

# MODULE II

## COMPANIES ACT

# 5

### MEMBERSHIP OF A COMPANY (SECTIONS. 2, 88, 91, 94, 95 OF COMPANIES ACT 2013)

#### Unit Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Meaning and Definition of Member.
- 5.3 Acquisition of Membership
- 5.4 Cessation of Membership
- 5.5 Rights and Liabilities of Members
- 5.6 Register of Members
- 5.7 Closure of Register of Members or Debenture Holders or Other Security Holders
- 5.8 Summary
- 5.9 Questions

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#### 5.0 OBJECTIVES

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After studying the unit students will be able to:

- Understand the meaning of member of company.
- How the membership can be acquired and terminated.
- Understand what is Register of members and its types.
- Understand the rights and liabilities of members.

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#### 5.1 INTRODUCTION

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The terms “members” and “shareholders” are usually used interchangeably. In general, every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, e.g., a person may be a holder of share(s) by transfer but will not become its member until the transfer is registered in the books of the company in his favor and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company

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## 5.2 MEANING AND DEFINITION

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Membership of A Company  
(Sections. 2,88,91,94,95 of  
Companies Act 2013)

### Section 2 (55) defines member under companies Act 2013

“member”, in relation to a company, means:

- (i) The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
- (ii) Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

### Who can be a member?:

An individual or body corporate can be a member in a company. A person who is of a sound mind and capable of contracting can be a member. Therefore, person should be competent to a contract. Following are the cases:

#### 1. Minor:

As a minor is incapable of entering into a valid contract, he cannot become a member. However, it has been held in *Diwan Singh V. Minerva Films Ltd.* (1958 Com. Cas. 191), that there is nothing in law to prevent a minor from acquiring or holding shares in a joint stock company, if he is properly represented and acts by a lawful guardian. A guardian can therefore hold shares in a company for and on behalf of minor. Minor's name may remain on company's register of members, but during minority he incurs no liability. If the allotment is made to the minor wrongly, the company can repudiate or cancel the allotment but must repay all the money received by such minor.

The minor on attending majority can rescind the contract and get his name removed from the register of members. However if he does not do so, he shall be a member of the company, and incur all the liabilities of a member. The company however cannot be compelled to admit minor as a member.

Every person who is competent to a contract may become a member. Hence a minor and a person of unsound mind cannot be members of a company. A minor can be admitted to the membership of a company limited by shares, by means of transfer of shares provided the shares are fully paid up. A minor during his minority can enjoy the benefits of membership without being liable as a contributory.

## **2. Company and subsidiary company:**

A company can become a member of another company as a company is a legal person.

However, a subsidiary company cannot be a member of a holding. Any allotment or transfer of shares by a holding company to its subsidiary shall be void. It may become a member of another company provided it is not prohibited by its memorandum of association. However, a company cannot buy its own shares

A subsidiary company can however be a member of the holding company in following cases:

- i. Subsidiary Company is concerned as a legal representative of a deceased member of the holding company
- ii. When subsidiary company is concerned as a trustee
- iii. When subsidiary company is a member of the holding company before the commencement of Act and it continues to be so.
- iv. Where subsidiary company was a member of the holding company before becoming the subsidiary of the holding company.

## **3. Trust:**

A trustee, who buys shares, will be treated as a member in his individual capacity. It cannot hold share in a company. A trustee can however hold shares in his name for and on behalf of the trust. Any person holding shares in a company as a trustee is required to make a declaration to the public trust within the prescribed time. A copy of such declaration is required to be sent by the trustee to the company concerned within 21 days after the declaration to the public trust. Failure to do so will lead to penalty.

## **4. Partnership Firm:**

A firm is not a legal person or a body corporate. It cannot hold shares in the company; however, partners in their individual capacity or as nominees of the partnership firm can hold shares in a company. These shares will constitute a part of the Assets of the firm. However, a firm can be a member of any association registered under section 25 of the Act, such as Chamber of Commerce or a Social Club or a Charitable Institution

## **5. Society:**

A registered society under the Societies Registration Act, 1860 can acquire shares in the company.

## **6. Other:**

An insolvent may be taken as member so long as his name appears in the register of members, notwithstanding the right of official assignee or receiver to be registered as a member.

## **7. Non-resident:**

A non-resident cannot become a member of a company without the permission of the Reserve Bank of India under the Foreign Exchange Regulation Act, 1973

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## **5.3 ACQUISITION OF MEMBERSHIP OF COMPANY**

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The person whose name is entered into the register of members is known as a member of the company member of a company means a person:

- i. Who has subscribed his name to the memorandum.
- ii. Any other person who has agreed in writing, to become a member and whose name is entered in the register of members.
- iii. Every person, holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository (Inserted by the Depositories Act, 1976)

On the other hand, a shareholder is one who holds shares in a company. These two expressions are being used interchangeable

Therefore, membership of a company can be obtained in following ways:

- i. By subscribing to the Memorandum of Association of a company;
- ii. By agreeing in writing to become a member;
- iii. Every person holding equity share capital and whose name is entered as beneficial owner in the records of the depository.

The essential factor to constitute membership is that the name of the person in either of the above circumstances must appear in the register of members of the company or as beneficial owner in records of depository.

### **ACQUISITION OF MEMBERSHIP:**

#### **1. By subscribing to the memorandum:**

The subscribers to the memorandum are deemed to have agreed to become members. Their names must be entered into the Register of member. Thus, if the subscribers later do not subscribe to the shares to which they have agreed, they will still be the 'members' and will be responsible for the payment in respect of the shares which they have agreed to subscribe. Hence neither application nor allotment of shares is necessary.

## **2. By undertaking qualification Share:**

When the director agrees to take qualification shares, such director is in same position as if he has signed a memorandum of the company for those shares of that number of value. They too are deemed to have become members on registration of the company and will be liable in respect of those qualification shares.

## **3. By allotment:**

A person can become a shareholder if he agrees to take shares in the company by allotment. Allotment means an appropriation of shares out of the previously un-appropriated capital of a company, to a particular person. Re-issue of forfeited shares does not amount to allotment.

