For B.Com (H) Students of Semester II

Shareholders Meetings

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- Annual General Meeting
- Extra-ordinary General Meeting
- Procedures and Requisites of Valid Meeting
- Resolutions

Members of a company have the right to participate in the fundamental corporate decision making and appoint their representatives (termed as directors) to run the company on their behalf. These rights are ensured by the meetings of members of the company. Meetings of the members of a company, called general meetings are required to be held from time to time.

Kinds of General Meetings

- Annual General Meeting (AGM)
- Extraordinary General Meeting (EGM)

(It may be noted that the requirement of Statutory Meeting and Statutory Report laid down by Section 165 of the Companies Act 1956 has been dropped by the Companies Act 2013.

Annual General Meeting (AGM)

(1) Meaning and Purpose. Annual General Meeting is a regular meeting of the members of a company which is held annually. This meeting provides an opportunity to the members of the company to review working of the company and express their views on the management of the company. The purpose of calling the meeting is to transact the *ordinary business* of the company. The ordinary business consists of:

(*a*) consideration of financial statements and reports of the Board of Directors and auditors;

(*b*) declaration of dividends;

(*c*) appointment of directors in place of those who are retiring;

(*d*) appointment and fixing of the remuneration of auditors of the company.

(2) Statutory requirement. It is a statutory requirement on every company other than a One Person Company to call and hold an annual general meeting every year (Section 96).

The *first annual general meeting* of a company must be held within 9 months from the closing of the first financial year of the company. So it is not necessary for the company to hold any annual general meeting in the year of its incorporation.

Subsequent annual general meetings must be held by the company each year within 6 months after the close of the financial year but the interval between any two annual general meetings must not be more than 15 months. Registrar may, however, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding 3 months. *Held,* in the case of *B.R. Kundra v. Motion Picture Association* that the gap between two AGMs cannot be more than 18 months (when the Registrar has by an order permitted it). Non-completion of final accounts alone may not be a valid ground for granting extension. *Financial year* refers to the period ending on the 31st day of March every year.

There should be one annual general meeting in *every calendar year* and, therefore, there must be as many general meetings as the number of calendar years for which the company had been carrying on business.

"There is a clear statutory duty on directors to call the meeting whether or not, the accounts, the consideration of which is only one of the matters to be dealt with at an annual general meeting, are ready or not."[2] If the annual accounts are not ready for being laid before the meeting, proper course is to hold the meeting within the prescribed time and then adjourn it to some future date early in the following year when the accounts will be available (*Held* in *M.D. Mundhra v. Assistant ROC)*. The fact that the company did not function is also not acceptable as an excuse for not calling the

2.*Re*. E1 Sombrero Ltd. (1958)

meeting.[3] Similarly, when the management of the company was taken over by the Government in the case of *Hindustan Co-op Society Ltd.*, it was not accepted as an excuse for not calling the meeting.

Thus, section 96 provides that there shall be an annual general meeting once at least in every year, i.e. one meeting per year. For example, in the case of *Sree Meenakshi Mills Co. v. Assistant Registrar, Madurai,* a meeting was called on 30th December, 1934. It was adjourned to 31st March, 1935 and the next meeting was held on 28th January, 1936. It was held that the company did not comply with the requirement of section 166 since no meeting was held in the year 1935.

(3) Authority to convene the Annual General Meeting. The power to convene the Annual General Meeting vests with the Board of Directors. Individual directors have no such power.[4] Secretary cannot issue any notice for the Annual General Meeting without the authority of the Board.

(4) Time and Place of the meeting. Company must call the annual general meeting either at the registered office of the company or at some other place within the city in which the registered office of the company is situated [*Sec. 96(2)*].

The annual general meeting must be held on any day which is not a National holiday during business hours, that is, between 9 a.m. and 6 p.m.

(5) Notice requirement. Company must give at least 21 days' written notice[5] or through electronic mode to call an annual general meeting of the shareholders. Annual general meeting may be held with a shorter notice if the consent in writing or through electronic mode is given by not less than 95% of the members entitled to vote at the meeting (*Sec. 101*).

(6) Default in holding the Annual General Meeting. If default is made in holding an annual general meeting, the Tribunal may, on the application of any member of the company, call or direct the calling of the annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient in relation to the calling, holding and conducting of the meeting. The directions that may be given include that only if one member of the

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[3].Madan Gopal Day *v.* State of West Bengal (1968)

[4].Browne *v.* La Trinidad (1887)

[5].It implies 21 days' clear notice *i.e.*, excluding both the days on which it is served and the date of the meeting.

company is present in person or by proxy that shall be deemed to constitute the meeting.

A general meeting so held shall be deemed to be the annual general meeting of the company.

If default is made in holding a meeting of the company in accordance with section 96, or in complying with any directions of the Tribunal, company and every officer of the company who is in default, shall be punishable with fine which may extend to R 1,00,000 and in the case of a continuing default, with a further fine which may extend to R 5,000 for every day after the first during which such default continues.

