

## **Introduction**

A company is a body corporate recognised by law as a person having its entity distinct from its members. It is capable of acting in its own name and can hold property in its own name. Despite all these powers, it is not a physical being. It, therefore, expresses its will or takes its decisions through resolutions passed at regularly convened meetings of the shareholders and their elected representatives, the directors.

Protection of investors is one of the primary themes of the Companies Act. The Companies Act provides the shareholders a forum of protection and then leaves them to a large extent to take care of themselves. The forum is meeting of the shareholders.

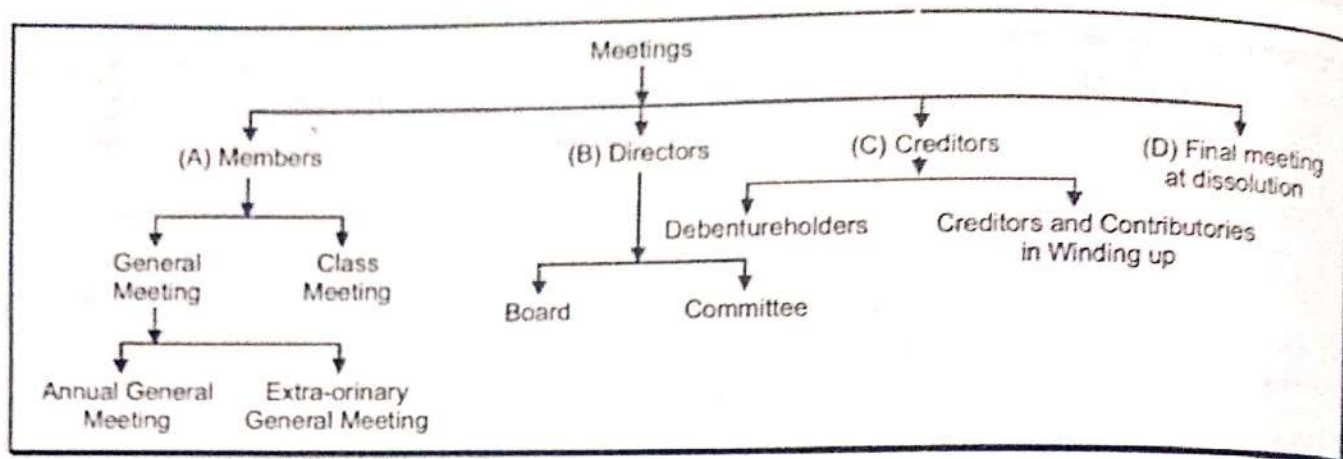
## **Meaning of Meeting**

In the context of a company, the word 'meeting' implies the coming together of a certain number of members for transacting the business in the agenda, for which a previous notice has been given.

It follows that to constitute a meeting there must be two or more persons. Generally the purpose of a meeting is to consider issues of common interests to its attendants.

## **Kinds of meetings**

Company meetings are of different kinds. The following table gives the classification of company meetings.



[NOTE. THE STATUTORY MEETINGS & STATUTORY REPORT U/S 165 OF COMPANIES ACT, 1956 HAVE BEEN OMITTED IN COMPANIES ACT, 2013]

As explained above in the chart, the meetings can be classified into various kinds :

**(A) Meeting of the Members :** The meetings of members of a company are categorized into two categories :

**(1) General Meetings :** The term 'General Meeting' has not been defined anywhere in the Companies Act, 2013, but it signifies any meeting which all those members of a company who have a right to vote are entitled to attend. The resolutions passed in the General meeting are binding on all the members of the company and the company itself, and, unless the memorandum or articles or terms of issue of a class of shares take away or limit the voting rights of a class of members, all members of the company may attend and vote at such meetings.

**General Meetings can further be classified as :**

- (i) Annual General Meeting [U/s 96]
- (ii) Extraordinary General Meetings [U/s 100]

[Refer Chapter-15 and 16 for detailed information on Annual General Meeting and Extraordinary General Meeting]

**Note :** The Companies Act, 1956 contained provisions relating to statutory meeting and statutory report under Section 165 of that but this section has been omitted in the Companies Act, 2013 and therefore, there is no provision for Statutory Meeting of the Companies under the new Act of 2013.

**(2) Class Meetings :** Class Meetings are held to deal with certain matters affecting the interests of the holders of a particular class of shares.

In other words, class meetings are those meetings which are held by shareholders of a particular class of share *e.g.*, preference shares. The class meetings are usually required to be held when it is proposed to alter, vary or affect the rights of a particular class of shares. For effecting such changes, it becomes necessary to call separate class meetings of the holders of those shares and seek their approval. Thus for example, where a company desires to cancel the arrears of dividends on cumulative preference shares, it is necessary to call a meeting of such shareholders and pass a special resolution as required by Section 48 of the Companies Act, 2013.

Class Meetings, are held to pass resolutions which are binding only on the members of the class of shares concerned, and the members of that class alone may attend and vote at



that meeting. The purpose for which class meetings are held is to obtain the assent of the concerned class-members to alterations in the rights of the class to which they pertain under the provisions to that effect in the memorandum or articles or to assent to compromises or arrangements which affect the class.

### (B) Meetings of the Directors

[Refer chapter-17, Board Meetings for detailed information]

### (C) Meetings of the Creditors [Section 230]

The meetings of the creditors is usually called when the company wants to make any compromise or arrangement with the creditors or any class of them. In fact, these meetings are not the meetings of the company as they are called by the creditors. Creditor's meeting may be called for any of the following purposes—

- (i) to enter into a compromise or arrangement proposed between a company and, its creditors or any class of them; or for a compromise or arrangement between a company and its members or any class of them;
- (ii) to seek approval of creditors for amalgamation or reconstruction of a company; or
- (iii) to seek consent of the creditors for winding up of a company.

In case of a company which is being wound up, any creditor or class of creditors or liquidator may apply to the Court for ordering a meeting of the creditors or class of creditors. If the majority in number representing  $\frac{3}{4}$ <sup>th</sup> in value of the creditors be present and voting either in person or by proxy (where allowed under rules made under Section 468) agree to the compromise or arrangement, shall if sanctioned by the Court, be binding on all the creditors, liquidators or contributories, as the case may be.

#### (i) Meeting for Voluntary Winding up of the Company [u/s 306]

In case of voluntary winding up of the company, the company shall :

- first call a meeting u/s 304 at which the resolution for the voluntary winding up of the company is to be proposed;
- later, the company shall call a meeting of its creditors u/s 306 (either on the same day on which meeting for resolution is called or on its next day).

However, under section 306 the company shall send the notice of both meeting by registered post to the creditors.

#### (ii) Meeting of the Debenture holders

The company may call the meeting of debenture holders to consider, (i) any variation in the conditions of their security or (ii) any alteration in their rights. The company may also hold debenture holder's meeting for issuing new debentures or effecting a change in the rate of interest on the existing debentures. The rules and procedure of these meetings are usually stated on the reverse of the debenture trust deed.

### (D) Final Meeting at dissolution [Section 318]

When the company is fully wound up, the company liquidator shall prepare a report of the winding up. This report shall show that the assets and property of the company has been disposed off and its debts have been fully discharged. Thereafter, the company liquidator shall call a general meeting of the company for laying the final winding up accounts. When the majority of the members of the company are satisfied (after considering the liquidator's

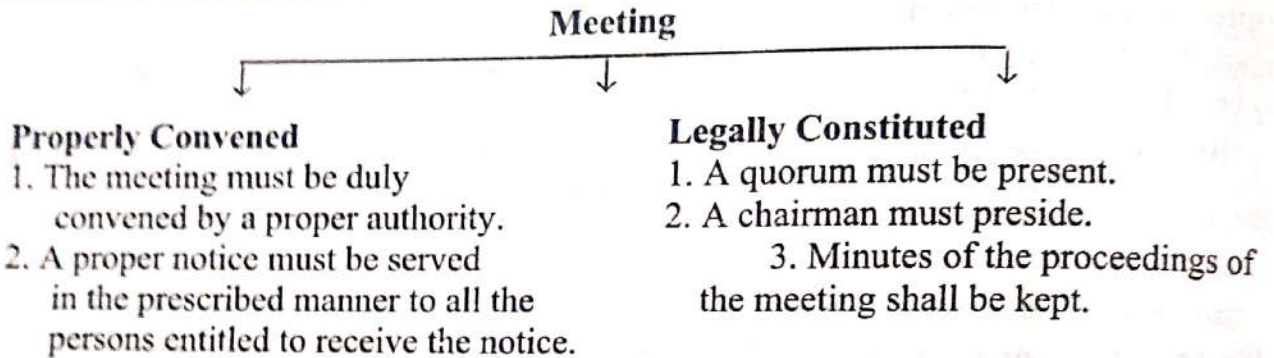


report) that the company shall be wound up, then they may pass a resolution for the dissolution of the company.