## **4. By transfer:**

A person who takes shares from an existing member by sale, gift or some other transaction, acquires membership, on his name appearing in the register of member. Every person who agrees in writing to become a member of the company and whose name is registered in its register of members, is a member of the company. Thus, two ingredients are necessary for membership by transfer of shares:

- i. An application in writing to become a member, and
- ii. An entry in the register

## **5. By Transmission:**

The transmission of shares takes places on the death or insolvency of the shareholder. On the death of a member, his executor or the person who is entitle under the law to succeed to his estate gets the right to have the shares transmitted to his name in the company's register of members. In case of transmission of shares no instrument of transfer is necessary. Articles of association gives the formalities to be followed with regards to transmission. The shares of the company are freely transferable.

## **6. Membership by acquiescence and estoppels:**

A shareholder is not a member unless his name is entered in the register of members of the company. Where a person allows his name to be put on the register of members, or knowing that his name is put on the register, does not take steps to have his name taken off, he shall be stopped from denying that he is a member. Where his name is entered by mistake and he is unaware of it then he does not become a member.

## **7. Joint members:**

When two or more persons hold share in a company in their joint names it is called a joint membership. They are to be treated as single member for the purpose of sending notices, dividends, interest etc. and name of person appearing first is to be treated as main member.

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## **5.4 CEASES OF MEMBERSHIP**

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Membership of A Company  
(Sections. 2,88,91,94,95 of  
Companies Act 2013)

Membership ceases in following event:

1. By transfer of shares. In such case even though transferor ceases to be a member, he remains liable to be placed in 'B' list for one year, if the company goes into liquidation.
2. By forfeiture of shares
3. By surrender of shares, where surrendering is permitted
4. By sales of shares by the company after it exercises its right of lien on the shares or in execution of a decree by court or other proper authority
5. By insolvency. Such shares of an insolvent vest in the Official Receiver or Assignee.
6. By death, the name of deceased member continues till the shares are registered in the name of his legal representative
7. By rescission of the contract to take shares on the ground of misrepresentation in the prospectus
8. When the company redeems its redeemable preference shares
9. On issue of share warrants by the company in place of share certificates
10. On winding up of the company. However, a member remains liable as a contributor and is also entitled to shares in the surplus assets, if any.

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## **5.5 RIGHTS AND LIABILITIES OF MEMBERS**

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### **RIGHTS OF MEMBERS:**

Following are rights of the members:

1. Right to receive notices of all general meetings
2. A member has a right of priority to have shares offered in case of increase of capital
3. Right to attend and vote at meetings
4. Right to appoint directors and auditors of the company
5. Right to receive copies of annual accounts of the company
6. Right to transfer his shares
7. Right to receive a share certificate
8. Right to inspect the minutes of proceedings of any general meeting

9. Right to inspect the register of members, register of debenture holders and copies of annual returns.
10. If his name is omitted in the register of members, he can apply to court for rectification of the register.
11. In case of statutory meeting, he is entitled to a copy of statutory report.
12. Right to receive dividends in case of preference shares
13. Right to be registered as a shareholder in Company's Book
14. Right of Privilege of immunity from personal liability of company's debts.
15. Right to participate in dividend distribution, if ordered in the discretion of directors
16. Right to rescind the contract and claim damages in case of his acquiring shares on account of mis-statement in the prospectus.
17. Right of Priority to have shares offered to him in case of increase of capital by the company.
18. Right to petition to High court for relief in cases of oppression and mismanagement.
19. Right to petition to High court for winding up of the company
20. Right to petition to the Central Government for ordering an investigation into the affairs of the company
21. Right to participate in appointments of directors and auditors in annual general meetings
22. Right to apply to the Central Government for calling an annual general meeting if the board of directors fails to call such a meeting
23. Right to apply to the Court for calling an extra ordinary meeting of the company
24. Right to participate in the distribution of assets in case of liquidation of the company.
25. Right to bring representative suits and company's cause of action, to remedy mismanagement or unauthorised acts and thereby to compel the company to enforce its rights.

**LIABILITIES OF A MEMBER:**

1. Liability of members depends on the nature of the company. In the case of an unlimited company, the liability of each member is unlimited. Every member of such a company is liable in full for all the

debts of the company, contracted during the period of his membership.

If the company is limited by guarantee, each member is bound to contribute, in the event of winding up, a sum of money specified in the liability clause of its memorandum of association.

If the company is incorporated with the liability of its members limited by shares, each member is liable to pay only the full nominal value of the shares held by him.

2. He is liable as a contributory in the case of winding up of the company.
3. A shareholder continues to be liable to the company even though he have transferred his shares to another company, until his name is deleted from the register of members and the name of transferee is put in his place.
4. He is liable to abide by the acts of the majority of members unless the majority acts oppressively or fraudulently.
5. A member is liable to accept the share if they are allotted to him within a reasonable time and in compliance with the provisions of the Act.
6. A member is liable to pay for the shares allotted to him either when allotment is made and/or when calls are validly made in accordance with the provisions of the articles. If the full nominal value of the shares has already been paid at the time of application, the liability of the shareholder to pay ceases.
7. A member is liable to have his shares forfeited in event of non-payment of any call. Shares can be forfeited only if all the conditions for a valid forfeiture exist. These conditions are:
  - a. Forfeiture must be in accordance with the provision of the company's articles.
  - b. Share can be forfeited only for non-payment of a call due in respect of the shares.
  - c. A proper notice requiring him to pay the exact amount on or before a specified day (Which must not be earlier than fourteen days from the date of service of the notice) should be given to the shareholder. The slightest defect in the notice invalidates forfeiture.
  - d. A formal resolution declaring the forfeiture of shares must be passed and a notice of the same served on the defaulting shareholder.
  - e. The power to forfeit shares should have been exercised in good faith and for the benefit of the company.

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## **5.6 REGISTER OF MEMBERS: (S.88) COMPANIES ACT 2013 RULE 2014**

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Every company shall keep and maintain the following registers as mentioned in the above act and rule. :

- (a) Register of Members mentioning separately for each class of equity and preference shares held by each member residing in or outside India;
- (b) Register of Debenture-holder and
- (c) Register of any other security holders.

<sup>4</sup> Provision: “Every company shall, from the date of its registration, keep and maintain a register of its members in one or more books in **Form No. MGT-1**. In the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.”

