Date: 18th June, 2022

LIVE COACHING CLASSES
BOARD OF STUDIES(A), ICAI

CA INTERMEDIATE
TOPIC NAME - XXXXXXXXXX
PAPER 2 : CORPORATE AND OTHER LAWS

Faculty Name: CA S SRIKANTH

Management and Administration

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TOPIC OVERVIEW
Management and Administration

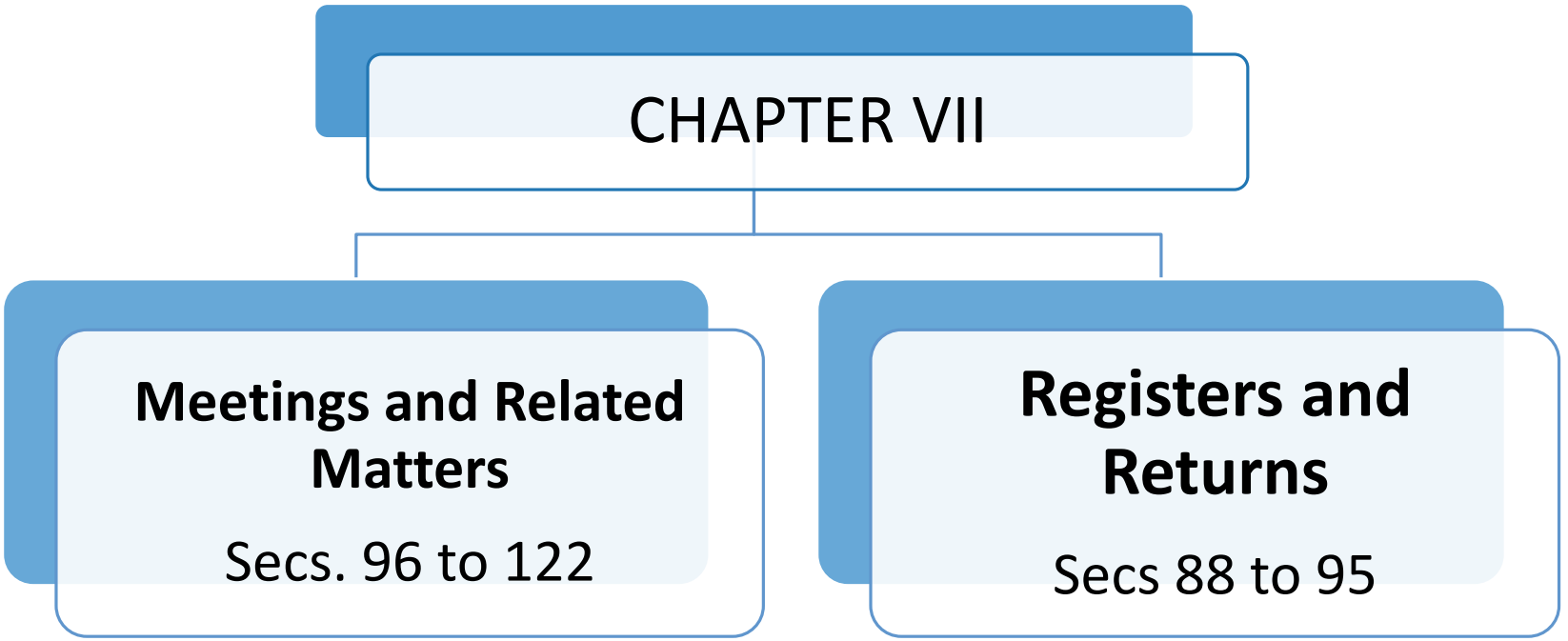
Companies Act, 2013 CHAPTER VII

The Companies (Management and Administration) Rules 2014

Note: All references to Sections and Rules are from the above unless specifically stated otherwise

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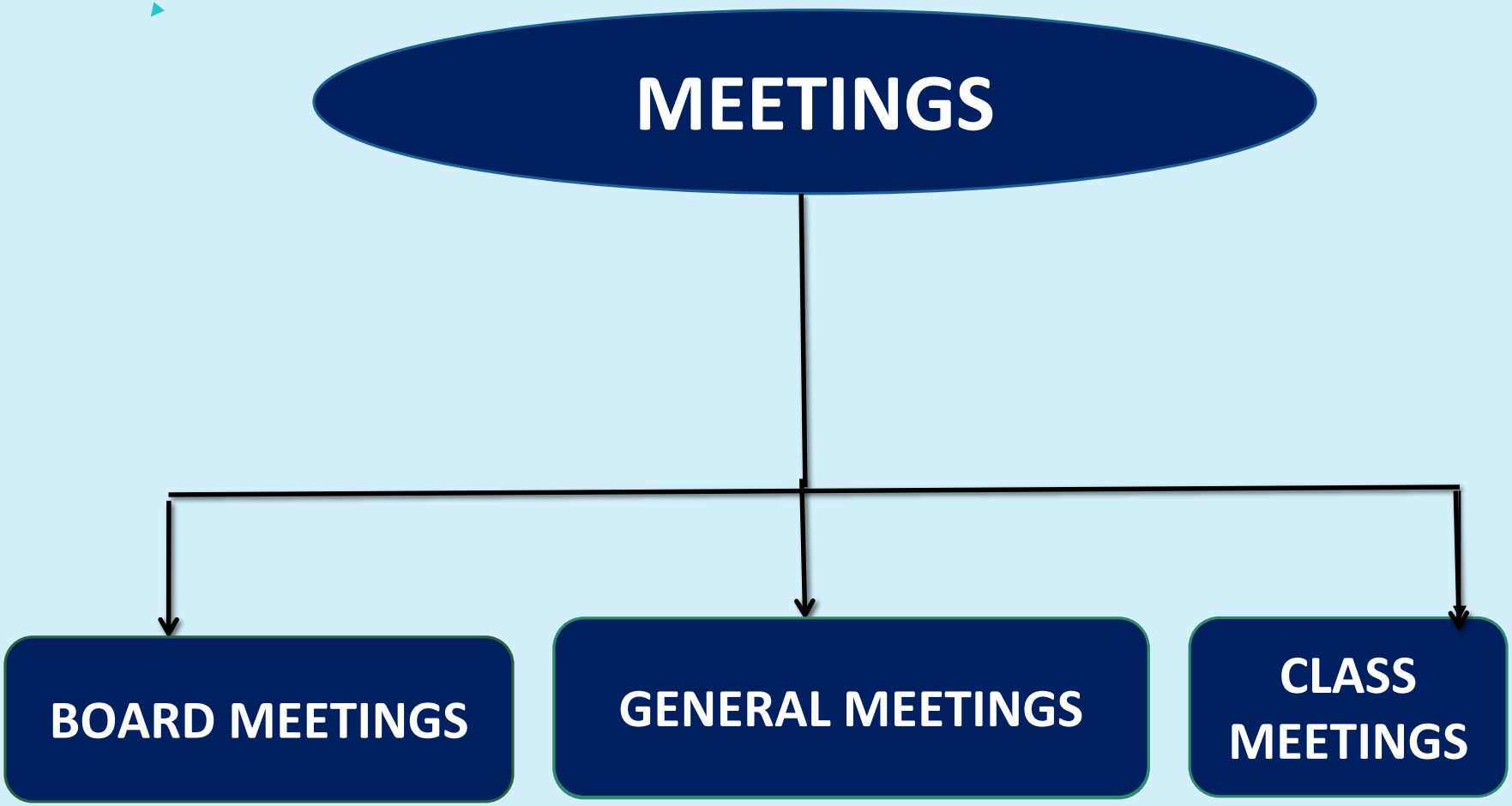
TOPIC OVERVIEW
Prospectus & Allotment of Securities



