

## **Meetings and resolution**

A meeting is a gathering of two or more people that has been convened for the purpose of achieving a common goal through verbal interaction, such as sharing information or reaching agreement. Meetings may occur face to face or virtually, as mediated by communications technology, such as a telephone conference call or a video conference.

### **Annual General Meeting**

- (1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

**Provided** that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year :

**Provided further** that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:

**Provided also** 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.

- (2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:

**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.

### **Power of Tribunal to Call Annual General Meeting**

- (1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

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

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

## **Extraordinary General Meeting**

An Extraordinary General Meeting (an EGM) can be defined as a meeting of shareholders which is not an Annual General Meeting (an AGM). It is held when some urgent issue becomes about the company arises or any situation of crisis and it requires the input of all senior executives and the Board. As we know, an EGM is held in case of emergency situations and requires the attention of seniors execs and the Board. Members, shareholders, and execs must be instructed on the purpose of the meeting so they have time to prepare their valuable input and then, collectively decide further course of action.

### **Who can Call for an EGM**

The members/shareholders of a company can call for an extraordinary general meeting. However, only certain members with a significant stake in the company are allowed to call for an EGM. They are listed in the Companies Act, 2013 as follows.

- In the case of a company having a share capital, members holding not less than one-tenth of such paid-up capital of the company that carry voting rights in regard to that matter as on the date of depositing the requisition;
- In the case of a company not having a share capital, members holding not less than one-tenth of the total voting power in regard to that matter as at the date of deposit of the requisition.
- EGM called by Board. Upon the receipt of a valid requisition, the Board has a period of 21 days to call for an EGM. The EGM must be then held within 45 days from the day of the EGM being called.
- EGM called by the requisitionists – In case the Board fails to call for an EGM, it can be called for by the requisitionists themselves during a period of 3 months from the day the requisition was deposited. If the EGM is held within this specified period of 3 months, it can be adjourned to any day in the future after the 3 months.

### **Essentials of a Valid Requisition**

The essentials of a valid requisition are listed down below as follows:

1. Specify the issue for which the meeting is called
2. Signed by requisitionists; and
3. Must be deposited at the company's registered office.

### **Requirements for holding an EGM**

A notice period of 21 days must be given to the members. However, there is an exception to this rule. Where if 95% of the voting members consent, the EGM can be held at a shorter notice.

### **Quorum Required for EGM**

Unless the company's Articles state otherwise, the following number of members are required for a quorum.

- In the case of a public company: five members personally present; and
- In the case of any other company: two members personally present.

# Conducting and convening

## MEETINGS OF THE BOARD

### 1. Frequency of Meeting:

**First Meeting:** First Meeting of Board of Directors within 30 (Thirty) days from the date of Incorporation of company.

#### **Subsequent Meetings:**

One person Company, **Small company** and Dormant company:

- At least one meeting of Board of directors in each half of calendar year
- Minimum Gap B/W two meetings at least 90 days.

Other than Companies mentioned above:

- Minimum No. of 4 meetings of Board of Director in a calendar year
- Maximum Gap B/W two meetings should not be more the 120 days.

### 2. Calling of Meeting: Meeting of Board of Director should be called by giving 7 days notice to Directors at his registered address **through:**

- By hand delivery
- By post
- By Electronic means

**Meeting at shorter Notice:** A meeting of Board of Directors can be called by shorter notice subject to the conditions:

- If the company is require to have independent director:
  - Presence of at least one Independent director is required.
  - In case of absence, decision taken at such meeting shall be circulated to all the directors, and
    - shall be final only on ratification thereof by at least one Independent Director
- If the company doesn't require to have independent director: The meeting can be called at a shorter notice without any conditions to be complied with.

### 3. Quorum of Board Meeting:

- 1/3 rd of total strength OR 2 (Two) Directors, whichever is higher.
- Where meeting of Board could not be held for want of quorum, the meeting shall automatically adjourn to same time, same place at next week (Not being national holiday).
- If number of directors reduced below quorum, then the remaining directors may hold the meeting for the following purposes:
  - To call a General meeting
  - Increase the number of directors.

- Quorum in case of Interested Directors:
  - If interested director exceed or equal to 2/3 of total strength the remaining directors not being less than 2 (two) shall be the quorum.

