



Date:4 March, 2021

**VIRTUAL COACHING CLASSES  
ORGANISED BY BOS, ICAI**

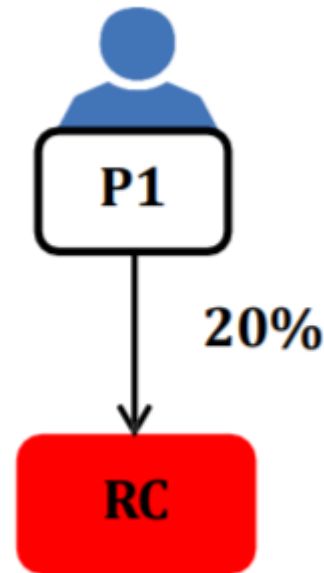
**INTERMEDIATE LEVEL  
PAPER 2: CORPORATE AND OTHER LAWS**

**Faculty: Ms. Sonali Shah**

# EXAMPLE

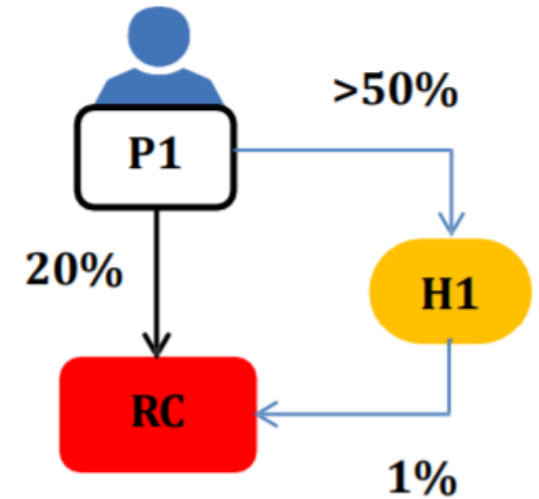
Q.1 P1 holds 20% holding directly in RC. There are no indirect holdings.

Whether P1 be treated as SBO?



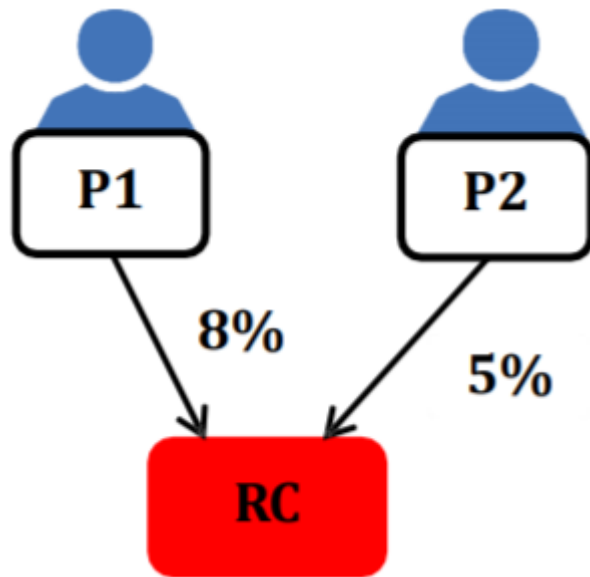
Q.2 P1 holding 20% in RC and more than 50% in H1. H1 holding 1% in RC.

Whether P1 be treated as SBO?

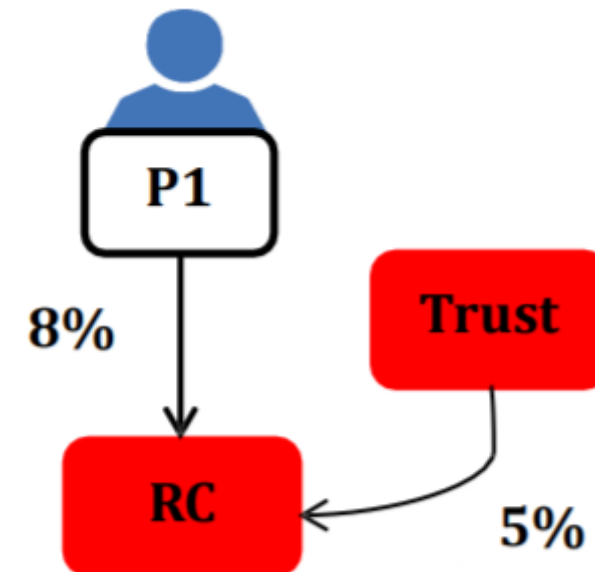


# EXAMPLE:

Q.3 P1 and P2 are holding 8%, 5% in RC.  
Whether P1 & P2 be treated as SBO?



Q.4 P1 directly holding 8% in RC P1 is a beneficiary in Trust Trust is holding 5% in RC  
The Trustee has made declaration u/s 89 Stating P1 is the beneficial Owner. Whether SBO declaration is needed

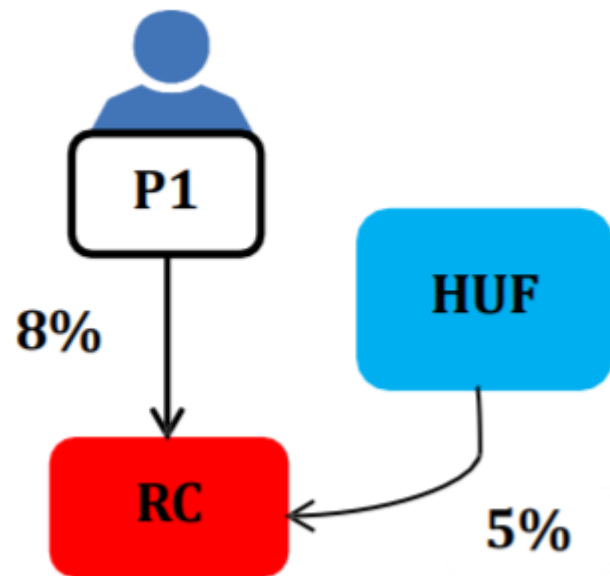


# EXAMPLE:

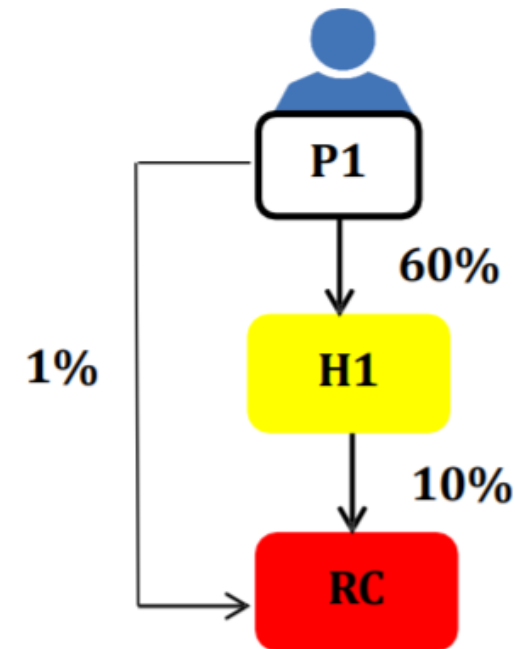
P1 is holding 8% in RC

P1 is the kartha of HUF

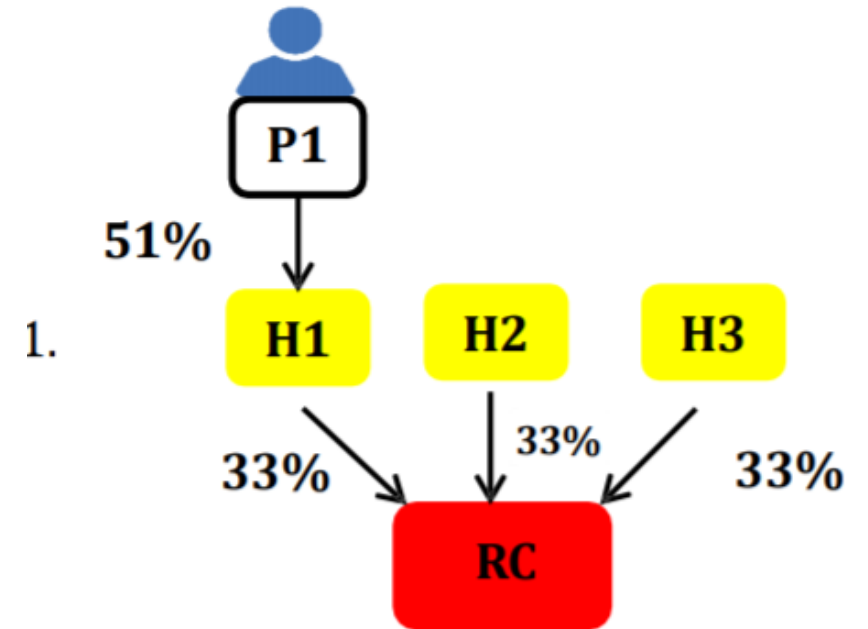
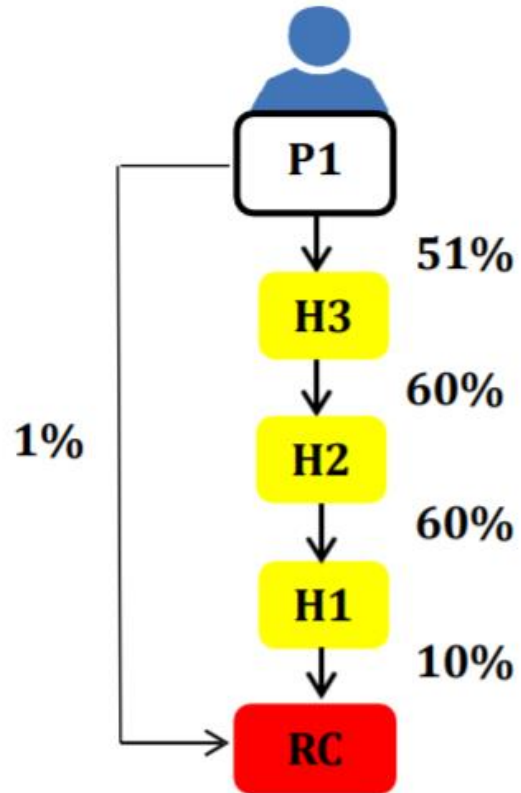
HUF holding 5% in RC



