

# MANAGEMENT AND ADMINISTRATION

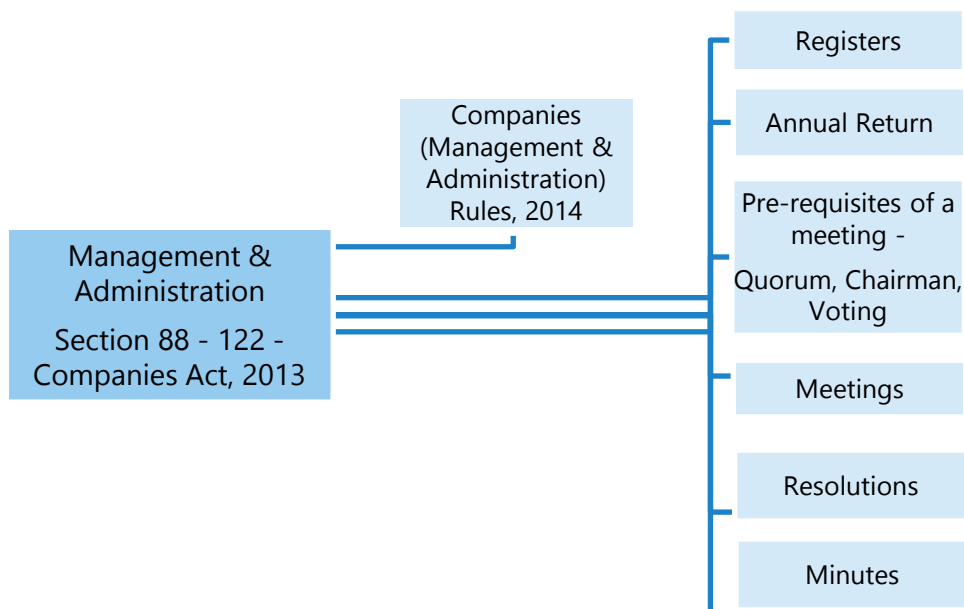


## LEARNING OUTCOMES

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

- ◆ Learn about the maintenance of registers and other documents required to be kept by a company.
- ◆ Understand the significance and provisions relating to filing of Annual Return.
- ◆ Know about pre-requisites of holding meetings for transacting business.
- ◆ Explicate provisions governing Quorum and appointment of proxies.
- ◆ Identify the various modes of casting votes.
- ◆ Know about the ordinary and special resolution.
- ◆ Elucidate provisions in respect of maintenance of Minutes.

## CHAPTER OVERVIEW



## 1. INTRODUCTION

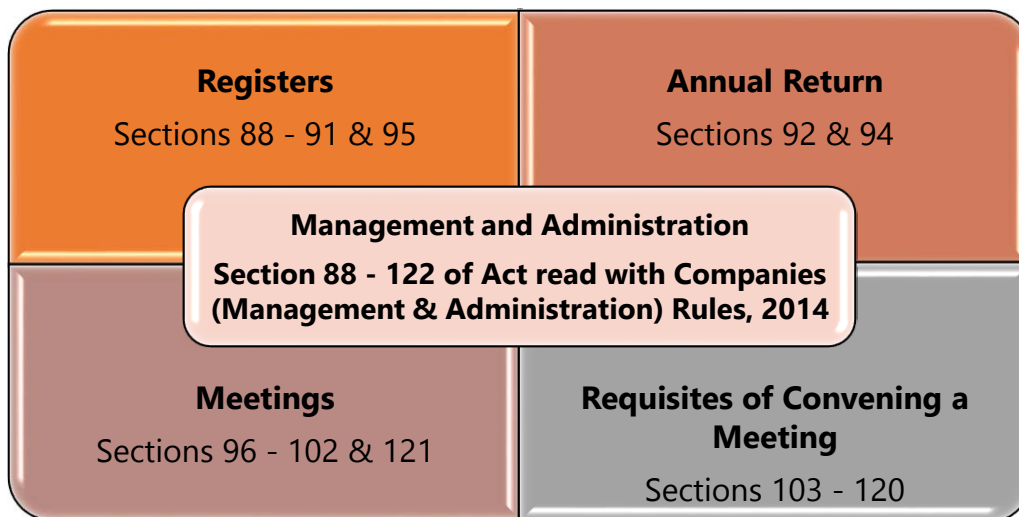
<b>Chapter VII</b>	<b>Consists of sections 88 to 122 as well as the Companies (Management and Administration) Rules, 2014.</b>
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A company is an artificial legal entity distinct from its members. The affairs of the company are managed by the members and directors through resolutions passed at the validly held meetings. The day-to-day affairs of the company are managed by the directors who collectively act through Board of Directors. The Board performs its role within the powers granted to it. Certain powers can be exercised by the board on its own and some with the consent of the company at the general meetings. In the capacity as owners of the company, the shareholders ratify the actions of the board at the general meetings. In a way, the general

meetings serve as the focal point for the shareholders to converge and give their decisions on the actions taken by the directors.

The proceedings of the general meetings are recorded in the 'minutes book'. On yearly basis, a company is required to hold its Annual General Meeting to transact requisite businesses including adoption of financial statements, appointment/re-appointment of directors and auditors, etc., after the close of the financial year. In between two AGMs, a company may hold extra-ordinary general meetings (EGM) also if there is any need to transact certain urgent business. After the conclusion of AGM, the company is required to prepare Annual Return and file a copy thereof with the jurisdictional Registrar of Companies. Every company is duty-bound to maintain register of members, register of debenture-holders and register of other security holders.

Chapter VII of Companies Act, 2013 deals with the provisions relating to management and administration of companies. It covers Sections 88 to 122 and is divided under the following headings–

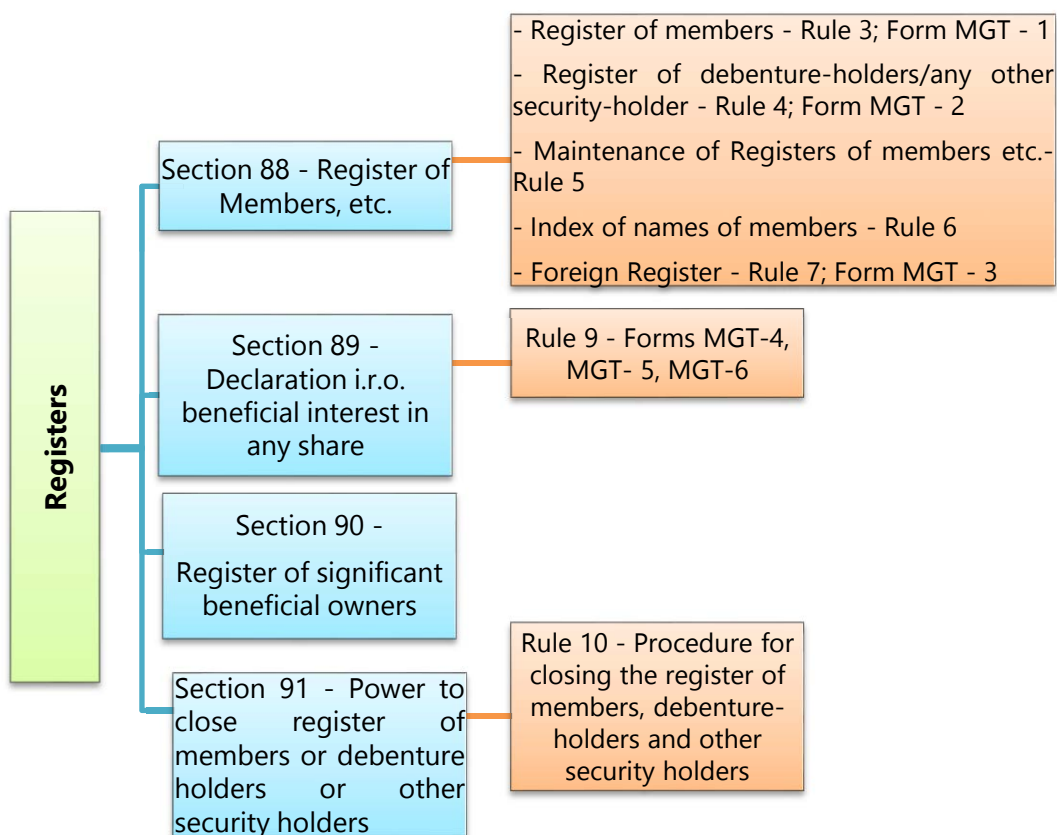


To initiate, it is imperative that we streamline the understanding of this chapter so as to link it with the essential concepts along with their procedures which can be found in the respective rules, i.e. *the Companies (Management and Administration) Rules, 2014* as amended from time to time.

Chapter VII applies to all the companies, public and private, and has special provisions applicable to One Person Company (OPC), which are enumerated in section 122 of the Act and are 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. Various provisions relating to keeping and maintenance of registers are as follows:



### REGISTER OF MEMBERS, ETC. [SECTION 88]

**Section 88 (1)** of the Companies Act, 2013 requires that every company shall keep and maintain the following registers:

- (i) Register of Members (holding of each class of equity and preference shares of each member residing in or outside India shall be shown separately in the register)
- (ii) Register of Debenture-holders (DH); and
- (iii) Register of any other security holders (OSH).

### **Maintenance of Register of Members**

- (i) Every company limited by shares shall, from the date of its registration, maintain a register of its members in Form No. MGT-1. *[Rule 3 (1)]*

However, in case of a company existing on the commencement of the Companies Act, 2013, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No. MGT-1. In case additional information, required as per the provisions of the Companies Act, 2013 and the Rules made thereunder, is provided by the members, such information may also be added in the register as and when provided. *[Proviso to Rule 3 (1)]*

- (ii) 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. *[Rule 3 (2)]*

However, in case of a company existing on the commencement of the Companies Act, 2013, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No. MGT-1. In case additional information,

required as per the provisions of the Companies Act, 2013 and the Rules made thereunder, is provided by the members, such information may also be added in the register as and when provided. *[Proviso to Rule 3 (2)]*

### **Maintenance of Register of Debenture Holders (DH) or any Other Security Holders**

Every company which issues or allots debentures or any other security shall maintain a separate register for debenture holders or security holders, as the case may be, for each type of debentures or other securities in Form MGT-2. *[Rule 4]*

### **Other Requirements applicable to all the Registers**

Rule 5 contains certain requirements which are applicable to all types of registers (*i.e. Register of Members, Register of Debenture-holders and Register of any Other Security Holders*). These are stated as under:

#### **♦ Time period for making entries in Register**

As per Rule 5 (1), 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.

According to Rule 5 (3), consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within seven days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

#### **♦ Place of maintaining Register**

According to Rule 5 (2), 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 information also to be referred in register**

- ❖ In terms of Rule 5 (6), if any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or competent authority attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.
- ❖ According to Rule 5 (7), in case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.
- ❖ According to Rule 5 (8), if promoters of any listed company, which has formed a joint venture company with another company have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

◆ **Updating of change in status of members**

Rule 5 (4) 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.

♦ **Rectification in register**

According to Rule 5 (5), if any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.

**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 and 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 and Index of Beneficial Owners being maintained by 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:**

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 debenture holders or of any other security holders or of beneficial owners, resident in that country. The register shall be called "**Foreign Register**".