## REQUISITES OF A VALID MEETING

A meeting must be called and held in the manner provided in the Act and the articles. Any irregularities in the procedure followed for convening and conducting a meeting will invalidate the proceedings of that meeting. Before a meeting can validly transact any business, the following requirements must be satisfied :

### PROPERLY CONVENED



It may be noted that the members or shareholders of the company are bound by the decisions, whether or not they were present provided the meeting was valid.

### 1. Proper Authority

A meeting to be valid must be called by a proper authority. The proper authorities to call the meetings are :

(i) **Board of Directors.** The Articles of Association of a company normally empower the Board of directors to convene general meeting.

Even Board has power at common law to call a general meeting even if this power is not expressly conferred upon them by Articles.

An individual director has no power to call a general meeting.

Similarly a secretary has no right to convene a general meeting without the authority of the Board of directors. But, such notice may be ratified by the Board before the meeting.

However, where certain directors held a meeting of the Board and prevented certain directors, who were validly in office from attending the meeting, the court held that since the meeting of the Board was unlawful, the notice convening the general meeting of the company also became invalid. But minor irregularity of the Board meeting will not incapacitate the general meeting from acting.

**Members.** If the directors do not call the meeting, then requisitionists (members) u/s 100 are eligible to Call EGM.

**The Tribunal.** An AGM can be called by Tribunal u/s 97.

National Company Law Tribunal. An EGM can be called by NCLT u/s 98.

A meeting so called and conducted shall be deemed to be a meeting of the company duly called and conducted.



## 2. Notice [Section 101]

The second requirement of a valid meeting is that all those who are concerned with business of the meeting and are entitled to attend it, are communicated of the date, time and business of the meeting. Such a communication is called 'notice of the meeting.'

**Length of notice.** Not less than 21 days notice in writing or through electronic mode should be given to the members to call a meeting of any kind. [As per 2013 Act notice can be given in the electronic mode u/s 101].

Not less than 21 days mean that both the date of the meeting and the date on which it is served are to be excluded. i.e. 21 clear days notice.

When a notice is sent by post, it is deemed to be served after 48 hours of posting.

This, notice to be valid must be despatched 25 days before the date of the meeting.

The articles may provide for a notice longer but not shorter than 21 days.

**When shorter notice will be sufficient. The meeting can however, be called by giving a shorter notice in the following cases :**

- (a) In the case of annual general meeting, by the consent of all the members entitled to attend and vote and not merely those present in the meeting.
- (b) In the case of any other meeting, by the consent of the members holding not less than 95 per cent *paid up share capital of the company, or holding not less than 95 per cent voting power.*

A person who is present and who votes at the meeting, will not be entitled to challenge the resolution of the ground of an invalidity of the notice.

**Notice to whom.** Notice of every meeting must be given to the following persons :

- (i) Every member of the company at his registered address in India.
- (ii) Every person entitled to shares in consequence of the death or insolvency of a member [legal representative of any deceased].
- (iii) The auditor or auditors of the company.
- (iv) Every director of the company.

If shares are held jointly by more than one person, notice may be served on the joint holder named first in the register in respect of the share [Sec. 21].

The Notice must be given to a Member even if he has waived his right to receive the Notice.

**Omission to give notice.** Deliberate omission to give notice of the meeting to the members or to a single member will make the meeting invalid. But an accidental omission to give notice to or non-receipt of the notice by any member, shall not invalidate the proceedings at the meeting. The expression 'accidental' implies absence of intention or deliberate design.

**Examples :** (1) A committee of a club met and passed a resolution expelling Y from the club. X a member of the committee was not summoned to the meeting, as she had previously informed that she would be unable to attend meetings. It was held that the omission to summon X invalidated the proceedings of the committee. [Young v. Ladies Imperial Club Ltd. (1920) 2 K.B. 523 (C.A.)].

(2) Nine members did not receive notice of a meeting because the addressograph plates for them had been separated from the rest because their dividend warrants had been returned through the post undelivered and uncashed. It was held that the omission was accidental and the meeting was valid. [Re : West Canadian Collieries Ltd. (1962) All. E.R. 26].



**Contents of the notice.** Every notice of a company must specify the place, day and hour of the meeting and shall contain a statement of the business to be transacted thereat. If time for holding the meeting and other essential particulars required by the section 101 are not mentioned in the notice, the meeting will be invalid and all resolutions passed thereat will be of no effect.

(a) Place of meeting.

(I) For AGM—(i) at Registered office of the Company or

(ii) at some other place within the same city, town or village in which the registered office of the company is situated

(II) for other general meetings : Not subject to aforesaid provision.

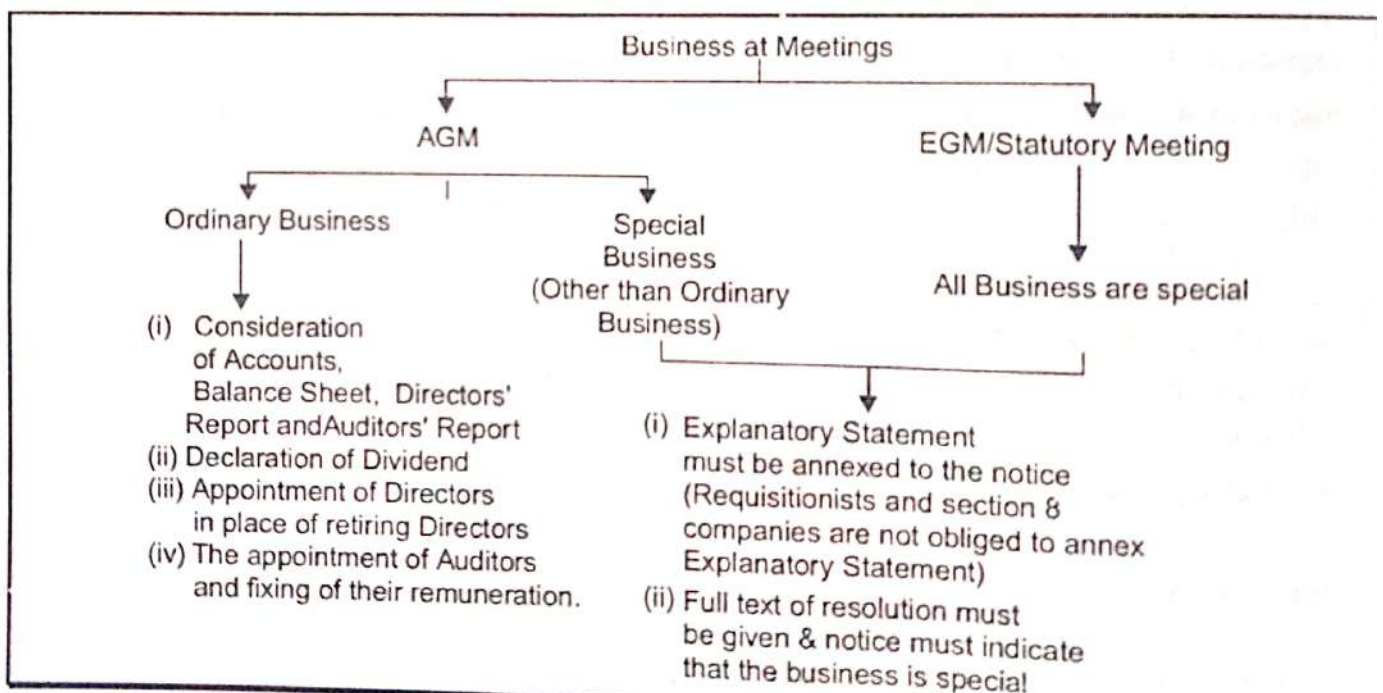
(b) Day of the meeting.

AGM. On any day that is not a public holiday.

For Other General Meetings. No bar to holding of any general meeting on a public holiday.

(c) Time of the meeting. Every AGM must be held during the business hours of the company. But such meeting may continue beyond the usual hours.

Other general meetings can be held at any time.



(d) Type of Businesses. Notice of meeting must contain a statement of nature of the business to be transacted in the meeting. Section 102 classifies the business into ordinary business and special business.

**Ordinary business.** The following business which is transacted at every annual general meeting is considered as ordinary business.

- (i) The consideration of accounts, balance sheet and the report of the Board of directors and auditors.
- (ii) The declaration of dividend.
- (iii) The appointment of directors in place of those retiring.
- (iv) The appointment of and fixing the remuneration of auditors.



**Special business.** Any business other than ordinary business transacted at an annual general meeting and all business transacted at the statutory meeting and at any extraordinary general meeting is deemed as special business.

In case of any items of special business to be transacted in the general meeting, an explanatory statement shall be annexed to the notice of the meeting.

Where any item of special business transacted at meeting affects any other company, the extent of shareholding interest of any directors or manager of the company in that other company, exceeding 20 percent of the paid-up share capital of that other company, must also be mentioned in the explanatory statement.