Extraordinary General Meeting (EGM)

Meaning

All general meetings other than the annual general meetings are known as extraordinary general meetings.

When and By Whom EGM may be called

Extraordinary general meeting may be called under the following circumstances:

(1) By the Board. When the directors have to transact some immediate and emergent business for which they cannot wait till the next annual general meeting, i.e. the board of directors of a company may call this meeting whenever it thinks the need of it.

(2) By the Board on the requisition. The board of directors may also call an extraordinary general meeting on the requisition of given number of members. The given number of members is-

(*a*) In the case of a company having share capital, member or members holding not less than 1/10 of the paid up share capital of the company carrying voting rights regarding the matter of requisition.

(*b*) In the case of a company not having share capital, member or members holding at least 1/10 of the total voting power of all the members regarding that matter.

Matters, for the consideration of which the meeting is called shall be stated in the requisition and those matters alone shall be considered at the meeting. Requisition must be duly signed by the

requisitionists and deposited at the registered office of the company.

Board of Directors must proceed to call a meeting for the consideration of the matters notified by the requisitionists within 21 days of the deposit of requisition at the registered office of the company. The meeting must be held by the directors on a day not later than 45 days from the date of the deposit of the requisition.

(3) By the Requisitionists. On default of the directors to call the meeting within 45 days of deposit of the requisition, the meeting may be called by the requisitionists themselves within 3 months of the date of deposit of the requisition. Requisitionists shall not be allowed to hold the meeting after the expiry of three months from the date of deposit of the requisition except a meeting which was duly convened within three months of the requisition but was adjourned to some other day which falls after the expiry of the said three months.

Requisitionists shall call the meeting in the same manner as nearly as possible in which meetings are called by the Board of Directors. Notice of such meeting shall be given in the same manner as for the regular meetings. If the registered office is not made available to them, they may hold the meeting anywhere else.[6] Requisitionists shall be entitled to claim all the expenses of calling the meeting from the company. The company shall be entitled to indemnify itself and to deduct the expenses of calling the meeting out of the fees or remuneration of those directors who were in default. Resolution, properly passed at the meeting called by the requisitionists, shall be binding upon the company.

(4) By the Tribunal. The Tribunal may also under certain circumstances call, hold and conduct the meeting of a company (*Sec. 98*)–

(*a*) When it is *impracticable* to call a meeting of the company in a manner in which meetings of the company may be called,[7] or

(*b*) When it is not *possible* to hold or conduct the meeting of the company in the manner prescribed by the Act or the Articles of Association of the company.

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[6].Rathnaveluswami Chettiar *v.* Manickavelu Chettiar (1951)

[7].Dayanand Chakraborty *v.* Himangu Sekhar Mukherjee and others (Company Petition No. 25 of 1977)

Tribunal may also give directions modifying or supplementing the operation of the provisions of the Act or the Articles of Association in relation to the calling, holding or conducting of the meeting. It may also direct the company that even one member of the company present in person or by proxy shall be deemed to constitute a meeting.[8]

The Tribunal may order for the calling, holding and conducting of such a meeting either (*a*) of its own motion, or (*b*) on the application of any director of the company, or (*c*) of any member of the company who would be entitled to vote at the meeting.

Comparative Note on General Meetings

Basis	***Annual General Meetings (AGM)***	***Extra-ordinary Meeting (EGM)***
What	Regular Meeting held once in every year.	Meetings other than AGMs.
Applicable to	All companies	All companies
Requirement	Within 6 months of close of the financial year.	Any time.
Purpose	Ordinary business- election of directors; passing of annual accounts; declaration of dividend; and appointment of auditors.	Any matter for which notice has been given.
Who may call	Board of directors	Board of directors; and Requisitionists
Default	Tribunal may call. Fine on default.	Tribunal may call. Fine on default.

Procedures and Requisites of a Valid General Meeting

The following are the requisites for calling and conducting a valid general meeting:

1. Proper Authority

The authority to call a general meeting is the board of directors of the company. The notice of the meeting should be issued under their authority, granted at a duly constituted meeting of the board or passing a resolution of the board by circulation. A single director has no power to convene a

[8].Ramroop Sharma *v*. C.R.E. Wood & Co. Ltd. (1958)

meeting. The secretary of the company has no authority to call a general meeting unless the Board resolves and authorises him to do so. (Held, *Re. Haycraft Gold Reduction and Mining Co., 1900)*.

In case the meeting of the Board of directors itself is unlawful *e.g.* where rightful directors are prevented from attending the directors' meeting, the decision taken by the Board at such meeting to call the general meeting shall also be unlawful.[9] Where, however, the meeting at which the directors decide to call a general meeting is not properly constituted (*e.g.* there is some defect in the appointment or qualification of the directors), but the Board acts *bona fide*, a general meeting called in pursuance of a resolution passed at such directors' meeting is not necessarily invalid.[10]

However, under certain circumstances, the requisitionists or the Tribunal may call a general meeting in case of default by the directors.

