



**S.Y.B.Com.**  
**SEMESTER - IV (CBCS)**

**COMPANY SECRETARIAL  
PRACTICE-II**

**SUBJECT CODE : UBCOMFSIV 5.07**

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***Revised Syllabus of Courses of B.Com.Programme at Semester IV  
with Effect from the Academic Year 2022-2023***

***2 Ability Enhancement Courses (AEC)  
2A \* Skill Enhancement Courses (SEC) Group A***

**5. Company Secretarial Practice - II**

<b>Sr. No.</b>	<b>Modules</b>	<b>No. of Lectures</b>
1	Management of Companies	11
2	Company Meetings	11
3	Dematerialisation and Online Trading	11
4	Reports and Winding Up	12
<b>Total</b>		<b>45</b>

Sr. No.	Modules
1	<b>Management of Companies</b>
	<ul style="list-style-type: none"> <li>Directors – Appointment, Duties, Role, Directors Report, Director Identification Number (DIN).</li> <li>Types of Directors , Role of CEO, Non- Executive Directors, Independent Director</li> <li>Auditor- Appointment, Duties, Rights &amp; Powers, Audit report.</li> </ul>
2	<b>Company Meetings</b>
	<ul style="list-style-type: none"> <li>Types of Company meeting, Secretarial Duties – Before, During and after company meeting – Annual General Meeting, Extra-Ordinary General Meeting, Board Meeting.</li> <li>Notices, agenda, Chairman, Quorum&amp; Proxy – Concept and Statutory Provisions</li> <li>Motion, Resolution, Minutes – Concept, Types Voting, Minutes – Concept, Methods.</li> </ul>
3	<b>Dematerialisation and Online Trading</b>
	<ul style="list-style-type: none"> <li>Dematerialisation – Need and Importance, Secretarial Duties, Procedures, Participants.</li> <li>Online Trading – Concept, Advantages &amp; Disadvantages, Bombay Stock Exchange Online Trading (BOLT), BOSS.</li> <li>Listing of securities – Procedure, Advantages, Secretarial Duties, Scrips – Types.</li> </ul>
4	<b>Reports and Winding Up</b>
	<ul style="list-style-type: none"> <li>Company Reports – Types, Secretarial Duties with regard to payment of dividend, Interest, Charges &amp; penalties.</li> <li>Winding up of a Company – Procedure,&amp; Statutory Provisions, Secretarial role in winding up.</li> <li>Specimen – Notice &amp; Agenda of Annual General Meeting, Notice &amp; Agenda of Board Meeting prior to Annual General Meeting, Resolution for appointment of Company Secretary, Special Resolution for alteration of Memorandum of Association, Minutes of Board Meeting prior to Annual General Meeting, Minutes of Annual General Meeting.</li> </ul>

## COMPANY SECRETARIAL PRACTICE

### REFERENCES

#### Readings:

- |                                      |   |   |
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**PAPER PATTERN**

**COMPANY SECRETARIAL PRACTICE - PAPER I & II**

**SEMESTER - III & IV**

**Q.1 Multiple Choice Questions**

(A) Select the most appropriate answer from the option given below 10

(Any Ten out of Twelve)

(B) State whether the following statements are True or False 10

(Any Ten out of Twelve)

**Q.2 Answer Any Two of the following Out of Three questions - Module - I 15**

a.

b.

c.

**Q.3 Answer Any Two of the following Out of Three questions - Module - II 15**

a.

b.

c.

**Q.4 Answer Any Two of the following Out of Three questions - Module - III 15**

a.

b.

c.

**Q.5 Answer Any Two of the following Out of Three questions - Module - IV 15**

a.

b.

c.

**Q.6 Write notes on Any Four out of Six 20**

# MANAGEMENT OF THE COMPANY

## Unit structure:

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Director of the Company
- 1.3 Appointment of Directors
- 1.4 Resignation by Director / Removal of Directors
- 1.5 Powers / Rights of Company Directors
- 1.6 Duties of Company Directors
- 1.7 Chairman of the Company / Board of Directors
- 1.8 The Chief Executive Officer (CEO)
- 1.9 Company Auditors
- 1.10 Summary
- 1.11 Exercises

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## 1.0 OBJECTIVES

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After studying the unit the students will be able:

- To explain about appointment of the Company Director
- To explain the powers and rights of the Company Director
- To explain the Chairman of the Board of Directors
- To explain the Role of the Chairman of the Board of Directors
- To explain about CEO ( Chief Executive Officer ) of the company
- To explain about Auditor of the Company

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## 1.1 INTRODUCTION

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A director is a person from a group of managers who leads or supervises a particular area of a company. Companies that use this term often have many directors spread throughout different business functions or roles (e.g. director of human resources). ... Some companies also have regional directors and area directors. The directors are the persons elected by the



shareholders to direct, conduct, manage or supervise the affairs of the company.

The Companies Act does not precisely define the term 'director'. But it has been defined under several sections of the Act, in the following manner:

According to Sec. 2 (13) of the Companies Act, "Director includes any person occupying the position of director by whatever name called." This definition given by the Companies Act does not give the clear meaning of the word director, but it means that a person who performs the duties of a director will be deemed to be a director irrespective of the name by which he is called.

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## **1.2 DIRECTOR OF THE COMPANY**

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### **1.2.1 Meaning and Definition**

**Section 2 (13) of the Indian Companies Act, 1956** defines director as any person occupying the position of director, by whatever name called. This legal definition fails to give details of functions, etc. of a company Director.

**Section 291 of the Indian Companies Act** expressly vests the management of the business of a company in its directors. They are responsible for directing, governing or controlling the management of a company.

**According to Sec. 2(30), "A director is the officer of the company."** Directors act as agents of shareholders and look after the management of the company. Company is an artificial person created by law. It does not have physical existence. It is invisible and acts through human agency. This human agency of company management is the Board of Directors. The individual members of the Board are called Directors and collectively they form the Board. All managerial powers are given collectively to the Board of Directors and not to Directors individually. They are responsible for directing, governing and controlling the management of their company. Directors have to function as a group. Board is the principal authority in company management. A public company needs minimum three directors. Directors are not outsiders but are elected by shareholders as their representatives. The Board of Directors is the top administrative organ of the company. Directors are the brains of the company as the Company can and does act only through its directors. This suggests that the Directors (collectively) occupy the most influential position in the company management.

### **1.2.2 Legal Position of Company Directors**

1. Under the Companies Act, the Board of Directors is a must for the management and administration of company.

2. Directors are elected representatives of shareholders and are given substantial powers of management. Such powers are not to be used individually by a director but collectively by all directors i.e. by the Board of Directors. Management of the Company
3. The statutory provision relation to Directors is given in Sections 252 to 323 of the Companies Act.
4. Every private company must have at least two directors and every public company must have at least three directors.
5. Directors are an agents, trustees and managing partners of a company. They are responsible for directing, governing and controlling the management of their company.
6. Directors have to honour legal provisions as regards their qualifications, appointment, retirement and use of powers.

### **Legal Position of Directors**

- Directors are not the company's employees nor its servants
- They are treated as Officers of the Company for certain matters under Companies Act
- They are Trustees of Company's money and property and the powers entrusted to them
- They control the affairs of the Company (artificial person governed by human agency) as its Agents; they are accountable to the company

### **1.2.3 Qualification of a Director**

Any person who is competent to enter into a contract can become a Director. The Indian Companies Act, 1956 has not laid down any specific academic, professional or technical or shareholding qualifications for a director. A person cannot be appointed as a director if he is of unsound mind or is declared insolvent or is guilty of fraud or moral turpitude. However, financial prudence requires that the directors must have some stake in the company. As a result, the Articles usually provide for certain qualification shares for a director. The law says that persons holding qualification shares can be elected as directors. The number of shares to be purchased by a director and their value are laid down in the Articles. However, the nominal value of such qualification shares should not exceed Rs. 5000. Similarly, a person has to file his written consent with the Registrar before accepting directorship. As per Section 270, the directors must obtain their qualification shares, within two months after their appointment unless they already hold shares of that amount. In the case of newly floated company, the directors must pay for their

qualification shares before the Certificate to Commence Business is obtained.

In brief, Section 270 provides that :Every director must purchase qualification shares within two months after his appointment.

Although, the directors have been referred as the trustees, or the managing partners of the company, but in real sense they are none of them. Directors may be considered as the agent, trustees or managing partner for a particular moment and for the particular purpose. **Bowen, L.J.** observed, “Directors are described sometimes as managing partners. But each of these expressions are used not as exhaustive of their powers and responsibilities, but as indicating useful points of view from which they may for the moment and for the particular purpose be considered.”

Se 164  
Disqualifications for Appointment of Director



A person

1. Court Declared Unsound (mind)
2. Undischarged insolvent
3. Pending Insolvency application
4. Convicted-Offence-Moral Turpitude-Min 6 Months and 5 years have not elapsed #
5. 7 years of Imprisonment ineligible to be D in any Co. #
  - “a Director of any Company”

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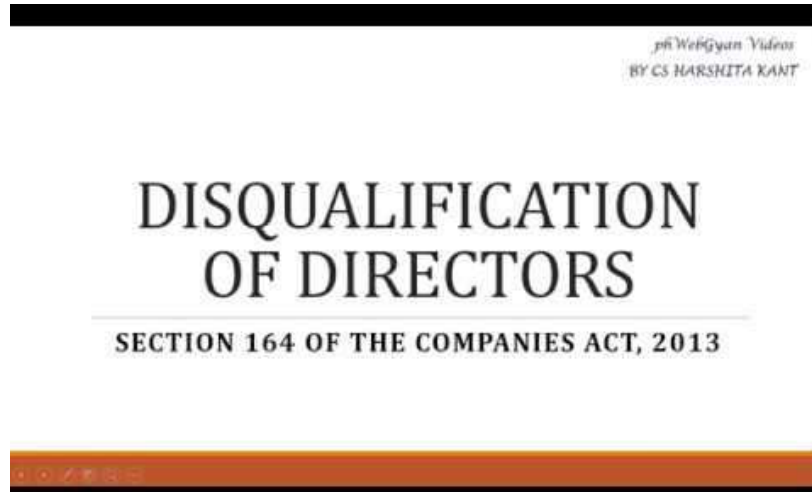
SPRS And Co., Company Secretaries

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#### 1.2.4 Disqualification of a Director

The circumstances in which a person cannot be appointed as a director of a company are enumerated in Section 274. According to this section, a person cannot be appointed as a director of company, if -

- i) He has been found to be of unsound mind by a competent court and the finding is in force;
- ii) He is an undischarged insolvent;
- iii) He has applied to be adjudicated as an insolvent and his application is pending;
- iv) He has been convicted of an offence involving moral turpitude and sentenced to imprisonment for not less than six months and a period of five years has not elapsed since the expiry of his sentence;
- v) He has not paid any call in respect of shares of the company held by him for a period of six months from the last day fixed for the payment;
- vi) He has been disqualified by an order of the Court under Sec. 203 of an offence in relation to promotion, formation or management of the company or fraud or misfeasance in relation to the company.



The Central Government may by notification in the Official Gazette remove the disqualifications enumerated in clause (iv) and (v) above. [Sec. 274 (2)]

In addition to the disqualifications mentioned above, there is another disqualification, namely, the person 'should not be a minor or older person under disability' but should be one competent to contract.

A private company which is not a subsidiary of public company may by its Articles provide for additional grounds for disqualification.

### 1.2.5 Liabilities of Company Directors

#### a) Liabilities to the Company :

1. **For Ultra-vires Acts** : The Directors are liable where they enter into contracts ultra-vires the Memorandum or Articles or ultra-vires their powers.
2. **For breach of trust** : The Directors are liable for making secret profits or use company's fund for their personal use. Such acts constitute breach of trust.
3. **For acting dishonestly** : The directors are liable when they act in a dishonest manner. For example, purchasing property in their own name first name and then selling the same to the company at a higher price with a desire to earn profit.
4. **For gross negligence** : The Directors are held liable for gross negligence while performing the statutory duties assigned to them. For example, delegating authority against the provisions in the articles.
5. **For willful misconduct** : The Directors are liable for willful misconduct in the form of misappropriation of company's assets.

In all these cases, the Director is not liable for the error of his judgement. For making him liable, his dishonesty or negligence or willful misconduct must be proved.

**b) Liability to outsiders (Outside Parties):**

The Directors are liable to outsiders (third parties) under the following circumstances:

1. For misstatement in the prospectus.
2. For acting fraudulently.
3. For breach of implied warranty of authority
4. For acting in their own name (signing cheque without mentioning the name of company)
5. For the debts and liabilities of the company at the time of winding up.

**c) Criminal Liabilities of Directors:**

Directors incur criminal liability for fraud and non-compliance of the various provisions of the Act. Here, they are punishable with fine or imprisonment or both as per the provisions in various Sections of the Act. Directors are liable to penalty under the following circumstances :

1. For mis-statements in the prospectus.
2. For default in holding AGMs as per provisions in the Companies Act.
3. For holding office as director in more than twenty companies at one time.
4. For taking loan from company without approval of the Government.
5. For failure to file return as to allotment of shares with the Registrar.
6. For failure to issue share certificates or debenture certificates.
7. For failure to give notice to Registrar as regards consolidation of share capital

**1.2.6 Remuneration of Directors**

Directors' remuneration is the process by which directors of a company are compensated, either through fees, salary or the use of the company's property, with approval from the shareholders and board of directors. A Public Company can pay remuneration to its directors including Managing Directors and Whole-time Directors, and its managers which shall not exceed 11% of the net profit as calculated in a manner laid down in section 198 of the Companies Act, 2013. Directors are not employed by the company but are the elected representatives of shareholders. They are not the regular employees of the company and are not eligible for regular remuneration like other company employees. They act as agents of the company and participate in the policy-framing and decision-making process. Directors have no right of remuneration unless there is a specific provision to that effect in the Articles or the shareholders resolve for the same in the general meeting. The Articles usually provide for the payment

of remuneration to directors in the form of honorarium. According to Section 198, total managerial remuneration payable to directors, managing director (s) and whole-time director(s) in respect of any financial year should not exceed eleven per cent of the net profits of that company for that financial year. This can be treated as the maximum limit of managerial remuneration. Section 349 and 350 lay down the manner of computation of net profits for the purpose of determining the overall maximum managerial remuneration.

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## 1.3 APPOINTMENT OF DIRECTORS

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### 1.3.1 Appointment of a Director

Every public company by virtue of Sec. 43 A, shall have at least three directors, private company shall have at least two directors. [Sec. 252]. Subject to this minimum number of directors, the articles may fix the minimum and maximum number of directors for its board of directors.