If the meeting is to accord approval to a document, the explanatory statement must also state the time and place where that document can be inspected.

**MODE OF NOTICE (SECTION 20)**

The notice may be sent to a member either personally or by post, to his registered address or the address given by him for sending notices in India.

If the notice is sent by post it is deemed to have been received on the expiry of 48 hours from the date of posting.

A notice by advertisement in a paper circulating in the neighbourhood of the registered office shall be deemed to be duly served, on the date on which it appears, on every member who has no registered address or has not supplied one to the company.

**Notice in case of adjourned meeting.** An adjourned meeting is a continuation of the original meeting and therefore, a fresh notice of such a meeting is not required to be given to the members unless articles so provide.

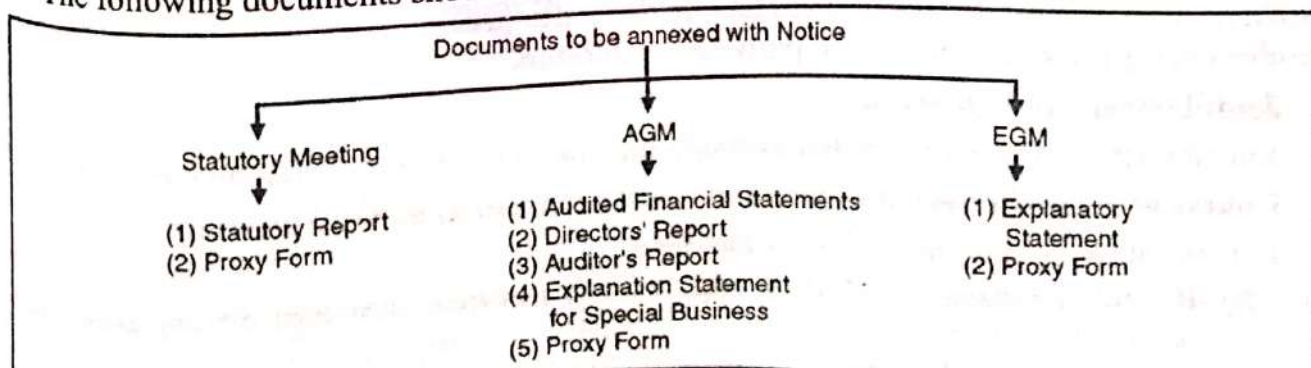
If the meeting is adjourned sine die (i.e. without fixing a day for the holding of adjourned meeting) or if fresh business, other than such business as is left uncompleted at the original meeting, is to be discussed, a fresh notice of the adjourned meeting must be given. Also, "when a meeting is adjourned for 30 days or more, notice of adjourned meeting shall be given as in the case of original meeting. Save as aforesaid, it shall not be necessary to give notice of an adjourned meeting."

**Notice of the Right of a Member to Appoint Proxy**

The notice must state with reasonable prominence that a member entitled to attend and vote is authorized to appoint a proxy to attend and vote instead of himself and that a proxy need not be a member. [Section 176(2)]

**Documents Accompanying the Notice**

The following documents should be annexed to the notice of the meeting.





### 3. PROPER QUORUM [SECTION 103]

'Quorum' means the minimum number of members who must be present in order to constitute a valid meeting and to validly transact business at the meeting. If the quorum is not present, the meeting shall not be valid and therefore the proceedings of such meeting shall be invalid.

Requisite Quorum

- Public Company --5 members personally present

U/s 103 of 2013 Act

Quorum for Public Companies is based on number of members, explained below :

Present No. of Members (on the date of meeting)	Quorum Required
• < 1000 (less than 1000)	5
• > 1000 < 5000 (more than 1000 but less than 5000)	15
• > 5000 (more than 5000)	30

- Any other Company --2 members personally present
- Articles may prescribe a larger quorum than provided u/s 103.

When all members of the company are present in person, the quorum is present even if quorum required by articles is more than the number of members.

Preference Shareholders are not to be Considered

**Preference shareholders are not counted in quorum except where :**

- (1) the proposed business include any item of business directly affecting their right.
- (2) preference shareholders have earned voting rights (section 47)

Proxies are not to be considered in the quorum

'Proxies' are to be excluded while counting the quorum. Hence, a company cannot, by its Articles or otherwise, provide for proxies being counted for purposes of quorum. However, the representative of a body corporate or of the President or the Governor of a state is to be treated as a member 'personally present' for purposes of counting a quorum.

A foreign company can also appoint representative to attend the meeting.

**Quorum where two or more body corporates are represented by a single individual.**

Where two or more corporate bodies are represented by a single individual, each of the bodies corporate will be treated as personally present by the individual representing it. For instance, if he represents three corporate bodies, his presence will be counted as three members being present in person for purposes of quorum.

**Joint Holders and Quorum**

Joint holders of shares are treated as single member for purpose of counting quorum.

**Course of action in case of quorum not being present at general meetings.**

If a quorum is not present within half an hour :

- (a) If General meeting is called on requisition of members, then such meeting shall stand dissolved.
- (b) If general meeting is called otherwise than on requisition of members.



The general meeting shall adjourn to :

- (i) such day, time and place as the Board may decide.
- (ii) If the Board does not so determine the day, time a place, the general meeting shall adjourn to same day, time and place in the next week.
- (iii) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, then the members present shall be a quorum.

One man meeting. But, where only one person is present, he cannot form a quorum, as a single member cannot constitute a meeting. The Department of Company Affairs has also clarified that a single member present cannot by himself constitute a quorum. However, the Company Law recognises certain exceptions which are as follows :

#### In case of class meeting the

- (i) one member may constitute a quorum for a meeting where he holds all the shares of a class. Thus, where all the preference shares in a company were held by one shareholder only it was held that a meeting of the preference shareholder attended by him only was valid.
- (ii) If there is only one creditor, debentureholders, he shall constitute quorum for the creditors, or debentureholder's, meeting.
- (iii) A member present in more than one capacity is counted separately in every capacity. In such a case, one person may form the quorum.
- (iv) One member may constitute a quorum for an Annual General Meeting when it is called by the Tribunal under section 97 of the Act.
- (v) One member of the company present in proxy or by person, shall be deemed to constitute a meeting where the Tribunal orders a general meeting other than AGM of the company to be held under section 98.
- (vi) Where a quorum is not present at a general meeting within half an hour of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place. If at the adjourned meeting also a quorum is not present within half an hour of the time of the meeting, the members present are the quorum. In such a case even one member will constitute the quorum.
- (vii) In the case of meetings of committees of the board, the committee may constitute a single person.

**Should quorum be continuously present ?** The Act is silent on the point of time of presence of the quorum at the meeting. However, the Regulation of Table A provides, "No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business."

It had also been held in *Re Hartley Baird Ltd.* that the quorum required is the quorum to be present at the time of beginning to consider the business and it need not be present throughout or at the time of taking the vote on any resolution.

In a nutshell, quorum need to be present only at the commencement of general meeting and does not imply the requirement of a continued presence of quorum throughout the meeting or when the meeting proceeds to vote.

#### Presumption as to Quorum

Quorum will always be presumed unless it is questioned at the meeting or the records show that a quorum was not, in fact present.



## MANDATORY REQUIREMENT FOR HOLDING AGM

Every company (other than a one person company) shall in each year hold in addition to any other meeting a general meeting as its annual general meeting [Section 96].

The term 'year' has not been defined in the Companies Act. It means 'Calender Year' as defined in the General Clauses Act. In other words, 'Calender year' is to be calculated from 1st January to 31st December and not twelve months from the date of incorporation of the company.

The annual general meeting is to be held in addition to any other general meeting that might have been held in a year. It appears that holding of an annual general meeting in every 'calender year' is a statutory necessity.

## WHICH COMPANIES TO HOLD AGM

Every Company except a One Person Company (OPC) whether public or private ; having a share capital or not ; limited or unlimited must hold annual general meeting.

[Note. OPC have been introduced by Companies Act, 2013]

## OBJECTS OF ANNUAL GENERAL MEETING

- An annual general meeting is an important meeting of protecting the interests of the shareholders. It is only at the annual general meeting of a company that the shareholders can exercise control over the affairs of the company. Hence it is desirable that they should meet at least once every year to review the working of the company.
- The Board of directors place accounts for consideration, approval & adoption by shareholders in the AGM.
- Shareholders exercise control over the management by re- electing or refusing to elect the directors.
- The Auditors of the company are also replaced or reappointed by the shareholders in the AGM.
- Dividends proposed by the directors is declared in the AGM.
- The annual general meeting is important because of the nature of business transacted at it. All other matters that require approval of the shareholders are discussed as 'Special Business' in the AGM.