2. Notice

Notice to whom? Notice of every general meeting should be given to the following persons:

(*i*) Every member of the company.

(*ii*) Every person entitled to a share in consequence of the death or insolvency of a member.

(*iii*) Auditor or auditors of the company

(*iv*) Every director of the company [*Sec. 101*(*2*)].

A preference shareholder is entitled to receive notice of only that general meeting which has to consider a resolution on which he is entitled to vote i.e. resolutions directly affecting their rights or all resolutions when the dividends are in arrears for a specified number of years. [*John Shaw and Sons (Salford) Ltd. v. Shaw, 1935].*

Deliberate omission to give notice to a single member may invalidate the meeting. However, an accidental omission to give notice to or non-receipt of it by a member will not invalidate the meeting [*Sec. 101*(*4*)]. Non-receipt of the notice under no circumstances invalidates the holding of the meeting.

Length of Notice. A proper notice in writing or through electronic mode to every member of the company is required by law for the holding of every valid meeting. Notice must be given even though a member has waived his right to have notice. It must disclose the purpose for which the

[9].Harben *v.* Philips (1883)

[10].Browne *v.* La Trinidad (1887)

meeting is called. It must be given at least 21 clear days before the date of the meeting. In calculating 21 days, the date of receipt of notice and the date of the meeting should be excluded [*Sec. 171*(*1*)]. The gap should be of 21 clear days (*Bharat Kumar Dilwali v. Bharat Carbon and Ribbon Manufacturing Co. Ltd, 1973).* The notice shall be deemed to have been received by a member at the expiry of 48 hours from the time of posting. In case of newspaper advertisement of a notice, the period of 21 clear days begins from the day after the issue of the newspaper[11].

Articles may provide for a notice longer than 21 days, but not shorter than 21 days.

A general meeting may with a shorter notice if consent in writing or through electronic mode is given by not less than 95% of the members entitled to vote at such meeting (*Sec. 101*).

Service of Notice. Company may serve notice on the members either personally or by prepaid post or by advertisement in the newspaper. It must be properly addressed. Service of notice by advertisement shall be deemed to be complete the day the advertisement appears in the newspaper. Explanatory statement need not be advertised, but the fact that the same has been sent to the members through post shall be mentioned in the advertisement. In case of joint-holding of shares, notice to first named shareholder would be sufficient.

When the meeting is adjourned for 30 days or more and the new business is to be transacted at the adjourned meeting, a fresh notice has to be given.

Contents of the Notice. The notice must contain the following particulars:

(*i*) Name of the meeting, the place, day and hour of the meeting. The meeting to be valid must be held at the place and time specified. Annual General Meeting should be held on a working day during business hours. But the meeting may continue beyond business hours. Extraordinary general meeting can be held on any day including a holiday and not necessarily during working hours.

(*ii*) *Nature of the business* to be conducted at the meeting. The Companies puts business into two categories:

(*a*) *General business* (also referred as ordinary business). In case of annual general meeting, all business relating to: (*i*) consideration of annual accounts; (*ii*) declaration of dividend; (*iii*) appointment

[11].Sneath v. Valley Gold ltd. (1893)

of directors in place of those retiring; and (*iv*) appointment of, and fixing of remuneration of the auditors, are considered as general business.

(*b*) *Special business*. Any other business at an annual general meeting and all businesses in case of any other meeting are regarded as special business. If special business is to be transacted at a general meeting, an 'explanatory statement' giving all the material facts of the item of special business including the particulars of interest, if any, of every director or other managerial personnel, must be annexed to the notice.

Agenda. Agenda gives guidance and information as to the business to be discussed and transacted in the meeting. It sets out the chronological sequence in which the various items of business shall be taken up in the meeting for discussion. The sequence should not be changed unless agreed to by the members present. Routine items should be put first and debatable items later. Similar items should be placed closer to each other.

Agenda is prepared by the Secretary in consultation with the Chairman or the Managing Director. Agenda must be clear and complete. A company may be restrained from transacting that business which is not mentioned in the agenda.

3. Place of the Meeting

Annual General Meeting. The annual general meeting is to be held by a company at its registered office or at some other place in the same city, town or village where the registered office of the company is situated. However, the Central Government has the power to grant exemption to any company from this provision.

A private company can hold its annual general meeting at any other place if:

(*i*) it has fixed the place of the meeting by the articles; or

(*ii*) it has fixed the place of the meeting by a resolution agreed by all the members.

Other General Meetings. There is no such provision in the Companies Act which requires that the general meetings of the company other than the annual general meeting must be held at some particular place. It, therefore, follows that the other general meetings can be held, subject to any specific provision in the articles at any other place. However, the directors must act reasonably in fixing the time and place of the

meeting so that members get full opportunity in exercising their voting rights.