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MEETINGS

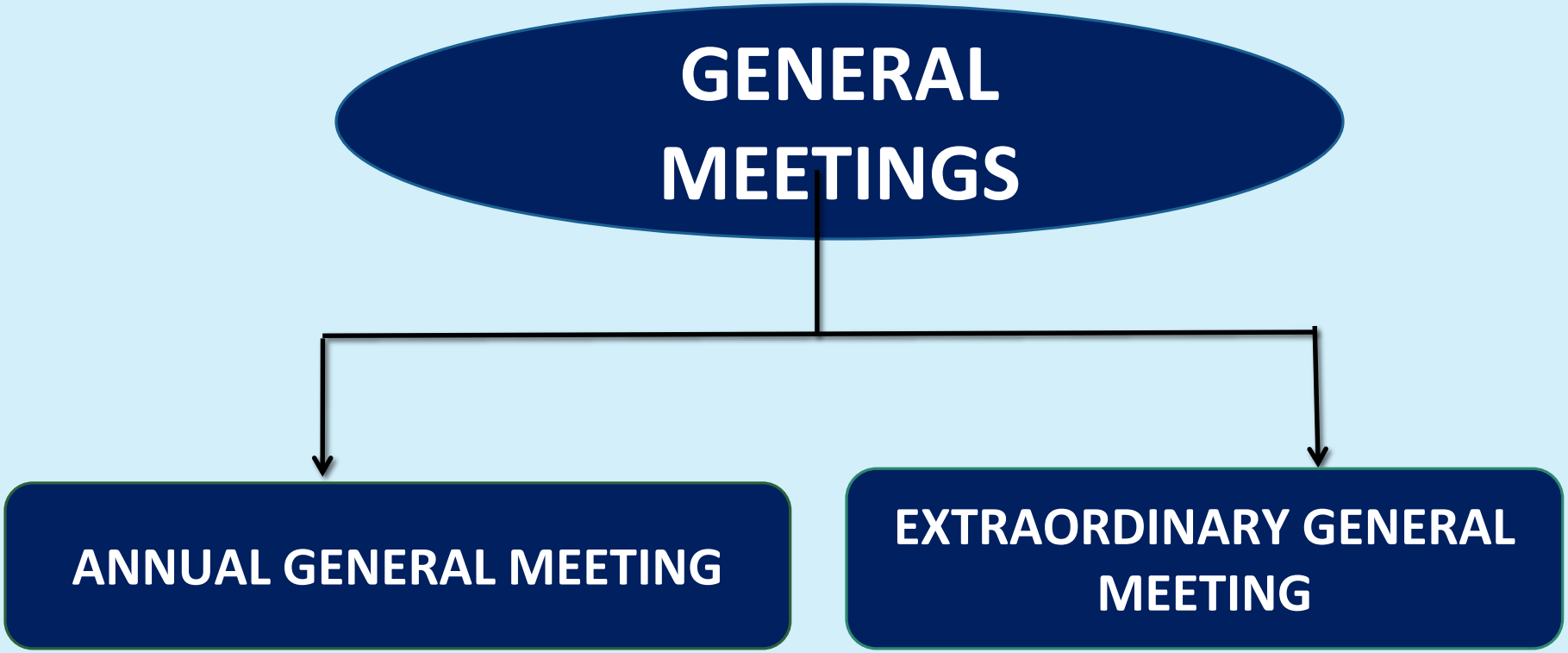
DIFFERENT KINDS OF MEETINGS



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MEETINGS

WE WILL DEAL WITH GENERAL METINGS AND RELATED MATTERS FIRST



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ANNUAL GENERAL MEETING (SEC. 96)

Every company (other than a One Person Company)

shall

in each year hold in addition to any other meetings,

a general meeting

as its Annual General Meeting (AGM)

The meeting shall be specified as AGM in the notices calling it

THUS AGM IS COMPULSORY FOR ALL COMPANIES
EXCEPT OPC
AND
IS AN ANNUAL FEATURE

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ANNUAL GENERAL MEETING (SEC. 96)

RULES RELATING TO AGM

The gap between two Annual General Meetings should not exceed **FIFTEEN MONTHS**

AGM to be held within a period of

SIX MONTHS, from the date of closing of the financial year :

AGM shall be held once in every year

the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding **THREE MONTHS**.

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ANNUAL GENERAL MEETING (SEC. 96)

FIRST AGM

First annual general meeting of the company should be held within

NINE MONTHS from the closing of the first financial year.

Where a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation

Extension of time cannot be granted by Registrar with respect to holding of the First AGM

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QUORUM OF MEETING (SEC. 103)

Abhiruchi Limited was incorporated on 11th December 2021. When should the company hold its AGM?

According to section 96(1), the company's financial year will close on 31st March 2022. The company may hold its first AGM by 31st December 2022, i.e. within 9 months of the close of its financial year.

Would your answer be the same if you are informed that the company was incorporated on 11th February 2021.

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Time and place for holding an AGM (SEC. 96 (2))

AGM SHALL BE

HELD during business hours, i.e. between 9 a.m. and 6 p.m. on any day that is not a National Holiday

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

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

National Holiday means and includes a day declared as National Holiday by the Central Government.

The Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

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Time and place for holding an AGM (SEC. 96 (2))

EXCEPTIONS TO SECTION 96 (2)

In case of a Sec. 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.

In case of a Government Company, the Central Government may approve a place other than the registered office or some other place in the same city, town or village in which the registered office of the company is situated

The above mentioned exception shall be applicable to a section 8 company or a Government Company as the case may be only if such company has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar.

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Power of Tribunal to call an AGM (Sec. 97)

WHAT?

Tribunal may call or direct the calling of an AGM of a company

WHEN?

If any default is made in holding the annual general meeting of a company under Section 96.

HOW?

On the application of any member of the company

This is notwithstanding anything contained in this Act or the articles of the company

Tribunal may give such ancillary or consequential directions as the Tribunal thinks expedient

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

A general meeting held in pursuance of this section shall, subject to any directions of the Tribunal, be deemed to be an AGM of the company under this Act.

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Power of Tribunal to call meetings of members, etc. (Sec. 98)

WHAT?

Tribunal may order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit

WHEN?

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,

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Power of Tribunal to call meetings of members, etc. (Sec. 98)

HOW?

Either *suo motu* or on the application of director or member of the company who would be entitled to vote at the meeting

Tribunal may 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

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

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

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Punishment for default in complying with the provisions of Sections 96 – 98 (Sec. 99)

Default in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal

PERSON LIABLE	PENALTY (PUNISHMENT)
Company and every officer of the company who is in default	Fine of up to **one lakh rupees**
Company and every officer of the company who is in default	In the case of a continuing default, with a further fine which may extend to **five thousand rupees** for every day during which such default continues.

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Report on Annual General Meeting (Sec.121)

WHO?

This section is applicable only to listed companies

WHAT?

A report, shall be prepared in Form No. MGT. 15 on each annual general meeting 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.

WHEN?

The company shall file with the Registrar a copy of the above report in WITHIN THIRTY DAYS of the conclusion of the annual general meeting with such fees/ additional fees as may be prescribed.

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Report on Annual General Meeting (Rule 31)

HOW?

The Report on AGM shall be prepared in the following manner, namely:-

(a) the report under this section shall be prepared in addition to the minutes of the general meeting;

(b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company;

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Report on Annual General Meeting (Rule 31)

CONTENTS OF THE REPORT

(i) the day, date, hour and venue of the annual general meeting;

(ii) confirmation with respect to appointment of Chairman of the meeting;

(iii) number of members attending the meeting;

(iv) confirmation of quorum;

(v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;

Contd…

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CONTENTS OF THE REPORT

(vi) business transacted at the meeting and result thereof;

(vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and

(viii) any other points relevant for inclusion in the report.

The Report shall contain fair and correct summary of the proceedings of the meeting.

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Punishment for failure to file the report within 30 days of conclusion of AGM (Sec. 121 (3))

Failure to file the report within 30 days of conclusion of AGM

PERSON LIABLE	PENALTY (PUNISHMENT)
COMPANY	**Fine of up to one lakh rupees** **In the case of a continuing default, with a further fine which may extend to five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees**

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Punishment for failure to file the report within 30 days of conclusion of AGM (Sec. 121 (3))

Failure to file the report within 30 days of conclusion of AGM

PERSON LIABLE	PENALTY (PUNISHMENT)
Every officer of the company who is in default	**Fine of up to Twenty five thousand rupees** **In the case of a continuing default, with a further fine which may extend to five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees**

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EXTRAORDINARY MEETINGS

All general meetings other than Annual General Meetings are called Extraordinary General Meetings.

Extraordinary General Meeting (EGM)



The Board MAY, whenever it deems fit, call an EGM

The Board SHALL call an EGM at the requisition made by the requisite no. of members

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Calling of EGM by Board *suo motu* (Sec. 100 (1))

WHEN?

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

(Note: Need not be during business hours unlike AGM)

WHERE?

An extraordinary general meeting of the company, shall be held at a place within India.

EXCEPTIONS

1. **The EGM of a wholly owned subsidiary of a company incorporated outside India**
2. **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.