**Note:**

1. Total strength shall not include directors whose places are vacant.
2. Interested director means, a director interested in accordance with section 184(2).
3. Director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.
4. **OPC Having One Director:** Provision of Section 173 and 174 shall not apply to an OPC having one director.

**4. Participation of Directors in Board Meetings:** directors may, apart from attending the meeting physically, participate in the meeting by way of video conferencing & other audio visual means.

- Matter which can't be dealt at a meeting held though Video conferencing:
  - Approval of the annual financial statements;
  - Approval of the Board's report;
  - Approval of the prospectus;
  - Audit Committee Meetings for consideration of accounts; and
  - Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

**• Procedure for conducting of meeting through Video Conferencing:**Requirements before Meeting:

- **The notice of the meeting shall, inform** regarding the option available to participate through video conferencing mode and provide all the necessary information to enable the directors to participate through video conferencing.
- **A director intending to participate through video conferencing or audio visual means shall communicate prior intimation sufficiently in advance to the Chairperson or the company** secretary of the company, so that company is able to make suitable arrangements in this behalf.
- Alternatively a director may intimate at the beginning of the calendar year his desire, to participate through the electronic mode, which shall be valid for that calendar year.

**Ordinary and special resolutions.**

- (1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

- (2) A resolution shall be a special resolution when—
- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
  - (b) the notice required under this Act has been duly given; and
  - (c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

## **Proxies**

- (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:  
Provided that a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll:  
Provided further that, unless the articles of a company otherwise provide, this subsection shall not apply in the case of a company not having a share capital:  
Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:  
Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.
- (2) 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.
- (3) If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.
- (4) Any provision contained in the articles of a company which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.
- (5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees:  
Provided that an officer shall not be punishable 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.
- (6) The instrument appointing a proxy shall—
- (a) be in writing; and

- (b) 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.
- (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.
- (8) 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.

## **Voting**

The votes cast by the shareholders play a 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.

With the dawn of the new law governing Companies which strives to shareholder activism, there are different options for a shareholder to vote on resolutions to be passed at General Meetings of the Company or in fact, in case of e-voting have his say without actually being present at the meeting!

Shareholders wider participation is giving real heat to the corporates. *Recently, Tata undoubtedly India's one of the biggest conglomerate had a bitter taste of it, when postal ballot resolutions paying remuneration to executive directors of Tata Motors failed. Around 64% of institutional investors and 41% of public shareholders have voted against the resolution.*

*In this article, unless otherwise expressly provided all sections referred to are of Companies Act, 2013 and rules referred to are of Companies (Management and Administration rules), 2014.*

## **METHOD OF VOTING**

The various modes through which a shareholder can cast his vote are mentioned below:-

→ **By attending the General Meeting:-**

### **1. Show of Hands**

As per Section 107, a resolution put to the vote of the meeting shall, ***unless a poll is demanded under section 109*** or the ***voting is carried out electronically***, be decided on a show of hands.

Further, through MCA's General Circular no. 20/2014 dated 17/06/2014, it has been precisely clarified that in case of Companies falling under Section 108 read with rule 20 (voting by electronic means), provisions of Section 107 (voting by show of hands) will not apply.

### **2. Poll**

As per Section 109 a poll may be demanded by such number of members holding, shares worth minimum value of Rs. Five Lakh or 10% voting power in the Company.

Further, MCA vide its aforesaid General Circular has clarified that in case of Companies falling under Section 108 read with rule 20 the concept of demand for poll is redundant.

Manner of voting by shareholders present in meeting if Company falls under purview of Section 108:-

It has been clarified by the circular that since these companies are mandatorily required to provide e-voting facility to its shareholders where the Principle of "One share – One vote" is recognized, therefore the meeting should be regulated accordingly by the Chairman.

Regulation of meeting by the Chairman:-

The chairman is authorized to regulate the meeting by virtue of Section 109(6) & aforesaid circular. The procedure has been jotted down in this article.

→ **By voting electronically:-**

As per Section 108 read with rule 20, every listed company and companies having more than 1000 shareholders are required to give e-voting option to their shareholders.

Further, as per revised Clause 35B (2) of listing agreement applicable from 17<sup>th</sup> April, 2014 every listed company agrees to provide to its shareholders who do not have access to e-voting facility, option to vote through postal ballot.