4. Quorum

Minimum number of members required to constitute a valid meeting and to transact business therein is called 'quorum'. No meeting can be valid without quorum. Any resolution passed at a meeting without quorum shall be invalid.

Section 103(1) of the Companies Act provides as follows:

(1) Unless the articles of the company provide for a larger number,—

(*a*) in case of a public company,—

(*i*) 5 members personally present if the number of members as on the date of meeting is not more than 1000;

(*ii*) 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;

(*iii*) 30 members personally present if the number of members as on the date of the meeting exceeds 5000;

(*b*) in the case of a private company, 2 members personally present, shall be the quorum for a meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(*a*) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(*b*) the meeting, if called by requisitionists under section 100 (i.e. extra-ordinary general meeting) shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (*a*), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Can a single member constitute a valid meeting?

Ordinarily, a single member present cannot form a quorum, as a single member cannot constitute a meeting. This is because meeting *prima facie* means coming together of two or more than two persons. The Companies Act also uses the expression "members" which shows that more than one member is expected to be present at the meetings.

However, under the following circumstances even a single member present may constitute the quorum and, therefore, a valid meeting:

1. When the Tribunal calls or directs the calling of a general meeting, it has the authority to direct that one member present in person or by proxy shall be deemed to constitute a valid meeting (*Sec. 97 and 98*).

2. When a class of members or creditors consists of one person, that member alone can constitute the meeting of that class and can pass a resolution by signing it, *e.g.*, when all the shares of a particular class are held by one person only.

At what time quorum must be present? The quorum must be present at the time when the meeting begins and proceeds to take up business. It need not be present throughout or at the time of taking the vote on any resolution.[12] Thus, once a meeting is organised and all the parties have participated, no person or faction, by withdrawing capriciously and for the sole purpose of breaking the quorum can render the subsequent proceedings invalid.

In case, a company is a member of another company, it may, by resolution of its Board of directors, authorise such person as it thinks fit to act as its representative at any meeting of the other company. Such person shall be considered as a member "personally present" for the purpose of counting the quorum. In case the same person represents more than one company who are members of the company, his presence will be counted as two or more members as the case may be, for purposes of quorum.[13] In case two or more persons are joint-holders of shares in a company, one or more of them will be counted as one member for the purposes of quorum.

A quorum is presumed unless it is questioned at the meeting or unless the record shows that the quorum in fact was not present.

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[12].*Re*. Hartley Baird Ltd. (1954)

[13].*Re*. Kelantan Coconut Estates Ltd. (1920)

5. Chairman

A general meeting of the company is to be presided over by a chairman who regulates and supervises the proper conduct of the business at the meeting. He decides all incidental questions arising in the course of the proceedings of the meeting. Chairman should act *bonafide* and in the best interest of the company as a whole. Articles usually provide the mode of appointment of the chairman of a meeting. If the articles do not provide otherwise, the members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands [*Sec. 104(1)*]. If a poll is demanded on the election of the chairman, it must be taken forthwith and the chairman elected on a show of hands can exercise all the powers in this connection [*Sec. 104(2)*]. If some other person is elected chairman as a result of the poll, he shall be the chairman for the rest of the meeting.

Chairman of the original meeting shall be the chairman of the adjourned meeting also unless validly removed. The chairman of a meeting may be appointed by the Company Law Board/Tribunal in cases where there are differences among the shareholders, and a peaceful meeting under the chairmanship of a person appointed by either group is impossible.[14]

Powers of a Chairman

1. The chairman has *prima facie* authority to decide all questions which arise at a meeting and which require decision at the time.

2. The entry in the minutes book of the chairman's decision is evidence of the decision of the meeting.

3. The chairman has a right to decide priority amongst speakers, to demand poll, to exercise casting vote, to expel an unruly member and he may, with the support of the majority, apply closure to a discussion after it has been reasonably debated.[15]

4. He can adjourn a meeting when it is impossible, by reason of disorder or other like causes, to conduct the meeting and complete business.

Casting Vote

Articles of Association may give an additional or second vote to the chairman of the company, over and above his right to vote as an ordinary member. In the case of a tie, *i.e.* equality of votes, chairman may use the casting vote to decide the matter in one way or the other.

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[14].Selvaraj *v.* Mylapore H.P. Fund (1968)

[15].Wall *v.* London Northern Assets Corporation (1898)

Duties of a Chairman

1. The chairman must take care to see that proper discipline is maintained at the meeting; that the proceedings are conducted in a proper manner; that proper opportunity is given to the members to express their views; that the voting is fair; and that the proceedings of the meeting are properly and correctly recorded in the minutes book.

2. The chairman should act *bona fide* according to his best ability and judgment and without any prejudices. He should see that the meeting is duly convened and properly held.