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THE REQUISITE NUMBER OF MEMBERS

TYPE OF COMPANY	REQUSITE NO. OF MEMBERS
Company having a Share Capital	**such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;**
Company NOT having a Share Capital	such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote

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RULES RELATING TO REQUISITION

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. (100 (3))

The requisition may be in writing or through electronic mode (Rule 17 (1))

The Requisition shall be provided at least twenty-one clear days prior to the proposed date of such extraordinary general meeting. (Rule 17 (1))

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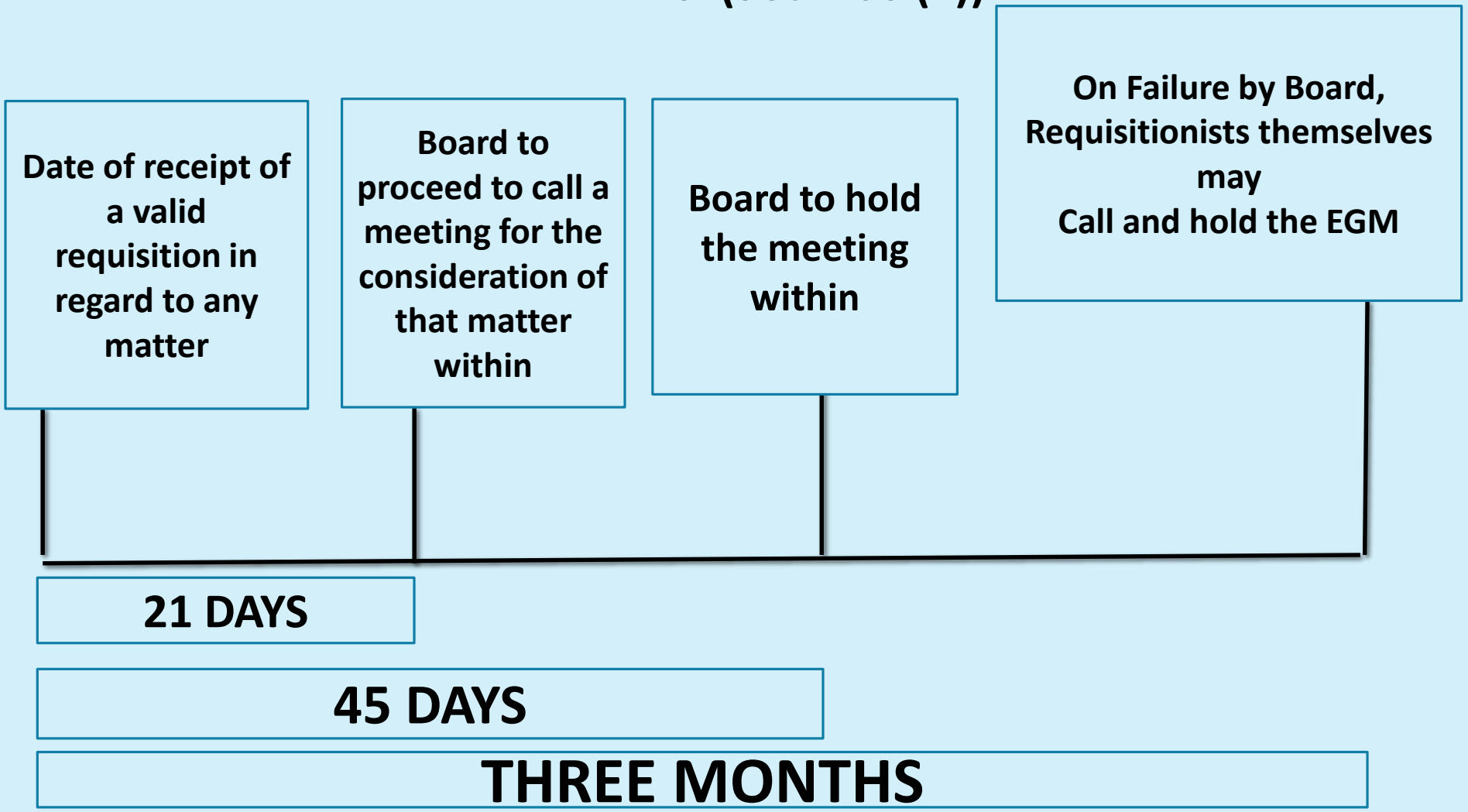
RULES RELATING TO REQUISITION

Any reasonable expenses incurred by the requisitionists in calling a meeting on failure by the board to do so shall be reimbursed to the requisitionists by the company..

The sums so paid/reimbursed 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

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PROCEDURE FOR CALLING OF EGM AT THE THE REQUISITION OF MEMBERS (Sec. 100 (4))



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RULES RELATING TO CALLING AND HOLDING OF MEETING BY REQUISITIONISTS THEMSELVES

Such meeting called and held by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board. (Sec. 100 (3))

The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. (Rule 17 (2))

The requistionists should convene meeting at the Registered office or in the same city or town (village?) where the Registered office is situated and such meeting should be convened on any day except national holiday. (Note: Need not be during business hours.)

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RULES RELATING TO CALLING AND HOLDING OF MEETING BY REQUISITIONISTS THEMSELVES

The notice shall be signed by all the requistionists

or

by a requistionist(s) (sic) duly authorised in writing by all other requistionists on their behalf

or

by sending an electronic request attaching therewith a scanned copy of such duly signed requisition. (Rule 17 (4))

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RULES RELATING TO CALLING AND HOLDING OF MEETING BY REQUISITIONISTS THEMSELVES

If the resolution is to be proposed as a special resolution, the notice shall be given as required by Section 114 (2) (Rule 17 (3))

This means that the intention to propose the resolution as a special resolution should be duly specified in the notice calling the general meeting

We will see that any business to be transacted at any meeting other than AGM is Special Business. Such Special Business requires an explanatory statement when the EGM is called by the Board stating the reasons .
No such explanatory statement need be annexed to the notice of an EGM convened by the requistionists.

The requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
(Rule 17 (5))

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RULES RELATING TO CALLING AND HOLDING OF MEETING BY REQUISITIONISTS THEMSELVES

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 requistionists deposit with the Company a valid requisition for calling an EGM.
(Rule 17 (6))

Where the meeting is not convened, the requistionists shall have a right to receive list of members together with their registered address and number of shares held and the company is bound to give the same 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. (Rule 17 (7))

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RULES RELATING TO CALLING AND HOLDING OF MEETING BY REQUISITIONISTS THEMSELVES

MODE OF GIVING NOTICE

The notice of the meeting shall be given by speed post or registered post or through electronic mode .

Rule 17 (8)

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.

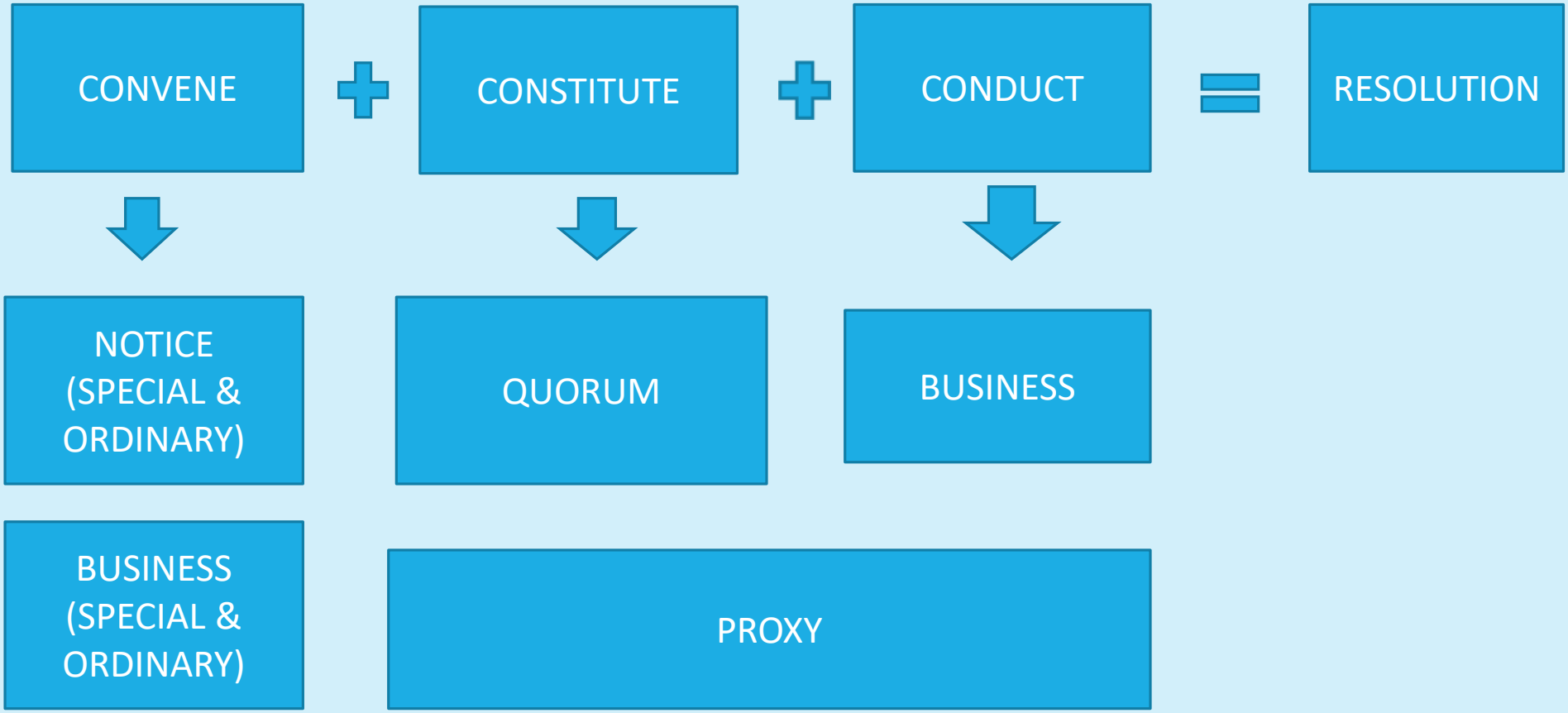
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WHO IS THE COMPANY?