■ **Other requirements relating to Foreign Register:**

In case a company decides to keep a Foreign Register, it shall comply with the following requirements:

- (i) *Filing of notice of the situation of the office:* Within 30 days from the date of the opening of any Foreign Register, the company shall file



with the Registrar of Companies, notice of the situation of the office where such register is kept. The notice shall be filed in Form No. MGT-3 along with the requisite fee.

- (ii) *Filing of notice in case of change or discontinuance:* In the event of any change in the situation of such office or of its discontinuance, the company 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 Registrar of Companies, of such change or discontinuance.
- (iii) *Foreign Register part of company's register:* A foreign register shall be deemed to be part of the company's register (to be called 'principal register') of members or of debenture-holders or of any other security holders or beneficial owners, as the case may be.
- (iv) *Format of Foreign Register:* The foreign register shall be maintained in the same format as the principal register.
- (v) *Inspection, etc. of Foreign 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. However, advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.
- (vi) *Decision of the appropriate competent authority binding in regard to the rectification:* 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.
- (vii) *Making of Entries in Foreign Register:* Entries in the foreign register 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.
- (viii) *Transmission of a copy every entry:* 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.

- (ix) *Keeping of Duplicate Foreign Register at Registered Office:* The company shall keep at the Registered Office a duplicate register of every foreign register duly updated from time to time.
- (x) *Duplicate Foreign Register to be part of Principal Register:* Every duplicate foreign register shall be deemed to be the part of the principal register, for all purposes of the Companies Act.
- (xi) *Transactions not to be registered in any other Register:* No transaction with respect to any shares or as the case may be, debentures or any other security, registered in a foreign register shall, during the continuance of that registration, be registered in any other register.
- (xii) *Transfer of Entries on discontinuation:* 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)**

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

### **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 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 [Rule 8]**

- 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.
- 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.

**Illustration 1**

*Luxy Hairstylefs Private Limited allotted 500 shares in the name of Mr. Zoey's daughter, Mila, who is 4 years old. Mr. Joe, the Director of the Company, has approached you to advise him on the entries to be made in the register of members, since Mila is incompetent to contract in her capacity as minor.*

**Answer:** Since minors are not competent to enter into any contract, their names cannot be entered in the register of members without the details of guardians. Therefore, Mr. Joe is advised that while filling MGT – 1, the name of a minor shall be entered only if the details of the guardian are available. Thus, Zoey's name shall also appear in the register of members of Luxy Hairstyles Private Limited since Mila is a minor.

**Illustration 2**

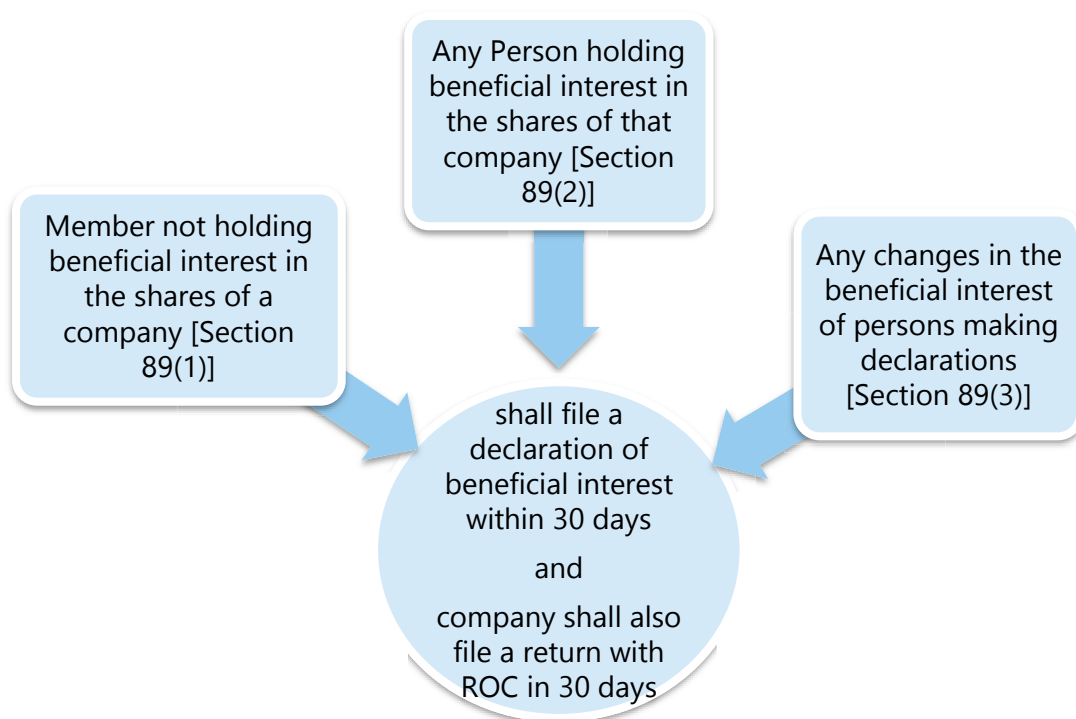
*Tanya and Tarun who recently got married were jointly allotted 1000 shares by New Hospitality Services Private Limited. Tarun intimated the company that only the name of his wife should appear in the records of the company in respect of joint holding of shares allotted to them. The directors of the company are not sure whether this is possible, given that the shares are held in the names of both Tanya and Tarun.*

**Answer:** Joint holders of shares may request the company to enter their names in the register in a certain order, or execute transfers to have their holdings split, with the result that part of the holding is entered showing the name of one holder and part showing the name of other holder. However, the condition of Tarun that only the name of his wife, Tanya, should appear in the register as a member cannot be acceded 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.

### DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE [SECTION 89]

Section 89 of the Companies Act, 2013 contains provisions relating to declaration of beneficial interest in any share. Rule 9 of the Companies (Management and Administration) Rules, 2014 provides for procedural aspect.



- **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. The declaration MGT-4 shall be made within a period of thirty days from the date on which his name is entered in the register of members of such company. [Section 89 (1) and Rule 9 (1)]

- **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. [Section 89 (2) and Rule 9 (2)]
- **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 under section 89 (1) by the registered owner and under section 89 (2) by the beneficial owner then, within 30 days of such change, a declaration is to be made to the company.
- **Filing of return by the company with the Registrar:** Where any declaration under section 89 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. [Section 89 (6) and Rule 9 (3)]
- **Consequence of non-filing of declaration:** Where a declaration required to be made under section 89 is not made 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. [Section 89 (8)]
- **Exemption:** Rule 9 shall not apply to a trust which is created to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI. Accordingly, such entities need not file the declarations as envisaged by this rule.
- **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 section 89 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)]*

### **Exemption from the provisions of section 89 *[Section 89(11)]***

The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, except sub-section (10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

**Exemption to a Government Company-** In case of Government Company - Section 89 shall not apply. *[Notification No. GSR 463 (E), 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 No. GSR 582 (E), dated 13<sup>th</sup> June, 2017].*

### **Penalty for default *[Sections 89 (5) & 89 (7)]***

Two kinds of penal provisions as described below are included under section 89 –

- (i) **Relating to Default made by persons required to make a declaration** - If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees. *[Section 89(5)]*
- (ii) **Relating to Default made by a company** - If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default. *[Section 89(7)]*

## REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY [SECTION 90]

As per Section 90 of the Companies Act, 2013, 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 this connection, MCA has issued the Companies (Significant Beneficial Owners) Rules, 2018, which deal 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, the 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 exercises 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. [Rule 2 (1) (i)]

**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. [Rule 2 (1) (d)]

**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 Reporting Company, if he satisfies any of the following criteria:

- a. the shares in the Reporting 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 Reporting Company under section 89 (2), and has made a declaration in this regard to the Reporting Company.



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

**Onus on the reporting company to identify a SBO and cause him to make declaration:** 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 sub-section (5) of section 90 read with the Amendment Rules, every reporting company shall give notice in the Form BEN-4 to any person (whether or not a member of the company) 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.

**Maintenance of Register of SBO and Inspection thereof:** According to section 90 (2) and 90 (3) read with Rule 5, 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 the Tribunal [Section 90 (7)]:** The company shall,—

- (a) Where that person fails to give the company, the information required by the notice within the time specified therein. (According to Rule 7 notice shall be given in Form No. BEN-4 for providing information 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 all rights attached to the shares and such other matters as may be prescribed.

*Note:* According to Rule 7, the reporting company shall apply to the Tribunal in accordance with section 90 (7), for order directing that the shares in question be subject to restrictions including-

- (i) restrictions on the transfer of interest attached to the shares in question;
- (ii) suspension of the right to receive dividend or any other distribution in relation to the shares in question;
- (iii) suspension of voting rights in relation to the shares in question;
- (iv) any other restriction on all or any of the rights attached with the shares in question.

Section 90 (8) states that 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.

According to section 90 (9), 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 under section 90 (8) 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 (i.e. Investor Education and Protection Fund Authority), in such manner as may be prescribed.

#### **Declaration by SBO under Section 90:**

As regards declaration of significant beneficial ownership under section 90, Rule 3 of SBO Rules, 2018 states as under:

- (1) Every individual who is a significant beneficial owner (SBO) in a Reporting Company, as on the date of commencement of the Amendment Rules, 2019 (i.e. 8-2-2019), is required to file a declaration in Form No. BEN-1 with the Reporting Company within 90 days from such commencement.

*Note:* According to Rule 4, the Reporting Company shall be required to file a return in Form No. BEN-2 with the Registrar in respect of such declaration within 30 days of its receipt from the SBO.

- (2) Any individual, who subsequently becomes a significant beneficial owner (SBO) in the Reporting Company or whose significant beneficial ownership undergoes any change, shall be required to file a declaration in Form No. BEN-1 with the Reporting Company in within 30 days of such acquisition or change.

*Explanation:* If an individual becomes a significant beneficial owner in the Reporting Company or if his significant beneficial ownership undergoes any change within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (i.e. 8-2-2019), 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 of SBO Rules**

Rule 8 of The Companies (Significant Beneficial Owner) Amendment Rules, 2018 states that the 'SBO' Rules shall not be made applicable to the extent the share of the Reporting Company is held by:

- (a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
- (b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
- (c) the Central Government, State Government or any local authority;
- (d) (i) a reporting company or (ii) a body corporate or (iii) an entity, controlled wholly or partly by the Central Government and/ or State Government(s);
- (e) 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 Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

### Penalty for Contravention

- (a) **By SBO:** If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees. [Section 90(10)]
- (b) **By Reporting Company:** If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a 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 of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees. [Section 90(11)]

It is worth noting that any contravention by Company and Officer in Default of the provisions of Section 90 and SBO Rules is compoundable.

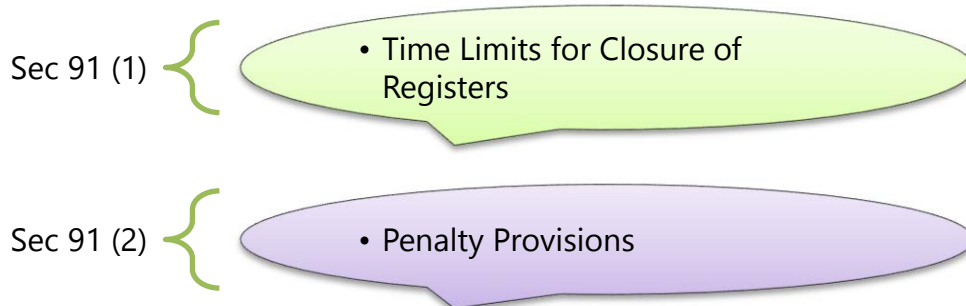
**Note:** Where any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made, he shall be liable for punishment for fraud under section 447. [Section 90(12)]

**Exemption to a Government Company-** In case of Government Company - Section 90 shall not apply - *Notification No. GSR 463 (E), 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 No. GSR 582 (E), dated 13<sup>th</sup> June, 2017.*

## POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE-HOLDERS OR OTHER SECURITY HOLDERS [SECTION 91]

Section 91 (1) deals with the time limits for which the respective registers of members, debenture-holders and other security holders are allowed to be closed. Section 91 (2) mentions the penalty for contravention of the provisions of sub-section (1).