6. Proxy

The term proxy has two meanings:

(*a*) a personal representative of the member at a meeting i.e. the person authorised to act or vote for another at a meeting of the company, and

(*b*) the instrument by which a person is appointed to act for another at a meeting of the company, since a representative can be appointed only in writing.

The following are the provisions of the Companies Act regarding appointment and rights of proxy:

(1) Law entitles every member of a company to appoint a person as his proxy to attend and vote at the company meeting instead of himself [*Sec. 105(1)*]. However, a member of a company having no share capital does not have this right unless its articles provide expressly.

(2) A member of a private company is not entitled to appoint more than one proxy to attend on the same occasion unless its articles provide otherwise. But a member of a public company may appoint more than one proxy *i.e.*, he may appoint one proxy in respect of certain shares held by him and a different proxy for other shares held by him. Provided that a person appointed as proxy shall act on behalf of such member or members not exceeding 50 and any such number of shares as prescribed.

(3) Any person can be appointed as a proxy whether he is a member of the company or not. In case the proxy is not a member of the company, he shall have no right to speak at the general meeting unless the articles otherwise provide. However, a proxy may put questions in writing and send the same to the chairman for answer.

(4) A proxy is ordinarily *entitled to vote only on a poll*. But he may vote on voting by show of hands if the articles provide. Besides

that, he may demand or join in demanding a poll. However, he shall have no right to inspect proxy forms or the minutes of the meeting.

(5) Proxy must be appointed by an instrument in *writing*, duly stamped and signed by the member of the company. A blank but stamped proxy is valid and may be completed by the person authorised to do so.

Proxy must be deposited with the company at least 48 hours before the commencement of the meeting. A company, however, cannot legally require proxies to be deposited with it earlier than 48 hours before the time of the meeting. After giving 3 days' notice to the company, members may inspect during business hours the proxies lodged with the company at any time during the period commencing 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting [*Sec. 105(4)*]. Proxy lodged for the original meeting remains valid for the adjourned meeting also.

(6) Every notice of a meeting must appropriately mention that a member is entitled to appoint a proxy and that the proxy need not be a member [*Sec*.105(2)]. A company cannot send invitation to members to appoint any one or more persons as proxies.

(7) A proxy is *revocable*. It can be revoked at any time. Death of the member appointing a proxy will, in the absence of provisions in the Articles revoke the authority of the proxy. Member may himself attend and vote in the meeting. Vote tendered by the proxy in such a case will not be accepted because the need for exercising the proxy had never arisen. Proxy in this case shall stand revoked impliedly. However, the mere presence of a member at the meeting does not imply the revocation of the authority of the proxy. When both the member and the proxy are present at the meeting, the member's absence from voting on the resolution on which the proxy casts his vote does not imply the revocation of the authority of the proxy. A proxy appointed later revokes the proxy appointed earlier.

(8) The relationship between the member and the proxy is that of *principal and agent.* A minor member has no capacity to appoint a proxy. He can act only through his guardian. However, a minor can be appointed a proxy. In the case of joint holders of shares, proxy appointed by the first named joint holder will have precedence over the proxy appointed by the second joint holder. Proxy appointed by the first joint holder will exercise voting right to the exclusion of the joint holders who may be present in the meeting.

7. Voting at General Meeting

The decisions at the meetings are taken by way of passing the resolutions. Every proposed resolution is discussed by the members of the company. Members have the right to move amendments to the proposed resolutions provided the amendments are germane to the proposed resolution. After a proposed resolution has been discussed it is put to vote. Every member has a right to vote on such resolutions. Shareholders may exercise their voting rights in their best interests with complete freedom. They are allowed to vote even if their interest is in conflict with the interest of the company. A director may vote in the shareholders' meeting even though his interest in the subject matter is opposed to the interest of the company. Only members whose names appear in the Register of Members shall have the right to vote. Share warrant holders, executor of a deceased member, receiver of an insolvent member cannot exercise any right to vote, unless registered as a member. However, a person who becomes a member between the date of the original meeting and the adjourned meeting may vote at the adjourned meeting. Members who were not present at the time of voting by show of hands may vote at a poll.

A company cannot prohibit any member from exercising his voting right on the ground that he has not held his shares or other interests in the company for any specified period before the meeting or on any other ground (*Sec. 106*). However, the articles may provide that a member shall not be entitled to exercise any voting rights, in respect of any shares registered in his name on which he has not paid all calls or other sums presently payable by him or in regard to which the company has exercised any right of lien (*Sec. 106*).

The preference shareholders have right to vote only on such resolutions which directly affect them; and when their dividends are in arrears for a specified number of years.

Voting may be either by a show of hands or by a poll.

Voting by show of hands. In the first instance, at any general meeting, voting takes place by a show of hands. On a show of hands, each member has only one vote. Proxies are not entitled to vote in case of such a voting unless the articles otherwise provide. The chairman's declaration on the result of voting by show of hands is conclusive.

