

MANAGEMENT & ADMINISTRATION



LEARNING OUTCOMES

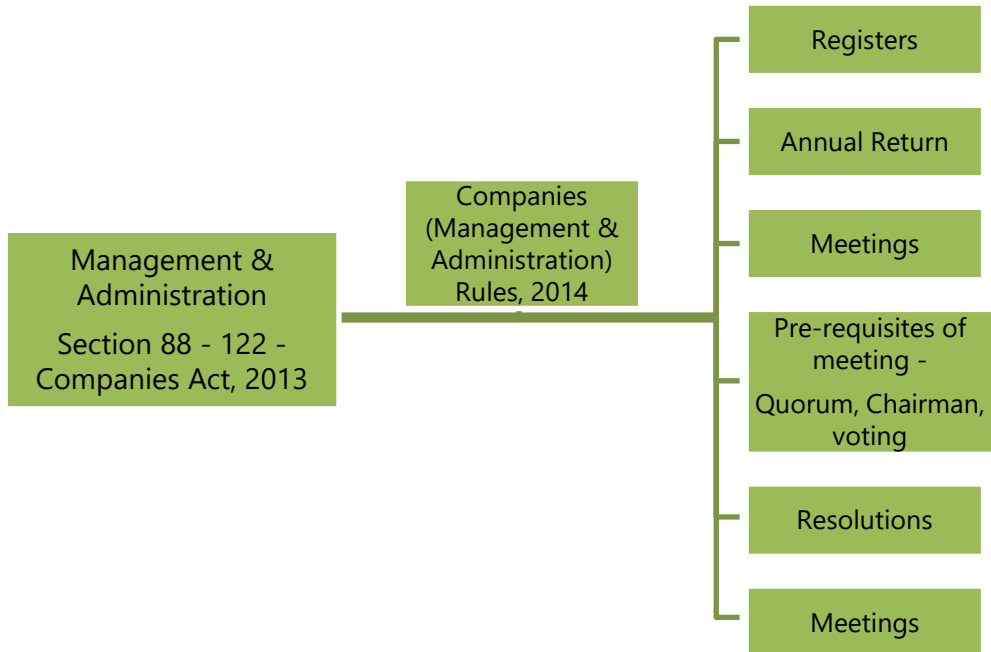
At the end of this chapter, you will be able to:

- ☐ State the meaning, need and importance of management & administration of company.
- ☐ Learn about the maintenance of registers and other documentation required to be kept by a company.
- ☐ Know about meeting for conduct of the business.
- ☐ Explain the requirements for convening of a valid meeting.

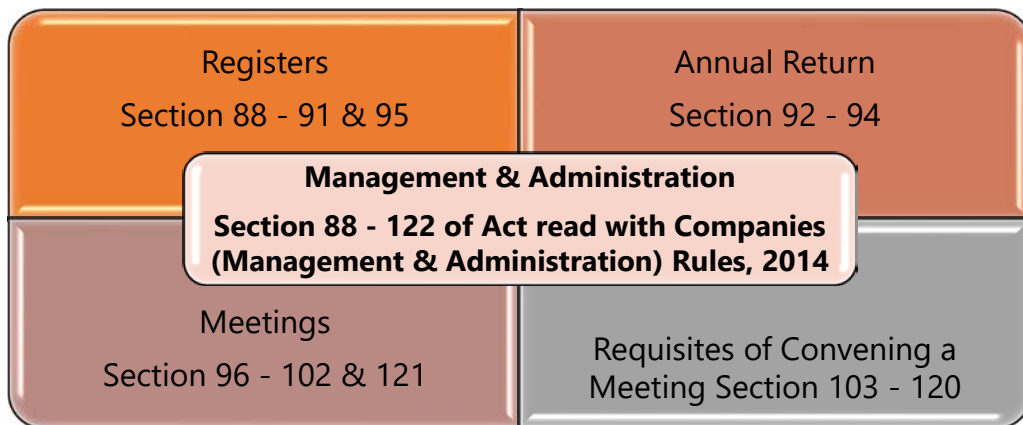


1. CHAPTER OVERVIEW & INTRODUCTION

A company is an artificial legal entity distinct from its members, thus, the affairs of the company are managed by the members and Director through resolutions passed at validly held Meetings. The Board of Directors in carrying out the day-to-day affairs of the company has to perform the role within the power which is granted to them. Certain powers can be exercised by the board on their own and some with the consent of the company at the general meeting. The shareholders as owners of the company ratify the actions of the board at the general meetings of the company. The meetings of the shareholders serve as the focal point for the shareholders to converge and give their decisions on the actions taken by the directors.



To begin with, let us understand the structure of this chapter of Companies Act, 2013 which deals with the provisions related to management & administration of companies. It runs from Section 88 to 122 and is divided under the following headings–



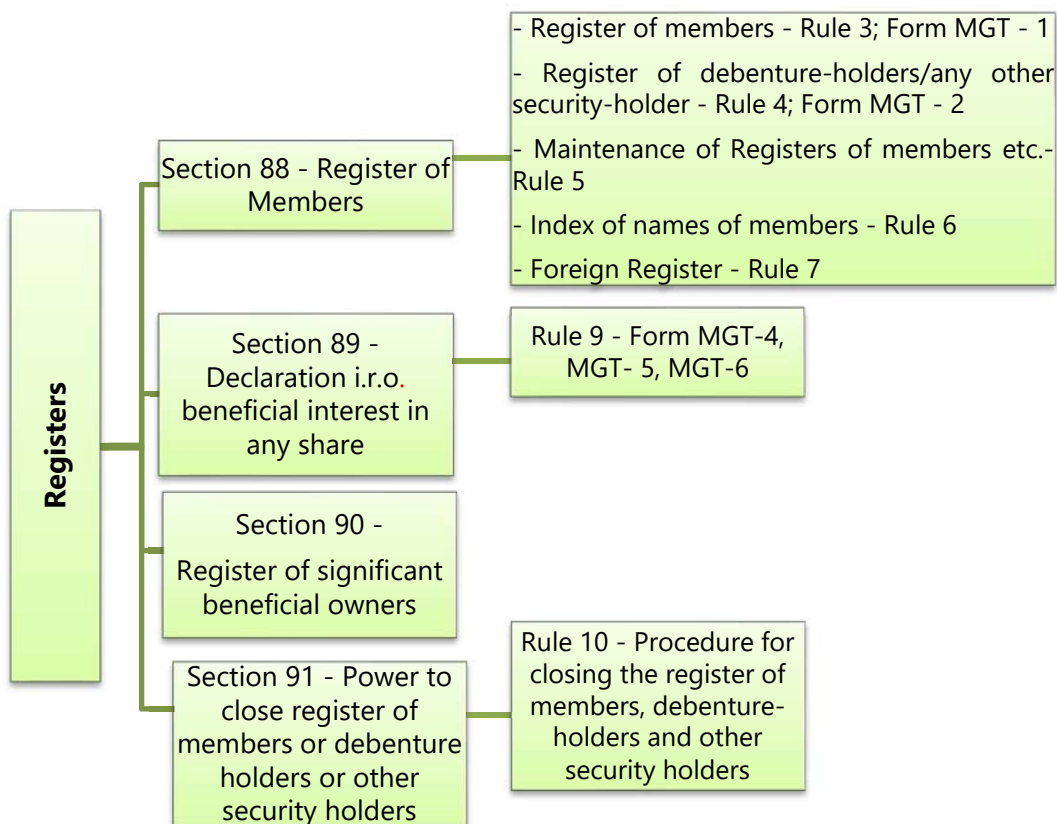
Thus, to initiate, it is imperative that we streamline the understanding of this chapter so as to link it with the essential concepts along with their procedures which can be found in the respective rules, i.e. *Companies (Management & Administration) Rules, 2014*.

This chapter applies to all the companies, public and private, and has special provisions applicable to One Person Company (OPC), which is enumerated in section 122 of the Act and is discussed later in this chapter.



2. REGISTERS

The provisions relating to maintaining the various registers as per the Companies Act, 2013 are contained in Sections 88 – 91. Along with these provisions, the *Companies (Management & Administration) Rules, 2014* are also applicable to the maintenance of registers by a Company. Relevant provisions related to maintenance of register is as follows:



Section 88 – Register of members, etc.

Section 88(1) of the Companies Act, 2013 seeks to provide that every company shall keep and maintain the register of members, register of debenture-holders (DH) and register of any other security holders (OSH).

- ♦ **Maintenance of Register of members:** Section 88(1)(a) requires a register of members to be maintained and that the holding of each class of equity and preference shares by each member residing in or outside India will have to be shown separately in the register of members. The form and manner in which these registers are to be maintained, is contained in Rule 3 of the Companies (Management & Administration) Rules, 2014; whereas Rule 5 provides for the maintenance of the register of members.
- ♦ **Time period for entries in register:** As per Rule 5, entries have to be made in the Register within 7 days of the date of approval by the Board or Committee thereof by approving the allotment or transfer of shares, debentures or any other securities, as the case may be.
- ♦ **Place where register shall be maintained:** According To Rule 5 also, the registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than 1/10th of the total members entered in the register of members reside.
- ♦ **Other informations also to be referred in register:** Any order passed by the competent authority attaching the shares or relating to dividends is also required to be referred in the register of members. The particulars of any charge, lien, pledge or hypothecation of any securities of the company is also required to be entered in the register of members as per Rule 5(7) and 5(8).
- ♦ **Particular in register:** Rule 3 provides that every company limited by shares, shall, from the date of its registration, maintain a register of its members in Form MGT-1. In case of a company not having share capital, the register shall contain the following particulars, in respect of each member–
 - Name of the member, address (registered office address in case the member is a body corporate); email address; Permanent Account Number or Corporate Identity Number ('CIN'); Nationality; in case member is a minor – name of his guardian and the date of birth of the member, name and address of the nominee;
 - Date of becoming the member;
 - Date of cessation;
 - Amount of guarantee, if any;
 - Any other interest, if any; and

- Instructions, if any, given by the member with regard to sending of notices, etc.
- ♦ **Maintenance of register of debenture holders (DH):** Section 88(1) (b) of the Act refers to the form and manner of maintenance of Register of DH, which corresponds to Rule 4 which states that every company which issues or allots debentures or any other security shall maintain a separate register for debenture holder or security holder in Form MGT-2.
- ♦ **Updating of change in status of members:** Rule 5 states that if any change occurs in the status of a member or debenture-holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund (IEPF) or due to any other reason, entries thereof explaining the change shall be made in the respective registers.
- ♦ **Index of names:** Section 88(2) provides that every register maintained under section 88(1) shall include an index of names included therein. However, according to Rule 6 of the *Companies (Management & Administration) Rules, 2014* the maintenance of index is not necessary where the number of members is less than 50. Rule 6 also provides that the company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.
- ♦ **Register index of beneficial owner to be maintained of a depository:** Section 88(3) is an enabling provision, which sets out that the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.