### Time period for holding AGM:

	Under the pervious Act 1956	Under company Act 2013
First AGM	First AGM shall be held within 18 months from the date of its incorporation-u/s 166	2013 Act has replaced the deadline of 18 months from the date of incorporation. The first AGM shall be



		held within 9 months from the end of the first financial year
Subsequent AGM	<p>Under Section 166 and 210 of the Companies Act, 1956 the AGM subsequent to the first AGM was required to be held on the earliest of the three given dates :</p> <p>(i) The meeting must be held in each year (<i>i.e.</i>, calendar year) <i>i.e.</i>, latest by 31<sup>st</sup> December each year [Section 166(1) of the 1956 Act]</p> <p>(ii) The meeting must be held within 15 months from the date of the previous annual general meeting. The ROC may extend this by not more than 3 months. [Section 166(1) of the 1956 Act]</p> <p>(iii) The meeting must be held not later than 6 months from the date of the balance sheet. If any extension has been granted under the second proviso to section 166(1) of the 1956 Act, then meeting must be held within 6 months plus period of extension granted. [Section 210(3) of the 1956 Act]</p>	<p>Under the 2013 Act also, the subsequent AGM is required to be held on the earliest of the three dates [Same dates as existed in 1956 Act.]</p> <p><b>Only change is that instead of two sections under 1956 Act, now this provision exists under section 96 of Companies Act 2013</b></p>
Business Hours	u/s 166(2) of the 1956 Act, every AGM should be called during business hours	u/s 96(2) of 2013 Act, the business hours have been clearly defined <i>i.e.</i> between 9 a.m. and 6 p.m.

### SUBSEQUENT AGM [U/S 96]

- (i) There must be one meeting held in each year, *i.e.* calendar year. In other words, one separate and distinct meeting every year.

Where a meeting called and held on a day in one year is adjourned to a date in the next year, and held on that date, does not become meeting of that year.

- (ii) The gap between two AGM's must not be more than fifteen months.
- (iii) AGM must be held not later than 6 months from the close of the financial year (*i.e.* from the date of Profit & Loss Account and Balance Sheet).

Whichever is Earlier

These three requirements are cumulative as well as separate; which means that failure to comply with any of them shall constitute an offence.

**Extension of time.** The registrar may, for any special reason extend the time for holding the annual general meeting (except the first annual general meeting) by a period not exceeding three months [Section 96(1)].

Where the time for holding the annual general meeting is extended by 3 months, the interval between two successive annual general meetings shall not exceed 18 months.

An application for extension is normally made before the expiry of the period prescribed in section 96(1).



The Registrar of Companies can grant extension of time for special reasons upto the maximum limit of 3 months, even if such extension allows the company to hold its annual general meeting beyond the calendar year.

It may be noted the court or NCLT is excluded from the power to extend the time of holding AGM. Hence the court or NCLT has no power to call and conduct the AGM. It means only ROC has power to grant extension.

#### Example

Name of Company	Date of Last AGM	Financial Year of the Company	Last date for Holding the AGM
Reliance Industries Ltd.	31-5-2014	1-4-2014 to 31-3-2014	(i) 30-9-2014 (within 6 months of closure of financial year) (ii) 31-8-2014 (within 15 months of previous AGM) (iii) 31-12-2014 (End of Calendar year) Whichever is earlier i.e. 31-8-2014 Registrar may grant the extension to hold AGM by 30-11-2014.

### VALIDITY OF AGM HELD BEYOND STATUTORY TIME

An annual general meeting held beyond the due date is not void & all resolutions passed at such AGM are valid. The only effect is that it involves penalty.

U/s 99 in a nut shell if the ROC does not extend the date of holding the AGM the directors shall be subjected to increasing penalty (i.e. ₹ 1,00,000 and additional fine upto ₹ 5,000 for every day of default) but the meeting shall be a valid meeting. Otherwise, the position of law would become impossible.

### PROPER AUTHORITY

The Board of Directors is the proper authority to convene AGM and if the managing director, manager, secretary or other officer calls a meeting without such authority, it will not be effectual unless the Board ratifies the act before the meeting is held.

### Notice

A public company must give at least 21 clear days notice for convening annual general meeting. The period of 21 days is calculated from the date of receipt of the notice by the members.

It excludes :

- (i) the day of service of the notice;
- (ii) the day on which the meeting is to be held.

- Notice is deemed to have been received by the members at the expiration of 48 hours after the letter containing it is posted. In nut shell, a notice must be sent 25 days before the meeting to the effective.
- Annual general meeting may be held with a shorter notice if it is so agreed by not less than 95% of the members entitled to vote in the meeting (Section 101). The consent



for a shorter notice may be obtained either before or after the meeting either in writing or through electronic mode.

- The notice shall state the meeting to be an annual general meeting specifically.

### NOTICE TO WHOM

After the provisions of Section 77 notice of AGM shall be served on

1. Every member of the company
2. Legal representative of deceased.
3. Receiver or official assignee of an insolvent member.
4. Auditor or auditors of a company
5. Every director of the company

As per secretarial standard (SS 2) issued by ICSI notice should also be given to :

- (i) Practising company secretary who has given the compliance certificate.
- (ii) Debenture trustee.
- (iii) In the case of listed company, the stock exchanges on which the shares or debentures of the company are listed.

### TIME, DATE AND PLACE OF HOLDING THE ANNUAL GENERAL MEETING (SECTION 96(2))

**Time.** Every annual general meeting shall be called during business hours. Business hours means between 9 am and 6 pm. (As inserted by 2013 Act).

It has been clarified by the Department of Company Affairs that the starting point of the meeting should be within the business hours but the duration is left to the meeting itself according to the speed with which it is in a position to go through its agenda. In other words, the meeting may continue beyond business hours. It may be noted that notice which does not mention the time for holding the meeting is invalid.

**Day.** AGM shall be called on a day which is not a 'public holiday'.

'Public holiday' is defined in section 2(38) of the Act as a public holiday within the meaning of the Negotiable Instruments Act, 1881.

The term 'public holiday' includes Sundays and any other day declared by the Central Government to be a public holiday.

30th June and 31st December are not public holidays under section 96, even if declared as public holidays for the limited purpose of half yearly closing of accounts of banks and treasuries etc.

But, where the Central Government declares a day to be a public holiday after the company has issued notices, it shall not be deemed to be a public holiday in relation to that meeting.

Hence annual general meeting must be held on a day that is not a public holiday. The provisions of section 96 have been held to be mandatory.

If AGM is adjourned because of lack of quorum, on the same day in the next week at the same time and place, if this day is public holiday accidentally, there is no contravention of Section 96.



- (i) The annual general meeting must be held at the registered office of the company.
- (ii) The directors may hold the meeting at any other place within the town, city or village in which the registered office is situated.

The city will include the postal limit or local body limit, whichever is wider. The term 'Postal Limits' may be construed to mean the city postal delivery area officially accepted by Postal Authorities.

Such discretionary power must be exercised *bona fide in the interest of shareholders and not with a view to deter shareholders from attending.*

Moreover, a private company which is not a subsidiary to a public company may hold the meeting, if the articles or the resolution so provides, in a State or town other than where its registered office is situated.

### Quorum

Quorum of Annual General Meeting is 5 members for a public company and of at least 2 members for a private company personally present.

**Increase in quorum requirements for public companies having more than 1000 members.**—Under the 1956 Act, the quorum requirement for public companies for general meetings was 5 members personally present unless the articles stipulated a large number. Section 103 of the 2013 Act fixes quorum based on the number of members of the company as under—

- 5 members personally present if the number of members as on date of meeting is not more than 1000
- 15 members personally present if the number of members as on date of meeting is more than 1000 but not more than 5000.
- 30 members personally present if the number of members as on date of meeting is more than 5000.

Thus, quorum requirements for a public company having more than 1000 members stand increased by the 2013 Act from 5 members personally present to 15/30 members personally present.

Moreover quorum need to be present only at the commencement of General Meeting.

Can a company hold Two AGMs on the same day. There is no provision in the Companies Act, the holding of two AGMs on the same day.

So by, giving separate notices for each meeting, two AGM's can be held on the same day. But the meetings must be held at different timings.

### BUSINESS TO BE TRANSACTED (SECTION 102)

The business to be transacted at an AGM may comprise of :

- (i) **Ordinary business.** In the case of annual general meeting, the following business is deemed as ordinary business.
  - (a) the consideration of the accounts, balance sheet and the report of the board of directors and auditors ;



- (b) the declaration of dividend ;
- (c) the appointment of directors in the places of those retiring ; and
- (d) the appointment of, and the fixing of remuneration of, the auditors.

Ordinary business is transacted by passing ordinary resolution.

### (ii) Special Business

All matters other than ordinary business are treated as special business at an annual general meeting.

For transacting special business at a meeting, there shall be annexed to the notice of the meeting an explanatory statement setting out :

- (a) all material facts concerning each item of such business, [**Note. Under 2013 Act material facts are those that enable members to understand meaning, scope & implication of items of business to take decisions**] and
- (b) in particular, the nature of the concern or interest, if any, of every director or every other key managerial personnel or relatives in each item.
- (c) The statement must also state the time and place where the document, if any proposed for approval at the meeting can be inspected by members.

