Meetings of Members

Importance in Law:-

Meetings constitute the forum for decision-making in company. Such forum exists for the members, directors and other groups in a company.

Decisions taken at a meeting are called "Resolutions".

Resolutions may be either unanimous or special or ordinary.

- > Unanimous Resolutions - Passed by a 100% vote.
- > Special Resolutions - Passed by 75% majority.
- > Ordinary Resolutions - Passed by simple 50% majority.

There are two types of meetings:-

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

Jan
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AGM (Annual General Meeting)

Section No. 96

Section 96(1) - Holding of Annual General Meetings.

- Every company other than OPC (One person co.) shall hold a AGM each year, and also not more than 15 months shall elapse between th two AGM's
- 1st AGM within 9 months from closing of first financial year and further AGM's shall be held within period of 6 months from date of closing of fin. year.
- for any special reason, Registrar may extend the time within which any AGM, other than 1st one, shall be held, within 3 months.

Section 96(2) -

- Every AGM shall be called during Business Hrs. between 9 a.m to 6 p.m.
- Day should not be National Holiday.
- Place - Registered office or any nearby place in same city.

Section 97

Section 97(1) :-

- If default is made in AGM of a company under section 96,
- The Tribunal, on application of any member, call or direct the calling of, an AGM of the company and
- give directions as Tribunal thinks expedient.

Right

Section 97(2) :-

- AGM held under subsection(1) shall, by directions of Tribunal, be deemed to be an AGM of the company under this act.

Section 98

Section 98(1) - If due to any reason, it is impracticable to call a meeting ~~accord~~ as per provisions of this act, Tribunal can suo motto or on application of any member :-

- Order a meeting to be called, held & conducted as the tribunal thinks fit.
- Give directions as Tribunal thinks in relating to calling, holding & conducting of meeting according to provisions of this act.

Section 98(2) - Any meeting called, held and conducted in accordance with any order made under sub section (1), shall be deemed to be a meeting duly called, held & conducted.

Section 99 - Punishment for Default

- If any default is made to hold meeting according to Sections 96, 97, 98

> The company & every officer shall be punishable with fine which may extend to 1 lakh rupees.

> And continuing default, 5,000 per day till default continues.

Calling an EGM

100 12

Section 100 - Extra Ordinary General Meeting

EGM

Section 100(1) - The Board may, whenever it deems fit call an EGM.

Section 100(2) - An EGM of members shall be called by the board, on requisition made by:

- Company Ltd. by shares - such no. of members not less than ~~10%~~ 1/10th of paid up share capital that holds right of voting on that date.

- Company Not having Sh. Cap. - Such no. of members not less than 1/10th of total voting power of all the members

Section 100(3) - The requisition made under subsect (2) shall -

- Set out matters for consideration.
- Be signed by requisitionists
- Sent to registered office of company.

Section 100(4)

- If board does not within 21 days from receipt of valid requisition proceed to call a meeting for consideration of that matter.

&

- On a day not later than forty-five days from the date of receipt of such requisition.

- The meeting may be called and held by requisitionists themselves within 3 months from requisition date.

Section 100(5)

- A meeting under sub-section (4) called by requisitionists shall be called and held in same manner, ~~in which~~ like Board calling meetings.

Section 100(6)

- Any Reasonable expenses incurred by requisitionists in calling a meeting will be reimbursed by company and sums so paid shall be deducted from any fee payable to directors who were in default in calling meeting.

Section 101 - Notice of General Meetings (EGM + AGM)

Section 101(1) - ◦ Meeting should be called by giving not less than 21 days notice.
◦ in writing or electronically.

◦ for shorter notice - atleast 95% of voting members should give their consent.

Section 101(2) - Notice must specify place, date, day and hour. & statement of business.

Section 101(3) - Notice should be given to:-
◦ Every members, legal rep., assignee.
◦ every Auditor.
◦ Every directors.

Section 101(4) - If due to any accidental omission to give notice to any member he cannot invalidate the proceedings of meeting.

Section 102 - Explanatory statements.

Section 102(1)

- 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:-

- The Nature of concern or interest, if any of :-
  - > Director or manager.
  - > Other key managerial personnel. (KMP)
  - > Relatives of above persons(↑)

- Any other information and facts that may enable members to understand the meaning, scope & implications of items of business) and to take decision thereon.)

