e-mail ID of the recipient; or
 - (c) by courier service.

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

As per SS-2, such notice shall remain on the website till the date of General Meeting. The notice of the meeting shall clearly state that:-

- (i) The company is providing facility for voting by electronic means and the business may be transacted through such voting.
- (ii) The facility for voting, either through voting by electronic means or ballot/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.
- (iii) 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.

(A) Additional Disclosures in notice:

The notice shall –

- (i) Indicate the process and manner for voting by electronic means;
- (ii) Indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
- (iii) Provide the details about the login ID;
- (iv) Specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

(B) Public notice by way of advertisement:

- (i) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notice of general meeting.
- (ii) The public notice shall be published at least twenty-one days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation.
- (iii) The public notice shall specify the following matter in the said advertisement;
 - (a) A statement that the business may be transacted through voting by electronic means;
 - (b) The date and time of commencement of remote e-voting;
 - (c) The date and time of end of remote e-voting;
 - (d) Cut-off date;

- (e) The manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;
- (f) A statement that –
 - (i) Remote e-voting shall not be allowed beyond the said date and time;
 - (ii) The manner in which the company shall provide for voting by members present at the meeting; and
 - (iii) A member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
 - (iv) A person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;
- (g) Website address of the company, if any, and of the agency where notice of the meeting is displayed; and
- (h) Name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means.

The public notice shall be placed on the website of the company, if any, and of the agency; Such notice shall remain on the website till the date of general meeting.

(C) Remote e-voting:

- (i) 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.
- (ii) During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialised form, as on the cut-off date, may opt for remote e-voting.
- (iii) Once a member has cast his vote on a resolution, he shall not be allowed to change it subsequently or cast the vote again.
 - (a) A member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again.
 - (b) At the end of the remote e-voting period, the facility shall forthwith be blocked.

(D) Register of scrutinizer:

- (i) The scrutinizer(s) shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights of members.
- (ii) The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutinizer(s) until the Chairman considers, approves and signs the minutes and thereafter, the scrutinizer(s) shall hand over the register and other related papers to the company.

(E) Voting at General Meeting:

- (i) During general meeting, a company may opt to provide the same electronic voting system as used during remote e-voting, the said facility shall be in operation till all the resolutions are considered

and voted upon in the meeting. In such a case, the members attending the general meeting and who have not exercised their right to vote through remote e-voting, shall be entitled to vote using the electronic voting system.

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

(F) Declaration of result of voting:

- (i) The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company.
- (ii) The scrutinizer shall make, not later than three days of conclusion of the meeting, a consolidated scrutinizer's report of the total votes cast in favor or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same.
- (iii) The Chairman or a person authorized by him in writing shall declare the result of the voting forthwith.
- (iv) The result of the voting, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere. Further, the results of voting along with the scrutinizer's report shall also be placed on the website of the company, in case of companies having a website and of the Agency, immediately after the results are declared.
- (v) The scrutinizers' register, report and other related papers received from the scrutinizer(s) shall be kept in the custody of the Company Secretary or any other person authorised by the Board for this purpose.
- (vi) The manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, scrutinizer or any other person till the votes are cast in the general meeting.
- (vii) If the requisite number of votes are cast in favor of the resolution, the resolution shall be deemed to be passed on the date of relevant general meeting.
- (viii) The results declared along with the report of the scrutinizer shall be placed on the notice board of the company at its registered office and its head office as well as corporate office, if any, if such office is situated elsewhere and on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman.
- (ix) In case of companies whose equity shares are listed on a recognized stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

As prescribed under Regulation 44 of SEBI (LODR) Regulations, 2015 –

- (1) The listed entity shall provide the facility of remote e-voting facility to its shareholders, in respect of all shareholders' resolutions.

- (2) The e-voting facility to be provided to shareholders in terms of sub-regulation (1), shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014, or amendments made thereto.
- (3) The listed entity shall submit to the stock exchange, within two working days of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.

DEMAND FOR POLL (SECTION 109)

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 by the following person(s):

- (a) **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 Rs.5,00,000/- 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.

The Chairman shall get the validity of the demand verified.

The demand for a poll may be withdrawn at any time by the persons who made the demand.

Time for taking poll and declaring the result

A poll shall be taken forthwith, if it is demanded for adjournment of the meeting or appointment of Chairman of the meeting.

A poll shall be taken at such time, not being later than 48 hours from the time when the demand was made on any other question. The Chairman shall announce the date, venue and time of taking the poll to enable members to have adequate and convenient opportunity to exercise their votes.

Further, the Chairman may permit any member who so desires to be present at the time of counting the votes. The Chairman shall inform the members, the modes and the time of such communication, which shall in any case be within 24 hours of closer of meeting in case the date, venue and time of taking poll not announced.

Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

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

MANNER TO GET POLL PROCESS SCRUTINIZED

Rule 21 of Companies (Management and Administration) Rules, 2014 provides that the chairman of a meeting shall ensure that –

- The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
- The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.

- The Scrutinizers arrange the Polling papers and distribute them to the members and proxies present at the meeting. In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. The Polling paper shall be in Form No. MGT-12.
- The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialing it.
- The Scrutinizers lock and seal an empty polling box in the presence of the members and proxies.
- The Scrutinizers open the Polling box in the presence of two persons as witnesses after the voting process is over.
- In case of ambiguity about the validity of a proxy, the Scrutinizers decide the validity in consultation with the Chairman.
- The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
- The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- Where voting is conducted by electronic means, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
- The Scrutinizers' report state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
- The Scrutinizers submit the Report to the Chairman who shall counter-sign the same.
- The Chairman declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

The scrutinizer/s appointed for the poll, shall submit a report to the Chairman of the meeting in **Form No. MGT- 13** within 7 days from the date the poll is taken. The report shall be signed by the scrutinizer or by all the scrutinizers, in case there is more than one scrutinizer.

Note: Sections 102, 103, 104, 105, 106, 107 and 109 shall apply in case of private company unless otherwise specified in respective sections of articles of the company provided otherwise.

POSTAL BALLOT (SECTION 110)

Meaning of postal ballot: As per section 2(65) "postal ballot" means voting by post or through any electronic mode. It includes voting by shareholders by postal or electronic mode instead of voting personally for transacting businesses in a general meeting of the company.

Company shall transact such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot. Provided that any item of business required to be transacted by means of postal ballot under Section 110(a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

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

- Ordinary business; and
- Any business in respect of which directors or auditors have a right to be heard at any meeting.

Each item proposed to be passed through postal ballot shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.