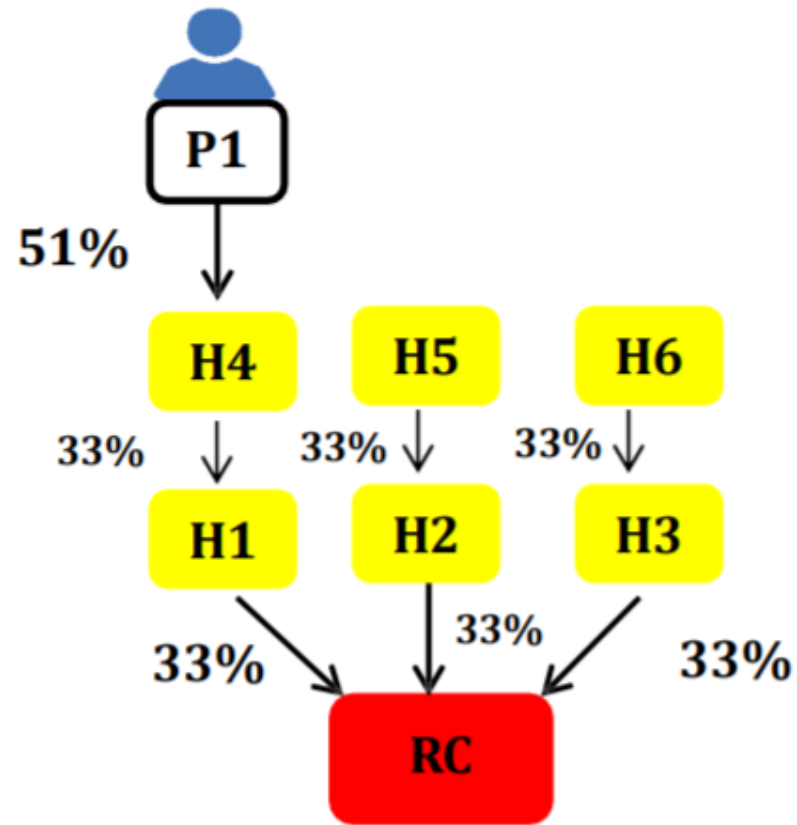
P1 is directly holds 1% in RC H1 holds 10% in RC  
P1 directly holds 60% in H1



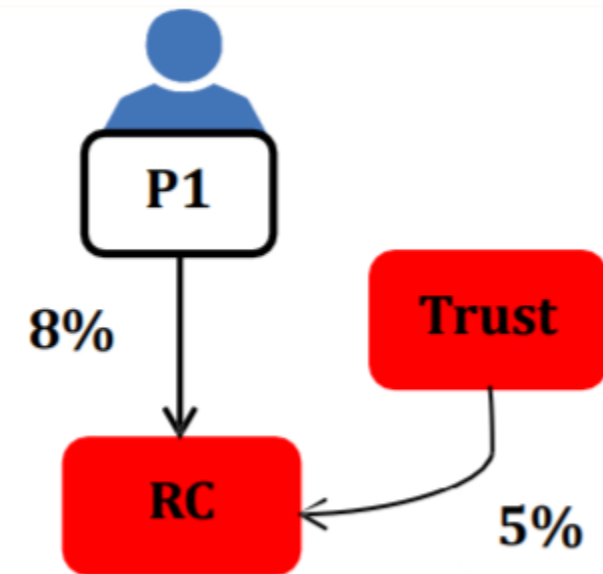
# EXAMPLE



# EXAMPLE



The Trust is Discretionary Trust (i.e. Public), P1 is Trustee, P1 is holding 8% in RC.





# MEETINGS



# MEETINGS

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## General meeting

- meeting of a company's shareholders as per the provisions of the Act .
- The general meeting can be an annual general meeting (AGM) or an Extraordinary General meeting (EGM).
- An annual general meeting (AGM) is a mandatory yearly gathering of a company's interested shareholders.
- The objective of holding an AGM is to provide an opportunity to members to discuss the functioning of the company, and take steps to protect their interests. They can discuss any matter relating to the conduct of the affairs of the company.
- An Extraordinary General Meeting (an EGM) can be defined as a meeting of shareholders which is not an AGM. The objective of holding an EGM is to discuss any matter of urgent importance which cannot be postponed till the next Annual General Meeting.
- The pre-requisites of the meetings are, in general applicable to all kinds of meetings, although the time limits may differ and there might be a specific mention of a certain type of meeting in that section.





# MEETINGS

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**Board Meeting**, is the meeting of the board of directors of the company

**Class meeting** is the meeting of special class of persons, like, creditors, preference shareholders, etc.



# ANNUAL GENERAL MEETING [S.96]

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- Section 96(1) of the Companies Act, 2013 states that every company, whether public or private, except One Person Company, shall hold an annual general meeting every year and that the gap between two AGMs shall not be more than 15 months.
- The company shall specify the meeting as such [i.e. as AGM] in the notices calling it.

# ANNUAL GENERAL MEETING

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## **HOLDING OF AGM**

- In case of the First AGM of a company, it shall be held within a period of 9 months from the date of closing of the 1st financial year (i.e. April to March next year).
- One AGM must be held in each calendar year.
- The subsequent AGM shall be held within a period of 6 months from the date of closing of its financial year.
- The gap between two annual general meetings should not exceed 15 months.

# ANNUAL GENERAL MEETING

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***Extension of validity period of AGM:*** In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting

**Example:** Abbeys Private Limited closed its financial year on 31st March 2018. According to section 96(1) of the Act, the Company should hold its annual general meeting for the year 2017-18 by 30th September 2018 unless an extension is granted by RoC on special reasons.

# ANNUAL GENERAL MEETING

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Example: Abbyrushi Limited was incorporated on 11th December 2016. When should the company hold its AGM?

According to section 96(1), the company's financial year will close on 31st March 2017. The company may hold its first AGM by 31st December 2017, i.e. within 9 months of the close of its financial year.

# TIME AND PLACE FOR HOLDING AGM

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- **Section 96(2) states that** Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
- Provided that the AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance:
- Provided further that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.
- Explanation—For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.

# ANNUAL GENERAL MEETING

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**SECTION 8 Company:** In case of Section 8 company the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting

## **Exemption to Government companies:**

In case of Government company, section 96(2) shall be read as:

‘Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at such other place within the city, town or village in which the registered office of the company is situated or such other place as the Central Government may approve in this behalf.

# ANNUAL GENERAL MEETING

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## **What if a company fails to call its AGM as per provisions of section 96?**

If a company fails to call its AGM two consequences will follow:

- a. Any member can apply to the tribunal and the tribunal will order calling of the meeting.
- b. The failure to call the meeting generally or in pursuance to the order of the Tribunal is an offence punishable with fine. The penalty is imposed on the company as well as every officer in default.



# POWER OF TRIBUNAL TO CALL AN AGM[S.97]

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

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

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

# EXTRAORDINARY GENERAL MEETING

## [S.100]

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All general meetings other than annual general meetings are called extraordinary general meetings.

Who can call an EGM?

1. **The Board** may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India;

# EXTRAORDINARY GENERAL MEETING

## [S.100]

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In case of Specified IFSC Private Company - In sub-section (1) of section 100, the following proviso shall be inserted, namely:-

“Provided that in case of a Specified IFSC private company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India.”.- Notification Dated 4th January, 2017.

In case of Specified IFSC Public Company- In sub-section (1), the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC public company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India.”. Notification Dated 4th January, 2017.

# EXTRAORDINARY GENERAL MEETING

## [S.100]

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### 2. The Board shall on the requisition of –

(a) In the case of **company having a share capital**, such number of members who hold, on the date of receipt of requisition, at least 1/10<sup>th</sup> of such paid-up capital of the company as on that date carries the right of voting;

b) In the case of **company not having a share capital**, such number of members who hold, on the date of receipt of requisition, at least 1/10<sup>th</sup> of total voting power of all the members having on the said date a right to vote.

The requisition shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

# EXTRAORDINARY GENERAL MEETING

## [S.100]

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**By requisitionists:** If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Sub section (4)]

A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under [section 197](#) payable to such of the directors who were in default in calling the meeting.

# EXTRAORDINARY GENERAL MEETING

## [S.100]

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**Rule 17** of the *Companies (Management and Administration) Rules, 2014*. provides as under with regard to calling of EGM by requisitionists:

- (1) The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of [section 100](#), by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.
- (2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.-

Explanation.- For the purposes of this sub-rule, it is here by clarified that requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on any day except national holiday

# EXTRAORDINARY GENERAL MEETING

## [S.100]

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- (3) If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of [section 114](#).
- (4) The notice shall be signed by all the requisitionists or by a requisitionist duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- (5) No explanatory statement as required under [section 102](#) need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

# EXTRAORDINARY GENERAL MEETING

## [S.100]

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(6) The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.