The company in the general meeting may by ordinary resolution, increase or reduce the number of its directors within the limit fixed as per Articles [Sec.258]. In the case of a public company or a private company which is a subsidiary of a public company any increase which is beyond the limit fixed by Articles must be approved by the Central Government and such an increase shall become void if disapproved by the Central Government. However, no approval of Central Government shall be required if the increase in the number of directors does not exceed twelve. [Sec. 259]

An individual who is competent to contract and is not disqualified under Section 274 can be appointed as a director, provided he is willing to act as a director and who holds or is willing to purchase share qualification as prescribed in the Articles. The company can increase or decrease the number of its directors within the limits fixed by its articles. For this, ordinary resolution in the general meeting must be passed.

1. **First Directors** : First Directors of a company are appointed by the promoters and their names are mentioned in the Articles. If not so, the Articles may prescribe the method of appointing them. In the absence of both, the subscribers to the Memorandum shall be deemed to be the first directors of the company. Written consent of directors to act in that capacity must be submitted to the Registrar. The first directors should have purchased or agreed to purchase qualification shares as per the articles.
2. **Subsequent Directors** : Subsequent Directors of the company are elected by the shareholders in the annual general meetings. Section 225 states that unless the Articles provide for the retirement of all the directors at every annual general meeting, at least two-thirds of the total number of directors of a public company and its subsidiary private company shall retire by rotation and shall be appointed by the shareholders in their general meetings. These provisions are not applicable to private companies.

At Subsequent AGMs out of the two-thirds directors liable to retire by rotation, one-third or the number nearest to one-third, must retire. The senior most Director shall retire in the first place. Persons who became directors on the same day, the retirement by rotation will be decided by mutual consent or by lot. The directors who are to retire by rotation at an AGM would automatically vacate office on the last day on which the annual general meeting ought to have been held.

### **1.3.2 Legal restrictions on the appointment of Directors**

#### **A. Legal Restrictions on First Directors :**

1. A director has to give a written consent to act as a director. This consent needs to be filed with the Registrar.
2. A director should have purchased or agreed to purchase qualification shares as per the Articles of the company.
3. The first directors must sign the prospectus before it is filed and issued to the public. They would be personally liable for any misleading statements made therein.

#### **B. Legal Restrictions on Subsequent Directors :**

1. Only individual can be appointed as a Director.
2. A person cannot act as a director of more than fifteen companies at the same time.
3. A separate resolution is required for the appointment of each director.
4. A person who desires to join as a director has to submit a written consent with the Registrar within 30 days of his appointment.

### **1.3.3 Appointment of Directors by the Board**

In addition to the Directors elected by the shareholder, the Board may appoint directors under the following circumstances / situations:

1. **Casual Vacancies :** Casual Vacancies are possible due to the death or resignation of existing director before the expiry of his term of office. Such casual vacancy may be filled in by the Board by appointing a new director.
2. **Additional Directors :** If the article so permit, the Board of Directors can appoint additional directors, subject to the maximum number of directors fixed in the Articles.
3. **Alternate Directors :** The Articles may empower the Board of appoint alternate (in place of original director) director, during the absence of an existing director for more than three months, from the State in which the meetings of the Board are normally held.

### **1.3.4 Appointment of Directors by the Central Government**

With a view to preventing mismanagement, the Central Government may appoint such number of directors as the Company Law Board may specify as being necessary to effectively safeguard the interests of the company/ shareholders. Such directors will be appointed for a period not exceeding three years on any one occasion. Such directors appointed by the Central Government shall neither be required to hold any qualification shares nor they shall be subject to retirement by rotation. Such appointment is possible only when the order is passed by the Company Law Board on reference made by members holding at least ten per cent voting rights or by the Central Government.

### **1.3.5 Nominated Directors**

In addition to directors elected by shareholders appointed by the Board and by the Central Government, there may be directors nominated by third parties such as financial institutions (IFCI, IDBI, ICICI, UTI, LIC etc.) on non-rotational basis. Such “Nominee” directors are usually appointed by financial institutions (LIC, IDBI or UTI) providing huge financial support to concerned company. The purpose is to have effective control on the companies financed by them.

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## **1.4 RESIGNATION BY DIRECTOR / REMOVAL OF DIRECTORS**

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### **1.4.1 Resignation by Directors**

The Indian Companies Act is silent as regards the resignation by directors as there is no provision in the Act as regards resignation of office by a director. A director can resign provided suitable provision exists in the Articles for such resignation. If the provision is available, a director can resign at any time as per the procedure prescribed in the Articles. In the absence of any provision in the Articles in this regard, his resignation, once made, takes effect immediately. There is no need for its acceptance by the Board or by the company in the general meeting.

### **1.4.2 Removal of Directors**

According to section 149 of the Companies Act 2013, in case of resignation or removal of an independent director, a new independent director is to be appointed within 180 days of such resignation or removal. As per Company Act Shareholders can remove a Director from the Company before the expiry of his tenure, except appointment by Central Govt. The company directors can be removed by the following three methods :

- a)** Removal by Shareholders (Section 284),
- b)** Removal by the Central Government (Section 288E), and
- c)** Removal by Company Law Board (Section 402)



**a) Removal by Shareholders (Section 284) :**

Shareholders have a right to remove the elected director if they so desire. For this, suitable procedure as given in the Companies Act must be followed. A company may remove a director before the expiry of his period of office by giving a special notice and passing an ordinary resolution to this effect in their general meeting.

**b) Removal by the Central Government ( Section 288E) :**

The Central Government may, by order, remove any director from his office against whom an adverse judgement has been given by a High Court, on a reference made by the Government for an alleged fraud, misfeasance, gross negligence or breach of trust, etc. in carrying out his legal obligations.

**c) Removal by Company Law Board (Section 402) :**

The Company Law Board has the power to remove a director on an application made to it for prevention for oppression (under Section 397) or mismanagement (under Section 398).

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## **1.5 POWERS / RIGHTS OF COMPANY DIRECTORS**

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The directors enjoy wide powers as regards the management of the company. However, their powers are not unlimited but subject to legal provisions and provisions in the A/A of the company. Powers of directors are noted in the Articles of the company. These powers are to be used collectively and not individually. Similarly, the directors have to pass necessary resolutions in their meetings for using such powers.

### **1.5.1 Statutory Provisions Regarding Powers Of Directors**

**A.** Under Section 292, the following powers can be exercised by the Board of Directors:

- i) The power to make calls;
- ii) The power to issue debentures;
- iii) The power to borrow moneys otherwise than on debentures;
- iv) The power to invest the funds of the company; and
- v) The power to make loans.

The powers listed under items (iii), (iv) and (v) can be delegated by the Board to any committee of directors, the managing director, the manager or any other principal officer of the company through a resolution passed at a Board meeting.

**B.** In addition to the above noted statutory powers, the Companies Act, under several other sections, provides for some additional powers to be exercised at the Board meeting only. Such powers are as noted below :

- i) The power to fill up casual vacancy among directors, to appoint alternate directors and to appoint additional directors, subject to any regulations in the Articles.
- ii) The power to accord sanction to such contracts in which any directors or their relatives, etc. are interested.
- iii) The power to recommend the rate of dividend on shared to be declared by the company at the Annual General Meeting, subject to the approval of the shareholders.
- iv) The power to appoint first directors of the company and to fill in any casual vacancy in the office of the auditor unless such a vacancy is caused by the resignation of the auditor.

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## **1.6 DUTIES OF COMPANY DIRECTORS**

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The duties of directors are divided into two categories ie. Sstatutory duties and General duties.

### **A) Statutory duties of Company Directors:**

1. It is the duty of the Board of Directors to see that all moneys received from applicants for shares are deposited in schedule bank until the “Certificate to Commence Business” is obtained.
2. Under Section 165 of the Act, the Board has a duty to forward a copy of the Statutory Report at least 21 days before the statutory meeting to every member of the company.
3. Under Section 210 (1), the Board has a duty to place before the members at the annual general meeting, the company’s Profit and Loss A/c and the Balance Sheet.
4. To call an extra-ordinary general meeting on the requisition of the specified number of members as per Section 169 (1) of the Act.
5. The Board of Directors has to make a “declaration of solvency” of the company in the case of members voluntary winding up (Section 488).
6. At the meeting of the creditors in a creditors’ voluntary winding-up, the Board of Directors must (a) cause a full statement of the position of the company’s affairs together with a list of creditors and the estimated amount of their claims to be laid before the meeting; and (b) appoint one of their member to preside at the said meeting.
7. The Board of Director is suppose to hold its meeting at least once in every three calendar months. In addition, at least four meetings of the Board must be held in every year.

8. It is the duty of the director to take consent of the Board before entering into any contract with the company for the purchase or supply of any goods or services to the company.
9. The directors have to purchase and pay for qualification shares within the prescribed time +limit as per provisions of the Act.

**B) Duties of Directors under the General Law :**

1. The Directors must always act bonafide for the benefit of the company. They must protect the interest of the company and must not make any secret profit.
2. The Directors must discharge their duties with such care and precaution as is reasonable in a person of their knowledge.
3. The Directors must attend all meetings of the Board unless it is impossible otherwise. This means they must not be negligent as regards their duties in relation to the company.
4. Finally, the Directors are expected to make full and complete disclosure in any contract in which they are directly or indirectly interested (Section 299).

**1.6.1 ROLE OF DIRECTORS**

**a) Agent:** A company is an artificial person and needs people in the Board of Company to run the business of the company on behalf of and for the welfare of shareholders of the company. The director acts as an agent of shareholders and promotes the objects of the company so that the company can earn profits and increase the intrinsic value of the share and earning of the company.

**b) Employee:** Any Whole-time director appointed by the Board of Directors and approved by the shareholders of the company acts as an employee of the company by managing the day-to-day affairs of the company. All the directors operate the company in the contours of employment letter issued by the Board of Company.

**c) Officer:** Director is treated as the main officer of the company and shall be liable for penal consequences under various statutes, if affairs of the company are not in compliance with the Companies Act, Income Tax Act, FEMA provisions and other applicable Legal statutes defined for various industries.

**d) Trustees:** Director is treated as trustee of the company, money and property of the powers are entrusted to and vested in them only as trustees.

**1.6.2 DIRECTOR'S REPORT :**Under Section 415 of the Companies Act 2006, the directors of a company are required to prepare a directors' report at the end of each financial year. This legislation is part of a general move towards greater corporate transparency.

The information provided by the directors' report helps shareholders understand: Management of the Company

- a) Whether the company's finances are in good health;
- b) Whether the company has the capacity to expand and grow;
- c) How well the company is performing within its market, and how well the market is performing in general;
- d) How well the company is complying with financial regulations, accounting standards and social responsibility requirements.

By knowing this information, shareholders can make better informed decisions and can hold the directors of the company to greater account.

### **1.6.3 What is included in a directors' report?**

As a minimum, a directors report should always state:

- a) The names of each director who served during the reporting year;
- b) A summary of the company's trading activities;
- c) A summary of future prospects;
- d) The principle activities of the company and, if relevant, the principle activities of its subsidiaries;
- e) Recommendations for dividends for the reporting year;
- f) Any financial events that occurred after the date on the balance sheet, if these events could affect the company's finances;
- g) Significant changes to the company's fixed assets.

### **1.6.4 DIRECTOR IDENTIFICATION NUMBER**

Director Identification Number (DIN) is a unique identification number given to an existing or a potential Director of any company which is incorporated. DIN came into existence after the insertion of the section 266A & 266B of the Companies Act, 1956 (as amended vide Act No 23 of 2006).

#### **Why Director Identification Number (DIN)?**

Many a times it is seen that a company is created and it raises money from investors and public and vanishes with the Director and are not been traceable. The main purpose of introducing Director Identification Number (DIN) was to keep a Date base of the Directors of the the incorporated companies and to keep complete information about the Directors so that they don't cheat anyone and in case they do, can be traceable.

Director Identification Number (DIN) not only helps fixing the identity of the Director but also relates his participation in others companies, past and present. In case any change of address or particular is faced by the DIN holder, they are suppose to inform the central government about the same. So this keeps the database 'live' always.

As per the recent amendment in the Companies Act, 1956, DIN has become mandatory for all the directors. DIN is individual specific and not company specific, so only one DIN is required per director/person irrespective of how many companies he is managing. This is a pre-requisite to incorporate a new company.

### **1.6.5 Types of Directors**

For start-ups and high growth businesses there are three types of directors available to them – the executive director, the non-executive director, and the independent director. A good board will aim to have a mixture of these three types as each brings a different element to the table.

#### **A) Executive directors**

Executive directors have a dual role as employees of the company and as directors. As directors they:

- have responsibilities, but must retain a degree of independence from their executive role.
- should be appointed as individuals, and not because of any position they hold within the company.
- must always be alert to the potential for conflicts between their management interests and their duties as a director.

An executive director brings an insider's perspective to the table which can be very valuable when discussing the operations of a company.

#### **B) Non-executive directors:**

These directors bring an outside perspective to the table and often a wealth of knowledge and experience. A non-executive director may be representing a major shareholder but an independent director will generally have no other links with the company other than sitting on the board. Non-executive directors' principal role is to provide independent judgement. This includes:

- outside experience and objectivity on all issues which come before the board.
- understanding detailed knowledge of the company's business activities and on-going performance, so they can make informed decisions.
- recognising the division between the board and management.

The boundary often gets blurred in start-ups and high growth businesses. For example, a non-executive director may be appointed to fill a gap in knowledge and expertise, and end up assisting management in that area.

Management of the Company

### **C) Independent directors:**

To gain true separation between management and governance it makes sense to include independent board members. Some owners can feel threatened by this independence, but in the end their outside thinking can enable the business to grow and develop valuable long-term strategy.

#### **Characteristics of the best independent directors**

- **Business experience** – A successful business person will have been 'in the firing line', experiencing and learning from real life experience rather than seminars and books. They will most likely have:
  - experienced adversity, risk and possibly had to fight for the survival of their business
  - scars and 'war stories' to help you avoid making similar mistakes.
- **All-round independence** – an independent director will be someone who will not compromise loyalty. They are independent in every way:
  - intellectually
  - financially
  - politically.

### **D) Silent and absent directors:**

A good director is an active one, quiet ones are wasting valuable space, time, and resources. In many start-ups or high growth businesses formed in partnership, it is common for one director take the lead in the running of the business, while the other is the silent partner. Do the business a favour and pull in people with skills and experience, who have a voice and something to add value to the business.

#### **The benefits of having one or more independent directors**

For start-ups and high growth businesses, there are several benefits from having one or more independent directors:

- a) they bring an objective viewpoint to the board,
- b) they are unlikely to have any family or majority ownership ties to the business
- c) they can cast a critical eye over the business without preconception or prejudice .
- d) they are also able to act in the capacity of counsellor, sounding board and devil's advocate.