A company shall send a notice and draft resolution by registered post or speed post, or by courier or by e-mail or by any other electronic means to all shareholders explaining the reasons and requesting them to send their assent or dissent in writing on a postal ballot. If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

Meaning of requisite majority: Requisite majority with regard to special resolution means votes cast in favor of the business is three times more than the votes cast against, with regard to ordinary resolution, votes cast in favor is more than the votes cast against.

CASE LAW

It was held in the case of *Wadala Commodities Ltd., In re (2014)* by the High Court of Bombay that resolution approving scheme of amalgamation should not be passed by shareholders only by way of voting through postal ballots or through electronic means in complete substitution of an actual meeting of shareholders.

Business to be transacted through postal ballot: [Rule 22 of the Companies (Management and Administration) Rules, 2014]

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

- (a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
- (b) Alteration of articles of association in relation to insertion or removal of provisions defining a private company;
- (c) Change in place of registered office outside the local limits of any city, town or village;
- (d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised;
- (e) Issue of shares with differential rights as to voting or dividend or otherwise;
- (f) Variation in the rights attached to a class of shares or debentures or other securities;
- (g) Buy-back of shares by a company;
- (h) Election of a 'small shareholders' director;
- (i) Sale of the whole or substantially the whole of an undertaking of a company;
- (j) Giving loans or extending guarantee or providing security exceeding 60% of its paid up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account;

Any item of business required to be transacted by means of postal ballot (as stated above), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

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

- (i) One person company;
- (ii) All other companies having members up to 200.

Rule 22 of the Companies (Management and Administration) Rules, 2014 lay down the procedure to be followed for conducting business through postal ballot.

- (1) Notice to all shareholders:** The company shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of thirty days from the date of dispatch of the notice.
- (2) Mode of sending documents:** The notice shall be sent:-
 - (a) By Registered Post or speed post, or
 - (b) Through electronic means like registered e-mail id; or
 - (c) Through courier service.

Passing of Resolution by Postal Ballot (Part 16 of SS-2)

- (i) Every company, except a company having less than or equal to two hundred Members, shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting. However, such item of business may be transacted at a General Meeting by a company which is required to provide e-voting facility to its Members. Ordinary Business shall not be transacted by means of a postal ballot.
- (ii) Every company having its equity shares listed on a recognised stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies which are required to provide e-voting facility shall provide such facility to its Members in respect of those items, which are required to be transacted through postal ballot.
- (iii) The Board shall: (a) identify the businesses to be transacted through postal ballot; (b) approve the Notice of postal ballot incorporating proposed Resolution(s) and explanatory statement thereto; (c) authorise the Company Secretary or where there is no Company Secretary, any Director of the company to conduct postal ballot process and sign and send the Notice along with other documents; (d) appoint one scrutiniser for the postal ballot; (e) appoint an Agency in respect of e-voting for the postal ballot; (f) decide the cut-off date for reckoning Voting Rights and ascertaining those Members to whom the Notice and postal ballot forms shall be sent; (g) decide on the calendar of events; (h) authorise the chairman or in his absence, any director to receive the scrutinizer's register, report on postal ballot and other related papers with requisite details.

Secretarial Standard-2 on Notice of postal ballot :

- (a) Notice of the postal ballot shall be given in writing to every Member of the company. Such Notice shall be sent either by registered post or speed post, or by courier or by e-mail or by any other electronic means at the address registered with the company.
- (b) The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling signing and returning the same. In case the Notice and accompanying documents are sent to Members by e-mail, these shall be sent to the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.
- (c) Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.

- (d) In case of companies having a website, Notice of the postal ballot shall simultaneously be placed on the website.
- (e) Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed. Notice shall also specify the mode of declaration of the results of the voting by postal ballot.
- (f) Notice of the postal ballot shall inform the Members about availability of e-voting facility, if any and provide necessary information thereof to enable them to access such facility.

In case the facility of e-voting has been made available, the provisions relating to conduct of e-voting shall apply, *mutatis mutandis*, as far as applicable.
- (g) Notice shall describe clearly the e-voting procedure.
- (h) Notice shall also clearly specify the date and time of commencement and end of e-voting, if any and contain a statement that voting shall not be allowed beyond the said date and time. Notice shall also contain contact details of the official responsible to address the grievances connected with the e-voting for postal ballot.
- (i) Notice shall clearly specify that any Member cannot vote both by post and e-voting and if he votes both by post and e-voting, his vote by post shall be treated as invalid.

(3) Publishing of an advertisement: The company shall issue an advertisement to be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, stating that the ballot papers have been dispatched.

The advertisement shall specify the following matters, namely:-

- (a) A statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
- (b) The date of completion of dispatch of notices;
- (c) The date of commencement of voting (postal and e-voting);
- (d) The date of end of voting (postal and e-voting);
- (e) The statement that any postal ballot form received from the Member after thirty days from the date of dispatch of Notice will not be valid;
- (f) A statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof;
- (g) The Contact details of the person responsible to address the grievances/queries connected with the voting by postal ballot including voting by electronic means; and
- (h) Day, date, time and venue of declaration of results and the link of the website where such results will be displayed.

Notice and the advertisement shall clearly mention the cut-off date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on cut-off date should treat this Notice for information purposes only.

(4) Notice to be placed on the website:

The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members.

Such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

(5) Appointment of scrutinizer: The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

The scrutinizer may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company and, who can in the opinion of the Board, scrutinise the postal ballot process in a fair and transparent manner.

The scrutinizer shall however not be an officer or employee of the company. The scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

Prior consent to act as a scrutinizer shall be obtained from the scrutinizer and placed before the Board for noting.

(6) Safe custody of registers and papers: Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.**(7) Submission of report of the scrutinizer:** The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.**(8) Maintenance of register by the Scrutinizer:** The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of the shareholder and details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.**(9) Preservation of postal ballots:** The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.**(10) Reply from members:** The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.**(11) Declaration of result:** The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.**(12) Applicability of Rule 20:** The provisions of Rule 20 of Companies (Management and Administration) Rules, 2014 regarding voting by electronic means shall apply, as far as applicable, with the necessary changes to this rule in respect of the voting by electronic means.**A postal ballot form shall be considered invalid if:**

- (a) A form other than one issued by the company has been used;

- (b) It has not been signed by or on behalf of the Member;
- (c) Signature on the postal ballot form doesn't match the specimen signatures with the company;
- (d) It is not possible to determine without any doubt the assent or dissent of the Member;
- (e) Neither assent nor dissent is mentioned;
- (f) Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Member;
- (g) The envelope containing the postal ballot form is received after the last date prescribed;
- (h) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;
- (i) It is received from a Member who is in arrears of payment of calls;
- (j) It is defaced or mutilated in such a way that its identity as a genuine form cannot be established;
- (k) Member has made any amendment to the Resolution or imposed any condition while exercising his vote (Para 16.5.3 of SS-2).