But, as per the circular issued by MCA it not necessary for a company to provide postal ballot facility to shareholders in case where rule 20 (i.e. e-voting) is applicable. This is however contradictory with Clause 35B (2) of listing agreement.

As per decided case of Supreme Court, in case of listed companies listing agreement shall prevail in comparison to company law. Therefore, in case of listed companies option for postal ballot is also to be provided to shareholders who do not have access to e voting facility.

## **PROCEDURE FOR POLL AT GENERAL MEETING:-**

### **A. Documents required:-**

1. Polling Papers(MGT-12)
2. Register of Members, attendance register(including attendance slips) and proxy register
3. Specimen signatures of members (to be coordinated with the RTA) and proxy forms received (MGT-11)
4. Board Resolution under section 113 (Representation of body corporate)
5. e-voting scrutinizer's report and ballot papers received in pursuance of clause 35B (2) of listing agreement

### **B. Procedure:-**

1. The scrutinizer shall distribute the polling paper to the members & proxies and lock an empty box in their presence.
2. After voting, he will open the box in presence of at least 2 witnesses.
3. He shall count the votes and check the following things while doing so:-
  - a. The person voting is member in register of members during book closure.
  - b. The person is present at the meeting, from attendance register.

- c. Validity of signature of the person signing, from specimen signatures.
- d. In case, person voting is a proxy, then proxy registers and forms.
- e. In case member a body corporate, authorization through Board resolution.
- f. In cases where e-voting option is also provided technical support should be provided to the scrutinizer for orderly conduct of poll. It should be ensured that members who have voted electronically or who have casted their vote through ballot paper by exercising their right under 35B (2) of listing agreement, are not exercising their voting right again at the general meeting. This can be confirmed from e-voting scrutinizers report.
- g. Incomplete polling papers to be taken as invalid.
- 4. In case, there is doubt upon validity of proxy, validity shall be decided in consultation with the chairman.
- 5. The scrutinizer thereafter, prepare his report in form MGT-13 and submit it to the chairman who shall counter-sign the same, within 7 days from date of taking of poll.

### **CONTRADICTION:**

As per rule 21(2) report of scrutinizer on poll shall be submitted to the Chairman of the meeting within seven days from the date the poll is taken.

But as per rule 20(3)(xiv) the results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members.

In light of above provisions it can be interpreted that the result of poll has to be mandatorily be given by the scrutinizer within 2 days (not seven) to ensure compliance with rule 20(3)(xiv).

### **Who can be appointed as scrutinizer?**

#### **Scrutinizer for e-voting**

As per rule 20(3) (ix) the Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the company and is a person of repute.

#### **Scrutinizer for poll**

As per Section 109(5) The Chairman shall appoint such number of persons as he deems necessary to scrutinize the poll process and report thereon to him.

### **Is it necessary that e-voting scrutinizer be appointed as scrutinizer at General meeting?**

No, from answer to the previous question it is evident that both the scrutinizers can be different.

However, due to complications occurring from e-voting, it is advisable that the scrutinizer appointed for e-voting be also appointed as scrutinizer for poll to be conducted at general meeting. For, this it should be ensured that the scrutinizer be a member of the Company entitled to attend the General Meeting, so that he can be selected as scrutinizer for poll also.



# **Minutes**

## **Minutes of Proceedings of General Meeting, Meeting of Board of Directors and Other Meeting and Resolutions Passed by Postal Ballot**

- (1) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty 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.]
- (2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.
- (3) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
- (4) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—
  - (a) the names of the directors present at the meeting; and
  - (b) 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.
- (5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—
  - (a) is or could reasonably be regarded as defamatory of any person; or
  - (b) is irrelevant or immaterial to the proceedings; or
  - (c) is detrimental to the interests of the company.
- (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).
- (7) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.
- (8) Where the minutes have been kept in accordance with sub-section (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.
- (9) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.
- (10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

- (11) 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 twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.
- (12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

# **Winding up**

## **Concept of winding up**

As per section 270 of the Companies Act 2013, the procedure for winding up of a company can be initiated either –

- a) By the tribunal or,
- b) Voluntary.

