

## **Introduction to Company Meetings**

A number of meetings are convened in a company and are generally classified as members' meetings, directors' meetings and other meetings. Members' meetings include the annual general meeting, which is the mandatory meeting of the members that every company is required to convene each year. However, there exists no embargo on holding more than one general meeting of the members, which are called the extra-ordinary general meetings. The meetings of the directors are called the Board meetings and the meetings of the committees of the directors are the Committee meetings. Other meetings include creditors meetings and class meetings. The focus of the Companies Act, 2013 has been on enhancing transparency, shareholders' democracy and protection of the interest of the investors. It has made few changes for regulating meetings for example, the requirement of holding a statutory meeting of members at the time of commencement of business of a company for any public company (required under the Companies Act, 1956) has been done away with, the concepts of video-conferencing and e-voting have been introduced.

## **Board of Directors**

The Board of directors of a company is a nucleus, selected according to the procedure prescribed in the Act and the Articles of Association. Members of the Board of directors are known as directors, who unless especially authorised by the Board of directors of the Company, do not possess any power of management of the affairs of the company. The Board of Directors oversees how the management serves and protects the long-term interests of all the stakeholders of the company. The institution of Board of Directors is based on the premise that a group of trustworthy people look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company. Acting collectively as a Board of directors, they can exercise all the powers of the company except those, which are prescribed by the Act to be specifically exercised by the company in general meeting. The Board formulate policies and establish organisational set up for implementing those policies and to achieve the objectives contained in the Memorandum, muster resources for achieving the company objectives and control, guide, direct and manage the affairs of the company. Section 2(10) of the Companies Act, 2013 defines that "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of

the company. The term 'Board of Directors' means a body duly constituted to direct, control and supervise the affairs of a company. As per Section 149 of the Companies Act, 2013, the Board of Directors of every company shall consist of individual only. Thus, no body corporate, association or firm shall be appointed as director.

### **Board Meetings [Section 173 read with Rules 3 and 4 of the Companies (Meetings of Board and its Powers), 2014]**

The Board of directors of a company are responsible for overseeing the management of the company and thereby exercise their power of day-to-day decision making by convening and holding Board meetings. Within 30 days of their incorporation, the companies must hold their first board meeting. Thereafter, the companies must hold at least four board meetings in a year, where there must not be more than 120 days' gap between two consecutive meeting

One of the striking features of the present legislation is that it allows the directors to take part in the board meeting through videoconferencing or any other audio-visual means. However, there is an embargo from dealing certain matters through the video-conferencing or audio-visual mode. A notice of at least seven days must be given to each of the director for a board meeting. In case of urgency a shorter notice may be given where at least one independent director is present at such meeting. The notice of a board meeting must be sent to all the directors, otherwise the proceedings of the meeting and the resolution passed thereat may be declared as invalid by the Court of law. Also, it has been held in the case of *Dankha Devi Agarwal v. Tara Properties Private Limited* that a decision taken in a meeting without due notice of such meeting for removal or induction would be instance of oppression and mismanagement. At least two directors or one-third of the total strength (higher of the two) constitutes quorum for a board meeting. Here the directors, both personally attending or through the audio-video means would be counted for the purposes of the quorum (section 174).

### **Board Composition**

Minimum/Maximum Number of Directors in a Company [Section 149(1)] Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company. A company can appoint maximum 15 fifteen

directors without any specific compliance. A company may appoint more than fifteen directors after passing a special resolution in general meeting. The restriction of maximum number of directors shall not apply to section 8 companies. Minimum number of directors;

- Public Company - 3 Directors
- Private Company - 2 directors
- One Person Company (OPC) - 1 Director

Maximum Number of Director is 15, which can be increased by passing a special resolution. Section 8 companies can have more than 15 directors.

Section 149(3) provides that every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. Further, Second proviso to Section 149(1) read Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 following class of companies must have at least one Women Director

### **Quorum for Board meeting Requirement**

- Quorum for Board Meeting =  $\frac{1}{3}$ rd of its Total strength or two directors, whichever is higher
- A Director participating through video conferencing/audio visual modes will also be counted for quorum
- Any fraction of a member will be rounded off as one
- Total strength shall not include directors whose places are vacant.

### **Power of Board [Section 179]**

Section 179 of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.