- e) they bring a one-off business knowledge and experience in many areas.
- f) many start-ups and high growth businesses tend to operate in a vacuum without looking at outside forces.
- g) outside directors introduce a fresh, and usually innovative, perspective.
- h) they may compensate in some of the key areas where management may be weak.
- i) the outside director may act a bit like a consultant.
- j) bring input and the ability to assist with objectivity.

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## **1.7 CHAIRMAN OF THE COMPANY / BOARD OF DIRECTORS**

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Every meeting of the Board of Directors must be presided over by a chairman. Regulations regarding appointment of a chairman are given in the Articles of a company. Normally, the Board elects its chairman for a particular period. If no chairman is elected by the Board, or if at any Board meeting, he is not present within 5 minutes, the directors present may choose one of them to be the chairman of the meeting. Chairman acts as the presiding officer of a Board meeting. As per Regulation 76 of “Table A”, subject to the articles, chairman is the chief authority in the conduct and control of Board meeting. He is given a ‘second’ or ‘casting’ vote in the case of an equality of votes.

In the Companies Act, 2013 there is a provision of compulsory appointment of woman director. Every company shall have atleast one of the directors who has stayed in India for 182 days or more in the previous calendar year. Such provision was absent in the Companies Act, 1956. In Addition, The Companies Act, 2013 provides that listed public company shall have at least one third of the total number of directors as independent directors. Such provision was absent in the Companies Act, 1956.

### **1.7.1 Who can be a Board Chairman ?**

- 1) Only a director of the company can be appointed as a Chairman.
- 2) There is no requirement that only a whole-time director shall be appointed as the Chairman. Even a part-time director can be elected as a chairman.
- 3) A director need not be a shareholders (unless the Articles require holding of qualification shares by the directors) and as such a non-shareholders director can also be appointed as a chairman at a Board meeting.



### 1.7.2 Role of the Chairman at the Board Meetings

- 1) Chairman has to see that Board meeting has been properly convened and that the required quorum is present in the Board meeting.
- 2) He has to see that the statutory provisions as laid down by the Act are complied with.
- 3) He has to preserve order at the meeting and conduct the deliberations in an orderly manner.
- 4) He has to take care and see that proceedings are conducted in a fair and impartial manner.
- 5) He has to act in good faith and to be fair and impartial in the conduct of his duties.
- 6) He has to adjourn the meeting, if necessary.
- 7) He has to ensure that sense of the meeting is properly and accurately ascertained.

To be an effective leader and mediator, a Chairman must be trusted by the other members of the Board and also by the officers and management of the company as well as the shareholders. In order to gain the trust of peer Board members, as well as management, it is important that the Chairman be fair. A good Chairman should also be open minded and should encourage Board members to voice their views. This is critically important because the whole concept of having a Board of directors is based on the belief that the best decisions are those that are made after a free and open sharing of views by people with different types of experiences.



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## **1.8 THE CHIEF EXECUTIVE OFFICER (CEO)**

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### **1.8.1 Meaning**

A chief executive officer (CEO) is the highest-ranking executive in a company, whose primary responsibilities include making major corporate decisions, managing the overall operations and resources of a company, acting as the main point of communication between the board of directors (the board) and corporate. Company can have other management personnel i.e. in addition to the company directors. If empowered by the articles, in addition to company directors, a company may employ Chief Executive Officer (CEO) for day-to-day administration



**Chief Executive Officer (CEO)**  
**Corporate Management**

### **1.8.2 Roles and Responsibilities of a CEO**

The roles and responsibilities of a CEO vary from one company to another, often depending on the organizational structure and/or size of the company. In smaller companies, the CEO takes on a more “hands-on role”, such as making lower-level business decisions. In larger companies he usually only deals with high-level corporate strategy and major company decisions. Other tasks are delegated to other managers or departments.

The typical duties, responsibilities and job description of a CEO include:

1. Communicating on behalf of the company with shareholders, government entities and public.
2. Leading the development of the company’s short- and long-term strategy.
3. Creating and implementing the company or organization’s vision and mission
4. Evaluating the work of executives of the company, including vice presidents and presidents.
5. Maintaining awareness of the competitive market landscape, expansion opportunities etc.

6. Ensuring that the company maintains high social responsibility.
7. Setting strategic goals and making sure they are measurable and describable.
8. Working closely with the CFO (Chief Financial Officer) to prepare annual budgets, complete risk analysis on potential investments, and advise the Board of Directors with regard to investment risk and return.

Management of the Company

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## 1.9 COMPANY AUDITORS

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### 1.9.1 Meaning

An auditor is a person authorized to review and verify the accuracy of financial records and ensure that companies comply with tax laws. They protect businesses from fraud, point out discrepancies in accounting methods and, on occasion, work on a consultancy basis, helping organizations to spot ways to boost operational efficiency. Auditors work in various capacities within different industries. Company Auditor means the independent registered public accounting firm responsible for conducting the audit of the Company's annual financial statements. In the case of public companies, the main duty of an auditor is to determine whether financial statements follow generally accepted accounting principles. To meet this requirement, auditors inspect accounting data, financial records and operational aspects of a business and take detailed notes on each step of the process, known as an audit trail. Once complete, the auditor's findings are presented in a report that appears as a preface in financial statements. Separate, private reports may also be issued to company management and regulatory authorities as well.



### 1.9.2 APPOINTMENT OF AN AUDITOR

The law under which we appoint lays down the procedure of appointment of auditors and also the rights, duties and the functions of the auditor. An auditor shall be independent. Here we will discuss the appointment of an

auditor as per the provisions of the Companies Act, 2013. Within thirty days from the date of the registration of the Company other than the Government Company, its Board of Directors need to appoint an individual or a firm as the first auditor of the company. The members shall ratify the appointment of the first auditor in the first annual general meeting of the company.

The first auditor of the company holds office from the conclusion of the first annual general meeting until the conclusion of the sixth annual general meeting and after this until the conclusion of every sixth meeting. However, the members of the company ratify the appointment of auditors at every annual general meeting.

However, in a case where the Board of Directors fails to appoint the first auditors of the company, they shall inform the members of the Company. Thus, the members shall appoint the first auditors of the company within ninety days at an extraordinary general meeting. The auditor so appointed shall hold the office until the conclusion of the first AGM.

The Board of Directors shall fill any casual vacancy in the office of the auditor of a company other than a Government Company within thirty days. This does not include any casual vacancy arising out of the resignation of an auditor. However, in case of a casual vacancy arising out of the resignation of an auditor, the Board of Directors shall fill the vacancy within thirty days. But, the company needs to approve this appointment at a general meeting within three months of the Board's recommendation. Such an auditor shall also hold the office till the conclusion of the next annual general meeting.

### **1.9.3 Rights and powers of a Company Auditor**

According to section 227 (1) of the Companies Act, 1956, a company auditor has the following rights:

- 1. Right of Access to Books of Accounts:** Every auditor of a Company has a right of access at all times to the books of accounts and vouchers of the company whether kept at the head office of the company or elsewhere.
- 2. Right to obtain Information and Explanations:** He has a right to obtain from the Directors and officers of the company any information and explanation as he thinks necessary for the performance of his duties as an auditor.
- 3. Right to Correct any Wrong Statement:** The auditor is required to make a report to the members of the company on the accounts examined by him and on every Balance Sheet and Profit and Loss Account and on every other document declared by this Act to be part of or annexed to the Balance Sheet or Profit and Loss Account which are laid before the company in General Meeting during his tenure of office.

4. **Right to visit Branches:** According to section 228, if a company has a branch office, the accounts of the office shall be audited by the company's auditor appointed under section 224 or by a person qualified for appointment as auditor of the company under section 226.
5. **Right to Signature on Audit Report:** Under section 229, only the person appointed as auditor of the company, or where a firm is so appointed, only a partner in the firm practicing in India, may sign the auditor's report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor.
6. **Right to receive Notice relating to General Meeting :** Under section 231 an auditor of a company has a right to receive notices and other communications relating to General Meeting in the same way as a member of the company.
7. **Right of being indemnified:** Under section 633, an auditor (being an officer of a company), has a right to be indemnified out of the assets of the company against any liability incurred by him defending himself against any civil and criminal proceedings by the company if it is proved that the auditor has acted honestly or the judgement delivered is in his favour.
8. **Right to have Legal and Technical Advice:** He has a right to seek the opinion of the experts and, thus, take legal and technical advice. This is necessary to give his opinion in his report.

#### 1.9.4 AUDIT REPORT

The auditing of the accounts of a company is usually done by an independent external auditor. An audit report is a letter from the auditor of a company that is the end result of the audit process. It states the auditor's opinion on whether the company's financial statements such as the balance sheet are in compliance with the generally accepted accounting principles (GAAP) and if they are free from material misstatement.

The audit report is generally accompanied by the company's annual report. The audit report is required by banks, financial institutions, investors, creditors, and regulators. When the auditor issues a clean report, it means that the company's financial statements have been found to be fully compliant with accounting standards. An unqualified report will tell you that the financial statement could have some errors.

Audit reports are very important to a company. Investors rely on the audit report to assess the financial health of the company and they base many important decisions on the audit report. Regulatory bodies also read the audit report as it tells them how accurate the financial information reported is. When an audit report is adverse it can seriously affect the company's status and reputation. It is essential to have good accounting practices so that the audit of accounts goes well.

### **1.9.5 Types of audit report**

An auditor releases an audit report that states the auditor's opinion on the financial statements of the company. There are four common types of auditors reports:

#### **a) Clean audit report :**

This is the best type of report that a company can receive from an auditor. A clean report is one that states that the financial statements of the company fully comply with GAAP and are free of any material misstatement. It indicates that the auditors are satisfied with the company's financial reporting and that they comply with the governing principles and laws applicable. Most audits result in clean audit reports.

#### **b) Qualified opinion:**

There are two situations in which a qualified report would be issued by the auditor. -1) If there are material misstatements in the financial statements but they are not pervasive, 2) If there is insufficient evidence to base the audit opinion on but the possible effects of any material misstatements are not pervasive.

The problem areas where there has been some calculation mistake will usually be specified by the auditors in the reports. This enables the company to fix the errors. When we use Tally software for our accounting, we stay in compliance with regulations and there is no scope for a calculation error in computing the reports.

#### **C) Adverse opinion:**

An adverse opinion on an audit report is the worst possible report that we can get. An adverse opinion means that the misstatements in the financial statements are both material and pervasive. An adverse opinion can damage a company's reputation and even have legal ramifications unless the issues are corrected. There are chances that the errors could have crept in by mistake, but they could also be the result of fraud. If there is an adverse opinion on account of illegal activities in the company, the corporate officers may face criminal charges. Investors and regulators will also reject the company's financial statements as a result of the adverse opinion in the audit report. If there are errors that were corrected, the company will have to have their financial statements re-audited satisfied before the statements are accepted.

#### **d) Disclaimer of opinion:**

An auditor would issue a disclaimer of opinion if:

- a) The auditor was unable to get enough audit evidence to base an opinion on,
- b) They did not get satisfactory answers to their questions,
- c) The possible effects of the undetected misstatements could be material and pervasive

This may happen if the auditor was denied access to certain financial information or if the auditor is unable to be impartial. A disclaimer of opinion means that the financial status of the company could not be ascertained.

Management of the Company

### **1.9.6 Duties of an Auditor**

#### **1. To Enquire:**

The duties of an auditor have been extended by the insertion of sub-section (1A) of section 227 under the Companies (Amendment) Act 1965 which is reproduced below: With prejudice to the provision of sub-section (1), the auditor shall enquire:

- a. Whether loans and advances made by a company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members.
  - b. Whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company.
  - c. Where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company, as consists of shares, debentures and other securities have been sold at a price less than at which they were purchased by the company.
  - d. Whether loans and advances made by the company have been shown as deposits.
  - e. Whether personal expenses have been charged to revenue account.
  - f. Whether it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in account books and the Balance sheet is correct, regular and not misleading.
2. Under section 227 (2, 3, 4 and 5), the duties of the auditor which relate to his report are given hereunder:

The Report: The auditor shall report to the shareholders on the accounts examined by him. The report so submitted shall contain the following:

- a. Whether, in his opinion, the Profit and Loss Account referred to in his report exhibits a true and fair view of the profit or loss.
- b. Whether, in his opinion, the Balance Sheet referred to in his report is properly drawn up so as to exhibit a true and fair view of the state of affairs of the business according to the best of the information and explanations given to him as shown by the books of accounts.

- c. Whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit.
  - d. Whether, in his opinion, proper books of accounts as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purpose of his audit have been received from branches not visited by him.
  - e. Whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by (c) of sub-section (3) of that Section and how he had dealt with the same in preparing the auditor's report.
  - f. Whether the company's Balance Sheet and Profit and Loss Account dealt with by the report are in agreement with the books of accounts and returns.
1. Where any of the matters referred to above is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.
  2. Under section 227 (4A), the Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the Auditor's Report shall also include a statement on such matters as may be specified therein.
  3. The Central Government before making any such order may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, in regard to the class or description of companies, if the Government thinks it necessary.
  4. In exercise of the powers conferred by sub-section (4A) of section 227 of the Companies Act, 1956, the Central Government has issued the Manufacturing and other Companies (Auditor's Report) Order, 1975 which applies to every company which is engaged in one or more of the following activities:
  5. The Company Law Board has now issued a fresh order viz. the Manufacturing and other companies (Auditor's Report) order, 1988 which has superseded the previous order of 1975.
- 3. Other Statutory Duties:** Under section 229, it is the duty of an auditor to sign the report prepared by him. Only a partner in the firm practicing in India may sign the Auditor's Report or authenticate any other document. Under section 56(1), the Prospectus issued by an existing company shall contain a report from the auditor of the company regarding:
- (i) Profits and losses;
  - (ii) Assets and liabilities of the company and its subsidiaries; and

- (iii) Rates of dividends paid by the company for each of the five it is Management of the Company  
auditor's duty to submit his report.

According to section 165 (4), the auditors of the company shall, in so far as the statutory report relates to the shares allotted by the company, the cash received in respect of shares and the receipts and payments of the company, certify it as correct after the same has been certified as correct by not less than two Directors of the company, one of whom shall be a Managing Director.

(Every company shall within a period of not less than one month and not more than six months from the date from which the company is entitled to commence business, hold a General Meeting of the members which shall be called the statutory Meeting.) 6. When a company goes into its voluntary winding up and a declaration of solvency is made by its Directors under section 488 (I), such a declaration is to be accompanied by the report of the auditors of the company under section 488(2). It is the duty of the auditors to make such a report. Under section 240, it is the duty of an auditor "to preserve and to produce to an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to the other body corporate which are in their custody or posser and otherwise to give to the Inspector all assistance in connection with the investigation which they are reasonably able to give".