## **I. WINDING UP OF A COMPANY BY A TRIBUNAL:-**

As per Companies Act 1956, a company can be wound up by a tribunal on the basis of the following reasons:

1. Suspension of the business for one year from the date of incorporation or suspension of business for whole year.
2. Reduction in number of minimum members as specified in the act (2 in case of private company and 7 in case of public company)

But with the introduction of new Companies Act 2013, these above stated grounds for winding up have been deleted and some new situations for winding up have been inserted.

As per new Companies Act 2013, a company can be wound up by a tribunal in the below mentioned circumstances:

1. When the company is unable to pay its debts
2. If the company has by special resolution resolved that the company be wound up by the tribunal.
3. If the company has acted against the interest of the integrity or morality of India, security of the state, or has spoiled any kind of friendly relations with foreign or neighboring countries.
4. If the company has not filled its financial statements or annual returns for preceding 5 consecutive financial years.
5. If the tribunal by any means finds that it is just & equitable that the company should be wound up.
6. If the company in any way is indulged in fraudulent activities or any other unlawful business, or any person or management connected with the formation of company is found guilty of fraud, or any kind of misconduct.

## **II. FILING OF WINDING UP PETITION:-**

Section 272 provides that a winding up petition is to be filed in the prescribed form no 1, 2 or 3 whichever is applicable and it is to be submitted in 3 sets. The petition for compulsory winding up can be presented by the following persons:

- The company
- The creditors ; or
- Any contributory or contributories
- By the central or state govt.
- By the registrar of any person authorized by central govt. for that purpose

At the time of filing petition, it shall be accompanied with the statement of Affairs in form no 4. That petition shall state the facts up to a specific date which shall not more than 15 days prior to the date of making the statement. After preparing the statement it shall be certified by a Practicing Chartered Accountant. This petition shall be advertised in not less than 14 days before the date fixed for hearing in both of the newspapers English and any other regional language.

## **III. FINAL ORDER AND ITS CONTENT:-**

The tribunal after hearing the petition has the power to dismiss it or to make an interim order as it think appropriate or it can appoint the provisional liquidator of the company till the passing of winding up order. An order for winding up is given in form 11.

## **IV. VOLUNTARY WINDING UP OF A COMPANY:-**

The company can be wound up voluntarily by the mutual decision of members of the company, if:

- Ø The company passes a Special Resolution stating about the winding up of the company.
- Ø The company in its general meeting passes a resolution for winding up as a result of expiry of the period of its duration as fixed by its Articles of Association or at the occurrence of any such event where the articles provide for dissolution of company.

## **V. PROCEDURE FOR VOLUNTARY WINDING UP:-**

1. Conduct a board meeting with 2 Directors and thereby pass a resolution with a declaration given by directors that they are of the opinion that company has no debt or it will be able to pay its debt after utilizing all the proceeds from sale of its assets.
2. Issues notices in writing for calling of a General Meeting proposing the resolution along with the explanatory statement.
3. In General Meeting pass the ordinary resolution for the purpose of winding up by ordinary majority or special resolution by 3/4th majority. The winding up shall be started from the date of passing the resolution.
4. Conduct a meeting of creditors after passing the resolution, if majority creditors are of the opinion that winding up of the company is beneficial for all parties then company can be wound up voluntarily.
5. Within 10 days of passing the resolution, file a notice with the registrar for appointment of liquidator.
6. Within 14 days of passing such resolution, give a notice of the resolution in the official gazette and also advertise in a newspaper.

7. Within 30 days of General meeting, file certified copies of ordinary or special resolution passed in general meeting.
8. Wind up the affairs of the company and prepare the liquidators account and get the same audited.
9. Conduct a General Meeting of the company.
10. In that General Meeting pass a special resolution for disposal of books and all necessary documents of the company, when the affairs of the company are totally wound up and it is about to dissolve.
11. Within 15 days of final General Meeting of the company, submit a copy of accounts and file an application to the tribunal for passing an order for dissolution.
12. If the tribunal is of the opinion that the accounts are in order and all the necessary compliances have been fulfilled, the tribunal shall pass an order for dissolving the company within 60 days of receiving such application.
13. The appointed liquidator would then file a copy of order with the registrar.
14. After receiving the order passed by tribunal, the registrar then publish a notice in the official Gazette declaring that the company is dissolved.