- The company is
- a Majority of its Members
- Passing a Resolution at
- a validly
- Convened
- Constituted and
- Conducted
- Meeting

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Calling of EGM at the requisition of members (Sec. 100 (2) to (6) Read with Rule 17



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NOTICE OF MEETING (SECTION 101 Read with Rule 17)

LENGTH OF NOTICE → **NOT LESS THAN TWENTY-ONE CLEAR DAYS' NOTICE**

Twenty-one days to be read as Fourteen Days in the case of a Sec. 8 Company

MEANING OF CLEAR DAYS

Clear days means the date on which notice is served and the date of meeting are excluded for sending the notice.

A company cannot curtail the requirement of clear days through its Articles.

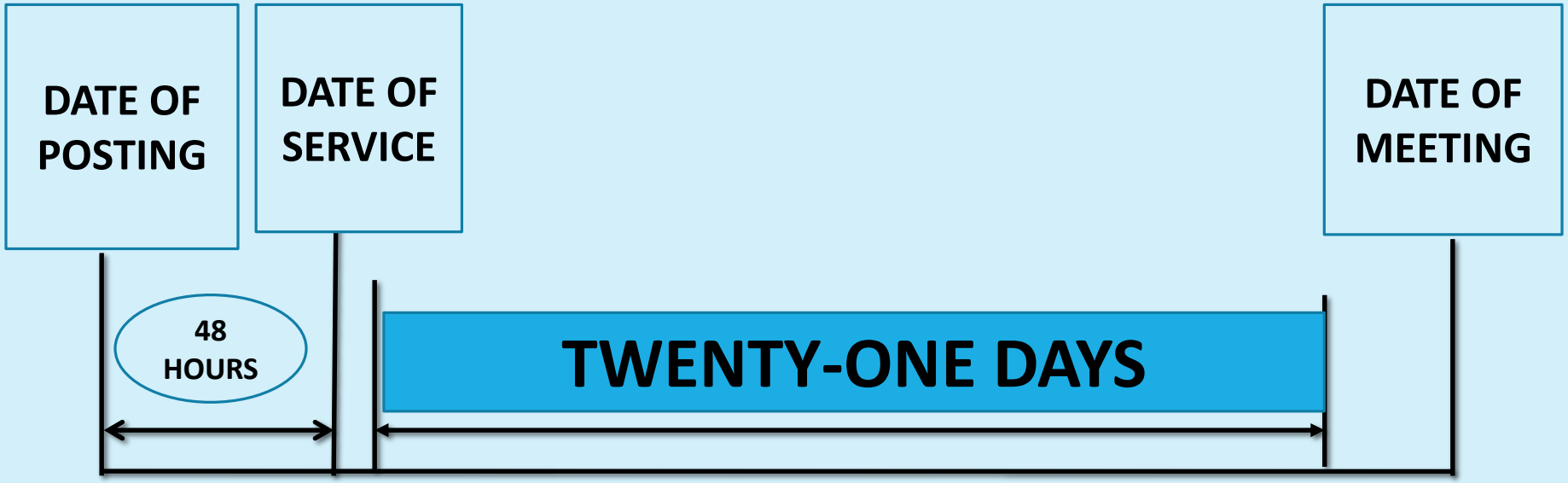
Where a notice of a General Meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted

(Rule 35(6) of the Companies Incorporation Rule, 2014)

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NOTICE OF MEETING (SECTION 101 Read with Rule 17)

LENGTH OF NOTICE



The directors of Cygni 21 Mines Limited posted the notice for an AGM on July 25th. The meeting was scheduled on August 14th. Is this valid.

The meeting may be held on any day after August 17th. Therefore meeting on 14th is invalid.

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NOTICE OF MEETING (SECTION 101 Read with Rule 17)

CAN A MEETING BE CONVENED BY GIVING SHORTER NOTICE?

A general meeting may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded by the requisite no. of members as detailed below

MEETING	REQUISITE NO. OF MEMBERS TO CONSENT
Annual General Meeting	Not less than ninety-five per cent. of the members entitled to vote thereat
Extraordinary general meeting	In the case of company HAVING 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
Extraordinary general meeting	In the case of company NOT HAVING Share Capital members having not less than ninty-five per cent. of the total voting power exercisable at that meeting

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NOTICE OF MEETING (SECTION 101 Read with Rule 17)

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 provision in respect of the former resolution or resolutions and not in respect of the latter

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NOTICE OF MEETING (SECTION 101 Read with Rule 17)

CONTENTS OF THE NOTICE

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. (Sec. 101 (2))

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NOTICE OF MEETING (SECTION 101 Read with Rule 17)

Who is entitled to receive the notice of the general meeting? (Section 101(3))

(a)every member of the company, legal representative of any deceased member or the assignee of an insolvent member;

(b)the auditor or auditors of the company; and

(c)every director of the company.

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NOTICE OF MEETING (SECTION 101 Read with Rule 17)

GANGA CLAUSE

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

EXCEPTIONS

Section 101 shall apply

To a Private Company unless otherwise specified in respective sections or the articles of the company provide otherwise.

To a Specified IFSC public company, unless otherwise specified in the articles of the company.

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MODE OF SENDING THE NOTICE

A company may give notice through electronic mode. Rule 18 (1))

For the purpose of this rule, the expression ‘‘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.

A notice may be sent through e-mail as

1. **a text or**
2. **an attachment to e-mail or**
3. **a notification providing electronic link or Uniform Resource Locator**

for accessing such notice. (Rule 18 (2))

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MODE OF SENDING THE 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 Rule 18 (3)

Company to provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein .

This facility is available only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email ids are already registered

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.

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MODE OF SENDING THE NOTICE

The notice shall be placed simultaneously on the website of the Company, if any, and on the website as may be notified by Central Government.

AUTHORITY TO CALL A GENERAL MEETING

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

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STATEMENT TO BE ANNEXED TO NOTICE (SEC. 102)

Business means the matters or Agenda to be transacted at the meeting

BUSINESS (Section 102(2)

The following matters are ORDINARY BUSINESS if transacted at an AGM

i. the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of Directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors

All other business at an AGM and All business at any other meeting shall be deemed to be SPECIAL BUSINESS

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STATEMENT TO BE ANNEXED TO NOTICE (SEC. 102)

As the name implies Ordinary Business is routine and needs no explanation

A statement setting out the following material facts concerning each item of Special Business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, Sec. 102 (1))

MATTERS TO BE INCLUDED IN THE STATEMENT

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.

The principle is that the members should be enabled to take an informed decision.

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STATEMENT TO BE ANNEXED TO NOTICE (SEC. 102)

Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two per cent. of the paid-up share capital of that company, also be set out in the statement.

INSPECTION OF DOCUMENTS

Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the above said statement annexed to the notice

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STATEMENT TO BE ANNEXED TO NOTICE (SEC. 102)

EFFECT OF NON-DISCLOSURE [SECTION 102(4)]

Any benefit may accrue to a promoter, director, manager, other key managerial personnel or their relatives as a result non-disclosure or insufficient disclosure in such explanatory statement;

Then, 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.

