



KAMARAJ COLLEGE
SELF FINANCING COURSES
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THOOTHUKUDI - 628 003



STUDY MATERIAL FOR
B. COM (CORPORATE SECRETARYSHIP)
SECRETARIAL PRACTICE II

IV - SEMESTER



ACADEMIC YEAR 2022 - 2023

PREPARED BY

DEPARTMENT OF COMMERCE, (SF)
KAMARAJ COLLEGE,
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II B. COM (CORPORATE SECRETARYSHIP)

SECRETARIAL PRACTICE II

Objectives:

To enable the students to

- * Understand the rights and liabilities of members
- * Understand the requisites of board meeting
- * Analyse the statutory reports and different kinds of meetings

UNIT - I

Members: Number of members – Rights and liabilities of members – stock holders – Closure of Register of members – Secretarial duties relating to maintenance of register of members.

UNIT - II

Meeting of Directors – Requisites of board meeting, Quorum, Voting, passing of resolutions; Resolution by circulation; Duties of the company secretary related to board meetings.

UNIT - III

Statutory Meeting – Statutory Reports – contents and specimen – Secretarial duties – AGM – Specimen copy of Director's report and Chairman's speech – Secretarial duties – Extraordinary General meeting

UNIT - IV

Conduct of the Meeting: Business to be transacted at different kinds of meetings; Motions – Resolution – Amendments – Methods, Voting procedure, Polling; Proxy – Kinds of proxies – Legal provision; Methods of Minutes writing; Secretarial Duties in connection with the conduct of the meeting; MCA-21 (E-filing)

UNIT - V

Winding up: Winding up and dissolution; Methods of winding up – Circumstances for winding up; winding up procedures; Secretarial duties for each method of winding up.

Liquidators right and powers – Appointment of committee of inspection – Position of Company Secretary in liquidation.



Suggested Readings:

1. Kapoor N.D., Company Law and Secretarial Practice
2. Ghosh P.K & Dr. Balachandran V, Company Secretarial Practice
3. Kuchhal M.C., Secretarial Practice'

Kamaraj College



UNIT – I

Members: Number of members – Rights and liabilities of members – stock holders – Closure of Register of members – Secretarial duties relating to maintenance of register of members.

Members of a Company

In the ordinary commercial usage, the term 'Member' denotes a person who holds shares in a company. The members or the shareholders are the real owners of a company. They collectively constitute the company as a corporate body. The ultimate authority in matters relating to the appointment and removal of the directors, auditors and other managerial personnel lies with shareholders. The powers of the Board are also subject to the control and supervision of the general body of the members.

Meaning and Definition

The Companies Act divides the members into three classes. According to Sec. 41 of the Companies Act, the three classes of members are:

- * The persons who have subscribed to the Memorandum of a company.
- * Every other person who has agreed in writing to become a member of the company and whose name has been entered in the Register of Members.
- * Every person holding equity share capital of a company and whose names are recorded as beneficial owner in the depository records are considered as members of the concerned company.

From the above, it is clear that all the subscribers to the Memorandum are deemed to be the members of the company even though their names do not appear in the Register of Members. But the Act provides that their names must be entered in the Register on its registration. As regards the second category of members, the criteria of membership are the person must have agreed in writing to become a member, and his name must have been entered in the Register of Members. If any one of the conditions is not satisfied, the person shall not be a member under this Act.

For the third category of members also 2 conditions are to be fulfilled to become the member of the company such as

- * The person must hold equity shares of the company.
- * His name must be entered as beneficial owner in the records of the depository.

A member can be distinguished from a shareholder in the following circumstances:

- * A registered member of a company having no share capital is not a shareholder since the company itself has no share capital.
- * A person who holds a share warrant is a shareholder but he is not a member of the company.



- * The legal representative of a deceased member is only a shareholder but not a member. To acquire membership, the legal representative of the deceased member should apply to the company and get his name registered in the register.

Who can become a member?

The company law does not prescribe any disqualification, which would depart a person from becoming a member of a company. It appears that any person who is competent to enter into valid contract can become a member of a company. The reason is obvious. Subscribing for shares is basically a contract between the company and the shareholder. However, the Memorandum or Articles may impose certain restrictions or restrain certain persons from acquiring membership in a company. In the absence of any express provision regarding the capacity of a person, the provisions of the Contract Act shall apply.

As regards to certain special category of persons, the judiciary has laid down certain principles for acquiring membership in a company. They are as follows:

➤ **Minors**

A minor, is not a competent person to enter into a valid contract. As such, he is disqualified to acquire membership. However, minors may be allotted shares. On attaining majority, the minor can avoid the contract. But the minor should repudiate the contract within a reasonable time.

➤ **Lunatic and Insolvent:**

A lunatic cannot become a member. An insolvent, however, can become a member and is entitled to vote at the meetings of the company. But his shares vest in the Official Receiver when he is adjudged insolvent.

➤ **Partnership Firm:**

A partnership firm may hold shares in a company in the individual name of partners as joint holders. But the shares cannot be issued in the name of the partnership firm, as it is not a legal person in the eye of law.

➤ **Company:**

A company, being a legal person, can become the member of another company in its own name. But a company can subscribe for the shares of another company only when it is authorized by Memorandum. Similarly, a subsidiary company cannot buy the shares of its holding company.

➤ **Foreigners:**

Foreign national can be members of companies registered in India. For that permission of RBI is mandatory. When he turns an alien enemy, his right as a member will be suspended.

➤ **Fictitious Person:**

A person who takes the shares in the name of fictitious person becomes liable as a member. Besides, such a person can be punished for impersonation under section 68-A.



Modes of acquiring membership

As per Sec. 41 of the Companies Act, a person may acquire the membership of a company

1. By subscribing to the Memorandum before the registration of the company.
2. By agreeing to become a member
 - * By applying for the shares offered by a company.
 - * By becoming a transferee of a share or shares and being placed on the register of members.
 - * By transmission of shares on succession to a deceased or bankrupt member and the consequent registration in the register of the company.
 - * By holding out shares and by allowing his name to be retained on the register.

Besides, there is another method of becoming a member of a company i.e. “Membership by Qualification Shares“. If a person agrees to become a director of a company, he is deemed to have accepted to become a member of that company. On his appointment, certain shares should be allotted to him. The Companies Act provides that anyone who agrees to become a director of a public company should take at least one share before his appointment. Such shares are known as qualification shares.

Rights of the Members

The members of a company enjoy several rights and they are the ultimate authority in the matters of the company and its management. Their rights can be grouped under three heads. They are detailed below:

➤ Statutory Rights

These are the rights conferred upon the members by the Companies Act. These rights cannot be taken away by the Articles of Association or Memorandum of Association. Some of the important statutory rights are given below

- * Right to receive notice of meetings, attend, to take part in the discussion and vote at the meetings.
- * Right to transfer the shares [in case of public companies].
- * Right to receive copies of the Annual Accounts of the company.
- * Right to inspect the documents of the company such as register of members, annual returns, etc.
- * Right to participate in appointments of directors and auditors in the Annual General Meetings.
- * Rights to apply to the Government for ordering an investigation into the affairs of the company.
- * Right to apply to the Court for winding up of the company.
- * Right to apply to the National Company Law Tribunal for relief in case of oppression and mismanagement under Secs. 397 and 398.



➤ **Documentary Rights**

In addition to the statutory rights, there are certain rights that can be conferred upon the shareholders by the documents like the Memorandum and the Articles of Association.

➤ **Legal Rights**

These are the rights, which are given to the members by the General Law.

CLOSURE OF REGISTER OF MEMBERS OR DEBENTURE HOLDERS

INTRODUCTION

Section 154 of the Companies Act, 1956 deals with closure of register of members or debenture holders but the section does not elaborate the object and purpose of such closure. Clause 16 of the Equity Listing Agreement deal with closure of transfer Book and fixing of Record Date and the purpose for which such book will be closed. The provisions of section 154 apply to closure of register of members but does not refer to closure of Register of Transfer whereas Clause 16 talks about closer of transfer Book and fixing of Record Date and not about closure of Register of Members. This Article is trying to further elaborate the combination of Section 154 and Clause 15 and 16 of the Listing Agreement. There is no compulsion on the company to close its Register of Members or any other book for any period. A company is not bound to close its Register of Members for any single day. But if the company whether public or private limited company, intended to close. The provisions of section 154 will have to comply with. The Madras High Court has been of the view that the section is mandatory if the Company choose to close its register of members it would have to comply with the requirement of this section. [Talyar Tea Co. v. Union of India, (1991)71 Com Case 95 (Mad); Gibson v. Barton, (1875)LR 10 QB 329.]