### **CONTAINS IN THE REGISTER:**

1. The name, address and occupation, if any of each member
2. It contains the details of each class of shareholders like their basic info, allotment, transfer, folio details etc.
3. In case of a company having a share capital, the shares held by each member, distinguishing each share by its number, except where such shares are held with a depository, and the amount paid or agreed to be considered as paid on those shares
4. It contains the details of debenture holders like their basic details, allotment or redemption/conversion details.
5. The date at which each member was entered in the register as a member.
6. This register is made in reference to register of members stating the details of directors or employees to whom the sweat equity shares have been given.
7. This register is made in reference to register of members stating the details of directors or employees to whom the sweat equity shares have been given.
8. The date on which any person ceases to be a member
9. This register is made in reference to register of members stating the details of directors or employees to whom the sweat equity shares have been given.

<sup>4</sup> <https://taxguru.in/company-law/register-members-companies-act-2013-rules-2014.html>

The register of member shall be prima facie evidence of any matter directed or authorized to be inserted therein by the Companies Act.

Membership of A Company  
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Companies Act 2013)

**Other entries in Register of Members or in respective registers are as under:**

Any, cancellation reduction, sub-division, buy-back or, forfeiture of shares, transmission of shares, shares issued under any scheme of arrangements, mergers, or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within **seven** days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

**Foreign Register:**

“**Foreign Register**”, means it contain the names and particulars of the members, debenture-holders, other security holders residing outside India. A company may keep a part of the its register in any country outside India, if it is, authorized by its articles, called foreign register of members, debenture holders, other security holders or beneficial owners residing outside India.

**Provisions:**

A company which has issued debentures or any other security may, if so, authorized by its articles, keep in any country outside India, a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners, resident in that country (hereafter in this rule referred to as the “**foreign register**”).

The company shall file **Form MGT-3** with the Registrar for notice of the situation of the office within **30 days** from the date of the opening of any foreign register along with the fee as provided in **Annexure B**.

If a foreign register is kept by a company in any country outside India, the decision of the appropriate authority in regard to the rectification of the register shall be binding.

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**5.7 CLOSURE OF REGISTER OF MEMBERS OR DEBENTURE HOLDERS OR OTHER SECURITY HOLDERS**

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At least seven days previous notice should be given as prescribed by the and under Security Exchange Board of India before closing of register of members or the debenture holder or the register of other security holders. If such company is a listed company or intends to get its securities listed, by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office

of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.

(2) The Private Companies shall serve a notice for closure of register of members or debenture holders or other security holders not less than seven days prior.

**Penalty:**

If a company fails to maintain; a Register of Members or a Register of Debenture holders other security holders or does not maintain them in accordance with the provisions contained herein above.

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## 5.8 SUMMARY

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**Who can be a member:** Minor: Company and subsidiary company : Trustees in their individual capacity, Partners in the Partnership Firm individually ,Society:

**ACQUISITION OF MEMBERSHIP:** By subscribing to the memorandum, By undertaking to buy qualification: By allotment: By transfer: By Transmission: Membership by acquiescence and estoppels: Joint members:

**CEASES OF MEMBERSHIP:** By transfer of shares. forfeiture of share, By surrender of shares, By sales of shares ,By insolvency. By death,

**RIGHTS OF MEMBERS:** Right to receive notices of all general meetings, A member has a right of priority to have shares offered in case of increase of capital, Right to attend and vote at meetings, Right to appoint directors and auditors of the company, Right to receive copies of annual accounts of the company, Right to transfer his shares, Right to receive a share certificate

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## 5.9 QUESTIONS

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1. Who can be a member of a company? How does a member cease to be a member?
2. Enumerate and explain the various modes of membership of a company.
3. State and discuss the rights and liabilities of a member.
4. Answer in brief-
  - a. What are “Register of Members” and Foreign Register
  - b. When can a company close its register of members?
  - c. When can the register of members be rectified?
5. Write Notes on:

- a. Forfeiture of shares
- b. Member and shareholder
- c. Register of members
- d. Membership by acquiescence
6. Define the following terms:
  - a. Certificate of Incorporation
  - b. Foreign Registers
  - c. Member of a company

Membership of A Company  
(Sections. 2,88,91,94,95 of  
Companies Act 2013)

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## **DIRECTORS OF COMPANIES APPOINTMENTS AND QUALIFICATIONS (SECTIONS.2, 149-183, 196, 203-205)**

### **Unit Structure**

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Meaning and Definition
- 6.3 Directors Identification Number
- 6.4 Who can become a Director? (Qualifications and Disqualification).
- 6.5 Appointment of Directors
- 6.6 Legal Position of Directors
- 6.7 Powers and Duties of Directors
- 6.8 Key Managerial Personnel
- 6.9 Conditions and Qualifications For Appointment of Managing Director, Whole Time Director or Manager (Kmp) (Section 196):
- 6.10 Summary
- 6.11 Questions

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### **6.0 OBJECTIVES**

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After studying the unit students will be able to:

- Understand the Qualification and Disqualifications of the Director
- Understand how the directors can be appointed.
- Understand the legal positions of directors.
- Understand powers and duties of directors.
- Understand the functioning of Key Managerial Personnel

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### **6.1 INTRODUCTION**

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Company is a body corporate and does not have any physical existence it its own. Company is an artificial person and gets the work done from the human agency. The factors of such agencies like directors and other members of the company thy work on behalf of an artificial person that is company.

Section 2 (34) of the Act prescribed that “director” means a director appointed to the Board of a company. A director is a person appointed to perform the duties and functions of director of a company in accordance

with the provisions of the Companies Act, 2013. company are termed as 'directors.

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## 6.2 MEANING AND DEFINITION

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Section 2 (34) of the Act prescribed that “**director**” means “a director appointed to the Board of a company”. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013. company are termed as directors.

Section 2(10) further defines the Board of Directors as “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.”

Provisions as to Companies Act 2013 Rules (2014) prescribes the Appointment, Qualifications, Disqualifications of the Directors. It further prescribes the minimum and maximum numbers of directors are as under.

Every company is required to have a Board of directors and it should be consisting of individuals as directors. Section 149 prescribes the minimum number of directors required in a company as follows:

Public Company– At least 3 directors

Private company- At least 2 directors

One person company– Minimum 1 director

There can be a maximum of 15 directors. A company may appoint more than 15 directors after passing a special resolution.

