Meetings

- **Statutory Meetings** (S167)
  - ★ First meeting -> Statutory meeting
  - ★ Section 165
    "within a period not less than one month or more than 6 months from the date at which the Company is entitled to commence business"
  - ★ Importance – to make shareholders aware of facts relating to Company

  - ★ Statutory Report (S165(2))
    - ■ Directors to send 'Statutory Report' to the shareholders atleast 21 days before the day of the meeting
    - ■ Certified by 2 Directors (if there is Managing Director certified by him)
    - ■ Certified by auditors
    - ■ Particulars
      1) The total number of **shares** allotted, giving details whether they are fully or partly paid up and what consideration has been received
      2) The total amount of **cash received** in respect of all **shares** allotted
      3) An abstract of **receipts**, distinctly setting out the sources, and payments made out of that balance remaining in hand, estimate of **preliminary expenses**, commission or discount paid or to be paid on issue of shares
      4) Names, addresses and occupations of the **Directors, manager and secretary** and the changes, if any that have occurred since the date of incorporation
      5) **Particulars of any contract** to be submitted to the meeting for approval and modifications done or proposed, if any
      6) If the Company has entered into **underwriting contracts**, the extent, if any, to which they have not been carried out and the reasons for the failure
      7) The arrears, if any, **due on calls** from every **Director or manager**
      8) Particulars of any commission or brokerage paid or agreed to be paid in connection with the issue of

sale or debentures to any Director or to the manager

- ■ Copy of report to be sent to registrar
- ■ Those responsible for default in filing Statutory Report and holding Statutory Meeting are liable to fine
- ■ Delay in sending Statutory Report to shareholders can be condoned by shareholders by unanimous vote
- ■ Not holding Statutory Meeting on time – Court can order compulsory winding up

➢ **Annual General Meeting (S166)**

- ★ Company to call one meeting of shareholders every year -> Annual General Meeting (AGM)
- ★ 1 AGM to be held within 18 months of incorporation
  Then no meeting necessary for the year of incorporation and the following year
- ★ 1 AGM every year
- ★ Gap between two meetings not to exceed 15 months
- ★ Consequences for not holding meeting:
  1) Application by any member to Company Law Board and Company Law Board will call for meeting
  2) Punishable with fine, that is, Company and any officer at default
- ★ Registrar given power to extend holding of AGM by 3 months
- ★ Holding of first AGM can't be postponed
- ★ Meeting to be held:
  a) During business hours
  b) Not a public holiday
  c) Registered Office or at any place in the town of Registered Office

- ★ Importance of AGM
  - ■ Protection of shareholders
  - ■ Powers of shareholders exercised at meeting:
    a) Voting of Directors
    b) Appointment of auditors
    c) Declaration of dividends
    d) Annual accounts presented

- ★ Ordinary Business
  - ■ As stated in Articles of Association

- Special Business
  - Any other issue taken up

- **Extraordinary General Meeting (S169)**
  - Clause 47 of Table A – all General meetings other than AGM is EGM
  - To be called by Board
  - Or on requisition by shareholder:
    - To be signed by shareholders or at least 1/10 of paid up capital or 1/10 of total voting power
    - Set out matters for consideration
    - Directors to call meeting on requisition within 21 days of receipt and meeting to take place within 45 days of receipt
    - If Directors fail requisitionists may itself hold meeting
    - Expenses to be met with by Company
    - Company can indemnify this from remuneration due to Directors
    - Directors refuse only on ground that it is against Act
    - Requisitionists can even go to Company Law Board

  - Power of Company Law Board to call meetings (S186)
    - Company Law Board to hold meeting on requisition by B or shareholders
    - Company Law Board to call meeting if it is 'Impracticable' by Board or shareholders
    - 'Impracticable' -> that is, not possible to hold a peaceful meeting
    - Requisition to be 'Bonafide' in the larger interest of Company for removing 'deadlock'

- **Procedure and Requisites of Valid Meeting**
  - Meeting should be called by proper authority
    - Board of Directors
    - In case of default by
      a) Requisitionists
      b) Company Law Board

  - Notice
    - Notice to be given to all members -> 'Corporately Assembled'
    - Notice to be in writing
    - Given within 21 days of meeting
    - 48 hours between despatch and receipt

- Notice can be sent by certificate of posting
- Private Company to contain its own special provisions as to duration of notice