PURPOSE

Section 154 deals with book closures but the section does not elaborate the object and purpose of book closure. Clause 16 of the listing agreement however indicates the purpose of book closure. It is for declaration of dividend, issue of bonus/right shares, etc. The purpose of book closure is to keep a cutoff date, for deciding the members who would be entitled for the benefits of dividend/right and bonus shares and not for determining the voting rights. [Jose Pulikken v Damien Subsidies & Kuries Ltd. (2000) 39 CLA 180 (CLB)]. Purpose under the Companies Act, 1956: The purposes behind closure of Register of members under section 154 may be declaration of a dividend, issue of bonus shares, issue of right shares, holding of Annual General Meeting, etc. The purposes behind closure of Register of debenture holders may be payment of interest, conversion of debentures into shares, redemption of debentures, etc. Purpose under Listing Agreement The Clause 16 of the Listing Agreement deal with closure of register of transfer book and for Record Date are: - Declaration of dividend. - The issue of right shares. - The issue of bonus shares. - Issue of shares for conversion of debentures or of shares arising out of right attached to debentures. - At the time of the Annual General Meeting. - Buy back of share capital. - For such other purposes as the Stock Exchange may require.



PERIOD OF CLOSURE OF REGISTER OF MEMBERS

Section 154 of the Act provides that the Register of members can be closed for an aggregate period of 45 days in a year but not exceeding 30 days at a time. A company may decide the book closure subject to the compliance with certain requirements under the Act. Whenever there arises a need to close Register of members, a company may after giving not less than seven days previous notice by advertisement in some newspapers circulating in the district in which the registered office of the company is situated, close the Register of members or the Register of debenture holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time. The company will give to the Stock Exchanges where the shares of the Company listed, notice in advance of at least seven working days, or of as many days as Stock Exchanges may from time to time reasonably prescribe, stating the dates of closure of its transfer books (or, when the Transfer books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the transfer books are to be closed (or the record is to be taken) and to send copies of such notices to the other recognized stock exchanges in India. The closure of Register is cloaked with the right to refuse the transfer of shares/debentures. Record date is an alternate for closing the registers. The purpose of closing the register is to get registers update and to fix a cutoff date for the purpose of payment of dividend or issue of right and bonus shares. The purpose can also be achieved by taking a record date for a day. As per the Listing agreement, the listed companies are required to give advance notice of atleast 21 days before closure of books and in the case of dematerialized securities; the notice period is reduced to 15 days.

ADVERTISEMENT

Section 154 lays prior condition of an advertisement of such closure in some newspapers circulating in the district in which registered office of the Company is situated. The closing must be advertised in a newspaper. The word “newspaper” should be taken in its popular sense. It would be adequate if an advertisement is issued in one English newspaper circulating in the district in which the registered office of the company is situated by giving not less than seven days advance notice from the commencement of the book closure. Section 53(3) provides that a document advertised in a newspaper circulating in the neighborhood of the registered office of the company shall be deemed to be duly served on the day on which the advertisement appears, on every member of the company who has no registered address in India and has not supplied to the company any address within India for giving notice to him. Publication in the daily official list of stock exchange cannot be said to be advertisement in newspaper and is not in conformity with requirements of section 154(1). [Talayar Tea Co. Ltd. v Union of India (1991) 71 Comp Cas 95 (Mad)]. The advertisement published under section 154 contains the following: (i) Date of closing from..... 20 to.....20. (both days inclusive) (ii) Days, date, time and venue of the General Meeting. (iii) Purpose of closure.

Department Clarification on Advertisement : It appear that some companies are in the practice of issuing notices in the newspapers regarding closure of “transfer book” apparently pursuant to section 154 of the Companies Act, 1956 without, making any reference in the notice either to the aforesaid section or to the closure of the register of members or of debenture



holders. The notice issued by some companies, on the other hand refer to the closure of 'transfer book' besides the register of members and/or debenture-holders. The divergence in the practice followed by companies in this regard is likely to create confusion in the mind of the shareholders. As section 154 specifically refers only to the register of members and debenture holders, it is considered desirable that notice issued by companies pursuant to the section should expressly refer to the closure of said register only. The "Transfer Book" or "Share Transfer Book" of a company, not being statutory documents, any notice of their closure under section 154 is neither necessary, nor would be in order, if the said books are different from Register of Members or Debenture Holders. {Circular No. 8/57/(154)-64-PR, dated 30-3-1965}

PENALITY

If the Register of members or of debenture holders is closed without giving the notice provided in sub-section (1) of section 154, or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the register is so closed.

Some important points to be kept in mind before comply the provisions of closure of books or fixing of record date:

- * Section 154 applies to all companies, public and private.
- * This section extended to the register of both members and debenture holders.
- * When a company is opting to close its register of members, compliance of this section is mandatory. [Talayar Tea Co. Ltd. v Union of India (1991) 71 Comp Cas 95 (Mad)].
- * During the closure of register of members, the company is obliged to make certain entries during the period of closure, such entry relating to registration of probate, notice of change of name and address, letter of administration court order etc. {Killick Nixon Ltd. v. Dhanraj Mill Pvt. Ltd., (1983) 54 Com Case (Bombay)}.
- * No need to give closure of register of transfer book at the time of AGM of the company, unless it is a listed company.
- * Fixing of record date is not required, if the company is not declaring any dividend, issue of bonus/right share or buy back of shares, at the time of AGM or for such other purposes as the Stock Exchange may require.
- * This section not says to give public notice for closing of register of transfer of the company. 8. The register of members will be kept open for inspection during closure period.
- * In Unlisted public company or private company can close their register of transfer book for uncertain period.
- * The purpose of closure of register of members or debenture holders is required to be given in advertisement.



SECRETARIAL DUTIES RELATING TO MAINTENANCE OF REGISTER OF MEMBERS

Every company needs to keep and maintain the below-mentioned registers with respect to its members:

- * Register of the members separately for the equity shares and preference shares.
- * Register for the debenture holders.
- * Register for other security holders.

The registers must contain an index of the names. Further, member's register, in case a company doesn't have the share capital, must have the following details of each member:

- * Name, address, E-mail, PAN, UIN, CIN, Occupation, Nationality, Father's /Mother's Name/Spouse's Name,
- * Date of commencement of membership,
- * Date of cessation of membership,
- * Other details as necessary.



UNIT - II

Meeting of Directors – Requisites of board meeting, Quorum, Voting, passing of resolutions; Resolution by circulation; Duties of the company secretary related to board meetings

MEETING OF DIRECTORS

The Board of Directors of Company is primarily an oversight board. It oversees the management of the company to ensure that the interest of non-controlling shareholders are protected, it also functions as advisory board. Meetings of the Board: -Section 173 of the Act deals with Meetings of the Board and Section 174 deals with quorum. -The Act provides that the first Board meeting should be held within thirty days of the date of incorporation. -In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings. -In case of One Person Company (OPC), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days.

General requirements for a meeting

All formal meetings must be properly convened in accordance with the association's rules. All members must be notified of:

1. The type of meeting being held;
2. The place, date and time of the meeting; and
3. The business to be considered at the meeting, including the full text of all motions or resolutions that will be put to members at the meeting.

Before the meeting commences, it is important to confirm there is a quorum present and that it is maintained during the meeting. A valid motion cannot be passed unless a quorum is achieved.

If there is a quorum, then all voting and passing of resolutions must be carried out in accordance with the rules and recorded accurately in the minutes.

Notice and agenda of meeting

The notice of meeting informs the members when and where the meeting will be. The agenda informs the members what is to be discussed and done at the meeting so that the members can decide:

- * if they want to attend the meeting; and
- * if they do not plan to attend in person, how to cast their proxy or postal vote (if allowed by the rules).