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## 6.3 DIRECTOR IDENTIFICATION NUMBER (SECTION 153- 159 AND RULES 2, 4)

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“Rule 2(d) of the Companies (Appointment and Qualification of Directors) Rules, 2014 defines DIN as an identification number allotted by the Central Government to any individual, intending to be appointed as Director or to any existing director of a company for the purposes of identifying as a director of a company”.

DIN is a unique Director identification number allotted by the Central Government to any person intending to be a Director or an existing director of any company. It is an 8-digit unique identification number that has lifetime validity. Any person intending to become a director in an already existing company shall have to make an application for allotment of DIN through **e-Form DIR-3**.

- The Central Government may cancel the DIN due to the following reasons
- If a duplicate DIN has been found which had issued to the director.

- If DIN was obtained by fraudulent means or by submitting the fake documents
- On the death of the concerned person the DIN can be withdrawn
- If the holder of DIN or person has been declared unsound mind by the competent court the Central Government may cancel the DIN and if the person has been adjudicated as insolvent

If any person or director contravenes any provisions laid down in respect of DIN shall be punishable with an imprisonment for a term which may be extended to Rs. 50,000/- and on continuation of the contravention a further fine which may extend to Rs. 500/- per day after the first during which the contravention continues.

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#### **6.4 WHO CAN BECOME A DIRECTOR? (QUALIFICATIONS AND DISQUALIFICATIONS). (SECTION 164 )**

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There are no qualifications laid down or prescribed under Companies Act, 2013 for an appointment of a position as 'Director' the only condition to be fulfilled being he must be competent to contract. Section 164 has made in regards with certain disqualifications for appointment of directors. When a person is disqualified under Section 164 he shall not be eligible to be appointed as a Director in a company.

##### **1. A person shall not be eligible for appointment as a director of a company, if—**

- (a) He is of unsound mind and stands so declared by a competent court;
- (b) He is an undischarged insolvent;
- (c) He has applied to be adjudicated as an insolvent and his application is pending;
- (d) He has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;
- (e) An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- (f) He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- (g) He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

## **2. No person who is or has been a director of a company which—**

- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

Directors of Companies  
Appointments and  
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183, 196, 203-205)

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## **6.5 APPOINTMENT OF DIRECTORS**

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A director is a person duly appointed to the Board of a Company, collectively called as Board or Board of Directors. The Board is responsible for the management of affairs of a company. They have the responsibility to act in the best interest of the company. Although, directors act on behalf of the company but the individual acts done by a director cannot bind the company, unless the director is authorized by a Board Resolution. Act further states that no person should be appointed as director who has not allotted a Director Identification Number along with a declaration that he has not been disqualified to become a director under the said Act.

A person shall be eligible for reappointment as a director provided, he is not a retiring director and further provides that his name should be intimated to the Registered Office of the company with in at least 14 days before the meeting.

The freedom for private company for an administration of the appointment procedure of directors under old act that is under Companies Act 1956 has been removed.

A company which contravenes any provisions under this chapter/section, the company and every officer of the company who shall be punishable with fine which shall not be less than Rs. 50,000/- and may be extended up to Rs. 5,00,000/-

**Following are the modes of appointment of directors:**

### **Appointment of First Director:**

Provisions must be made in the articles of the company for an appointment of First Director of the Company. Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

**Nominee Director (Section 149 (7) ):**

This section defines “nominee director” as a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests. Further it is stated that the Nominee Director cannot be considered as an Independent Director in a company.

Section 161(3) provides an authority to Board to appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

**Additional Director Section [161(1)]:**

As per the provisions made under Articles of Association of the Company this Section 161(1) of the Companies Act, 2013 speaks about the appointment of the additional director. The Board of Directors may appoint an additional director to the Board only if articles provides for the same. The additional director shall hold office from the date of appointment till the date of the ensuing annual general meeting or the last date on which annual general meeting should have been held, whichever is earlier.

**Independent Director Section [149(6)]:**

An Independent Director is a non-executive director of a company and helps the company in improving corporate credibility and governance standards. Section 149 of the Companies Act, 2013 falls under chapter XI Appointment and Qualification of Directors. Section 149 (6) An independent director in relation to a company means a director other than a managing director or a whole-time director or a nominee director.

**For example:** ABC Bank grants a loan of ₹ 25 lakhs to X Ltd. ABC Bank appoints Mr. S as nominee director in A Ltd. Mr. S cannot become an Independent Director in A Ltd.

**Resident Director Section [149 (3)]:**

The above section provides that “Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.”

The resident Director will act as any other Director of the company. He will be responsible as any other Director of the Company; as far as operational control is concerned his insolvent is not considered. To fulfill the statutory requirement Resident director is usually appointed. He may participate in Board Meetings of the company whenever required. Like any other director the Resident Director is required to attend at least one Board Meeting in a particular year.

**Alternate Director: [S.161 (2)]:**

The board may appoint a person as an alternate director if the articles provides or a resolution passed in the General Meeting in this regard for the same. An alternate director is appointed where an original director so appointed remains outside India for a period of not less than 3 months. The term of office of an alternate director shall vacate the office when the original director returns to India or where the term of original director expires before his return to India the term of alternate director shall also expires at that time.

**Appointment of Directors in Casual Vacancy [Section 161(4)]:**

<sup>1</sup>In case if, the office of any Director appointed by the Company in General Meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next General Meeting. Any person so appointed shall hold office only up to the date up to which the Director in whose place he is appointed would have held office if it had not been vacated. [Section 161(4)]

Casual Vacancy in the Office of Director happens under the following situations:

- Resignation by the Director
- Disqualification of the Director
- Death of the Director
- Insolvency of the Director

**Woman Director: Section 149 (1) Second Provision, S. 152 (5) and Rule 3**

The said rule lays down the provisions relating to appointment of Woman Director are as under:

Every listed company; Every other public company having paid-up share capital of one hundred crore rupees or more or turnover of Rs.300 crore or more. Further is provides that the Woman Director should submit the consent form No 112 along with the Director's Identification Number Provided by Central Government.

Any new company registered under this act should comply the provisions of an appointment of woman director with in a period of 06 months from the date of incorporation.