Foreign Register – Section 88(4) read with Rule 7:

- ♦ **Maintenance of foreign register:** Section 88(4) read with Rule 7 provides that a company which has share capital or which has issued debentures or any other security may, if so authorised by its articles, keep in any country outside India, a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners, resident in that country. The register may be referred as “**Foreign Register**”.
- ♦ **Compliances:** The Foreign Register is optional. Once company decides to keep, it shall comply to the following–
 - The company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar of Companies (‘RoC’) notice of

the situation of the office in the prescribed Form No. MGT – 3 along with the fee where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within 30 days from the date of such change or discontinuance, as the case may be, file notice in Form No. MGT.3 with the RoC of such change or discontinuance.

- A foreign register shall be deemed to be part of the company's register ('principal register') of members or of debenture-holders or of any other security holders or beneficial owners, as the case may be.
- The foreign register shall be maintained in the same format as the principal register.
- A foreign register shall be open to inspection and may be closed, and extracts may be taken therefrom and copies thereof may be required, in the same manner, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.
- If a foreign register is kept by a company in any country outside India, the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.
- Entries in the foreign register maintained under section 88(4) shall be made after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.
- The company shall –
 - ❖ Transmit to its registered office in India, a copy of every entry in any foreign register within 15 days after the entry is made; and
 - ❖ Keep at such office a duplicate register of every foreign register duly updated from time to time and it shall be deemed to part of the principal register.
 - ❖ No transaction with respect to any shares, debentures, or any other security, registered in a foreign register shall, during the continuance of such foreign register, be registered in any other register.
- The company may discontinue the keeping of any foreign register, and thereupon all entries in that register shall be transferred to some other

foreign register kept by the company outside India or to the principal register.

- ♦ **Penalty for failure to maintain register in accordance with the provisions of Section 88(1) and 88(2) of the Act:** Section 88(5) of the Act provides that company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ Rs. 50,000 but which may extend to ₹ Rs. 3,00,000 and where the failure is a continuing one, with a further fine which may extend to ₹ . 1,000 per day.
- ♦ **Nature of offence:** The offence under this section is a compoundable offence under section 441 of the Act.
- ♦ **Details of Nominations in the register:** It is important to note here that Form MGT – 1 and MGT – 2 require details of nomination as referred to in section 72 of the Act, *read with Rule 19 of the Companies (Share Capital and Debentures) Rules, 2014* to be entered in the Register of members and register of debenture-holders or other security holders as the case may be.
- ♦ **Authentication of entries:**
 - The entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.
 - (2) The entries in the foreign register shall be authenticated by the company secretary of the company or person authorised by the Board by appending his signature to each entry.

Example 1

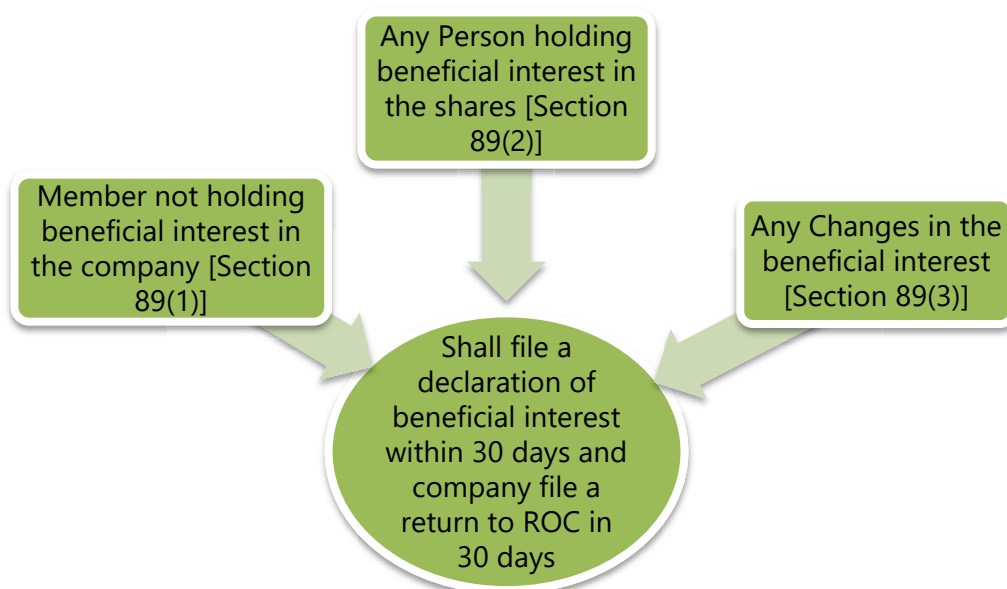
Mr. Zoey purchased the shares of Luxy Hairstyles Private Limited, at market price, in the name of his daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the updation of said change in the register of members, since Mila, being a minor is incompetent to contract in her capacity.

Answer: Since, the minors are not competent to enter into any contract, thus their names cannot be entered in the register of members. Therefore, Mr. Joe is advised that while filing MGT – 1 and MGT – 2, the names of the minor can only be entered only if the details of the guardian are present. Thus, Zoey's name shall appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

Example 2

Mrs. And Mr. Taneja, recently got married and jointly purchased the shares of New Hopes India Private Limited on 14th August 2018. Mr. Taneja intimated the company that only the name of his wife should appear in the records of the company, for the shares purchased by them. The secretary of the company is not sure whether this is possible, given that the shares are held in the names of both the persons.

Answer: Joint holders of shares may request the company to enter their names on the register in a certain order, or execute transfers to have their holding split, with the result that part of the holding is entered showing the name of one holder and part showing the name of another. However, the condition of Mr. Taneja that only the name of his wife should appear in the register as a member cannot be catered to, although the names can be entered in the order such that the name of his wife appears first. The reason for this is that the articles of most companies provide that, in the case of exclusion of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

Section 89 – Declaration in respect of beneficial interest in any share-

- ◆ **Declaration by registered holder of shares:** A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as "the registered owner"), shall file with the company,

a declaration to that effect in Form No. MGT. 4, specifying the name and other particulars of the person who holds the beneficial interest in such shares, within a period of thirty days from the date on which his name is entered in the register of members of such company.

- ◆ **Declaration by person holding beneficial interest in shares:** Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company in form MGT-5, within 30 days after acquiring such beneficial interest, specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.
- ◆ **Declaration in case of change in beneficial interest:** Where any change occurs in the beneficial interest in any shares in respect of which a declaration has been filed u/s 89 (1) and (2), then, within 30 days of such change, a declaration is to be made to the company.
- ◆ **Filling of return by the company with the registrar:** Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in Form No. MGT.6 with the Registrar in respect of such declaration with fee.
- ◆ **Consequence of non-filling of declaration:** where a declaration required u/s 89 is not filed by the beneficial owner, then, any right with respect to such shares shall not be enforceable by the beneficial owner or by any person claiming through him.
- ◆ **Exemption:** Trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. These entities need not file the declarations as envisaged under this section.
- ◆ **Duty of the Company to pay dividend not affected:** Nothing contained in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged
- ◆ **Meaning of beneficial interest :** For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—
 - (i) exercise or cause to be exercised any or all of the rights attached to such share; or

- (ii) receive or participate in any dividend or other distribution in respect of such share. [Section 89(10)]

Penalty for default under section 89(5) & 89(7) –

Two kinds of penal provisions are included under section 89 –

- ♦ **Related to persons required to make a declaration** [Section 89(5)]- If any person fails to make a declaration as required under section 89, without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
- ♦ **Related to company** [Section 89(7)]- If a company, required to file a return u/s 89(6), fails to do so within 30 days of receipt of declaration by it, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
- ♦ **Exemption to Government Company**- In case of Government Company - Section 89 shall not apply - *Notification dated 5th June, 2015.*

The above mentioned exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar- *Notification dated 13th June, 2017.*

Example 3

Ms. Emma gifted the shares purchased by her of the Company Bio-Optics Limited, to her sister Cathy. Emma had purchased these shares on the occasion of her birthday in February 2019. However, neither Emma nor Cathy were aware that they had to intimate about the transaction of transfer of such shares as a gift, to the company. Discuss the same in light of the provisions of section 89 of the Act.

Answer: The provisions of the section 89 of the Act, dealing with declaration of beneficial interest in shares by a person to the company does not apply in a civil suit where the title of the shares is in a dispute. In *Khajamiya Miransaheb Mujahid v. Peerapasha Miransaheb Mujahid (1987) (Kar.)*, where the shares are gifted away, they become the property of the donee. Hence, the provisions relating to declaration of beneficial interest are not applicable.

SECTION 90– REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY

As per Section 90 of the Act, every Significant Beneficial Owner “SBO” is required to disclose the nature of his interest and other particulars within the prescribed period of time to the Company, which in turn will inform the same to the Registrar of Companies. In the said connection, MCA has issued Companies (Significant Beneficial Owners) Rules, 2018 (“SBO”), which deals with identification and reporting in connection with SBO.

Definition of Significant Beneficial Owner: The term 'significant beneficial owner' “SBO” has been defined in section 90 of the Act as Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as “significant beneficial owner”).