(7) Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition.

(8) The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting



# SECTION 98: POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC.

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- (1) If for any reason it is **impracticable** to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting,—
- (a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
  - (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

# SECTION 98: POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC.

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

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.”

The word Impracticable as construed in a reasonable way must naturally mean that it is not possible to hold a peaceful or useful meeting. The tribunal takes a common sense view of the matter and orders a meeting if it would appear to a prudent man of business that the holding of an useful meeting has become impracticable.

# SECTION 98: POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC.

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***In India Spg Mills Ltd. vs General Madan, AIR 1953 Cal 355:***

*A person who was not holding the qualification shares of a director was appointed chairman and some directors had transferred shares to him to enable to fulfill the requirement. This was alleged, by a group of shareholder, to be invalid and was the subject matter of the suit. It was held that it was impracticable to hold a meeting in such circumstances and the court could intervene.*

***In Lothian Jute Mills Ltd (1950)55 CWN 646 (Cal)***

*“There was a dispute between the shareholders of a company as to who were the lawful directors of the company entitled to call a meeting. It was held to be proper that the court should step in call and meeting, the validity of which is beyond question”*

# PUNISHMENT FOR DEFAULT IN COMPLYING WITH THE PROVISIONS OF SECTION 96 TO 98

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**Section 99** lists out the punishment for contravention of section 96 to 98, i.e. default in holding a meeting of the company as AGM or on the directions issued by the Tribunal.

It states that:

- the company and every officer of the company who is in default, shall be punishable with fine which may extend to ` 1,00,000 and in the case of a continuing default, with a further fine which may extend to ` 5,000 for every day during which the default continues.

# PREREQUISITES OF A VALID MEETING

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1. **Meeting should be called by proper Authority-** The BOD is the appropriate authority to call the meeting except when the meeting has, in the event of default of the directors, been called by the requisitionists or tribunal.
2. Notice of Meeting [S.101]
3. Explanatory Statement [S.102]
4. Quorum [S.103]
5. Chairman [S.104]- For the proper conduct of meeting chairman is necessary.
6. Voting
7. Resolution
8. Minutes of the meeting



# NOTICE OF MEETING [S.101 & Rule 18]

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S.101 (1) reads as:

A general meeting of a company may be called by giving not less than **clear twenty-one days notice** either **in writing** or **through electronic mode** in such manner as may be prescribed.

## What is meant by 21 Clear days

21 days clear notice means the day of sending the notice and the day of Meeting shall not be counted.

Further in case the notice of the general meeting is sent by post, service of notice of the meeting shall be deemed to have been effected at the expiry of 48 hours after it was posted.[posted (Rule 35(6) of the Companies Incorporation Rule, 2014]



# NOTICE OF MEETING [S.101 & Rule 18]

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**Question :** If a general meeting is to be held at 3 p.m. on 27th April,2020 service of notice of the meeting will be deemed to have been duly effected if it had been despatched by post at any time before 3 p.m. on \_\_\_\_\_.

Exception: Section 8 company- 14 clear days notice





# NOTICE OF MEETING [S.101 & Rule 18]

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## WHAT IS MEANT BY ELECTRONIC MODE

**Rule 18** of the **Companies (Management and Administration) Rules, 2014** prescribes conditions to be complied with in case a company elects to send the notice by electronic means.

“electronic mode” shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.







# NOTICE OF MEETING [S.101 & Rule 18]

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As per Rule 18, of the **Companies (Management and Administration) Rules, 2014**

- A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.
- The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company or as provided by the depository:

**Provided** that the company shall provide an advance opportunity atleast once in a financial year, to the member to register his e-mail address and changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose e-mail ids are already registered.



# NOTICE OF MEETING [S.101 & Rule 18]

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- The subject line in **e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.**
- When notice or notifications of availability of notice are sent by e-mail, the company should ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as “proof of sending”.
- The company’s obligation shall be satisfied when it transmits the e-mail and the company shall not be held responsible for a failure in transmission beyond its control



# NOTICE OF MEETING [S.101 & Rule 18]

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- If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.
- The notice made available on the electronic link or Uniform Resource Locator has to be readable, and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company if any and on the website as may be notified by the Central Government.



# NOTICE OF MEETING [S.101 & Rule 18]

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**Example 1** Mr. Abeer filed a complaint against the company, Elixir Private Limited since it did not serve the notice to him for attending the annual general meeting. The company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abeer, inviting him to attend the annual general meeting of the company. Abeer alleges that he never received the email. State whether the company is liable as guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with rules.

**Answer:** As per Rule 18(3) of the Companies (Management & Administration) Rules, 2014, the company's obligation shall be satisfied when it transmits the email and the company shall not be held responsible for a failure in transmission beyond its control. Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.



# SHORT NOTICE TO MEETING

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter.

Type of Meeting	Type of Company	Consent by
Annual General Meeting (AGM)	All kinds of companies	Not less than 95% of the members entitled to vote thereat
Any other general meeting viz. EGM, etc	Companies having a share capital	Members holding a majority in number of members entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting
	Companies having no share capital	Members having not less than 95% of the total voting power exercisable at that meeting



# SHORT NOTICE TO MEETING

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As provided in the proviso to sub-section (1) of section 101, that a general meeting may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto—

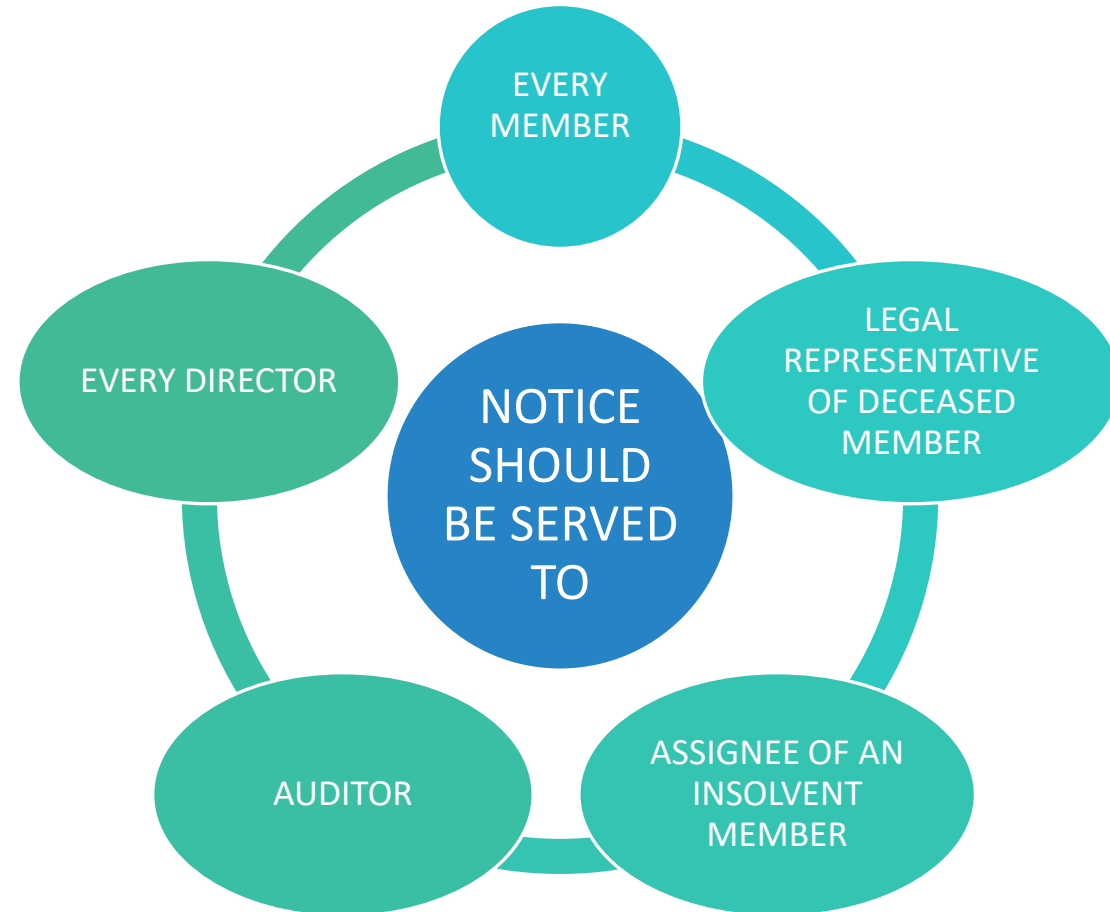
- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
  - (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
  - (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:



# WHO IS ENTITLED TO RECEIVE NOTICE [S.101(3)]

## Authority to call a GM

A general meeting (AGM, EGM) has to be called by the Board. An individual director does not have an authority to call a GM. Any notice of GM given without the sanction of the Board is invalid; however, the same can be ratified by the Board.





# CONTENT OF NOTICE- SECTION 101(2)

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A valid notice must state the **day, date, hour, place** of the meeting and shall **contain a statement of business to be transacted in that meeting.**

Meetings shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a national holiday. A Meeting called by the requisitionists shall be convened only on a working day. Where the Notice of a General Meeting did not specify the hour of the Meeting, the Notice was invalid and any Resolution passed at such Meeting was also invalid [*Prachi Insurance Co. Ltd. v. Chaudhary Madhusudan Das, (1964) 2 Comp L J 157 (Orissa)*]

The time mentioned in the Notice is the time for commencement of the Meeting. The company should start its Meeting during the business hours but it is not necessary that the Meeting ends within the business hours; the Meeting may end even after the business hours.