<sup>1</sup> <https://www.lawrbit.com/companies-act-procedures/fill-casual-vacancy-in-the-office-of-director/>

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## 6.6 LEGAL POSITION OF DIRECTOR

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In the words of Bowen, L.J.:

“Directors are described sometimes as agents, sometimes as trustees and sometimes as managing partners. But each of these expressions is used not as exhaustive of their powers and responsibilities but as indicating useful points of view from which they may for the moment and for the particular purpose to be considered.”

In short it is difficult to express the legal position of the directors of a company. The Companies Act makes no effort to define the exact positions of the directors. Director is a multifaceted personality as at various times been described by judges as agents, trustees or managing partners.

### 1. Directors as trustees:

Trustee is a person whom the trust vested. He is a custodian of the funds of the company. A trustee is a person in whom is vested the legal ownership of the assets which he administers for the benefit of another or others. Directors are regarded as trustees of the company's assets, and of the powers that vest in them because they administer those assets and perform duties in the interest of the company and not for their own personal advantage. Case- *Ramaswamy Iyer v/s. Brahmayya & Co. [1966] 1 Comp. LJ 107 (Mad.)*

There is a contrast view in respect of the above discussion as a Trustee can acquire property in his own name on behalf of the trust whereas director cannot. Secondly director has to play multifaceted role while representing the company to that of trustees.

### 2. Directors as Managing Partner:

In a company the management is in the hands of plural executives. So, the directors are managing partners (the term partner used in the sense of the Partnership Act). Even though substantial powers may be entrusted upon directors or to an outsider, such a person has to act under the superintendence, control and direction of the board of Directors.

Therefore, unlike in a partnership firm, no power can be delegated on a single director as a managing partner. The principle of delegates non-protest delegate, i.e., power once delegated cannot be further delegated, is applicable to company management.

### 3. Directors as Agent:

That directors are agents is their first feature. As company is an artificial person and it gets the work done through human agency. However, directors being agents are not personally liable for their acts unless they contravene the provisions of the Act as specifically mentioned in it. Further a notice given to the agent is the notice to the principal, similarly any notice given to the director is the notice given to the company.

It is quite distinct from the principle of agency. The acts and intention of its agents are the acts and intention of the body corporate. Even a company can be held liable for the animus contended by its directors. Directors are not agents of the members of the company.

#### **4. Directors as Employee:**

A director is elected by the shareholders in general meeting, and once so elected, he enjoys well-defined rights and powers under the Act or the articles. Even the shareholders who elect them cannot interfere with their rights or powers except under certain circumstances. An employee appointed by the company under a contract of service is a servant of the company. He does not enjoy any powers other than those vested in him by the employer, who can always direct his actions and interfere in his work.

As such directors are agents of the company but they are not employees or servants of the company. However, there is nothing in law to prevent a director from accepting employment under the company under a special contract which he may enter into with the company *Case Law- R.R. Kothandaraman v. CIT (1957)*.

Accordingly, where a director accepts employment under the company under a separate contract of service, in addition to the directorship, he is also treated as an employee or servant of the company. He shall, in such a case, be entitled to remuneration and other benefits admissible to employees, in addition to his remuneration as Director under the Act.

#### **5. Directors as organs of corporate body:**

In the case of *Bath v. Standard Land Co. Ltd.*, Neville J. stated that the board of directors are the brain of the company and a company does act only through them.

Company is a body corporate and does not have its own mind or body to act. In the case of *Bath v. Standard Land Co. Ltd.*, Neville J. stated that the board of directors are brain of the company and company does act through them. If we consider a company as a human body, the directors are the mind and the will of the company and they control the actions of the company. On the other hand, organ of the body does not suffer from any illness without its immediate effect on the whole body. The conclusion of this is director actually works in different capacities at different level to ensure that the company is being managed as per the procedures laid down under law.

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### **6.7 POWERS AND DUTIES OF DIRECTORS**

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Section 166 of the Companies Act 2013 stipulates the following duties of the directors of a Company:

1. A director must function in accordance provisions made in the company's Articles of Association.

<sup>2</sup> <https://www.taxmann.com/post/blog/meaning-of-a-director-appointment-qualifications-legal-position-etc?amp>

2. A director must act in the best interests of the company's stakeholders, in good faith and promote the company's aims and objectives.
3. It is expected that a director shall use his independent judgment in carrying out his responsibilities with due care, skill and diligence.
4. A director should constantly be aware of potential conflicts of interest and endeavor to avoid them in the best interests of the firm.
5. A director must verify that appropriate considerations have taken place and that the transactions are in the company's best interests.
6. Director has to assure that the company's vigilance mechanism and users are not prejudicially affected on such use.
7. Confidentiality of sensitive proprietary information, trade secrets, technology, and undisclosed prices must be protected and should not be released unless the board has approved it or the law requires it.
8. It is expected that the company's director must not assign his or her office, and any such assignment shall be invalid.
9. If a corporate director violates the terms of this section, he or she will be fined not less than one lakh rupees but not more than Rs. 5,00,000/-

#### **FIDUCIARY DUTIES OF DIRECTORS:**

Fiduciary duties are basically relating with the concept of good faith, and are owed to the company as a result of the management control that directors exercise over the Company. It is the duty of directors to act in the best interest of the Company. Fiduciary duties are a Legal obligation and cannot be waived in any manner.

- a. **Duty of Loyalty.** The most important fiduciary duty is the duty of loyalty: The decision that taken place within the company should act in the interests of the company, and not in the own interests of directors.
- b. **Duty of Care:** Directors, in circumstances where they do not have a clash of interest, is the duty of care , the duty to pay attention and to try to make good decisions in the interest of the company.
- c. **Duty of Disclosure of the facts:** Director is bound to disclose all the facts to the members, in the interest of the company.
- d. **Must act in accordance with the provisions of Articles of Association:** It is expected that the director must act in accordance and the provisions laid down in the Articles of Association of the company.
- e. **No Secret Profit:** Director of the company shall not achieve or attempt to achieve any undue gain or secret profit or any benefit at the

sacrifice of the company. If any director is found guilty of making any undue gain, he shall be liable to compensate the amount to the company which is equivalent to the gain or benefit earned.