Rescinding the Resolution

A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot or passed at a General Meeting by a company which is required to provide e-voting facility to its Members. (Para 16.8 of SS-2).

Modification to the Resolution

No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot (Para 16.9 of SS-2).

CIRCULATION OF MEMBERS' RESOLUTION (SECTION 111)

As per Section 111, a company shall, on requisition in writing of certain number of members, give notice to members of any proposed resolution intended to be moved in the meeting or circulate any statement with respect to matters referred in proposed resolution.

A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

- (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,—
 - (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;
 - (ii) in the case of any other requisition, not less than two weeks before the meeting; and
- (b) there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

The company shall not be bound to circulate any statement, if on the application either of the company or of any other person who claims to be aggrieved, the Central Government, by order, declares that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

An order may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

If default is made the company and every officer of the company shall be liable to a penalty of twenty-five thousand rupees. .

CASE LAW

Company is not bound to circulate any resolution proposed by shareholders who are not eligible to do so on account of their not having requisite qualification as prescribed under section 188(2)(a) or (b) [Held in *Kotak Mahindra Bank Ltd. v. Sureshchandra v. Parekh (2014)* by Company Law Board, Mumbai Bench]

MAINTENANCE OF MINUTES OF MEETINGS

The minutes refer to a written record of business transacted at a meeting. Section 118 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. In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution. The chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company's interest in the minutes. Minutes kept shall be evidence of the proceedings recorded in a meeting and containing fair and correct summary of the proceeding thereat.

As per section 118(10) every company shall observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

In case of Section 8 Company – section 118 shall not apply as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation-*Notification dated 5th June, 2015.*

In case of Specified IFSC Public Company/Specified IFSC Private Company - sub-section (10) of section 118 shall not apply.

If any default is made in complying with the provisions of Section 118 in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Rule 25 of the Companies (Management and Administration) Rules, 2014 contains provisions with regards to minutes of meetings

- (A) Distinct minute book for each type of meeting:** A distinct minute book shall be maintained for each type of meeting namely:

- (i) general meetings of the members;
- (ii) meetings of the creditors;
- (iii) meetings of the Board; and
- (iv) meetings of the committees of the Board.

It may be noted that resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting.

- (B) Manner of maintenance of minutes:** Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.

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.

- (C) Manner of signing of minutes:** Each page of every minute book shall be initialed 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 meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;
- 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;
- in case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

- (D) Preservation of minutes book:** Minute books of general meetings shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board. Minutes of the Board and committee meetings shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose at the registered office or at such other place as may be approved by the Board.

SECRETARIAL STANDARD-2 ON GENERAL MEETINGS

Secretarial Standard-2 (SS-2) on "General Meetings", issued by the Council of the Institute of Company Secretaries of India and approved by the Central Government, seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto. This Standard also deals with conduct of e-voting and postal ballot.

SCOPE:

This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof. However, Section 8 companies need to comply with the applicable provisions of the Act relating to General Meetings.

The exemption to a company registered under Section 8 of the Companies Act, 2013 as referred above and the specific exemptions given to a private company and Government company in this Standard shall be available only if it has not committed any default in filing its Financial Statements or Annual Return with the Registrar of Companies.

The principles enunciated in this Standard for General Meetings of Members are applicable mutatis-mutandis to Meetings of debenture-holders and creditors. A Meeting of the Members or class of Members or debenture-holders or creditors of a company under the directions of the Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by this Standard without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect to the conduct of such Meetings.

This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

Preservation of Minutes in case of scheme of Merger and Amalgamation

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

REPORT ON ANNUAL GENERAL MEETING

Every listed public company shall prepare in the prescribed manner 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 Companies Act, 2013 and the rules made thereunder.

As per Rule 31 of the Companies (Management & Administration) Rules, 2014, the copy of the report prepared in pursuance of sub-section (1) of section 121 and sub-rule (1), shall be filed with the Registrar in **Form No. MGT.15** within thirty days of the conclusion of the annual general meeting along with the fee.

The report in pursuance of the provisions of sub-section (1) of section 121 shall be prepared in the following manner, namely:-

- (a) the report under this section shall be prepared in addition to the minutes of the general meeting;
- (b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, 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;
- (c) the report shall contain the details in respect of the following, namely:-
 - (i) the day, date, hour and venue of the annual general meeting;
 - (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.

(d) the Report shall contain fair and correct summary of the proceedings of the meeting.

If the company fails to file the report under Section 121(2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.

DUTIES OF COMPANY SECRETARIES BEFORE, DURING AND AFTER GENERAL MEETING

Before the General Meeting:

1. To convene a Board meeting, after giving notice as per Section 173(3), as soon as the final accounts are ready, invite the Auditors for their report and transact the following business (in case of listed company, give advance notice to stock exchange):
 - (a) To consider and discuss the report of Audit Committee on the Annual accounts.
 - (b) To approve the accounts and authorise signing of accounts.
 - (c) To secure Auditor's report on the accounts.
 - (d) To approve the draft of the Board's Report in compliance with the provisions of Section 134 of the Act and to authorise the Chairman to sign the Report on behalf of the Board.
 - (e) To consider the payment of dividend, if any, in case it is to be declared in the Annual General Meeting.

(Note: In case of listed company prior intimation have to be sent to stock exchange of the Board meeting where recommendation of dividend is proposed to be considered vide Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015.)
- (2) Listed entity to disclose the audit qualifications of any other audit reservations along with financial results in addition to explanatory statement as to how audit qualifications of previous accounting year have been addressed in financial results.
 - (a) To fix time, date and place for the annual general meeting, approve the draft notice and also authorise the Secretary to issue Notice for the meeting. The Notice must contain Ordinary Business in accordance with the provisions of Section 102 of the Act, While fixing the time, date and place for the annual general meeting, care should be taken that the time should be during 9 am to 6 pm, the date should not be a National holiday, and the place should be either the registered office of the company or some other place within the same city, town or village in which the registered office of the company is situated.
 - (b) To consider the closure of the Register of Members and the Share Transfer Books of the Company in compliance with the provisions of Section 91 of the Act and to authorise the Secretary to arrange for its publication in a newspaper. In case of listed company, a notice in advance of at least 7 working days should be sent to the stock exchange(s) about the proposed dates for such closure and also to comply with the requirement of stock exchange for book closure.
- (3) Listed entity shall give prior intimation to stock exchange at least 2 days in advance (excluding date of

intimation and date of meeting) about Board meeting in which financial results are due to be considered [Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

- (4) In case of listed company, close the registers for the period as advertised and inform the all the stock exchanges by giving a notice in advance of at least 7 working days.
- (5) To arrange for the printing of the balance sheet, profit and loss account, reports of the directors and of the auditors and the notice for the meeting.
- (6) To issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting and where it is to be sent by post, it should be posted 48 hours still earlier in terms of section 101. Notice of the meeting must also be sent to the directors (whether member or not), auditors and stock exchanges. In case of section 8 companies, 14 clear day's notice is sufficient for general meeting.
- (7) If the directors decide for the publication of the Chairman's statement, make arrangements for the same.
- (8) Check proxies with the Register of Members as and when they are received, from day to day, so that an up-to- date position is available till the date of the meeting.
- (9) To arrange for the printing of attendance slips or attendance register and ballot papers.
- (10) In consultation with the chairman or the Managing Director, prepare a detailed agenda for the meeting.
- (11) To prepare Dividend List from the Register of Members/beneficial owners, as on the last date of the closure of the Register of Members and the Share Transfer Books.
- (12) To make arrangement for the printing of a combined document containing "Notice of Dividend" and "Dividend Warrant".