Voting by poll. Voting in accordance with the voting rights given to the members by the Articles of Association is called a 'Poll'. Proxies are allowed to vote in case of voting by poll. There is a counting of votes cast in favour and against the resolution in case of a poll. Ordinarily, it implies exercise of voting rights by members in proportion

to their share of the paid up equity capital of the company. All decisions taken on voting by show of hands will stand cancelled as soon as a demand for voting by poll is made. It is the demand for poll and not its result which will eradicate the decision by show of hands.

A poll can be demanded either before or after the declaration of the result of voting on a show of hands. A ***poll may be demanded*** by either of the following:

(*a*) Chairman, on his own motion. It is the duty of the chairman to demand poll when he knows that proxies have been lodged and that on a poll the decision on a show of hands is likely to be reversed.[16]

(*b*) In the case of a company having share capital, by any member or members, present in person or by proxy holding not less than 1/10 of the total voting power in respect of the resolution or having paid up share capital of not less than ₹ 5,00,000.

(c) In the case of any other company, by any member or members present in person or by proxy and having not less than 1/10 of the total voting power.

The demand for poll may be withdrawn at any time by the person or persons who made the demand (*Sec. 109*).

Poll must be held according to the provisions of the Articles of Association. A poll on a resolution for the adjournment of the meeting or for the appointment of the chairman must be immediately taken. Chairman, in all other cases, must take poll at any suitable time but not later than 48 hours of the demand for poll (*Sec. 109*). If a poll is not completed on the same day, it will be continued on the next day and the chairman will not be entitled to close the poll. When more than one resolution is to be passed, poll should be taken on each of the resolutions separately.[17]

The chairman of the meeting shall have the power to regulate the manner in which a poll shall be taken. It need not necessarily be by ballot. It may be by show of hands. But it cannot be by *secret ballot* because secret ballot polling is possible where each member has one vote to cast. In case of voting by poll, members have the votes in accordance with the shares held by them. The chairman shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on a poll and to report thereon to him.

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16. Second Consolidated Trust Ltd. *v.* Ceylon etc. (1943)
17. Patent Wook Keg Syndicate Ltd *v.* Pearse (1906)

Difference between Voting by Show of Hands and Poll

	Show of Hands	***Poll***
1.	Each member has one vote only.	Members have the votes as per the voting rights held by them.
2.	Proxies are not allowed to vote.	Proxies are allowed to vote.
3.	There is no counting of votes in favour and against the resolution.	Votes in favour and against are counted.
4.	Decision of voting by show of hands is cancelled as soon as poll is demanded.	Decision of voting by poll is never cancelled.

Passing of Resolution by Postal Ballot

In view of poor attendance of the members at the general meetings of companies, the Companies Act provides for voting through postal ballot including voting by electronic mode. It is limited to specified resolutions proposed to be passed by a listed company. The Central Government has framed rules in this regard.

"**Postal Ballot**" includes voting by post or through any electronic mode [Section 2(65)]

Applicability

One Person Company and other companies having members up to 200 are not required to transact any business through postal ballot.

List of Businesses in which the Resolutions shall be passed through Postal Ballot

(*a*) alteration of the objects clause of the memorandum;

(*b*) alteration of articles of association in relation to insertion or removal of provisions which are required to be included in the articles of a company in order to constitute it a private company;

(*c*) change in place of registered office outside the local limits of any city, town or village;

(*d*) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so;

(*e*) issue of shares with differential rights as to voting or dividend or otherwise under section 43;

(*f*) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(*g*) buy-back of shares by a company under section 68;

(*h*) election of a director under section 151 of the Act;

(*i*) sale of the whole or substantially the whole of an undertaking of a company as specified under of section 180;

(*j*) giving loans or extending guarantee or providing security in excess of the limit specified under section 186:

Besides these, the SEBI regulations require business to be passed by postal ballot for issuing sweat equity to the promoters; delisting of equity shares; and substantial acquisition of shares and takeovers.

Procedure to be followed for conducting business through Postal Ballot

As per the Companies (Management and Administration) Rules 2014, the following procedure is to be adopted for conducting business through postal ballot:

(1) **Notice:** The company is required to send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot

The notice shall be sent either (a) by Registered Post or speed post, or (b) through electronic means like registered e-mail id or (c) through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members

(2) **Advertisement:** An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a *wide* circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying the prescribed details on the business to be transacted by postal ballot, voting schedule, details of the person for grievances.

(3) **Scrutiniser:** The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

(4) **Report:** The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.

(5)**Safe Custody:** The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

(6) **Result:** The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.

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

E-Voting or Voting by the Electronic Means

''Voting by electronic means'' or ''electronic voting system'' means a 'secured system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security'.

To enhance the participation of shareholders in the general meetings, e-voting has been introduced by the Companies Act 2013. This has made possible for members/shareholders to vote without physically attending the general meeting. E-voting does not eliminate the right of the members to physically attend and vote at the general meeting. But a member can cast his vote through one mode only. A member after casting his vote though e-voting can attend the general meeting but cannot cast vote in that meeting for that matter to secure wider participation of shareholders in important decisions of the company.