However, Companies (Significant Beneficial Owners) Amendment Rules, 2019 (“Amendment Rules”) has amended the definition of the term SBO. In terms of Rule 2(1) (h) of the SBO Rules, the term ‘Significant Beneficial Owner’ (SBO) is defined as an individual who—

- i. acting alone or together, or
- ii. through one or more persons or trust,

Possess one or more of the following rights or entitlements in the Reporting Company (i.e. the company in respect of which SBO declaration is required to be filed)—:

- i. holds indirectly, or together with any direct holdings, not less than 10% of the shares;
- ii. holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
- iii. has the right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- iv. Has the right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

In simple terms, SBO is an individual who either alone or together with other individuals or trust, exercises rights or entitlements in the Reporting Company by way of holding 10% shares or 10% voting rights or right to receive 10% or more dividend, both indirect and direct holdings or right taken together or such individual exercise significant influence or control, indirectly or along with direct holding in the Reporting Company. The amended Rules further explain that if an individual does not hold any indirect right or entitlement as mentioned in (i), (ii) or (iii) above, he will not be considered to be a 'significant beneficial owner'.

Significant influence: The term "significant influence" was previously not defined specifically for the rules, and hence, to provide clarity, the following definition has been inserted through SBO rules: "Significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

Majority stake: The Amendment Rules inserted a new term, "Majority Stake," which means

- i. holding more than one-half of the equity share capital in the body corporate; or
- ii. holding more than one-half of the voting rights in the body corporate; or
- iii. Having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate.

Direct and Indirect shareholding: The Amendment Rules provide that when an individual holds any rights or entitlement directly in the reporting company, the said individual shall not be considered as SBO. An individual will be considered to hold a right or entitlement directly in the Relevant Company, if he satisfies any of the following criteria:

- a. the shares in the Relevant Company representing such right or entitlement are held in the name of such individual;
- b. the individual holds or acquires a beneficial interest in the shares of the Relevant Company under section 89(2) of the CA 2013, and has made a declaration in this regard to the Relevant Company.

Indirect shareholding is, when a shareholder is a (a) Body corporate; (b) Hindu Undivided Family (c) Partnership (d) Trust (e) Pooled investment vehicle.

Onus on the reporting company: The duty is on the reporting company to identify a SBO and cause such SBO to make a declaration in the prescribed Form. As per

the Amendment Rules, every reporting company shall give notice in the Form BEN-4 to any person whom the company knows or has reasonable cause to believe-(a) to be a significant beneficial owner of the company; (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

Also, according to the section 90 of the Act read with amended rules every company shall maintain a register of significant beneficial owners in Form No. BEN-3 which shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.

Application to Tribunal [Section 90 (7)]: The company shall,—

- (a) Where that person fails to give the company the information required by the notice in form no. BEN4 within 30 days of date of notice; or
- (b) Where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of the right to receive dividend or any other distribution in relation to the shares in question; suspension of voting rights in relation to the shares in question; any other restriction on all or any of the rights attached with the shares in question.

On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed within a period of one year from the date of such order.

Provided that if no such application has been filed within a period of one year from the date of the order such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

Declaration by SBO:

- a. Every individual who is a SBO in the Reporting Company, as on the date of commencement of the Amendment Rules, is required to file a declaration with the Reporting Company in Form BEN-1 within 90 days from such commencement. In turn, the Reporting Company will be required to file the said disclosure with the Registrar within 30 days of receiving it from the SBO.
- b. Any individual, who subsequently becomes a significant beneficial owner in the Reporting Company or whose significant beneficial ownership undergoes any change, is required to file a declaration with the Reporting Company in Form BEN-1 within 30 days of such acquisition or change.
- c. If an individual becomes a significant beneficial owner in the Reporting Company or her significant beneficial ownership undergoes any change within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

NON-APPLICABILITY

The amended Rules will not be applicable where the shares of the Relevant Company are held by:

- (a) the Investor Education and Protection Fund Authority;
- (b) its holding company which has complied with section 90 of CA 2013 and the Rules, provided that the details of such holding company are reported in Form BEN-2;
- (c) the Central Government, any State Government or any local authority;
- (d) an entity/ body corporate controlled wholly or partly by the Central Government and/ or State Government(s);
- (e) investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and

- (f) investment vehicles regulated by the Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

Contravention

(a) By SBO: Where any SBO fails to give required disclosure under the SBO Rules then such individual(s) shall be liable for the following:

- (i) Imprisonment for a term which may extend to one year or
- (ii) With fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees or
- (iii) With both
- (iv) Where the failure is continuous, with a further fine which may extend to one thousand rupees for every day after the first day during which the failure continues.

Contravention by SBO of provisions of Section 90 and SBO Rules is compoundable.

(b) By Reporting Company: Where the Reporting Company fails to maintain register of SBO or file return of SBO with ROC or denies inspection, then

- (i) Company shall be liable for a fine which shall not be less than INR 10,00,000 but which may extend to INR 50,00,000
- (ii) Every officer in default shall be liable for a fine which shall not be less than INR 10,00,000 but which may extend to INR 50,00,000
- (iii) Where the failure is continuous, with a further fine which may extend to one thousand rupees for every day after the first day during which the failure continues

Contravention by Company and Officer in Default of provisions of Section 90 and SBO Rules is compoundable.

Note: Where the SBO or the Officer in Default intentionally furnishes any false or incorrect information or suppresses any material information, then they will be liable for fraud under section 447.

Exemption to Government Company- In case of Government Company - Section 90 shall not apply - *Notification dated 5th June, 2015.*

The above mentioned exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section

137 or annual return under section 92 with the Registrar- *Notification dated 13th June, 2017.*

SECTION 91 – POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE-HOLDERS OR OTHER SECURITY HOLDERS

- ◆ The said section is divided into two parts – sub-section (1) deals with the time limits for which the register of members is allowed to be closed and sub-section (2) mentions the penalty for contravention of the provisions of sub-section (1).
- ◆ According to Section 91(1) a company may close the register of members, debenture-holders and other security holders by giving minimum 7 days' notice or such lesser period as specified by Securities Exchange Board of India ('SEBI').
- ◆ Section 91(1) further states that the registers may be closed for any period not exceeding 30 days at any one time and for an aggregate period of 45 days in one year.
- ◆ Section 91(2) sets out that if the registers is closed without giving the notice as prescribed in sub-section (1), or after giving a shorter notice than that so provided, or for a continuous period or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000 per day subject to a maximum of ₹ 1,00,000 during which the register is kept closed. However, the offence is a compoundable offence under section 441 of the Companies Act, 2013.
- ◆ According to Rule 10 of the *Companies (Management & Administration) Rules, 2014*, A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice, if such company is a listed company or intends to get its securities listed, 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. [Sub rule (1)]

- ♦ It is important to note here that the private companies have been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of the registers.[Rule 10 (2), *Companies (Management & Administration) Rules, 2014*]



3. ANNUAL RETURN [SECTION 92, 94]

Provisions with regard to Annual Return are contained in section 92 and Rules 11 and 12 of the *Companies (Management & Administration) Rules, 2014*. Every company shall prepare an annual return in Form No. MGT. 7 as prescribed in Rules containing the following particulars:

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies.

2. Its shares, debentures and other securities and shareholding pattern

3. Its indebtedness

4. Its members and debenture-holders along with the changes therein since the close of the previous financial year

5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.

6. Meetings of members or a class thereof, Board and its various committees along with attendance details.

*7. Remuneration of directors and key managerial personnel

8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment.

9. Matters relating to certification of compliances, disclosures.

10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.

- ♦ The afore-mentioned annual return has to be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice. However, in relation to ¹One

¹ In case of Private Company - proviso to sub-section (1) of Section 92 for the proviso the following proviso shall be substituted, namely:-

Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

- ♦ Sub section 2 of section 92 read with Rule 11(2) of the *Companies (Management & Administration) Rules, 2014*, provides that the annual return, filed by a listed company or a company having paid-up share capital of ₹ 10 crore or more; or a turnover of ₹ 50 crore or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form MGT – 8. It must state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Act.
- ♦ ²Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report. A copy of annual return shall be filed with the RoC within 60 days from the date on which the Annual General Meeting ('AGM') is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.

***"In case of Private Company** – Clause (g) of Sub-Section (1) of Section 92 shall apply to private companies namely:-

"(g) "aggregate amount of remuneration drawn by directors;" - *Notification Dated 13th June, 2017*"

Penalty for contravention–

- ♦ Section 92(5) of the Act specifies that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one

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

The above exceptions/ modifications/ adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with Registrar. *Notification Dated 13th June, 2017*

² In case of Specified IFSC Public Company and Specified IFSC Private Company - Sub-section (3) of section 92 shall not apply. - *Notification Date 4th January, 2017*

hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

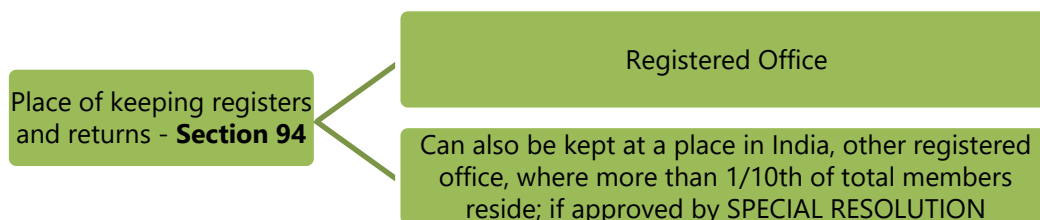
- ♦ If a company secretary in practice, certifies the annual return otherwise than in accordance with this section and the rules made thereunder, he shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5,00,000.

Example 4

Big Fox Private Limited called its Annual General Meeting on 30th September, 2018 for laying down the financial statement for approval of its shareholders' for the financial year ended 31st March 2018. However, due to want of quorum, the meeting could not take place and was cancelled. The company has not filed the annual financial statements or the annual return for the year ending March 2018, with the RoC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92. Discuss.

Answer: The director is incorrect in holding that there no contravention of the provisions of the Companies Act, 2013. Section 92 states that every company has to file an annual return with the RoC in Form MGT – 7 within 60 days of date on which annual general meeting was held or the date when it must have been held. In the above case, the annual general meeting of Big Fox Private Limited should have been held by 30th September 2018, but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 and shall be liable for a penalty as specified in Section 92(5) of the Act.

³Section 94 – Place of keeping and inspection of registers, returns, etc.



³ Section 93 of the Companies Act, 2013 has been omitted by the Companies (Amendment) Act, 2017 -Amendment Effective from 13th June 2018

Extract of Section 94(1)

"The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.