# OMISSION TO SEND NOTICE [S.101(4)]

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Section 101(4) states that any accidental omission to give notice to, or non-receipt of such notice to any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

This essentially means, that the omission must not be designed or deliberate. Failure to send notice to a member, under a belief that it will not reach him at the address mentioned in the register of members is deliberate and not accidental, even if the belief is based on a mistaken impression. The onus is on the company to prove that the omission was not deliberate



# EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE (SECTION 102)

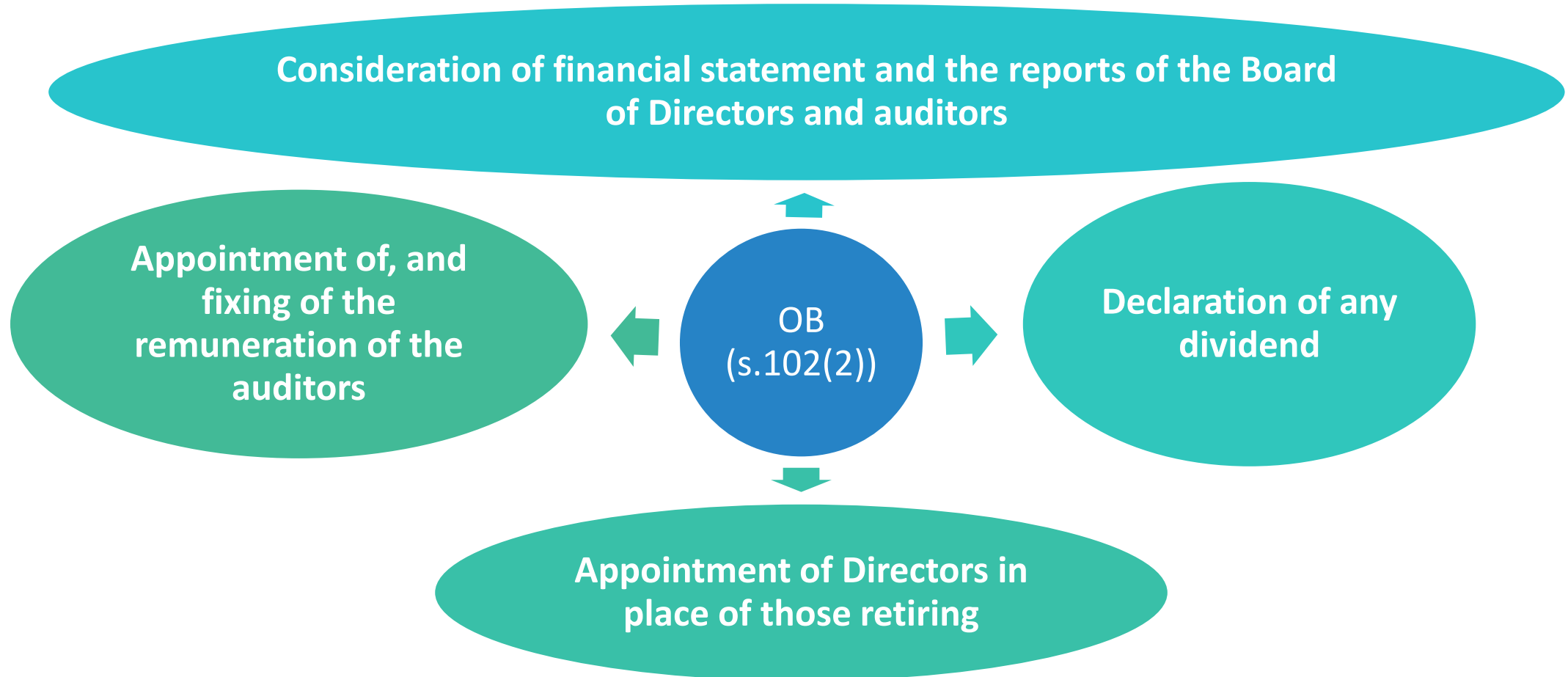
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**Section 102 of the Companies Act, 2013** states that that where any **special business** is to be transacted at the company's general meeting, then an '**Explanatory Statement**' should be annexed to the notice calling such general meeting, which must specify,

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—
  - (i) every director and the manager, if any;
  - (ii) every other key managerial personnel; and
  - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.



# ORDINARY AND SPECIAL BUSINESS





# EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE (SECTION 102)

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- In the case of **AGM**, all business to be transacted thereat except the ones stated above are special business.
- At the **EGM**, every business transacted is a special business. Explanatory statement is not required for transacting OB.
- Proviso to section 102(2) sets out that If special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and every other KMP shall be disclosed, if the extent of shareholding is 2% or more of the paid up share capital of that other company.
- In case any item of business refers to any document which is to be considered at the meeting, then the time and place where such document can be inspected should also be specified in the explanatory statement.



# EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE (SECTION 102)

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## **Effect of nondisclosure [S.102(4)]:**

- If as a result non-disclosure or insufficient disclosure in explanatory statement,
- any benefit accrues to a promoter, director, manager, other key managerial personnel or their relatives,
- such person shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force,
- be liable to compensate the company to the extent of the benefit received by him.



# PENALTY FOR CONTRAVENTION OF SECTION 102

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- Without prejudice to the provisions of sub-section (4),
- if any default is made in complying with the provisions of this section,
- every promoter, director, manager or other key managerial personnel of the company who is in default
- shall be liable to a **penalty of fifty thousand rupees** or **five times the amount of benefit accruing** to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.

# APPLICABILITY OF S.101 & 102 TO PRIVATE COMPANIES

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Section 101 & 102 shall apply, unless otherwise specified in respective sections or the articles of the company provide otherwise. [*Notification dated 5th June, 2015.*]

This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar. [*Notification dated 13th June 2017.*]



# QUORUM FOR MEETING [S.103 (1)]

PUBLIC COMPANY	PRIVATE COMPANY
number of members $\leq$ 1000, quorum - 5 members personally present	Quorum - 2 members personally present  <b>*AOA may provide for larger number. So, a private limited Company may amend its Articles in a manner which allows proxy to be counted towards the quorum.</b>
if the number of members $>$ 1000 - upto 5000, quorum - 15 members personally present	
number of members $>$ 5000, quorum - 30 members personally present.  <b>*AOA may provide for larger number</b>	

The term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.



# ADJOURNED MEETING DUE TO WANT OF QUORUM [S.103(2)]

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

- 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
- the meeting, if called by requisitionists under section 100, shall stand cancelled.

# ADJOURNED MEETING DUE TO WANT OF QUORUM

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## NOTICE OF ADJOURNED MEETING

In case of an **adjourned meeting** or of a **change of day, time or place of meeting**, 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.

Where **quorum is not present in the adjourned meeting** also within half an hour, then the members present shall form the quorum.

# EXCEPTIONS

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1. In case of private company - Section 103 shall apply, unless otherwise specified in respective sections or the articles of the company provide otherwise. - [Notification dated 5th june, 2015.](#)
2. In case of [Specified IFSC Public Company](#) - Section 103 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company. [Notification Date 4th January, 2017.](#)

QUESTION- What if the quorum for the meeting is lost after the meeting has started? Will it lead to invalidation of proceedings?

# EXAMPLE

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*Q. There are 54 members of Dicey Private Limited. The company held its annual general meeting on 1<sup>st</sup> July 2019 at 2:00 p.m. and 28 members were present till 2:30 p.m. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions as discussed in the meeting. Comment whether the meeting took place as per the provisions of Companies Act, 2013.*

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# EXAMPLE

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**According to section 103 of Companies Act, 2013, in case of a Private Limited Company, 2 members personally present shall be the Quorum. If Quorum is not present within half an hour from the time appointed for holding a meeting, then the meeting shall stand adjourned, and if at the adjourned meeting also, Quorum is not present, the members present shall be the Quorum. In case, there are only 2 shareholders. Out of these, one cannot attend AGM, according to above, whether one person attending the AGM, would be taken as quorum in case of adjourned meeting?**

**Ans:** No, one person can not form quorum of an adjourned meeting. Please refer to Department of Company Affairs' (now Ministry of Company Affairs) Letter No. 8/16(1)/61-PR dated May 19, 1961 wherein the views of the Department on this issue are also that a single person cannot by himself constitute a quorum at the adjourned AGM.

# EXAMPLE

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**There are, however, some exceptions to this general rule which permit a Meeting to be constituted of only one Member. These are:**

Where a person holds all the shares of a class, that person may constitute a class Meeting.

Where default is made in holding an Annual General Meeting in accordance with Section 96 of the Act, the Tribunal while ordering the convening of the Meeting, may direct that one Member present in person or by proxy will constitute the Quorum [Proviso to sub-section (1) of Section 97 of the Act].

Where it is impracticable to call a Meeting in the manner prescribed by the Act or the Articles, the Tribunal may order a Meeting to be held and direct that one Member present in person or by Proxy shall be deemed to constitute a Meeting [Proviso to sub-section (1) of Section 98 of the Act].

