Company Meetings

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Company Meeting

- A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business.
- There must be at least two persons to constitute a meeting.

characteristics

- 1. Two or more persons must be present
- The assembly of persons must be for discussion and transaction of any lawful business
- 3. Notice is essential
- 4. Held at a particular date, time and place
- 5. Must be held as per the provisions of companies Act.

Two or more persons must be present at meeting - Exceptions

- when the tribunal calls for annual meeting (u/s 97 and u/s 98)
- Where one person held all the shares of a particular class (class meeting of shareholders)
- Absence of quorum and adjourned meeting

Kinds of company meetings

- Meeting of directors
- Meeting of shareholders
- Meeting of creditors
- Meeting of debenture holders

Meeting of directors

- Section 2(34)
 - Director means a director appointed to the board of a company.
 - The meeting of directors is known as board meetings

Frequency of the board meeting (173)

- First meeting-within 30 days from the date of incorporation
- Minimum 4 meetings- every year
- A maximum gap of 120 days between two consecutive meetings
- In case of small company and dormant company- at least one meeting in each half of calendar year- and gap between two-not less than 90 days.
- One person company-need not hold any meeting



Notice of the meeting (173(3))

- Minimum of 7 days notice should be sent to every director
- By hand delivery/post/electronic means
- Urgent business- at least one independent director
- In absence of independent director decision taken circulated to all directors and shall be final only on ratification thereof at least one independent director

Board meeting through video conferencing or other audio visual means (173(2))

- Safeguard the integrity of the meeting by ensuring sufficient security and identification procedures.
- 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 authorized participants at the Board meeting.
- To record proceedings and prepare the minutes of the meeting.
- 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.
- To ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing.
- 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.

Matters not to be dealt with – video conferencing

- 1. Approval of annual financila statement
- 2. Approval of board's report
- 3. Approval of the prospectus
- 4. Audit committee meetings for consideration of accounts
- Approval of the matters relating to amalgamation, merger, demerger, acquisition and take over



Agenda

- The term agenda means a statement of the business to be transacted at a business
- When the agenda is enclosed with the notice, each of the directors give due consideration to the proposed business and comes with necessary preparation for discussion in the meeting



Quorum (section 174)

• The quorum of the board meeting shall be 1/3 of its total strength or two directors whichever is higher. And the participation of directors by video conferencing or other audio visual means shall also be counted for the purposes of quorum under this sub-section.



Chairperson

 Every meeting of the board must have a chair person to preside over it. The articles usually name the chairperson who shall preside over the board meeting



Voting

 Unless the articles otherwise provide, questions arising at meeting of the board of directors shall be decided by a single majority. Each director has one vote at the meeting.

Meeting of the committee of directors

- Large companies-subccommittees of directors
- Audit committee (section 177)
- Nomination and remuneration committee(section 178(1)
- Stakeholders relationship committee (178(15))

Minutes of the board meeting

• As per section 118, every company must maintain minutes of all the proceeding sof every meeting of its board of directors in the book kept for the purpose, within 30 days of the the conclusion of such a meeting

Decretary's duties regarding board meeting

Before meeting

- Give notice
- Prepare and circulate agenda
- Have available at the meeting documents, records, correspondence, etc
- Make all arrangements
- Issue invitation letter- solicitor or other other officers

At the meeting

- Attend meeting and assist chairman
- Secure signature of the directors-attendance register
- Ascertain quarum and inform it to the chairman
- Read notice of the meeting
- To note decisions taken at meeting and records all proceedings of the meeting

After meeting

- To prepare minute of the meeting-ready for approval for the next general meeting
- To take steps to carry out the instructions of the directo's meeting
- If dividend delared/ issue of new shares/debentures/ right shares etc –inform the mettar to stock exchange.

Meeting of shareholders

- A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act.
- The meetings to be held for seeking approval to ordinary business and special business are called annual general meeting and extraordinary general meeting.
- In certain cases, a company may have to hold a meeting of the members of a particular class of members. Thus shareholder's meeting can be any of the following
 - Annual General Meeting
 - > Extra ordinary general meeting
 - Class meeting

ANNUAL GENERAL MEETING (AGM) (Sec. 96)

- Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year.
- Following are the key provisions regarding the holding of an annual general meeting:
- Holding of annual general meeting
 - 1. Annual general meeting should be held once every year.
 - 2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
 - 3. Subsequent annual general meeting of the company should be held within 6 months from the
 - closing of the financial year.
 - 4. The gap between two annual general meetings should not exceed 15 months.

Time and place for holding an annual general meeting

- An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.
- It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.
- The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose. "National Holiday" for this purpose means and includes a day declared as National Holiday by the Central Government.

Default in holding the annual general meeting

• Section 99 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues.