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

Provided further that the period for which the registers, returns and records are required to be kept shall be such as may be prescribed."

- ◆ As per Rule 14(1), the registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

Explanation.- For the purposes of this sub-rule, reasonable time of not less than two hours on every working day shall be considered by the company.

- ◆ According to Section 94(3) read with Rule 14(2), any member, debenture-holder or security holder or beneficial owner can take the extracts during any business without payment of any fee or can also get copies thereof with payment of fee not exceeding ` 10 for each page. Such copies or entries or return shall be supplied within 7 days of deposit of fee.

Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section.

Preservation of register of members etc. and annual return–

- ◆ **Preservation of register of members:** Rule 15 of the *Companies (Management & Administration) Rules, 2014* states that the register of members along with the index shall be preserved permanently and shall be kept in the custody of company preservation of register of members secretary of the company or any other person authorised by the Board for such purpose; and

- ♦ **Preservation of register of debenture holders/ other security holders:** The register of debenture-holder or any other security holder along with the index shall be preserved for a period of 8 years from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.
- ♦ **Copies of documents filled with ROC to be preserved:** Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the RoC.
- ♦ **Preservation of foreign register:** shall be preserved permanently, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture-holder or any other security holder shall be preserved for a period of 8 years from the date of redemption of debenture or securities.

Penalty for refusing the inspection or making any extract or copy required –

- ♦ If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable for each such default, to a penalty of ₹ 1, 000 for every day subject to a maximum of ₹ 1, 00,000 during which the refusal or default continues. [Section 94(4)]
- ♦ The Central Government may also, by order, direct an immediate inspection of the document, or directs that the extract required shall forthwith be allowed to be taken by the person requiring it. [Section 94(5)]

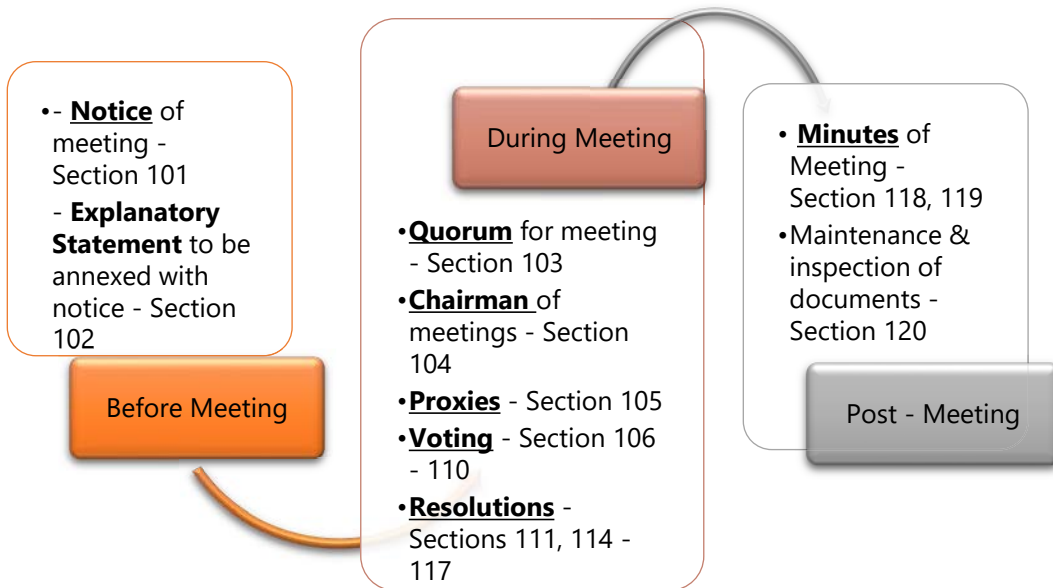
Section 95 – Registers, etc. to be evidence–

It provides that the registers, indices and copies of annual return shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.



4. PRE-REQUISITES OF A MEETING

Before we move on to our next concept of types of meetings and the procedure to convene them, as per the Companies Act, 2013, let us take a turn and swot the terms which are important to know for convening the meeting.



Key terms:

- (a) **General meeting** is the meeting of a company's shareholders as per the provisions of the Act. The general meeting can be an annual general meeting (AGM) or an Extraordinary General meeting (EGM). An annual general meeting (AGM) is a mandatory yearly gathering of a company's interested shareholders. The objective of holding an AGM is to provide an opportunity to members to discuss the functioning of the company, and take steps to protect their interests. They can discuss any matter relating to the conduct of the affairs of the company. An Extraordinary General Meeting (an EGM) can be defined as a meeting of shareholders which is not an AGM. The objective of holding an EGM is to discuss any matter of urgent importance which cannot be postponed till the next Annual General Meeting.
- (b) **Board Meeting**, is the meeting of the board of directors of the company
- (c) **Class meeting** is the meeting of special class of persons, like, creditors, preference shareholders, etc.

The pre-requisites of the meetings are, in general applicable to all kinds of meetings, although the time limits may differ and there might be a specific mention of a certain type of meeting in that section.

SECTION 101: NOTICE OF A MEETING⁴

Section 101 of the Companies Act, 2013 states that to properly call a general meeting notice of at least *21 clear days*⁵, before the meeting, should be given to all the members, legal representative of any deceased member or the assignee of insolvent members, the auditors and directors, in writing or electronic mode or other prescribed mode.

Mode of sending the notice:

As per *Rule 18 of the Companies (Management & Administration) Rules, 2014*, sending of notices through electronic mode has been statutorily recognized.

For the purpose of this rule, 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.

- ◆ The said rule mentions that 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.
- ◆ The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository. Also, the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the 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 email ids are already registered.

⁴ In case of Specified IFSC Public Company - Section 101 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Dated 4th January, 2017

⁵ In case of section 8 company, in clause (1) of Sub-section (1) of Section 101 for the words "21 days", the words "14 days" shall be substituted. Notification dated 5th June, 2015.

The above mentioned exception shall be applicable to a section 8 company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar. Notification dated 13th June, 2017.

- ◆ 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.
- ◆ The notice shall be placed simultaneously on the website of the Company, if any, and on the website as may be notified by Central Government.
- ◆ Where a notice of GM 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 Rule, 2014)

Meaning of 21 clear days:

21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice. A company cannot curtail the requirement of 21 clear days through its Articles.

Who is entitled to receive the notice of the general meeting? (Section 101(3))



According To Section 101(4) 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. The onus is on the company to prove that the omission was not deliberate.

Example 5

Mr. Abeer filed a complaint against the company, Elixir Private Limited since it did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr.

Abeer, inviting him to attend the annual general meeting of the company. Abeer alleges that he never received the email. State whether the company is liable as guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with rules.

Answer: As per Rule 18(3) of the *Companies (Management & Administration) Rules, 2014*, the company's obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.

Meetings held at shorter notice—

Generally, general meetings need to be called by giving at least a notice of 21 clear days.

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

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

Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.

Contents of the Notice – Section 101(2):

A valid notice must state the day, date, hour, place of the meeting and shall contain a statement of business to be transacted in that meeting.

Authority to call a GM

A general meeting (AGM, EGM) has to be called by the Board. An individual director does not have an authority to call a GM. Any notice of GM given without the sanction of the Board is invalid; however, the same can be ratified by the Board.

EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE (SECTION 102)⁶

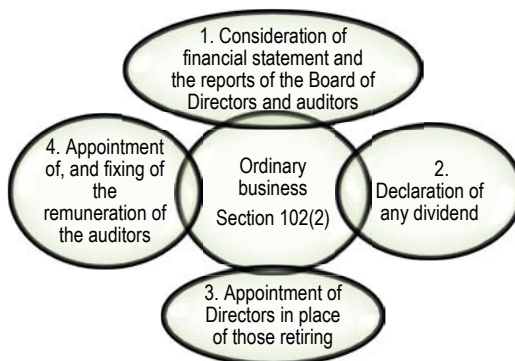
Section 102 of the Companies Act, 2013 mentions that where any **special business** is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify,

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Ordinary business and Special business: Companies Act, 2013 sets out the two types of businesses transacted in general meetings, which are –

- ◆ Ordinary business (OB)
- ◆ Special business. (SB)

Ordinary business are the following business which are transacted at the annual general meeting of the company–



⁶ In case of Specified IFSC Public Company - Section 102 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Date 4th January, 2017.

- ◆ In the case of AGM, all business to be transacted thereat except the ones stated above are special business. At the EGM, every business transacted is a special business. Explanatory statement is not required for transacting OB.
- ◆ Proviso to section 102(2) sets out that If special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and every other KMP shall be disclosed, if the extent of shareholding is 2% or more of the paid up share capital of that other company.
- ◆ In case any item of business refers to any document which is to be considered at the meeting, then the time and place where such document can be inspected should also be specified in the explanatory statement.
- ◆ **Effect of non-disclosure [Section 102(4)]:** If as a result non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a promoter, director, manager, other key managerial personnel or their relatives, such person 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 for contravention of the provisions of this section–

Without prejudice to the provisions of sub-section (4), 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.

QUORUM FOR MEETINGS [SECTION 103]⁷

Quorum means the minimum number of members who must be present in order to constitute a valid meeting. Section 103 of the Act states that unless the articles of the company provide for a larger number, the quorum for the meeting shall be as follows–

⁷ In case of Specified IFSC Public Company - Section 103 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Date 4th January, 2017.

Public Company -



☐ If number of members is not more than 1000, quorum shall be 5 members personally present

☐ if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present

☐ If the number of members exceed 5000, then quorum shall be 30 members personally present.

Private Company -



☐ Quorum - 2 members personally present

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

Adjourned Meeting due to want of 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:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the 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.

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

Example 6

There are 54 members of Dicey Private Limited. The company held its annual general meeting on 1st July 2019 at 2:00 p.m. and 28 members were present till 2:30 p.m. The

Chairman of the meeting proceeded to initiate the meeting and passed the resolutions as discussed in the meeting. Comment whether the meeting took place as per the provisions of Companies Act, 2013.

Answer: As per the provisions of Section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present, within half-an-hour from the time appointed for holding a meeting of the company. Thus, the quorum for the annual general meeting of Dicey Private Limited was complied with and the company is not in contravention with any of the provisions of the Companies Act, 2013.