The agenda commonly forms part of the notice or is attached to it so members receive all the necessary details at once. Any reports should be sent out in advance to allow people



time to read the documents and where proxy or postal voting is allowed, it is suggested that the relevant forms or voting slips also be sent at this time.

The time and manner for giving notice of a meeting is set out in the rules of the association, and must be strictly adhered to. Inadequate notice may invalidate a meeting. All members who are entitled to attend a meeting must be given proper notice in accordance with the rules.

Typical agenda briefly sets out what matters will be covered and in what order. If members are notified of the business to be conducted at the meeting, then the meeting must be confined to dealing with those particular matters. Any new agenda items raised during a meeting should be put on the agenda for the next meeting. This allows members time to consider matters properly and avoids disadvantaging members who are not in attendance at the meeting and therefore unaware the new business.

The role of the meeting chairperson

A proper meeting must have a chairperson to chair the proceedings. The chairperson is required to control the meeting procedures and has the task of:

- * Ensuring proper notice was given and an agenda provided;
- * Checking (and usually signing) the minutes of previous meetings;
- * Ensuring the meeting gets through its business in the allocated time. This may involve limiting the time members get to speak;
- * Dealing with the order of business;
- * Keeping order and facilitating discussion;
- * Ensuring everyone has an opportunity to speak. People who tend to dominate should be managed so quieter members can also share their views.
- * Receiving motions, putting them to the vote and declaring the result;
- * Making sure decisions are reached on issues discussed and that everyone understands what the decisions are; and
- * Declaring the meeting closed.

The chairperson may choose not to vote on a motion despite being entitled to do so as a member. The rules may provide that the chairperson has an additional ‘casting’ vote if there is a tie in the vote.

Quorum

A quorum is the minimum number of people required for the meeting to be valid. The Act requires that a quorum be stated in the rules of the association for both general meetings and committee meetings. The quorum may be set as a percentage of the membership rather than a fixed number, to allow for changing membership numbers.

If a quorum is not present, the association will need to consider its options to reconvene the meeting on another date (the rules may set out this process).



Motions and resolutions

A motion is a proposal that is put before a meeting for discussion and a decision. If a motion is passed it becomes a resolution. Resolutions are binding and should be recorded in the minutes of the meeting.

An association's rules will outline how motions should be dealt with. It is best practice for motions to be placed on the agenda so members have adequate time to consider them before the meeting.

Putting forward and voting on a motion

Associations should be guided by the procedures in the rules but proposing and passing a motion will generally involve the following steps:

- * A member puts forward a clear and concise proposal for a decision or action to the meeting via the chairperson. This is called a motion.
- * A second person agrees to 'second' the motion so it can be put before the meeting for consideration. A motion that is not seconded will lapse.
- * There is an opportunity for members to discuss and speak for or against the motion.
- * The motion is read aloud and voted on.
- * If the motion is passed, it becomes a resolution. A resolution passed by a simple majority of votes (more than half of the members who cast a vote) is known as an ordinary resolution.
- * The resolution is formally documented in the minutes along with the name of mover and seconder.

Resolutions become binding on the association as long as the people making the decision have the authority to pass them. It is a good idea to always follow up a resolution with a clear understanding of how the resolution will be implemented, by whom and when.

Amending a motion or resolution

The mover with the agreement of the meeting can usually amend a motion. Alternatively, someone may move an amendment to the original motion, which if successful creates a second motion.

Motions to amend motions can create confusing discussion if everyone is not clear on exactly which motion is being debated and it is important the chairperson keeps proceedings as simple as possible. If a motion does not fully express the view of the meeting, it may be easier to simply vote on it and let it be defeated.

Resolutions can be withdrawn or cancelled at the same meeting by using the same procedure that applies for moving and adopting a resolution.

Special resolutions

There are a number of occasions when the Act requires more than a simple majority vote to pass a resolution. These special resolutions need a majority of 75% to be passed and are required to:



- * Amend the rules or change the name or objects of the association;
- * Apply for voluntary cancellation; and
- * Amalgamate with another association.

A special resolution is passed by 75% of the members who are eligible to vote and actually do so in person (or by proxy or postal vote) at the meeting. It does not mean 75% of the total membership of the association. The requirements for passing a valid special resolution are discussed in detail in altering the Rules.

As a motion proposing a special resolution is subject to specific notice requirements it cannot be amended at the meeting. A major change would potentially disadvantage those members not present at the meeting who may have made their decision not to attend on the basis of the advertised motion. As new motions or amendments cannot be taken from the floor, it may be necessary to provide notice of 2-3 different motions so that if one fails another may be looked at. This gives people time to consider alternative motions. If a motion is not moved it lapses.

Voting methods

When a meeting wants to decide on a matter, it does so by voting. The rules will outline the voting rights of members and the voting methods to be used. Common voting methods include:

- * **Show of hands**
Members vote by raising their hand when asked if they are in favour or against the motion and a count is taken.
- * **Voice vote**
A simple method by which members indicate their vote by saying 'yes' or 'no'. The decision is based on the volume of sound and there is no clear count of those in favour and against the motion;
- * **Rising method**
Similar to show of hands but members exercise their vote by standing up;
- * **Ballot**
Members cast their vote in writing. This is generally used for the election of committee members and important matters where secrecy or confidentiality is required. Once the vote has been taken the chairperson or returning officer (an independent person) collects and counts the papers.
- * **Proxy and/or postal votes**
The rules of association must make provision for these forms of voting to be used. A proxy vote is where someone else votes on behalf of another member who is unable to attend the meeting;
- * **Chairperson's casting vote**
If the votes are equal or tied the chairperson may exercise a second or casting vote to decide on a motion (if the rules provide for this). Although the chairperson may use the vote to decide either for or against a motion, it is usual for the vote to be cast against the motion.



Proxy and postal voting

Proxy and postal voting can only be used if these forms of voting are specifically provided for in the association's rules.

Associations should carefully consider whether to include these voting methods in the rules. These are convenient methods of voting for members who cannot attend general meetings, for example where members live all over the State making attending meetings on even an irregular basis problematic. However their decisions are based solely on the material circulated in advance rather than arguments put forward in the debate at the meeting. These voting methods also involve additional work to implement.

If proxy votes are allowed, a written proxy form must be completed giving the proxy authority to vote either as the proxy sees fit or only in a certain way.

Proxy forms are usually sent out with the notice of meeting and agenda papers and returned to the association well before the start of the meeting. This ensures their legitimacy for inclusion in the voting process during the course of the meeting.

Postal voting is where a member casts their own vote, rather than relying on a proxy. The vote must generally be directed to one or more specific resolutions such as the election of committee members and office bearers. Postal voting allows more members to cast their vote than might be the case if the vote were restricted to only those who attend the meeting and extends the democratic process to as many members as possible.

The postal vote must clearly show the voter's intent, so using a formal ballot paper may be helpful. It is important to set a deadline for when these votes must be received. Associations should also consider safeguards to prevent a person casting multiple votes.

The original debate is suspended while the chairperson listens to the reasons why the point of order has been raised and may invite discussion about the issue. It is the task of the chairperson to rule on the point of order and their decision is final.

What is the Role of a Company Secretary in a Board Meeting?

Private companies aren't subject to the strict regulations that publicly traded companies must abide by, but recent regulatory changes are casting a stronger light on the role of the corporate secretaries. Company secretaries take on increasing duties and responsibilities becoming key individuals within companies, thus they are influential officers in the company who function as advisors to the board directors and as managers on matters of governance and other important issues.

Duties company secretaries must adhere to and are as follows;

Before Board Meetings

1. Liaise with the Chairperson on the appropriate meeting date, send invitations, notices, agendas, proxy forms, Financial statements, previous minutes and programs to be circulated in line with the laws or Constitutive Documents then share any reading, reference or other material in advance before the meeting



2. To organize the prior meeting's minutes for distribution to the board directors for approval at the upcoming meeting.
3. To request copies of the financial report and any committee reports for inclusion in the board packet.
4. Review a preliminary agenda with the board chair then request for any corrections, additions or deletions on any agenda item within seventy-two (72) hours in advance before the meeting.
5. Review all the proxy forms sent by the shareholders 48 hours before the meeting.