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STATEMENT TO BE ANNEXED TO NOTICE (SEC. 102)

Penalty for default in compliance with Sec. 102 [Sec. 102 (5)]

PERSON LIABLE	PENALTY (PUNISHMENT)
Every promoter, director, manager or other key managerial personnel of the company who is in default	**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.**

This is without prejudice to the duty to compensate the company for any benefit derived.

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QUORUM OF MEETING (SEC. 103)

"Quorum" means the MINIMUM number of persons required to constitute and transact business at a meeting.

Quorum for the general meetings of a Public Company

NO. OF MEMBERS AS ON DATE OF MEETING	QUORUM
not more than one thousand	**FIVE** members **personally** present
more than one thousand but up to five thousand	**FIFTEEN** members **personally** present
exceeds five thousand	**THIRTY** members **personally** present

Quorum for the general meetings of a Private Company shall be TWO members personally present

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QUORUM OF MEETING (SEC. 103)

The Quorum prescribed above shall be applicable only if the Articles of the Company do not prescribe a LARGER number.

The word "personally" denotes that a proxy (a person attending the meeting on behalf of a member) will NOT be counted in the quorum.

Joint Holders of shares shall be counted as a single member for the purposes of ascertaining quorum.

EXCEPTIONS

Section 103 shall apply

To a Private Company unless otherwise specified in respective sections or the articles of the company provide otherwise.

To a Specified IFSC public company, unless otherwise specified in the articles of the company.

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QUORUM OF MEETING (SEC. 103)

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

A meeting, if called by requisitionists under section 100, shall stand cancelled:

In other cases 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

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

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QUORUM OF MEETING (SEC. 103)

Whether a single member constitutes a quorum at the adjourned meeting?

It is submitted that under the General Clauses Act singular includes plural and plural includes singular.

Whether a proxy will be counted in the quorum at the adjourned meeting?

The expression used is "members present" and not "members personally present." Hence, a proxy will be counted in the quorum at the adjourned meeting (provided the original meeting was adjourned for want of quorum). Daimler Co. Ltd. vs. Continental Tyre and Rubber Co., (1916) 2 A C 307, 325.

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QUORUM OF MEETING (SEC. 103)

in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give NOT LESS THAN THREE DAYS NOTICE to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

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QUORUM OF MEETING (SEC. 103)

SECRETARIAL STANDARD -2 PRESCRIBES AS FOLLOWS
(This is a mandatory standard)

1. **Quorum shall be present throughout the meeting i.e. not only at the time of commencement of the Meeting but also while transacting business.**
2. **Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be counted for the purpose of Quorum.**
3. **A Member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.**
4. **The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot.**

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QUORUM OF MEETING (SEC. 103)

Abbey Limited has 2300 members and the annual general meeting of the company is to be held on 23rd February 2019 at 10.30 a.m. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded with the meeting. There were 5 items of special business to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 & 5 and accordingly passed resolution as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

Hint: What is the quorum for this meeting?

Was it present throughout the meeting?

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QUORUM OF MEETING (SEC. 103)

An Extraordinary General Meeting of Bughunt Limited, an unlisted public company was held on 15th March 2022 at 11.00 AM. The company has 6500 members.

Around 11.30 AM about 12 members in person and about 100 proxies had assembled.

The Proxies claim that the meeting has a valid quorum and demand the chairman to proceed with the agenda.

The Chairman refuses on the ground that Quorum is not present.

Who is correct? What are the legal consequences.

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ADJOURNMENT

Let us understand the difference!

Postponement is when the meeting is scheduled for a later date BEFORE the date of meeting

Adjournment is when the meeting is scheduled for a later date AT the meeting either by choice or statutorily e.g. want of quorum

Cancellation is when a scheduled meeting is not held at all due to Act of God, Pandemic etc.,

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MEETINGS

ADJOURNMENT

Statutory i.e. by operation of law
Meeting 'stands' adjourned

Non-statutory or by volition or choice
The meeting 'is ' adjourned

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MEETINGS

NON-STATUTORY ADJOURNMENT

- Sine die i.e without specifying the date of the adjourned meeting
- The meeting may also specify the date of the adjourned meeting

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RESOLUTIONS PASSED AT ADJOURNED MEETINGS (SEC.116)

Where a resolution is passed at an adjourned meeting of

a. a company; or

b. the holders of any class of shares in a company; or

c. the Board of Directors,

the resolution shall be treated as passed

on the day it was actually passed

and

not on any earlier date.

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PROXIES (SEC. 105)

WHO IS A PROXY?

PROXY IS A PERSON WHO ATTENDS ANY GENERAL MEETING OF A COMPANY ON BEHALF OF A MEMBER

WHAT IS A PROXY?

PROXY IS THE INSTRUMENT OR DOCUMENT BY WHICH THE PROXY IS AUTHORIZED BY THE MEMBER TO ATTEND ANY GENERAL MEETING OF A COMPANY ON BEHALF OF SUCH MEMBER

MEMBER WHO ATTENDS HIMSELF IS SAID TO ATTEND IN PERSON OR IS PERSONALLY PRESENT.

WHEN A PROXY ATTENDS THE MEETING ON BEHALF OF A MEMBER, THE MEMBER IS SAID TO ATTEND THROUGH PROXY

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PROXIES (SEC. 105)

Any member of a company 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:

MEMBER WHO ATTENDS HIMSELF IS SAID TO ATTEND IN PERSON OR IS PERSONALLY PRESENT.
WHEN A PROXY ATTENDS THE MEETING ON BEHALF OF A MEMBER, THE MEMBER IS SAID TO ATTEND THROUGH PROXY

Unless the articles of a company otherwise provide, the above provision shall not apply in the case of a company not having a share capital:

The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:

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PROXIES (SEC. 105)

INSTRUMENT APPOINTING A PROXY

The form of appointment of proxy shall be in the Form No. MGT.11.

The instrument appointing a proxy shall—
(a) be in writing; and
(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it

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PROXIES (SEC. 105)

The proxy shall be filed with the company at its registered office not later than 48 hours before the meeting. [Rule 10 (1)]

The Articles of a company may prescribe a period longer than forty-eight hours before a meeting of the company for deposit of the proxy form to be considered valid.

If so, such a provision shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

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PROXIES (SEC. 105)

The articles of Ultima Software Limited provides that proxies should be deposited 72 hours prior to the meeting. Susheel has been appointed as proxy for Shekhar Verma to attend the AGM to be held on 22nd July 2022 at 10 a.m.. He deposited the proxy formwith the company at 9.30 a.m. on 20th July 2022.
The MD of the company is of the opinion that the proxy is invalid. Is this view correct?

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PROXIES (SEC. 105)

An instrument appointing a proxy, if in the Form MGT.11, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

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PROXIES (SEC. 105)

A proxy shall not have the right to speak at the meeting and shall not be entitled to vote except on a poll.
i.e. Proxy cannot vote on show of hands
But he can demand a poll and also vote on a poll

Should the Proxy be a member?
No, a proxy need not be a member.
Exception
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.
[Rule 19 (1)]

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PROXIES (SEC. 105)

Can a person be a proxy for more than one member?

A person can act as proxy on behalf of
not exceeding FIFTY members holding in the aggregate not more than
TEN PERCENT OF THE TOTAL SHARE CAPITAL OF THE COMPANY CARRYING VOTING RIGHTS

A member holding more than ten percent, of the total share capital of the Company carrying voting rights may appoint a single person as proxy
Such person shall not act as proxy for any other person or shareholder.
Rule 19 (2)

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PROXIES (SEC. 105)

It is proposed to appoint Susheel Menon as the proxy for attending the meeting of Ultima Software Solutions Limited to be held at Thiruvananthapuram on 22nd July 2022 in respect of the following members holding share capital as mentioned against their respective names

1. **Achyut Menon 1%**
2. **Ananth Vasudevan 2%**
3. **Keshav Kurup 2%**
4. **Narayan Unni Nair 5%**
5. **Shekhar Verma 12%**

Is the proposal valid. Advise them.

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SATUTORY INFORMATION REGARDING PROXY IN THE NOTICE

In 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.

If default is made in complying with the above provision, every officer of the company who is in default shall be liable to penalty of five thousand rupees.

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INSPECTION OF PROXIES

- Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled to inspect the proxies lodged.

- Such inspection may be done 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, at any time during the business hours of the company.

- Not less than three days' notice in writing of the intention so to inspect shall be given to the company.