Example 7

Abbey Limited has 2300 members and the annual general meeting of the company is to be held on 23rd February 2019 at 10.30 a.m. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the chronicles of the meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 & 5 and accordingly passed resolution as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

Answer: In the above case, while the appropriate quorum was present at the time when the meeting started as per section 103 of the Companies Act, 2013, the quorum was not present at the time of deciding Agenda 4 & 5. It has been held that where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

CHAIRMAN OF MEETING [SECTION 104]⁸

Election of chairman by members: Section 104 of the Companies Act, 2013 seeks to provide that unless the articles of association of the Company otherwise provide, the members, personally present, shall elect among themselves to be the Chairman by show of hands.

⁸ In case of Specified IFSC Public Company - Section 104 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Dated 4th January, 2017.

Demand of poll: The section further provides that if a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll, and such other elected person shall be the Chairman for rest of the meeting.

Powers of chairman: Chairman of the meeting is the person who manages the meetings and ensures that the required decorum of the meeting is maintained at all times, till the meeting is concluded and post that, executes the minutes of the meeting. The Chairman has *prima facie* authority to decide all questions which arise at a meeting and which require decision at the time. In order to fulfil his duty properly, he must observe strict impartiality.

Right to cast casting vote: The Chairman has a casting vote in Board Meetings and general meetings, if specifically empowered by the articles of the Company. A casting vote means that in event of the equality of vote on a particular business being transacted at the meeting, the Chairman of the meeting shall have a right to cast a second vote. If there is no provision in the articles for a casting vote, an ordinary resolution on which there is equality of votes is deemed to be dropped.

Exemption to Private Company- 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.*

This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar. *Notification dated 13th June 2017.*

5. Proxies [Section 105]⁹

The section provides following laws related to proxy:

- ◆ Appointment of a proxy is an important right of a member of the company. Sub-section (1) provides that 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.

However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

⁹ In case of Specified IFSC Public Company - Section 105 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Date 4th January, 2017.

Applicability of the sub-section (1) - Unless the articles of a company otherwise provide, this sub-section shall not apply to a company not having a share capital. CG may also prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

- ◆ According to Rule 19 of the *Companies (Management & Administration) Rules, 2014*, a member of a company registered under section 8 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 act on behalf of such member or number of members not exceeding fifty and holding in aggregate not more than 10 per cent of the total share capital of the company carrying voting rights. However, a member who is holding more than 10 per cent of the total share capital of the Company carrying voting rights may appoint a single person as a proxy and such person shall not act as a proxy for any other person or shareholder.
- ◆ The instrument appointing a proxy must be in Form No. MGT. 11 [*Rule 19(3) of the Companies (Management & Administration) Rules, 2014*]. 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. For execution of proxy, the Articles of Association of a company cannot specify any special requirement to be complied with. [[Section 105 (6)].
- ◆ As a compliance requirement, 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. [Sub- section (2)]
- ◆ Section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
- ◆ Rule 20 of the *Companies (Management & Administration) Rules, 2014* is applicable to listed companies. According to Rule – 20(4)(iii), the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.

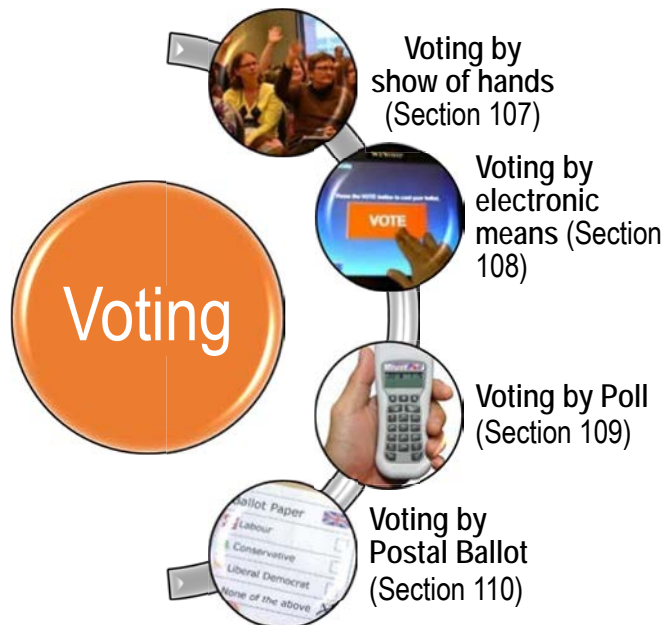
- ◆ Section 105(8) provides that every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.
- ◆ Penalty for default–
 - If default is made in complying with sub-section (2), every officer of the company who is in default shall be liable to penalty of five thousand rupees.
 - If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or willfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees.
 - For refusing the inspection to members at any time during the business hours, the company and every officer who is in default, shall be punishable with fine upto ₹ 10,000 and where the contravention is a continuing one, with a further fine upto ₹ 1,000 per day of default.
 - Offences under this section are compoundable under section 441 of the Act.



6. VOTING [SECTION 106-109]

The votes cast by the shareholders play decisive role in the business proposed in General Meetings of a Company. An equity shareholder has the right to vote for every motion. However, as per the Section 47 of the Companies Act, 2013 preference shareholder is entitled to vote only for a resolution pertaining to his rights. The companies Act provides for various modes through which a shareholder can cast his vote. These include–

- ◆ Voting by show of hands – (section 107);
- ◆ Voting by electronic means – (section 108);
- ◆ Voting by demand of poll – (section 109);
- ◆ Voting by Postal Ballot – (section 110).



The right to vote is a personal right of a shareholder and he may use it as he likes it. He may split its vote for and against the resolution.

RESTRICTION ON VOTING RIGHTS [SECTION – 106]¹⁰

The **section overrules the whole of the Companies Act, 2013** and provides that the articles of association of a company may provide that no member shall exercise any voting right in respect of any share registered in his name on which any amount is due from him on calls or any other sums payable to the company, or in regard to which the company has exercised the right of lien. [Sub section (1)]

Section – 106 (2) also suggests that a company shall not prohibit any member from exercising his voting rights on any other ground except the grounds mentioned in (1).

On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses. [Sub section (3)]

Also, such member can't sign a requisition for an extraordinary general meeting.

¹⁰ In case of Specified IFSC Public Company - Section 106 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification Date 4th January, 2017.*

Note: Where the articles of the company do not contain any provision restricting the exercise of voting right of member, a member cannot be prevented from voting, even though, calls or other sum payable by him have not been paid or the company has exercised any right of lien over his shares. But, where the articles contain any such provision, and the shares forfeited for non-payment of calls have been re-allotted, the new allottee being liable for the balance remained unpaid on the shares will not be entitled to vote so long as any calls presently payable on the shares remain unpaid.

Example 8

What happens in case of voting by joint shareholders? Suppose that Mr. & Mrs. Iyer are joint shareholders of Goal Private Limited and they hold 500 shares of the company. Regarding a particular special business being transacted at the extraordinary general meeting of the company, Mr. Iyer is in the favour of the decision, whereas Mrs. Iyer is against the resolution. Decide how should the vote be casted in case of this situation?

Joint shareholders must concur in voting unless the articles provide to the contrary.

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

Example 9

Consider a situation where directors are also the shareholders of the company.

Directors, who are also the shareholders of the company, stand in a fiduciary relationship with the company in their capacity as directors. However, a director should vote as a common shareholder would vote in a general meeting, and need not be influenced by the fact of his being a director.

VOTING BY SHOW OF HANDS [SECTION 107]¹¹

- ♦ According to section 107 of the Companies Act, 2013, unless the voting is demanded by way of poll or by electronic means, the voting should be done by way of show of hands in the first instance.

¹¹ In case of Specified IFSC Public Company - Section 107 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. Notification Date 4th January, 2017.

- ◆ Also, section 107(2) states that the declaration by the Chairman of the meeting in the minutes books shall be the conclusive evidence that the resolution is passed.

Example 10

Can an insolvent shareholder vote at the meeting by show of hands?

Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as member.

VOTING THROUGH ELECTRONIC MEANS [SECTION 108]

E- Voting has been introduced under Section 108 read with the Companies (Management and Administration) Rules, 2014 and provides that a member in the prescribed class of companies may exercise his right to vote by electronic means.

Rule 20 of the Companies (Management & Administration) Rules, 2014 provides a detailed procedure for electronic voting, which states as follows –

“Voting through electronic means” shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this rule.

Companies providing its members to exercise right to vote by electronic means: Every listed company and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

A Nidhi, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

Explanation: For the purpose of this sub-rule, “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Exercise of right by a member: A member may exercise his right to vote through voting by electronic means on resolutions and the company shall pass such resolutions in accordance with the provisions of this rule.

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

- (i) Notice of meeting:** 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;
- (ii) Notice to be hosted on website:** 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;
- (iii) Notice containing the particular:** the notice of the meeting shall clearly state -
 - (a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
 - (b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
 - (c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;
- (iv) the notice shall:**
 - (a) indicate the process and manner for voting by electronic means;
 - (b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
 - (c) provide the details about the login ID;
 - (d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.
- (v) Publication of notice:** the company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but 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, and specifying in the said advertisement, inter alia, the following matters, namely:-

- (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) the statement that-
 - (A) remote e-voting shall not be allowed beyond the said date and time;
 - (B) the manner in which the company shall provide for voting by members present at the meeting; and
 - (C) 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
 - (D) 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:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

(vi) **Time for opening of e-voting:** 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;

(vii) **Option for remote e-voting:** During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialized form, as on the cut-off date, may opt for remote e-voting.

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that 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;

(viii) At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

(ix) **Appointment of scrutinizer:** The Board of Directors shall appoint one or more scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner.

Provided that 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 electronic voting system;

(x) **Function of scrutinizer:** the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

(xi) **Role of Chairman:** The Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutinizer, 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.

- (xii) Counting of votes:** 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 and make, not later than three days of conclusion of the meeting, a consolidated scrutinizer's report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same:

Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

Explanation: It is hereby clarified that 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, Scrutiniser or any other person till the votes are cast in the meeting.

- (xiii) Access to details:** For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutiner shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutiner may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:

- (xiv) Maintenance of Register:** The scrutiner 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;

- (xv) Safe Custody of register:** The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiner until the Chairman considers, approves and signs the minutes and thereafter, the scrutiner shall hand over the register and other related papers to the company.