Directors of Companies  
Appointments and  
Qualifications (Sections.2, 149-  
183, 196, 203-205)

If a corporate director violates the terms of this section, he or she will be fined not less than one lakh rupees but not more than Rs. 5,00,000/-

### **POWERS OF BOARD OF DIRECTORS:**

There are also certain powers of the board that those resolutions can only be passed by calling a board meeting. The said provisions are applicable under Section 175, Companies Act 2013.

- i. To make calls on shareholders for unpaid money in respect of their shares.
- ii. To Issue securities and shares
- iii. To borrow monies
- iv. To approve the financial statement
- v. To approve amalgamation merger and reconstruction arrangement of the companies.
- vi. To Invest the funds of the company
- vii. To grant loans or to provide securities in respect of loans.
- viii. To diversify the business of the company
- ix. To take over a company.
- x. To authorise the buyback of securities and shares

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### **6.8 KEY MANAGERIAL PERSONNEL (SECTION 2, 196, 203-205 )**

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Key Managerial Personnel means to a group of people who are in charge of maintaining the operations of the company. Key Managerial Personnel are persons who have authority and responsibility for planning, directing and controlling the activities of enterprise. These group includes Chief Executive Office, Chief Financial Officer, Company Secretary, Whole Time.

According to Section 2 (51) “key managerial personnel”, in relation to a company, means:

- “(i) The Chief Executive Officer or the managing director or the manager;
- (ii) The company secretary;
- (iii) The whole-time director;
- (iv) The Chief Financial Officer; and

- (v) Such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) Such other officer as may be prescribed;”

**Companies are required to appoint Key Managerial Personnel**

- a) Any listed companies
- b) Any public limited company which have paid-up capital of Rs. 10 Crores or above. Those companies are required to appoint full-time managerial person as Managing director of the company or CEO or full-time director; and Chief Financial Officer (CFO); and Company Secretary

**Key Role & Responsibilities of Managing Director /Whole time Director/ Manager in a Company:**

- a) Managing Director is assigned with considerable powers to manage the affairs of the company as per the provisions under memorandum and articles of association of the company.
- b) To supervise the company’s operations, financial performance, investments, and business and to give systematic guidance and direction to the board to see that the company achieves aims and objectives.
- c) Developing and implementing business plans to improve cost-effectiveness.
- d) Maintaining positive relations with business partners, shareholders, and authorities.
- e) Delegating executives in their duties.
- f) Assessing, managing, and resolving ambiguous developments and circumstances.
- g) Authenticating documents and other financial-statements proceedings contract on behalf of company.
- h) Every Key managerial personnel is required to disclose its interest in any company before the board within 30 days from date of its appointment

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## **6.9 CONDITIONS AND QUALIFICATIONS FOR APPOINTMENT OF MANAGING DIRECTOR, WHOLE TIME DIRECTOR OR MANAGER (KMP) (SECTION 196):**

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The tenure of appointments of KMP shall be for a term not exceeding 5 years at a time. Company must not appoint any person KMP who is below the age of twenty-one years or has attained the age of seventy years.

### **Following person or group of persons are not qualified to get appointed as KMP**

The person who has been undischarged insolvent declared by the competent court.

The person at any time suspended payment to his creditors;

The person at any time has been convicted by a court in any offence and sentenced for a period of more than six months

The person had been sentenced to imprisonment for any period, for any acts as specified under Schedule V of the Companies Act, 2013

The person had been detained for any period under the “Conservation of Foreign Exchange and Prevention of Smuggling Activities Act”

### **<sup>3</sup>Penalty amount in case of contravention with provisions of law:**

Any company or its officer who contravenes the provisions under the Act Key managerial personnel shall be held liable for penalty.

Every defaulting company shall be liable to pay penalty amount of Rs. 100000 which may extend to amount of Rs. 500000.

In case of director or any officer in default penalty amount may extend to Rupees Fifty thousand. In case of continuing default, the penalty may extend to Rupees One thousand per day till default continues

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## **6.10 SUMMARY**

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### **Director Identification Number (Section 153- 159 and Rules 2, 4)**

#### **Who can become a director? (Qualifications and Disqualifications)**

- 1. A person shall not be eligible for appointment as a director of a company, if—** (a) he is of unsound mind and stands so declared by a competent court; etc
- 2. No person who is or has been a director of a company which—** (a) has not filed financial statements or annual returns for any continuous period of three financial years;etc

<sup>3</sup><https://corpbiz.io/learning/appointment-of-key-managerial-personnel/#:~:text=Any%20company%20o>

**Modes of appointment of directors: Appointment of First Director: Nominee Director Additional Director ,Independent Director, Resident Director ,Alternate Director, Appointment of Directors in Casual Vacancy , Woman Director**

**LEGAL POSITION OF DIRECTOR: Directors as trustees, Directors as Managing Partner: Directors as Agent ,Directors as Employee: Directors as organs of corporate body.**

**POWERS AND DUTIES OF DIRECTORS: 1. A director must function in accordance provisions made in the company's Articles of Association. . director must act in the best interests of the company's**

**Register of Companies: Foreign Register, Closure of register of members or debenture holders or other security holders.**

**Key Managerial Personal Includes:**

- (i) The Chief Executive Officer or the managing director or the manager;
- (ii) The company secretary;
- (iii) The whole-time director;
- (iv) The Chief Financial Officer; and
- (v) Such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) Such other officer as may be prescribed; ”

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## **6.11 QUESTIONS**

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1. What are the types of directors?
2. How directors are appointed- Explain in detail the appointment process and qualification and disqualifications of directors.
3. Who can be a “director” of a company?
4. Explain fully the provision of the companies act, 2013 about DIN
5. Explain the Legal Positions of the Director of a Company
6. Explain the key role and responsibilities of Managing Director or Whole Time Director of the company
7. Explain the Criteria for an appointment of Key Managerial Personnel in the company.