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## 1.10 SUMMARY

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**According to Sec. 2(30), "A director is the officer of the company."** Directors act as agents of shareholders and look after the management of the company. Company is an artificial person created by law. It does not have physical existence. It is invisible and acts through human agency. This human agency of company management is the Board of Directors. The individual members of the Board are called Directors and collectively they form the Board. Every public company by virtue of Sec. 43 A, shall have at least three directors, private company shall have at least two directors. [Sec. 252]. Every meeting of the Board of Directors must be presided over by a chairman. Regulations regarding appointment of a chairman are given in the Articles of a company. Normally, the Board elects its chairman for a particular period. Chief executive officer (CEO) is appointed as the highest-ranking executive in a company, whose primary responsibilities include making major corporate decisions, managing the overall operations and resources of a company, acting as the main point of communication between the board of directors (the board) and corporate. An auditor is appointed by Board of Directors. He is a person authorized to review and verify the accuracy of financial records and ensure that companies comply with tax laws. They protect businesses from fraud, point out discrepancies in accounting methods and, on occasion, work on a consultancy basis, helping organizations to spot ways to boost operational efficiency.



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## 1.11 EXERCISE

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1. Discuss the powers of Chairman of the Board of Directors.
2. Explain the role played by CEO
3. Explain the procedure of appointment of an Auditor
4. Discuss the duties of Auditor of the company
5. Write short notes on -
  - a) Qualification of Director,
  - b) Remuneration of Director



## COMPANY MEETINGS

### Unit Structure:

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Types of Company Meetings
- 2.3 Shareholders Meetings
- 2.4 Annual General Meeting and Secretarial Duties
- 2.5 Board Meetings
- 2.6 Secretarial Duties – Before, During and after Company Meetings
- 2.7 Essentials/ Requisites of Valid General Meeting
- 2.8 Notice of the Meeting
- 2.9 Agenda of the Meeting
- 2.10 Chairman of the Meeting
- 2.11 Quorum at the Meeting-Concept & Statutory Provisions
- 2.12. Proxy at the Meeting-Concept & Statutory Provisions
- 2.13 Motion
- 2.14 Resolution
- 2.15 Minutes –Concept, Types and Methods
- 2.16 Voting
- 2.17 Summary
- 2.18 Exercise

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### 2.0 OBJECTIVES

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After studying the unit the students will be able to:

- Explain the types of Company Meetings
- Understand the concepts Notices, agenda, Chairman, Quorum and Proxy
- Explain the Statutory Provisions related to Notices, agenda, Chairman, Quorum and Proxy
- Understand the concepts and types of Motion, Resolution, Minutes, Minutes

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## 2.1 INTRODUCTION

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Company forms of business organisation wherein capital is contributed by shareholders and management is entrusted in the hands of Board of directors are popular form of business entities. Here the company meetings plays very important role in decision making and policy framing. Moreover, the company meetings are governed by the specific provisions laid down Chapter VII “Management and Administration” in the Companies Act, 2013 and also the rules made there under. Company secretary should have an eye over the conduct of meetings and preparations of meetings.

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## 2.2 TYPES OF COMPANY MEETINGS

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### 2.2.1 Meaning and Definition

Meeting is an official gathering of two or more persons for lawful business. The word “meeting” is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business. Following are the few definitions of meeting:

**In the case of Sharp vs. Dawes (1971)**, the meeting is defined as “An assembly of people for a lawful purpose” or “the coming together of at least two persons for any lawful purpose.”

**According to P.K. Ghosh** “Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting.”

**According to K. Kishore**, “A concurrence or coming together of at least a quorum of members by previous notice or mutual agreement for transaction business for a common interest is meeting.”

Thus, company meetings are very important for discussion and taking rational decisions in democratic manner. The meeting can be of shareholders, directors or class meetings of preference shareholders as well as creditors.

### 2.2.2 Types of Meeting

Meetings under the Companies Act, 2013 may be classified as:

#### 1. Shareholders meeting-

- a. Annual General Meeting,
- b. Extra-Ordinary General Meeting
- c. Class Meeting

#### 2. Directors Meeting-

- a. Board Meeting
- b. Committee Meeting

**3. special meeting-**

- a. Class meeting
- b. Creditors meeting

**4. Other meetings:****Meetings of the Debenture holders****Meetings of creditors & contributories**

- a. Meetings of creditors for purpose other than winding up.
- b. Meetings of creditors for winding up.
- c. Meetings of contributories in winding up.

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## **2.3 SHAREHOLDERS MEETINGS**

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Shareholders meetings are called general meetings. In such meetings, important matters such as alterations in Memorandum or Articles, election of directors, approval of annual accounts are discussed and final decision is taken.

Under the Companies Act, 1956, the first meeting of shareholders in public company i.e. statutory meeting was mandatory but now under the new Companies Act, 2013 that concept is fully done away. Such meeting was necessary to approve the statutory report in statutory meeting. But now no need of statutory meeting under the new companies Act i.e. Companies Act, 2013

**2.3.1 Annual General Meetings [Section 96]**

- I) Every company other than a One Person Company (OPC) shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and the company shall specify the meeting as such in the notices calling Annual General Meeting.
- II) **The gap between 2 annual general meeting should not exceed 15 months:** There should not be more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next **first annual general meeting**. It shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:
  - **Extension of time:** Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.
  - **Day, Hour and place of AGM:** Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and 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.

- **Notice of meeting:** A general meeting of a company may be called by giving not less than clear twenty-one days 'notice either in writing or through electronic mode in such manner as may be prescribed:

**Section 101. Notice of meeting.**

- 1) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed:

Provided that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five percent of the members entitled to vote at such meeting.

- 2) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.
- 3) The notice of every meeting of the company shall be given to
  - (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
  - (b) the auditor or auditors of the company; and
  - (c) every director of the company.
- 4) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

**Section 97. Power of Tribunal to call annual general meeting.**

- 1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- 2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

**Section 121. Prescribes for the Report on annual general meeting.**

- 1) Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made there under.
- 2) The company shall file with the Registrar a copy of the report referred to in subsection (1) within thirty days of the conclusion of the annual general meeting with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403.
- 3) If the company fails to file the report under sub-section (2) before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

**Sections 96 to 98. Punishment for not calling AGM in time: Punishment for default in complying with provisions of**

If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues

**2.3.2 Extraordinary General Meetings**

Annual general meetings are conducted every year so there is a long-time gap between two AGMs .So, if any matter of urgent nature arises it can be urgently dealt with Extra ordinary general meeting.

All the discussion done at such extra ordinary meeting shall be treated as special business. Calling such an EGM and conducting such EGM shall be same as convening and conducting AGM. The notice of such meeting must be sent 21 days in advance before the date of meeting. Quorum must be 5 members for Public limited company and 2 members for Private limited company. The resolution passed at such meeting must be filed with ROC within 30 days from the date of passing of the resolution.

**Section 100. Governs Calling of extraordinary general meeting.**

(Convened by directors - Convened by directors on the requisition of the shareholders u/s 100)

- 1) The Board may, whenever it deems fit, call an extraordinary general meeting of the company.
- 2) The Board shall, at the requisition made by,
  - a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
  - b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote, call an extraordinary general meeting of the company within the period specified in sub-section (4).
- 3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.
- 4) If the Board does not, **within twenty-one days** from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the 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 the requisitionists themselves within a **period of three months from the date of the requisition**.
- 5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.
- 6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

• **Secretarial duties and functions relating to EGM:**

**1. Before EGM:**

- Scheduling the Board meeting prior to EGM
- Circulating the notice of the meeting
- Sending proxy forms along with notice of the meeting
- Making suitable arrangements for the meeting

**2. During EGM:**

- Reading the company EGM meeting notice
- Ascertaining quorum
- Providing all necessary information and documents to chairman of the meeting.

- If demanded, arranging for the poll
- Taking notes of the proceedings of the meeting.

### **3. After EGM:**

- Recording resolution passed in the meeting
- Drafting minutes of the meeting.
- Filing minutes with Registrar within 30 days of the meeting.

#### **2.3.3 Class Meeting of Shareholders covers class meetings of preference shareholders**

These meetings are convened and conducted when matters relating to the rights of specific classes i.e. preference shareholders or debenture holders is proposed to alter, change or vary. The proposed change must be informed and intimated the concerned members properly. For instance, if it has been decided to cancel arrears of dividend on cumulative preference shares then it is important to call a meeting of such affected shareholders and to pass a resolution required under the provisions of the Companies Act.

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## **2.4 ANNUAL GENERAL MEETING AND SECRETARIAL DUTIES**

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Every Company, apart from One-person Company (OPC) must have to hold in addition to other meetings, by giving a notice about the meeting, not more than 15 months in between the date of AGM to the next. A Company may hold its first AGM within the period of 9 months from closing of its first financial year otherwise in other cases within the period of 6 months. [Section 96(1) of the Companies Act, 2013]

### **2.4.1 Agenda of AGM**

The agenda of annual general meeting may involve following:

- Minutes of previous meeting must be presented and approved.
- Financial statements must be presented for its shareholders approval.
- The decisions made by directors over the previous years are ratified by shareholders.
- Shareholders elect the board of directors for upcoming years.

### **2.4.2 Quorum of meeting**

As provided under section 103 of the companies act the quorum of the company will be:

#### **1. In case of public company should be:**

- Five personally present in case the total member on date of the meeting does not exceed 1000,
- 15 in case more than thousand but less than five thousand and;



- 30 in case of more than 5000 members on the date of meeting.
- 2. While in the case of a **private company** only 2 members if personally present will make up the quorum of the meeting.
- 3. It has been also provided that in case the quorum is not fulfilled within half an hour the scheduled time of the meeting then the meeting would be adjourned to the same day of the next week.
- 4. In case the quorum is not filled within half an hour in the adjourned meeting then the present members would form the required quorum for the meeting.
  - Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
- 5. In the case of the meeting by requisition under section 100, the meeting stand cancelled in case of lack of quorum as provided under section 103(2)

- **Notice of Meeting**

Notice is written invitation sent to shareholders regarding their AGM. Following are the requirements of notice for general meeting of shareholders:

1. Every member of the company should receive notice of meeting in written form.
2. Notices shall be sent other important persons such as auditors, secretarial auditor, and debenture trustees if it is necessary.
3. Notice should be sent by hand delivery or by post, ordinary or speed post or by courier, fax or an e-mail etc.
4. Notice shall be displayed on the website of the company.
5. Notice should clearly specify the nature of meeting and business to be transacted at meeting.
6. Notice and other accompanying documents should be given at least 21 days in advance of the meeting.
7. No other item other than mentioned in the Notice and agenda should be taken up at the time of meeting.
8. Attendance slip and proxy form should be attached along with notice with clear instruction of filling and stamping

9. Such meeting convened properly issuing notice should not be postponed or cancelled.

### **2.4.3 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):
  - i. To consider and discuss the report of Audit Committee on the Annual accounts.
  - ii. To approve the accounts and authorise signing of accounts.
  - iii. To secure Auditor's report on the accounts.
  - iv. 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.
  - v. 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.)
  - vi. 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.
13. Check proxies with the Register of Members as and when they are received, from day to day, so that an up-to-date position is available till the date of the meeting.
14. To arrange for the printing of attendance slips or attendance register and ballot papers
15. In consultation with the chairman or the Managing Director, prepare a detailed agenda for the meeting

16. To prepare Dividend List from the Register of Members/beneficial owners, as on the last date of the closure of the Register of Members and the Share Transfer Books.
17. To make arrangement for the printing of a combined document containing “Notice of Dividend” and “Dividend Warrant”.

- **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.
11. To keep at the meeting Register of Members, Minutes Book of the general meeting containing minutes of the previous annual general meeting(s), copies of the accounts, notice of the meeting and reports of the directors and of the auditors.
12. To ensure that the Chairman of the Audit Committee is present at annual general meeting to provide any clarification on matters relating to audit and to answer shareholder queries;

- **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.
6. To file balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting in Form AOC-4 within thirty days of the meeting. Ensure that a copy of Secretarial Audit Report obtained from a Secretary in whole time practice as required under Section 204(1) of the Act, if any, is filed with Registrar of Companies within 30 days from the date of annual general meeting. In case of listed company, send a copy of the proceedings of the annual general meeting to the stock exchange.
7. Where the company has invited public deposits, a copy of the Balance sheet shall be forwarded to the RBI

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## 2.5 BOARD MEETINGS

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### 2.5.1 Types of Board Meetings

- **Meetings of the Board Committees**

A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.

- **Meetings of Board of directors/Board Meeting.**

Board is collective name for all the directors of the company. It is the decision-making authority which frames policies for the smooth flow of business of the company. Board of directors are the representatives of the shareholders of the company and they meet frequently through board meetings.

1. Under Section 173 of the Act, this provision of the board meeting is applicable to all types of companies including one-person company.
2. The first board meeting is mandatory to be held within **thirty days** of the incorporation of the company and subsequent to that the company should hold a minimum of four meetings of the board of directors.
3. One of the most important aspects is that not more **than 120 days** gap should be there between two such meetings. One Person Company

shall convene at least one board meeting in half calendar year and the gap between two meetings should not exceed by **more than 90 days**.

4. The meeting can be done by way of **video conferencing or any other audio-video means**. The central government may decide upon exceptions, modifications or conditions of the companies or class of companies to be excluded from the applicability of this section and it can also decide which matters can't be decided upon by way of video conferencing.
5. SS - 1 – SECRETARIAL STANDARD ON MEETINGS OF THE BODs prescribes the rules and regulation of a valid board meeting.

### 2.5.2 Notice for Board Meeting

Following are the requirements of notice for Board meeting:

1. A minimum notice of not less than **seven days** has to be provided to every director of the company about the meeting at his registered address in the company by way of post or by e-mode.
2. The meeting can be called at a shorter notice. In the case of absence of the independent director, decisions of such meeting should be circulated to every director and should also be ratified by at least one independent director.
3. Notice should be sent by hand delivery or by post, ordinary or speed post or by courier, fax or an e-mail etc.
4. Notice should specify the day, date, time and full address of venue of meeting. Meeting can be conducted including public holiday and at any place.
5. The agenda and notes on agenda should be given at least 7 days before the date of meeting
6. The notice should also specify that a member have right to appoint proxy who need not to be a member in the company.
7. Notices, agenda and notes on agenda can be given at shorter period than 7 days if majority of members are of Board or committee as the case may be, agree.
8. Any supplementary item which is not originally included in the agenda shall be taken up for discussion in the meeting with the permission of chairman and with the consent of majority of directors present in the meeting. But if such an item is significant should be taken up by the board without prior written notice.