- (xvi) Result on websites:** The results declared along with the report of the scrutiner shall be placed on the website of the company, if any, and on the

website of the agency immediately after the result is declared by the Chairman:

Provided that in case of companies whose equity shares are listed on a recognised 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.

(xvii) Passing of date of resolution: Subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

Explanation: For the purposes of this clause, the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Act.

(xviii) Resolution not to be withdrawn: a resolution proposed to be considered through voting by electronic means shall not be withdrawn.

DEMAND FOR POLL [SECTION 109]¹²

- ◆ Section 109 provides that before or on declaration of result of the voting on any resolution by a show of hands, the Chairman of the meeting on his own, or on demand made by the 'specified' members in that behalf.

Members who can demand for poll –

- In case of a company having a share capital, by the members present in person or proxy, where allowed, and having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than ₹ 5,00,000 or such higher amount has been prescribed has been paid – up.
- 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 1/10th of the total voting power.
- ◆ **Withdrawal of demand for poll:** the demand for poll may be withdrawn by the persons who made the demand, at any time.

¹² In case of Specified IFSC Public Company - Section 109 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. *Notification Date 4th January, 2017*

- ◆ A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.
- ◆ A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the Chairman of the meeting may direct.
- ◆ Where a poll is to be taken, the Chairman of the meeting shall appoint a scrutinizer for observing the poll process and votes given on poll and to report thereon.
- ◆ The duties of a scrutinizer shall be as follows—
 - To ensure proper conduct of the polling process;
 - To maintain proper records of the poll;
 - To submit a report to the Chairman of the meeting which shall contain the details of votes cast in the favour and against the resolution; and
 - To ensure that the compliance of the provisions of section 109 and Rule 21.
- ◆ The Chairman shall regulate the manner in which the poll shall be taken at the meeting and appoint such number of scrutinizers as may be necessary. Rule 21 lays down the procedure describing the manner in which the Chairman shall get the poll process scrutinized—
 - The Chairman of the 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 shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and 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 initialling it.

- ❖ The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
 - ❖ The Scrutinizers shall 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 shall 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 under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
 - ❖ The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
 - ❖ The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.
 - ❖ The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.
- The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT.13 and the report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.
 - The results of the poll shall be deemed to be the decision of the meeting on the resolution.

Applicability of section 101 to 107 and 109 to Private companies- Section 101 to 107 and 109 shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise. *Notification dated 5th June, 2015.*

This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar. *Notification dated 13th June 2017.*

POSTAL BALLOT [SECTION 110]

As per section 2(65) "postal ballot" means voting by post or through any electronic mode. The provisions relating to passing of resolution by postal ballot are contained in Section 110 read with Rule 22 of the *Companies (Management and administration) Rules, 2014*.

Extract of the Act

"(1) Notwithstanding anything contained in this Act, a company—

- (a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and
- (b) may, in respect of 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, transact by means of postal ballot.

In such manner as may be prescribed, instead of transacting such business at a general meeting.

Provided that any item of business required to be transacted by means of postal ballot under clause (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.

- (2) 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."
- ◆ The section seeks to provide that the Central Government may declare items of business that can be transacted only by postal ballot and also in respect of 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.
- ◆ Only those assents/ dissents are to be considered which have been sent by the members within 30 days as prescribed in Rule 22. Sub-section (2) of Section 110 makes a deeming provision that if a resolution is assented by requisite majority of shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.

- ◆ Manner in which postal ballot shall be conducted is prescribed in Rule 22 of the *Companies (Management & Administration) Rules, 2014*. The same is described as follows–
 - Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor 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.
 - The notice shall be sent either
 - (a) by Registered Post or speed post, or
 - (b) through electronic means like registered e-mail id or
 - (c) through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.
 - An advertisement shall 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, about having dispatched the ballot papers and specifying therein, *inter alia*, 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;
 - (d) the date of end of voting;
 - (e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
 - (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; and

- (g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.
- 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 and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
 - 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 shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
 - 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.
 - 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;
 - The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.
 - 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.
 - 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.

- The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.
- The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, *mutatis mutandis* to this rule in respect of the voting by electronic means.
- pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a 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 which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
 - (c) change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
 - (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 under sub-section (8) of section 13;
 - (e) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;
 - (f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
 - (g) buy-back of shares by a company under sub-section (1) of section 68;
 - (h) election of a director under section 151 of the Act;
 - (i) sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;
 - (j) giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186;

Provided that any aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, 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.

Provided further that One Person Companies and other companies having member's upto two hundred are not required to transact any business through postal ballot.

Example 11

How does the counting happen at the time of postal ballot?

It is important to know here that, a member who is voting by way of postal ballot, has votes in proportion to his share in the paid-up share capital of the company. And in this regard, he need not use all his votes in the same way. Therefore, 4 types of ballots may be received from the shareholders–

- (i) Ballots which contain assents;
- (ii) Ballots which contain dissents;
- (iii) Ballots wherein the member has voted partially assenting, partially dissenting or using not all his shares in any particular way; and
- (iv) Invalid ballots (due to absence/ mismatch of signature, overwriting, etc.)

7. CIRCULATION OF MEMBER'S RESOLUTIONS [SECTION 111]

Circulation of members' resolution and statements: While the board enjoys the primacy in setting the agenda of the meetings, the members are given a right under section 111 to propose resolutions for consideration at the general meetings. The number of members required to make a requisition under sub-section (1) of this section are as required to requisition a general meeting in sub-section (2) of section 100.

(1) Prerequisites of a valid Requisition: The prerequisites for a valid requisition prescribed in sub-section (2) of section 111 are as under:

- (a) Requisition must be made in writing and signed
 - (i) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition,

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;

- (ii) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote,.
- (b) Two or more copies of the said requisition may contain signature of all the requisitionists.
- (c) It must be deposited at the registered office of the company not less than six weeks before the meeting in the case of a requisition requiring notice of a resolution. In case of other resolutions, the same is to be deposited not less than two weeks before the meeting.
- (d) A sum reasonably sufficient to meet the company's expenses in giving effect to proposing the resolution is deposited or tendered. When the money is tendered, no payment is made but an unconditional offer is made to pay money.

The proviso to sub-section (2) of section 111 provides that the time period provided above need not be complied with in case an annual general meeting is called on a date within six weeks after the copy has been deposited. The copy of requisition, in such a case, shall be deemed to have been properly deposited for the purposes thereof although not deposited within the time required by this sub-section. The company is not duty bound to circulate the notice of the resolution when the prerequisites are not complied with.

- (2) **Notice to members:** As per section 111 of the Companies Act, 2013, a company shall, on requisition in writing of such number of members, as required in section 100 (Calling of EGM), give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.
- (3) **Exception from circulation of any statement:** The Company shall not be bound to circulate any statement, if on the application either on behalf of the company or of any other person who claims to be aggrieved, then the

¹³Central Government, by order, declares that the rights conferred are being abused to secure needless publicity for defamatory matter.

- (4) **Order to bear the cost:** An order made may also direct that the cost incurred by the company shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.
- (5) **Default in contravention of the provision:** If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

8. REPRESENTATION OF THE PRESIDENT & GOVERNORS IN MEETING OF COMPANIES TO WHICH THEY ARE MEMBER [SECTION 112]

Section 112 of the Companies Act, 2013 provides that the President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting and such other person shall be entitled to exercise the same rights and powers including the right to vote to proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

9. REPRESENTATIONS OF CORPORATIONS MEETING OF COMPANIES AND CREDITORS [SECTION 113]

Section 113 of the Companies Act, 2013 seeks to provide that where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

¹³ The Power of the Central Government has been delegated to Regional Director. *MCA Notification 4090 (E) dated 19th December, 2016.*



10. RESOLUTIONS [SECTION 114–117]

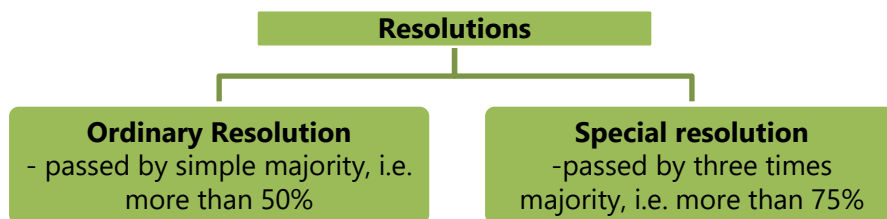
In lay man's language, a resolution is the formal decision of an organization while transacting a business at a meeting. A motion which has obtained the necessary majority vote in its favour becomes a resolution. When a resolution is passed, a company is bound by it.

Difference between Motion & Resolution—

- ◆ Most matters come before a meeting by way of a motion recommending that the meeting may express approval or disapproval or take certain action or order something to be done.
- ◆ A motion is a proposal, and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution, as where a motion is made for the adjournment of the meeting.
- ◆ A motion whether it is passed for the closure of discussion or adjournment, etc. can be passed by an ordinary resolution unless there is a specific provisions in the articles.

As per the Companies Act, 2013, resolutions are of two types—

- ◆ Ordinary Resolutions – which are passed by simple majority; and
- ◆ Special Resolutions – which are passed by 75% majority.



SECTION 114–ORDINARY & SPECIAL RESOLUTION:

Section 114 of the Act defines an Ordinary and Special Resolution. It states that:

Ordinary Resolution—

Section 114(1) states that a resolution shall be 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 of the Chairman, 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.

Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.