Requirement of E-Voting

As per section 108 of the Companies Act 2013 read with rule 20 of the Companies (Management & Administration) Rules 2014, following companies are required to provide e-voting facility to their members to vote at general meeting:

-Every Listed Company

- Every Company having 1000 or more Shareholders

Procedure of E-Voting

(1) **Appointment of E-Voting Agency:** The company which has to provide e-voting facility to its members will have to take e-voting platform of any e-voting service provider/agency with adequate cyber security.

(2) **Appointment of Scrutiniser:** The Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner. The scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

(3) **Dispatch Notice to the Shareholders:** The notices of the meeting shall be sent to all the members, auditors of the company, or directors either-

(*a*) by registered post or speed post ; or

(*b*) through electronic means like registered e-mail id;

(*c*) through courier service;

The notice shall also be placed on the website of the company and of the agency. The notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means. The notice shall clearly indicate the process and manner and time schedule for voting by electronic means and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner.

(4) **Advertisement in Newspaper:** The company shall cause an advertisement to be published, not less than 5 days before

the date of beginning of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying the matters giving details of e-voting as prescribed by the rules.

(5) E-Voting: The e-voting shall remain open for not less than one day and not more than three days. In all such cases, such voting period shall be completed three days prior to the date of the general meeting. During the e-voting period, shareholders of the company may cast their vote electronically. Once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently. At the end of the voting period, the portal where votes are cast shall forthwith be blocked.

(6) Scrutiniser's Report: The scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses not in the employment of the company and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman.

(7) Declaration of Results: The results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members. Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

Points to be Noted

(*i*) *Show of hands not to be allowed in case of e-voting:* Voting by show of hands would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.

(*ii*) *Participation in the general meeting after voting by e-means:* A person who has voted through e-voting mechanism shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final.

(*iii*) *Relevance of provisions relating to demand for poll:* In case of companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, the provisions relating to demand for poll would not be relevant.

Advantages of E-Voting to the Company

- Reduction in cost and paperwork as there will no need to print and store physical ballot papers.
- The counting of votes and results will be accurate and the results will be declared in a very short time.
- The time provided for Postal ballot may be gradually reduced.

Advantages of E-Voting to the Shareholders

- The participation in the decision making process will increase as voting can be done from home or office and there is no need to attend the meeting physically.
- Voting can be done for different companies at the same time.
- There will be increased transparency.

Minutes of the Proceedings

"*Minutes*" means the written record of the proceedings of a meeting. Minutes is the evidence of the correct record of the decisions of a meeting. Section 118 provides the following rules regarding recording of the minutes:

1. Every company shall make entries of minutes of all the proceedings of every general meeting within 30 days of the conclusion of every such meeting in bound books kept for that purpose with their pages consecutively numbered. Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting in such book shall be dated and signed by the chairman of the same meeting within the period of 30 days or in the event of death or inability of the chairman within that period, by a director duly authorised by the Board for the purpose.

In no case the minutes of proceedings of a meeting shall be attached to any such book by pasting or otherwise.

2. The minutes of each meeting shall contain a fair and correct summary of the proceedings.

3. Recording of the minutes should begin with the name, date, time and place of the meeting and the persons who had attended the meeting in their respective capacities as members, directors, auditors etc.

4. All appointment of officers made at any of the meetings shall be included in the minutes of the meeting.

5. The minutes should not contain such matters which in the opinion of the chairman of the meeting—

(*a*) is or could reasonably be regarded as defamatory of any person;

(*b*) is irrelevant or immaterial to the proceedings, or

(*c*) is detrimental to the interests of the company.

The chairman has an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified above.

6. If a default is made in complying with these provisions in respect of any meeting, the company shall be liable to a penalty of Rs 25,000 and every officer of the company, who is in default, shall be punishable with fine which may extend to ₹ 5000.

Minutes of meetings kept in accordance with provisions of section 118 shall be the evidence of the proceedings recorded therein. They shall also be a proof of this fact, unless contrary is proved. All appointments of directors or liquidators made at such a meeting shall be deemed to be valid.

The minutes book containing the proceedings of general meetings shall be kept open for inspection for at least 2 hours at the registered office of the company. Every member shall be entitled to inspect it, free of cost during normal business hours. He is also entitled to be furnished, within 7 days after he has made a request on that behalf to the company, with the copy of any minutes on payment of the prescribed fee.

RESOLUTIONS

A proposal, when passed and accepted by the members, becomes a resolution. Members holding 5 per cent of the voting rights or any 100 members, holding paid up capital of the company of at least ₹ 1 lakh may, at their own expense, require the company to give notice to all the members of any resolution which they may be intending to move at the general meeting of the company.