Section 91 (1) contains following provisions:

- (i) **Closure Period:** A company may close its register of members or register of debenture-holders or register of other security holders for an aggregate period of 45 days in each year but not exceeding 30 days at any one time.
- (ii) **Notice Period:** The respective registers of members, debenture-holders or other security holders may be closed by giving minimum 7 days' notice or such lesser period as may be specified by Securities Exchange Board of India ('SEBI') for listed companies or those companies which intend to get their securities listed.

Rule 10 of the *Companies (Management & Administration) Rules, 2014*, specifies the manner of closure of registers as under:

- (a) 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 and in such manner, as may be specified by SEBI, 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.

[Rule 10 (1)]

- (b) *Exemption to Private Companies:* It is to be noted that a private company has been exempted from issuing a public notice in newspapers, provided it issues minimum 7 days' notice to its members prior to closure of the registers. [Rule 10 (2)]

Section 91 (2) contains **penalty provisions** as stated below:

In case of contravention of provisions of section 91(1) (i.e. if the respective registers are closed without giving notice, or after giving a shorter notice than that so provided, or for a continuous or an aggregate period in excess of the specified limits), section 91 (2) states following penalty:

- 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.

**Note:** The offence is a compoundable offence under section 441 of the Companies Act, 2013.

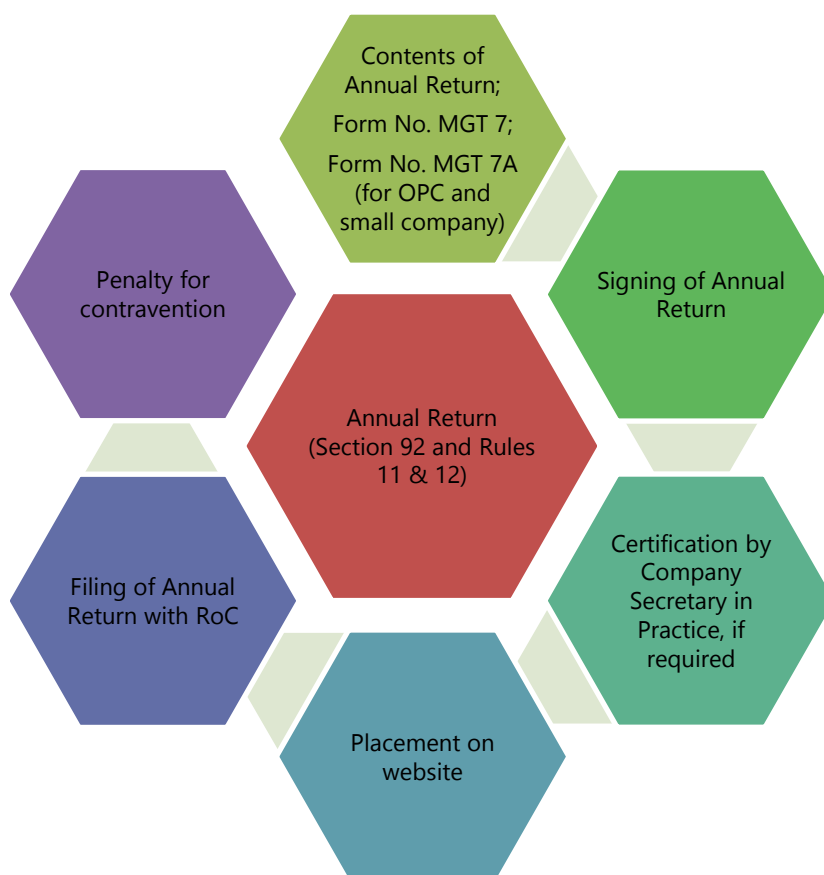


### 3. ANNUAL RETURN [SECTION 92 AND 94]

Provisions with regard to Annual Return are contained in section 92 of the Companies Act, 2013 and Rules 11 and 12 of the *Companies (Management & Administration) Rules, 2014*.

*As per Rule 11, every company shall file its annual return in Form No. MGT-7 except One Person Company (OPC) and Small Company.*

*One Person Company and Small Company shall file the annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.*



### Contents of Annual Return

According to section 92(1), every company shall prepare a return (referred to as the Annual Return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- (b) its shares, debentures and other securities and shareholding pattern;
- <sup>1</sup>(c) [Omitted]
- (d) its members and debenture-holders along with changes therein since the close of the previous financial year;

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<sup>1</sup> Clause (c) of section 92(1) was omitted *vide* the Companies (Amendment) Act, 2017, w.e.f. 5<sup>th</sup> March, 2021.

- (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
- <sup>2</sup>(g) remuneration of directors and key managerial personnel;
- (h) 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;
- (i) matters relating to certification of compliances, disclosures as may be prescribed;
- (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors; and
- (k) such other matters as may be prescribed,

### Abridged Form of Annual Return

In terms of Second Proviso to Section 91 (1), the Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed. Accordingly, as per Rule 11 (1) One Person Company and small company shall file the annual return from the financial year 2020-2021 onwards in Form No. MGT-7A.

### Signing of Annual Return

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

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<sup>2</sup> **In case of Private Company** – Clause (g) of sub-section (1) of Section 92 shall apply to private companies which are small companies, as under:-

(g) "aggregate amount of remuneration drawn by directors;". - Notification No. GSR 464 (E), dated 5-6-2015, as amended by Notification No. GSR 583 (E), dated 13th June, 2017.



However, in relation to <sup>3</sup>One 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.

### **Certification of Annual Return by a Company Secretary in practice in certain cases**

Section 92 (2) read with Rule 11 (2) of the *Companies (Management & Administration) Rules, 2014*, provides that the annual return, filed by:

- (i) a listed company or
- (ii) 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 stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

Such certificate shall be in Form No. MGT – 8.

### **Placing of Annual Return on Website**

<sup>4</sup>Every company shall place a copy of the annual return on its website, if any, and the web-link of such annual return shall be disclosed in the Board's report. [*refer Section 92 (3)*]

<sup>3</sup>**In case of Private Company** - For proviso to sub-section (1) of Section 92, the following proviso shall be substituted, namely:-

"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 No. GSR 464 (E), dated 5-6-2015, as amended by Notification No. GSR 583 (E), dated 13th June, 2017. Notification Dated 13th June, 2017*]

<sup>4</sup> (i) In case of Specified IFSC Public Company - Sub-section (3) of section 92 shall not apply. - *Notification No. GSR 8 (E), dated 4th January, 2017.*

(ii) In case of Specified IFSC Private Company - Sub-section (3) of section 92 shall not apply. - *Notification GSR 9 (E), dated 4th January, 2017.*

### Time limit for Filing of Annual Return

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. Where no annual general meeting is held in any year, it shall be filed within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM. [Section 92 (4) and Rule 12]

### Penalty for contravention

(i) Section 92(5) specifies as under:

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

(ii) Section 92(6) specifies penalty in case of a Company Secretary in Practice as under:

If a company secretary in practice certifies the annual return otherwise than in accordance with section 92 or the rules made thereunder, he shall be **liable to a penalty of two lakh rupees**.

### Illustration 3

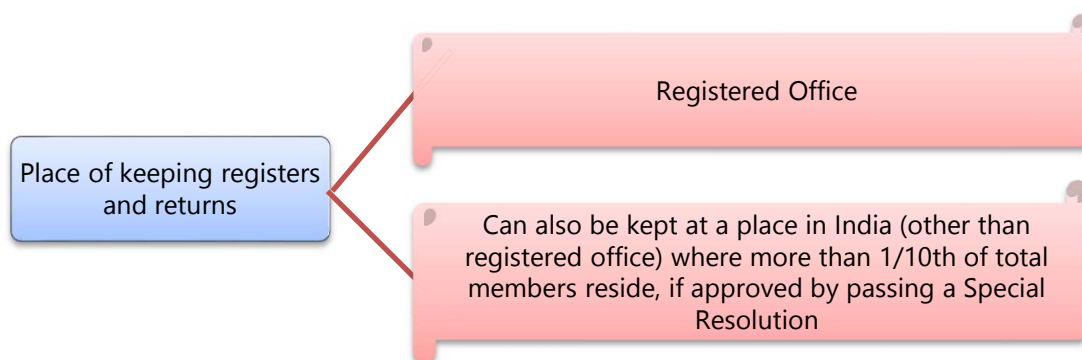
*Big Fox Entertainment Limited called its Annual General Meeting on 30<sup>th</sup> September, 2021, for laying down the financial statements relating to the Financial Year ended 31<sup>st</sup> March 2021 for approval of its shareholders and conducting of other requisite businesses. However, due to want of quorum, the meeting could not take place and was cancelled. The company did not file the annual return for the year ending 31<sup>st</sup> March 2021, with the jurisdictional Registrar of Companies till date. The directors are of the view that since the Annual General Meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.*

**Answer:** The contention of directors is incorrect if they are of the view that there is no contravention of the provisions of the Companies Act, 2013. Section 92 (4) states that every company has to file an annual return with the RoC within 60 days from the date on which Annual General Meeting is held or where no Annual

General Meeting is held in any year, it shall be filed 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 the above case, the Annual General Meeting should have been held by 30<sup>th</sup> September, 2021 but it did not take place for want of quorum. Even if it was not held, Big Fox Entertainment Limited was required to file Annual Return within the specified time along with the reasons for not holding the AGM. By not filing Annual Return, the company has contravened the provisions of Section 92 of the Companies Act, 2013 and therefore, it shall be liable for a penalty as specified in Section 92 (5) of the Act.

### PLACE OF KEEPING AND INSPECTION OF REGISTERS, RETURNS, ETC. [SECTION 94]<sup>5</sup>



#### Place of keeping Registers and Returns

In respect of place of keeping Registers and Returns Section 94 (1) and First Proviso state as under:

- (i) *At Registered office:* 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.
- (ii) *At any other place in India:* The 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.

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<sup>5</sup> Section 93 was omitted by the Companies (Amendment) Act, 2017 w.e.f. 13-6-2018.

**Inspection of Registers, etc.**

According to section 94 (2), the registers and their indices, except when they are closed 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.

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.

*Extracts of register or index:* According to Section 94 (3) read with Rule 14 (2), any member, debenture-holder or security holder or beneficial owner or any other person can take the extracts 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.