(B) At the Meeting:

1. To arrange for the collection of admission slips or in the alternative to get the Attendance Register signed by the shareholders, and to make them comfortable in their seats, and to look to the comfort and convenience of the directors and the chairman.
2. To help the Chairman in ascertaining quorum.
3. To read out the notice of the meeting if advised by the Chairman.
4. To read out the Auditor's Report, if advised by the Chairman, when the item relating to adoption of accounts is taken up for consideration.
5. To produce copies of Memorandum and Articles of Association of the company.
6. To help the Chairman in the conduct of the meeting, particularly in the conduct of poll, counting of votes etc.
7. To supply to the Chairman any information which he may require in connection with the queries raised by the shareholders relating to accounts and other connected matters.
8. Give advance information to the members who are to propose and second the resolutions to be passed at the meeting.
9. To take notes of the proceedings for the purpose of preparing minutes thereof.
10. To keep at the meeting Register of Members, Minutes Book of the general meeting containing minutes of the previous annual general meeting(s), copies of the accounts, notice of the meeting and reports of the directors and of the auditors.

11. To ensure that the Chairman of the Audit Committee is present at annual general meeting to provide any clarification on matters relating to audit and to answer shareholder queries; For listed entities, the Chairperson of the Stakeholders Relationship Committee shall also be present at the annual general meetings to answer queries of the security holders.

(C) After the Meeting:

1. To prepare minutes of the proceedings.
2. To record the minutes of the meeting and get them signed by the Chairman within thirty days of the meeting.
3. To send intimation of appointment/re-appointment of directors. File Form DIR-12 with the Registrar of Companies within 30 days of appointment along with filing fee.
4. To send intimation of appointment/re-appointment of auditors. File form ADT-I with the Registrar within 15 days of appointment/re-appointment.
5. To file copies of the special and other resolutions, if any, passed at the meeting, along with Form MGT14 with the Registrar of Companies, within thirty days of the meeting.
6. To file balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting in Form AOC-4/AOC-4 CFS within thirty days of the meeting. In case of companies covered under XBRL filing, it should be ensured that the annual accounts are filed in XBRL format. Ensure that a copy of Secretarial Audit Report obtained from a Secretary in whole time practice as required under Section 204(1) of the Act, if any, is filed with Registrar of Companies within 30 days from the date of annual general meeting.

The listed entity shall submit to the stock exchange and publish on its website a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders. [Regulation 34 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

7. Where the company has invited public deposits, a copy of the Balance sheet shall be forwarded to the RBI.
8. To open a separate bank account known as "Dividend Account for the year" and to deposit the total amount of dividend within five days from the date of declaration of dividend.
9. To get the Dividend Warrants and Notice of Dividend signed by authorised persons.
10. To dispatch Dividend Warrants together with the Notice of Dividend to the shareholders within thirty days of the declaration of dividend after making arrangement with the banker for payment of dividend warrants at prescribed number of branches at par.
11. To file along with the prescribed filing fee, Annual Return, as an attachment to Form MGT-7/MGT-7A with the Registrar of Companies within sixty days of the meeting prepared as at the date of the annual general meeting, as required by Section 92 of the Companies Act, 2013. The Certificate of Company Secretary shall be in Form MGT-8.
12. To take action on other decisions of the shareholders.
13. If the company is listed then to submit to the stock exchange, within 2 working days of conclusion of annual general meeting, details regarding the voting results in the format specified by the Board [Regulation 44 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].

VIRTUAL MEETINGS: TECHNOLOGICAL ADVANCEMENT IN CONDUCT OF GENERAL MEETINGS

General meetings, particularly when large numbers of shareholders are involved, can be very expensive and are not considered to be a cost-effective. Virtual meetings of members have advantages for companies and their shareholders. Present-day shareholders are spread across the country and also in different countries, and as the AGMs can only be conducted in the city or place in which the registered office of the company is located, it makes it more difficult for the shareholders located in faraway locations and cities to attend the meetings as it involves a lot of travel time and cost. With less participation, the agenda items are often passed without any discussion with fewer members. Virtual meetings will help in increasing shareholder participation as compared to physical meetings because of improved access, shareholders who cannot attend in person due to location or other reasons can attend virtually and do not have to incur the time and costs of travel to a physical meeting.

Similarly, companies may find virtual meetings help to achieve wider shareholders' participation. Virtual annual meetings offer benefits to both companies and shareholders. With companies and investors becoming increasingly global, virtual meetings can save travel time and costs for shareholders, avoid traffic and other logistical delays and be easier to schedule. It will also eliminate the costs of an in-person meeting, including travel for shareholders and a company's directors and management, thereby allowing shareholders more time to attend more meetings in which they hold the shares, as well as minimizing the amount of time that directors and management must spend at meetings. This in turn will increase the participation of shareholders who would otherwise not attend the meetings.

Advantages of Virtual AGM/EGMs

- Increase shareholder participation in meetings.
- Save time on travel and cost because of remote voting.
- Encourages more participation by investors across the world.
- Provides greater accessibility to shareholders who cannot be physically present due to distance.
- Enables institutional investors to attend more than one meeting in a day and protect shareholders' interest.
- Reduce the cost of holding and conducting shareholder meeting, including the costs of the venue, stationary, transport and refreshments.
- Saves time of the Company's personnel.

Difficulties in holding Virtual Meetings of Members:

- Security of the systems used.
- Streaming with quality without interruption.
- Providing with secure login and shareholder authentication for attendance, with ease of access for shareholders, and remote voting.
- Combined registration, voting and reporting software.
- Customized instant results screen and detailed audit reporting.
- Data Security of Logins and Passwords.
- Allowing the shareholders, the choice of device.
- The technology used must give all shareholders a reasonable opportunity to participate.