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PROXIES (SEC. 105)

Issue of invitations to appoint as proxy a person or one of a number of persons specified in the invitations to members entitled to attend thereat and vote by proxy

PERSON LIABLE	PENALTY (PUNISHMENT)
Every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees.	**A penalty of fifty thousand rupees**

An officer shall not be liable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

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Representation of President and Governors in meetings Sec. 112

- The CG or any SG may be a member of a company;
- The shares will be held in the name of the President of India or the Governor of the respective state;
- In such cases the President or Governor as the case may be MAY appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.
- Such person will have the same rights and powers as the President or, as the case may be, the Governor could exercise as a member of the company including the right to vote by proxy or on postal ballot

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Representation of Corporations at meetings of Companies and Creditors (Sec. 113)

- A body corporate, whether a company within the meaning of this Act or not, may be a member or creditor or debenture holder of a company
- In such cases such body corporate MAY appoint such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.
- This may be done by authorizing such person through a resolution of its directors or other governing body
- Such person will have the same rights and powers as the company could exercise as a member of the company including the right to vote by proxy or on postal ballot

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VOTING

Methods of Voting

- Voting by Show of Hands
- Voting on Poll
- Voting through electronic means
- Voting through Postal Ballot

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VOTING BY SHOW OF HANDS (SEC. 107)

At any general meeting, a resolution put to the vote of the meeting shall, unless

a. a poll is demanded under section 109 or

b. the voting is carried out electronically,

be decided on a show of hands.

Declaration by Chairman as to result of voting by show of hands to be final

A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the minutes book of the company shall be CONCLUSIVE EVIDENCE of the fact of passing of such resolution or otherwise.

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Demand for Poll (Sec. 109)

WHEN?

Before or on the declaration of the result of the voting on any resolution on show of hands

HOW?

The Chairman MAY on his own motion order a poll to be taken

AND

SHALL do so on a demand made in that behalf by the requisite no. of members

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Demand for Poll (Sec. 109)

THE REQUISITE NUMBER OF MEMBERS

TYPE OF COMPANY	REQUISITE NO. OF MEMBERS
Company having a Share Capital	**the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up**
Other Companies	**any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.**

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Demand for Poll (Sec. 109)

WHEN SHOULD A POLL 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.**

The demand for a poll may be withdrawn at any time by the persons who made the demand.

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CHAIRMAN OF MEETING (SEC. 104)

WHO IS THE CHAIRMAN OF A MEETING?

- **Chairman of the meeting is the person who manages and controls the meetings.**
- **He has complete authority on deciding on matters of decorum till the meeting is concluded**
- **On conclusion of the meeting he has to ensure that the minutes of the meeting have been correctly recorded.**
- **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 perform his duty correctly, he must be strictly impartial.

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CHAIRMAN OF MEETING (SEC. 104)

ELECTION OF CHAIRMAN TO BE INITIALLY BY SHOW OF HANDS

Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

POLL FOR ELECTION OF CHAIRMAN TO BE TAKEN FORTHWITH

- If a poll is demanded on the election of the Chairman, it shall be taken forthwith.
- The Chairman elected on a show of hands as aforesaid shall continue to be the Chairman of the meeting unless and until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

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CHAIRMAN OF MEETING (SEC. 104)

CHAIRMAN'S CASTING VOTE

- Chairman has a casting vote.
- This is an additional vote available to the chairman which he will use only when there is a tie i.e. when the no. of votes cast in favour is EQUAL TO the no. of votes cast against.
- In such a case the Chairman MAY use his casting vote to ensure that the resolution is passed.
- If the chairman does not use his casting vote or if there is no provision in the articles for a casting vote, an ordinary resolution on which there is tie is deemed to be dropped.

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Demand for Poll (Sec. 109)

Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

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Manner in which the Chairman shall get the poll process scrutinized etc., (Rule 21)

- **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 proxies and authorizationdocuments 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

The Polling paper shall be in Form No. MGT.12.

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Manner in which the Chairman shall get the poll process scrutinized etc., (Rule 21)

- **The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.**
- **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.**

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Manner in which the Chairman shall get the poll process scrutinized etc., (Rule 21)

- **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.**

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Manner in which the Chairman shall get the poll process scrutinized etc., (Rule 21)

- **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.**

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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 compliancewith the provisions of section 109 and Rule 21.**

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VOTING THROUGH ELECTRONIC MEANS (SEC. 108)

A member in the prescribed class of companies may exercise his right to vote by electronic means also known as e-voting.

Prescribed Classes of Companies

A. **EVERY COMPANY** which has **LISTED** its equity shares on a **RECOGNISED STOCK EXCHANGE** and

B. A 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.

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VOTING THROUGH ELECTRONIC MEANS (SEC. 108)

For the purpose of this rule,

- **'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. [Explanation II(ii) to Rule 20(2)]

- **'electronic voting system'** means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security. [Explanation II(iv) to Rule 20(2)]

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VOTING THROUGH ELECTRONIC MEANS (SEC. 108)

- ***'remote e-voting'*** *means the facility of casting votes by a member using an electronic voting system from a place other than venue of general meeting. [Explanation II(v) to Rule 20(2)]*

- ***'voting by electronic means'*** *includes "remote e-voting and voting" at the general meeting through an electronic voting system which may be the same as used for remote e-voting. [Explanation II(vii) to Rule 20(2)]*

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VOTING THROUGH ELECTRONIC MEANS (SEC. 108)

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.

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VOTING THROUGH ELECTRONIC MEANS (SEC. 108)

"Voting through electronic means" or "e-voting" shall be done in accordance with Rule 20 of the Companies (Management and Administration) Rules, 2014

i. Notice of meeting:

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;

ii. 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;

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PROCEDURE

iii. Notice to contain the following particulars:

The notice of the meeting shall clearly state -

a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;

b) 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;

c) that the members who have cast their vote by remote c-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;

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PROCEDURE

iv. Publication of notice:

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 under clause (i) of sub-rule (4) 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.**

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PROCEDURE

CONTENT OF ADVERTISEMENT

Statement that the business may be transacted through voting by electronic means.

The date and time of commencement of remote e-voting.

The date and time of end of remote e-voting.

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PROCEDURE

CONTENT OF ADVERTISEMENT

- Cut-off date.
- 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.
- Website address of the company, if any, and of the agency where notice of the meeting is displayed.
- Name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:.

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PROCEDURE

v. Time for opening of e-voting:

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;

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PROCEDURE

vi. 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;

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PROCEDURE

vii. 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.

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PROCEDURE

viii. Appointment of scrutinizer:

The Board of Directors shall appoint one or more scrutinizers, 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.

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PROCEDURE

ix. 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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PROCEDURE

x. 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 scrutinizer 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 scrutinizer 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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PROCEDURE

xi. Maintenance of Register:

The scrutinizer 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.

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PROCEDURE

xii. Safe Custody of register:

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

xiii. Result on websites:

The results declared along with the report of the scrutinizer 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.

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PROCEDURE

xiv. 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.

xv. Resolution not to be withdrawn:

A resolution proposed to be considered through voting by electronic means shall not be withdrawn.

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POSTAL BALLOT (SEC. 110)

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 Section 110 read with Rule 22 of the *Companies (Management and administration) Rules, 2014.*

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POSTAL BALLOT (SEC. 110)

1. 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

(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 such business by means of postal ballot in such manner as may be prescribed, instead of transacting such business at a general meeting.

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.

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POSTAL BALLOT (SEC. 110)

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."

- The Central Government may declare items of business that can be transacted **only by** postal ballot and also 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.

- Only those **assents/ dissents** are to be considered which have been sent by the members **within 30 days** as prescribed in Rule 22.

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POSTAL BALLOT (SEC. 110)

- Manner in which postal ballot shall be conducted

A. Where a company is required or decides to pass any resolution by way of postal ballot Send notice + draft resolution to all shareholders

B. The notice shall be sent either

By Registered Post or speed post	Through electronic means like registered e-mail id	Through courier service

The Members to Send Assent/Dissent within 30 days of date of dispatch of notice

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POSTAL BALLOT (SEC. 110)

C. 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

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POSTAL BALLOT (SEC. 110)

Content of advertisement

- A statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means
- The date of completion of dispatch of notices
- The date of commencement of voting;
- The date of end of voting

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POSTAL BALLOT (SEC. 110)

Content of advertisement

- 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.
- A statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof.
- Contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

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POSTAL BALLOT (SEC. 110)

D. 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.

E. 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.

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

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POSTAL BALLOT (SEC. 110)

G. 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.

H. 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;

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POSTAL BALLOT (SEC. 110)

I. 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.

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POSTAL BALLOT (SEC. 110)

J. 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.

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POSTAL BALLOT (SEC. 110)

K. 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.

L. The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.

M. 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.

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POSTAL BALLOT (SEC. 110)

N. 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;

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POSTAL BALLOT (SEC. 110)

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;

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;

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POSTAL BALLOT (SEC. 110)

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:

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POSTAL BALLOT (SEC. 110)

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.