The absence of explanatory statement would make the meeting invalid.

Explanatory statement need not state the reasons for the special business to be transacted at the meeting. (*LIC Vs. Escorts*)

The requirements of explanatory statement are not applicable to Sec. 25 Companies.

Some of the examples of special business are :

- (i) Removal of a director.
- (ii) Issue of a bonus shares.
- (iii) Issue of a right shares.
- (iv) Election of a person as director other than a retiring director.

### POSTPONEMENT

Where an annual general meeting is convened for a particular date and notice is issued to the members, the Board of directors may cancel or postpone an annual general meeting provided such implied power is exercised for bona fide and proper reasons.

### **Incomplete books of accounts—proper remedy is adjournment of meeting**

Where the accounts are not ready for being placed before the annual general meeting, non-holding of the meeting is an offence. The excuse that the accounts are not complete is not legally acceptable. So the proper course shall be to hold the meeting within prescribed time limit and then to adjourn the said annual general meeting to a subsequent date when the annual accounts are expected to be ready for consideration.

### **PROCEDURE FOR HOLDING ADJOURNED ANNUAL GENERAL MEETING**

An annual general meeting may be adjourned by the chairman if the meeting bonafide so decides. However, the chairman cannot wrongfully adjourn the meeting for some ulterior



motive and if he does so the members may appoint a new chairman and accordingly proceed with the meeting.

It may also be noted that adjourned meeting is not to be counted as a separate meeting.

It is not necessary to give notice of adjourned general meeting to the members (shareholders) of a company unless the date of the adjourned general meeting is not decided at the original meeting itself. The adjourned annual general meeting may come to be accidentally held on a holiday.

Voting Rights where the meeting held after the prescribed time limit

Voting rights of members shall be determined as at the time of the meeting and not as they would have been if the meeting had been held within the prescribed time.

Default in holding annual general meeting : The consequences of default in holding annual general meeting may be discussed as follows :

**(i) Power of the Tribunal to call annual general meeting [Section 97]**

If any company fails to hold an annual general meeting as prescribed u/s 96 of 2013 Act within the prescribed period, the Tribunal on the application of any member, may

- (i) either call or
- (ii) direct the calling of a general meeting of the company.
- (iii) It may give such directions as it thinks fit in regard to the calling, holding, or conducting of such meetings.
- (iv) The Tribunal may direct that one member of the company present in person or by proxy shall be deemed to constitute a meeting.
- (v) A general meeting held at the directions of the Tribunal shall be regarded as an annual general meeting.

It is only a member and not the company that is empowered to invoke the provisions of Section 97. The company cannot seek directions against itself.

It may be noted that only the Tribunal has the power to order the convening of a meeting after the statutory time has elapsed.

**(ii) [Section 99] Penalty**

If default is made in holding the meeting of the company in accordance with section 96 or in complying with any direction of the Tribunal under section 97, the company and every other officer of the company who is in default, shall be punishable with fine

- (i) which may extend to ₹ 1,00,000 and
- (ii) in the case of a continuing default with a further fine which may extend to ₹ 5,000 for every day after the first during which the default continues. (Section 99).

The company is liable for mere default but for the prosecution of a director or an officer of the company, it must be shown that he was knowingly a party to the default.

The company would not be liable for the default if it is due to a cause beyond its control.

Where the books of the company had been seized by the police and produced in the criminal court, the Kerala High Court held that the company would not be punished because the default was beyond the control of the company.



## **(A) Preliminary Duties Before the Meeting**

FUNCTIONS OF CS U/S 205 OF 2013 ACT and Rule 10 of companies (Appointment and Remuneration of Managerial Personnel Rules, 2014).

### **1. To Prepare Final Accounts**

It is the duty of the company secretary to ensure that the profit & loss account and the balance sheet of the company are prepared at the end of the financial year as per the provisions of the Companies Act 2013. It is also worth noting here that the annual general meeting can't be delayed even though the accounts are not ready to be presented before the meeting.

### **2. To get Approval from the Board**

The Balance Sheet and Profit and Loss Accounts will be submitted to the Board meetings for consideration and approval. These financial statements will be signed on behalf of the board as per the Act.

### **3. Submission of Final Accounts to the Statutory Auditors**

After approval of the Board the Profit and loss account and Balance sheet will now be submitted to the statutory auditors of the company for their auditing of the annual accounts, so that the audited accounts are ready well in advance before the Annual General Meeting.

### **4. To Draft Various Documents**

The company secretary in consultation with the Chairman will prepare a draft of annual report of the Director's Report Chairman's speech, Notice of Annual General Meeting



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Explanatory Statement etc. and some technical analysis along with expert views. It must be noted that the documents should be free from any grammatic mistakes and properly printed in a presentable way.

### **5. To Fix the Schedule of the AGM**

The secretary will prepare in consultation with the Chairman the schedule of time, date and place for the AGM. He will issue notice and agenda of the Board meeting to all the directors. The secretary can also visit the place before meeting so as to verify the place and its suitability.

### **6. To fix Board Meeting to finalize the Annual General Meeting**

The board meeting is just held before the annual general meeting. In this meeting all issues regarding date, time and place of the annual general meeting are finalized. Further the annual accounts are also to be approved in the board meeting.

The AGM must be within prescribed period.

- (i) There is one AGM in each calander year.
- (ii) The gap between two AGM's must not be more than 15 months.
- (iii) AGM must not be held later than 6 months from the closed the financial year, whichever earlier.

### **7. Correspond and intimate the Stock Exchange**

Immediately after the board meeting, the stock exchange should be informed of the dividends or bonus recommended by the board to the shareholders. Also indicate the record date on which shareholders registered in the broks of the company would be entitled to the dividend. Book closure notice should be sent to all the stock exchange.

### **8. Arrangement for Printing**

It is the duty of the Secretary to make arrangement for the printing of the Balance sheet, Profit and Loss A/c, report of the directors and of the auditors and notice for the meeting.

### **9. To Issue Notice of AGM**

It is the duty of the company secretary to send out the notices along with all relevant document to the auditors and members under certificate of posting at least 25 days before the date of annual general meeting so that 21 clear day's notice is given to the members. A short notice may be given if so consented to by all the members in writing in under Rule 18 of companies (Management and Administration) Rules, 2014.

Company secretary should complete despatch of notice at least 25 days before the meeting. Preferable notice should be sent under passed certificate (UPC).

### **10. To fix the Agenda of the Meeting**

The company secretary must advise the stock exchange concerned (in case of Listed Shares) that the question of recommendation of dividend will be an item on the agenda of the board meeting at which the accounts are approved and signed.

### **11. Publication of Notice of Closure of Register of Members**

He must arrange for the publication in a newspaper of notice of closure of the register of members as per section 91 of the Act.



**12. To Prepare the list of Proxy Forms**

He must prepare a list of valid proxies which are received not later than 48 hours before the time of holding a meeting and prepare a separate attendance register for such valid proxies. He also has a duty to make arrangement for inspection of proxies.

**13. To Prepare Dividend List**

The company secretary will prepare dividend list from the register of members on and from the record date.

**(B) At the Meeting****14. To Collect Attendance Slips**

It is the duty of the company secretary to arrange for the collection of admission slips or in an alternative to get the Attendance Register signed by the shareholders. The main purpose of attendance to produce as evidence or proof.

**15. To assist the Chairman in Ascertaining the Quorum**

It is the duty of the company secretary to help the Chairman in ascertaining whether quorum is present or not. Once quorum is ensured, Chairman to call the meeting to order.

**16. To Read the Notice of the Meeting**

The secretary has to read the notice convening the meeting and minutes of last Annual General Meeting (AGM) with the permission of the Chairman.

**17. Chairman's Speech**

Chairman Speech is not a Statutory requirement. If Chairman speech is prepared, Chairman to read Chairman's speech.

**18. Duty to read Director's and Auditors Report**

It is the duty of the company secretary to read the Auditor's report and also to read the directors' report unless it is taken as read.

**19. To assist the Chairman in Answering the Queries**

It is the duty of the company secretary to assist the Chairman for the smooth conduct of the meeting particularly in the conduct of poll, counting of votes etc.

It is also the duty of the company secretary to supply to the Chairman any information which he may require in connection with the queries raised by the shareholders relating to accounts.

Chairman to proceed to subsequent items, one by one, for shareholders approval by resolution which will be proposed and recorded accordingly. At the end, Chairman to declare the meeting as closed.

**20. Duty to Take Notes of Proceedings of the Meeting**

Company Secretary has to take the notes of the proceedings of the meeting and resolutions passed at the meeting.

**(C) After the Meeting****1. Prepare Minutes**

It is the duty of the secretary to draft the minutes of the meeting and get them signed by the Chairman within 30 days.