### **Power of Directors to Make Calls on Shares**

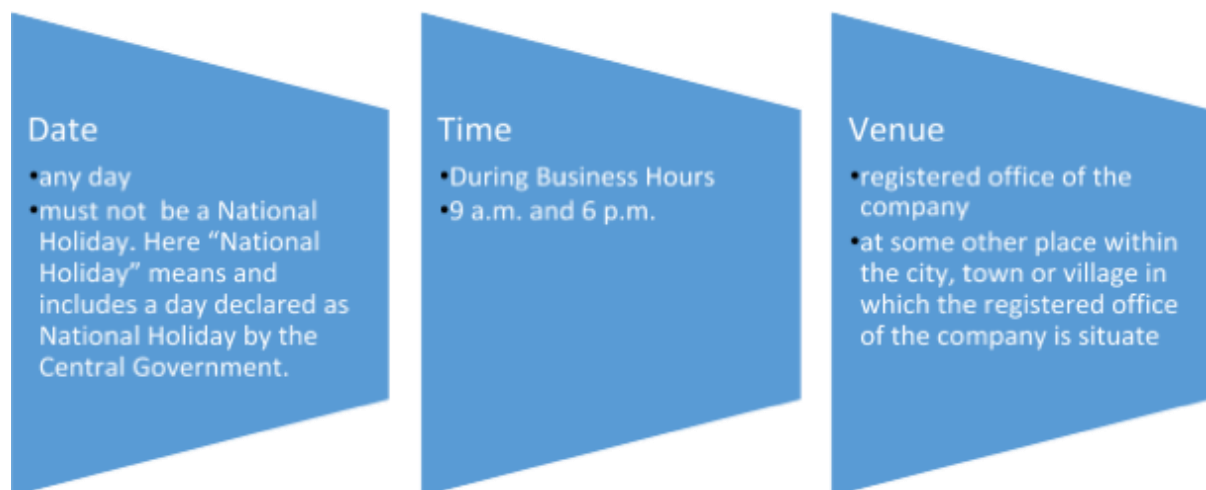
The Articles of Association of companies generally provide that the power to make calls in advance from the shareholders in respect of unpaid amount on shares vest in the directors. The power to make calls is a fiduciary one and shall not be used by the directors for their own benefit. This power cannot be delegated by the directors to any committee of directors, the managing agent, secretaries, treasurers or the manager, In **Poiner Alkali Works Ltd v. Amiruddins**. Tayyabji, it was held that where the articles provide that every shareholder shall be liable to pay the amount of every call to the persons and at the time and place appointed by the directors, the resolution should specify the time, place and amount of the payment of the call. In **East and West Insurance Co Ltd v. Mrs. Kamla Jayanti Lsl Mehta**, it was held that when the time for the payment of the call is not fixed by the board of directors, the call is valid although there was an omission in specifying the place and person whom the call is to be paid. A valid resolution making a call must state; (a) The amount of the call, (b) The time when the call should be paid, (c) The person to whom the payment is to be made and (d) The place where the payment is to be made.

### **Members' meetings**

**Annual General Meeting (Section 96):** One of the opportunities annually given to the members of a company is to take part in the business of the company by exercising their power to take decisions. For this purpose, each year every company is required to hold at least one meeting of its members' which is known as an annual general meeting (AGM). An exemption from holding an annual general meeting is only given to a one-person company.

The first general meeting of a company must be held within nine months from the date of closing the financial year of the company, and then the company need not hold any annual general meeting in its year of incorporation. The subsequent annual general meetings shall take place within six months of the date of closing of the financial year. The time prescribed for the first annual general meeting cannot be extended, however, the time period for subsequent annual general meetings may be extended to a maximum of three months with the leave of the Registrar of companies.

Following chart depicts the date, time and venue for holding an annual general meeting. Here the Central Government is empowered to exempt, subject to conditions, any company from the holding such meeting in accordance with the date, time and venue as prescribed.



When a company defaults in holding an annual general meeting as required, the Tribunal has the power to call such meeting upon receipt of an application from any member of the company. The Tribunal may even direct to hold a one-member meeting. Such meetings shall be deemed as an annual general meeting as per provisions of this Act. Upon such default, the company and every officer in default would be liable for punishment as prescribed.