★ Contents of Notice
- Place, day and hour of meeting
- Statement of business to be transacted, that is, two categories
  - a) General business
    - Accounts
    - Director's Report
    - Declaration of dividends
    - Appointment of Directors and auditors and their remuneration
  - b) Special business
    - Any other business
    - Business EGM

★ Explanatory Statement
- In respect of special business, explanatory statement giving all the material particulars of the issue, Supreme Court has held this to be mandatory

★ Private Companies
- To provide their own regulations regarding matter of notice

★ Quorum
- For a valid meeting there should be quorum
- Section 174
  - Public Company – 5 members
  - Private Company – 2 members

  Unless Articles of Association provide for higher number
- Within ½ hour of meeting, quorum not present meeting is dissolved if it has been called by requisition
- In other cases meeting is automatically adjourned by 1 week

★ Chairman
- Chairman necessary
- Appointment of Chairman regulated by articles of Association
- Otherwise members personally present shall elect one of themselves to be Chairman

- Chairman can't postpone or adjourn meeting expect with bonafide reasons
- Appointment by Court
  - Court has power to appoint independent Chairman for a Company meeting
  - When there are factions in the meeting/ peaceful meeting can't be held

★ Voting
- Business in meeting carried out in the form of passing Resolutions
- Shareholders can discuss every proposed Resolution and move amendments
- After discussion of Resolution it is put to vote
- Every equity shareholder has a right to vote
- Right to vote can't be excluded on the ground of period of holding share
- Right to vote is excluded
  a) Non payment of calls on shares
  b) Company is exercising a lien on shares
- Differential voting rights are recognised

  For eg. Preference shareholders to vote only on Resolutions effecting preference shares
- Informal agreements valid under certain circumstances by show of hands
- Voting takes place by show of hands, one vote for one shareholder

★ Poll
- Dissatisfaction by show of hands, voting by poll allowed
- Taking poll means recording number of votes cast for and against a Resolution
- Voting right of a member on a poll shall be in proportion to his share of the paid up equity capital of Company
- Poll to be ordered by Chairman on his own notion or **bound** to call poll when:
  a) Public Company having share capital, by any member or members present in person or by proxy and holding share in the Company:
     i. Which confer a power to vote on the Resolution not being less than 1/10 of all the total voting power in respect of the Resolution

ii. On which an aggregate sum of not less than Rs. 50,000/- is paid up

b) Private Company having share capital, by one member if not more than 7 members are present at the meeting and by at least 2 members when more than 7 members are present at the meeting

c) In the case of any other Company, by the holders of 1/10 of the total voting power in respect of Resolution

- During poll member has right to split his votes and distribute it in any manner in which he choses
- Manner or taking poss decided by Chairman -> two scrutinizers are appointed

★ Voting by Proxy (S176)

- "A proxy is a person representative of a shareholder at a meeting of the Company, who may be described as his agent to carry out a course which the shareholder has himself decided upon"
- Proxy to act as per instructions of shareholder
- Relationship of principal and agent

- A member to vote either in person or proxy
- Articles of Association may allow voting by proxy with show of hands
- Unless Articles allow proxy, not allowed to vote except by poll
- System of voting by proxy very popular
- Proxy has no right to speak
- Instrument of appointing proxy to be in writing and signed by shareholder

- To be deposited in Company 48 hours prior to meeting
- Act provides for giving proxy forms along with notice
- Form to be in blank with no suggested names
- Proxy always revocable
- Revocation subject to Articles of Association
- Revocation to be received at office before meeting
- Proxy form can be inspected by any person having right to vote

- ★ Resolution by Postal Ballot (S192-A)
  - ■ 2000A -> passing of Resolutions by postal ballot
  - ■ Extended to listed companies and no issues the Central Government declares by notification
  - ■ Notice to be sent to shareholders along with draft Resolution -> Shareholders to send assent or dissent in writing within 30 days of posting letter
  - ■ Notice to be sent by registered post acknowledgement due or mode prescribed by Central Government and to carry postage pre-paid envelope
  - ■ Resolution is represented by majority to be as passed at a general meeting
  - ■ Person fraudulently defaces or destroys postal ballot – 6 months or fine of both
  - ■ Postal ballot can take place by electronic mode