**2. Deposit the amount of Dividend in the Separate Bank Account**

It is the duty of the secretary to open a separate bank account known as "Dividend account for the year....." and to deposit the total amount of dividend payable.

**3. To make Arrangement for the Issue of Dividend Warrants**

Secretary has to make arrangement for the issue of dividend warrants, if any, within 30 days from the declaration of dividend after making arrangement with the banker for payment of dividend warrants at prescribed branches at par.

**4. Deposit the Corporate Dividend Tax**

It is the duty of the secretary to pay Corporate Dividend Tax within seven days to the concerned Income-tax officer along with the prescribed return.

**5. To File Copies of Final Accounts with the Registrar**

It is the duty of the secretary to file copies of Profit and Loss Account, Balance Sheet, special resolutions with the registrar within 30 days of the meeting.

[Section 137]

**6. To Prepare Annual Return**

It is the duty of the secretary to prepare Annual Return and file it with the Registrar of companies within 60 days of the meeting.

[Section 92]

**7. To get the Special Resolution Registered**

It is the duty of the company secretary to implement the resolutions passed in the meeting. Special resolutions and other resolution/agreements specified in section 117 shall be filed in Form No. MGT.14 along with the fee with the concerned Registrar within 30 days of the Annual General Meeting.



## **EXTRAORDINARY GENERAL MEETING**

Regulation 42 of the Table F provides "all general meetings other than annual general meetings shall be called extraordinary general meetings." In other words, a statutory meeting and annual general meeting of a company are called ordinary meetings. All general meetings other than these are called Extraordinary General Meetings.

### **NEEDS FOR EGM**

An extraordinary general meeting may be held for the purpose of dealing with any extraordinary matter which can't be postponed till the next annual general meetings such as :

- Changes in M.O.A
- Changes in A.O.A



- Reduction or reorganisation of share capital
- Issue of Debentures
- Removal of Director
- Removal of Auditors

For such urgent or special business that may arise between two AGMs, an EGM is convened. Moreover such matters concerning the administration of company's affairs can be transacted only by resolution of the members in general meeting.

### **BUSINESS TO BE TRANSACTED**

All business transacted at such meeting is called special business.

Moreover, in case of special business, every item on the agenda must be accompanied by the 'Explanatory Statement' in terms of Section 102.

### **WHO CAN CONVENE ?**

An extraordinary general meeting may be convened by any one of the following :

#### **A. The Board of directors.**

- (i) on its own
- (ii) on the requisition of shareholders.

#### **B. By Requisitionists themselves.**

#### **C. By the National Company Law Tribunal (NCLT).**

### **(A) Extraordinary meeting convened by the Board of directors**

(1) On its own—Regulation 43(i) of Table F provides that "Board may, whenever it thinks fit, call an extraordinary general meeting". However, the company secretary has no authority to convene an extraordinary general meeting without such authority, if he calls, it will not be effectual unless the Board of directors ratifies the act before the meeting is held.

Where the directors think fit to convene a meeting, they do so by resolution passed at a duly convened and constituted meeting of the Board.

**Notice of EGM.** Notice of every EGM together with the explanatory statement must be given to the members at least 21 clear days before the meeting.

A shorter notice may, however, be held valid if consent is accorded thereto by members of the company holding 95 percent or more of the voting right (Section 101).

#### **2. By the Directors on Requisition of Shareholders (Section 100)**

**The directors are bound to call an extra ordinary general meeting of the company if the following conditions are satisfied :**

1. The requisition is signed by the requisite number of members under section 100. **The requisite number of members who shall sign the requisition shall be :**

- (i) in the case of a company having a share capital, holders of atleast 10% of the paid up capital of the company and
- (ii) in the case of a company not having a share capital, members having at least 10% the total voting powers.



2. The requisition shall state the matters for the consideration of which meeting is to be called (Section 100(3)).

3. The requisition shall be deposited at the registered office of the company (Section 100(3)).

**EGM called by Board.** *On receipt of a valid requisition*

- (i) The Board shall within 21 days from the date of the deposit of a valid requisition proceed to call EGM by giving 21 clear days notice.
- (ii) The meeting shall be held within 45 days from the date of the deposit of the requisition.

### Time and Venue of Meeting

The provisions of Section 96 regarding time and venue/place of holding AGM has no applicability to the EGM. However, directors are expected to keep in mind, convenience of the members in fixing the time and place of the meeting so that they can exercise their voting rights. A general meeting other than AGM need not be held only at registered office.

### (B) Extraordinary meeting convened by the requisitionists (Requisitioned meeting)

If the Board does not, within 21 days from the date of the deposit of a valid requisition, proceed duly to call a meeting on a day not later than 45 days from the date of the deposit of the requisition the meeting may be called : by the requisitionists themselves as follows :

**1. Eligible Members.** One or more of the requisitionists after the expiration is 3 months from the date of deposit of requisition may proceed to call the meeting provided that :

- (i) in the case of a Company having a share capital by such of the requisitionists as represent either,
  - the majority in the value of paid up capital or
  - at least  $\frac{1}{10}$  th of the paid up capital and having the right of voting.

**Whichever is less**

- (ii) in the case of a company not having a share capital, by the requisitionists having 10% of the total voting power of all the members of the company.

### 2. Time period for holding EGM.

The extraordinary general meeting requisitioned by the members must be held within three months of the deposit of the requisition.

But a meeting duly commenced before the expiry of the period of three months may be adjourned to some day after the expiry of that period and such a meeting shall be deemed to commence within time. Moreover the meeting shall not be held after the expiration of 3 months from the date of deposit of requisition.

**3. Manner of Calling of EGM.** The EGM shall be called in the same manner as nearly as possible as that in which meetings are called by Board of directors. If the registered office is not made available for holding the meeting, it may be held elsewhere.



4. **No other business can be transacted except for which it is especially convened.** It is important to note that a requisitioned meeting (whether convened by the Board of Directors or by the requisitionists themselves) cannot transact any business other than that for which it has been expressly convened.

5. **Expenses to be reimbursed.** The company is bound to repay all end reasonable expenses incurred by the requisitionists in calling such a meeting. Any sum so repaid shall be retained by the company out of fees or other remuneration due or likely to become due to directors at fault [Sec. 100(6)].

6. **No action against defaulting directors.** Since an alternative remedy of calling the meeting lies with the requisitionists no action can be taken against the defaulting directors of the company for not holding the meeting.

### **(C) Power of Tribunal to Call EGM**

1. **Impracticable to Call an EGM.** If for any reason it is impracticable to call or hold or conduct an EGM, the Tribunal may order an EGM to be called, held and conducted in such manner as it thinks fit.

### **Powers of Tribunal**

Tribunal may give directions in respect of place, date and the manner in which the meeting be held and conducted.

Tribunal may also give such ancilliary or consequential directions as it thinks fit (including a direction that one member present in persons or proxy shall be quorum).

### **WHEN TRIBUNAL TO EXERCISE POWER**

Tribunal may exercise such power :

- (a) on the application of a member or
- (b) on the application of a director or
- (c) *suo motu* (on its own motion)

Such meeting deemed to be meeting of the company

Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.



Who shall have right to attend meetings of audit committee besides its members ?	Auditors of a company and the key managerial personnel shall have a right to attend the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.	Auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.
Attendance at annual general meetings by Chairman of Audit Committee	Not obligatory under the 2013 Act	The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.

## MEETINGS OF THE BOARD

### 1. Frequency

Note. As per 1956 Act, at least one meeting must be held in every three calendar months. But the 2013 Act requires that not more than 120 days shall intervene between 2 consecutive board meetings. The directors of a company exercise most of their powers in a joint meeting called the meetings of the Board.

**In the case of every company, a meeting of the Board of directors must be held :**

- (i) accordingly that not more than 120 days intervene between two board meetings, and
- (ii) at least four such meetings shall be held in every year. (Section 173) ✓

In other words no gap between two board meetings should not exceed 120 days and no year should expire without at least four directors meetings have been held in it. The provisions of Section 173 will be fulfilled if the Board of Director of a Company meet on the first of January or the 30th of April or any date inbetween. Similarly board may at least meet on a particular date during May to August, Sept. to Dec. and so on. Even, it has been clarified, that Department would have no objection if a meeting is held with a gap or 120 days and if at least four such meetings are held in a year.<sup>1</sup>

The object of this section is to ensure that Board meetings are held at reasonably frequent intervals so that the directors may be in touch with the management of the company's affairs.

**First Board Meeting.** As per 2013 Act, the first meeting of the BOD of every company must be held within 30 days of its incorporation. No such provision existed in 1956 Act.

However, the Central Government is empowered to relax the rule with regard to any class of companies. The intention is to save smaller companies having insufficient business to be transacted at Board meetings from unnecessary hardships and expenditure involved in holding them.