### 2.5.3 Quorum for board meeting

1. As per section 174, the quorum for the board meeting is 1/3rd of the total strength of the board of director or two, whichever is highest.

2. The participation of the directors by video conferencing or by other audio-visual means shall be counted for the purpose of quorum under this sub-section.

#### **2.5.4 Agenda of board meeting**

As per Companies Act, it is not mandatory to send agenda along with notice of board meeting but it is sent for their convenience to facilitate speedy decision making. Approval of earlier meeting minutes, issue of shares, debentures, review of financial position of the company, allotment, transfer and transmission of shares, profit distribution, determining rate of dividend and fixing future period policies are routine matters included in the agenda of board meeting.

Following are the provisions of the Act for agenda:

1. Agenda and notes on agenda should be given to directors at least seven days before the date of meeting.
2. Agenda and notes on agenda should be sent by hand delivery or by post, ordinary or speed post or by courier, fax or an e-mail etc.
3. If a director mentions specific means for the delivery of agenda and notes on agenda, then it should be sent to him by such means.
4. Agenda and notes on agenda shall be sent to original director at the address registered with company.
5. Notes on items of business which are in the nature of unpublished price sensitive information may be given at a shorter period of time than stated above, with the consent of majority of directors, which should include at least one independent director, if any.
6. Supplementary notes on any agenda items may be circulated at or prior to the meeting but shall be taken up with the permission of chairman and with the consent of majority of directors.

#### **2.5.5 Duties of company secretary regarding board meeting**

The company secretary has to play very significant role in the conduct of board meeting. He has to perform following duties and functions before, during and after the meeting.

- **Before the meeting**

1. Fixing the date, time and place of meeting in consultation with chairman.
2. Issuing notices and agenda to all the directors as per the directions of chairman or as directed by the authority convening Board meeting.
3. Keeping required papers and documents ready such as periodical financial statements, bank pass book, trading returns and transfer

statements, minutes of board meetings etc. This will facilitate the smooth conduct of meeting.

4. Arrangement of the board room for meeting by fulfilling the requirements of stationery and other equipments.

- **During the meeting**

1. Ascertaining quorum and obtaining the signature of directors who are present in the **“Directors Attendance Book”**.
2. Reading the notice of meeting and minutes of previous meeting and to obtain the signatures of the chairman on the minutes after they are confirmed by the directors.
3. Providing information and taking the notes of the proceedings of the meeting. These notes will help to write minutes in accurate manner.

- **After the meeting**

1. Preparing the minutes of the meeting and entering same in Minutes Book within 30 days of the meeting.
2. Implementation of decisions taken in the board meeting and to carry out the instructions issued by the board. The secretary of the company should perform statutory duties specifically imposed on him.
3. Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

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## **2.6 SECRETARIAL DUTIES – BEFORE, DURING AND AFTER COMPANY MEETINGS**

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Company secretary occupies a pivotal position in company administration. He is closely connected with conducting company meetings. He needs to perform various functions before, during and after the company meetings. He is responsible for conducting all businesses relating to meetings lawfully. He ensures that all the meetings are properly convened and accurately recorded. The company secretary studies all the provisions of Indian Companies Act, 2013 in relation to Company meetings. Before organizing any meeting, he makes preliminary arrangements. A high level of planning and precision is required for flawless company administration and management. He follows all the provisions governing the company meetings. His importance in the company is known to all the members and others. His duties relating to company meetings are divided into the following three categories.



### **1. Secretarial Duties Before Meetings**

The company secretary prepares the notice and agenda of meeting to be circulated among the members. The venue, day, date time is mentioned in notice. Agenda specifies the list of items of businesses to be transacted at the meeting. He also gets the entire documents ready in advance which are essential for the smooth conduct of the meeting. For instance, Annual Report is very important to be presented in AGM. Various documents are necessary for discussion and decision making at the board meeting. Hence, secretary gets done all the preliminary requirements of the meetings before hand.

### **2. Secretarial Duties During Meetings**

It is the duty of the company secretary to keep an eye on quorum when the meeting commences. He helps chairman to ascertain the quorum for the smooth conduct of meeting. He has to read the minutes of earlier meeting before the commencement of the meeting. During the meeting, he remains present, takes notes of the proceedings of the meetings, and makes arrangements for voting. He reads the reports as per the instruction of the chairman. During the course of meeting, he needs to provide pertinent information if any issue is raised by the members. He looks after that all the items of the agenda are properly taken for the discussion.

### **3. Secretarial Duties After Meetings**

The main task after the meeting is writing minutes. Company secretary drafts the minutes of the meetings and place it before the chairman for consideration and approval. He plays the role of executive officer for the decisions taken at the meeting. He has to communicate the newly appointed persons i.e. company auditors for next financial year by sending the letters of appointments. He also ensures whether the dividend is paid to all the members before the due date. Company secretary is required to submit the copies of resolutions to ROC as per legal requirements. He is also assisted by his subordinates for post- meeting drafts and other related work.

Thus, company meetings are inevitable in the company form of business. Secretary extends required support and co-operation to the chairman and directors for conducting meetings in orderly manner.

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## **2.7 ESSENTIALS /REQUISITES OF VALID GENERAL MEETING**

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Every company meeting to be valid meeting must comply with certain requirements. These requirements are the essential requisites for valid general meeting which are elaborated as follows:

- a. **A meeting must be properly convened:** It means the meeting must be called by competent authority as per the provisions of the Articles of the Company. The company's board of directors has the right to convene a general meeting. A single director has no power to convene

a meeting. The secretary of the company has no authority to call a general meeting unless the Board resolves and authorizes him to do so.

- b. **A meeting must be duly constituted properly:** A company meeting must be properly scheduled. Minimum number of members required to constitute a valid meeting and to transact business therein is called 'quorum'. No meeting can be valid without quorum. Any resolution passed at a meeting without quorum shall be invalid. Usually, Quorum is fixed by the Articles of Association.
- c. **A meeting must have proper person in Chair:** Every meeting of the company must be presided over by a chairman who regulates and supervises the proper conduct the business at a meeting. He decides all incidental questions arising in the course of the proceedings of the meeting. Chairman acts bonafide and in the best interest of the company as a whole. Articles usually provide the mode of appointment of the chairman of a meeting. If the articles do not provide otherwise, the members personally present at the meeting shall elect one of them to be the chairman thereof on a show of hands [Sec. 175 (2)]. Chairman of the board usually act as the chairman of the meetings of members and directors.
- d. **A meeting must be properly conducted and accurately recorded:** A company meeting is conducted for lawful purpose and legal provisions are followed for the conduct of the meeting. The quorum is ascertained before the beginning of the meeting. Voting must be done impartially at the meeting. Irregular voting is invalid. The decisions held at the meeting must be recorded properly in the form of minutes and resolutions.
- e. **Following are the five significant formalities essential for convening and constituting company meetings:**
  - Notice
  - Agenda
  - Quorum
  - Chairman
  - Proxy

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## 2.8 NOTICE OF THE MEETING

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As per Section 101 of Companies Act, 2013, the general meeting of a company can be convened by giving a notice of not less than 21 days, either in writing or through electronic mode. A notice of meeting is served upon members of the company, legal representatives of a deceased member, auditors and directors of the company. Notice contains the information about day, date, time and venue of the meeting. It also includes the agenda i.e. business to be transacted in the meeting. Such business is general business i.e., appointment of auditor, approval of director report, and declaration of rate of dividend. Special business includes, alteration in M/A, and A/A. Secretary by drafting notice of

meeting completes first formality regarding meeting. Notice is a kind of invitation given to concerned members. The company secretary should take all precautions so that there is no omission in serving notice to concerned members who are entitled to receive the same.

As far as board meeting is concerned, a reasonable notice must be issued. The idea behind issuing notice well in advance is to enable members to make arrangement for attending meeting conveniently. Notice of board meeting shall be issued in writing to all the board of directors. The person who is authorized to send notice must send the meeting notice.

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## **2.9 AGENDA OF THE MEETING**

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The word agenda has been derived from the Latin word which means to “drive on” or “to set in motion” what is known in English as an agenda is list of individual items which must be acted upon or processed. It is an ordered sequence of items to be discussed in formal meeting. In short, Agenda of meeting means points to be discussed in a meeting. An agenda lists the items of business to be taken up during a meeting or session. It is usually sent along with notice of the meeting. It should be brief and indicative of programs to be discussed and done at the meeting. Agenda serves as the foundation of the company meeting business. It gives a clear idea to concerned members about nature of business of company meetings. Secretary while drafting notice and agenda takes precaution that the points of agenda are arranged in logical order. The agenda ensures smooth conduct of meeting. Depending upon the nature and type of meeting, agenda varies. The business of meeting is conducted as per the items listed in agenda. Agenda facilitates the member’s preparation for the meeting. No important matter is skipped or omitted due to agenda.

The objective of an agenda is to:

1. Familiarise participants with the topics to be discussed and issues to be raised,
2. To show what prior knowledge would be expected from the participants,
3. To indicate what outcome the participants may expect from meeting.

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## **2.10 CHAIRMAN OF THE MEETING**

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### **2.10.1 Meaning**

The chairman enjoys special status in the meeting. If no chairman is present within 15 minutes of the meeting or unwilling to act as a chairman of the meeting, the directors present shall elect one amongst themselves to be a chairman of the meeting.

The person who has been elected to preside over the meeting and conduct the proceedings of the meeting in smooth manner is called chairman. He is

in charge of meeting and his presence is of utmost importance for the orderly functioning of meeting.

Normally Articles of Association provides for the appointment of Chairman and his rights and duties. In the absence of such provisions the members present in the meeting elect one of them to be the chairman.

### **2.10.2 Section 104. Chairman of meetings**

1. Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.
2. If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of this Act and the Chairman elected on a show of hands under sub-section (1) shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting.

### **2.10.3 Duties and functions of chairman**

1. The chairman has to see that the meeting is properly convened over which he is presiding. Chairperson should outline the purpose of the meeting and remind members why they are there.
2. He must ensure that the meeting is properly convened and constituted i.e. that proper notice has been given, that the required quorum is present, etc.
3. He must ensure that the provisions of the act and the articles in regard to the meeting and its procedures are observed.
4. He must ensure that business is taken in the order set out in agenda and no business which is not mentioned in the agenda is taken up unless agreed to by the members.
5. He must impartially regulate the proceedings of the meeting and maintain discipline at the meeting.
6. He may exercise his powers of adjournment of the meeting, should be in good faith feel that such a step is necessary. The chairman has the power to adjourn the meeting in case of indiscipline at the meeting. A chairman however does not have the power to stop or adjourn the meeting at his own will and pleasure. If he adjourns the meeting prematurely, the members present may decide to continue the meeting and elect another chairman and proceed with the business for which it was convened.
7. He must exercise his power to order a poll correctly and must order it to be taken when demanded properly.
8. He must exercise his casting vote bonafide in the interest of the company.

9. The chairman has power to give ruling on the interpretation of the rules and all the members are abided by his ruling.
10. He also has to see that all the resolutions passed in the meeting must be properly entered in Minutes book.
11. To decide the priority of speakers is also one of the important duties of chairman of the meeting.

#### **2.10.4 Rights and powers of chairman**

1. He must ensure that the meeting is properly convened and constituted.
2. He has power to decide the priority of members and he has to see that all the members get the equal and fair opportunity to speak in the meeting.
3. He has power to stop the meeting if he feels that the enough discussion has been done on the respective motion. Thus he has power to stop irrelevant discussion in the meeting.
4. He has right to adjourn the meeting when the quorum is not available.
5. To maintain the order and decorum in the meeting and to perform this duty he may exclude certain matters, remarks from the meeting that is defamatory or irrelevant. (Section 193)
6. He has right to stop any of the speaker who is exceeding over the time allotted to him.
7. He has right to exercise his casting vote in case of tie.

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### **2.11 QUORUM OF THE MEETING**

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Quorum is an essential pre-requisite for a valid meeting. The business of the meeting is not conducted if quorum is not available. The word quorum is derived from the Latin language which means 'the minimum number of persons who must be present at the meeting' as required under the law. Under the companies Act, 2013 the quorum for a General Meeting, a Board Meeting and an Extraordinary General Meeting is enumerated with its provisions:

Section 103 of the Act states the quorum required for a General Meeting. Under this Section, unless the Articles of Association of the company provide for a larger quorum, the minimum quorum must be:

#### **For public companies**

- 5 members to be present if as on the date of the meeting being held, the number of members in the company does not exceed one thousand.
- 15 members to be present if as on the date of the meeting there are more than one thousand members but less than five thousand members.

- 30 members to be present if as on the date of the meeting there are more than five thousand members.

### **For private companies:**

In case of private company regardless of number of members, two members must be present for the quorum to be met for a meeting.

### **Legal provisions regarding quorum**

1. Members present in proxies' are not counted for ascertaining quorum.
2. Preference shareholders and equity shareholders without voting rights are also excluded while counting quorum.
3. If within half an hour from the time scheduled for holding the meeting, the quorum is not present, the meeting shall be adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Board of directors may determine and notify.
4. If in the adjourned meeting also, quorum is not present within half an hour from the time scheduled for holding the meeting, members present shall be the quorum.
5. Quorum must be present throughout the meeting.

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## **2.12 PROXY– CONCEPT & STATUTORY PROVISIONS**

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### **2.12.1 Meaning**

The term “proxy” has been used to denote both the instrument and the person appointed through the instrument. The term is not defined in the Act.

**Secretarial Standard-2** defines the term as “Proxy means an instrument in writing signed by a Member, authorising another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also where the context so requires, the person so appointed by a Member”.

**Black’s Law Dictionary [9th Edition, Page 1346]** defines the term “proxy” as “One who is authorized to act as a substitute for another; in corporate law, a person who is authorized to vote another’s stock shares”.

### **2.12.2 Right of member to appoint a proxy**

1. Sub-section (1) of section 105 enables a member, who is entitled to attend and vote to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. However, a proxy so appointed cannot speak at a meeting though he may vote on poll.
3. A member may appoint one or more proxies to vote in respect of the different shares held by him or he may appoint one or more proxies in

the alternative, so that if the first named proxy fails to vote, the second one may do so, and so on.