During the Board Meeting

1. To set up everything i.e. ensure that the venue of the meeting is secured if it is a virtual or hybrid meeting setting up and testing any audio, teleconference or video-conferencing equipment so that there are no problems once the meeting starts.
2. To verify and record the members present in the meeting, and the ones that sent their apologies and read out any proxy form sent.
3. Record the minutes of the meeting unless the bylaws state otherwise. It's helpful to take written notes as well.
4. To make a record of all actions items, resolutions and decisions of the board, including the names of these who made or seconded motions. The record should reflect who voted for or against a motion and whether it passed or failed.

After the Board Meeting

1. Prepare a draft of the recent meeting minutes and review them with the board chair and the secretary while the discussions are still fresh in everyone's mind which makes it easier to prepare for the next meeting.
2. To request for the board chair's signature on the approved minutes from the previous meeting.
3. Send final minutes to be approved by the chair.



UNIT III

STATUTORY MEETING

Statutory Meeting – Statutory Reports – contents and specimen – Secretarial duties – AGM – Specimen copy of Director's report and Chairman's speech – Secretarial duties – Extra-ordinary General meeting

What is a Statutory Meeting?

It is the first meeting of the shareholders of a public company having share capital and is held once in the lifetime of a company. A private limited company and a company limited by guarantee not having share capital need not hold a statutory meeting.

Statutory meeting must be held within a period of not less than one month and not more than six months after the date on which it is authorized to commence its business.

Objects of statutory meeting

Statutory Meeting is convened in order to accord the shareholders an opportunity for seeing what degree of success has attained the flotation of the company and in order that any special matters requiring their approval may be laid before them. The statutory meeting is held to inform the shareholders matters relating to incorporation, allotment of shares, contracts entered into by the company, utilization of funds etc.,

Notice of the Meeting

The Directors have to send a notice of the meeting to all members of the company at least 21 days before the date of the statutory meeting.

Statutory Report

The directors are required to prepare and send a report, called the 'Statutory Report' to every member of the company at least 21 days before the date of the meeting.

Contents of a Statutory Report

The statutory report contains information relating to:

- * **Shares allotted**

The total number of shares allotted distinguishing those allotted as fully paid up, partly paid up, shares issued for consideration other than cash etc.

- * **Cash received**

The total amount of cash received by the company in respect of all the shares allotted.

- * **Abstract**

An abstract of the receipts of the company and of the payments made, upto a date within seven days of the day of the report. The receipts should clearly state the amount received



in respect of shares, debentures. The payments made for various purposes should be clearly stated.

*** Directors, auditors and other managerial personnel**

The names, occupations and address of all the directors, auditors, manager and secretary of the company. Changes if any that have occurred should also be mentioned.

*** Contracts**

The particulars of any contracts, modification of contracts or proposed modification of contracts.

*** Underwriting contract**

The extent to which each underwriting contract has not been carried out along with the reasons.

*** Arrears of calls**

The arrears on calls from directors and manger.

*** Commission and brokerage**

The particulars of commission and brokerage paid or to be paid to any director or manager in connection with the issue of shares or debentures.

Certification of Statutory Report

According to Section 165(4), the statutory report must be certified as correct by not less as two directors; one of whom shall be the managing director, if any. The auditors of the company would then certify it as correct regarding the shares allotted, cash received in respect of such shares and the receipts and payments of the company.

Filing of Statutory Report

As per provisions of Section 165(5), a certified copy of the statutory report shall be filed with the registrar for registration immediately after it has been sent to the members of the company.

Annual General Meeting – Company Secretary Functions and Duties The Company Secretary is responsible for making all the arrangements for holding the annual general meetings of the company. He is required to perform the following functions and duties in this connection.

Before the Meeting:

1. To convene a Board meeting, after giving notice as per Section 173(3), as soon as the final accounts are ready, invite the Auditors for their report and transact the following business (in case of listed company, give advance notice to stock exchange):
 - * To consider and discuss the report of Audit Committee on the Annual accounts.
 - * To approve the accounts and authorise signing of accounts.
 - * To secure Auditor's report on the accounts.
 - * To approve the draft of the Board's Report in compliance with the provisions of Section 134 of the Act and to authorise the Chairman to sign the Report on behalf of the Board.



- * To consider the payment of dividend, if any, in case it is to be declared in the Annual General Meeting. (Note: In case of listed company prior intimation has to be sent to stock exchange of the Board meeting where recommendation of dividend is proposed to be considered at least 2 working days in advance vide clause 19 of listing agreement.)
 - * If the Auditors' report contains any reservations qualification or adverse remarks, the Board's Report must contain explanations there for.
2. To fix time, date and place for the annual general meeting, approve the draft notice and also authorise the Secretary to issue Notice for the meeting. The Notice must contain Ordinary Business in accordance with the provisions of Section 102 of the Act, While fixing the time, date and place for the annual general meeting, care should be taken that the time should be during 9 am to 6 pm, the date should not be a National holiday, and the place should be either the registered office of the company or some other place within the same city, town or village in which the registered office of the company is situated.
 3. To consider the closure of the Register of Members and the Share Transfer Books of the Company in compliance with the provisions of Section 91 of the Act and to authorise the Secretary to arrange for its publication in a newspaper.
 4. In case of listed company, a notice in advance of at least 7 working days should be sent to the stock exchange(s) about the proposed dates for such closure and also to comply with the requirement of stock exchange for book closure.
 5. Immediately after the Board meeting, the stock exchanges should be informed of the dividends and/or cash bonuses recommended by the Board and to the shareholders in their Report, and financial information like
 6. The total turnover, gross profit/loss, provision for depreciation, tax provision and net profit/loss, for the year with comparative figures of the last year and the amounts appropriated from reserves and accumulated profits of the previous year's etc. Such intimation has to be sent within 15 minutes of closure of the Board meeting.
 7. To arrange for the publication in a newspaper of at least 7 days previous notice of closure of the Register of Members and the Share Transfer Books as per Section 91 of the Act.
 8. In case of listed company, close the registers for the period as advertised and inform the all the stock exchanges by giving a notice in advance of at least 7 working days.
 9. To arrange for the printing of the balance sheet, profit and loss account, reports of the directors and of the auditors and the notice for the meeting.
 10. To issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting and where it is to be sent by post, it should be posted 48 hours still earlier in terms of section 101. Notice of the meeting must also be send to the directors (whether member or not), auditors and stock exchanges.
 11. If the directors decide for the publication of the Chairman's statement, make arrangements for the same.
 12. In case of listed company, send six copies of the directors' report, balance sheet and profit and loss account and three copies of the notices to such stock exchange(s) and one copy of each of them to all other recognised stock exchanges in India.



During the Meeting:

1. To arrange for the collection of admission slips or in the alternative to get the Attendance Register signed by the shareholders, and to make them comfortable in their seats, and to look to the comfort and convenience of the directors and the chairman.
2. To help the Chairman in ascertaining quorum
3. To read out the earlier meeting minutes.
4. To read out the notice of the meeting if advised by the Chairman.
5. To read out the Auditor's Report, if advised by the Chairman, when the item relating to adoption of accounts is taken up for consideration.
6. To produce copies of Memorandum and Articles of Association of the company
7. To help the Chairman in the conduct of the meeting, particularly in the conduct of poll, counting of votes etc.
8. To supply to the Chairman any information which he may require in connection with the queries raised by the shareholders relating to accounts and other connected matters.
9. Give advance information to the members who are to propose and second the resolutions to be passed at the meeting.
10. To take notes of the proceedings for the purpose of preparing minutes thereof.

After the Meeting:

1. To prepare minutes of the proceedings.
2. To record the minutes of the meeting and get them signed by the Chairman within thirty days of the meeting
3. To send intimation of appointment/re-appointment of directors. File Form DIR-12 with the Registrar of Companies within 30 days of appointment along with filing fee.
4. To send intimation of appointment/re-appointment of auditors.
5. To file copies of the special and other resolutions, if any, passed at the meeting, along with Form MGT- 14 with the Registrar of Companies, within thirty days of the meeting.