Business to be transacted at annual general meeting:

- The business to be transacted at an annual general meeting may comprises of
 - ordinary business
 - This is matters usually happens in the ordinary course of time, namely
 - adoption of an annual account, director's report, auditor report
 - declaration of any dividend
 - the appointment of directors in place of those retiring
 - appointment of, and the fixing of the remuneration of, the auditors
 - Special business
 - Any other business scheduled to be transacted at the meeting will be deemed to be special business. Eg: increase authorized capital, alter AOA/MOA

Duty of the Secretary at the Annual General Meeting:

A. Before the Meeting:

- 1. He is to see that the Annual Accounts are prepared according to the provisions of the Act and duly audited and certified by the Auditors of the company.
- 2. He is to prepare the agenda in consultation with the Chairman and issue notices of the Board Meeting held just before the Annual General Meet-ing.
- 3. He is to prepare the Annual Report of the Directors in consultation with the Chairman.
- 4. He is to send the notice of the Annual Gen-eral Meeting to all members along with necessary forms.
- 5. He is to prepare the Chairman's speech in consultation with the Chairman.
- 6. He is to receive, scrutinize, countersign and register all proxies received before the fixed time.
- 7. He is to close the Share Transfer Register and prepare the dividend lists and warrants.

B. At the Meeting:

- 1. He is to see that no unauthorized person enters the General Meeting.
- 2. He is to help the Chairman to ascertain whether a quorum is present or not.
- 3. He is to read the notice convening the meet-ing.
- 4. He is to help the Chairman by supplying necessary information.
- 5. He is to help the Chairman to conduct the meeting.
- 6. He is to take notes of the proceedings.

C. After the Meeting:

- 1. He is to prepare the Minutes and get it signed by the Chairman.
- 2. He is to execute the decisions and resolu-tions passed at the meeting.
- 3. He is to file necessary documents with the Registrar.
- 4. He is to incorporate the alterations, if any, made in the Memorandum or the Articles of Asso-ciation passed in the meeting.

EXTRA ORDINARY GENERAL MEETING ((Sec. 100)

- All general meetings other than annual general meetings are called extraordinary general meetings. All businesses items can be transacted at the extraordinary general meetings are special business.
- Extraordinary general meeting may be called in the following ways:
 - by directors
 - By directors on rquest of shareholders
 - By requisition of shareholders
 - By tribunal
- NOTICE OF THE MEETING (Sec 101) (Se
- A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

Class Meeting

 where the share capital of the company is divided into different classes of shares, meeting of different classes of share holders may have to be called. It is known as class meeting. Such a meeting can be attended only by that classes of shareholders.

Meeting of creditors

• A company may call the meeting of creditors when the company proposes to make a scheme for arrangement wit its creditors. Section 230 of the companies Act explains such compromises and arrangements. Such meetings are meetings at any time other than the meeting at the time of winding up of the company.

Meeting of debenture holders

 The company may call the meetings of its debenture holders to get their approval for making any change in their terms and conditions.

Requisites of a valid meeting

- Proper authority to convene the meeting
- 2. Proper notice must be served. (Sec. 101 and Sec. 102 of the Companies Act, 2013)
- Proper quorum must be present in the meeting. (Sec. 103 of the Companies Act, 2013)
- 4. Proper chairman must preside the meeting. (Sec. 104 of the Companies Act, 2013)
- 5. Proper minutes of the meeting must be prepared. (Sec. 118 and 119 of the Companies Act, 2013)
- 6. Voting
- 7. Proxies
- 8. Resolutions

Resolution

- Every item included in the agenda is put before the meeting in the form written of approval for discussion and decision. When it is approved by the required majority of members present, it becomes a resolution.
- A resolution is the collective decision of the meeting.
- Resolutions will be any of the following
 - Ordinary resolution
 - Special resolution
 - Resolution requiring special notice

Ordinary Resolution

- An **ordinary resolution** is refers to a resolution, passed by the members of the company by a bare majority.
 - Ordinary resolution means a resolution in which the votes cast in favour of resolution exceeds the votes cast against it.
 - The resolution affirmed by more than half members, present in person or proxy at the General Meeting.
 - It should be passed by votes cast, by any of the following modes, i.e. show of hands, polling or electronically, in favour of the resolution.
 - The notice convening the meeting shall be duly given to the members. In addition to this, the members who don't participate in voting are not taken into consideration. In general, the ordinary resolution must be passed to transact the ordinary business at AGM (Annual General Meeting).

Features of ordinary resolution

- It should be passed at a properly constituted and convened general meeting
- It should be passed by a simple majority of members present at the meeting including proxy
- It is commonly passed for ordinary transactions of the business
- It is not necessary to convene meeting by stating the particulars of ordinary resolution. But there must be notice of 21 days to attend the general meeting
- Copy of ordinary resolution need not filed with the registrar.