4. Second proviso to sub-section (1) provides that the said sub-section does not apply to a company not having share capital unless the articles otherwise provide. In other words articles of a company not having share capital may entitle a member to appoint a proxy to attend, speak and vote on behalf of himself. Alternatively, the articles of such company may restrict the right of the member to appoint proxy.
5. Limitation on right of member of section 8 company Rule 19 (1) provides that a proxy shall be a member of the company in case of companies registered under section 8 of the Act.
6. Deposit of proxy instrument Sub-section (4) of section 105 read with SS-2 clause 6.6.1 provides that the proxies shall be deposited with the company either in person or through post. The proxies are to be deposited not later than 48 hours before the commencement of the meeting in relation to which they are deposited.
7. A proxy shall be accepted on a holiday if the last date by which it could be accepted is a holiday.
8. Any provision in the articles of a company which specifies or requires a longer period for deposit of proxy than 48 hours before a meeting of the company shall have effect as if a period of forty-eight hours had been specified in or required for such deposit. Hence, the provisions of the Act will override the provisions of the articles.
9. A member of a company not having a share capital shall not be entitled to appoint proxy unless articles provide so. Central Government may also specify companies whose members shall not be entitle to appoint a proxy.
10. A person appointed as proxy shall not act as proxy for more than fifty members or for more than prescribed number of shares.

**Form No. MGT-11**

**Proxy form**

*[Pursuant to section 105(6) of the Companies Act, 2013 and rule 19(3) of the Companies (Management and Administration) Rules, 2014]*

CIN: U74140MH2006PTC162836

Name of the company: LoyltyRewardz Management Private Limited

Registered office: A-703, TheQube M.V Road, Marol, Andheri-Kurla Road, Andheri (E), Mumbai-400059

Name of the member (s):

Registered address:

E-mail Id:

Folio No/ Client Id:

DP ID:

I/We, being the member (s) of ..... shares of the above named company, hereby appoint

1. Name: .....

Address:

E-mail Id:

Signature....., or failing him

2. Name: .....

Address:

E-mail Id:

Signature....., or failing him

3. Name: .....

Address:

E-mail Id:

Signature.....

as my/our proxy to attend and vote (on a poll) for me/us and on my/our behalf at the ..... Annual general meeting/ Extraordinary general meeting of the company, to be held on the ..... day of..... At..... a.m. / p.m. at.....(place) and at any adjournment thereof in respect of

such resolutions as are indicated below:

Resolution No.

1Adoption of Balance sheet, statement of Profit and Loss, Auditors Report and Directors Report for the year ended 31st March, 2015.



2 To ratify the appointment of M/s. S R B C & Co. LLP (FRN: 324982E),

Chartered Accountants (Firm Registration No. 101720W) as Statutory Auditors of the Company

3 To appoint Mr. Ajay Kaushal as the director of the company

4 To appoint Mr. Mr. Srinivasu Nagesvar Mallapragada as the director of the company.

Signed this..... day of..... 20....



Affix  
Revenue  
Stamp

Signature of shareholder

Signature of Proxy holder(s)

**Note: This form of proxy in order to be effective should be duly completed and deposited at the Registered Office of the Company, not less than 48 hours before the commencement of the Meeting.**

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## 2.13 MOTION

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### 2.13.1 Meaning

Motion is proposal, any subject or topic put forward for discussion, approval in the meeting. Any member at a meeting who introduces or moves a subject for discussion it is called a motion. With the permission of the chairman a motion is moved by an individual. He 'secures the floor', addresses the chairman and makes a short speech in support of the motion. It is a proposed resolution. Any person puts forward such a proposal is called 'mover' and the one who supports such a motion is called 'seconder'. After sufficient discussion, the motion is put to vote. If majority votes are in favour of the motion, it turns into resolution.

### 2.13.2 Rules Regarding Motion

1. Every motion should be in writing and signed by the proposer or mover.
2. It should be clear, precise and unambiguous.

3. A motion should be within the scope of properly convened notice of meeting.
4. The language of motion is normally is 'affirmative'.
5. Every member present in the meeting can speak only once on the motion but the proposer can have liberty to speak twice on his proposed motion.
6. The motion can be proposed or by seconded only by present members.
7. Once proposed, motion cannot be withdrawn without proper permission in the meeting.
8. A motion can be amended during the discussion in the meeting.

### 2.13.3 Types of motion

1. **Original motion:** Original motion is a motion which comes up for the discussion for the first time a fresh. It is a specific item listed in the agenda. It is proposed by mover and supported by seconder. It initiates the discussion in the meeting.
2. **Formal motion:** Such kind of motion may not be subject matter of original motion, so no previous notice for such motion is required. Such motions may be proposed to postpone, end or prevent the discussion on a specific topic presented in the meeting. Amendments cannot be made to such formal motions. Following are the types of formal motions:
  - a) **Closure:** Such types of motions are moved in the meeting to stop discussion when sufficient time has been already given for the discussion. For moving such motion, seconding is required. This is to save valuable time and being wasted on account of irrelevant discussion and to conclude on the topic.
  - b) **Point of Order:** It is a motion meant for expressing objection or complaint by a member against the speech made by another member. A member cannot raise a 'point of order' because he disagrees with the speaker or chairman ordinarily. But he can raise it on any one of the following justified reasons:
    - i. Incorrect procedure of meeting is followed For example, the chairman allows an item not mentioned in the agenda, to be raised by a member.
    - ii. Irrelevant things are said by any member unnecessarily and thereby wasting time.
    - iii. If a member uses some unparliamentarily language, i.e. words which are not allowed to be used inside Parliament
    - iv. If any rule regarding meetings as given in the bye-laws of the association is transgressed or violated.
    - v. When a speaker makes some remarks against any member which are insulting.

- vi. When a member draws the attention of the chairman that quorum has fallen due to early leaving of some member or members.

Such a formal motion does not require seconding. The chairman may approve or disapprove the point of order and accordingly give his ruling. He either says 'Yes, it is out of order' or 'No, it is in order'.

Sometimes unnecessarily 'points of order' are raised by a member or a group of members to interrupt the debate and to kill the time so that the proposal under discussion is not put to vote as he or they fears or fear that the resolution, which is sure to be passed will go against his or their interest.

Sometimes a chairman, being biased, consistently disapproves justified points of order. In that case members in a large majority may raise a 'No confidence' move against the chairman.

3. **Substantive motion:** Substantive motion known as main motion which calls for an action or expression of an opinion. One can try to change the wording of this kind of motion. It is a motion changed due to an amendment. Thus original motion is changed due to amendments, is called as substantive motion. It is a modified version for further discussion in the meeting.
4. **Previous question:** The purpose of this motion to stop ongoing discussion and set aside original motion. This is a type of closure motion which wants to stop discussion and stop taking of votes on a proposal under discussion. This is a technique by which an undesirable or controversial proposal is shelved. Any member may move a motion for the previous question stating that **"this question be not now put"**.
5. **Proceed to next business:** The main purpose of this motion is to stop/prevent further discussion and voting on the original motion. When members feel that sufficient information is not before them on some proposal under discussion they wait to stop taking of votes on that issue. Any member may propose to 'proceed to the next business and another member seconds it. This closure proposal is put to vote. If passed, no vote is taken on that proposal. If lost, then vote is taken on that proposal for decision.
6. **Adjournment:** Adjournment motion is for adjourning debate/controversy on any motion in the meeting. Any member can move such motion if he is of opinion that some more information is required to have proper discussion on specific matter. If such motion is accepted, the debate is postponed to an agreed date and if the motion is rejected or lost the debate begins once again.
7. **Refer back:** This is motion moved on Board of directors meeting. Any member can move this 'the matter be referred back'. Another member shall second it. Now this proposal is put to vote. If passed, then the matter is referred back. If lost, then discussion is resumed and vote is taken on the matter. For example; if the report presented in the board

meeting, and if directors feel that few need to be studied again then such director can move such refer back motion.

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## 2.14 RESOLUTION

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### 2.14.1 Meaning

Every resolution is a motion in the past in its earlier stage. Once the motion proposed in the meeting is accepted by the majority of members it becomes the final decision, it is known as resolution. The resolutions must be clearly and correctly worded.

### 2.14.2 Types of Resolution

#### 1. Ordinary resolution (section 114)

- An ordinary resolution is a resolution passed by the shareholders of a company by a simple or bare majority (for example more than 50% of the vote) either at a convened meeting of shareholders or by circulating a resolution for signature.
- An ordinary resolution is the most common method by which a corporate entity conducts its business or the board of directors seeks shareholder approval of its actions. It means the vote cast in favour of resolution is more than votes against the resolution. Normally show of hands or poll methods of voting are used/followed in case of ordinary resolution.
- These resolutions may not be filed with ROC but they are entered in Minutes book properly.
- Following are the cases in which ordinary resolution is suffice:
  - i. Declaring the rate of dividend
  - ii. Approval of director's report, auditor's report
  - iii. Election of directors
  - iv. Voluntary winding up of the company

#### 2. Special resolution:

- A special resolution is approved by substantial majority of vote cast i.e. 75% or more. It requires absolute majority.
- the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.
- There should be clear cut intention to treat it as a special resolution expressed in notice of general meeting. There should be 21 days' notice is necessary for passing of such a resolution.

- The concerned members must be provided with the text of resolution 21 days in advance before passing such resolution.
- As per section 117, the copy of special resolution must be registered with ROC within a period of 30 days from the day of its passing.
- In following case the special resolutions are passed:
  - i. Any alterations in M/A or A/A
  - ii. Voluntary winding up of the company
  - iii. Reduction of share capital of the company
  - iv. Creation of secret reserves

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## **2.15 MINUTES CONCEPT, TYPES AND METHODS**

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**2.15.1 Meaning:** The term ‘minutes’ means a brief and accurate written record of business concluded at a company meeting. Minutes of meeting are an official record of the proceedings of a meeting. Minutes help in understanding the deliberations and decisions taken at the Meeting. There is no restricted format or language for recording Minutes of meeting.

Minutes are precise and drafted in summary form. Minutes are different from notes taken during the meeting. Minutes are written after the meeting whereas notes are taken down during the meeting. Minutes cannot be challenged if duly approved. The main objective of writing minutes of meeting is to preserve the written record of business transacted at the meeting. It helps to record and preserve the record of decisions taken and resolution passed. Properly written and duly approved minutes serve as a legal document. Writing minutes is mandatory. Minutes may be preserved in physical or electronic form.

According to section 118 of the Companies Act, 2013, every company is required to write and maintain minutes of all meetings within 30 days of the conclusion of the meeting.

### **2.15.2. Minutes of Board Meeting and Provisions as per Act**

1. Minutes shall be recorded in books maintained for that purpose.
2. A Distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.
3. Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.
4. A company may maintain its Minutes in physical or in electronic form with Timestamp. Every Company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

5. The pages of the Minutes Books shall be consecutively numbered. This shall be followed irrespective of a break in the book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp. In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.
6. Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.
7. Minutes of the Board Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company. There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.
8. Minutes of the Board Meeting shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.

### **2.15.3 Contents of Minutes**

#### **1. General Contents**

- a) Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.
- b) Minutes shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees, if any, including Invitees for specific items.
- c) Minutes shall contain a record of all appointments made at the Meeting.

#### **2. Specific Contents**

Minutes shall inter-alia contain:

- a) Record of election, if any, of the Chairman of the Meeting
- b) Record of presence of Quorum.
- c) The names of Directors who sought and were granted leave of absence.
- d) The mode of attendance of every Director whether physically or through Electronic Mode.
- e) In case of a Director participating through Electronic Mode, his particulars, the location from where and the Agenda items in which he participated.

- f) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.
- g) Noting of the Minutes of the preceding Meeting.
- h) Noting the Minutes of the Meetings of the Committees
- i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.
- j) The fact that an Interested Director was not present during the discussion and did not vote.
- k) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.
- l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.
- m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.
- n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice and the transacting of any item other than those included in the Agenda.
- o) The time of commencement and conclusion of the Meetings.

#### 2.15.4 Methods of writing minutes

1. **Minutes by Resolution:** In the first type of minute writing only decisions taken or approved are noted. This is called as summary method of writing minutes. Only formal and final decisions and resolutions are recorded. Such minutes are brief but easy to understand. Normally such minutes begin with the word “**Resolved that...**” after which the exact text of the resolution comes.
2. **Minutes by Narration:** In this type minutes are written in descriptive form. The procedure wise details are mentioned along with final decisions and resolutions. This method gives full information about the business of the meeting to the reader as it provides full statement of facts, discussions during the meeting, suggestions and methods of voting used also the votes for and against and how final decision arrived at. This kind of minute writing is popular and preferred.

A company secretary can select any of the above method of minute writing or the combination of these two methods will be good depending upon nature and proceeding of meeting.

**2.15.5 Recording of Minutes**

1. Minutes shall contain a fair and correct summary of the proceedings of the Meeting. The Company Secretary shall record the proceedings of the Meetings.
2. Where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.
3. The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.
4. The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.
5. Minutes shall be written in clear, concise and plain language.
6. Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.
7. Minutes need not be an exact transcript of the proceedings at the Meeting. In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.
8. Any document, report or notes placed before the Board and referred to in the Minutes shall be identified by initialling of such document, report or notes by the Company Secretary or the Chairman.

**2.15.6 Finalisation of Minutes**

Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee for their comments.

**2.15.7 Entry in the Minutes Book**

1. Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.
2. In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.
3. The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary. Where there is no Company Secretary, it shall be entered by any other person duly authorised by the Board or by the Chairman.



4. Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting in which such Minutes are sought to be altered.

### **2.15.8 Signing and Dating of Minutes**

1. Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.
2. The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes

### **2.15.9 Inspection and Extracts of Minutes**

1. The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.
2. Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.

### **2.15.10 Preservation of Minutes and other Records**

1. Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.
2. Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.
3. Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board and permission of the Central Government, where applicable.
4. Minutes Books shall be kept in the custody of the Company Secretary. Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.

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## **2.16 VOTING**

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### **2.16.1 Meaning**

Voting is a method of expressing opinion in meeting. It's a very common method of reaching a decision. The right to vote in company meeting is

restricted to certain people such as shareholders, directors etc. Voting is necessary in general meetings as well as in board meeting to arrive at certain decisions. Voting is the expression of opinion in favour or against any proposal. The word “vote” is derived from the Latin word “Votum” which means vow, wish.

### **2.16.2 Methods of voting**

The articles of association gives the details of methods of voting for general meeting in accordance with Companies Act, 2013.

#### **1. By show of hands**

This is a simple and popular method of voting in company meeting. The chairman asks the members present to express their opinion by raising their hands unless the poll is demanded. Here the rule followed is “one man, one vote”. The votes for and against counted and Majority wins. This result is final if no poll is demanded. If there is tie, chairman can exercise his casting vote power if provided in the Articles.

#### **2. By Poll**

This is another alternative method of voting to show of hands. When members present are not satisfied with the voting under show of hands can demand poll. Every member is provided with voting paper to indicate his /her vote “for” or “against” the proposal. This method is superior to show of hands and treated as final. Here, the member can vote as per his share qualification. The rule followed is “one share, one vote”. It is a capitalistic method of voting. This method ensures more secrecy in voting.