Section 102(2) - In Case of an AGM, every business other than the following will be deemed to be a special business:-

- > Consideration of fin. State.
- > Reports of BOD & Auditors.
- > Declaration of dividend (any)
- > Appointment of directors in place of old.
- > Appointment & fixing rem. of Auditor.

Remuneration

{In the case of any meeting other than AGM, all businesses transacted thereat shall be deemed to special business}

Section 103 - Quorum of the Meeting:

- **Section 103(1)** - Unless articles provide for larger numbers:-

[Public company]

[Members]	[Presence Needed]
0 - 1,000	5 Members personally present
1000 - 5,000	15 Members personally present
5,000 above	30 Members personally present

[Private Company] - 2 Members personally present

- **Section 103 (2)** - If quorum is not present within 1/2 hr.

  > The meeting shall stand adjourned to same day in next week at same time & place.

  > If meeting is called by requisitionists under section 100, it would be cancelled.

- **Section 103 (3)** - If in the adjourned meeting also, a quorum is not present within 1/2 hr., The members present shall be the quorum.

Section ~~105~~ - 104 - Chairman of the Meeting.

- Section 104(1) - Unless the articles provide otherwis the members present will elect one. (show of hands).

- Section 104(2) - If poll is demanded for election. then chairman elected on show of hands under (1) shall continue to be chairman until other is selected through poll.

Section 105 - Proxies in Meetings.

Section 105(1) - A member entitled to attend & vote has right to give his power to vote a proxy on his behalf.

- Proxy shall not have right to speak but only vote on ~~poll~~ (except on a poll).

Section 105(2) - In every notice calling a meeting of a company which has share capital or which articles allow proxy, there shall appear with reasonable prominence a statement that a member entitled to vote is entitled to appoint a proxy to vote on his behalf, but proxy should not be the member of the company.

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Voting at Meetings - Section 106 - 110

Section 106

- **Section 106(1)** - No member will exercise voting rights if calls or sums on his shares are payable by him and he has not paid it.

- **Section 106(2)** - Company shall not prohibit from voting any member on any grounds. except in sub-section(1).

- **Section 106(3)** - On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, need not, if he votes, use all his votes & cast in the same way all the votes he uses.

Section 107.

Section 107(1) - ~~An~~ At any meeting, a resolution be decided on show of hands, unless demanded for poll under section 109.

Section 107(2) - A declaration by chairman
- A show of hands
- Entry in minutes of meeting

This ~~&~~ all shall be the conclusive evidence of resolutions passed in the meetings.

Section 109 - Poll in Meetings:

- Section 109(1) -

Before or on the declaration of result on any resolution on show of hands,
a poll may be ordered by

- A chairman on his own Motion
- Chairman by demand -
  - Company having share capital:-
    - Mem 1/10th of total voting power
      and
    - aggregate 5,00,000 & more paid up
  - Company (any other):-
    - 1/10th of total voting power.

- Section 109(2) - Demand for poll may be withdrawn anytime by person who has demanded

- Section 109(3) - A poll demanded for Adjournment of meeting or appointment of Chairman shall be taken $\boxed{\text{forthwith.}}$ (Straight away)
  $\boxed{\text{तुरंत}}$

- **Section 109(4)** - A poll demanded on any other question other than adjournment of meeting & appointment of chairman shall be taken at such time, not being later than 48 hrs. from the time when demand was made, as the chairman of the meeting may direct.

- **Section 109(6)** - Chairman shall have power to regulate the manner in which the poll shall be taken.

- **Section 109(7)** - The result of the poll shall be deemed to be the decision of the meeting on the resolution on which poll was taken

Section 114 - Ordinary and Special Resolutions.

- **Section 114(1)** - When resolution is passed by votes cast in favour, by members or proxies or postal ballots, including casting vote if any of Chair, exceed the votes against Resolution. (50%)

- **Section 114(2)** - It will be special resolution when:-
  - When intention is to propose Spec. Res. in Notice.
  - and votes are in favour are 3 times those in against. (75%)

Section 115 - Resolutions requiring special notice.