As per Rule 14, Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely: —

- (i) address or registered address (in case of a body corporate);
- (ii) e-mail ID
- (iii) Unique Identification Number
- (iv) PAN Number

### Preservation of Register of Members etc. and Annual Return

As per Second Proviso to Section 94 (1), the period for which the registers, returns and records are required to be kept shall be such as may be prescribed. In this respect Rule 15 of the *Companies (Management & Administration) Rules, 2014* states as under:

- **Preservation of register of members:** The register of members along with the index shall be preserved **permanently** and shall be kept in the custody of company secretary of the company or any other person authorised by the Board for such purpose.
- **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.
- **Preservation of Copies of documents filed with ROC:** 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 of Members:** The foreign register of members 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-holders or any other security holders shall be preserved for a period of **8 years** from the date of redemption of such debentures or securities.

The foreign register shall be kept in the custody of the company secretary or person authorised by the Board.

### 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 direct that the extract required shall forthwith be allowed to be taken by the person requiring it. [Section 94 (5)]

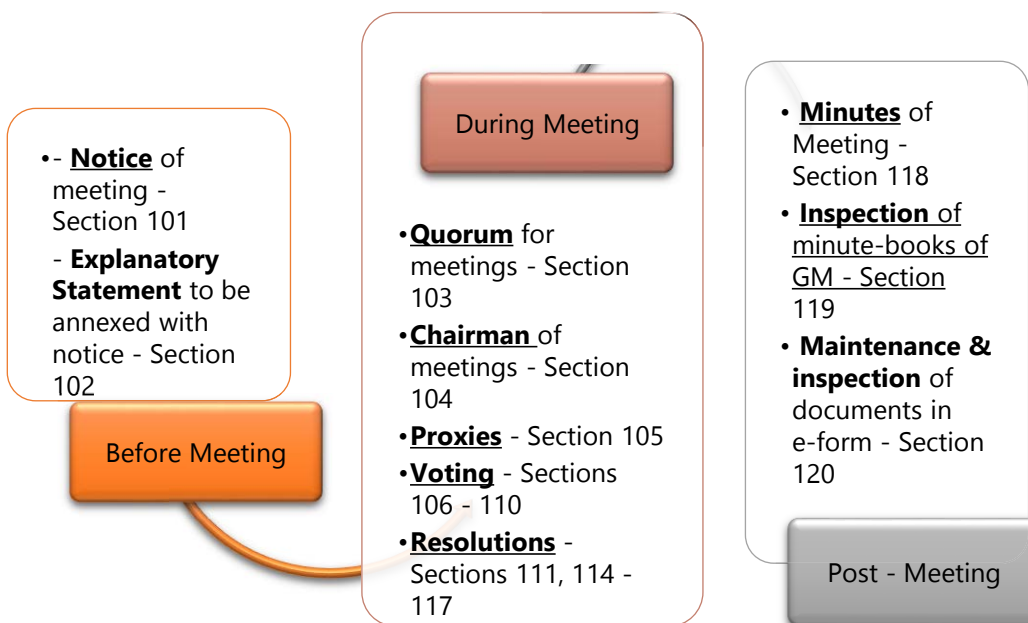
\* Powers are delegated to Regional Directors.

## REGISTERS, ETC. TO BE EVIDENCE [SECTION 95]

According to Section 95, 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 understand the terms which are important to know for convening a meeting.



**Key terms:**

- (a) **General Meeting:** It is the meeting of the shareholders of a company to be held 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 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 (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:** It is the meeting of the Board of Directors of a company.
- (c) **Class Meeting:** It is the meeting of particular class of persons, like, creditors, preference shareholders, debenture-holders, 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 the respective section.

**NOTICE OF A MEETING [ SECTION 101]**

Section 101 (1) of the Companies Act, 2013 states that in order to properly call a general meeting, a notice of at least *21 clear days* is required to be given either in writing or through electronic mode in such manner as may be prescribed.

**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 No. GSR 8 (E), dated 4th January, 2017.]

**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. This exception shall be applicable to a section 8 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 No. GSR 466 (E), 5-6-2015 as amended by Notification No. GSR 584 (E), dated 13th June, 2017.]

### **Contents of the Notice [Section 101(2)]**

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

### **Persons entitled to receive the Notice of the General Meeting [Section 101(3)]**

The notice of every meeting of the company shall be given to:

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

**Notice needs to be served to**

- \* Members
- \* Legal representative of the deceased member
- \* Assignee of the insolvent member
- \* Auditor/auditors of the company
- \* Every director of the company

### **Meaning of 21 clear days:**

The term '21 clear days' means that the date on which notice is served and the date of meeting are excluded while sending the notice of a meeting. A company cannot curtail the requirement of 21 clear days through its Articles of Association.

**Note:** Where a notice of a meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted (*Rule 35(6) of the Companies (Incorporation) Rules, 2014*)



**Sending of Notice of Meeting through Electronic Mode:**

As per *Rule 18 of the Companies (Management & Administration) Rules, 2014*, sending of notices through electronic mode has been statutorily recognized. Accordingly, it is permitted for a company to give notice through electronic mode.

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

- 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.
- Rule 18(3)
  - ◆ 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.

It is to be noted that 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 e-mail ID recorded or to update a fresh e-mail ID and not from the members whose e-mail ids are already registered.
  - ◆ 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.
  - ◆ If notice is sent in the form of a non-editable attachment to e-mail, such attachment shall be in the Portable Document Format or in a

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

- ♦ 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.
- ♦ If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.
- ♦ The company may send e-mail through in-house facility or its registrar and transfer agent or authorise any third-party agency providing bulk e-mail facility.
- ♦ 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.

**Non-receipt of Notice:** 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.

#### Illustration 4

*Mr. Abhinav, a member of Elixir Logistics Limited, filed a complaint against the company for not serving him a notice 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. Abhinav, inviting him to attend the annual general meeting of the company. Mr. Abhinav alleges that he never received the email. State whether the company is liable to be guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with the applicable Rules.*

**Answer:** As per Rule 18 (3) (v) 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, Rule 18 (3) (vi) if a 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. Accordingly, Elixir Logistics Limited shall not be held guilty if there was a failure in transmission beyond its control or in case where Mr. Abhinav did not update his e-mail address.

### **Shorter notice of less than 21 days [Proviso to Section 101 (1)]**

As noted earlier, usually 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 sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto—

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

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

#### **Illustration 5**

*The paid-up share capital of Aakash Soaps Limited is Rs. fifty lakh divided into five lakh shares of ₹10 each. The directors of the company are desirous of calling an extra-ordinary general meeting (EGM) by giving a shorter notice which is less than 21 days. Sixty percent of the members holding shares worth Rs. forty lakh accorded their consent by electronic mode to the shorter notice. Whether EGM can be validly called.*

**Answer:** In the above case, consent to call the EGM by shorter notice has been accorded by sixty percent members holding shares worth Rs. forty lakh which works out to 80% ( $40,00,000/50,00,000 \times 100$ ) whereas the requirement is that majority in number of members who represent not less than 95% of paid-up share capital which gives them a right to vote at the meeting (*i.e. shareholders holding shares worth ₹ 47,50,000*) must consent to shorter notice. Therefore, the EGM cannot be validly called and held.

### Authority to call a General Meeting

A general meeting (AGM or EGM) has to be called by the Board of Directors. An individual director does not have the authority to call a General Meeting. Any notice of General Meeting given without the sanction of the Board is invalid; however, the same can be ratified by the Board. For calling a General Meeting, the Board passes a Board Resolution.

### EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE [SECTION 102]<sup>6</sup>

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' shall be annexed to the notice calling such general meeting. The 'Explanatory Statement' 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.

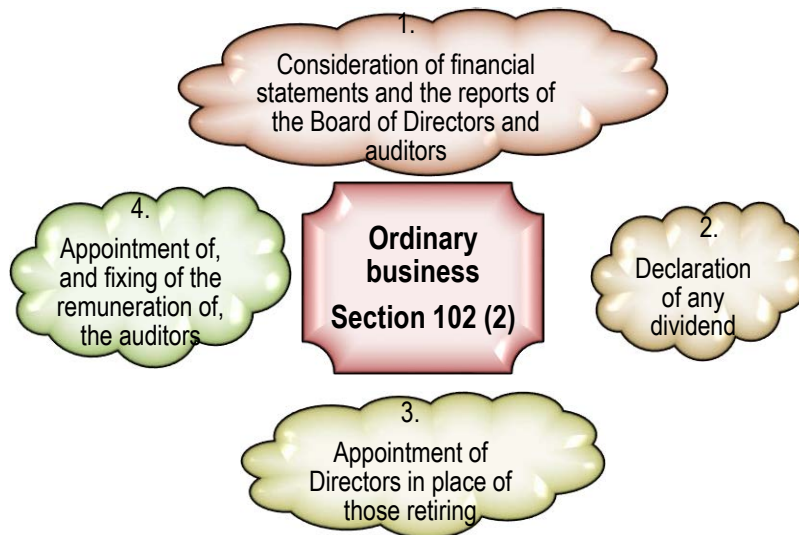
**Ordinary business and Special business:** Companies Act, 2013 sets out two types of businesses as under:

<sup>6</sup> **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 GSR 8 (E), Dated 4th January, 2017.

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

**Ordinary business** includes the following business which are transacted at the Annual General Meeting of a company–

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



- 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 Ordinary Business.
- Proviso to section 102 (2) sets out that if any item of special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and of 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/insufficient disclosure in Explanatory Statement [Section 102(4)]:** If as a result of 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 section 102**

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. [Section 102 (5)]

### **QUORUM FOR MEETINGS [SECTION 103]<sup>7</sup>**

Quorum means the minimum number of members who must be personally present in order to constitute a valid meeting. Section 103 of the Companies Act, 2013 states that unless the articles of the company provide for a larger number, the quorum for the meeting shall be as follows–

#### **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 -**

☐

- ☐ Two members personally present shall be the Quorum.

<sup>7</sup> **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 No. GSR 8 (E), Date 4th January, 2017.*

- It is to be noted that 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.

### **Adjournment of Meeting for want of Quorum [Section 103 (2) and (3)]**

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.

*Quorum not present at the adjourned meeting also:* Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

#### **Note:**

The following points have been prescribed by Secretarial Standard – 2:

1. One person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum. However, to constitute a meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than one thousand members with a Quorum requirement of five members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more member is personally present.
2. Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

3. Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be counted for the purpose of Quorum.
4. A Member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.
5. The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot.

#### Illustration 6

*There are 54 members in Nice Games Private Limited. The company called its annual general meeting on Friday, 1<sup>st</sup> July 2022 at 2:00 p.m. at its registered office. There were 28 members present till 2:30 p.m. at the venue of the AGM. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions after observing due process. 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 general meeting of the company. Thus, the quorum for the Annual General Meeting of Nice Games Private Limited was complied with and the company has not contravened any of the provisions of the Companies Act, 2013.

#### Illustration 7

*Abbey Lights and Sounds Limited has 2300 members. The company called its Annual General Meeting on Tuesday, 23<sup>rd</sup> August, 2022 at 10.30 a.m. at its registered office situated in Connaught Place, New Delhi. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the Annual General 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 and 5 and accordingly passed resolutions 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:** According to Secretarial Standard - 2 (SS-2), Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

In the above case, while the required quorum as per section 103 of the Companies Act, 2013 was present at the time when the meeting started, the quorum was not present at the time of deciding Agenda 4 and 5. Thus, 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]<sup>8</sup>

**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 on a show of hands.

**Demand for 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 that time. In order to fulfil his duty properly, he must observe strict impartiality.