Functions (duties) of a secretary related to Extra Ordinary General Meeting:

Duties Before The Meeting:

Board Meeting:

The secretary has to convene a board meeting in consultation with the Chairman. The board has to decide the day, date, time, and place of the meeting. Notice: The secretary drafts the notice, agenda, and other required documents. He gets it approved by the chairman. Then he sends 21 clear days' notice and other documents to the members before the meeting. Public Notice: He has to publish notice of the extraordinary general meetings in leading newspapers for the information of the general public. Arrangement: The secretary has to make arrangements such as booking the hall, refreshments, documents, etc.



Duties during the Meeting:

Quorum:

The secretary checks the quorum at the beginning of the meeting and informs the same of the chairman. Attendance: The secretary has to get signatures of members present at the meeting in 'Members Attendance Book'. Reading Notice: The secretary reads out the notice and agenda of the meeting as per the direction of the chairman. Assist Chairman: The secretary assists the chairman by providing necessary information, records, document, etc. Notes of Proceedings: The secretary should take down the notes of the proceedings of the meeting. He has to draft the minutes on the basis of these notes. Poll: The secretary has to make necessary arrangements for taking poll if it is demanded.

Duties after the Meeting:

Drafting Minutes:

The secretary drafts the minutes of the meeting on the basis of the notes taken down during the proceedings of the meeting. Implementation of Decisions: The secretary instructs the concerned department for implementing the decisions taken at the meeting. Filing Resolutions: The secretary has to file the certified copy of resolutions passed at the meeting to the Registrar of Companies.



UNIT - IV

Conduct of the Meeting: Business to be transacted at different kinds of meetings; Motions – Resolution – Amendments – Methods, Voting procedure, Polling; Proxy – Kinds of proxies – Legal provision; Methods of Minutes writing; Secretarial Duties in connection with the conduct of the meeting; MCA-21 (E-filing)

Conduct of the Meeting: Business to be transacted at different kinds of meetings;

- * Statutory meeting,
- * Annual general meeting,
- * Extraordinary general meeting,
- * Class meetings.

Statutory Meeting

Every company limited by shares and every company limited by guarantee and having a share capital shall, within not less than one month and not more than six months from the date at which the company is entitled to commence a business, hold a general meeting of the members of the company.

This meeting is called the 'statutory meeting.' This is the first meeting of the shareholders of a public company and is held only once in the lifetime of a company.

Statutory report

The Board of directors shall, at least 21 days (based on Companies Act) before the day on which the meeting is to be held, forward a report, called the 'statutory report,' to every member of the company.

Procedure at the meeting;

- * List of members,
- * Discussion of matters relating to a formational aspect,
- * Adjournment.

Objects of the meeting and report;

- * To put the members of the company in possession of all the important facts relating to the company.
- * To provide the members an opportunity of meeting and discussing the management, methods, and prospects of the company.
- * To approve the modification of the terms of any contract named in the prospectus.



Annual General Meeting

Company to hold an annual general meeting every year. Every 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 notice calling it.

There shall not be more than 15 months between one annual general meeting and the other. But the first annual general meeting should be held within 18 months from the date of its incorporation.

The Registrar may, for any special reason, extend the time for holding an annual general meeting by a period not exceeding 3 months. But no extension of time is granted for holding the first annual general meeting.

Every annual general meeting shall be called during business hours on a day that is not a public holiday.

It shall be held either at the registered office of the company or at some other place within the city, town, or village in which the registered office of the company is situated.

As regards holding of the annual general meeting, no distinction is made between a public company and a private company.

A general meeting of a company may be called by giving not less than 21 days' notice in writing.

Annual general meeting a statutory requirement

The annual general meeting of a company is a statutory requirement. It has to be called even where the company did not function during the year.

Cancelling or postponing of convened meeting

Where an annual general meeting is convened for a particular date, and notice is issued to the members, the Board of directors can cancel or postpone the holding of the meeting on that date provided power is exercised for bona fide and proper reasons.

Cancelling of failure to hold an annual general meeting

If a company fails to hold an annual general meeting:

- * Any member can apply to the Company Law Board for calling the meeting.
- * The company and every officer who is in default shall be punishable with a fine.

Powers of Company Law Board to call an annual general meeting

If a company makes the default in holding an annual general meeting, any member of the company may apply to the Company Law Board for calling such a meeting.

Penalty for default

If a company makes the default in holding a meeting by Company Law or in complying with any direction of the Company Law Board in calling a meeting, the company, and every officer of the company who is in default, shall be punishable with fine.



Extraordinary General Meeting

A statutory meeting and an annual general meeting of a company are called ordinary meetings.

Any meeting other than these meetings is called an extraordinary general meeting. It is called for transacting some urgent or special business which cannot be postponed till the next annual general meeting.

It may be convened.

- * By the Board of directors On its own or on the requisition of the members; or
- * By the requisitions themselves on the failure of the Board of directors to call the meeting.

The extraordinary meeting convened by the Board of directors. The Board of directors may call an extraordinary general meeting:

- * On its own.
- * On the requisition of the members.

An extraordinary meeting convened by the requisitions Power of Company Law Board to order meeting:

If for any reason it is impracticable for a company to call, hold or conduct an extraordinary general meeting, the Company Law Board may call an extraordinary meeting.

Class Meetings

Under the Companies Act, class meetings of various kinds of shareholders and creditors are required to be held under different circumstances.

Class meetings of the holders of different classes of shares are to be held if the rights attaching to these shares are to be varied.

Requisites of a Valid Meeting

A meeting can validly transact any business if the following requirements are satisfied;

- * The meeting must be duly convened by proper authority.
- * Proper notice must be served in the prescribed manner.
- * A quorum must be present.
- * A chairperson must preside.
- * Minutes of the proceedings must be kept.

Motions

A motion signifies a proposition or proposal on any item of business submitted to the meeting for consideration and decision. In other words, a motion may be regarded as a proposed resolution which may be altered or amended if so desired by the members, before it is put to vote.



The following conditions must be satisfied for a motion to be valid:

- * A motion should ordinarily be put in writing, dated and signed by the mover. However, if permitted by the chairman, verbally placed before the meeting for discussion, but before its final adoption as a resolution, it should be formally drawn in black and white.
- * A motion should also be duly seconded by some other member. When the chairman of the meeting himself moves a motion, it need not be seconded.
- * A motion must be within the scope of the meeting and relevant to the business on the agenda. 4. It should be in the positive or affirmative form though in some cases, the motion may be negative in form e.g., “That the question be not now put.”
- * It should begin with the word “That”.
- * It should be constructed in such a way that it can be formally adopted as resolution.
- * It should be clear and unambiguous.
- * It should not contain any argument, interference or any defamatory expression. ‘The motions should be moved in the order of business set out on the agenda.
- * All motions are to be handed over to the chairman of the meeting unless the rules prescribe that motions have to be sent by a certain date to the secretary. In the latter case, it should be done accordingly.
- * No formal notice of a motion on procedural matters is necessary.

Moreover, motions are not required to be sent for the following purposes:

- i) Appointment or election of the chairman.
- ii) Changing the order of items of the agenda.
- iii) Rectification of typing errors, if any.
- iv) Motion for condolence or congratulations.
- v) Motion for the adjournment or closure of meeting.
- vi) Motion for adoption of the minutes of previous meeting or the accounts.
- vii) Vote of thanks to the chair.

Amendments

An amendment is an alteration proposed in the terms of a motion. Any member can propose addition, omission or substitution of words, figures, names or any other terms on the original motion before it is put to vote. An amendment is not intended to be a substitute for the original motion, but only qualifies the latter. Moreover, an amendment to a motion should not be confused with an amendment of law or of a resolution in force.

Amendments to the original motion can be brought about in the following manner:

1. By adding certain words to the original motion, e.g., “that the words ‘exclusive of all allowance’ be added after the words Rs. 5,000/-
2. By omitting certain words in the original motion, e.g., “that the words ‘leasing’ may be omitted”.



3. By substituting certain words in the original motion e.g.. “that the word ‘should be’ substituted by ‘must be’.
4. By inserting certain words in the original motion, e.g. “That the words ‘University of Delhi’ should also be inserted after the name of the college”.
5. By changing the position of some words.