Though there is no special penalty provided for non-Compliance with the requirements of section 173, the default is punishable under section 450.

### NEW PROVISION ADDED IN 2013 ACT

**Under Section 173 of the Companies Act, 2013 :**

The 2013 Act allows participation of directors in board meetings through video



conferencing or through such other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings.

“Video conferencing or other audio visual means” means audio visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides the procedure for convening and conducting the Board meetings through video conferencing or other audio-visual means.

## Procedure of Convening Board Meeting

(through video conferencing or other audio visual means)

### 1. Arrangements

Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.

The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care —

- (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
- (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- (c) to record proceedings and prepare the minutes of the meeting ;
- (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
- (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

The persons, who are differently abled, may make request to the Board to allow a person to accompany him.

### 2. Notice

- (a) The notice of the meeting shall be sent to all the directors according to the provisions of section 173 (3)
- (b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.



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### 3. Communication of intention by director to participate by video conferencing

- (a) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
- (b) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
- (c) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.
- (d) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.

### 4. Roll call

At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely :

- (a) name;
- (b) the location from where he is participating;
- (c) that he has received the agenda and all the relevant material for the meeting; and
- (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b) ;

- After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

A 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.

- The Chairperson shall ensure that the required quorum is present throughout the meeting.
- With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

### 5. Statutory Registers

The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.



## 6. Participation of directors and Voting

- Every participant shall identify himself for the record before speaking on any item of business on the agenda.
- If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.
- If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

## 7. Restriction of Access

From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

## 8. Decision

At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

## 9. Minutes

- The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
- Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
- After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

## Matters not dealt through video conferencing

### Rule-4 of the Companies (Meetings of Board and its Powers) Rules, 2014

Rule 4 provides that the following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means —

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;



**BOARD MEETINGS**

- (iv) the Audit Committee Meetings for consideration of accounts; and
- (v) the approval of the matter relating to amalgamation, merger, demerger acquisition and takeover.



## 7. RESOLUTIONS

Decisions of the company are made by resolutions of its members, passed at meetings of members. The word 'resolution' has not been defined in the Companies Act. It may be defined as the formal decision of a meeting on any motion before it. A proposal when passed and accepted by the members becomes resolution.

**Three kinds of resolutions are recognised by the Companies Act.**

1. Ordinary resolutions [Sec. 114(1)].
2. Special resolutions [Sec. 114(2)].
3. Resolutions requiring a special notice. [Sec. 115].
4. Resolution by postal ballot (Section 110 A).

The Companies Act and the articles of association of a company lay down the type of the resolution required of any particular matter. As a rule, all 'ordinary business' as per the Act can be done by an ordinary resolution; all 'special business' can be done by any type of resolution ordinary and special.

**NOTE. Under 2013 Act, votes casted electronically shall be counted determining whether ordinary or special resolution has be passed. No such provision existed in 1956 Act.**

However, under certain special conditions, as per the Act, special notice of 14 days to the company is essential for matters to be passed either by ordinary or by special resolution.

**1. Ordinary resolution. [Sec. 114(1)].** An ordinary resolution is one which is passed at a general meeting by a simple majority of members entitled to vote therein. Simple majority means that the votes cast either by show of hands or electronically or on a poll in favour of a particular proposal including the casting vote of the chairman exceeds the votes cast against it. Thus, voting for and voting against must both be counted and the neutral votes are to be ignored. The votes may be cast by the members either in person or by proxy, if allowed. An ordinary resolution is sufficient to effect any transaction which is within the powers of the company and is not required either by the articles or the Companies Act to be effected in some other manner. All resolutions which are not special or which do not require special notice are ordinary resolutions.



Ordinary resolutions normally do not require filing with the Registrar of companies. The usual notice of 21 days is however, required for passing an ordinary resolution.

**The important items of business of a company which can be transacted with ordinary resolutions are :**

- (1) Approval of statutory report.
- (2) Adoption of directors' report, balance sheet, profit and loss account and auditors' report on the accounts.
- (3) Election of directors.
- (4) Declaration of dividend.
- (5) Appointment of auditors and fixing their remuneration.
- (6) Appointment of sole selling agents.
- (7) Removal of a director before the expiry of his tenure. It also requires special notice of 14 days to the company.
- (8) Appointment of another director in place of the one removed.
- (9) Alterations of share capital such as increase, sub-division, consolidation, etc.
- (10) Issue of shares at a discount.
- (11) Sale of the whole or part of the company's undertaking or business.

**2. Special resolution. [Sec. 114(2)].** A resolution shall be a special resolution when.

- (i) the intention to propose the resolution as a special resolution has been duly specified in the notice;
- (ii) the notice required under the Act (21 days) has been duly given ; and
- (iii) the votes cast in favour of the resolution by members entitled to vote either in person or by proxy are not less than three times the number of votes if any, cast against the resolution. The votes may be cast either on a show of hands or by poll. There is no question of a casting vote in case of a special resolution.

An explanatory statement setting out all material facts concerning the subject matter of the special resolution including in particular, the nature of the concern or interest, if any, therein of every director and manager, if any, shall be annexed to the notice of the meeting.

A copy of every special resolution together with the copy of the explanatory statement shall, within thirty days of the passing of the resolution be filed with the registrar who shall record the same.

A special resolution is a most useful part of the the mechanism of a company. It is by and through the instrument of a special resolution that the companies carry out important executive or administrative acts which are, or may be necessary for the company's benefit. The aim of passing a special resolution is to ensure that every important change shall be made only after due deliberation and with the sanction of the greater body of shareholders of the company.

The articles of association may provide that certain types of business shall be approved by a special resolution. The Act also provides that in certain specified cases, a company must pass a special resolution.

**A special resolution is required for the following purposes.**

- (1) To alter the provision of the memorandum for changing the place of registered office from one State to another or objects of the company. [Sec. 13].
- (2) To change the name of the company. [Sec. 13].
- (3) To alter the articles of the company. [Sec. 14].



- (4) To offer further issue of subscribed capital when shares are offered to outsiders. [Sec. 62].
- (5) To create reserve capital.
- (6) To reduce the share capital of the company. [Sec. 66].
- (7) To authorise payment of interest out of capital.
- (8) To request the Central Government to appoint inspectors for investigation of the affairs of the company. [Sec. 213].
- (9) To authorise payment of remuneration to directors who are not in the whole time employment of the company. [Sec. 197].
- (10) To make the liability of directors unlimited.
- (11) To have the company wound up by the NCLT or Tribunal [Sec. 271].
- (12) To wind up the company voluntarily. [Sec. 304].

A copy of the special resolution must be plan with the regular within 30 days of passing it.

**3. Resolutions requiring special notice. [Sec. 115].** In addition to the above two types of resolutions, there is another class of resolution provided under the Companies Act which require a special notice to be given in respect of them.

**Special notice is required in the following cases :**

- (i) For the appointment of an auditor other than the retiring auditor. [Sec. 140].
- (ii) For express resolution that the retiring auditor shall not be reappointed. [Sec. 140].
- (iii) For removing a director before the expiry of his term. [Sec. 169].
- (iv) For appointing another person as director in place of the director removed. [Sec. 169].
- (v) Appointment as director of a person other than the retiring directors section 160.

The articles of a company may provide for additional matters in respect of which special notice is required.

In the above cases, the notice of intention to move the resolution shall be given to the company not less than 14 days before the meeting. In computing 14 days the day on which the notice is served and the day of the meeting are excluded. The company must, immediately after receiving the notice, give its members notice of the proposed resolution in the same manner as it gives notice of any meeting. If that is not practicable, the company must give notice either by advertisement in a local newspaper or in any other mode allowed by the articles at least 7 days before the meeting.

A resolution requiring special notice is not actually an independent class of resolution. Such a resolution may be an ordinary or special resolution.

**4. Passing of Resolution by Postal Ballot.** It is generally noticed that members of a listed company are widely dispersed and there is very poor attendance at the general meetings. The meetings are normally attended by the promoters, their friends and associates who collect proxies and by and large resolutions are passed unanimously and without any dissent. Moreover the general meetings are required to be held during working hours and the shareholders find it difficult to attend the meeting. By Postal Ballot shareholder can take part in decision making of the company.

A listed company may if so desire may get any resolution passed by means of a postal ballot. Section 110 also empowers the central government to declare that certain business can only be conducted by postal ballot. In respect of such notified business it is mandatory for the company to pass the resolution only by postal ballot and shall not be placed for transacting before the general meeting of the company.



**Notice of resolution by Postal Ballot.** In Case Listed Company decided to pass a resolution by postal ballot would need to send a notice to all the shareholders alongwith the draft resolutions explaining the reasons thereof and requesting them to send their assent within 30 days from the date of posting of the letter. [Section 192 A (2) & (3)]

**Method for sending notice. The company may issue notices either :**

(i) under Registered Post Acknowledgement Due ; or

(ii) under Certificate of Posting ; and

with an advertisement published in a leading English Newspaper and in one vernacular Newspaper circulating in the State in which the registered office of the company is situated, about having despatched the ballot papers.