**Chairman to have 'casting vote' if so provided in the Articles:** The Chairman has a casting vote in Board Meetings and general meetings, if specifically empowered by the articles of the company. The term 'casting vote' means that in

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<sup>8</sup>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 No. GSR 8 (E), Dated 4th January, 2017.*

the event of 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 a Private Company-** In case of a private company - Section 104 shall apply, unless otherwise specified in respective section or the articles of the company provide otherwise. - *Notification No. GSR 464 (E), 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 No. GSR 583 (E), dated 13<sup>th</sup> June 2017.*



## 5. PROXIES [SECTION 105]<sup>9</sup>

Section 105 of the Companies Act, 2013 and Rule 19 of the *Companies (Management & Administration) Rules, 2014* contain provisions relating to the proxies.

- Appointment of a proxy is an important right of a member of the company. Section 105 (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.

- **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. The Central Government may also prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

<sup>9</sup> **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 No. GSR 8 (E), Dated 4th January, 2017.*

According to Rule 19, a member of a company registered under section 8 (companies formed with charitable objects, etc.) 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 can act as proxy on behalf 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 proxy for any other person or shareholder. *[Rule 19 (2)]*

- As a compliance requirement, in every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. *[Section 105 (2)]*
- The appointment of proxy shall be in Form No. MGT-11. *[Rule 19(3)]*
- If the instrument appointing a proxy is in the prescribed Form, it shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company. *[Section 105 (7)]*
- The instrument appointing a proxy shall be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument shall be under its seal or be signed by an officer or an attorney duly authorised by the body corporate. *[Section 105 (6)]*
- Section 105 (4) provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
- 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.

In simple words, it can be said that:

- every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled to inspect the proxies lodged.
- for the purpose of inspection, a minimum three days' notice in writing is required to be given to the company.
- inspection by any member can be made 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.
- inspection can be done at any time but only during the business hours of the company.

■ **Penalty for default–**

- ◆ If default is made in complying with section 105 (2), every officer of the company who is in default shall be liable to penalty of five thousand rupees. *[Section 105(3)]*
- ◆ 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 issues the invitation as aforesaid or authorises or permits their issue, **shall be liable to a penalty of fifty thousand rupees.**

Provided that an officer shall **not be liable** under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy. *[Section 105(5)]*



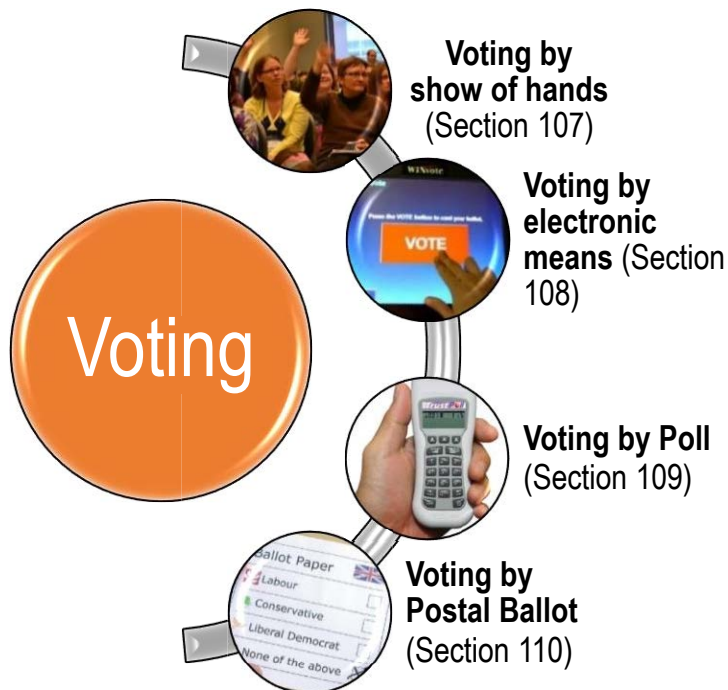
## 6. VOTING [SECTION 106-109]

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 various modes through which a shareholder can cast his vote are as follows:

- ◆ 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 his vote for and against the resolution.

**RESTRICTION ON VOTING RIGHTS [SECTION – 106]<sup>10</sup>**

Section 106 (1) indicates the supremacy of Articles of Association and specifies that the Articles 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 presently payable by him to the company have not been paid, or
- in regard to which the company has exercised any right of lien.

Section 106 (2) requires that a company shall not prohibit any member from exercising his voting rights on any other ground except the grounds mentioned as above.

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. [Section 106 (3)]

In other words, on a poll being taken at a meeting of a company, a member having more than one vote or his proxy, need not use all his votes or cast in the same way all the votes he uses.

Also, such member cannot sign a requisition for an extra-ordinary general meeting.

In case of joint shareholders, they must concur in voting unless the articles provide to the contrary. Regulation 52 of Table F states as under:

- (i) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
- (ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

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<sup>10</sup> **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 No. GSR 8(E), Dated 4th January, 2017.*

**Note:**

Where the articles of the company do not contain any provision restricting the exercise of voting rights of members, then a member cannot be prevented from voting, even though, calls or other sums 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, if any, remaining unpaid on the shares would not be entitled to vote so long as any calls presently payable on the shares remain unpaid.

**Illustration 8**

*Suppose Mr. Subramaniam and Mrs. Sneha are joint shareholders of Sports Equipment Private Limited holding 500 equity shares. In respect of a particular special business being transacted at the extra-ordinary general meeting (EGM) of the company, Mr. Subramaniam is in favour of passing the resolution whereas Mrs. Sneha does not favour the resolution. Decide how should the vote be casted in case such a situation arises?*

**Answer:**

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. The joint-holders have a right to instruct the company as to the order in which their names shall appear in the register of members. Accordingly, in case of Mr. Subramaniam and Mrs. Sneha, it is to be seen as to whose name appears first in the register of members; and then to decide whether the vote is casted in favour of resolution or against it.

**Illustration 9**

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

**Answer:**

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 shall vote in the same manner as a common shareholder would have voted in a

general meeting. Therefore, while casting his vote, he is not supposed to be influenced by the fact that he is one of the directors of the company.

### VOTING BY SHOW OF HANDS [SECTION 107]<sup>11</sup>

- According to section 107 (1) of the Companies Act, 2013, unless the voting is demanded by way of poll or by electronic means, the voting shall be done by way of show of hands in the first instance.
- Section 107(2) states that the declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the minutes books shall be conclusive evidence that the resolution has been passed.

#### Illustration 10

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

**Answer:** 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 a member.

### VOTING THROUGH ELECTRONIC MEANS [SECTION 108]

Section 108 of the Companies Act, 2013 has introduced the facility of e-voting in respect of prescribed classes of companies. Accordingly, the members of such companies may exercise their right to vote by electronic means.

*Rule 20 of the Companies (Management & Administration) Rules, 2014* provides a detailed procedure for electronic voting.

Rule 20 (1) states that “**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 Rule 20.

<sup>11</sup> **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 No. GSR 8 (E), Dated 4th January, 2017.*



**Companies required to provide its members the facility of exercising right to vote by electronic means [Rule 20 (2)]:**

Every company which:

- has listed its equity shares on a recognised stock exchange; and
- has 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.

**Exempted entity:** However, 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-I.-** 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.

**Explanation-II.-** For the purposes of this rule, the expression-

- ✓ 'cut-off date' means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting. [Explanation II (ii) to Rule 20(2)]
- ✓ 'cyber security' means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction;
- ✓ 'electronic voting system' means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security. [Explanation II(iv) to Rule 20(2)]

- ✓ 'remote e-voting' means the facility of casting votes by a member using an electronic voting system from a place other than venue of general meeting. [Explanation II(v) to Rule 20(2)]
- ✓ 'secured system' means computer hardware, software, and procedure that -
  - (a) are reasonably secure from unauthorised access and misuse;
  - (b) provide a reasonable level of reliability and correct operation;
  - (c) are reasonably suited to performing the intended functions; and
  - (d) adhere to generally accepted security procedures; [Explanation II (vi) to Rule 20(2)]
- ✓ 'voting by electronic mean' includes "remote e-voting and voting" at the general meeting through an electronic voting system which may be the same as used for remote e-voting. [Explanation II (vii) to Rule 20(2)]

**Exercise of right to vote through voting by electronic means 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:** Rule 20 (4) states that a company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure:

- (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) **Placing of Notice 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) Particulars contained in Notice:** 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;
  - (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) When to block facility:** 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(s):** 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) Willingness of scrutinizer for appointment:** 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) **Scrutinisers to have access to details relating to members:** 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 scrutiniser 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 scrutiniser 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 by scrutinisers:** The scrutiniser 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 scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.

**(xvi) Results along with the report of the scrutiniser to be placed on websites:** The results declared along with the report of the scrutiniser 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) Date when resolution shall be deemed to be passed:** 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 Companies Act, 2013.

**(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]<sup>12</sup>

Section 109 provides that before or on the declaration of 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 or on a 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 as may be prescribed has been paid-up.

<sup>12</sup> **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 No. 8 (E), Dated 4th January, 2017*

- ◆ In 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 a poll may be withdrawn at any time by the persons who made the demand.
- **To take forthwith poll demanded for adjournment of meeting or appointment of Chairman:** A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.
- **When to take poll demanded on any other question:** 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.
- **Appointment of sufficient number of scrutinizers:** Where a poll is to be taken, the Chairman of the meeting shall appoint sufficient number of scrutinizers to scrutinize the poll process and votes given on poll and to report thereon to him.
- **Duties of scrutinizer:** 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 the compliance of the provisions of section 109 and Rule 21.
- **Power of Chairman to regulate:** The Chairman of the meeting shall have the power to regulate the manner in which the poll shall be taken.
- **Rule 21** lays down the procedure describing the manner in which the Chairman shall get the poll process scrutinized—
  - ◆ According to Rule 21 (1), 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. The report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizers, and the same shall be submitted by them to the Chairman of the meeting within **seven days** from the date the poll is taken. *[Rule 21 (2)]*
- ◆ The results of the poll shall be deemed to be the decision of the meeting on the resolution. *[Section 109 (7)]*

**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. 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 No. 464 (E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13<sup>th</sup> June 2017].*

## POSTAL BALLOT [SECTION 110]

Section 2(65) defines the term "postal ballot" to mean voting by post or through any electronic mode.

The provisions relating to passing of resolutions by means of 'postal ballot' are contained in Section 110.

Further, Rule 22 of the *Companies (Management and Administration) Rules, 2014* contains the provisions relating to procedure to be followed for conducting business through postal ballot.

**Extract of Section 110 of the Companies Act, 2013**

“(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.”

- Section 110 seeks to provide that the Central Government may declare certain items of business that can be transacted only by postal ballot. In addition, in respect of any other item of business (except ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting) postal ballot may be used.
- 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 under:
  - ◆ 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 members upto two hundred are not required to transact any business through postal ballot.

*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, following types of postal 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.)

The postal ballots shall be segregated as per the above criteria and resolution shall be deemed as passed if assents are greater in number.



## 7. CIRCULATION OF MEMBERS' 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 are required to contain signatures of all the requisitionists.
- (c) The requisition 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) **Exemption 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, the <sup>13</sup>Central 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 as above by the Central Government 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 complying with the provisions:** 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

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

person shall be entitled to exercise the same rights and powers including the right to vote by 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.