### **Business to be transacted at an annual general meeting (section 102)**

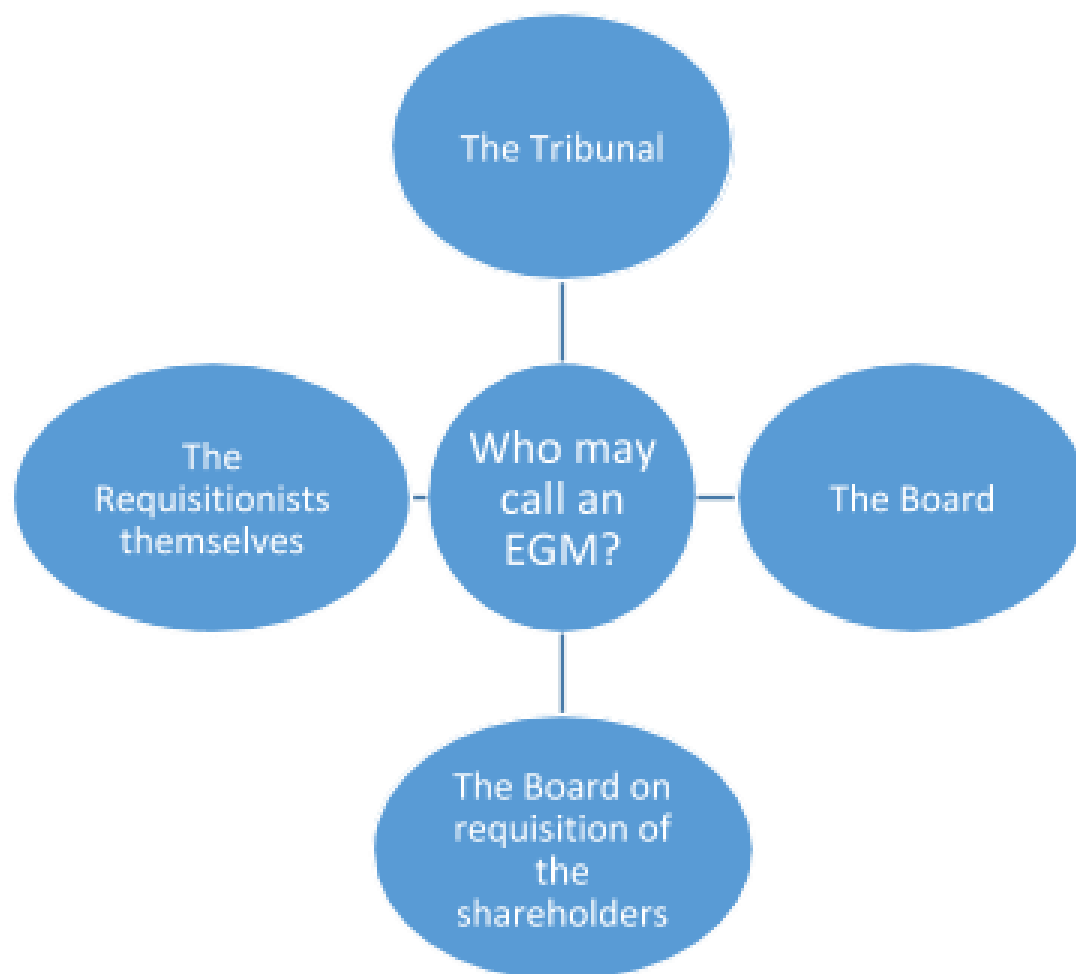
The business transacted at the annual general meeting is called the ordinary business (this is the reason a general meeting is also referred to as an ordinary meeting). Items of ordinary business constitutes consideration of financial statements, Board reports and auditor’s report, declaring dividends, appointment of directors and appointment and salary fixation of the auditors of the company.

**Extra-Ordinary general meeting (Section 100):** All other general meetings convened and held in a company besides the annual general meeting are regarded as extraordinary general meetings. All the business transacted at an extra-ordinary general meeting is called special business (all other businesses except ordinary business). The following diagram illustrates, who all can call an extra- ordinary general meeting:

The shareholders making a requisition must possess at least one-tenth of the paid up share capital of the company and where the company is without the share capital, the shareholders must possess at least one-tenth of the voting powers of the company. Such share-holders,

requisitioning a general meeting, must sign upon the matters required to be addressed at the meeting. The Board upon receipt of such valid requisition must call a general meeting within 21 days. The date of the meeting in any case must not be later than 45 days from such requisition.

In case these dead-lines are not met by the Board, the shareholders making requisition may go ahead to call and hold a general meeting themselves. They can do so within 3 months from the requisition date. All the reasonable expenses incurred by the shareholders on holding such meeting,



are to be reimbursed to them by the company by deducting such amounts from the fees of the defaulting directors.

In *LIC of India v. Escorts Ltd*, the Supreme Court observed that every shareholder of a company possesses a right to call/requisition an extra-ordinary general meeting, subject to the

provisions of the Act. Once the requisition is made in compliance of the prescribed law, the shareholder cannot be restrained from calling such meeting.