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<sup>2</sup> <https://www.taxmann.com/post/blog/meaning-of-a-director-appointment-qualifications-legal-position-etc?amp>

## **MEETINGS**

### **(SECTIONS.96-122, 173-176)**

#### **Unit Structure**

- 7.0 Objectives
- 7.1 Introduction
- 7.2 Meaning and Definition
- 7.3 Annual General Meeting (AGM)
- 7.4 Extra Ordinary General Meeting
- 7.5 Meetings by Tribunal
- 7.6 Class Meeting
- 7.7 Summary
- 7.8 Questions

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#### **7.0 OBJECTIVES**

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After studying the unit students will be able to:

- Understand the Meaning and Definition of Meeting
- Understand the procedures to be followed to conduct meetings of the company.
- Understand the legal positions of directors.
- Understand powers and duties of directors.
- Understand the functioning of Key Managerial Personnel

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#### **7.1 INTRODUCTION**

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Meeting is not defined under any provisions of Companies Act of 2013, but taking references from common business and market parlance meeting generally defined as a gathering or getting together of a number of persons for transacting any lawful business and to arrive at proper fruitful conclusion. There must be at least two persons to form a meeting.

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#### **7.2 MEANING AND DEFINITION**

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##### **Meetings:**

##### **Board of Directors Meeting:**

Board meetings are meetings at the top level, i.e. a meeting where board members or their representatives are present. A company is not a living person but it is a non-living person which acts through the human agency, and such agencies are taking the decisions as per time required. All Companies shall hold Board at a regular interval. The board of directors'

act as agents through which the company takes actions as well as makes decisions.

The Board of Directors is the highest authority in a company and they have the powers to take all major decisions for the company. The board is also liable for managing the affairs of the entire company.

The first board meeting as far as **Public Limited Company** is concerned should be held within 30 days of the incorporation or registration. In the case of a Public Limited Company, the first board meeting has to be held within the first 30 days. The Board should keep in mind that there should not be a gap of more than 120 days between two meetings.

In the case of **Small Companies** or **one person company**, at least two meetings must be held, one in each half of the financial year. Additionally, the gap between the two meetings must be at least 90 days. In a circumstance where the meeting is held at a short notice, at least one independent director must be attending the meeting.

#### **Quorum for the Board Meeting:**

The quorum for the Board Meeting refers to the minimum number of members of the board that are required to conduct lawful meeting. Section 174 of Companies Act, 2013, provides that the minimum number of members of the board required for a valid meeting is 1/3rd of a total number of directors. However, a minimum of two directors must be present. Such rules do not apply to One Person Company,

#### **Notice of Board Meeting:**

It contains a document that are sent to all the directors of the company for conveying the Board Meeting. This document tells about the details of the meeting scheduled viz, the venue, date, time, and agenda of the meeting. A notice of at least **Seven days** before the actual day of conduction of meeting, required to be sent to every director of companies. Of all type of companies.

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### **7.3 ANNUAL GENERAL MEETING (AGM)**

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#### **Annual General Meeting Under the Companies Act, 2013:**

An interaction An Annual General Meeting (AGM) is held to have communication and interaction between the management and the shareholders of the company. The Companies Act, 2013 makes it mandatory to hold an annual general meeting to discuss the important matters pertaining to appointment of auditors, yearly results of the company, etc. A company should observe the procedures under the Companies Act, 2013 to conduct the Annual General Meeting.

All companies except one person company (OPC) should hold an Annual General Meeting after the end of each financial year. A company must hold its AGM within a period of six months from the end of the financial year. However, in the case of a first annual general meeting, the company

can hold the AGM in less than nine months from the end of the first financial year. In such cases where the first AGM is already held, there is no need to hold any AGM in the year of incorporation. Do note that the time gap between two annual general meetings should not exceed 15 months.

An annual general meeting (AGM) under Companies Act, 2013 is a yearly meeting of company's shareholders to receive, confirm, accept the Annual Financial Statements ending on 31st March every year along with the Board of Directors Report and Report of the Auditors thereon. Matters that are discuss in AGM are:-

- Dividend declaration to shareholders.
- Appointment of directors to replace the retiring directors.
- Appointment of auditors and deciding the auditor's remuneration.
- Apart from the above ordinary business, any other business may be conducted as a special business of the company.

Provisions has made under Section 96 of the Companies Act, 2013, in respect of conduct of Annual General Meeting of the Company.

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 and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between two annual general meeting of a company. The first annual general meeting of the Company should be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year. Provided that if 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.

#### **NOTICE OF AGM:**

The company must serve a notice not less than before 21 days' to its members in writing /by post or in electronic mode. The notice should include the place, the date and day of the meeting, the hour at which the meeting is planned to conduct. The notice should also contain the business to be conducted at the Annual General Meeting.

A company should send the notice of the AGM to the following: -

- All members of the company including their legal representative of a deceased member
- Assignee of an insolvent member.
- The statutory auditor(s) of the company.
- All director(s) of the company.

## **QUORUM OF AGM:**

In the case of a private company, the quorum for Annual General Meeting in case of Public Company are as under:- .

- If the number of members is **within thousand. Five members should be present** at the meeting.
- If the number of members are more than one thousand but within five thousand then minimum Fifteen **members** present at the meeting.
- **Thirty members present** at the meeting if the number of members is **more than five thousand**.
- In case the quorum for the meeting is not present **within half an hour** from the time scheduled, the meeting will be postpone to the same day in the next week for the same time and at the same venue or place.

## **Minutes of Annual General Meeting:**

A formal written record of or proceedings of meetings are known as 'Minutes'. The said record may be in physical or electronic form in the minutes book. Every company has to be prepared a Minutes of Annual General Meeting mandatorily. The minutes should be signed and entered in the minute book within **thirty** days from the AGM. The Minutes book will be kept at the Registered Office of the company or at such other place permitted by the Board.

## **PROXIES:**

### **Meaning:**

Member of the company is Member of the company entitled to attend the meeting and vote at the meeting has a right to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Proxy shall have not a right to speak at the meeting and shall have right to vote except on a poll. A Person appointed as a proxy shall act on behalf or favour of such number of member(s) not more than fifty. The proxy form (MGT-11) must be deposited with the company shall not be a longer than a period of 48 hours. Section 8 company for "promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object", no member of this company shall have right to appoint proxy unless shall other person is also member of such company. Company, at its own expense cannot invite to its member for appointing proxy.

If there is any default made in fulfilling with this provision, penalty of Rs.5000 will be imposed as per the above provision.