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RESTRICTION ON VOTING RIGHTS (SEC. 106)

Notwithstanding anything contained in this Act

the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name in the following circumstances:

- **If any calls or other sums presently payable by him have not been paid on such shares, or**
- **If the company has exercised any right of lien with regard to such shares.**

A company shall not, except on theabove grounds, prohibit any member from exercising his voting right on any other ground.

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RESTRICTION ON VOTING RIGHTS (SEC. 106)

REMEMBER!

Every member has ONE VOTE on Show of Hands i.e ONE PERSON = ONE VOTE

But, on a Poll ONE SHARE = ONE VOTE

So if you have 200 shares in Reliance Industries Limited, you have 200 votes!

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.

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VOTING BY JOINT SHAREHOLDERS

- Joint shareholders must concur in voting unless the articles provide to the contrary.

- The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders.

- The joint-holders have a right to instruct the company as to the order in which their names are to appear in the register.

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CIRCULATION OF MEMBERS' RESOLUTION (SEC. 111)

- Normally the Board of Directors decides the agenda and the resolutions to be proposed at a meeting

- This section provides that members too have a right to propose resolutions and submit any statement with respect to the matters referred to a proposed resolution or business to be dealt with at that meeting

- Such resolutions and statements received from THE REQUISITE NO. OF MEMBERS as specified in S. 100 shall be circulated by the board to all members entitled to notice of the meeting and shall be taken up at the meeting.

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CIRCULATION OF MEMBERS' RESOLUTION (SEC. 111)

A company shall, on requisition in writing of such number of members, as required in section 100,—

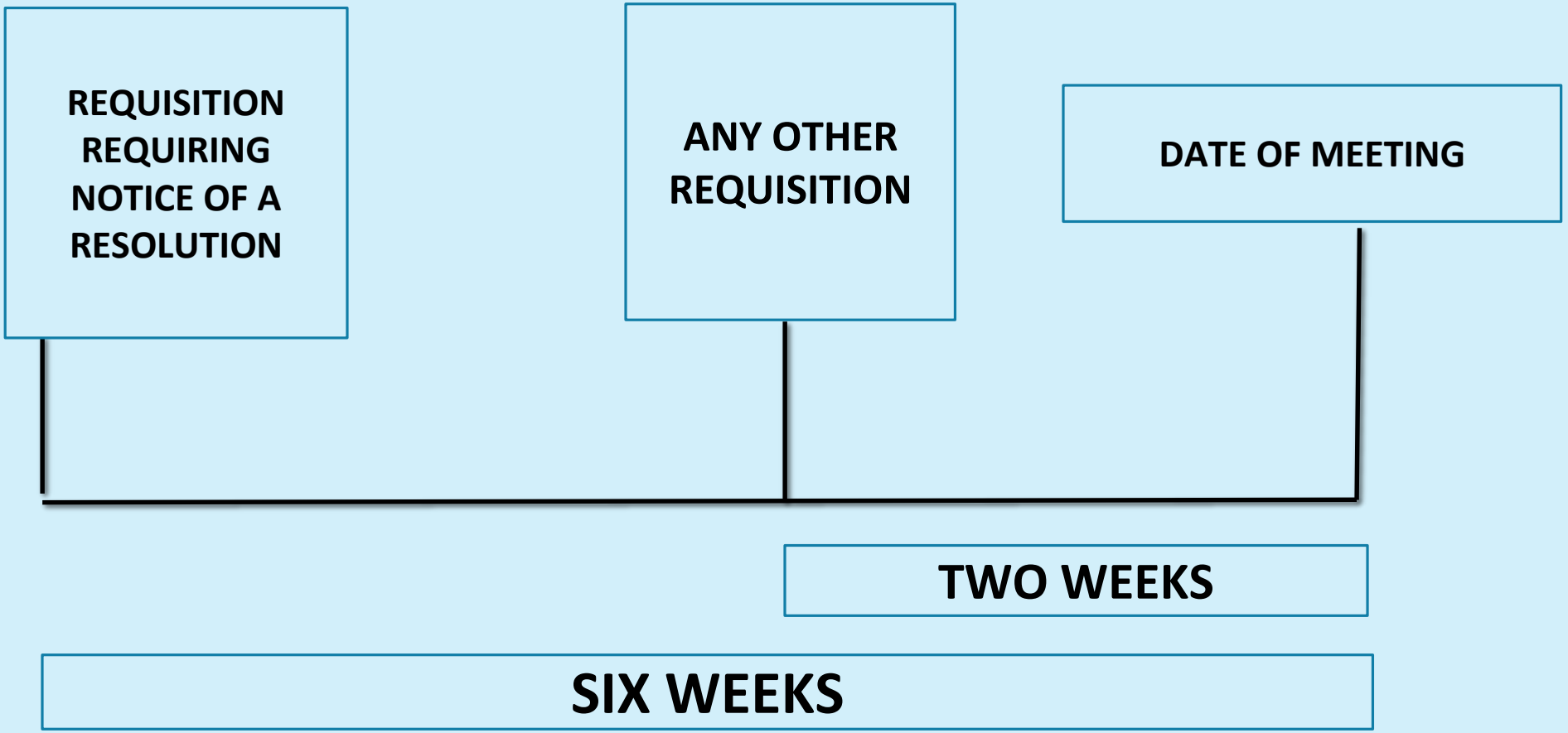
(a) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and

(b) circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

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CIRCULATION OF MEMBERS' RESOLUTION (SEC. 111)

TIME LIMIT FOR DEPOSIT OF REQUISITION TOGETHER WITH A SUM REASONABLY SUFFICIENT TO MEET THE COMPANY'S EXPENSES FOR CIRCULATION



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CIRCULATION OF MEMBERS' RESOLUTION (SEC. 111)

- a copy of the requisition signed by the requisitionists (or two or more copies which, between them, containing the signatures of all the requisitionists)

Shall be deposited at the registered office of the company within the time limit prescribed above;

- if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an AGM is called on a date within six weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

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CIRCULATION OF MEMBERS' RESOLUTION (SEC. 111)

- The company shall not be bound to circulate any statement as mentioned above, if on the application either of the company or of any other person who claims to be aggrieved, the Central Government (Regional Director (RD)), by order, declares that

- the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

- An order as above by the RD may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

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CIRCULATION OF MEMBERS' RESOLUTION (SEC. 111)

Penalty for default in compliance with Sec. 111 [Sec. 111 (5)]

PERSON LIABLE	PENALTY (PUNISHMENT)
the company and every officer of the company who is in default	**A penalty of twenty-five thousand rupees**

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ORDINARY AND SPECIAL RESOLUTIONS (SEC. 114)

MOTION VS. RESOLUTION

A MOTION IS PROPOSED, SECONDED AND PUT TO VOTE

A SUBSTATNTIVE MOTION PERTAINS TO ITEM OF AGENDA
A PROCEDURAL MOTION RELATES TO CONDUCT OF MEETING
E. G. ADJOURNMENT, POLL, ELECTION OF CHAIRMAN ETC.,

A SUBSTANTIVE MOTION WHEN APPROVED BY THE REQUIRED MAJORITY IS SAID TO BE PASSED

A MOTION WHEN PASSED IS A RESOLUTION

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ORDINARY AND SPECIAL RESOLUTIONS (SEC. 114)

ORDINARY RESOLUTION

Notice required under this Act has been duly given

VOTES CAST **IN FAVOUR OF THE RESOLUTION**, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, **EXCEED THE VOTES, IF ANY, CAST AGAINST** the resolution by members, so entitled and voting.

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ORDINARY AND SPECIAL RESOLUTIONS (SEC. 114)

SPECIAL RESOLUTION

Notice required under this Act has been duly given

THE INTENTION TO PROPOSE THE RESOLUTION AS A SPECIAL RESOLUTION HAS BEEN DULY SPECIFIED IN SUCH NOTICE

VOTES CAST **IN FAVOUR OF THE RESOLUTION**, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, **ARE** required to be **NOT LESS THAN THREE TIMES THE NUMBER OF THE VOTES, IF ANY, CAST AGAINST** the resolution by members, so entitled and voting.

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ORDINARY AND SPECIAL RESOLUTIONS (SEC. 114)

PRACTICAL PROBLEM

HAS A SPECIAL RESOLUTION BEEN PASSED IN THE FOLLOWING CASES?