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This course was adopted ***in L Opera Photography Ltd 1989 BCLC 763 (Ch D).***

*In a company consisting of two members with 51:49 holding, the majority shareholder was not able to remove the other from directorship because under the articles a meeting without the other attending was not possible. So the majority shareholder applied for a court order that a meeting should be called at which the attendance of one would be the quorum. Since, the majority shareholder had a statutory right to remove the other from directorship his right could not be vetoed by quorum requirements and therefore, the court passed the necessary orders”*

# CHAIRMAN OF MEETING [S.104]

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**Election of chairman by members:** Section 104 of the Companies Act, 2013 seeks to provide that-

- unless the articles of association of the Company otherwise provide,
- the members, personally present,
- shall elect one among themselves to be the Chairman
- by show of hands.

**Demand of poll:** The section further provides that if a poll is demanded on the election of the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll, and such other elected person shall be the Chairman for rest of the meeting.



# CHAIRMAN OF MEETING [S.104]

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**Powers of chairman:** Chairman of the meeting is the person who manages the meetings and ensures that the required decorum of the meeting is maintained at all times, till the meeting is concluded and post that, executes the minutes of the meeting. The Chairman has *prima facie* authority to decide all questions which arise at a meeting and which require decision at the time. In order to fulfil his duty properly, he must observe strict impartiality.

**Right to cast casting vote:** The Chairman **has a casting vote in Board Meetings and general meetings**, if specifically empowered by the articles of the Company. A casting vote means that in event of the equality of vote on a particular business being transacted at the meeting, the Chairman of the meeting shall have a right to cast a second vote. **If there is no provision in the articles for a casting vote, an ordinary resolution on which there is equality of votes is deemed to be dropped.**

# PROXIES[S.105]

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Sub-section (1) provides that any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. A proxy is not counted for the purpose of quorum.

**Applicability** of the sub-section (1) - **Unless the articles of a company** otherwise provide,

- A member of a company not having share capital shall not be entitled to appoint proxy
- The provisions relating to proxies shall not be applicable to companies not having share capital.

# RESTRICTION ON PROXIES

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CG may prescribe a class/ classes of companies whose members shall not be entitled to appoint a proxy

- A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.
- A person can act as proxy on behalf of members-
  - Not exceeding 50
  - Holding in aggregate not more than 10% of the total share capital of the Company carrying voting rights
- a member who is holding more than 10 per cent of the total share capital of the Company carrying voting rights may appoint a single person as a proxy and such person shall not act as a proxy for any other person or shareholder.

# PROXIES[S.105]

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- The instrument appointing a proxy must be in Form No. MGT. 11[*Rule 19(3) of the Companies (Management & Administration) Rules, 2014*]. It needs to be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument should be under its seal or be signed by an officer or an attorney duly authorised by the body corporate. For execution of proxy, the Articles of Association of a company can not specify any special requirement to be complied with. [[S.105 (6)].
- As a compliance requirement, every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. [S.105(2)]

# PROXIES[S.105]

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- Section 105(4) of the Act provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
- Section 105(8) provides that every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.
- REVOCAION OF PROXY: A proxy is always revocable.

# PENALTY

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If default is made in complying with sub-section (2), every officer of the company who is in default shall be liable to penalty of five thousand rupees.[S.105(3)]

If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or willfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees. However, No offence under this section is committed when a list of persons willing to act as proxies is given to a member at his request, provided that the list is available to all members who are entitled to vote upon making a request in writing.

For refusing the inspection to members at any time during the business hours, the company and every officer who is in default, shall be punishable with fine upto ` 10,000 and where the contravention is a continuing one, with a further fine upto ` 1,000 per day of default.

Offences under this section are compoundable under section 441 of the Act.

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Q. A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting. According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent at proxies for members X and W respectively?

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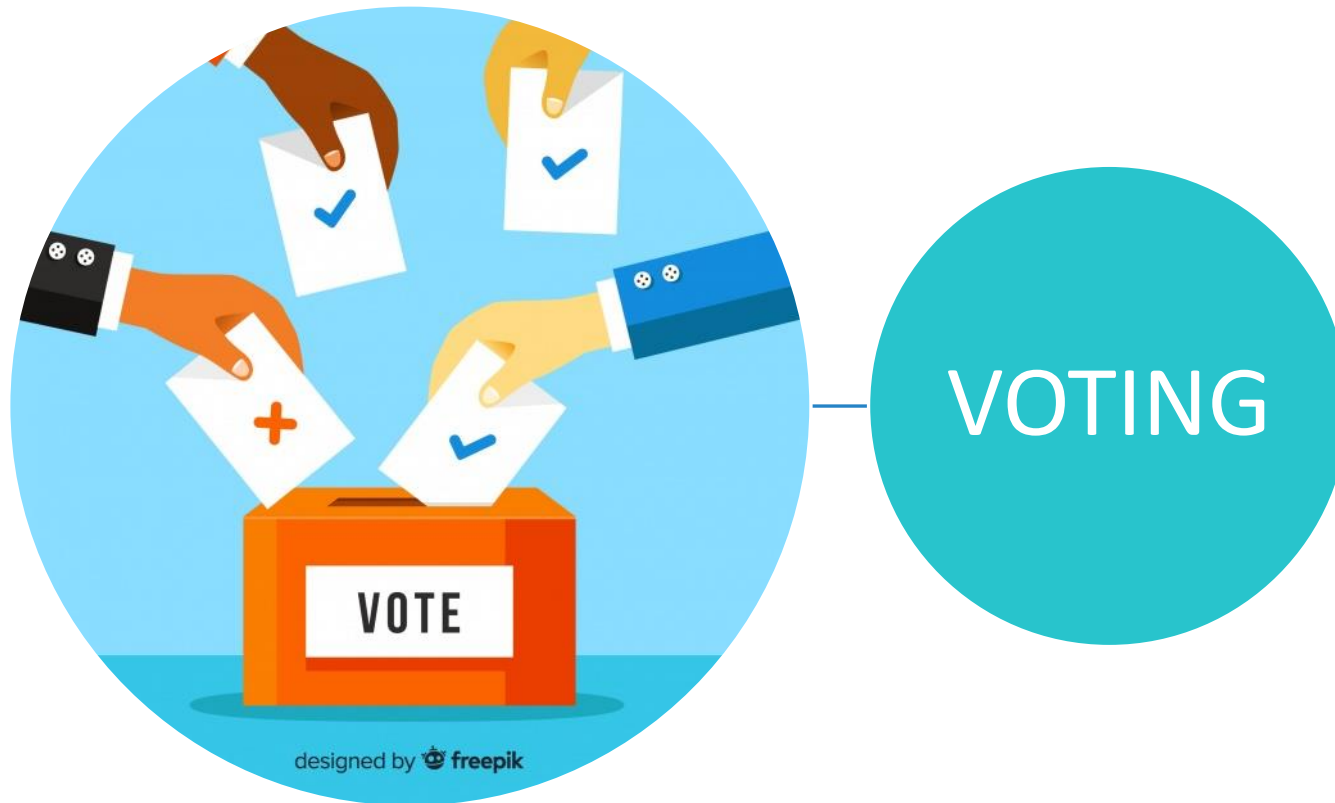
The Annual General meeting of SHREESLASAR Limited was scheduled for 25th December, 2019. Mr. Ananat, shareholder of SHREESLASAR Limited has desired to inspect inspection of proxies lodged with the company. The notice for inspection should be given at least before the meeting:

- (a) 24 hours
- (b) 1 day
- (c) 2 days
- (d) 3 days



# VOTING [S.106- 109]

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- VOTING BY SHOW OF HANDS [S.107]
- VOTING BY ELECTRONIC MEANS [S.108]
- VOTING BY POLL [ S.109]
- VOTING BY POSTAL BALLOT [S.110]

# VOTING RIGHTS

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- Section 2(93) of the Companies Act, 2013 ("**2013 Act**"), provides the definition of 'voting right' which means *the right of a member of a company to vote in any meeting of the company or by means of postal ballot*
- Principally, voting right is the decision making right vested with all the members of a company to approve or disapprove the resolutions placed before the company at the general meeting. In case of shareholders of the company, the right of shareholders to vote in a general meeting of the company is attached to the number of shares held by the shareholders of the company. Section 47 of the Companies Act 2013 relates to voting rights of shareholders in a Company.
- Voting rights can vary depending on the nature and category of the shares issued by the company and subscribed by the shareholder.
- Section 47 (*Voting rights*) of the Act deals with voting rights vested with every equity shareholder and preference shareholder of a company.

# VOTING RIGHTS

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- While an **equity shareholder** has the right to vote on every resolution placed before the company, a **preference shareholder** has the right to vote only on **those resolutions which directly affect the rights attached to its preference shares** i.e. any resolution for winding up of the company or for the repayment or reduction of its equity or preference share capital.
- However, an **exception under section 47 of the 2013 Act** has been carved out for the preference shareholders, which is in the case where preference shareholders have not been paid any dividend by the company for a period of 2 years or more, such preference shareholders would acquire the right to vote on every resolution placed before the company just like equity shareholders

# RESTRICTION ON VOTING RIGHTS [S.106]

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The **section overrules the whole of the Companies Act, 2013** and provides that the articles of association of a company may provide that no member shall exercise any voting right in respect of any share registered in his name on which any amount is due from him on calls or any other sums payable to the company, or in regard to which the company has exercised the right of lien.

Section – 106 (2) also suggests that a company shall not prohibit any member from exercising his voting rights on any other ground except the grounds mentioned in (1).

On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses. [Sub section (3)]. Also, such member can't sign a requisition for an extraordinary general meeting.