In another case, *Rathnavelu Chettiar v. M.Chettiar*, the shareholders gave a requisition in compliance of the provision of the Act for removing the MD of the company. Where the directors failed to call a meeting within the prescribed time, the shareholders themselves requisitioned the meeting. The venue of the meeting was decided as the registered office of the company. However, on the day of the meeting, the registered office was locked, thus the meeting was held at some other place. The court held such meeting to be a validly convened meeting.

The Tribunal may also, under certain circumstances order to hold and convene a meeting (other than an annual general meeting). Here the Tribunal may on its own motion or upon the application made by any director or members having voting rights may call such a meeting. The Tribunal may give necessary directions for conduct of the meeting including the permission for holding one - member meeting in person or through proxy (section 98).

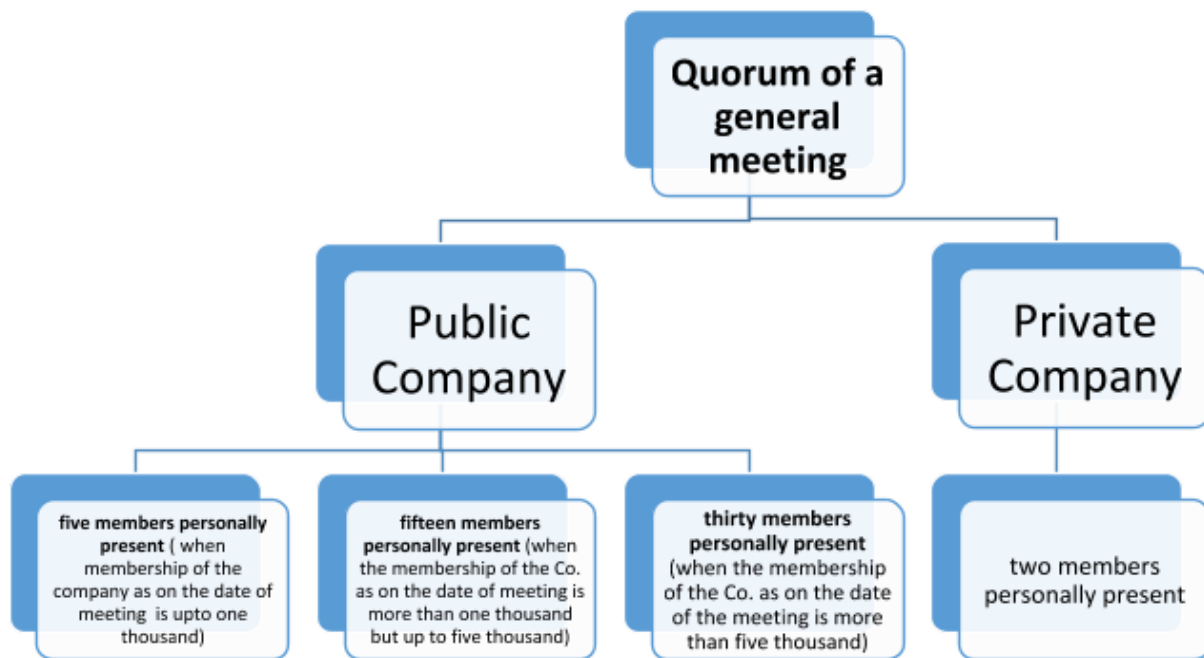
### **Notice of the meeting (Section 101)**

For calling a general meeting a notice is required to be given to every member of the company or to his legal representative (in case of a deceased member), every director and auditor of the company. Such notice must be given to the aforesaid parties at least 21 clear days before the meeting. The notice can be sent either in writing or through electronic means. The requirement of 21 days' notice can be done away with, if at least 95 percent of the members voting at the meeting agree to a shorter notice for such meeting.

The notice of a meeting must provide for the date, time and venue of the meeting along with the statement of the business to be dealt at the meeting. It is necessary to send such notice of the meeting as prescribed, however inadvertent failure to send notices or in case any member or other persons do not receive the notice shall not *per se* affect the validity of the meeting.

### **Quorum (Section 103)**

For holding a valid meeting, a minimum requisite number of members must attend the meeting to transact the business, which constitutes quorum of the meeting. Following charts, provides at a glance, the quorum required to be present at general meetings:



### **Adjournment of a meeting**

Where the requisite number of members are not present within half an hour of the allotted time of the meeting, such meeting is adjourned to be held on the same day next week at same time and venue or as scheduled by the Board. The only exception to the rule is, when the meeting is called by the requisitionists, in such a case the meeting is not adjourned for the want of quorum and is cancelled. In other cases, members present within half an hour of the adjourned meeting shall constitute the quorum.