**Voting through Electronic Mode:**

**Relevant Rules / Procedure prescribed in the Companies (Management and Administration) Rules, 2014 as under:**

As per the relevant provisions of Companies Act 2013 Rules 14 every listed company or Company having not less than one thousand shareholders may pass any resolution by electronic voting system in accordance with the provisions of this rule.

Such companies shall provide to its members the facility to exercise their right to vote at general meetings by way of electronic modes. A member may exercise his right to vote at any general meeting by electronic method and company

- i. The notice of the meeting shall be sent to all the members, auditors of the company, or directors either: -
  - by speed post or registered post OR
  - through courier service
  - through electronic modes like registered e-mail id
- ii. The notice shall also be placed on the website of the company
- iii. The notice of the meeting shall distinctly mention that the business which may be transacted via electronic voting system and the company is providing facility for voting by electronic means and distinctly indicate the process and training for voting by electronic means and the time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for maintaining security and casting of vote in a secure manner.

**Voting through Postal Ballot: Relevant Rules / Procedure prescribed in the Companies (Management and Administration) Rules, 2014 as under:**

**(Section 110 of the Companies Act, 2013)**

Postal ballot includes **voting by post or through electronic modes** within a period of thirty days from the date of dispatch of the notice meeting.

Where a company is required or decides to come up with any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution containing the reasons there for and requesting them to send their consent or discord in writing on a postal ballot.

**The notice shall be sent either:**

- By Registered Post or speed post OR

- Through courier service for ease of the communication of the consent or discord of the shareholder to the resolution within the said period of **thirty days**.
- Through electronic means like registered e-mail id OR
- i. Scrutinizer shall be appointed who is not in employment of the company so that the voting process shall be in a fair and transparent.
- ii. If a resolution is consented to by the required majority of the shareholders by means of postal ballot including voting by electronic means, it shall be like to have been duly passed at a general meeting called for the purpose.
- iii. Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of consent or discord of the shareholder in writing on a postal ballot, the ballot paper should not be discarded or the identity of shareholder should not be disclosed.
- iv. A report shall be submitted by the scrutinizer at the earliest after the last date of receipt of postal ballots but not later than seven days thereof.
- v. All other papers and the postal ballot relating to the voting should be kept in the custody of the Scrutinizer until the chairman's approval is received. On the signing the minutes by the chairman, the same and other papers should be returned to the registrar safely.
- vi. The consent or discord received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.
- vii. The results shall be declared by declaring it, along with the scrutinizer's report, on the website of the company.

The resolution shall be likely to be passed on the date of at a meeting convened in that behalf.

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#### **7.4 EXTRA ORDINARY GENERAL MEETING: (Section 100-117)**

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Special General Meeting can be known as an 'Extra Ordinary General Meeting' Matters requiring immediate consideration by members, which cannot be postponed till next Annual General Meeting, to overcome such emergencies, the companies can facilitate for holding of emergency meetings of the members which are termed as Extra Ordinary General Meeting.

- Section 100 of the Companies Act, 2013 with rule 17 of The Companies Rules, 2014 associated with matters related to holding of Extra-ordinary General Meeting.

- Like Annual General Meeting there is no fixed time for holding an Extra-ordinary General meeting. However, there are some transactions which are urgent which cannot made wait or postpone till next Annual General Meeting, then an Extra-ordinary General meeting can be called which gives a company freedom to transact business in whom the consent of shareholders/ members are required.
- As per the Provisions under Companies Act, 2013 there is no specific reasons or purpose of business for which the EGM is called. However, an EGM might be called to deal with any of the following:
  - Matter on whom approval of members is/are required
  - Removal of Auditor
  - Related party transactions
  - Removal of Director
  - Any matter that can not wait until the next shareholders meeting.
- The notice for Extra-ordinary General meeting has to be served at least twenty-one days before the conduction of actual day of meeting.
- <sup>1</sup>An Extra-ordinary General meeting (EGM) can be called by:-
  - Company or
  - Requisition made by,
    - a) In the case of a 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;
    - b) In the case of a 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
    - c) A meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.
    - d) 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 the Companies Act, 2013 payable to such of the directors who were in default in calling the meeting.

<sup>1</sup> <https://www.cagmc.com/extraordinary-general-meeting->

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## 7.5 MEETING BY TRIBUNAL (SECTION 97- 99)

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Tribunal means National Company Law Under Section 2(90) of Companies Act. Tribunal can call a meeting under following circumstances.

<sup>1</sup> <https://www.cagmc.com/extraordinary-general-meeting->

- An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company.
- A Company whether private or public, limited or unlimited, having a share capital or not, fails to hold its AGM within the prescribed time then the Tribunal under Section 97 of the Act of 2013 is empowered to call or direct the calling of AGM of such company on the application of any member of the company and further order for any measures or directions as it deems fit awarded by the Tribunal . Such meeting held under the directions of the tribunal shall be deemed to be an AGM of such company.

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## 7.6 CLASS MEETING

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Class meeting is a meeting of a group of shareholders, debenture holders, creditors etc having identical interests. Such meetings is convened by a particular class of shareholders only and only if they think that their rights are being altered or if they want to vary their attached rights.

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## 7.7 SUMMARY

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MEETINGS: Board of Directors Meeting, Quorum for the Board Meeting, Annual General Meeting Under the Companies Act, Notice of Annual General Meeting and its Contents, Quorum required for Annual General Meeting. Minutes Of Annual General Meeting: Provisions for Proxies: Extra Ordinary General Meeting, Class Meeting, Meetings by Tribunal. Class Meeting.

### **Voting through Electronic Mode:**

Relevant Rules / Procedure prescribed in the Companies (Management and Administration) Rules, 2014.

Voting through Postal Ballot: Relevant Rules / Procedure prescribed in the Companies (Management and Administration) Rules, 2014

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## 7.8 QUESTIONS

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1. Define the term 'Meeting' What are the various types of provisions of meetings have been made under Companies Act 2013.
2. Explain the procedure for conducting an Annual General Meetings

3. What are the legal formalities to conduct the voting on different modes?
4. What is extra-ordinary general meeting (EOGM). What are the procedure and requirements to hold Extra Ordinary General Meeting?
5. Write a Short Note:-
  - a) Postal Ballot
  - b) Tribunal meeting
  - c) Quorum
  - d) Proxies

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