# RESTRICTION ON VOTING RIGHTS [S.106]

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Note: Where the articles of the company do not contain any provision restricting the exercise of voting right of member, a member cannot be prevented from voting, even though, calls or other sum payable by him have not been paid or the company has exercised any right of lien over his shares. But, where the articles contain any such provision, and the shares forfeited for non-payment of calls have been re-allotted, the new allottee being liable for the balance remained unpaid on the shares will not be entitled to vote so long as any calls presently payable on the shares remain unpaid.

# VOTING BY SHOW OF HANDS [ S.107]

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According to section 107 of the Companies Act, 2013, unless the voting is demanded by way of poll u/s 109 or by electronic means u/s 108, the voting should be done by way of show of hands in the first instance.

Also, section 107(2) states that the declaration by the Chairman of the meeting in the minutes books shall be the conclusive evidence that the resolution is passed.



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*Can an insolvent shareholder vote at the meeting by show of hands?*

Yes. Notwithstanding that he has no longer any beneficial interest in the shares and the dividends are payable only to his trustee in bankruptcy, an insolvent shareholder so long as he remains in the register of the company as a member, is entitled to exercise his votes which are attributed to his status as member.

# VOTING THROUGH ELECTRONIC MEANS

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E- Voting has been introduced under Section 108 read with the [Companies \(Management and Administration\) Rules, 2014](#) and provides that a member in the prescribed class of companies may exercise his right to vote by electronic means.

*Rule 20 of the Companies (Management & Administration) Rules, 2014* provides a detailed procedure for electronic voting, which states as follows –

**“Voting through electronic means”** shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this rule.



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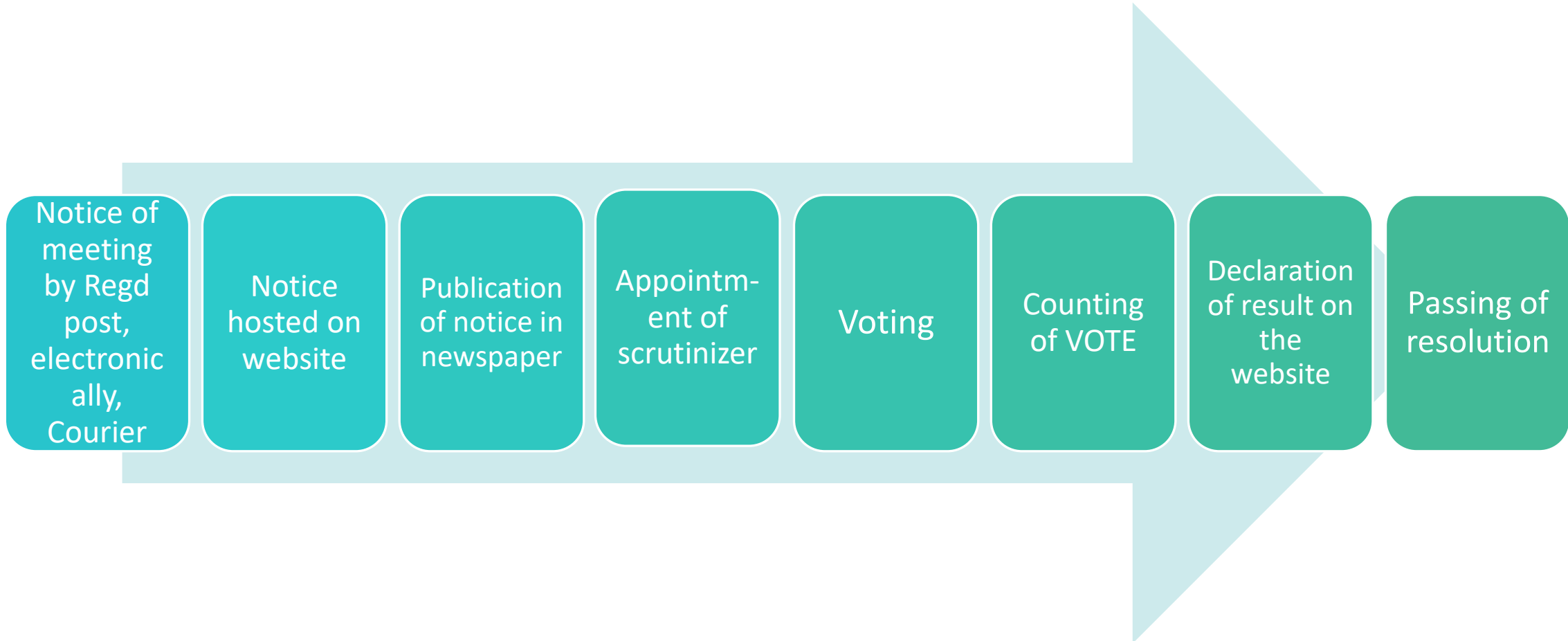
**Companies providing its members to exercise right to vote by electronic means: Every listed company and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.**

Provided that a Nidhi, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

**Exercise of right by a member:** A member may exercise his right to vote through voting by electronic means on resolutions and the company shall pass such resolutions in accordance with the provisions of this rule.

# PROCEDURE FOR E- VOTING

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# NOTICE OF MEETING

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The notice of the meeting shall be sent to all the members, directors and auditors of the company either-

- (a) by registered post or speed post; or
- (b) through electronic means, namely, registered e-mail ID of the recipient; or
- (c) by courier service;

**Notice to be hosted on website:** the notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

# CONTENT OF NOTICE

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- that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
- that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
- that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again.
- indicate the process and manner for voting by electronic means;

# CONTENT OF NOTICE

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- indicate the date and time of commencement of remote e-voting; the date and time of end of remote e-voting; cut-off date; ["cut-off date" means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting];
- provide the details about the login ID; and specify the process and manner for generating or receiving the password and for casting of vote in a secure manner
- name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:
- website address of the company, if any, and of the agency where notice of the meeting is displayed; and
- The manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password

# CONTENT OF NOTICE

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the statement that-

- (A) remote e-voting shall not be allowed beyond the said date and time;
- (B) the manner in which the company shall provide for voting by members present at the meeting; and
- (C) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and
- (D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting; [remote e-voting" means the facility of casting votes by a member using an e-voting system from a place other than venue of a general meeting;]

# PUBLICATION OF NOTICE

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- the company shall cause a public notice by way of an **advertisement** to be published,
- immediately on completion of dispatch of notices for the meeting but at least twenty-one days before the date of general meeting,
- 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 country-wide circulation.
- the public notice shall also be placed on the website of the company, if any, and of the agency;

# TIME FOR OPENING E- VOTING

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- the facility for remote e-voting shall remain open for **not less than three days** and shall close at **5.00 p.m.** on the **date preceding the date of the general meeting;**
- Option for remote e-voting:** During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialized form, as on the cut-off date, may opt for remote e-voting:
- Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:



- 
- Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;
  - At the end of the remote e-voting period, **the facility shall forthwith be blocked**
  - Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e voting.

# APPOINTMENT OF SCRUTINISER

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The Board of Directors shall appoint one or more scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner

Provided that 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 electronic voting system;

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

# ROLE OF CHAIRMAN

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- The Chairman shall, at the general meeting,
- at the end of discussion on the resolutions on which voting is to be held,
- allow voting,
- with the assistance of scrutinizer,
- by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

# COUNTING OF VOTES

---

- The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting,
- thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company
- and make, not later than three days of conclusion of the meeting, a consolidated scrutinizer's report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same:
- Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

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Explanation: It is hereby clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

- **Access to details:** For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutiniser shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes.

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**Maintenance of Register:** The scrutiniser shall maintain a register either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;

**Safe Custody of register:** The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.

# DECLARATION OF RESULT

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**Result on websites:** The results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman:

Provided that in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

# PASSING OF RESOLUTION

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**Passing of date of resolution:** Subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

Explanation: For the purposes of this clause, the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Act.

**(xviii) Resolution not to be withdrawn:** a resolution proposed to be considered through voting by electronic means shall not be withdrawn.



# DEMAND FOR POLL [S.109]

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Section 109 provides **that before or on declaration of result of the voting on any resolution by a show of hands**, the Chairman of the meeting on his own, or on demand made by the 'specified' members in that behalf, order for poll.

## Members who can demand for poll –

In case of a company having a **share capital**, by the members present in person or proxy, where allowed, and having not less than **1/10th of the total voting power or holding shares** on which an aggregate sum of **not less than ` 5,00,000** or such **higher** amount has been prescribed has been paid – up.

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

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## **Within what time poll has to be taken?**

- A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.
- A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the Chairman of the meeting may direct.

# PROCEDURE FOR CONDUCTING POLL

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- Where a poll is to be taken, the Chairman of the meeting shall appoint a scrutinizer for observing the poll process and votes given on poll and to report thereon.
- The duties of a scrutinizer shall be as follows—
  - To ensure proper conduct of the polling process;
  - To maintain proper records of the poll.
  - To submit a report to the Chairman of the meeting which shall contain the details of votes cast in the favour and against the resolution; and
  - To ensure that the compliance of the provisions of section 109 and Rule 21

- 
- The Chairman shall regulate the manner in which the poll shall be taken at the meeting and appoint such number of scrutinizers as may be necessary.
  - Rule 21 lays down the procedure describing the manner in which the Chairman shall get the poll process scrutinized-
  - The Chairman of the meeting shall ensure that –
    - The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
    - The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.

- 
- The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and the Polling paper shall be in Form No. MGT.12.
  - The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
  - The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
  - In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.

- 
- The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
  - The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
  - Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
  - The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

- 
- The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.
  - The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in [Form No. MGT.13](#) and the report shall be signed by the scrutinizer and, in case there is more than one scrutinizer by all the scrutinizer, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.