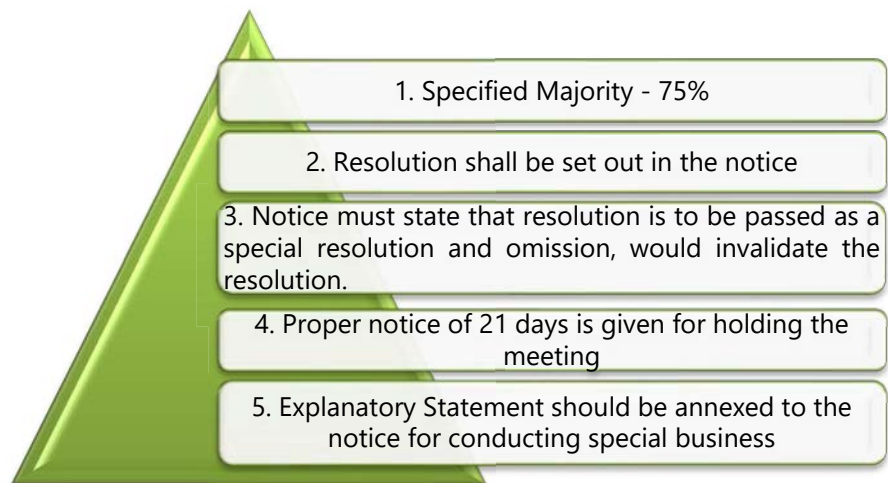
Special Resolution—

As per Section 114(2) of the Act, a resolution shall be a special resolution, when—

- (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) The notice required under this Act has been duly given; and
- (c) The votes cast in favour of the resolution, 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 of the Chairman, 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, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

In simple words, a resolution shall be a special resolution, when it is duly specified in the notice, calling the general meeting and votes cast in favour is 3 times the votes cast against the resolution.

Characteristics of Special Resolution—



Example 12

In the annual general meeting of Black Mango Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Discuss whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.

For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll is demanded in respect of any.

The only case where a resolution should be moved separately is the one which requires that as regards the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.

Where notice has been given of several resolutions, each resolution must, be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be material.

RESOLUTIONS REQUIRING SPECIAL NOTICE [SECTION 115]**Section 115 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice**

Section 115 of the Companies Act, 2013 states that where, by any provision contained in this Act or in the Articles of Association of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

As per the Act, **special notice is required in the following cases –**

- (a) Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 140(4)].
- (b) Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 140].
- (c) Resolution to remove a director before the expiry of his period of office [Section 169(2)]

- (d) Resolution to appoint another director in place of the removed director [(Section 169(5))]

Further, the articles may provide for additional matters which may require special notice.

Rule 23—Special Notice—

1. 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 5,00,000 rupees has been paid up on the date of the notice.
2. The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of 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.
3. 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.
4. 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 and such notice shall also be posted on the website, if any, of the Company.
5. The 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.

RESOLUTIONS PASSED AT ADJOURNED MEETING [SECTION 116]

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.

Example 13

The extra-ordinary general meeting of the company, Purple Banana Private Limited was due to be held on 23rd September 2019. However, due to want of quorum, the

meeting was adjourned to a later date on 1st October 2019 and two resolutions were passed on that date. Now, as per section 116 of the Companies Act, 2013, the said two resolutions shall be deemed to have been passed on the original date of meeting, i.e. 1st October 2019 and not on the earlier date.

RESOLUTIONS AND AGREEMENTS TO BE FILED [SECTION 117]

Section 117^{14 15} of the Act, provides that a copy of every resolution and an agreement in respect of matters specified therein together with an explanatory statement shall be filed in Form No. MGT. 14 with the Registrar within thirty days of its passing and the Registrar shall register the same.

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.”

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

- ◆ Special Resolutions
- ◆ Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- ◆ Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
- ◆ Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members.

¹⁴ In case of Specified IFSC Public Company - Sub-section (1) of section 117, for the words “thirty days” read as “sixty days”. *Notification Dated 4th January, 2017.*

¹⁵ In case of Specified IFSC Private Company - Sub-section (1) of section 117, for the words “thirty days” read as “sixty days”. *Notification Dated 4th January, 2017*

- ◆ Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016.
- ◆ ^{16 & 17} Resolutions passed in pursuance of sub-section (3) of section 179.
Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions;
Provided further that nothing contained in this clause shall apply to a banking company 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; and
- ◆ any other resolution or agreement as may be prescribed and placed in the public domain.

Penalty under the Act-Section 117(2)

If any company fails to file the resolution or the agreement under sub-section (1) 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 twenty-five 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 fifty 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 five lakh rupees.

11. MINUTES (SECTION 118)

Section 118 prescribes that every company shall prepare, sign and keep minutes of every general meeting of any class of shareholders or creditors, including the meeting called by the requisitionists, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, within 30 days of the conclusion of every such meeting concerned, or passing of

¹⁶ In case of private company - clause (g) of Sub-section 3 of Section 117 shall not apply. *Notification dated 5th June, 2015.*

The above mentioned exemption shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar- *Notification dated 13th June, 2017.*

¹⁷ In case of Specified IFSC Public Company - Clause (g) of sub-section (3) of section 117 shall not apply. *Notification Dated 4th January, 2017.*

resolution by postal ballot in books kept for that purpose with their pages consecutively numbered. [Sub section (1)]¹⁸ & ¹⁹

- ◆ The minutes of each meeting shall contain a fair and correct summary of the proceedings that took place at the concerned meeting.
- ◆ All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
- ◆ In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain–
 - The names of the directors present at the meeting; and
 - In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.
- ◆ Any of the following matter shall not be included in the minutes of the meeting, which in the opinion of the Chairman of the meeting–
 - Is or could reasonably be regarded as defamatory of any person; or
 - Is irrelevant or immaterial to the proceedings; or
 - Is detrimental to the interests of the company.
- ◆ The matter to be included or excluded in the minutes of the meetings shall be at the absolute discretion of the Chairman of the meeting.
- ◆ The minutes kept in accordance with the provisions shall serve as the evidence of the proceedings therein.

¹⁸ In case of Specified IFSC Public Company - In Sub-section (1) of section 118, the following proviso shall be inserted, namely:-

"Provided that in case of a Specified IFSC public company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose."- *Notification Date 4th January, 2017*

¹⁹ In case of Specified IFSC Private Company - In Sub-section (1) of section 118, the following proviso shall be inserted, namely:-

"Provided that in case of a Specified IFSC private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose."- *Notification Date 4th January, 2017*

- ◆ Where the minutes have been kept in accordance with this section, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.
- ◆ No document, purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.
- ◆ Every company shall observe Secretarial Standards with respect to general and Board meetings, specified by the Institute of Company Secretaries of India and approved as such by the Central Government.^{20 & 21} [Sub section (10)]
- ◆ Penalty for contravention–
 - If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of ₹ 25,000 and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000.
 - If a person is found guilty of tampering with the minutes of the proceedings of the meeting, he shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1,00,000.

Rule 25 of the Companies (Management & Administration) Rules, 2014 prescribes the procedure for maintenance of minutes of proceedings of general meeting, meeting of Board of Directors and other meetings and resolutions passed by postal ballot as follows–

- ◆ 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

²⁰ In case of Specified IFSC Public Company- Sub-section (10) of section 118 Shall not apply. - Notification Date 4th January, 2017.

²¹ In case of Specified IFSC Private Company- Sub-section (10) of section 118 Shall not apply. - Notification Date 4th January, 2017

- (iv) meetings of each of the committees of the Board.
- ◆ The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within 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.
- ◆ Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed –
 - (i) 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;
 - (ii) 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 authorised by the Board for the purpose;
 - (iii) 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.
- ◆ The 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.
- ◆ The minute books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

Exemption to Section 8 companies: In case of Section 8 company - section 118 shall not apply as a whole except that minutes may be recorded within 30 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.*

The exceptions, modifications and adaptations, shall be applicable to a section 8 company which has not committed a default in filing its financial statements under 137 or Annual Return under section 92 with the Registrar. *Notification dated 13th June, 2017.*



12. INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING [SECTION 119]

How shall the inspection take place?

As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall–

- ♦ Be kept at the registered office of the company; and
- ♦ Be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting. However, at least 2 hour in each business day shall be allowed for inspection [Sub – Section (1)].

Any member shall be entitled to be furnished, 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, with a copy of any minutes referred [Sub – Section (2)].

What is the penalty for contravention of the provisions of the Act? [Sub section (3)]

If any inspection under sub – section (1), is refused by the company to the member, or if the copy of minute-book is not furnished within the time specified under sub – section (2), then the company shall be liable to a penalty of ₹ 25,000 and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000 for each such refusal or default as the case may be.

Power of Tribunal [Sub – Section (4)]

In the case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

Rule 26–Copy of minute book of general meeting–

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page:

Provided that a member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM [SECTION 120]

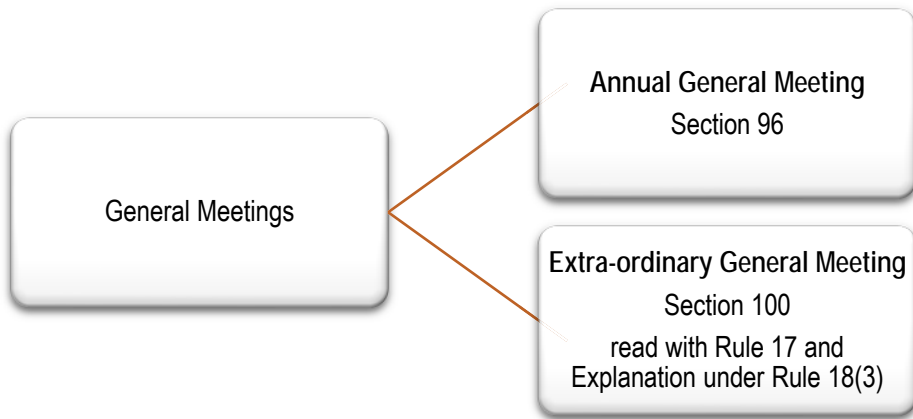
The said section seeks to provide that any document, record, register or minute, etc., required to be kept by a company or allowed to be inspected or copies given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be specified in *Rule 27, 28 and 29 of the Companies (Management and Administration) Rules, 2014*.

- ◆ *Rule 27 of the Companies (Management and Administration) Rules, 2014* states that every listed company or a company having at least 1000 shareholders, debenture-holders and other security holders, may maintain its records, as required to be maintained under the Act or rules made thereunder, in electronic form.
- ◆ *Rule 28 sets out that* the Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.
- ◆ *Rule 29 states that* the records maintained in electronic form shall be made available for inspection by the company in electronic form. Copies of the records maintained in e-form, containing a clear reproduction of the whole or part thereof, should be provided on payment of not exceeding ₹ 10/page.