## **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.

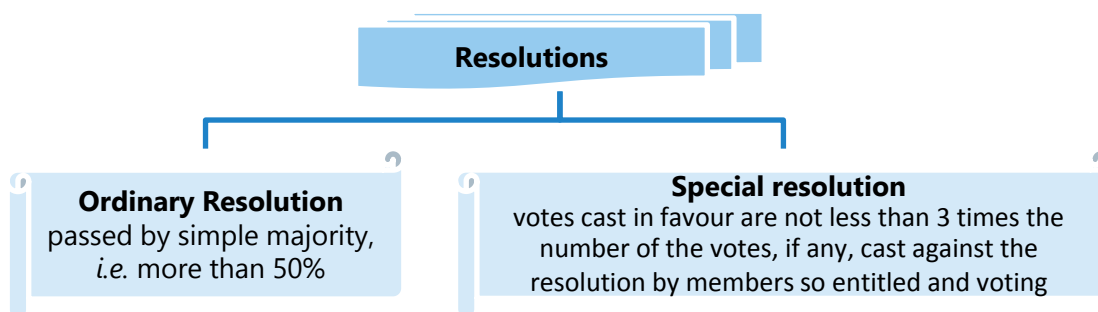
### **Difference between Motion and Resolution—**

- 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, e.g. 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 provision in the articles.

## ORDINARY AND SPECIAL RESOLUTION [SECTION 114]

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

- Ordinary Resolutions – which are passed by simple majority; and
- Special Resolutions – votes cast in favour are not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting



Section 114 of the Companies Act, 2013 states as to what constitutes an Ordinary Resolution and a Special Resolution.

### 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, 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.

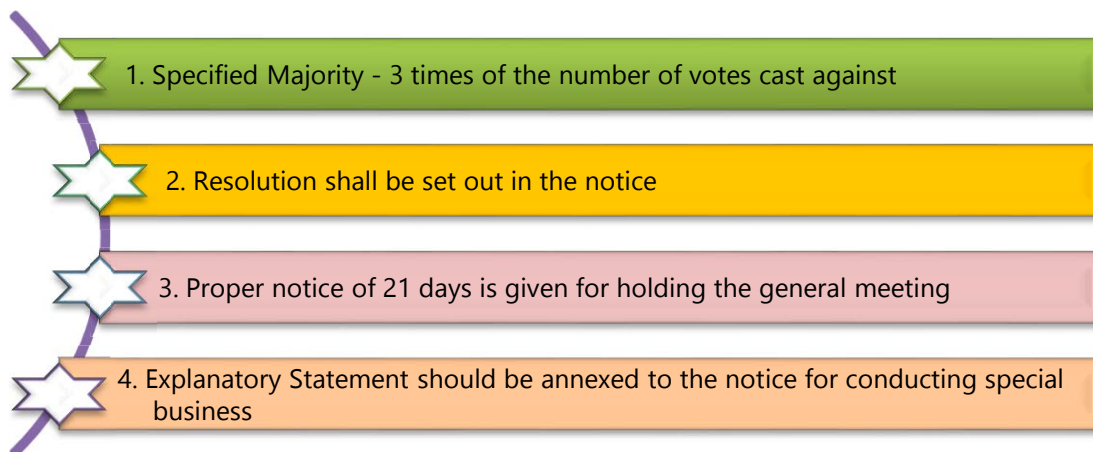
### Special Resolution

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

- 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;
- The notice required under this Act has been duly given; and

- (c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Characteristics of Special Resolution—

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

#### Illustration 11

*The Annual General Meeting of Super Star Bakers Limited was attended by 60 members. In respect of a particular business, the resolution was to be passed as a special resolution. Ten members voted against the resolution whereas five abstained themselves from the voting. The Chairman of the meeting Mr. Ravinder declared that the resolution was passed as a special resolution. Whether the declaration is valid.*

**Answer:** In case of a special resolution, the requirement is that the votes cast in favour of the resolution must be three times the number of the votes cast against it. In the above case, ten members voted against the resolution which implies that minimum thirty members (three times of ten) must vote in favour of the resolution. Ignoring five members who abstained themselves from voting, forty-five members (sixty minus ten minus five) voted in favour of the resolution which far exceeds the required majority of thirty members. Therefore, declaration by Mr. Ravinder, Chairman of the meeting, that the resolution was passed as a special resolution is valid.

**Illustration 12**

*In the annual general meeting of Steel Products 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.*

**Answer:** 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 decides 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 be immaterial.

**RESOLUTIONS REQUIRING SPECIAL NOTICE [SECTION 115]**

**Section 115 of the Companies Act, 2013 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice**

According to Section 115 where, by any provision contained in this Act or in the Articles 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.

**Special notice for passing a resolution is required in the following cases –**

- (a) Resolution for appointment of an auditor other than the retiring auditor at an annual general meeting. [Section 140 (4)]

- (b) Resolution at an annual general meeting providing expressly that a retiring auditor shall not be re-appointed. [Section 140 (4)]
- (c) Resolution to remove a director before the expiry of his period of office. [Section 169 (2)]
- (d) Resolution to appoint another person as director in place of the removed director at the meeting at which he is removed. [(Section 169 (2)]

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

**Rule 23 specifies the procedure to be followed in respect of Special Notice as under:**

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 of the Companies act, 2013, where a resolution is passed at an adjourned meeting of:

- (a) a company; or
- (b) the holders of any class of shares in a company; or
- (c) the Board of Directors of a company,

the resolution shall be treated as having been passed on the day on which it was actually passed and not on any earlier date.

**Example**

The extra-ordinary general meeting of the company, Purple Cosmetics Private Limited was due to be held on Thursday, 23<sup>rd</sup> June, 2022. However, due to want of quorum, the meeting was adjourned to a later date on Thursday, 30<sup>th</sup> June, 2022 and two resolutions were passed on that date.

According to section 116 of the Companies Act, 2013, the said two resolutions shall be deemed to have been passed on the adjourned date of meeting, *i.e.* Thursday, 30<sup>th</sup> June, 2022 and not on the earlier date.

**RESOLUTIONS AND AGREEMENTS TO BE FILED [SECTION 117]**

**Section 117<sup>14&15</sup> of the Companies Act, 2013** provides that a copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed.

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

<sup>14</sup> **In case of Specified IFSC Public Company** - Sub-section (1) of section 117, for the words "thirty days" read as "sixty days". Notification No. GSR 8 (E), Dated 4th January, 2017.

<sup>15</sup> **In case of Specified IFSC Private Company** - Sub-section (1) of section 117, for the words "thirty days" read as "sixty days". Notification No. GSR 9 (E), Dated 4th January, 2017.

embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

According to Rule 24 of the *Companies (Management and Administration) Rules, 2014*, a copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in **Form No. MGT-14** along with the fee.

**Resolutions and agreements to be filed with the Registrar as per Section 117 (3) 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.
- Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016.
- <sup>16 & 17</sup> Resolutions passed in pursuance of sub-section (3) of section 179.

<sup>16</sup> **In case of a private company** - clause (g) of Sub-section 3 of Section 117 shall not apply.

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 No. GSR 464 (E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13<sup>th</sup> June, 2017.*

<sup>17</sup> **In case of Specified IFSC Public Company** - Clause (g) of sub-section (3) of section 117 shall not apply. *Notification No. GSR 8 (E), Dated 4th January, 2017.*



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 in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,—

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

### **Penalty for contravention [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 ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.

## **11. MINUTES (SECTION 118)**

- Section 118 of the Companies Act, 2013, states 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 resolution by

postal ballot in books kept for that purpose with their pages consecutively numbered. [Sub-section (1)]<sup>18 & 19</sup>

- 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.
- There shall not be included in the minutes, any matter 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 on the afore-said grounds shall be at the absolute discretion of the Chairman of the meeting.

<sup>18</sup> **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

<sup>19</sup> **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

- The minutes kept in accordance with the provisions of Section 118 shall serve as the evidence of the proceedings recorded therein.
- Where the minutes have been kept in accordance with Section 118 (1), then 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 requires 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.<sup>20 & 21</sup> [Section 118 (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–

- ◆ *Distinct minute books to be maintained for each type of meeting:* A distinct minute book shall be maintained for each type of meeting namely:

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<sup>20</sup> **In case of Specified IFSC Public Company-** Sub-section (10) of section 118 Shall not apply. - Notification No. GSR 8 (E), Dated 4th January, 2017.

<sup>21</sup> **In case of Specified IFSC Private Company-** Sub-section (10) of section 118 Shall not apply. - Notification No. GSR 9 (E), Dated 4th January, 2017

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

**Note:** Resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting.

- ◆ *Maximum time allowed for entering minutes of proceedings:* The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.
- ◆ *Data to be entered when a resolution is passed by Postal Ballot:* 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.
- ◆ *Signing of Minute Books:* 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.

- ◆ *Place of keeping minute books of general meetings and their preservation:* 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.
- ◆ *Place of keeping minute books of Board and committee meetings and their preservation:* 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 companies (companies formed with charitable objects, etc.), 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.

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 No. GSR 466 (E), dated 5th June, 2015 as amended by Notification No. GSR 584 (E), dated 13<sup>th</sup> June, 2017.*



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

Section 119 of the Companies Act, 2013 contains the provisions in respect of inspection of minute-books of general meeting.

Accordingly, 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 hours in each business day shall be allowed for inspection [Section 119 (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. [Section 119 (2)].

In other words, within 7 working days of making a request along with the requisite fees, the member shall be furnished with a copy of any minutes.

**Penalty for contravention [Section 119 (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 to order inspection [Section 119 (4)]**

In 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.

**Copy of minute book of general meeting [Rule 26]**

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]

Section 120 of the Companies Act, 2013 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 prescribed.

Provisions prescribed in *Rules 27, 28 and 29 of the Companies (Management and Administration) Rules, 2014* are relevant in this respect. *Rule 30* states the penalty in case of contravention.

**Companies which may maintain records in electronic form:** Rule 27 of the Companies (Management and Administration) Rules, 2014 states as under:

- 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**.

Explanation.- For the purposes of this sub- rule, it is hereby clarified that in case of existing companies, data [may] be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.

- The records in electronic form shall be maintained in such manner as the Board of directors may think fit:

Provided that -

- (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made thereunder;
- (b) the information as required under the provisions of the Act or the rules made thereunder should be adequately recorded for future reference;
- (c) the records must be capable of being readable, retrievable and reproducible in printed form;

- (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made thereunder;
- (e) the records, once dated and signed digitally, shall not be capable of being edited or altered;
- (f) the records shall be capable of being updated, according to the provisions of the Act or the rules made thereunder, and the date of updating shall be capable of being recorded on every updating.

■ *Explanation:-* For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made thereunder to be kept by a company.

**Who is responsible for the maintenance and security of electronic records:**

*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.

The person who is responsible for the maintenance and security of electronic records shall-

- (a) provide adequate protection against unauthorized access, alteration or tampering of records;
- (b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
- (c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
- (d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
- (e) ensure that the computer systems can discern invalid and altered records;
- (f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;
- (g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

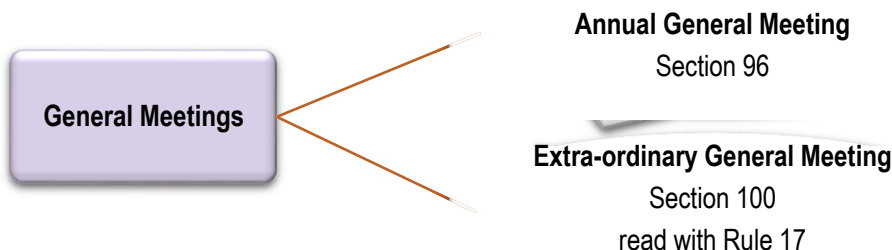


- (h) ensure that records are kept in a non-rewritable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;
- (i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
- (j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;
- (k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
- (l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
- (m) take necessary steps to ensure security, integrity and confidentiality of records.