### **Chairman of a meeting (section 104)**

A chairman is elected by the members personally present at a meeting by the show of hands. Such chairman is required for orderly conduct of the meeting. In case a poll is demanded for electing a Chairman, the provisions of the Act shall apply and the earlier chairman shall continue unless a new one is appointed.

### **Proxies (section 105)**

Members entitled to attend and vote at the meeting, may participate in the decision making process by voting in the meeting, either personally or through a duly appointed proxy. The proxy is another person, whom a member appoints to attend and vote at the meeting on his behalf. However, such a proxy does not possess the right to speak at such meeting on behalf of



the member, nor is he entitled to vote except in case of a voting by poll. Section 105 of the Act, further deliberates upon the provisions for appointing a proxy. A member can revoke his proxy by a notice in writing.

A member can appoint more than one proxies for the same meeting, in case he possesses different shares of that company. But in case, the said member appoints more than one proxies for the same bunch of shares, then all the proxies shall be jointly and severally liable.

### **Voting at a meeting (section106)**

A member can participate in the decision-making process of the company by voting at the meetings. Such a right to vote can only be restricted by the articles of a company, where it stipulates that the shares in respect of which any call money or sums remains due or shares upon which the company has exercised any lien, such shareholders do not have right to vote.

### **Voting by show of hands (Section 107)**

When a resolution is to be passed at a general meeting, voting takes place by show of hands unless the members ask for a poll or voting happens electronically. Such voting is evidenced though the Chairman's declaration and an entry to this effect in the minutes of the meeting.

### **Voting through electronic means [Section 108 read with Rule 20 Companies (Management and Administration) Rules, 2014]**

The Central Government may prescribe in accordance with the Rule 20, certain class or classes of companies and also the manner in which a member may vote by the electronic means.

**Demand for a Poll (Section 109 read with Rule 21 Companies (Management and Administration) Rules, 2014):** A poll may be either ordered by the chairman *suo moto* or may be demanded by such number of members prescribed under this section.

Where a resolution is to be passed through poll, the Chairman shall require the assistance of certain persons for scrutinising the poll and the votes and to prepare a report in accordance with the Rule 21 of Companies (Management and Administration) Rules, 2014). The Chairman has the power to regulate the poll in accordance with the said rules.

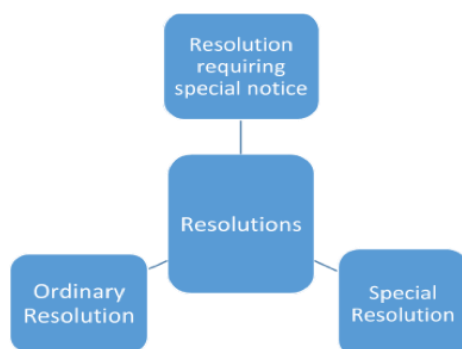
**Postal Ballot (Section 110 read with Rule 22 Companies (Management and Administration) Rules, 2014):** A Central Government notification may declare certain business items (excluding the items of ordinary business) to be dealt vide the postal ballot. A resolution passed by the required majority by a postal ballot shall be deemed to be passed at a duly convened general meeting.

### **Ordinary and Special resolution (Section 114)**

Decisions in a company are taken by passing resolutions to that regard. The resolutions can be ordinary, special and resolutions requiring special notice, depending upon the nature of the decision to be taken.

**Ordinary resolution** is said to be passed when the votes cast by the eligible members in favour exceed the votes casted against any resolution. Here the members can either vote in person or through proxy. The Chairman of the meeting possesses a casting vote in case of a tie.

Whereas a **special resolution** is said to be passed for a resolution when a notice duly given for the purpose clearly specifies that the resolution to be passed is a special one. Such resolutions require that the votes by the eligible members must be three times in favour in comparison to the votes cast against the resolution. Here the person can either vote in person or through a proxy.



### **Minutes of the meeting (section 118 read with Rule 25 Companies (Management and Administration) Rules, 2014)**

Companies are required to maintain and keep the records of the proceedings of every meeting called the minutes of the meeting, which are to be prepared according to the provisions of this Act and the Secretarial Standards. The minutes of each of the meeting are to be recorded

succinctly including all the details like the new appointments made. The minutes prepared in the loose sheets must be signed by the Chairman within 30 days of the meeting in the form of a book with pages consecutively numbered. The minute book of each kind of company viz. the general meetings, creditors' meetings are to be kept separately.

The minutes of the meetings shall have an evidentiary value for the proceedings mentioned therein.