Circumstances

- Change in the name of the company on the direction of registrar, when the company register a wrong or incorrect name.
- Rectification of the name of the company on the direction of central govt, when the name is identical with or nearly resembles the name by which a company in existence had been previously registered.
- Retirement and appointment of Auditors and fixing their remuneration
- Contribution to bonafide charitable and other funds
- Appointment of directors by the company
- Appointment of additional directors
- Removal of directors
- When a company is to be wound up voluntarily
- Appointment of company liquidator, etc....

Special Resolution

- A special resolution is the resolution, that is affirmed by the members of the company by three-fourth majority.
- Special Resolution (SR) is a resolution in which the votes cast in favour of the resolution must be three times higher than the votes cast against it.
- The resolution is required to be passed by any methods, such as voting on a show of hands or polling or electronically by the members present in person or proxy or postal ballot.
- 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, are required to be not less than 3 times the number of the votes, if any, cast against the resolution.

Matters for which special resolution is required

- Amendment of Articles of Association
- Shifting of registered office
- Alteration of Memorandum
- Alteration of Articles for conversion of company (pvt to public or viceversa)
- Variation of terms of contract or objects in prospectus
- Variation of shareholders' rights
- Issue of sweat equity shares
- Issue of shares to employees under employees' stock option scheme
- Further issue of shares
- Issue of debentures or loans with an option to convert into equity
- Reduction of share capital
- Scheme for providing money for purchase of shares of co. etc.
- Buy-back of shares ,etc

BASIS FOR COMPARISON	ORDINARY RESOLUTION	SPECIAL RESOLUTION
Meaning	When at the general meeting, simple majority is required to move the resolution, it is called as Ordinary Resolution.	When at the general meeting, super majority is required to pass the resolution, it is known as Special Resolution.
Consent of members	At least 51% members should be in favor of the motion.	At least 75% members should be in favor of the motion.
Registration with ROC	A copy of OR should be filed with ROC, in certain cases.	A copy of SR must be filed with ROC.
Business transacted	Ordinary business or special business, depending on requirements of the Act.	Special business.
Chairman's role	The chairman of the meeting can use his decisivevote to decide an ordinary resolution if the votes cast in favour and against a resolution are equal	The chairman cannot do so in case of special resolution.

3. Resolutions requiring Special Notice

- Section 115 provides that where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceedingmRs.5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules. Such resolution may be passed ordinary or special.
 - Eg: appointment of auditor
 - Removal of director and appointment of another director in place of him

Motions and resolutions

- All the matters for decision before the meeting of the company are placed in the form of proposal called motions. Motion is the proposal made by the member. A motion moved at a meeting may or maynot be accepted by the meeting.
- The motion or amended motion is put to vote in the meeting. If the motion is adopted, it is called resolution.

Interruption of debate

- Sometimes the members present in the meeting may not agree with the content of the motion. , therefore they may interrupt the discussion. The interrupton may take place in any one of the following ways.
 - Amendments
 - Point of order
 - Formal or dilatory motions
 - Closure
 - Previous question
 - Next business
 - Refer back to the committee
 - Adjornment

Winding up

Winding up

- Winding up of the company is the stage when the business of the company is dissolved, all the assets of the company are realized the money realised is distributed among the creditors, debenture holders and shareholders of the company. it is the process of realization of the assets, payment of the liailites and distribution of surplus if any among the members of the company. the term winding up is also known as liquidation of the company.
- Modes of winding up (Section 270)
- The winding up of a company may be either—
- (a) by the Tribunal; or
- (b) Voluntary.

Circumstances in which company may be wound up by Tribunal. (Section 271)

- (1) A company may, on a petition under section 272, be wound up by the Tribunal,—
 - (a) if the company is unable to pay its debts;
 - (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
 - (c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
 - (d) if the Tribunal has ordered the winding up of the company under Chapter XIX;
 - (e) if on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
 - (f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
 - (g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Petition for winding up (Section 272)

- A petition to the Tribunal for the winding up of a company shall be presented by—
 - (a) the company;
 - (b) any creditor or creditors, including any contingent or prospective creditor or
 - creditors;
 - (c) any contributory or contributories;
 - (d) all or any of the persons specified in clauses (a), (b) and (c) together;
 - (e) the Registrar;
 - (f) any person authorised by the Central Government in that behalf; or
 - (g) in a case falling under clause (c) of sub-section (1) of section 271, by the
 - Central Government or a State Government.