**13. MEETINGS**

Now that we have understood the basic terms which are required to call, convene and conduct the meeting properly, let us discuss the provisions related to meetings

given in the Companies Act, 2013. The Act describes two types of general meeting to be held in a company which are–



SECTION 96–ANNUAL GENERAL MEETING ('AGM')

- ◆ Section 96(1) of the Companies Act, 2013 states that every company, whether public or private, except One Person Company, shall hold an annual general meeting every year and that the gap between two AGMs shall not be more than 15 months.
- ◆ The company shall specify the meeting as such [i.e. as AGM] in the notices calling it.
- ◆ **Holding of annual general meeting**
 - Annual general meeting should be held once every year.
 - 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.
 - Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
 - The gap between two annual general meetings should not exceed 15 months.
- ◆ **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.

Example 14

- Abbeys Private Limited closed its financial year on 31st March 2019. According to section 96(1) of the Act, the Company should hold its annual general meeting for the year 2018-19 by 30th September 2019 unless an extension is granted by RoC on special reasons.
- Abbyrush Limited was incorporated on 11th December 2018. When should the company hold its AGM?

According to section 96(1), the company's financial year will close on 31st March 2019. The company may hold its first AGM by 31st December 2019, i.e. within 9 months of the close of its financial year.

- ♦ ***Time and place for holding an annual general meeting:*** Section 96(2) states that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

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

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

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

Exemption to Section 8 companies:

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

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

The above mentioned exception shall be applicable to a section 8 company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar. *Notification dated 13th June, 2017.*

Exemption to Government companies:

In case of Government company, section 96(2) shall be read as:

'Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at 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. *Notification dated 5th June, 2015 read with Notification Dated 13th June, 2017*

The above mentioned exception/ modification/ adaptation shall be applicable to Government company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar. *Notification dated 13th June, 2017.*

SECTION 97: POWER OF TRIBUNAL TO CALL ANNUAL GENERAL MEETING

- (1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, 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:

Provided that 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.

- (2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

SECTION 98: POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC.

- (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo motu* 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:

Provided that 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.

- (2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted."

Punishment for default in complying with the provisions of section 96 to 98–

Section 99 lists out the punishment for contravention of section 96 to 98, i.e. default in holding a meeting of the company as AGM or on the directions issued by the Tribunal. It states that the company and every officer of the company who is in default, shall be punishable with fine which may extend to ₹ 1,00,000 and in the case of a continuing default, with a further fine which may extend to ₹ 5,000 for every day during which the default continues.

SECTION 121: REPORT ON ANNUAL GENERAL MEETING

According to Section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of AGM along with the prescribed fee. According to Rule 31 of the *Companies (Management and Administration) Rules, 2014*, the report shall be prepared in the following manner:

- (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 AGM;

- (ii) confirmation with respect to appointment of Chairman of the meeting;
 - (iii) number of members attending the meeting;
 - (iv) confirmation of quorum;
 - (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
 - (vi) business transacted at the meeting and result thereof;
 - (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
 - (viii) any other points relevant for inclusion in the report
- ♦ **Penalty for default :** If the company fails to file the report within 30 days of conclusion of AGM, 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.

SECTION 100: EXTRA-ORDINARY GENERAL MEETINGS

All general meetings other than annual general meetings are called extraordinary general meetings.

Who can call an EGM?

- ²² & ²³ 1. The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

²² In case of Specified IFSC Private Company - In sub-section (1) of section 100, the following proviso shall be inserted, namely:-

"Provided that in case of a Specified IFSC private company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India." - *Notification Dated 4th January, 2017.*

²³ In case of Specified IFSC Public Company- In sub-section (1), the following proviso shall be inserted, namely:- "Provided that in case of a Specified IFSC public company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India." - *Notification Dated 4th January, 2017.*

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

2. **The Board shall on the requisition** of –

- (a) In the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up capital of the company as on that date carries the right of voting;
- (b) In the case of company not having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of total voting power of all the members having on the said date a right to vote.

The requisition 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. The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

3. **By requisitionists:** If the Board does not, within twenty-one 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 forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub section (4)]

A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

Rule 17 of the *Companies (Management and Administration) Rules, 2014* provides as under with regard to calling of EGM by requisitionists:

- (1) The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, 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.

- (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.-

Explanation.- For the purposes of this sub-rule, it is here by clarified that requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened 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) The notice shall be signed by all the requisitionists or by a requisitionists duly authorised 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 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) 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) 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) 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.

Example 15

1. The Board of directors of Illusions Private Limited, a company registered in New Delhi, has decided to call an EGM in Madrid, Spain on 2nd October 2018. Discuss whether the general meeting can be convened on the said date.

No, the meeting cannot be convened in the manner as stated in the facts of the question. As per *Rule 17(2) of the Companies (Management and Administration) Rules, 2014*, the requisitionists should hold the meeting in the registered office of the company or in the same city or town in which the registered office is situated and it should be a working day.

2. The members of the Blumove Peacocks Private Limited, holding 1/10th voting power of the company, requisitioned a meeting on 14th August, 2018 to the Board of Directors. However, the directors did not pay any heed to such a requisition and did not call an extra-ordinary meeting. Discuss the consequences of the contravention of the same in accordance with the Companies Act, 2013.

Where the Board, after the receipt of the requisition, does not within 21 days call for a meeting within 45 days of the date of requisition, then the requisitionists may themselves call and convene the meeting.



14. APPLICABILITY OF THIS CHAPTER TO ONE PERSON COMPANY [SECTION 122]

- (1) The section states that the provisions of section 98 and section 100 to 111 shall not apply to One Person Company.
- (2) The ordinary businesses as mentioned under section 102(2)(a), which a company is required to transact at an AGM, shall be transacted in the case of One Person Company, as provided in Sub-section (3).
- (3) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.
- (4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes book required to be maintained

under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

SUMMARY

- ◆ The Chapter discusses about the registers and returns to be kept and maintained by the company as per the provisions of the Companies Act, 2013 and the types of meetings to be held in accordance with the Act. It also discusses the terms relevant to properly convene and conduct the meetings.
- ◆ Section 89 states that a person holding beneficial interest in the shares of the company shall intimate the company about it in Form MGT-4/5, as applicable, and thereafter the company shall intimate the RoC about the interest of member within 30 days in Form MGT-6.
- ◆ Section 91 deals with the time limits within which the registers of the company is allowed to be closed and also mentions the penalty for contravention of the same. It states that the registers may be closed for a maximum of 30 days at a time and 45 days in aggregate in a year.
- ◆ Section 92 of the Act provides that the company is required to file an annual return in Form MGT – 7 to RoC after the conclusion of AGM and specifies the content to be included in the annual return.
- ◆ The annual return has to be signed by a director of the company and the Company Secretary; and in case, there is no Company Secretary, by a Company Secretary in Practice.
- ◆ For OPC and small company, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of the company.
- ◆ Section 94 describes that the registers and returns and other documents of the company shall be kept at the registered office of company. However, they can also be kept at any other place where more than 1/10th of the total members reside but the same should be approved by way of a special resolution.
- ◆ The Act prescribes two types of general meetings that are held within the company – Annual General Meeting as mentioned in section 96 and Extra-Ordinary General Meeting as per section 100.

- ◆ Section 96 discusses about the annual general meeting to be held in a company every year and prescribes that the AGM shall be held within 6 months from the date of the closing of the financial year and that the gap between two AGM shall not exceed 15 months.
- ◆ The AGM shall be held within the business hours and on a working day, i.e. other than National Holidays.
- ◆ Listed public companies shall file a report on AGM with the RoC in MGT-15 within 30 days of the AGM.
- ◆ Section 100 prescribes the provisions for holding the EGM and states that either the board of directors, or a requisition made to Board by a specific number of members, are authorised to call an EGM.
- ◆ Further the chapter discusses about the notice to be sent to members and others for calling the meeting and sets out the length of the notice.
- ◆ Also, the Act describes the Chairman to be appointed for the meetings and the proxies to be appointed by the member of the meeting.
- ◆ Section 121 of the Act requires a listed public company to issue a report on the AGM to be filed with the RoC within 30 days of the conclusion of the AGM.

TEST YOUR KNOWLEDGE

Question 1

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

Answer

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

- (i) is or could reasonably be regarded as defamatory of any person;

- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

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

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

Question 2

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent at proxies for members X and W respectively?

Answer

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

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

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

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

Question 3

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

Answer

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

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

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of every director and the manager, if any or every other key managerial personnel and relatives of such persons; and
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 4

Tulip Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

- (i) *Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.*

- (ii) Does Mr. Rich, holding 400 shares of total worth ₹ 4000 only, has the right to inspect the Register of Members?

Answer

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

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

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

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

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

Question 5

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

The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

Answer

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

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

Question 6

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

Answer

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

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

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Question 7

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

- (i) *In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting*

power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

- (ii) *In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.*

Answer

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

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

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

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

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

- (i) The chairman cannot reject the demand for poll subject to provision in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Question 8

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

Answer

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

In the given case, Sirhj has given proper notice.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

Question 9

Miraj Limited held its Annual General Meeting on September 15, 2019. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2019, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

Answer

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

By virtue of Rule 25 of the *Companies (Management and Administration) Rules 2014* read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

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

Question 10

Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer

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

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

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

Thus, the first AGM of Infotech should have been held on or before 31st December, 2017. Further, the Registrar does not have the power to grant extension to time limit

Question 11

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

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

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

Answer

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

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

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

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

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

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

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

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

Question 12

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

Answer

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

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

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

Question 13

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

Answer

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

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

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

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

Question 14

Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2019. The notice was posted to the members on 16th October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

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

Answer

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

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

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

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 2 days.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Question 15

KMN Ltd. scheduled its Annual General Meeting to be held on 11th March, 2019 at 11:00 A.M. The company has 900 members. On 11th March, 2019 following persons were present by 11:30 A.M.

- 1. *P1, P2 & P3 shareholders*
- 2. *P4 representing ABC Ltd.*
- 3. *P5 representing DEF Ltd.*
- 4. *P6 & P7 as proxies of the shareholders*
- (i) *Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.*
- (ii) *What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?*
- (iii) *In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.*

(iv) *What happens if there is no Quorum in the Adjourned meeting?*

Answer

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

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

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

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

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

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

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

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