Resolutions

A resolution is a motion that has been carried by the majority of the persons present and voting in the meeting. It expresses the formal will or opinion of the meeting. Thus, if a motion is the beginning, a resolution is the end of a matter put before the meeting. Once a motion turns into a resolution, it becomes binding on the body including the disagreeing minority, provided the resolution is lawful and is not contrary to the rules of the body concerned. A resolution once adopted cannot be amended or withdrawn except by passing a repealing resolution in the subsequent meeting. A resolution concludes the discussion on an agenda item and indicates that the next business on the agenda should be taken up. A resolution should be so drafted that there is no ambiguity or vagueness. It should be clear, exact and stated in the affirmative. Usually, the words “Resolved that” precede the main part of the resolution. Sometimes, a brief explanation is given earlier and then the main resolution starts with these words.

Specimen of resolutions of a sports club:

- * “Resolved: That a sub-committee with the Secretary as a convener, be appointed by the chairman to organise a Football Tournament on the occasion of the Silver Jubilee celebrations of the club.”
- * “Resolved: That the audited Annual Accounts for 1992-93 and the Auditor’s report thereon be, and are hereby, adopted.”

VOTING PROCEDURES AND METHODS

In the previous section, you studied about the motion, amendments and resolutions and how a meeting can be interrupted and adjourned. Voting is another important aspect of a meeting to decide the fate of a motion. You will study about this in this section. Every motion which is introduced and debated in a meeting should reach its logical conclusion i.e., either carried or fall. To determine its fate, the chairman of the meeting seeks the opinion of the house. This is known as ascertaining the sense of the meeting. As the mind of a majority of members makes the sense of the house by acclamation that is by clapping of hands or cheering it is not advisable to adopt this method in formal meetings. The lung power of enthusiastic minority may show a different result because of the different majority. However, this process can be adopted in case of formal motions like a vote of thanks to the chairman, or appointment of an official, etc. For all serious and important businesses, a proper system of voting should be adopted.



Methods of Voting

There are several ways in which votes for and against a motion may be recorded. Some of the common methods are the following:

- * Voice vote
- * Show of Hands
- * Standing Vote
- * Division
- * Ballot
- * Poll Now
- * let us discuss them one by one.

Voice Vote:

This method of voting is generally adopted in legislative bodies. It involves Indication of the member's approval or otherwise by saying 'Aye' (for the motion) or 'No' (against the motion) as and when the chairman invites opinion. The Chairman compares the volume of sound of the two responses and declares the result by saying. "The 'Ayes' or 'Noes' have it" as the case may be. However, this method of voting is not preferred as it does not permit exact counting of votes in favour and against.

Show of hands:

In meetings, voting by show of hand is adopted to determine the sense of the house. After the debate on a motion is over, the chairman puts the motion to vote by first requesting those who are in favour of the motion to raise their hands. The 'teller' then counts the hands and reports to the chairman. Later, those who are against the motion, raise their hands and their count is also given to the chairman. Finally, the chairman declares the result. He need not give the details of votes for or against the motion. However, where the show of hands is clear enough to reveal a great difference he should declare the result immediately. In case of equal votes, the chairman may exercise the casting vote either way. But, if he does not use the casting vote, the motion is lost. Proxy cannot be used here as the voting has to be done by show of hands only.

Standing vote:

In the case of voting by show of hands in a large gathering, there is a possibility that some members may raise both the hands and create confusion. To avoid this possibility standing vote is preferable. The chairman requests the members voting in favour of the motion to stand if where they are sitting and their number is counted. If the majority opinion is apparent from those standing, count out may be dispensed with unless otherwise necessitated by the provisions of bye-laws. In that case, those who are against the motion also stand up and are counted. In the standing vote system, no secrecy is possible. Similarly, no proxy can be used. Further, it involves much time and effort, creates lot of noise and cause inconvenience to the member as well as to the teller.



Division:

Under this method, when the motion is put to vote, the chairman asks the member to form themselves into two groups - one favouring the motion and the other against the motion. They may assemble in two different sides of the meeting hall or go to two different rooms. The teller counts the number of members of each group and conveys the result to the chairman who then announces the same. In this method a clear picture of persons favouring a motion or otherwise is seen and no secrecy is maintained. Also, proxy is not possible. The method is not only time consuming but also disturbs the whole sitting arrangement.

Ballot:

When the issue before the house is important and there are apparent differences of opinion among the members who do not wish to disclose their voting preference, they may ask the chairman to determine the sense of the house by ballot. If the rules so provide, the chairman asks the secretary to distribute a piece of paper of equal size to each member present. They express their opinion by writing 'yes' or 'no'. If the members have to elect a person out of two or more candidates and their names are known much before the voting is to be held, the names are printed on the ballot paper in alphabetical order. Each voter gets a ballot paper and puts a prescribed cross mark (x) or tick mark (✓) against the name he elects. He then puts the ballot in a sealed box. Finally, the ballot papers are collected and the votes are counted. The merit of this method is that the members can record their opinions without undue influences by others. If the number of votes is large, the task of recording the votes becomes time consuming. Moreover, the rejection of invalid votes is often challenged and counting disputed.

Poll:

This is a voting method whereby each member with a voting right may deliver his vote to an appointed officer, either orally or in writing. Generally, members are supplied with Rolling papers. Each member puts down his signature on the rolling paper after writing the number of votes he can cast on his own (in the case of a company, each member has vote for every share held by him and he can cast all these votes at a poll either in person or by proxy). The rolling papers are collected by the appointed officer and details are entered on a sheet called point list. The chairman appoints scrutineers to examine the proxies, count the votes and report the result to him. Where the number of voters is very large and votes of proxies are counted, polling is the only satisfactory method of ascertaining the majority opinion.

A poll may be conducted under the following circumstances:

- i. Where the members are not satisfied with the result on a show of hands, they can demand an immediate poll, as per the bye-laws.
- ii. The rules so demand that a poll will be taken on any or all-important issues listed in the agenda.
- iii. If the rules do not prohibit, the chairman himself may decide on a poll if he deems it necessary. The poll may be demanded by a member when he is not



convinced with the result of voting by show of hands. In that case, the result from the show of hands is ignored and the poll is taken immediately or on a later date. There can be objection to a poll if it is allowed by the chairman without first trying show of hands. Generally, the standing orders or bye-laws prescribe the procedure of taking a poll and it is the duty of the chairman to follow the same.

The polling procedure should also be explained to each member. The advantage of taking a poll are as follows:

- a. The sense of meeting can be ascertained with greater accuracy.
- b. Where the number of voters is very large, all can take part.
- c. Absentee members can cast their votes through proxies, if the bye-laws so, permit.
- d. Where proxies are allowed, the voting reflects the shareholding strength.

A serious limitation in the polling method appears when a minority group acquires a large number of proxies of disinterested absentee members. Further, it is a time-consuming method of finding the opinion of members. It may be noted that proxy is a written authorisation given to a person to vote on behalf of the voter. The person so authorised to act and vote on behalf of another is also called a proxy.

MINUTES OF MEETINGS

Meaning and Importance Literal meaning of the word 'Minutes' is a note to preserve the memory of anything. The minutes of a meeting are a written record of the proceedings including the business transacted, decisions taken and resolutions arrived at. The object of keeping minutes is to preserve a clear, conscious and accurate record of the conclusions reached in the meeting of a constituted body which would serve as a reminder of the subject dealt with and the actions to be taken in future. The minutes once confirmed at a subsequent meeting are acceptable as evidence of the proceedings.

Minutes of meetings may be of two kinds:

- * Minutes of Decisions; and
- * Minutes of Narration.

Minutes of decisions

Minutes of decisions are also known as minutes of resolutions. Here, the details of the discussion held in the meeting are omitted and only the final decisions taken on every item are recorded in the form of resolutions. These resolutions are usually in the affirmative form and begin with the words "Resolved that", or "It was resolved that"

Minutes of narration

These are records of businesses covered in a meeting including the discussions and arguments in favour or against a particular proposition, the number of votes cast for and against a motion, etc. Minutes of narration also record the items like the number of members present,



the receipt of apologies for absence, the submission of routine reports and the passing of a vote of thanks to the chairman.