Powers of Tribunal (Section: 273)

- (1) The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—
 - (a) dismiss it, with or without costs;
 - (b) make any interim order as it thinks fit;
 - (c) appoint a provisional liquidator of the company till the making of a winding up order;
 - (d) make an order for the winding up of the company with or without costs; or
 - (e) any other order as it thinks fit:

Company Liquidators

 when a company goes into liquidation under the order of tribunal, a person is appointed to perform the duties relating to winding up of the company. such a person/s are called official liquidators/company liquidators.

Removal and replace ment of liquidator (Section.276)

- 1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in
- writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—
 - (a) misconduct;
 - (b) fraud or misfeasance;
 - (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
 - (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
 - (e) conflict of interest or lack of independence during the term of his appointment that
 - would justify removal.
- (2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

Powers and duties of Company Liquidator (Section.290)

- (1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—
 - (a) to carry on the business of the company so far as may be necessary for the beneficial

winding up of the company;

- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;
- (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;
- (d) to sell the whole of the undertaking of the company as a going concern;
- (e) to raise any money required on the security of the assets of the company;

- (f) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal in the name and on behalf of the company;
- (g) to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;
- (h) to inspect the records and returns of the company on the files of the Registrar or any other authority;
- (i) to prove rank and claim in the insolvency of any contributory
- (j) to draw, accept, make and endorse any negotiable instruments
- (k) to take out, in his official name, letters of administration to any deceased contributory,
- (l) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;

- (m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—
 - (i) for winding up of the company;
 - (ii) for distribution of assets;
 - (iii) in discharge of his duties and obligations and functions as Company Liquidator; and
- (n) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

Voluntary Winding Up

- Voluntary winding up means the winding up of the company by the members without interference by the tribunal.
- Circumstances in which company may be wound up voluntarily. (Section. 304)
- A company may be wound up voluntarily,—
- (a) if the company in general meeting passes a resolution requiring the company to be wound up
- voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on
- the occurrence of any event in respect of which the articles provide that the company should be
- dissolved; or
- (b) if the company passes a special resolution that the company be wound up voluntarily

Conditions for voluntary Winding up

- Declaration of solvency in case of proposal to wind up voluntarily (section.305)
- Shareholders resolution
- Meeting of creditors. (Section.306)

Provisions applicable to voluntary winding up

- Commencement of voluntary winding up (section 308)
- Stopping the business (Section 309).
- Appointment of company liquidator (section 310)
- Powers to remove and fill vacancy of company liquidator
- Notice of appointment of liquidator to be given to the registrar
- Cessor of board powers
- Powers and duties of company liquidator on voluntary winding up
- Appointment of committees
- Company liquidator has to submit report on progress of winding up as may prescribed to members and creditors
- The liquidator has to make a report to the tribunal if he is of opinion that a fraud has been committed by any person in respect of the company.
- As soon as the affairs of the campny are fully wound up, the liquidator shall prepare a report of winding up showing that the property and assets of the company have been disposed of and creditors claims are fully settled.

Preferential payment and settlement of liabilities

- Preferential payments are the first payment made by the company, In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—
 - 1. All revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority within the twelve months immediately before that date;
 - 2. All wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;
 - 3. All accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;

- 4. All amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;
- 5. All amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company:
- 6. All sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and
- 7. The expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.

consequences of winding up

- Shareholders-liable to the face value of share
- Creditors –realise the assets and dischare the liabilities
- Servants and officers
- Proceedings against the company-no suit or legal proceedings
- Costs if insufficient-payment of cost out of assets
- Documents- -made known to all those having any dealing with the company.

Dissolution of a company

- Dissolution means a stage when the company ceases to exist. On dissolution the existence of company comes to an end. After dissolution the existence of company ends
- Existence of liquidator of company also ends
- No recognition of the loan of the company
- No work can be carried in the name of the company

Methods of dissolution of the company

- If the name of the company is removed from the register of companies by registrar (*Defunct company*)
- Dissolution by the order of tribunal
- Dissolution by liquidation

Dissolution:	Winding Up:
The dissolution of a company is	The winding up of a company is board
The dissolution of a company is recorded and registered by the	The winding up of a company is heard and judged by the Tribunal
Registrar of Companies	and judged by the Thounar
The process of dissolution is purely administrative function.	The process of winding up is purely judicial function.
The Liquidator does have any important role in the dissolution	The Liquidator has an important role in the winding up.
The dissolution must take place after winding up.	After winding up, dissolution takes place.
Order of the tribunal is essential	Order of the tribunal is not essential

National Company Law Tribunal (section 408)

- The National Company Law Tribunal (NCLT) is a quasijudicial body in India that adjudicates issues relating to Indian companies. The NCLT was established under the Companies Act 2013 and was constituted on 1 June 2016 by the Modi government.
- National company law appellate tribunal (section 410)
 - The central govt has to establish an appealate tribunal called NCLAT, which has to hear the appeal against the oders of the tribunal.

THANK YOU