The results of the poll shall be deemed to be the decision of the meeting on the resolution.

# APPLICABILITY OF SECTION 101 TO 107 AND 109 TO PRIVATE COMPANIES

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**Applicability of section 101 to 107 and 109 to Private companies-** Section 101 to 107 and 109 shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise. *Notification dated 5th June, 2015.*

This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar. *Notification dated 13<sup>th</sup> June 2017.*



# POSTAL BALLOT [ S.110]

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- As per section 2(65) “postal ballot” means **voting by post or through any electronic mode.**
- The provisions relating to passing of resolution by postal ballot are contained in S.110 read with Rule 22 of the Companies (Management and administration) Rules, 2014.
- Section 110 reads as:  
“(1) Notwithstanding anything contained in this Act, a company—  
(a) shall, in respect of **such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot;** and

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(b) may, in respect of **any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting**, transact by means of postal ballot.

In such manner as may be prescribed, instead of transacting such business at a general meeting.

Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

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

# PROCEDURE FOR CONDUCTING POSTAL BALLOT

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- Manner in which postal ballot shall be conducted is prescribed in Rule 22 of the *Companies (Management & Administration) Rules, 2014*. The same is described as follows
  - Where a company is required or decides to pass any resolution by way of postal ballot, it shall **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 because postal ballot means voting by post or through electronic means **within a period of thirty days from the date of dispatch of the notice**.

# PROCEDURE FOR CONDUCTING POSTAL BALLOT

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- 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.
- **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 therein, *inter alia*, the following matters, namely:-

# PROCEDURE FOR CONDUCTING POSTAL BALLOT

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- (a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
- (b) the date of completion of dispatch of notices;
- (c) the date of commencement of voting;
- (d) the date of end of voting;
- (e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;
- (f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
- (g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

# PROCEDURE FOR CONDUCTING POSTAL BALLOT

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- 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 and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
- 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.

# PROCEDURE FOR CONDUCTING POSTAL BALLOT

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- Postal ballot received back from the shareholders shall be kept in the **safe custody of the scrutinizer** and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, **no person shall deface or destroy the ballot paper or declare the identity of the shareholder.**
- 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;
- The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

# PROCEDURE FOR CONDUCTING POSTAL BALLOT

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- 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.
- The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.
- The results shall be declared by placing it, **along with the scrutinizer's report, on the website of the company.**
- The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, *mutatis mutandis* to this rule in respect of the voting by electronic means.



# BUSINESS TRANSACTED BY POSTAL BALLOT

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- pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot—
  - (a) **alteration of the objects clause** of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
  - (b) **alteration of articles of association** in relation to insertion or removal of provisions which, under **sub-section (68) of section 2**, 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 as specified in sub-section (5) of section 12;

# BUSINESS TRANSACTED BY POSTAL BALLOT

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- (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 raised under sub-section (8) of section 13;
- (e) **issue of shares with differential rights** as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of 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 sub-section (1) of 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 sub-clause (a) of sub-section (1) of section 180;
- (j) **giving loans** or **extending guarantee** or **providing security** in excess of the limit specified under sub-section (3) of section **186**:

# BUSINESS TRANSACTED BY POSTAL BALLOT

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Provided that any aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, **may be transacted at a general meeting** by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section

Provided further that **One Person Companies** and other companies having member's upto **two hundred** are **not required to transact any business through postal ballot.**

# CIRCULATION OF MEMBERS RESOLUTION

## [S.111]

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- Section 111 gives members a right under section 111 to propose resolutions for consideration at the general meetings.
- Who can make a requisition under S.111?
  - **Company having a share capital:-** Members holding  $\geq 1/10^{\text{th}}$  of the paid up equity share capital
  - **Company not having a Share Capital-** Members holding  $\geq 1/10^{\text{th}}$  of the total voting power.

# CIRCULATION OF MEMBERS RESOLUTION [S.111]

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## Rights Of requisitionists u/s 111

- a. The requisitionists are **entitled to propose any resolution** to the company and require the company to move such resolution at the ensuing AGM. When a resolution is so proposed the company shall be bound to give notice of such resolution to all its members.
- b. With respect to any matter referred to in the notice of GM, which is to be dealt with at the GM, the requisitionists are entitled to **prepare any statement** with respect to such matter, and require the company to circulate such statement to all the members

# LEGAL REQUIREMENTS OF VALID REQUISITION UNDER S.111

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1. Requisition must be made in **writing and signed**
2. **Two or more copies** of the said requisition may contain signature of all the requisitionists.
3. **Where requisition proposes resolution:** It must be **deposited at the registered office of the company** not less than **six weeks** before AGM. However, if after the requisition is deposited with the company, an AGM is called on a date within 6 weeks of the date of deposit of the requisition, the requisition shall be deemed to be properly deposited.
4. **When requisition requires circulation of statement:** It must be deposited at the registered office of the company at least two weeks before the meeting.

**Note :** The company is not duty bound to circulate the notice of the resolution when the prerequisites are not complied with.

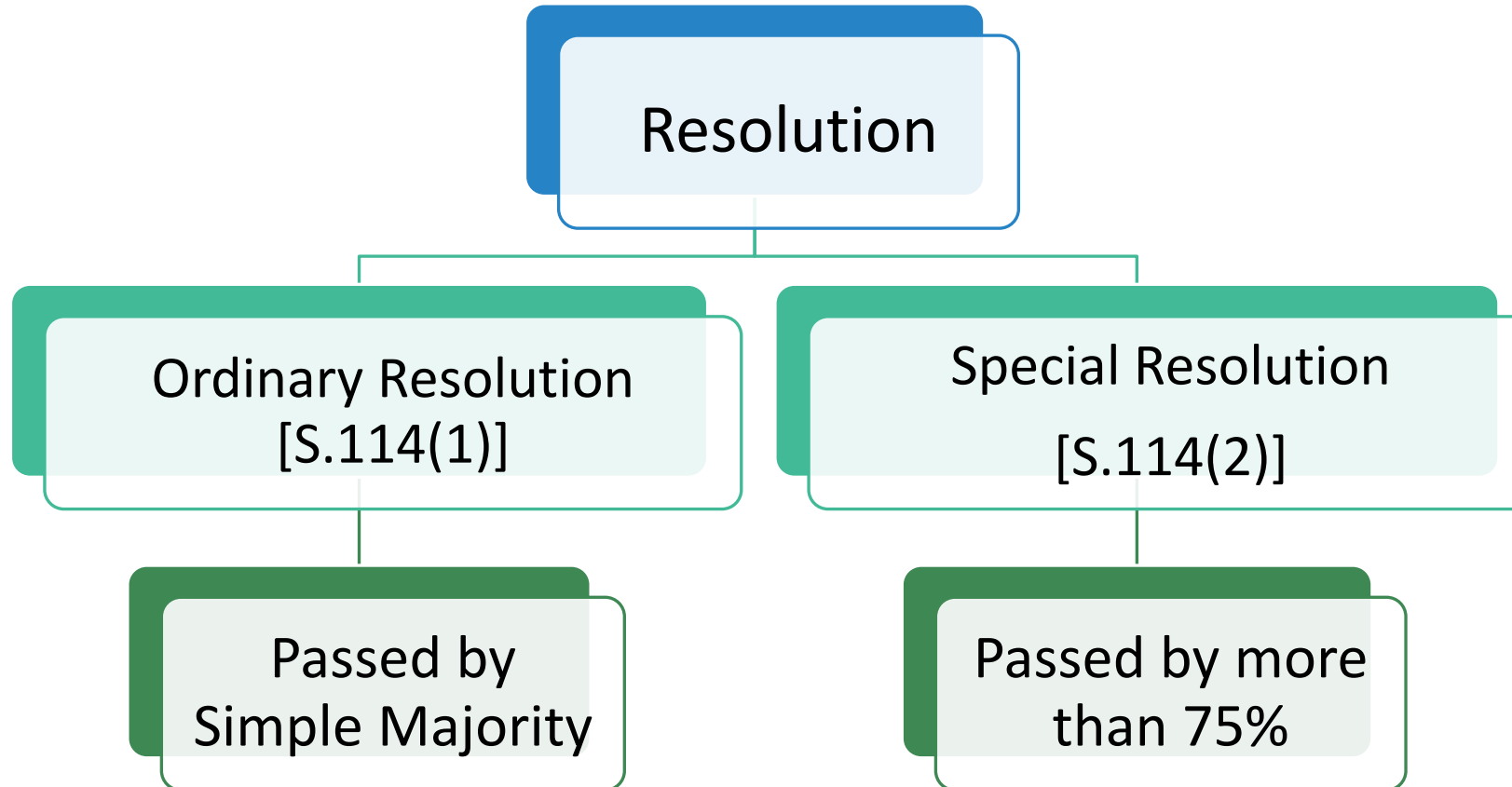
# PENALTY FOR DEFAULT

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If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