**Inspection and copies of records maintained in electronic form:** *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 electronic form, containing a clear reproduction of the whole or part thereof, shall be provided on payment of not exceeding ₹ 10 per page.

## 13. GENERAL MEETINGS

Now that we have understood the basic terms which are required to call, convene and conduct the meetings properly, let us discuss the provisions related to meetings given in the Companies Act, 2013. The Act describes two types of general meetings to be held by a company. They are–



**ANNUAL GENERAL MEETING (AGM) [SECTION 96]**

- 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. Annual General Meeting (AGM)] in the notices calling it.

**Holding of Annual General Meeting (AGM)**

- 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 meetings 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.

**Illustration 13**

*Abbeys Grocers Private Limited closed its financial year on 31<sup>st</sup> March, 2022. When should it hold its Annual General Meeting (AGM) for the financial year 2021-22?*

**Answer:** According to section 96 (1) of the Companies Act, 2013, Abbeys Grocers Private Limited should hold its annual general meeting for the financial year 2021-22 latest by 30<sup>th</sup> September 2022 unless an extension is granted by jurisdictional Registrar of Companies for any special reason.

**Illustration 14**

*Abbyrush Mechanics Limited was incorporated on 12<sup>th</sup> July, 2022. When should the company hold its first Annual General Meeting (AGM)?*

**Answer:** In the above case, the financial year of Abbyrush Mechanics Limited will close on 31<sup>st</sup> March, 2023. According to section 96 (1), the company must hold its first AGM latest by 31<sup>st</sup> December 2023 *i.e.* within 9 months of the close of its financial year on 31<sup>st</sup> March 2023. If Abbyrush Mechanics Limited holds its first AGM in this manner, it shall not be necessary for the company to hold any AGM in the year of its incorporation.

**Time and place for holding an annual general meeting:** Section 96 (2) states that every annual general meeting shall be called during business hours, *i.e.*, 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.

Provided further that 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 No. GSR 466 (E), 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 No. GSR 584 (E), dated 13<sup>th</sup> 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 situate or such other place as the Central Government may approve in this behalf. *Notification No. GSR 463 (E), 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 No. GSR 582 (E), dated 13<sup>th</sup> June, 2017*.'

### **POWER OF TRIBUNAL TO CALL ANNUAL GENERAL MEETING [SECTION 97]**

In case a company defaults in holding Annual General Meeting, then Section 97 of the Companies Act, 2013 empowers Tribunal to call AGM. The provisions of Section 97 are as under:

- (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.

### **POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC. [SECTION 98]**

- (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]**

Section 99 lists out the punishment for contravention of section 96 to 98.

Accordingly, if any default is made in holding a meeting of the company in accordance with section 96 (*i.e.* AGM) or section 97 (*i.e.* AGM called by Tribunal) or section 97 (a meeting of members other than AGM called by Tribunal) or in complying with any the directions issued by the Tribunal, then 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.

### **REPORT ON ANNUAL GENERAL MEETING [SECTION 121]**

According to Section 121 of the Companies Act, 2013, 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 thereunder with respect to calling, convening and conducting the meeting;
  - (vi) business transacted at the meeting and result thereof;
  - (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
  - (viii) any other points relevant for inclusion in the report.
- (d) the report shall contain fair and correct summary of the proceedings of the meeting.

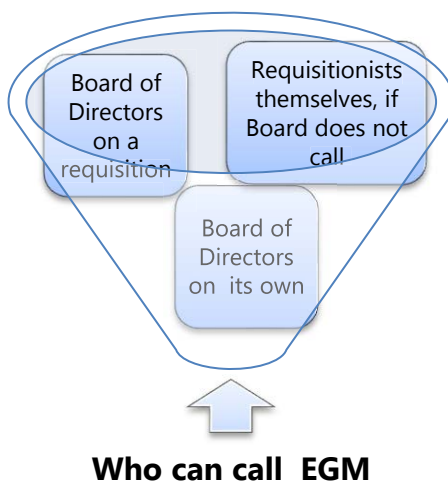
**Penalty for default :** If the company fails to file the report within 30 days of conclusion of AGM, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, 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.

### EXTRA-ORDINARY GENERAL MEETINGS [SECTION 100]

All general meetings other than annual general meetings are called extra-ordinary general meetings (EGMs). Section 100 of the Companies Act, 2013 contains provisions regarding the calling of EGMs.

#### Calling of EGM



#### <sup>22</sup> & <sup>23</sup> 1. By Board of Directors on its own -

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

<sup>22</sup> **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 No. 9 (E), Dated 4th January, 2017.*

<sup>23</sup> **In case of Specified IFSC Public Company**- In sub-section (1) of section 100, 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 No. GSR 8 (E), 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. *[Section 100 (1)]*

2. **By the Board of Directors at 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 1/10<sup>th</sup> of such paid-up share 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 have, on the date of receipt of requisition, at least 1/10<sup>th</sup> of total voting power of all the members having on the said date a right to vote. *[Section 100 (2)]*

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. *[Section 100 (3)]*

*Note:* 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 themselves:** 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. *[Section 100 (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. *[Section 100 (5)]*

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. *[Section 100 (6)]*



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

- (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 hereby 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 requisitionist 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.

### Illustration 15

*The members of Blumove Peacocks Appliances Private Limited, holding more than 1/10<sup>th</sup> voting power of the company, requisitioned the Board of Directors to call a general meeting on 14<sup>th</sup> July, 2022. However, the directors did not pay any heed to such a requisition and therefore, no general meeting was called. Discuss the consequences of the contravention of not calling a general meeting on the requisition of required number of members in accordance with the Companies Act, 2013.*

**Answer:** In the above case, the requisition for calling a general meeting is made by the sufficient number of requisitionists and therefore, the Board Directors is required to initiate the process of calling the meeting. According to section 100 (4), if the Board does not, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting within 45 days from the date of receipt of such requisition, then the requisitionists may themselves call and hold the meeting. This can be done within a period of three months from the date of the requisition. According to section 100 (5), a meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board of Directors.

Accordingly, the requisitionists being members of Blumove Peacocks Appliances Private Limited can call and hold the general meeting within a period of three months from the date of the requisition since the Board was not inclined to call such a meeting within the stipulated time after the requisition was made.

### Illustration 16

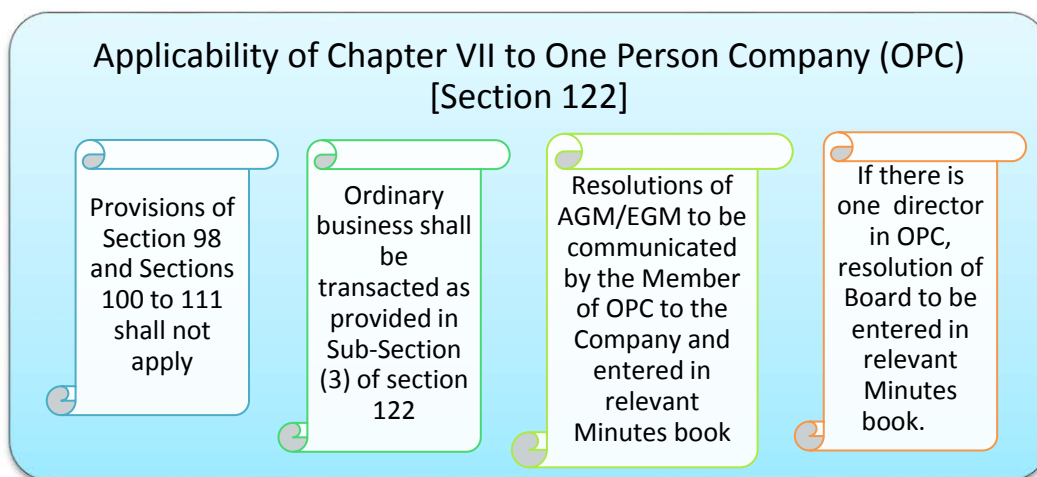
*The Board of Directors of Vishnu Orchards Limited, a company having its registered office in New Delhi, did not proceed to call a meeting despite receipt of a requisition from the required number of requisitionists. In view of this, requisitionists themselves decided to call the meeting to be held in Madrid, Spain on*

2<sup>nd</sup> October, 2022. Discuss whether the general meeting can be convened on the said date and place.

Keeping in view the facts of the above case, the meeting cannot be convened as proposed to be held by the requisitionists. As per *Rule 17 (2) of the Companies (Management and Administration) Rules, 2014*, the requisitionists should hold the meeting at the registered office of the company or in the same city or town in which the registered office is situated. In addition, the day of holding the meeting should be a working day and not a National Holiday. It is to be noted that 2<sup>nd</sup> October, 2022 is a National Holiday.



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



- (1) Section 122 (1) of the Companies Act, 2013 states that the provisions of section 98 and section 100 to 111 shall not apply to a One Person Company (OPC). An overview of these sections is as under:

Section No.	Heading of Section
Section 98	Power of Tribunal to call meetings of members, etc.
Section 100	Calling of EGM
Section 101	Notice of meeting

Section 102	Statement to be annexed to notice
Section 103	Quorum for meetings
Section 104	Chairman of meetings
Section 105	Proxies
Section 106	Restrictions on voting rights
Section 107	Voting by show of hands
Section 108	Voting through electronic means
Section 109	Demand for poll
Section 110	Postal ballot
Section 111	Circulation of Members' Resolution

- (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). *[Section 122 (2)]*
- (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. *[Section 122 (3)]*

In other words, following procedure shall be adopted for any business to be transacted at an AGM or any other meeting (*i.e. EGM*) of OPC:

- (i) The resolution of AGM or EGM shall be communicated by the member to the company;
- (ii) The said resolution shall be entered in the relevant minutes book.
- (iii) The minutes book shall be signed and dated by the member.

*Note:* The date on which the minutes book is signed by the member shall be deemed to be the date of the meeting for all the purposes.

- (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. [Section 122 (4)]

Simply stated, in case OPC has only one director, following procedure shall be adopted for any business to be transacted at the meeting of Board of Directors:

- (i) The resolution by such director shall be entered in the relevant minutes book.
- (ii) The minutes book shall be signed and dated by such director.

*Note:* The date on which the minutes book is signed by the director shall be deemed to be the date of the meeting for all the purposes.

### Penalty

If any default is made in compliance with any of the provisions of this rule, the company and every officer or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues. [Rule 30]

## 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 convening and conducting of the meetings.
- Section 89 states that a person holding beneficial interest in the shares of a company shall intimate the company about such interest in Form No. MGT–

4 or MGT-5, as applicable, and thereafter, the company shall intimate the RoC about the interest of member within 30 days in Form No. MGT-6.