- The technology must be secure and must provide reasonable measures for verifying/validating those allowed to attend and vote at the meeting.
- The company must provide a digital record of the meeting.

It is pertinent to mention that as per Regulation 44 of the SEBI (LODR) Regulations, 2015 the top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

[Omitted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 w.e.f. 31.12.2024]

Voting by electronic means is a facility given to the members of a company to cast their votes on the resolutions through electronic mode. It provides an opportunity to shareholders residing in far-flung area to take part in the decision making process of the company. They may or may not attend the meeting physically. Boards in their fiduciary capacity are now looked upon for greater accountability and transparency for the effectiveness of their overall governance process. E-Voting is a further step to encourage corporate democracy and to promote good corporate governance.

E-voting allows a voter to record his or her secure and secret ballot electronically. E-voting are generally used in government elections like general elections, state legislative assembly elections etc. and considered as a tool of effective governance in voting infrastructure. E-voting is a common Internet infrastructure that enables the investors to vote electronically on resolution of companies. Shareholders normally exercised their votes on resolutions proposed by companies through postal ballot. If a company decides to pass any resolution by resorting to postal ballot, it will send a notice to all the shareholders, requesting them to send their assent or dissent in writing on a postal ballot. The Companies Act, 2013 had ushered in the concept of e-voting to ensure wider shareholder participation in the decision-making process in companies.

Practical Situations arising in Meetings through Video-Conferencing

- 1) How to accommodate the shareholders who wants to ask questions in view of the large attendance of shareholders throughout the length and breadth of the country?**
 - A. In the notice to the AGM it may be mentioned that shareholders whoever wants to speak to get their names registered and it's also to be mentioned that at the discretion of the Chairman the speakers will be allowed to speak depending upon the availability of time.
- 2) Why the proxy provisions are dispensed with in case of General meetings held through video conferencing?**
 - A. In case of VC meetings there is no question of proxy attendance. A shareholder can himself attend the meeting from wherever he is located. Same applies to the case with e-voting. In case of e-voting also there is no proxy to vote on behalf of the shareholder.
- 3) Is it required to give venue of the meeting in the Notice? If so what would be the venue of the meeting, for meetings held through video conferencing?**
 - A. Yes, place of the meeting shall be provided in the Notice. In case of virtual meetings deemed venue is to be given.
- 4) For conduct of AGMs through VC/OAVM, can the Companies mention in their AGM notices that the Company holds the right to restrict the number of speaker shareholders depending on the availability of time. Are the companies allowed to restrict speakers?**
 - A. Yes, companies can restrict the speakers depending upon the availability of time. The notice calling for meeting should require the speaker shareholders to register themselves in advance and depending upon the time availability, it shall be at the discretion of the Chairman to allow the speakers.

In addition, companies may allow recordings to be sent in advance with the permission of the Chairman and shareholders, in order to avoid scenarios where a speaker shareholder may get disconnected or have an audio/visual connection issue, thus saving time and effectively maintaining the decorum of the meeting.

5) The number of speakers registering to speak at the meeting has gone up considerably. Companies are forced to choose those speakers who are favourably disposed to the company. Is this a correct practice? How can this be managed?

- A. If the number of speaker's shareholders registering is considerably more, the Chairman should put a cut-off as it may not be feasible to allow all the registered speakers due to time constraints.

For e.g., giving 3 mins each to 50 registered speakers in a meeting held through VC or OAVM will prolong the meeting with 150 minutes. Therefore, it is at the discretion of Chairman to decide the order (first come first serve, etc.) and the cut-off depending on the situation and time availability.

6) Is it mandatory to share the question / query well in advance with the Company by the Shareholder at the time of registering himself as speaker. Can a shareholder refuse to share the question, even if asked to share, by the Company?

- A. Shareholder may share his query well in advance with the Company so that even if he could not get connected, his query may be read out and answered. However, the shareholder may prefer to raise his query at the meeting only and in such case, he need not share his query in advance with the Company.

7) How can the companies keep registers open for inspection at the AGM held via VC or OAVM, if the Company does not maintain the registers in electronic form and nor the company has scanned the same?

- A. In case the registers are not maintained in an electronic form, the physical registers/documents should be scanned for uploading in a virtual data room established for the purpose. Login ID and password can be provided for inspection and it is to be ensured that only view rights are given for inspection and the registers/documents cannot be deleted, copied or downloaded or the register/ documents may be made available for inspection on a virtual platform (e.g., Zoom, Microsoft teams, etc.), and displayed in a presentation form. The registers/documents which shall be made available for inspection in connection with the AGM, shall be made available from the time notice is given till the conclusion of the meeting.

8) What are the consequences if during the AGM held through VC or OAVM, the Chairman gets disconnected due to poor net connectivity etc. and unable to join again? How can the Company proceed with the AGM for remaining items?

- A. In case, the Chairman of the meeting gets disconnected due to poor connectivity, etc. for 5-10 minutes, it does not necessarily lead to adjournment of the meeting. However, if the Chairman is unable to join again and depending on the size, structure, dynamics of the company, there are two options available: either adjourn the meeting or if the meeting so decides elect another Chairman to proceed with the AGM, the company is required to follow the Articles/Section 104 of the Companies Act, 2013 and proceed accordingly.

9) Do Shareholders and Directors have any rights to ask recording of AGM conducted through VC or OAVM?

- A. Recording of the General Meetings held through VC or OAVM is not mandatory as per law and only the recorded transcript has to be maintained. Therefore, a shareholder/director cannot ask for the recording of meeting conducted through VC or OAVM. Even if the company records the meeting its only for their internal purpose.

10) Do Shareholders and Directors have any rights to ask for the copy of recorded transcript of AGM conducted through VC or OAVM?

- A. Public companies have to mandatorily upload the recorded transcript on the web site of the company, if any. In case where a company has no website and has not uploaded the transcript, may provide a copy of the same to the shareholder who ever has asked for the same. In case of a private company there is no such requirement of uploading the recorded transcript on the website of the company. However, even in such cases as a good Governance measure copy of the recorded transcript may be made available, since there is no confidentiality as such is involved.

11) How to ascertain the quorum during the proceedings of AGM? In case a person leaves the AGM through VC in between, whether he would be counted for the purpose of quorum or should he be present throughout the meeting?

- A. As per para 3.1 of Secretarial Standard – 2 on General Meetings, the quorum shall be present throughout the meeting. It shall be the responsibility of the Chairman and the Company Secretary to keep a check on the attendance throughout the meeting for the purpose of quorum and if the attendance depletes below the required quorum, the meeting should be adjourned.

12) Is it mandatory to engage the services of CDSL or NSDL for the purpose of VC or we can have arrangements with the private service provider viz., Zoom, Google Meet, Webex, etc., especially when e-voting facility is provided by CDSL/NSDL only?