Types of Resolutions

Companies Act provides for two types of resolutions:

1. Ordinary Resolution.

2. Special Resolution.

Ordinary Resolution [*Sec. 114(1)*]

It is passed

(*i*) by a simple majority of votes at a general meeting,

(*ii*) of which notice required under the Companies Act has been duly given. 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, exceed the votes cast against it. An ordinary resolution is required to pass the annual accounts, to declare dividends, to hold elections of directors, to appoint auditors, to issue shares at a discount, etc.

Special Resolution [(*Sec. 114(2)*]

(*i*) It must be passed by a majority of three-fourths of the votes in person or by proxy. In other words the votes cast in favour of the resolution must not be less than three times the number of votes cast against the resolution.

(*ii*) The intention to propose the resolution as a special resolution must specially be mentioned in the notice issued for calling the meeting.

(*iii*) The notice must be accompanied by an explanatory statement setting out all material facts concerning the subject matter of the special resolution.

(*iv*) The resolution must be passed exactly in the same terms as specified in the notice for the meeting.

(*v*) A copy of the special resolution is required to be filed with the Registrar for registering within 30 days of the passing of the resolution.

Some examples of the cases where a special resolution is necessary are:

(*i*) Alteration of memorandum for changing the place of registered office from one State to another or for altering its objects.

(*ii*) Changing the name of the company with the previous approval of the Central Government.

(*iii*) Alteration of the Articles of Association.

(*iv*) To reduce the share capital of the company.

Any reference to an extraordinary resolution in the Articles of Association of a company will be construed as referring to a special resolution. However, special resolution and special business are two different things.

Difference between Ordinary Resolution and Special Resolution

	Ordinary Resolution	***Special Resolution***
1	It is passed by a simple majority i.e. votes cast in favour exceeds votes cast against the resolution.	It is passed by a special majority i.e. votes cast in favour exceeds three times the votes cast against the resolution.
2	An explanatory statement is not required to be sent along the notice of the meeting.	An explanatory statement, giving all material facts about the matter, is required to be annexed to the notice of the meeting.
3	Items of 'general business'- passing of annual accounts, dividend declaration, appointment of directors, and appoint-ment of auditors – are transacted by passing ordinary resolution.	Fundamental corporate decisions- altering the objects, name, situation clause of the memorandum; altering the articles of association; reducing the share capital etc.- are taken by passing special resolution.
4	Ordinary resolutions are not required to be registered with the Registrar.	Special resolutions are required to be registered with the Registrar within 30 days of passing.

Resolution Requiring Special Notice (*Sec. 115*)

An ordinary or special resolution may require special notice to be given for moving it. The requirement of the special notice is laid down by the Companies Act which as follows:

1. A notice of the intention to move the resolution is given to the company not less than 14 clear days before the meeting at which it is to be moved. Such notice is to be given to the company by members holding not less than one per cent of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up by the member(s) who are proposing the resolution.

2. The company shall, immediately after receiving such notice, inform all the members regarding the notice of the proposed resolution. The

company is required to give such notice in the same manner as it gives notice of the meeting or, if that is not practicable, shall give the notice either by an advertisement in a newspaper having an appropriate circulation or by any other mode allowed by the Articles. Notice of not less than seven days before the meeting is required to be given by the company.

3. After the notice requirement, the resolution would be passed by the members at the general meeting either by a simple or three-fourths of the majority as required by the Act for different matters.

According to the Companies Act in the following cases, special notice of the resolution must be given:

(*a*) to replace the old auditor by a new one or to provide that a retiring auditor shall not be appointed.

(*b*) to appoint a person who is not a retiring director as director of the company.

(*c*) to remove a director before the expiry of his term.

(*d*) to appoint another director in place of the removed director.

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

Resolutions passed at the adjourned meetings (*Sec. 116*)

Any resolution passed at an adjourned meeting of a company shall be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Resolutions which require Registration with the Registrar of Companies [*Sec. 117*]

Following resolutions or agreements must be registered with the Registrar within 30 days of their passing or making thereof:

1. Special Resolution;

2. Resolutions which have been agreed to by all the members of a company but which, in the absence of such an agreement, would have to be passed as special resolutions;

3. Any resolution of the board of directors of a company or an agreement executed by a company relating to the appointment of a managing director or variation of its terms;

4. Resolutions or agreements which have been approved by all the members of a class of shareholders but which would have otherwise required to be passed by a particular majority and all resolutions or agreements

which bind all the members of a class of shareholders though not agreed to by all those members;

5. Resolutions passed by a company conferring power under Section 293 upon its directors:

(*a*) to sell or dispose of the whole or any part of the company's undertaking; or

(*b*) to borrow money beyond the limits of the paid up capital and free reserves of the company; or

6. Resolutions requiring the company to be wound up voluntarily.

If default is made in getting any of the above resolutions registered, the company and every officer of the company who is in default shall be punishable with fine as prescribed.