#### **3. By Voice/ Acclamation**

This is one of the simple and common methods of voting by clapping hands or applause. Under this method, the chairman asks members present in the meeting whether they are in favour or against the resolution by saying ‘yes’ or ‘no’. If the volume of voice in favour of resolution is more, the resolution is accepted and vice versa. When meeting is likely to be unanimous such type of voting method is applied. Though it is not reliable and scientific method. If any member demands poll immediately the results of voice/ acclamation becomes invalid.

#### **4. By division**

In this method of voting, the chairman asks the members to divide themselves into two groups as per for and against the resolution. One group in one corner of the room and another group at the other corner of the room. The votes are counted with the help of secretary. If the decisions of show of hands are challenged then the division method of voting is adopted.

## **5. By Ballot**

Ballot method is also a secret method of voting normally used in political elections. In company meeting, it is a very positive step since year 2000. Ballot means voting through post or through electronic means. It provides ample of convenience to the shareholders who are unable to attend annual general meeting can vote through ballot. Every member is provided with ballot paper to record their vote after which it is deposited in ballot box.

## **6. Electronic voting**

As per Section 108, Electronic voting means voting through electronic means. Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. This is the most advanced method of voting in general meetings of the company. Voting through electronic means enables the voter to record their vote using computer or mobile.

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## **2.17 SUMMARY**

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Company meetings are very important for discussion and taking rational decisions in democratic manner. The meeting can be of shareholders, directors or class meetings of preference shareholders as well as creditors. Company secretary occupies a pivotal position in company administration. He is closely connected with conducting company meetings. He needs to perform various functions before, during and after the company meetings. Every company meeting to be valid meeting must comply with certain requirements. Company secretary needs to implement all the provisions of the Act for conducting AGMs, EGMs, Class meetings and Board Meetings. Secretary also ensures that every company meeting must comply with certain requirements; such as notice, agenda, quorum, chairman and minutes.

Proxy is an instrument in writing signed by a Member, authorising another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also where the context so requires, the person so appointed by a Member. Motion is proposal, any subject or topic put forward for discussion, approval in the meeting. Any member at a meeting who introduces or moves a subject for discussion it is called a motion. Every resolution is a motion in the past in its earlier stage. Once the motion proposed in the meeting is accepted by the majority of members it becomes the final decision, it is known as resolution. Minutes of meeting are an official record of the proceedings of a meeting. Minutes help in understanding the deliberations and decisions taken at the Meeting. Voting is a method of expressing opinion in meeting. It's a very common method of reaching a decision. The right to vote in company meeting is restricted to certain people such as shareholders, creditors and directors. There are various methods of voting such as show of hands, voice/acclamation, ballot, poll, division and electronic voting. Thus, company secretary takes all the precautions and conduct the company meetings according to provisions of the Companies Act, 2013.

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## 2.18 EXERCISE

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- 1) Explain the duties of company secretary before, during and after the Annual General meeting?
- 2) Explain the duties of company secretary before, during and after the board meeting?
- 3) What are the different kinds of company meeting?
- 4) Write short notes on
  - a. Types of motion
  - b. Proxy
  - c. Quorum
  - d. Chairman
  - e. Annual general meeting
  - f. Notice of board meeting
  - g. Agenda
- 5) Discuss the kinds of resolution.
- 6) What are the duties and powers of the chairman?
- 7) Explain the concept minutes and explain its statutory provisions.
- 8) State the quorum of board meeting and general meeting.



## **DEMATERIALISATION AND ONLINE TRADING**

### **Unit structure:**

- 3.0 Objectives
- 3.1 Introduction to Dematerialization
- 3.2 Importance of Dematerialization
- 3.3 Process / Procedure of Dematerialization
- 3.4 Participants in Dematerialization
- 3.5 Secretarial Duties in regard to Dematerialisation
- 3.6 Online Trading - Concepts
- 3.7 Bombay Stock Exchange Online Trading (BOLT)
- 3.8 Listing of Securities
- 3.9 Scripts
- 3.10 Summary
- 3.11 Exercise

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### **3.0 OBJECTIVES**

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After studying the unit the students will be able to:

- Understand the meaning and importance of Dematerialization
- Know the Secretarial duties, Procedures, Participants in the Dematerialization process
- Elaborate the concept online trading and advantages and disadvantages of online trading.
- Explain the role of Bombay stock exchange in online trading.
- Explain the Procedure, Advantages, Secretarial duties of Listing of Securities.

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### **3.1 INTRODUCTION TO DEMATERIALIZATION**

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#### **3.1.1 Meaning of Dematerialization**

With the introduction of depository system in 1996 with the passing of Depository Act to bring more transparency and to avoid delays in share transfer procedure, dematerialization came in to existence. This enables to hold share in electronic form which prevents inherent weaknesses of physical share transfer.

Demat / dematerialization is the process of converting physical shares into electronic format. An investor who wants to dematerialize his shares needs to open a demat account with Depository Participant. Investor surrenders his physical shares and gets them converted into electronic shares in his demat account.

According to the Depositories Act, 1996, an investor has the option to hold securities either in physical or electronic form.

### **3.1.2 Re-materialisation of shares:**

The process of converting electronic holdings of securities (shares, stocks, mutual fund units, bonds, debentures, etc.) into physical form (certificates) is known as re-materialisation.

A depository is responsible for holding the securities of a shareholder in electronic form. These securities could be in the form of bonds, government securities, and mutual fund units, which are held by a registered Depository Participant (DP).

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## **3.2 IMPORTANCE OF DEMATERIALIZATION**

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### **3.2.1 Importance**

1. Paperwork Handling related to shares in the physical format often led to errors and unforeseen mishaps in the past. So, it is safe to have securities in electronic form. It simply eliminates the risk of theft or loss or any act of forgery.
2. Tracking records and share documents with respect to transfer and upkeep transactions was difficult
3. The authorities in charge of updating these documents could not keep up with the increasing volume of share papers, which, if left unchecked, could cripple the financial base of the Indian share market and associated businesses.
4. Introduction of scripless/paperless trading system was required.
5. Possibility of Best use of computer technology in Indian stock exchanges.
6. Offering convenience of time saving and energy saving to investors.
7. Providing technically sound market for encouragement to foreign investors.
8. Introduction of economical, transparent, safe and quick method of dealing in electronic form of securities.

### **3.2.2 Advantages/ merits/ benefits/ of dematerialization**

#### **a. To investors/demat account holders**

1. Easy transfer of shares as the cost of transfer is less due to exemption of stamp duty
2. In case of sale of share transaction faster payments is possible.

3. Risk of fraud, loss of share certificate has been eliminated due to electronic versions.
4. Changing of portfolio of investments have become easy and simple.
5. Dematerialized shares reduced paperwork.
6. Transfer and transmission of shares have become more safer and quicker
7. High liquidity due to faster settlement of transactions.
8. Bankers offers easy loans on demat shares.
9. Demat shares have becoming popular with fast pace among the younger generation as they are techno savvy. Thus, saves lot of time.
10. In one demat account, all kinds of securities can be kept by the investors.

**b. To issuer company**

1. As depository maintains proper record of demat account holders, this all recorded information is provided to Issuer Company which in turn facilitate distribution of dividend, interest and bonus shares easily.
2. Easy and quick transfer of shares
3. Reduced administrative cost.
4. Immediate settlement of transactions
5. Various kinds of paper work such as allotment, transfer and bonus shares reduced to a greater extent.

**c. To banks**

1. Huge turnover due to maximum payments are made through banks.
2. Increased business as more and more every investor needs to open a bank account for transacting business in shares.
3. Profitability of banks increases.

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### **3.3 PROCESS/PROCEDURE OF DEMATERIALIZATION**

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**Following is the process of Dematerialisation**

1. The client (registered owner) shall submit a request to the DP in the Dematerialisation Request Form for dematerialisation, along with the certificates of securities to be dematerialised. Before submission, the client has to deface the certificates by writing "SURRENDERED FOR DEMATERIALISATION".
2. The DP will verify that the form is duly filled in and the number of certificates, number of securities and the security type (equity, debenture etc.) are as given in the DRF. If the form and security count

is in order, the DP will issue an acknowledgement slip duly signed and stamped, to the client.

3. In case the securities are not in order they are returned to the client and acknowledgment is obtained. The DP will reject the request and return the DRF and certificates in case:

- 
- I. A single DRF is used to dematerialise securities of more than one company.
  - II. The certificates are mutilated, or they are defaced in such a way that the material information is not readable. It may advise the client to send the certificates to the Issuer/ R&T agent and get new securities issued in lieu thereof.
  - III. Part of the certificates pertaining to a single DRF is partly paid-up; the DP will reject the request and return the DRF along with the certificates. The DP may advise the client to send separate requests for the fully paid-up and partly paid-up securities.
  - IV. Part of the certificates pertaining to a single DRF is locked-in, the DP will reject the request and return the DRF along with the certificates to the client. The DP may advise the client to send a separate request for the locked-in certificates. Also, certificates locked-in for different reasons should not be submitted together with a single DRF
4. In case the securities are in order, the details of the request as mentioned in the form are entered in the DPM (software provided by NSDL to the DP) and a **Dematerialisation Request Number (DRN)** will be generated by the system.
- I. The DRN so generated is entered in the space provided for the purpose in the dematerialisation request form.
  - II. A person other than the person who entered the data is expected to verify details recorded for the DRN. The request is then released by the DP which is forwarded electronically to DM (DM - Depository Module, NSDL's software system) by DPM.
  - III. The DM forwards the request to the Issuer/ R&T agent electronically.
  - IV. The DP will fill the relevant portion viz., the authorisation portion of the demat request form.
  - V. The DP will punch the certificates on the company name so that it does not destroy any material information on the certificate.
  - VI. The DP will then despatch the certificates along with the request form and a covering letter to the Issuer/ R&T agent.



- VII. The Issuer/ R&T agent confirms acceptance of the request for dematerialisation in his system DPM (SHR) and the same will be forwarded to the DM, if the request is found in order.
- VIII. The DM will electronically authorise the creation of appropriate credit balances in the client's account.
- IX. The DPM will credit the client's account automatically.
- X. The DP must inform the client of the changes in the client's account following the confirmation of the request.

The issuer/ R&T may **reject dematerialisation** request in some cases. The issuer or its R&T Agent will send an objection memo to the DP, with or without DRF and security certificates depending upon the reason for rejection. The DP/Investor has to remove reasons for objection within 15 days of receiving the objection memo. If the DP fails to remove the objections within 15 days, the issuer or its R&T Agent may reject the request and return DRF and accompanying certificates to the DP. The DP, if the client so requires, may generate a new dematerialisation request and send the securities again to the issuer or it's R&T Agent. No fresh request can be generated for the same securities until the issuer or its R&T Agent has rejected the earlier request and informed NSDL and the DP about it.

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### 3.4 PARTICIPANTS IN DEMATERIALIZATION

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#### Following are the main participants

1. **Depository:** Depository is an institution which facilitates the smooth transfer of ownership of securities from physical form to electronic form. Depository acts as a central system where in all the securities are held in electronic form. It keeps record of all the transactions i.e. purchase and sale of securities in online form. Currently, there are two depositories registered with SEBI and are licensed to operate in India: NSDL (National Securities Depository Ltd.) and CDSL (Central Depository Services India Ltd.). NSDL is the very first depository established in 1996 to look after the dematerialization process. Whereas CDSL was established after NSDL in the year 1999.
2. **Depository participants (DPs):** A DP is an agent of the depository providing depository services to traders and investors. Depository participant is an agent or representative of depository. It acts as a connecting link between investor and depository. An investor cannot have direct access to depository but he can trade his securities through his depository participant. Normally every DP has an Identity number for identification. Every investor needs to open a demat account with DP. As per SEBI guidelines, banks, financial institutions and stock brokers are allowed to operate as depository participants. (DP).
3. **Issuer Company:** It is a company which brings new issue of securities. Such a company need to register itself with depository. India, most of the public limited companies are issuer companies.

- 4. Beneficial owner /Investor:** The one who opens demat account is an investor and ultimate beneficiary. He is the one whose name is recorded with depository and through his demat account he get bonus shares and dividend.

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### 3.5 SECRETARIAL DUTIES IN REGARD TO DEMATERIALISATION

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The secretary of Issuer Company has to perform the following duties in respect of issuing securities in electronic form.

- 1) The Secretary has to ensure that the draft prospectus has been filled with the SEBI through an eligible Merchant Banker, at least 21 days prior to the filling of prospectus with the Registrar of Companies. SEBI suggests changes in the draft prospectus. The issuer company (it is a company which makes an issue of securities) carries out such changes in it before filing prospectus with the Registrar of Companies.
- 2) The Secretary has to ensure whether the company's scrip (rule) come under compulsory dematerialized trading or not.
- 3) If the dematerialized trading is compulsory, the secretary has to see that the company enters into an agreement with the depository.
- 4) The Secretary has to see that the company made an application for listing of securities on the stock exchanges.
- 5) The Secretary has to ensure that the company gives an option to the subscriber or the shareholder or the investor to receive security certificate in dematerialized form with a depository.
- 6) The Secretary has to intimate details of allotment to the depository immediately.

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### 3.6 ONLINE TRADING – CONCEPT

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#### 3.6.1 Meaning

We live in the electronic era where almost everything is done online and financial markets are not far behind as online trading has replaced offline trading. Online trading has ensured that you can buy or sell, order from anywhere in the world. It refers to act of an investor or trader buying and selling stock, futures, options, bonds or any other financial security through the facility of internet.

Online trading system enables to register with online trading portal. This service is available on internet for dealing in shares and other securities. BSE introduced BOLT online trading system whereas NSE has NEAT online trading system. Online trading is gaining popularity due to its multiple benefits. Transactions can be seen online it is less time consuming and minimized the errors and frauds. The speed of transactions has been increased as compared to offline transactions

### 3.6.2 Advantages of Online Trading

Following are the advantages and disadvantages of online trading –

1. **Convenience and Flexibility:** The biggest advantage of online trading is the convenience factor because it offers the convenience of dealing through mobile as nowadays all brokers are giving online trading application. Besides it gives a lot of flexibility as you can put orders from anywhere whether you are.
2. **Inexpensive/economical:** One of the clearest advantages of online trading is the reduction in transaction costs and high fees associated with traditional brick-and-mortar brokerage firms.
3. **Access to online tools:** Many of today's online trading companies offer customers an impressive suite of tools providing valuable information and helping optimize trades.
4. **Opportunity to monitor investments in real time:** Many online trading sites offer stock quotes and trade information that make it easy for people to see how their investments are doing in real time.
5. **Other Advantages:**
  - Easier and convenient way to own shares with Immediate transfer
  - Equity and debt both the kind of instruments can be easily held in demat account.
  - reduced expenditure on printing and distribution and less transaction cost
  - Depository participant acting as an intermediary between depository and investor rendering various facilities thus there is no need for an investor not to contact company immediately.
  - safe and secured than physical shares as no possibility of fraud and forgery
  - Even one share can be sold/ dealt with and results in automatic credit demat account.