- A. It is not mandatory to engage the services of CDSL or NSDL for the purpose of holding a meeting through VC or OAVM, even though they might be the service providers for the purpose of e-voting. The company may use other service providers which depends upon the size of the company, number of shareholders and commercials.

The service providers for e-voting shall be registered / certified and no such requirement is there for service providers who provide the platforms for holding virtual shareholders meetings.

DRAFTING OF NOTICE AND MINUTES OF AGM AND EGM**Specimen Notice of Annual General Meeting**

Name of the Company

Registered Address

CIN - Email- Telephone: Website:

NOTICE OF (Meeting Number) ANNUAL GENERAL MEETING

NOTICE is hereby given that the (Meeting Number) Annual General Meeting of the Members of (Name of the Company) will be held on (day), the (date), 20....., at am/ p.m. at (address) to transact the following business:

Ordinary Business:

1. To receive, consider and adopt the standalone and consolidated Financial Statements of the Company for the financial year ended 31st March, ... and the Reports of the Board of Directors and the Auditors.
2. To declare dividend for the financial year ended 31st March, ...

3. To appoint a Director in place of Mr. (DIN), who retires by rotation and being eligible, offers himself for reappointment.
4. To appoint Statutory Auditors and to determine their remuneration. For this purpose, to consider and if deemed fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the Annual General Meeting of the Company (subject to ratification of their appointment at every AGM), at a remuneration of Rs./- (Rupees only) for the year and Rs./- (Rupees only) per year for the subsequent years plus reimbursement of out of pocket expenses and service tax, as applicable.”

“RESOLVED FURTHER THAT the Board of Directors of the Company (including a Committee thereof), be and is hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient to give effect to this Resolution.”

Special Business:

5. To appoint Mr. as Director

To consider, and if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 152 and other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Qualification of Directors) Rules, 2014, Mr. (DIN), who was appointed as an Additional Director of the Company with effect from, 20..... by the Board of Directors of the Company pursuant to Section 161(1) of the Companies Act, 2013 and the Articles of Association of the Company and who holds office upto the date of this Annual General Meeting, and being eligible, offer himself for appointment and in respect of whom the Company has received a notice in writing under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr. for the office of Director, be and is hereby appointed with effect from the date of this Meeting as a Director of the Company, liable to retire by rotation.”

By Order of the Board of Directors

For

.....(Signature)

.....(Name)

Place :

Date : 20....

Company Secretary

Notes :

1. The explanatory statement setting out the material facts pursuant to Section 102 of the Companies Act, 2013, relating to special business to be transacted at the Meeting is annexed.
2. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company.
3. Proxies, in order to be effective, must be received in the enclosed Proxy Form at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.

4. A person can act as a proxy on behalf of Members not exceeding 50 and holding in the aggregate not more than ten percent of the total share capital of the Company carrying voting rights. A Member holding more than ten percent of total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as a proxy for any other person or shareholder.
5. A Corporate Member intending to send its authorised representatives to attend the Meeting in terms of Section 113 of the Companies Act, 2013 is requested to send to the Company a certified copy of the Board Resolution authorizing such representative to attend and vote on its behalf at the Meeting.
6. Members/Proxies/Authorised Representatives are requested to bring the attendance slips duly filled in for attending the Meeting. Members who hold shares in dematerialised form are requested to write their client ID and DP ID numbers and those who hold shares in physical form are requested to write their Folio Number in the attendance slip for attending the Meeting.
7. During the period beginning 24 hours before the time fixed for the commencement of Meeting and ending with the conclusion of the Meeting, a Member would be entitled to inspect the proxies lodged at any time during the business hours of the Company. All documents referred to in the Notice and accompanying explanatory statement are open for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Annual General Meeting and at the venue of the Meeting for the duration of the Meeting.
8. Route-map to the venue of the Meeting is provided at the end of the Notice / Page no. of the Annual Report.
9. The Register of Members and the Share Transfer Books of the Company will remain closed from to (both days inclusive).
10. The dividend on shares as recommended by the Board, if approved at the Annual General Meeting, will be paid within thirty days from the date of declaration to those Members or their mandatees whose names appear:
 - (a) as Members in the Register of Members of the Company on, and
 - (b) as beneficial owners on that date as per the lists to be furnished by in respect of shares held in electronic form.
11. Unclaimed / Unpaid Dividend:

Pursuant to Section 205A of the Companies Act, 1956 (Section 124 of the Companies Act, 2013, once notified), dividend for the financial year ended 31st March, ... which remains unclaimed for a period of seven years, become due for transfer on (date) to the Investor Education and Protection Fund of the Central Government. Members who have not claimed their dividend for the above mentioned year are requested to make their claim to the Share Department of the Company at the Registered Office of the Company or to the Registrar & Share Transfer Agents of the Company at .. (address) as early as possible but not later than (date).
12. Electronic copy of the Annual Report is being sent to all the Members whose email IDs are registered with the Company/Depository Participant(s) for communication purposes unless any Member has requested for a hard copy of the same. For Members who have not registered their email address, physical copy of the Annual Report is being sent in the permitted mode. In case you wish to get a physical copy of the Annual Report, you may send your request to (email) mentioning your folio/DP ID and Client ID. Annual Reports is also available in the Financials section on the website of the Company at

13. Members holding shares in physical mode are requested to register their email IDs with the Registrar & Share Transfer Agents of the Company and Members holding shares in demat mode are requested to register their email ID's with their respective DP in case the same is still not registered. Members are also requested to notify any change in their email ID or bank mandates or address to the Company and always quote their Folio Number or DP ID and Client ID Numbers in all correspondence with the Company. In respect of holding in electronic form, Members are requested to notify any change of email ID or bank mandates or address to their Depository Participants.
14. Any query relating to financial statements must be sent to the Company's Registered Office at least seven days before the date of the Meeting.
15. Voting through electronic means

In compliance with provisions of Section 108 of the Companies Act, 2013 and Rule 20 of the Companies (Management and Administration) Rules, 2014, the Company is pleased to provide members the facility of exercising their right to vote electronically on the items mentioned in this Notice. The Company has appointed Mr. as scrutinizer for conducting the e-voting process in a fair and transparent manner.

The voting period begins on, 201... at 10:01 hrs. and will end on, 201... at 17:00 hrs. During this period shareholders' of the Company, holding shares either in physical form or in dematerialised form, as on the cut-off date of, 201..., may cast their vote electronically. The e-voting module shall be disabled for voting thereafter.

The Company has signed an agreement with (agency) for facilitating e-voting to enable the Shareholders to cast their vote electronically. The instructions for shareholders voting electronically are given at page no. of the Annual Report.