- Section 90 requires a significant beneficial owner to make a declaration to the company specifying the nature of his interest and other prescribed particulars.
- Section 91 deals with the time limits within which the registers of the company are allowed to be closed and also mentions the penalty for contravention. 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 provides that every company shall file its Annual Return in Form No. MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file Annual Return from the financial year 2020-2021 onwards in Form No. MGT-7A which is an abridged form of Annual Return.
- Section 92 provides that annual return is to be filed after the conclusion of each Annual General Meeting and specifies the contents to be included in the annual return.
- The annual return shall be signed by a director of the company and the Company Secretary; and in case, there is no Company Secretary, by a Company Secretary in Practice.
- In case of One 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.
- 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 1/10<sup>th</sup> of the total members reside but the same should be approved by way of a special resolution.
- There are 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 stated in section 100.
- Section 96 discusses about the annual general meeting (AGM) 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 AGMs shall not exceed 15 months.

- In case of a newly incorporated company, first Annual General Meeting shall be held within 9 months from the closing of the first financial year. Accordingly, the company is not required to hold any annual general meeting in the year of its incorporation.
- The AGM shall be held within the business hours and on a working day, i.e. other than National Holidays.
- In case of default in holding Annual General Meeting, the Tribunal is empowered to call, or direct the calling of, an annual general meeting of the company. The Tribunal may give such ancillary or consequential directions as it thinks expedient.
- If for any reason it is impracticable to call a meeting of a company other than AGM, the Tribunal may, either suo motu or on the application of any director or member, order a meeting of the company to be called, held and conducted in such manner as it thinks fit.
- 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 an Extra-ordinary General Meeting (EGM) and states that either the board of directors or specified number of members making a requisition to the Board, are authorised to call an EGM.
- A notice is required to be sent to the members and others for calling the general meetings. The notice shall specify the place, date, day and the hour of the meeting and shall also contain a statement of the business to be transacted at such meeting.
- Quorum is the minimum number of members who must be personally present in order to constitute a valid meeting.
- Quorum needs to be present not only at the time of commencement of the meeting but also while transacting business.
- A Chairman needs to be appointed for the meetings. In the absence of any contrary provision in the Articles of a company, the members personally

present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

- Any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. The appointment of proxy shall be in Form No. MGT-11.
- At any general meeting, a resolution put to vote of the meeting shall be decided on a show of hands except where a poll is demanded or the voting is carried out electronically.
- There are certain items of business which need to be transacted only by means of voting through a postal ballot.
- If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.
- The members of a company have a right to propose resolutions for consideration at the general meetings.
- A resolution can be ordinary resolution or a special resolution. Ordinary resolution can be passed by simple majority whereas special resolution requires minimum 75% majority for its passing.
- A resolution passed at an adjourned meeting shall be treated as having been passed on the day on which it was actually passed and not on any earlier date.
- Copies of specified resolutions and agreements are required to be filed with the Registrar of Companies.
- As regards minutes, every company shall prepare, sign and keep minutes of every general meeting including the meeting called by the requisitionists, every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board.
- The minutes kept in accordance with the prescribed provisions shall serve as the evidence of the proceedings recorded therein.



- The books containing the minutes of the proceedings of any general meeting shall be open for inspection during business hours by any member, without charge, subject to certain reasonable restrictions. At least 2 hours in each business day shall be allowed for inspection.
- Any document, record, register or minute, etc., required to be kept or allowed to be inspected or copies given to any person by a company, may be kept or inspected or copies given, as the case may be, in electronic form.

## TEST YOUR KNOWLEDGE

### Multiple Choice Questions

1. *The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM.*
  - (a) *Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.*
  - (b) *No, the signing is not in order as only the Chairman is authorised to sign the report*
  - (c) *Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.*
  - (d) *No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.*
2. *The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?*

- (a) 75% of members entitled
  - (b) 90% of members entitled
  - (c) 91% of members entitled
  - (d) 95% of members entitled
3. Which among the following companies is not required to provide its members the facility to exercise right to vote by electronic mode under the provisions of the Companies Act, 2013?
- (a) B Limited, whose equity shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange.
  - (b) A Limited, whose equity shares (only type of share the company is having) are listed on a recognised stock exchange
  - (c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange
  - (d) D Limited, whose equity shares as well as preference shares are listed on a recognised stock exchange.

### Descriptive Questions

1. In a General meeting of Alpha Software Limited, the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes, Mukesh, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Mukesh is maintainable under the provisions of the Companies Act, 2013?
2. A General Meeting was scheduled to be held on Friday, 15<sup>th</sup> April, 2022 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 09-04-2022 was deposited by Mr. Y with the company at its registered Office on 11-04-2022. 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 12-04-2022 was deposited with the company on the same day

*and the proxy form in favour of Mr. N was deposited on 14-04-2022. All the proxies viz., Y, M and N were present before the meeting.*

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

3. *M. H. Mechanics Company Limited served a notice of General Meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Mechanics Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Mechanics Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 2013? Explain in detail.*
4. *Tulip Gardens Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants to keep the register of members at Kolkata.*
  - (i) *Keeping in view the provisions of the Companies Act, 2013, explain whether Tulip Gardens Ltd. can keep the Registers and Returns at Kolkata.*
  - (ii) *Whether Mr. Rich, a director holding only 400 shares of worth ₹ 4000, has the right to inspect the Register of Members?*
5. *Examine the validity of the following situation with reference to the relevant provisions of the Companies Act, 2013:*

*The Board of Directors of Shreya Transporters and Logistics Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.*
6. *Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?*
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 1/10<sup>th</sup> 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.*
- 8. *Surya, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position in respect of demand for inspection of proxies by Surya as per the provisions of the Companies Act, 2013*
- 9. *There are certain entities to which the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable. List them.*
- 10. *Infotech Ltd. was incorporated on 1.4.2018. No General Meeting of the company has been held till 30.4.2020. 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.*
- 11. *The Articles of Association of DJA Water Tanks Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary general meeting to consider the appointment of Managing Director:*
  - (i) *A is the representative of Governor of Uttar Pradesh.*
  - (ii) *B and C are preference shareholders,*
  - (iii) *D is representing Y Ltd. and Z Ltd.*
  - (iv) *E, F, G and H are proxies of shareholders.*

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

12. *What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Companies Act, 2013.*
13. *Super Mart Limited called its AGM in order to lay down the financial statements for the approval of the shareholders. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the opinion that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?*
14. *Madurai Bakestry Ltd. issued a notice for holding of its Annual General Meeting on 7<sup>th</sup> September, 2022. The notice was posted to the members on 16<sup>th</sup> August, 2022. Some members of the company alleged that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:*
  - (i) *Whether the meeting has been validly called?*
  - (ii) *If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?*
  - (iii) *Can the delay in giving notice be condoned?*
15. *KMN Cables Ltd. scheduled its Annual General Meeting to be held on 15<sup>th</sup> September, 2022 at 11:00 A.M. The company has 900 members. On the scheduled date of AGM following persons were present by 11:30 A.M.*
  1. *P1, P2 & P3 shareholders*
  2. *P4 representing ABC Ltd.*
  3. *P5 representing DEF Ltd.*
  4. *P6 & P7 as proxies of the shareholders*
    - (i) *Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.*
    - (ii) *What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.?*
    - (iii) *In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.*

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

16. *As a matter of fact, the usual time allowed for making entries in the register of members or register of debenture-holders or register of other security holders is seven days after the Board of Directors or its committee grants its approval. There are certain events, on the happening of which the entries can be made even after seven days. Which are those events?*
17. *With a view to transact some urgent business, Ratna, Rimpi and Ratnesh, the three directors of Shilpkkaar Constructions Limited are desirous of calling a general meeting of shareholders by giving shorter notice than 21 days' clear notice. The fourth director, Nilesh is of the opinion that such an action will attract penalty provisions since there is contravention. The paid-up share capital of the company is Rs. 30 crores divided into 3 crores shares of Rs. 10 each. Keeping in view the applicable provisions of the Companies Act, 2013, discuss regarding the possibility of calling a general meeting by giving shorter notice.*
18. *Miraj Sugar Mills Limited held its Annual General Meeting on September 15, 2022. The meeting was presided over by Mr. Venkat, the Chairman of the Board of Directors of the company. On September 17, 2022, 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.*
19. *Shikhar Cement Limited passed two resolutions by means of postal ballot. Keeping in view the relevant provisions of the Companies Act, 2013, you are required to advise the directors of the company regarding the provisions applicable for making entries in the minutes book including the time limit within which the entries must be made.*
20. *The paid-up share capital of Disha Home Appliances Limited is Rs. 8 crores divided into 80 lacs shares of Rs. 10 each. The directors of the company would like to know the circumstances under which the Annual Return of the company shall be required to be certified by a company secretary in practice.*
21. *Prince Auto-parts Limited, a listed company, has recently concluded its Annual General Meeting. As a statutory requirement, it is obligatory on its*

part to file with the jurisdictional Registrar of Companies a copy of the Report on its AGM.

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

## ANSWERS

### Answer to MCQ based Questions

1.	(d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.
2.	(d) 95% of members entitled
3.	(c) C Limited, whose preference shares (the company is having both equity as well as preference shares) are listed on a recognised stock exchange

### Answer to Descriptive Questions

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

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

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

Hence, in view of the above, the contention of Mukesh, a shareholder of Alpha Limited is not valid because the Chairman has absolute discretion on

the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

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

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

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

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

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

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

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



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

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

4. (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.

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

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

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

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

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

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

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

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

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the

meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

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

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

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

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

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

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

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

9. Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 (*as amended by the Companies (Significant Beneficial Owners) Amendment Rules, 2019, w.e.f. 8-2-2019*) states that the 'SBO' Rules shall not be made applicable to the extent the shares of the Reporting Company are held by following entities:
- (a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];
  - (b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;
  - (c) the Central Government, State Government or any local authority;
  - (d)
    - (i) a reporting company; or
    - (ii) a body corporate; or
    - (iii) an entity,  
controlled wholly or partly by the Central Government and/ or State Government(s);
  - (e) Securities and Exchange Board of India (SEBI) registered Investment Vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) regulated by SEBI;
  - (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.
10. 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 2018 to 31st March 2019, the first Annual General Meeting (AGM) of the company should be held on or before 31st December, 2019.

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

Thus, the first AGM of Infotech Ltd. should have been held on or before 31st December, 2019. Further, in case of first AGM, the Registrar of Companies does not have the power to grant extension of any time limit.

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

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

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

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

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

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

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares

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

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

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

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

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

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

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

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

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

- 14.** 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.
- 15.** According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000.
- (i) (1) P1, P2 and P3 will be counted as three members.
  - (2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
  - (3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted as constituting quorum.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a listed company; or
- (ii) a company having paid-up share capital of Rs. 10 crores or more or turnover of Rs. 50 crores or more.

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

- 21.** (i) In terms of Section 121 (2) of the Companies Act, 2013, Prince Auto-parts Limited is required to file with the jurisdictional Registrar of Companies a copy of the Report maximum within thirty days of the conclusion of its Annual General Meeting.
- (ii) In terms of Section 121 (3) of the Companies Act, 2013, every listed company, which fails to file with the jurisdictional Registrar of

Companies a copy of the Report on its Annual General Meeting within the specified time limit, shall be liable to the following penalty:

- **Company:** Rs. one lakh and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. five lakh.
- **Every officer who is in default:** Minimum Rs. twenty-five thousand and in case of continuing failure, with a further penalty of Rs. five hundred for each day after the first during which such failure continues subject to a maximum of Rs. one lakh.

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

[illegible]