Objects of Minutes

Recording of minutes of a meeting helps in achieving many objectives which can be listed as follows:

1. Human memory is short and it is not possible to remember all of what transcribes or is decided in a meeting after a lapse of some time. Thus, to avoid any dispute in future, the recording of minutes is imperative.
2. Minutes constitute a permanent record of the resolutions passed or the decisions taken which show an empirical progress of the body or organisation.
3. Minutes, once confirmed by the chairman in the subsequent meeting, are acceptable as legal documentary evidence in the courts of law in connection with any relevant matter.
4. It is obligatory on the part of every registered body to have a record of proceedings their respective meetings. So, recording of minutes is necessary to comply with legal requirement as well.

Importance of Minutes

In the absence of proper recording and maintenance of the minutes, it may not fulfil an important legal requirement. It may also create differences of views and dispute among the members as to what happened and what was decided in the meeting. A Minute Book containing all the decisions taken in a meeting is the starting point to take systematic action on any resolution sooner or later. Minutes show the sense of the meeting on any item and the same may have to be conveyed to the person concerned if it is so required. Recording of decisions regarding appointment, promotion, retirement, leave, etc., of the officers and other employees of the organisation is a routine but very important requirement. If the minutes of such decisions are not available, it may cause serious problems. Problems may also arise in respect of other decisions as well. Thus, the importance of recording minutes of meetings cannot be minimised at any stage in the life of any organisation. Distinction between Minutes and Report: When a summary of the proceedings of one or more meetings is prepared for the information of members or for the press, it is known as a report. But it should not be confused with minutes though both are records of proceedings of a meeting.

1. Minutes are record of decisions of a meeting which are prepared in the form of resolutions while a report is drafted in a narrative form. A report contains discussions and arguments as well as the decisions taken.
2. Minutes record the exact workings of resolutions. They may include the names of the mover and the recorder. On the other hand, a report gives the gist of the decisions. It may or may not contain the exact wordings of resolutions.
3. Separate minutes are prepared for each meeting while a report may be prepared as a summary of the proceedings of more than one meeting.
4. Minutes are drafted by the secretary while a report may be written by any person who has been assigned the task to perform.



5. Minutes serve as authentic official record of the proceedings and decisions of a meeting and are accepted as legal evidence in the courts of law, but the reports are not normally accepted as legal evidence.

Drafting of Minutes

It is the responsibility of the secretary to get the minutes of a meeting recorded. He should take notes of the proceedings as the meeting progresses. He should cover all the important points and should write the minutes in a proper minute book soon after the meeting is over. Delay in the preparation of minutes may result in omissions or use of vague and inaccurate language. Moreover, it is essential that minutes should be recorded in a methodical and business-like manner.

While drafting the minutes of a meeting, the following precautions should be taken:

- * Minutes should be brief, precise, factual and free from ambiguity.
- * Minutes should set out exactly what was transacted at the meeting. Exact wordings of the resolutions should be recorded to avoid the risk of subsequent misinterpretation.
- * If no conclusion is reached on any item at the meeting it should be clearly mentioned.
- * The minutes should also include the names of movers and seconders, the manner of voting and the results of voting.
- * Minutes should be written in the past tense, third person and generally in affirmative form. As far as possible superfluous words should be avoided.
- * Minutes should not contain any matter which is defamatory, irrelevant or immaterial to the meetings or detrimental to the organisation.
- * Arguments advanced for and against any motion should not find a place in the minutes. Moreover, partiality or bias towards any person or group should be avoided in writing the minutes.
- * Recording of minutes should follow the same sequence of items as given in the agenda. In case of variation, the exact order in which the business took place should be followed.
- * Pages of the Minutes Book should be numbered and the Minutes Book should be property bound. Separate minute books should be kept for general meetings and for meetings of standing or permanent committees.
- * Minutes should specifically mention the nature and kind of meeting held e.g., Subcommittee Meeting, Board Meeting, Annual Meeting, General Meeting, etc.
- * Minutes should clearly indicate the date, time and place of the meeting.
- * The minutes must give the name of the presiding officer (chairman), and the names of the members attending the meeting. In the case of a general body meeting only the number of persons present in the meeting may be recorded.
- * Names of absentees and apologies for absence should also be recorded wherever possible.
- * All items of the business transacted in a meeting should be serially numbered and wherever necessary, their heading and sub-headings should be given.
- * When any reference is made to any letter, report or statement with regard to any item of business the date of each such document should be mentioned in the minutes.

KEY WORDS



Motion

A question or definite proposal submitted at a meeting for consideration. Point of Order: A question raised during a meeting regarding any irregularity in the proceedings like absence of quorum.

Amendment

Proposed alteration in the terms of a motion moved in meeting. Ballot: Ascertaining the sense of a meeting on any issue which involves members giving their vote or opinion on a ballot paper.

Division

A method of ascertaining the sense of a meeting whereby members favouring the motion and those against it form themselves into two separate groups.

Minutes

Written record of the proceedings of a meeting including the business transacted and decision taken and resolutions passed.

Resolution

A motion carried by the majority of persons present and voting in a meeting. Show of Hands: A method of voting whereby members are required to raise their hands respecting for and against a motion.



UNIT - V

Winding up: Winding up and dissolution; Methods of winding up – Circumstances for winding up; winding up procedures; Secretarial duties for each method of winding up.

Liquidators right and powers – Appointment of committee of inspection – Position of Company Secretary in liquidation.

Winding up of Companies

A company can go completely out of its business affairs on receipt of Wind-up notice from the tribunal or with the voluntary concern of the company members. In the Companies Act, Section 270 to 323 prescribes the rules and procedures applicable during the wind-up or dissolution process of the company. According to the act, a company has to wind up its business completely if :

- * It fails to pay its debts exceeding Rs 1 lakh.
- * It is unable to operate or is incapable of reviving the business of the company from losses.
- * It is formed in any fraudulent manner
- * It fails to follow due diligence related to the company with the authorities.
- * If the tribunal or the members of the company seems the opinion of wind up fit for the company in good faith.
- * If declared involvement or bankrupt under the Insolvency and Bankruptcy Code.

Dissolution of Company

Generally, a company is wound up by making an application to the National Company Law Tribunal (NCLT) and upon satisfaction of compliance and consent of interested parties is taken, the dissolution order is sanctioned. Such an order has the following implications:

- * The company winding-up procedure is completed as defined in the statute.
- * The assets and liabilities have been settled and distributed the remaining amongst stakeholders in order of preference.
- * The company name is then struck off from the registers of the registrar. Hence, dissolution is necessary to step for winding up of companies.

Whereas in other cases, the company has been dissolved under the scheme of reconstruction or amalgamation. Such an order has the following implications:

- * The company has not applied for winding up of the company rather taken over under the scheme of reconstruction or amalgamation.
- * The winding-up application need not be made for such dissolution.



Liquidation of Companies

A company can only be discharged of its duties and responsibilities when it is fully dissolved with no obligations or no credit claims pending against the company. Liquidators being a part of the company's dissolution/windup process undertake the liquidation of companies. Liquidation of a company involves selling off assets of the company, paying off its liabilities and preparation of liquidation report by the liquidator appointed, and submitting it to the tribunal or the winding-up committee for taking the windup process further.

In the Companies Act, 2013, the Sections 310 to 317, 348 to 353 and 359 to 363 governs the liquidation process and provisions related to appointment, removal, powers, duties, and actions, etc of the company liquidator.

Particulars	Winding up of Company	Liquidation of Company	Dissolution of the company
1. Meaning	To completely dissolve the company and no further operations can be done in the name of the company	To dispose of assets or properties or both of the company to pay off its liabilities.	To completely dissolve the company and no further operations can be done in the name of the company. Or in other cases, will be carried in another company name
2. Moderator	NCLT (National Company Law Tribunal) or The Winding-up Committee of Company	Liquidator (appointed by company or tribunal.)	NCLT (National Company Law Tribunal)
3. Continuity	After completion of the windup process, the company cease to exist in the legal environment	After completion of the liquidation process, the company is further detained for civic liabilities or further searches or analyses by different authorities'.So, the company tends to exist in the environment even after completion of the liquidation process.	After an order of dissolution, the company ceases to operate.
4.Activities included	Filing of resolution/ petition, the appointment of the liquidator, receipt of declarations, preparation of	Appointment of a liquidator, selling off company assets, payment of	Filing of resolutions, declarations and other documents as required to complete the



	reports, disclosures to Registrar of Companies, etc	liabilities and preparation of liquidation report.	procedural formalities.
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Winding up of a Company- An Overview

The provisions related to winding up of a company are governed by the Insolvency and Bankruptcy Code. Apart from this, winding up of a company is governed by the provisions of the Companies Act, 2013.