1. Three members attend the meeting of a Private Company. Two members are in favour of the motion. One is neutral. None against

2. Two members attend the meeting of a Private Company. 1 member is in favour of the motion. The other does not vote.

3. Five members attend the meeting of a public company having 200 members. Three members are in favour of the motion. One is neutral. One is against

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RESOLUTIONS REQUIRING SPECIAL NOTICE (SEC. 115)

Special Notice is a notice given by the members to the company

Where any provision in the Act requires Special Notice it shall be given in accordance with Rule 23

Special Notice shall be given 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 FIVE LAKH RUPEES has been paid up on the date of the notice.

BE SENT BY MEMBERS TO THE COMPANY not earlier than three months but at least fourteen days before the date of the 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.

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RESOLUTIONS REQUIRING SPECIAL NOTICE (SEC. 115)

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.

Where it is NOT PRACTICABLE the notice may be published **AT LEAST SEVEN DAYS** before the meeting, exclusive of the day of publication of the notice and day of the meeting in TWO NEWSPAPERS one in English and one in Vernacular.

MATTERS REQUIRING SPECIAL NOTICE

a. Appointing a person other than the retiring auditor at an AGM [Sec. 140(4)]
b. Removal of a director
c. Appointment of a director in the place of the director so removed at that meeting

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RESOLUTIONS AND AGREEMENTS TO BE FILED (SEC. 117)

WHAT?

Certain Resolutions and agreements together with the explanatory statement, if any, to be annexed to the notice under s. 102 to be filed with the Registrar

WHEN?

Within THIRTY DAYS of the passing or making thereof

In the case of a specified IFSC Public or Private Company the time limit is SIXTY DAYS

HOW?

In Form No. MGT 14

(Rule 24)

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RESOLUTIONS AND AGREEMENTS TO BE FILED (SEC. 117)

The following have to be filed under S. 117

Special Resolutions

Resolutions which have been agreed to by ALL the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

Resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

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RESOLUTIONS AND AGREEMENTS TO BE FILED (SEC. 117)

The following have to be filed under S. 117

Any Board Resolution or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016

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RESOLUTIONS AND AGREEMENTS TO BE FILED (SEC. 117)

Board Resolutions passed in pursuance of section 179 (3) .

(These are resolutions on important financial and strategic matters which can be passed by the board only at a Board Meeting)

Normally, resolutions filed under Sec. 117 are public domain and can be inspected and copies thereof may be obtained under s. 399. But resolutions filed in this category cannot be so inspected because they pertain to strategy and finance of a company.

EXCEPTION TO ABOVE

Board Resolution passed by the following companie to grant loans, or give guarantee or provide security in respect of loans in the ordinary course of business:

(a) A Banking Company

(b) Any class of Non Banking Finance Company

(c) Any class of Housing Finance Company

Above provision does not apply to Private Company and a specified IFSC Public Company

Any other resolution or agreement as may be prescribed and placed in the public domain.

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RESOLUTIONS AND AGREEMENTS TO BE FILED (SEC. 117)

The copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to above shall be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

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RESOLUTIONS AND AGREEMENTS TO BE FILED (SEC. 117)

Failure to file the resolution/agreement within Thirty/Sixty days

PERSON LIABLE	PENALTY (PUNISHMENT)
COMPANY	**Fine of up to Ten thousand rupees** **In the case of a continuing default, with a further fine which may extend to one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees**

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RESOLUTIONS AND AGREEMENTS TO BE FILED (SEC. 117)

Failure to file the resolution/agreement within Thirty/Sixty days

PERSON LIABLE	PENALTY (PUNISHMENT)
Every officer of the company who is in default	**Fine of up to Ten thousand rupees** **In the case of a continuing default, with a further fine which may extend to one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees**

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MINUTES OF PROCEEDINGS OF GENERAL MEETINGS ETC., (SEC. 118)

WHAT?

Company shall cause

Minutes of the proceedings of

a. every general meeting of any class of shareholders or creditors, and

b. every resolution passed by postal ballot and

c. every Board Meeting or of every committee of the Board,

to be prepared and signed in the prescribed manner in books kept for that purpose with their pages consecutively numbered

WHEN?

Within THIRTY DAYS of the conclusion of every such meeting concerned, or passing of resolution by postal ballot

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EXCEPTION

Minutes of the proceedings of every Board Meeting or of every committee of the Board of a specified IFSC Private or Public Company , to be prepared and signed in the manner as may be prescribed at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose

Section 118 shall not apply to a Sec. 8 company as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation

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RULES RELATING TO MINUTES

Minutes are the record and evidence of the business transacted at a meeting.

No meeting is concluded until the minutes have been properly recorded and signed off.

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

All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

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RULES RELATING TO MINUTES (Rule 25)

A distinct minute book shall be maintained for each type of meeting namely:

- general meetings of the members;
- meetings of the creditors
- meetings of the Board; and
- 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.

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RULES RELATING TO MINUTES (Rule 25)

A brief report on the postal ballot conducted including the resolution proposed, the result of the voting 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.

The minute books of general meetings, Board and Committee 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.

Additionally the minutes of Board and Committee meetings can be kept in a place as the Board may decide.

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RULES RELATING TO MINUTES (Rule 25)

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.

WHO?

- Minutes of Meeting of a Board or a Committee – Signed by the Chairman of said meeting or the Chairman of succeeding meeting.
- Minutes of General Meeting – Signed by the Chairman of same meeting within **THIRTY DAYS**. In case of any event, death or inability of Chairman, by a **DIRECTOR** authorised by Board.

The Rule followed for Minutes of General Meeting applies for **ANY RESOLUTION PASSED BY POSTAL BALLOT**

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RULES RELATING TO MINUTES

MATTERS THAT SHALL NOT BE INCLUDED IN THE MINUTES

Any matter which, in the opinion of the Chairman of the meeting,—

(a) is or could reasonably be regarded as defamatory of any person;
or
(b) is irrelevant or immaterial to the proceedings;
or
(c) is detrimental to the interests of the company.

The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified above

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RULES RELATING TO MINUTES

MATTERS TO BE INCLUDED IN THE BOARD MINUTES

the minutes of Board Meetings shall also contain—

(a) the names of the Directors present at the meeting; and

(b) 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.

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RULES RELATING TO MINUTES

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 required by this section to be contained in the minutes of the proceedings of such meeting.

Every company shall observe
SECRETARIAL STANDARDS
with respect to general and Board meetings specified by the ICSI, and approved as such by the Central Government.
(This provision does not apply to IFSC Public and Private Companies)

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MINUTES TO BE EVIDENCE

The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

Where the minutes have been kept in accordance with this section and the rules made thereunder

then,

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.

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Default in compliance with any of the provisions of sec. 118 and the relevant rules relating to maintenance of minutes with respect to ANY meeting

PERSON LIABLE	PENALTY (PUNISHMENT)
Company	Penalty of twenty-five thousand rupees
Every officer of the company who is in default	Penalty of five thousand rupees

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Penalty for Tampering with Minutes

PERSON LIABLE	PENALTY (PUNISHMENT)
A person found guilty of tampering with the minutes of the proceedings of meeting	**Imprisonment for a term which may extend to TWO YEARS AND with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.**

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INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING (Sec 119)

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 hours in each business day shall be allowed for inspection.

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 with a copy of any minutes referred.

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INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING (Sec 119)

PENALTY FOR CONTRAVENTION

PERSON LIABLE	PENALTY
Company	Rs.25,000
Every Officer in default	Rs.5,000

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INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING (Sec 119)

Power of Tribunal

The Tribunal may direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person who was affected by the refusal or default.

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INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING (Sec 119)

Any member shall be entitled to be furnished, within **SEVEN WORKING DAYS** after he has made a request to the company, of the 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.**

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.** (Rule 26)

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MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM (Sec 120)

- Every listed company or a company having at least 1000 shareholders debenture-holders and other security holders, may maintain its records, as required to be maintained in electronic form. (Rule 27)

- The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records. (Rule 28)

- The records maintained in electronic form shall be made available for inspection by the company in electronic form.

- Copies of the records maintained in e-form, containing a clear reproduction of the whole or part thereof, should be provided on payment of not exceeding Rs.10/page. (Rule 29)

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APPLICABILITY TO OPC (Sec 122)

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

- Any business which is required to be transacted at an AGM or other general meeting of a One Person Company by means of an ordinary or special resolution is sufficient.
- If 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 deemed to be the date of the meeting for all the purposes under this Act.

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APPLICABILITY TO OPC (Sec 122)

- Where there is only one director on the Board of Director of a OPC
- Any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient
  - In case of such One Person Company, the resolution by such director is entered in the minutes book 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.

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