16. The Results shall be declared on or after the Annual General Meeting of the Company and shall be deemed to be passed on the date of Annual General Meeting. The results alongwith the Scrutinizer's Report shall be placed on the website of the Company within 2 days of passing of the resolutions at the Annual General Meeting of the Company and shall be communicated to (Stock Exchange).

EXPLANATORY STATEMENT

As required by Section 102 of the Companies Act, 2013, the following explanatory statement sets out all material facts relating to the business mentioned under Item No. 7 of the accompanying Notice dated

Item No. 5

Mr. who was appointed as an Additional Director of the Company under Section 161(1) of the Companies Act, 2013 effective, holds office up to the date of this Annual General Meeting, and is eligible for appointment as Director of the Company.

The Company has received notice under Section 160 of the Companies Act, 2013 from a Member signifying her intention to propose the candidature of Mr. for the office of Director.

A brief profile of Mr., as required to be given pursuant to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, has been given elsewhere in this Notice.

Mr. is not a Director of any other public limited company in India. He is a Member of the Audit Committee and the Investment Committee of, He does not hold any share in the Company and is not related to any Director or Key Managerial Personnel of the Company in any way.

The Board of Directors considers it in the interest of the Company to appoint Mr. as a Director.

By Order of the Board of Directors

For

.....(Signature)

Place :

.....(Name)

Date : 20....

Company Secretary

Specimen Minutes of Annual General Meeting

MINUTES OF THE PROCEEDINGS OF THE (Number of Meeting) ANNUAL GENERAL MEETING OF
..... (Name of the Meeting) HELD ON (day), ... (date) 20... FROM TO
..... A.M/ P.M. AT (address).

The following were present:

1. Mr. W (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. D (Director and Member)
5. Mr. E. (Director and Chairman of Audit Committee)
6. Mr. F (Company Secretary)
7. (Members present in person) [state number]
8. representing shares (Members present by Proxy) [state number]

Mr. G, Partner of M/s....., Chartered Accountants, Auditors of the Company, was present.

Mr. H, Practising Company Secretary, Secretarial Auditor of the Company, was also present.

CHAIRMAN

In accordance with Article of the Articles of Association, Mr. W, Chairman of the Board of Directors, took the Chair.

The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman stated that Mr..... and Mr.....Directors, could not attend the Meeting due to..... (Explain the reason for absence).

Quorum was present at the commencement of the Meeting as well as at the time of consideration of each item of business.

The following documents / Registers of the Company remained open and accessible for inspection during the continuance of the AGM:

- (a) Financial Statements for the financial year ended 31st March, ..., including the Consolidated Financial Statements for the said financial year, and the Reports of the Board of Directors and the Auditors.
- (b) Register of Directors and Key Managerial Personnel and their shareholding.

Register of Contracts or Arrangements in which Directors are interested.

With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read.

The Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item wise.

1. Adoption of Consolidated and Standalone Financial Statements

The Chairman requested Mr. to read the Ordinary Resolution for the adoption of the Financial Statements for the year ended 31st March, 20..... and Mr. read out the Ordinary Resolution as follows:

“RESOLVED THAT the Financial Statements of the Company for the year ended 31st March, 20....., including Consolidated Financial Statements for the said financial year, along with the Reports of the Board of Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted.”

After the above Resolution was proposed and seconded, but before it was put to vote, the Chairman invited Members (other than those present by Proxy) to make observations and comments, if any, on the Report and financial statements, as well as on the other Resolutions set out in the Notice convening the Meeting.

Some Members made their observations and comments and raised queries on the Annual Report and Financial Statements and other items set out in the Notice and the Chairman answered their queries.

Before putting the Resolution to vote, the Chairman reminded the Meeting that Proxies were not eligible to vote on a show of hands. Thereafter, the Chairman put the Resolution for the adoption of the Financial Statements, Consolidated Financial Statements and the Reports thereon to vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.

2. Declaration of Dividend

Mr. read out the following Resolution

“RESOLVED THAT the dividend @ Rs. on the equity shares of Rs. 10/Re.1/ - each, fully paid-up, be and is hereby declared for payment, to those Members whose names appear on the Company's Register of Members on 20..”.

The Resolution was proposed by Mr. and seconded by Mr., and was put to vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

3. Appointment of Director

Proposed by : Mr.

Seconded by : Mr.

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:

“RESOLVED THAT pursuant to Section 152 of the Companies Act, 2013, Mr. A, who retires by rotation and, being eligible for re-appointment, offers himself for reappointment, be and is hereby re-appointed as a Director of the Company liable to retire by rotation.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

4. Appointment of Auditors

Proposed by : Mr.

Seconded by : Mr.

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s....., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the Annual General Meeting of the Company (subject to ratification of their appointment at every AGM), at a remuneration of Rs./- (Rupees only) for the year and Rs./- (Rupees only) per year for the subsequent years plus reimbursement of out of pocket expenses and service tax, as applicable.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

5. Appointment of Director

Proposed by : Mr.

Seconded by : Mr.

The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 152 and other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Qualification of Directors) Rules, 2014, Mr. (DIN), who was appointed as an Additional Director of the Company with effect from, 20..... by the Board of Directors of the Company pursuant to Section 161(1) of the Companies Act, 2013 and the Articles of Association of the Company and who holds office upto the date of this Annual General Meeting, and being eligible, offer himself for appointment and in respect of whom the Company has received a notice in writing under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr. for the office of Director, be and is hereby appointed as a Director of the Company, liable to retire by rotation with effect from the date of this Meeting.”

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

VOTE OF THANKS AND CONCLUSION OF MEETING:

Since there was no other item for discussion and consideration the meeting ended with vote of thanks to the Chair. The Chairman in response, warmly acknowledged the same and thanked the members present and announced the closure of meeting.

Date :

.....

Place:

CHAIRMAN

Specimen Minutes of Extra-Ordinary General Meeting

MINUTES OF THE PROCEEDINGS OF THE EXTRA-ORDINARY GENERAL MEETING OF (Name of the Company) HELD ON (day), ... (date) 20..... FROM TO A.M./P.M.
AT(address).

The following were present:

1. Mr. A (in the Chair)
2. Mr. B (Director and Member)
3. Mr. C (Director)
4. Mr. F (Company Secretary)
5. (Members present in person) {state number}
6. (Members present by Proxy) {state number}

Mr. G, Partner of M/s....., Chartered Accountants, Auditors of the Company, was present.

CHAIRMAN

In accordance with Article of the Articles of Association, Mr. A, Chairman of the Board of Directors, took the Chair.

The Chairman welcomed the Members and introduced the Directors seated on the Dias.

The Chairman stated that Mr. and Mr. Directors, could not attend the Meeting due to..... (explain the reason for absence).