- If by any provision contained in this act or in the articles of a company, special notice is required for any resolution.
- Then company should not give notice of the intention of making a special resolution to the :-
  - > 1% of total Voting power.
    or
  - > Shareholders holding atleast ₹5 lakh paid up shares.

Section 116 - Resolutions at adjourned meeting

- Where a resolution is passed at an adjourned meeting :-
  - of company
  - of holders of any shares of company.
  - of BOD of company.

- The resolution shall be treated as passed on date it was (infact) passed, not on any previous date.

Section 117 - filling of Resolutions.

- Section 117(1) - A copy of every resolution.
  - in respect of every matters under (3)
  - with explanatory statement under 102

  Shall be filled with the Registrar within $\boxed{\text{30 days}}$ of passing with prescribed fee.

- Section 117(2) → If company fails to file - then -

  > Company shall be punishable with fine which shall not be less than 5 lakh rupees. but may extend to 25 lakhs.

  > Every officer including liquidator in default shall be punishable with fine atleast 1 lakh upto 5 lakhs.

- Section 117(3) - Main Matter to be filled are:-

  - Special Resolutions
  - Resolution which are agreed by all the members of a company
  - Any Resolution of BOD relating to Appointment, Re-appointment, renewal or variation of terms of appointment of Managing director.
  - for voluntary winding up of company.
  - Resolutions which specify certain powers exercised by board
  - Any other resolution as may be prescribed.

Section 118 - Minutes of Meetings.

- Section 118(1) - Every company shall cause minutes of ~~meetings~~ ~~are~~:-
  - ~~Any~~ type of Meetings of shareholders.
  - Meetings of BOD.
- And to be prepared & signed within 30 days of conclusion of such meeting
- with pages consecutively numbered.

- Section 118(2) - Minutes of each meeting will contain fair & correct summary of proceedings.

- Section 118(3) - All appointments made at any of the meetings aforesaid shall be included in the Minutes of Meeting.

- Section 118(4) - In case of meetings of BOD Minutes should also contain:-
  (i) Names or addresses of directors present.
  (ii) Names of directors dissenting at every resolutions.

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- **Section 118(5)** - There shall not be included in the Minutes of a meeting, any matter which in the opinion of the chairman of the meeting:

  - Is or could reasonably be regarded as defamatory of any person.
  - Is irrelevant or immaterial to the proceedings.
  - Is detrimental to the interests of company.

- **Section 118(6)** - Chairman should excercise his right for inclusion & non-inclusion in regard to any matters in minutes unders ~~10~~ (5).

- **Section 118(7)** - The minutes kept in accordance with this section shall be evidence of the proceedings.

- **Section 118(11)** - Where minutes are in accordance with sub-section (1), until the contrary, The meeting shall be deemed to be duly called and held and all resolutions, shall be deemed to be valid.

- If any default in meeting then,

  > Company penalty of 25 thausand.
  > Officer in default penalty of 5 thausand.

- Section 118(12) - If any person is found guilty of tampering with minutes, he shall be punishable with
  - imprisonment upto 2 years.
  - fine not less than 25,000 upto 1,00,000.

Section 119 - Inspection of Minutes.

- Section 119(1) - The books containing minutes:-
  - Be kept at registered office.
  - Be open during business hrs. (not less than 2 hrs) for inspection by any members.

- Section 119(2) - Any member shall be entitled to be furnished within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes referred in sub-section (1).

- Section 119(3) - If any provision under (1) & (2) are refused then,
  - company - penalty of 25,000.
  - Officer in default - Penalty of 5,000.

- Section 119(4) - In case of any refusal or default, The Tribunal may, without any action under sub-section (3) :- direct
  - Direct inspection of minutes.
  - Direct to send copy to person requiring it.

Section 121 - Report on AGM.

- Section 121(1) - Every listed public company shall prepare a report on AGM including confirmation that meeting was duly called, held and convened. conducted. as per act.

- Section 121(2) - Company shall file with the Registrar a copy of Report within 30 days of conclusion of AGM with prescribed & additional fees within prescribed time.

- Section 121(3) - If company fails to file under (2), then ~~company~~ :-
  - company - fine not less than 1 lakh upto 5 lakhs.
  - Every officer in default - fine from 25,000 upto 1,00,000