# RESOLUTIONS [S.114-117]

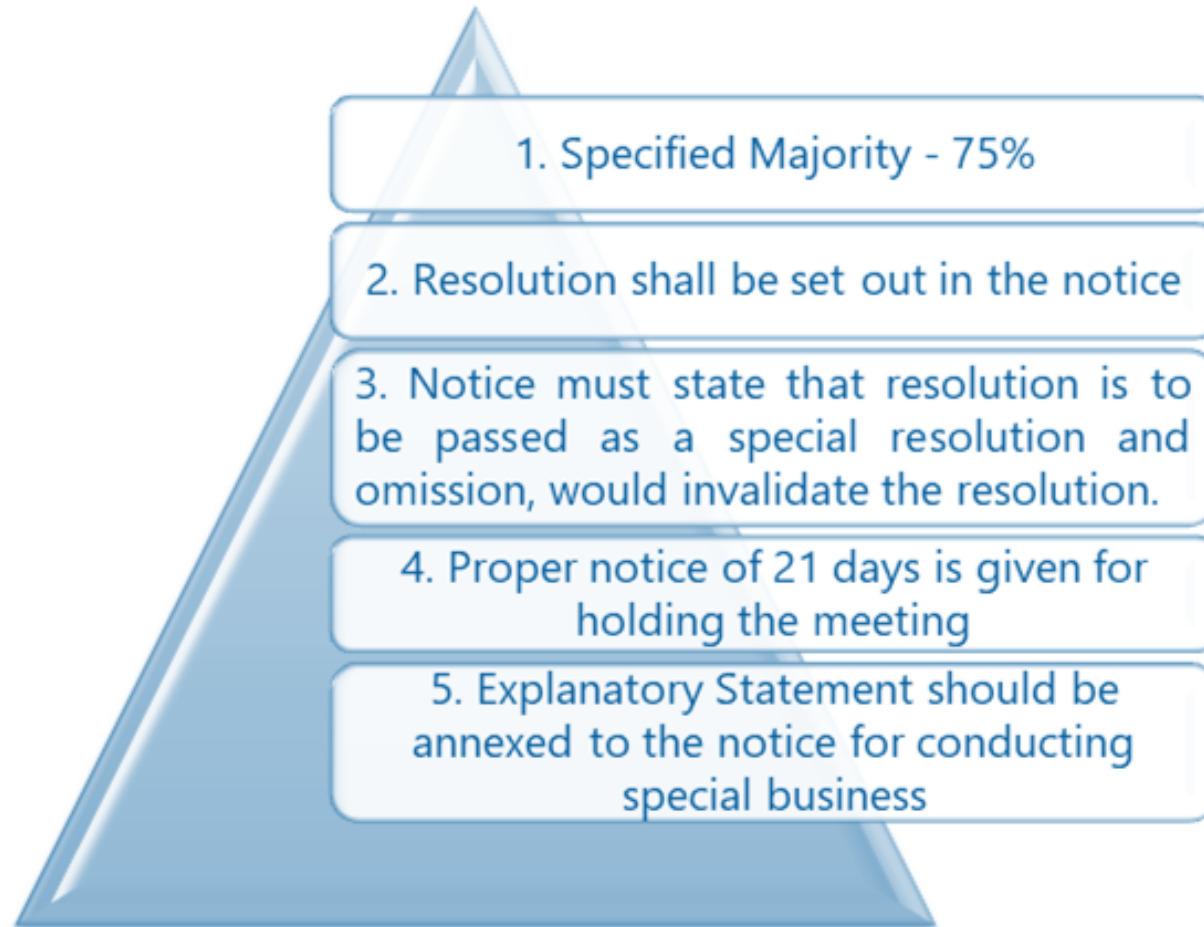
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# CHARACTERISTICS OF SPECIAL RESOLUTION

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# RESOLUTION REQUIRING SPECIAL NOTICE

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**Section 115 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice**

Section 115 of the Companies Act, 2013 states that where,

- by any provision contained in this Act or
- in the Articles of Association of a company,
- special notice is required for passing any resolution,
- then the **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 the total voting power,**
- **or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.**

# RESOLUTION REQUIRING SPECIAL NOTICE

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As per the Act, **special notice is required in the following cases –**

- Resolution for appointment of an auditors other the retiring auditor at an annual general meeting [Section 140(4)].
- Resolution at an annual general meeting to provide that a retiring auditor shall not be re-appointed [Section 140].
- Resolution to remove a director before the expiry of his period of office [Section 169(2)]
- Resolution to appoint another director in place of the removed director [(Section 169(5)]
- Further, the articles may provide for additional matters which may require special notice.

# REQUIREMENTS FOR SP. NOTICE

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- Notice shall be given to the company **not earlier than 3 months but at least 14 days before the date of meeting** at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
- A special notice required to be given to the company shall be **signed, either individually or collectively** by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.
- **The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting**, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

# REQUIREMENTS FOR SP. NOTICE

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- Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.
- The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

# MINUTES OF THE MEETING [S.118]

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Section 118 prescribes that

- every company shall prepare,
- sign and
- keep minutes of every general meeting of any class of shareholders or creditors,
- including the meeting called by the requisitionists,
- and every resolution passed by postal ballot and
- every meeting of its Board of Directors or of every committee of the Board,
- within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered

# MINUTES OF THE MEETING [S.118]

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- The minutes of each meeting shall contain a **fair and correct summary** of the proceedings that took place at the concerned meeting.
- All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
- In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain—
  - The names of the directors present at the meeting; and
  - In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

# MINUTES OF THE MEETING [S.118]

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- Any of the following matter shall not be included in the minutes of the meeting, which in the opinion of the Chairman of the meeting—
  - Is or could reasonably be regarded as defamatory of any person; or
  - Is irrelevant or immaterial to the proceedings; or
  - Is detrimental to the interests of the company.
- The matter to be included or excluded in the minutes of the meetings shall be at the absolute discretion of the Chairman of the meeting.
- The minutes kept in accordance with the provisions shall serve as the evidence of the proceedings therein.



# MINUTES OF THE MEETING [S.118]

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- Where the minutes have been kept in accordance with this section, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.
- No document, purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters requires by this section to be contained in the minutes of the proceedings of such meeting.

# MINUTES OF THE MEETING [S.118]

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- Every company shall observe Secretarial Standards with respect to general and Board meetings, specified by the Institute of Company Secretaries of India and approved as such by the Central Government. [Sub section (10)].
- **Penalty for contravention–**
  - If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of ` 25,000 and every officer of the company who is in default shall be liable to a penalty of ` 5,000.
  - If a person is found guilty of tampering with the minutes of the proceedings of the meeting, he shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than ` 25,000 but which may extend to ` 1,00,000.

# MINUTES OF THE MEETING [S.118]

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## PROVIIONS CONTAINED IN RULE 25

- A **distinct minute book shall be maintained for each type of meeting** namely: (i) general meetings of the members; (ii) meetings of the creditors (iii) meetings of the Board; and (iv) meetings of each of the committees of the Board.
- **The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along** with the date of such entry within thirty days of the conclusion of the meeting
- In case of every **resolution passed by postal ballot, a brief report on the postal ballot conducted** including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

# MANNER OF SIGNING OF MINUTES

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**Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed –**

(i) in the case of minutes of proceedings of a **meeting of the Board** or of a committee thereof, by **the chairman of the said meeting or the chairman of the next succeeding meeting;**

(ii) in the case of minutes of proceedings of a **general meeting**, by the **chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose;**

(iii) In case of every **resolution passed by postal ballot**, by the **chairman of the Board** within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

# PRESERVATION AND CUSTODY OF MINUTE BOOKS

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**The minute books of general meetings, shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board.**

**The minute-books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.**

# INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING [SECTION 119]

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As per section 119 of the Companies Act, 2013, the books containing the minutes of the proceedings of any general meeting of a company shall–

- ◆ Be kept at the registered office of the company; and
- ◆ Be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting. However, at least 2 hour in each business day shall be allowed for inspection [Sub – Section (1)].

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred [Sub – Section (2)].

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**Penalty for contravention:** If any inspection under sub – section (1), is refused by the company to the member, or if the copy of minute-book is not furnished within the time specified under sub – section (2), then the company shall be liable to a penalty of ` 25,000 and every officer of the company who is in default shall be liable to a penalty of ` 5,000 for each such refusal or default as the case may be.

**Power of Tribunal [Sub – Section (4)]** In the case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

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**Rule 26**—Copy of minute book of general meeting— Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page: Provided that a member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.



# REPORT ON AGM S.121

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This section is **applicable to listed public companies and** states that they shall **prepare a report in the Form MGT – 15** as prescribed in Rule 31 of the Companies (Management and Administration) Rules, 2014, **on each AGM** including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

- The company shall **file with the Registrar a copy of the report** referred to in sub-section (1) **within 30 days of the conclusion of the annual general meeting** with such fees as may be prescribed, or with such additional fees as may be prescribed.

# REPORT ON AGM S.121

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- If the **company fails to file the report** under sub-section (2) before the expiry of the period specified therein, such **company shall be liable to a penalty of one lakh rupees** and in case of **continuing failure, with further penalty of five hundred rupees for each day** after the first during which such failure continues, subject to a **maximum of five lakh rupees** and **every officer of the company who is in default shall be liable to a penalty which** shall not be less than **twenty-five thousand rupees** and in case of **continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees**

# APPLICABILITY OF CH.VII TO OPC [S.122]

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The section states that the provisions of section 98 and section 100 to 111 shall not apply to One Person Company.

(2) The ordinary businesses as mentioned under section 102(2)(a), which a company is required to transact at an AGM, shall be transacted in the case of One Person Company, as provided in Sub-section (3).

(3) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be

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deemed to be the date of the meeting for all the purposes under this Act.

(4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes book required to be maintained © The Institute of Chartered Accountants of India MANAGEMENT & ADMINISTRATION 7.69 under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

# PRACTICE QUESTIONS

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Q. The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company



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**THANK YOU**