When a company opts for the process of winding up, either the company can go for the procedure of voluntary winding up or there is another procedure related to compulsory winding up. The Ministry of Corporate Affairs have brought out notifications in the year 2020 regarding the winding up of small companies.

Non-Compliance with the above provisions would lead to several criminal and civil liabilities.

Benefits of Winding Up of a Company

The following benefits are present for winding up of a company:



➤ Proper Method and Procedure is Followed by Winding up Process

By following the above procedure related to winding up of a company, there would be compliance with the respective laws and acts.

➤ There is no Legal Action on the Company

Through this process, directors would have a chance to provide their own opinions and recommendations related to saving the company. If the recommendations are proper procedure would be followed, and the company and its directors can avoid any legal action from the tribunal or the court. Through this the company can change its focus on taking up business opportunities.

➤ Very Less Cost is required in the process of liquidation

The prices followed for the above process is not expensive.



➤ **Creditors Protection**

Creditors would be safeguarded if proper procedures are allowed to be utilised. Through this process of winding up of a company, proper procedures are followed. Creditors are ranked based on the method of priority which is utilised by a particular company or a business. Hence the statements which are provided by creditors in advance would be safeguarded. Their collective rights through such processes would be safeguarded.

➤ **Any form of Lease Agreements would be cancelled**

If there are any forms of lease agreements entered into by the company, then all such agreements and contracts would be cancelled as a result of the liquidation.

Types of Winding Up of a Company

There are two types of winding up of a Company



- * Winding up by Way of Tribunal- Winding up by a creditor is when external members are involved in the process of winding up. Creditor's voluntary winding up can be transformed into winding up by way of a tribunal u/s 270 and 271 of the CA 2013.
- * Voluntary Winding Up- This is considered when the company wants to carry out the process through resolution of the board and members. Voluntary winding is divided into member's voluntary winding up and creditor's voluntary winding up.

Grounds for Winding up a Company

There are specific grounds for winding up a company:

- * If the tribunal thinks that the company is unable to pay debts. Inability to pay debts is construed in s 271(2) of the CA 2013.
- * If the company has taken a special resolution to wind up the affairs of the company.
- * If the company has acted against the sovereignty and integrity of India and goes against the state, friendly relations with foreign countries.
- * If the tribunal has considered to wind up the company because it is a sick company under chapter 19.



- * If the tribunal is of the opinion that the company has done something fraudulently or unlawful purpose for which the company. This clause can be activated by the registrar or any person who is going to complain regarding the affairs of the company.
- * If the company has regularly defrauded and faulted in filing the annual returns.
- * If the tribunal is of the opinion that it is just and equitable for the company to wind up.

Procedure- Winding up of a Company

➤ **Petition Filed for Winding up of a Company**

First interested individuals should file a petition for winding up of the company. The following can file the petition on behalf of the company:

- * Trade Creditors of the Company
- * The Company Itself
- * Any form of contributories of the company
- * Any of the three mentioned categories
- * Government Authority such as the Central Government or the State Government
- * Registrar of Companies

The petition must be submitted in Form WIN 1 or WIN 2. Such petition must be submitted in Triplicate. An affidavit must be accompanied along with the petition in Form WIN 3.

➤ **Statement of Affairs of the Company**

As per rule 4 of the Companies (Winding Up) Rules, 2020, the statement of affairs of the company must be provided along with the petition. As per section 272(4) or section 274(1) the statement of affairs of the company must be submitted in the format of Form WIN 4. Such information must be up to date and not be more than 30 days old. The statement of affairs of the company must be made in duplicate form and must be accompanied with an affidavit. The affidavit of concurrence must be in Form WIN 5.

➤ **Advertisement**

The petition must be advertised for a period of 14 days before the date of hearing. Such advertisement must be in English and in a vernacular language. The paper must be circulated in the state or the Union territory where the company has the registered office. The format of advertisement should be Form WIN 6.

➤ **Appointment of Provisional Liquidator**

After the submission of the petition along with the official proof of the affidavit, then the tribunal will appoint a provisional liquidator. As per section 273(1)(c), the notice of appointment of the provisional liquidator would be made to the company. This must be done in Form WIN 7. The responsibilities which have to be carried out by the provisional liquidator would be mentioned in accordance to the requirements of the company. Such would be mentioned in Form WIN 8.



➤ **Send notice to the Provisional Liquidator**

As per section 277 (1), the registrar of companies would send a copy of the notice to the official liquidator. This would be sent in the format of Form WIN 9, through courier or registered speed post or any other electronic method. This must be sent within 7 days of the order.

➤ **Winding up Order**

The winding up order which is made would be sent to the company liquidator in the format of Form WIN 11. Such order must contain respective variations in the signed and sealed form. This must be sent within a period of 7 days to the company by the registrar. When it is sent by the registrar to the company it must be in Form WIN 12 and 13.

➤ **Custody of Property**

All the assets and documents would be taken by the company liquidator. The liquidator has the power to take custody of all the documents, actionable claims and books of the company. A report must be provided by the company liquidator to the tribunal within 60 days of the order.

➤ **Affairs of the company**

If the affairs of the company are wound up, then the company liquidator would make an application to the tribunal for the dissolution of the company. This would only be made if the company liquidator feels it just and reasonable for winding up a company. Once the order is passed for winding up a company, a copy of the order would be forwarded to the registrar. This must be carried out within 30 days of the order of winding up of a company.

➤ **Dissolving the Company**

If the tribunal finds out that the accounts are in order then it would pass an order for dissolution or dissolving the company. This has to occur within 60 days of receiving such application.

Winding up a Company through Voluntary Winding Up

The below procedure would provide winding up of a company thorough the voluntary method:

➤ **Passing of Resolution and Special Resolution**

First and foremost, the company must have a general meeting to pass the resolution. However, the company would have to check the memorandum of association and articles of association if such provision related to dissolution is present. After this is carried out then the company would have to arrange for a general meeting. A special resolution has to be passed by the members in the general meeting. A special resolution would require 75% or three forth of the majority of the members. After such resolutions are passed, the company would have to appoint a liquidator for carrying out the procedure for voluntary winding up. Majority of the creditors must provide their representation during voluntary winding up.



➤ **Declaration of Solvency**

In the next step, the company has to declare the solvency status. This would show information on finances available with the company. Such solvency status has to be shown to the trade creditors also.

➤ **Preparation of Winding Up Report**

The liquidator appointed would prepare a report related to winding of the company. Such report would have information on the assets, liabilities and other form of trade liabilities which are associated with the company. Such report must be placed before the general meeting of the company. Once this is approved the liquidator, will provide a copy of the accounts which are final to the ROC.

➤ **Application to Tribunal**

The company liquidator would also apply to the tribunal for dissolution of the company. If the tribunal finds out that the accounts are in order then it would pass an order for dissolution or dissolving the company. This has to occur within 60 days of receiving such application. Such information has to be filed with the ROC.

What Documents are required for Winding up a Company?

The following documents are required for Winding up a Company:

- * Certificate of Incorporation of the company
- * Memorandum of association and Articles of Association of the company
- * Certificate related to the closure of bank account of the company
- * Copy of the Board Resolution
- * Copy of the resolution of the creditors stating that three-fourth of members have accepted
- * Statement of Accounts of the Company
- * Winding Up Petition Form WIN 1 or WIN 2
- * Statement of Affairs of the Company in the Format of Form WIN 4
- * Affidavit of Concurrence in Format of Form WIN 5
- * Advertisement in the Vernacular Newspaper Form WIN 6
- * Appointment of Provisional Liquidator in the Format WIN 7 and 8
- * Form STK-2 (Procedure for winding up a defunct or Dormant Company (This would only be used for the fast track procedure which is carried out by the courts)



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