Quorum was present at the commencement of the Meeting as well as at the time of consideration of each item of business.

With the consent of the Members present, the Notice convening the ExtraOrdinary General Meeting of the Company was taken as read.

The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.

Appointment of Independent Director

Proposed by : Mr.

Seconded by : Mr.

The following Resolution having been proposed and seconded respectively by the aforementioned Members was put to vote as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and the rules made there under read with Schedule IV to the Companies Act, 2013, approval of the Company be and is hereby accorded for appointment of Mr. E (DIN No.....), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to, ... AND THAT by virtue of sub-section (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation.”

The Chairman enquired from the Members present if there were any clarifications required on the same. Since none of the Members required any clarification, the Ordinary Resolution was put to vote and on a show of hands declared carried by the requisite majority.

CLOSE OF THE MEETING

There being no other business to transact the Meeting closed with a vote of thanks to the Chair.

Date :

.....

Place:

CHAIRMAN

LESSON ROUND-UP

- An annual general meeting is required to be held every year by every company other than a One Person Company (whether public or private, limited by shares or by guarantee, with or without share capital or unlimited company).
- In case of default is made in holding the annual general meeting of a company under section 96, the Tribunal may call or direct the calling of an annual general meeting.
- Class meetings are those meetings which are held by holders of a particular class of shares e.g. preference shares.
- For a General Meeting to be valid, it must be duly convened, properly constituted and the business must be validly transacted.
- In case of public company the quorum shall depend on number of members as on the date of meeting personally present in the meeting:-
 - If members not more than 1000—quorum shall be 5.
 - If members more than 1000 but less than 5000- quorum shall be 15.
 - If members more than 5000- quorum shall be 30.
 - In case of private company 2 members personally present shall be the quorum of the meeting.
- The central government is vested with the power to prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
- Chairman plays a very important role in a meeting as he is responsible for successful conduct of a meeting.
- A motion becomes a resolution only after the requisite majority of members have adopted it.
- Various methods which may be adopted for taking votes on a motion properly placed before a meeting are by show of hands, by poll, by postal ballot and by electronic voting.
- In accordance with Section 117 of the Act, certain resolutions are required to be filed with the Registrar for recording within 30 days of its passing at the meeting.
- Every company is required to keep minutes of the proceedings of general meetings and of the meetings of Board of Directors and its Committees. A virtual meeting is when people around the world, regardless of their location, use video, audio, and text to link up online.
- Virtual meeting is a “room” set up online through a website host that allows people from anywhere to “meet” with each other to share information and network in real-time.

GLOSSARY

Book Closure: Book closure refers to the time period when a company will not handle adjustments to the register, or requests to transfer shares. The book closure date is often used to identify the cut-off date determining which investors of record will be sent a given dividend payment or the issue of right or bonus shares or issue of shares for conversion of debentures. This is more relevant in case of physical shares. Also refer Section 91 of Companies Act, 2013.

Suo motu: It is a Latin legal term meaning “on its own motion” mutatis mutandis It is a Latin term meaning “the necessary changes having been made” or “once the necessary changes have been made.”

Roll Call: A roll call is nothing but identifying and confirming the attendance of the director participating through Electronic Mode.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. ABC Pvt Limited is incorporated on 31st December, 2019. Up to what time such company can hold its first Annual General Meeting. What would be your answer if company incorporated on 1st January, 2020?
2. Some members have joined the meeting but at the time of transacting business items they left before meeting ends without transacting any business items of the Notice. Does this constitute a valid General Meeting? List out the points in the light of the provisions of Companies Act, 2013 having regard to Quorum of General Meeting?
3. List out the persons whom Notice of the General Meeting is to be given. Explain the provisions with respect to the Notice of the Annual General Meeting.
4. Ram Commodities Private Limited could not hold its 10th annual general meeting for the year 2019-20 by 30th September, 2020. The company sought extension of time for holding the AGM from the Registrar of Companies but failed to hold the meeting within the extended time too. Instead, it held the meeting on 31st March, 2021 and passed resolutions thereat. Certain shareholders have challenged the validity of these resolutions. Referring to the provisions of the Companies Act, 2013, examine whether the contention of the shareholders shall be tenable.
5. What are the items that constitute Ordinary Business in an Annual General Meeting of a company?
6. Who shall be chairman of a general meeting of a company? What are the provisions of the Companies Act, 2013 regarding his election?
7. Every Annual General Meeting of a company shall be called on a day which is not a National holiday. Can an adjourned Annual General Meeting of a company be called on a National holiday?
8. A shareholder having given proxy, personally attends and votes at the meeting. Comment, illustrating a case law.
9. At a general meeting, two joint holders voted on a resolution. Will the votes of both the joint holders be accepted?
10. What are the provision of the Companies Act, in regard to the holding of an Extra Ordinary General Meeting?

11. At a General meeting of a company, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration?
12. The Annual General Meeting (AGM) of a company is scheduled to be held on 22nd August, 2022 at 2 p.m. Taking into account the relevant legal provisions contained in the Companies Act, 2013 indicate the latest time for posting notices of the meeting to the members to ensure legal compliance:
 - a) The notice must be sent latest by August 03, 2022. Further, if notice is sent by post or courier it must be posted latest by August 01, 2022.
 - b) The notice must be sent latest by August 05, 2022. Further, if notice is sent by post or courier it must be posted latest by August 03, 2022.
 - c) The notice must be sent latest by August 07, 2022. Further, if notice is sent by post or courier it must be posted latest by August 05, 2022.
 - d) The notice must be sent latest by July 31, 2022. Further, if notice is sent by post or courier it must be posted latest by July 29, 2022.
13. Mr. Raghav is a shareholder of M/s Diceball Infra Limited. He wants to have a copy of minutes of General Meeting. Within how many days he will get the copy after applying to the company?
 - a) Within ten working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed.
 - b) Within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed.
 - c) Immediately on payment of such fees as may be prescribed.
 - d) Within fifteen working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed.
14. M/s RK Enterprises Limited wants to issue GDR. What resolutions are required to be passed in this case?
 - a) After AGM only.
 - b) The company can issue after passing a ordinary resolution.
 - c) The company can issue after passing a special resolution in its general meeting.
 - d) The company can issue after passing a board resolution.

LIST OF FURTHER READINGS

- Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI
- ICSI Premier on Company Law
- Bare Act- Companies Act, 2013

- ICSI Guidance Note on SS-2
- ICSI FAQs on Virtual Meetings
- The Law and Practice Relating to Company Meetings, Third Edition by CS Ramaswami Kalidas, FCS, MBA—Bloomsbury Publishing India Pvt. Ltd

OTHER REFERENCES (Including Websites/Video Links)

- <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==>

[illegible]

[illegible]