- ★ Representation of companies and Government (S187 & 187-A)
  - ■ Where Company or Corporation is member of another Company can send representative
  - ■ Representative to be appointed by Resolution of Board Of Directors or governing body
  - ■ Central and State Government is member, President or Governor sends representative
  - ■ Person nominated holds position of Proxy

➢ **Resolutions**

- ★ Kinds of Resolutions (S189)
  - ■ Two kinds
    - a) Ordinary Resolution – simple majority of shareholders
    - b) Special Resolution – require support of ¾ majority of shareholders present at meeting
  - ■ When voting is my Special Resolution should be mentioned in notice and act to permit it
  - ■ Typed and printed copy of Special Resolution to be registered with registrar within 30 days
  - ■ Important matters effecting Company to be by Special Resolution
  - ■ Ordinary Resolution requiring special notice–matter: for eg.
    - a) Removing Director, auditor
    - b) Proposing appointment of Director

- Notice to be given as for General Meeting
  Or 7 days notice
  Or by Newspaper advertisement

- ★ Circulation of Member's Resolutions (S188)
  - Requisition by shareholders for earlier notice of Resolution
    Requisition to be signed by 1/20 of shareholders
    Or 100 shareholders holding shares with paid up capital or Rs. 1 lakh
  - Copy of requisition to be deposited in Registered Office 6 weeks earlier or 2 weeks in other matters
  - Deposit sum to meet expenses
  - Company bound to notify Resolution
    - Not bound
      i. Is defamatory in nature
      ii. Banking Company – against interest of Company

- **Registration of Resolutions and Agreements (S192)**
  - ★ Following to be registered with Registrar of Companies within 30 days and certified and signed by Officer of Company
    1) Special Resolution
    2) Resolutions which have not been agreed to by all the members of a Company but which, in the absence of such an agreement would have to be passed as Special Resolution
    3) Any Resolution of Board Of Directors of a Company or any agreement executed by a Company relating to appointment of Managing Director or variation of its terms
    4) Any transaction of the above kind relating to managing agents or secretaries and treasurers
    5) Resolutions or agreements which have been approved by all members of a class of shareholders, but which would not have otherwise required to be passed
    6) Resolutions passed by a Company conferring power under section 293 upon its Directors to sell or dispose of the whole or any part of the Company's undertaking, or to borrow money beyond the limit of the paid up share capital and free reserves of the Company, or to contribute to charities Rs. 50,000/- or 5% of average net profits

7) Any Resolution approving the appointment of sole selling agents under section 294
8) Resolutions requiring Company to be wound up voluntarily

- **Minutes (S193-195)**
  - ★ Company to keep records of proceedings of General Meeting and meetings of Board Of Directors and committees of Board Of Directors -> Number of Directors attending and Resolutions passed
  - ★ Within 30 days entries to be made in books kept for the purpose
  - ★ Pasting of lose sheets and keeping minutes in loose sheets not allowed
  - ★ Kept in bound books and hand written
  - ★ Typed sheets can't be pasted
  - ★ Each page to be signed by Chairman of the meeting or next meeting
  - ★ Appointments of officers to be included
  - ★ Absolute discretion to Chairman not to include
    a) Defamatory matters
    b) Irrelevant or immaterial matters
    c) Matters detrimental to interest of Company
  - ★ Minutes kept to show shareholders
  - ★ Can be altered only by Resolution
  - ★ Minutes evidence of proceedings
  - ★ Kept at Registered Office of Company
  - ★ Open to inspection of members without charge – restriction 2 hours – can obtain copies - Denial of above rights punishable

- **Publication of Reports of Proceedings (S197)**
  - ★ No document purporting to be report of meetings to be circulated or advertised at cost of Company
  - ★ Circulation to be provided in minutes
- **Service of Documents on Members (S53)**
  - ★ Either personally or by post
  - ★ Sent to registered address/ address given to Company for communication
  - ★ No registered address in India, by advertisement inserted in newspaper having circulation in the neighbourhood of Registered Office of Company
  - ★ Joint-holder -> sent to name of first holder
  - ★ Death or insolvency -> representatives

- **Service of Documents on Registrar (S52)**
  - By registered post or certificate of posting
  - Leaving it at the office

- **Service of Documents on Company (S51)**
  - To Registered Office of Company by registered post or certificate of posting by leaving them
  - Securities are held by depository
    - To depository by electronic mode
    - Of floppies or disks