Postal Ballot includes voting by electronic mode, accordingly a shareholder can send his assent or dissent through electronic mode by e-mail, fax, telex or by floppy.

It may be noted that notice shall include, a postage prepaid envelop for facilitating the communication of the assent or dissent of the shareholder to the resolution.

### **Resolution Passed by Postal Ballot**

If a resolution is assented to by a requisite majority of the shareholders by mean of postal ballot, it shall be deemed to have been duly passed at a general meeting conveyed in that behalf.

This means special resolution can't be passed by Postal Ballot.

The scrutinizer shall submit his report as soon as possible after the last date of receipt of Postal Ballots.



### **3. Quorum**

#### **Quorum should be present throughout the Meeting.**

A minimum of five Members personally present and entitled to vote, in the case of a public company, and two Members personally present and entitled to vote, in the case of a private company, shall be the Quorum for a General Meeting. Where the requirements for Quorum as prescribed in the Articles are more stringent, the Quorum should conform to such requirements.

A Meeting must be constituted of at least two individuals present in person. The Quorum requirement of five Members in the case of a public company will be fulfilled where a person acting as an authorized representative of five bodies corporate is present in the Meeting along with another Member personally present. However, if there is no such other Member personally present, the Quorum requirement will not be fulfilled.

Since Members need to be personally present at a Meeting to constitute the Quorum, Proxies are to be excluded for determining the Quorum. However, a duly authorized representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.



# MINUTES

## New Provisions introduced by the Companies Act, 2013

Section 118 of the 2013 Act introduces the following new requirements which were not there in the 1956 Act :

- The 2013 Act requires minutes to be kept of meeting of any class of shareholders and creditors also. **This was not the case under the 1956 Act.**
- Minutes of every resolution passed by postal ballot are also to be kept.
- Every company shall observe such secretarial standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India (ICSI) and approved as such by the Central Government.
- **The 1956 Act contained no specific penalty for tampering with minutes. Section 118(12) of the 2013 Act** provides that 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 ₹ 25,000 but which may extend to ₹ 1,00,000.
- In case of any refusal of inspection of minute books or refusal to furnish copies of minute books to member, **the CLB was empowered by the 1956 Act to direct to grant an immediate inspection of the minute books or direct that the copy required shall be sent to the person requiring it. This power is now transferred by the 2013 Act to the Tribunal.**

## Meaning

The terms 'minutes' is nowhere defined in the Companies Act. In a literal sense it means a note to preserve the memory of an event or transaction. It may be defined as the written record of the business done at a meeting *i.e.* resolutions and decisions of the meeting. The minutes of a meeting are the official records of the matters considered and decisions taken at a meeting. They are intended to record what was done, and not what was said. Therefore, they do not cover speeches of the members or the arguments advanced for and against a proposal.

Every company prepares minutes of its meetings with a view to preserve an authentic



record of the business transacted thereat and to comply with the requirements of the Companies Act, 2013.

### Minutes Vs. Report

A clear distinction should be clearly drawn between a report and a minute. The former chiefly consists of what was said, the latter consists of what was done or agreed upon, and its place of record is the minutes. Reports are always in a narrative form giving a historical account of all things discussed. They may deal with arguments in favour of and against a motion, things on which no decisions are taken, names of proposers and recorders, feelings of members, directors etc. A report gives statement of result, events, progress etc.

Minutes usually contain a series of sentences each of which starts with the word 'resolved' and they are always in affirmative form.

### OBJECTS OF KEEPING THE MINUTES

Human memory is short. It is possible that one may forget about the decisions taken at meetings, and therefore disputes might arise. To avoid such consequences, it is advisable to keep a record of the decisions.

#### Minutes of proceedings at meetings are kept for the following reasons:

1. They constitute an official record of the decisions arrived at the meeting and once the minutes are confirmed, they are unalterable.
2. When minutes are signed by the Chairman of the meeting, or the next succeeding meeting, there are *prima facie evidence of the proceedings thereat and decision recorded therein are deemed to be valid, until the contrary is proved.*
3. Minutes, if properly kept, help members to recall the exact conclusions reached at in previous meetings.
4. A member who was absent from a meeting can easily understand what had happened at it by reading the carefully prepared and detailed minutes of that meeting.
5. In effect, they represent the history of an organisation. In this respect, they are invaluable to new comers. They mirror the latest posture of affairs in the organisation.

### KINDS OF MINUTES

Minutes are of two kinds :

- (a) *Minutes of narration ; and*
- (b) *Minutes of decisions or resolutions.*

**(i) Minutes of Narration.** These are records of events or items of business which do not require formal resolutions. For example, noting of members present, recording of facts like calling the meeting, recording of apologies for non-attendance, statements of proposers and seconders of motions etc.

**(ii) Minutes of Resolutions.** These are set out in the form of a statement of what was resolved and may, or may not, be accompanied by a statement indicating the mover and seconder. Such minutes record only the formal decisions of the directors or the company at duly convened meetings.



## COMPILATION OF MINUTES

The writing up of the minutes is the responsibility of the secretary. It is his duty to make a true and correct record of the meetings of the company. He should take brief notes of the proceedings of the meeting either on the agenda paper or on a separate note book of his own. The secretary should be very attentive while the proceedings are going on. Nothing important should be omitted from the record of the proceedings. The secretary should write up the minutes as soon as possible after the meeting. Delay in the preparation of minutes may result in omissions or vague or inaccurate language.

The minutes should be divided into paragraphs, each paragraph dealing with a separate subject. For the purpose of quick reference each paragraph should be given a brief heading.

Minutes when signed by the chairman become the permanent and official record of the proceedings of a meeting. Accordingly, great care is necessary in recording them.

## CONTENTS OF MINUTES

The minutes of a meeting should contain a fair and correct summary of its proceedings. They should be brief and yet must state the information necessary to form an idea about the business transacted at the meeting. "They are more analogous to a telegram than to a letter, or to a precis than to a narrative".

The minutes of every meeting should contain the following particulars:

1. Kind of meeting (Annual General, Extraordinary, Board etc.) with date, time and place of meeting.
2. Names of chairman, directors, secretary, and persons in attendance (solicitor, auditor etc.). In case of general meeting, number of members attending.
3. Reading and confirmation of the minutes of the last meeting and the fact of their being signed by the chairman together with any matters arising from the minutes and decisions taken, if any.
4. Names of absentees and apologies for absence, if any.
5. A brief account of the business transacted at the meeting in the order in which it was considered by the meeting. A brief, appropriate head should be given to each matter either in the margin or at some other suitable place and it should be numbered also. The following matters should be specifically recorded :
  - (a) text of resolutions adopted,
  - (b) appointment of officers made at the meeting,
  - (c) the number of votes cast in favour and against a special resolution,
  - (d) the names of directors not concurring in each resolution passed at the meeting, and
  - (e) the names of directors who refrained from voting on matters in which they were interested.
6. The signatures of the Chairman and the date of signing.

## ESSENTIALS OF GOOD MINUTES

Although minutes are intended to be a permanent record during the life time of a company, they are meant only to be a brief record. This implies that they should be long



winded, *i.e.*, while writing them all superfluities should be avoided. Minutes should not take the form of a narrative or a historical account of the proceedings of the meeting.

**The essentials of good minutes are as follows :**

1. Minutes should be brief and precise, setting out exactly what was transacted at the meeting. They should be factual and impersonal.
2. Minutes are written in past tense, and generally in affirmative form.
3. These should be complete so that it may be safely assumed that any matter not mentioned in the minutes was not dealt with.
4. Minutes should record the kind of the meeting (*e.g.*, *Annual General Meeting, a Committee Meeting*) which was held, its date, time and place, with a sufficient indication of those present, and the name of the chairman.
5. Minutes should be compiled as soon as possible within 30 days of the conclusion of the meeting.
6. The minutes of each meeting should have the main heading, with sub-headings, *e.g.*, *the accounts, dividend, election or re-election of directors, appointment of auditors etc.* at proper places and should be underlined, or printed or typed in bold type to be conspicuous at a glance.
7. The minutes should contain the exact words of all resolutions which have been passed. It is not necessary to state the name of the mover or seconder.
8. Partiality or bias should be avoided in writing minutes. Arguments advanced on either side need no mention.
9. Minutes should not contain any matter which is defamatory ; irrelevant or immaterial to the proceedings ; or detrimental to the interest of the organisation.
10. Minutes should be written according to the sequence of items on the agenda, or, if that was varied, in the exact order in which the business took place.
11. Pages of the minutes book should be numbered, initialled or signed, and the last page of the record of proceedings of each meeting should be signed and dated by the chairman of the meeting within the time prescribed. The chairman should sign the meeting after they have been confirmed by the members or the directors as the case may be.