### 3.6.3 Disadvantages of Online Trading

1. **Risk of excessive trading:** The investor may enjoy the flow of the online transaction and for time being he may forget that he is using his real money.
2. **No personal relationships with brokers:** Professional share broker and online investor /trader don't share mentor mentee relationship and can take a decision on his own for online trading.
3. **Error and Connectivity Problems:** At times there is poor internet connectivity which may hinder the online share trading experience. Investor is at the mercy of internet connection. If the internet

connection is too slow or is interrupted, he/she may suffer loss out on a profitable or lucrative deal.

4. Users who are not familiar with the basics of brokerage software can make mistakes which can prove to be a costly affair.
5. Experts often stress the importance of research, particularly for new traders. You need to learn as much as you can about the companies in which you invest.
6. **kind of addiction:** Online traders can experience a certain high when trading that is similar to what people experience when gambling, according to a recent study on excessive trading published in the journal Addictive Behaviours.

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### 3.7 BOMBAY STOCK EXCHANGE ONLINE TRADING (BOLT)

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#### 3.7.1 Introduction

BSE was established in 1875, as "The Native Share & Stock Brokers' Association" one of the most updated, fastest and progressive stock exchanges in the world. BSE is the first stock exchange in the country which obtained permanent recognition (in 1956) from the Government of India under the Securities Contracts (Regulation) Act 1956. BSE's pivotal and pre-eminent role in the development of the Indian capital market is widely recognized. It migrated from the open outcry system to an online screen-based order driven trading system in 1995 which is totally advanced and sophisticated. BSE also has a wide range of services to empower investors and facilitate smooth transactions.

Today, BSE is the world's number 1 exchange in terms of the number of listed companies and the world's 5th in transaction numbers. BSE provides an efficient and transparent market for trading in equity, debt instruments and derivatives. It has a nation-wide reach with a presence in more than 359 cities and towns of India. BSE has always been at par with the international standards. The systems and processes are designed to safeguard market integrity and enhance transparency in operations. BSE is the first exchange in India and the second in the world to obtain an ISO 9001:2000 certification. It is also the first exchange in the country and second in the world to receive Information Security Management System Standard BS 7799-2-2002 certification for its BSE On-line Trading System (BOLT). BOLT is currently operating in 25,000 Trader Workstations located across over 359 cities in India.

**BOLT** facilitates online screen-based transactions in securities. it established in 1995 its online trading. BSE has largest number of listed companies in the world almost 4937 companies with 7700 instruments traded. The in February, 2001 BSE introduced the world's first centralized exchange-based internet trading system i.e. BSEWEBX.com. This enables the investors to trade online on BSE platform.

### 3.7.2 Advantages of BOLT

- The system shows scrip, market related information required by investors on continuous basis.
- It has capacity to perform 2 million transactions per day.
- System works from Monday to Friday 9.30 am to 3.30 am
- Facility of trading anywhere, anytime at any time.
- BSE internet trading system: [www.bsewebx.com](http://www.bsewebx.com)

### 3.7.3 BOSS

BSE is one of the few stock exchanges in the world, which has obtained the ISO certification for its surveillance function. Surveillance: **BSE's On-Line Surveillance System (BOSS)** monitors on a real-time basis the price movements, volume positions and members' positions and real-time measurement of default risk, market reconstruction and generation of cross market alerts.

The main objective of the surveillance function is to promote market integrity in two ways, By monitoring price and volume movements (volatility) as well as by detecting potential market abuses (fictitious/ artificial transactions, circular trading, false or misleading impressions, insider trading, etc) at an ascent stage, with a view to minimizing the ability of the market participants to influence the price of any Security in the absence of any meaningful information by taking timely actions to manage default risk.

- The surveillance activities at BSE are allocated to three Cells:
  1. **Price monitoring:** is mainly related to the price movement/ abnormal fluctuation in prices or volumes of any Security
  2. **Investigations:** conducting snap investigations / examinations / detailed investigations in Securities where manipulation /aberration is suspected.
  3. **Position Monitoring:** relates mainly to abnormal positions of Members in order to manage the default risk BSE has launched a beta version of its online member (broker) surveillance system e-Boss. Brokers would be able to monitor fraudulent trade practices such as circular trading, pump and dump, wash sales, front running, order book spoofing and the like. Usual alerts on orders trades, scrip-wise gainers and losers and the like would also be available.

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## 3.8 LISTING OF SECURITIES

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### 3.8.1 Meaning

Listing of securities is one of the important functions of stock exchange which allows the company to include its securities in the official trade list of the exchange. Listing means the admitting the securities of a company to trading on a stock exchange. Listing is not compulsory under the

Companies Act. It becomes necessary when a public limited company desires to issue shares or debentures to the public. When securities are listed in a stock exchange, the company has to comply with the requirements of the exchange. Listing facilitates the official buying and selling of listed securities. Listed company should follow the rules and regulations of the concerned stock exchange.

Section 21 of the securities contract regulation act, 1956, provides that the central government can make it mandatory for public limited company to get its shares /securities listed on the recognised stock exchange. This shows that government has power to make listing compulsory in case of specific company's securities though it's not compulsory.

Renowned companies' securities such as L & T, Godrej, Tata Group, Reliance etc. have been listed on various Indian stock exchanges such as NSE and BSE.

### **3.8.2 Objectives of Listing**

The major objectives of listing are:

- 1) To provide ready marketability and liquidity of a company's shares and securities.
- 2) To raise the Goodwill of the company which has been listed.
- 3) To provide free negotiability to stocks.
- 4) To protect interest of shareholders and investors.
- 5) To provide an effective control and supervision mechanism for of trading in securities.
- 6) To offer convenience to the investors regarding buying and selling of securities.

### **3.8.3 Listing requirements**

A company which desires to list its shares in a stock exchange has to comply with the following requirements:

- 1) Permission for listing should have been provided for in the Memorandum of Association and Articles of Association.
- 2) The company should have issued for public subscription at least the minimum prescribed percentage of its share capital (49 percent).
- 3) The prospectus should contain necessary information with regard to the opening of subscription list, receipt of share application etc.
- 4) Allotment of shares should be done in a fair and reasonable manner. In case of over subscription, the basis of allotment should be decided by the company in consultation with the recognized stock exchange where the shares are proposed to be listed.

- 5) The company must enter into a listing agreement with the stock exchange. The listing agreement contains the terms and conditions of listing. It also contains the disclosures that have to be made by the company on a continuous basis.

### **3.8.4 Minimum Public Offer**

A company which desires to list its securities in a stock exchange should offer at least sixty percent of its issued capital for public subscription. Out of this sixty percent, a maximum of eleven percent in the aggregate may be reserved for the Central government, State government, their investment agencies and public financial institutions.

The public offer should be made through a prospectus and through newspaper advertisements. The promoters might choose to take up the remaining forty percent for them, or allot a part of it to their associates.

### **3.8.5 Fair allotment**

Allotment of shares should be made in a fair and transparent manner. In case of over subscription, allotment should be made in an equitable manner in consultation with the stock exchange where the shares are proposed to be listed.

In case, the company proposes to list its shares in more than one exchange, the basis of allotment should be decided in consultation with the stock exchange which is located in the place in which the company's registered office is located.

### **3.8.6 Listing Procedure**

The following are the steps to be followed in listing of a company's securities in a stock exchange:

1. The promoters should first decide on the stock exchange or exchanges where they want the shares to be listed.
2. They should contact the authorities to the respective stock exchange/ exchanges where they propose to list.
3. They should discuss with the stock exchange authorities the requirements and eligibility for listing.
4. The proposed Memorandum of Association, Articles of Association and Prospectus should be submitted for necessary examination to the stock exchange authorities
5. The company then will finalize the Memorandum, Articles and Prospectus
6. Securities are issued and allotted.
7. The company enters into a listing agreement by paying the prescribed fees and submitting the necessary documents and particulars.
8. Shares are then are available for trading.

#### A. Advantages to listed company

- 1) Listed securities are preferred by the investors as they have better liquidity.
- 2) Listing provides wide publicity to the companies since their name is mentioned in stock market reports, analysis in newspapers, magazines, TV news channels. This increases the market for the securities
- 3) Listing provides a company better visibility and improves its image and reputation.
- 4) It makes future financing easier and cheaper in case of expansion or diversification of the business.
- 5) Growth and stability in the market through broadening and diversification of its shareholding.
- 6) Listing attracts interest of institutional investors of the country as well as foreign institutional investors.
- 7) Listing enables a company to know its market value and this information is useful in case of mergers and acquisitions, to arrive at the purchase consideration, exchange ratios etc.
- 8) By complying with the listing requirements, the operations of the company become more transparent and investor friendly. It further enhances the reputation of the company.

#### B. Advantages to investors

- 1) It provides liquidity to investments. Security holders can convert their securities into cash by selling them as and when they require.
- 2) Shares are traded in an open auction market where buyers and sellers meet. It enables an investor to get the best possible price for his securities.
- 3) Ease of entering into either buy or sell transactions.
- 4) Transactions are conducted in an open and transparent manner subject to a well-defined code of conduct. Therefore, investors are assured of fair dealings.
- 5) Listing safeguards investors interests. It is because listed companies have to provide clear and timely information to the stock exchanges regarding dividends, bonus shares, new issues of capital, plans for mergers, acquisitions, expansion or diversification of business. This enables investors to take informed decisions.



- 6) Listed securities enable investors to apply for loans by providing them as collateral security.
- 7) Investors are able to know the price changes through the price quotations provided by the stock exchanges in case of listed securities.
- 8) Listing of shares in stock exchanges provides investors facilities for transfer, registration of rights, fair and equitable allotment.
- 9) Shareholders are provided due notice with regard to book closure dates, and they can take investment decisions accordingly.

### **C. Advantages to the stock exchanges/Economy**

- 1) The Information about company is readily available.
- 2) Stock exchanges are found activated as larger number of securities of various companies is listed.
- 3) Safe and secured dealings as stock exchanges are governed by SEBI.
- 4) Enhances the capital formation pace in the country.
- 5) Attracts foreign individual and financial institutional investors due to listing.

#### **3.8.8 Disadvantages of listing**

Though listing has many merits but it has other side also which throws light on its demerits. It doesn't provide any security to the investors regarding the company whether it is financially sound. It is a lengthy process and it requires the company to supply all the relevant information to the stock exchanges from time to time. Listing is not that fruitful for checking the malpractices and artificial price hike of securities.

#### **The following are the limitations of listing:**

1. **Price Rise:** Listing might enable speculators to drive up or drive down prices at their will. The violent fluctuations in share prices affect genuine investors.
2. In case of excessive speculation, share prices might not reflect its fundamentals. The stock markets may fail to be the true economic barometer of an economy's performance.
3. In case of bear markets share prices might be hammered down, and the standing of a company might be lowered in the eyes of the investors, shareholders, bankers, creditors, employees etc.
4. Listing of securities may induce the management and the top level employees to indulge in 'insider trading' by getting access to important information. Such actions adversely affect the common security holders.

5. The management might enter into an agreement with brokers to artificially increase prices before a fresh issue and benefit from that. Common public might be induced to buy shares in such companies, ultimately the prices would crash and the common investors would be left with worthless stock of securities.
6. Listing requires disclosing important sensitive information to stock exchanges such as plans for expansion, diversification, selling of certain businesses, acquisition of certain brands or companies etc. Such information might be used by the competitors to gain advantage.
7. Outsiders might acquire substantial shares in the company and threaten to take over the company or they might demand hefty compensation to sell their shares.
8. Stock exchanges in India still suffer from shortcomings. Listed securities might be utilized by scamsters to indulge in scams.

### **3.8.9 Secretarial duties**

1. The company secretary should prepare and submit all the required documents to the stock exchange authorities. Such as MA/AA, prospectus, Statement in lieu of prospectus, balance sheet, Director's report, agreement with underwriters etc. also specimen copies of share and debenture certificates, particulars of capital structure, details of dividends and cash bonuses during the last 10 years along with brief history of company activities since its incorporation.
2. The company secretary must ensure that the company is adhering to the rules for listing of securities. stock exchanges give special attention to such new application for listing. For example:
  - a. whether the articles contains following provisions;
    - i. A common form of transfer shall be used
    - ii. Fully paid shares will be free from lien
    - iii. Calls paid in advance may carry interest, but shall not confer a right for dividend
    - iv. Unclaimed dividend shall not be forfeited before the claim becomes the time barred.
    - v. Option to call on shares shall be given only after sanction by general meeting.
  - b. Whether at least 49% of each class of securities issued was offered to the public for subscription through newspapers for not less than 3 days.
  - c. Whether the company is of fair size, has a broad-based capital structure and there is sufficient public interest in its securities.

3. After the stock exchange authorities go through the application and if they are satisfied, they may call upon the company secretary to execute listing agreement which shall contain the obligations and restrictions. This agreement will have 39 clauses with sub-clauses. Various issues such as share certificates, letters of allotment, transfer of shares, information to be given to the stock exchange regarding closure of registers of members for the purpose of dividends, issue of bonus shares, right shares, holding of meetings, submission of copies of director's reports, annual accounts, notices, resolutions etc are covered by this listing agreement.

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### **3.9 SCRIPTS**

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The word scrip has various meanings in different context. Sometimes it is regarded as chit. Scrip is also a temporary document which represents fractional share resulted from a split or spin off. Scrip is basically documents which acknowledge debt. Scrip may indicate currency issued by Private Corporation. In a broader sense, the term scrip refers to any type of substitution currency that replaces legal tender.

Companies that faces cash crunches, often pay scrip dividends. When a company offers its shareholders a scrip dividend, it offers them the choice to receive dividends in the form of more shares or in cash.

The most widely used and most modern kind of scrip is used in the retail industry in the form of gift cards or gift certificates. Sometimes it is considered improper to give cash as a gift; it can be acceptable to give someone a gift card as a present. Gift cards facilitate the user to control how and where the card is spent as they can only be used in particular locations.

Scrip evolved in the 1980s which contained a popular method of fundraising. This fundraising option is specifically popular among bands, athletic groups, schools, and other nonprofit organizations.

Retailers provide nonprofit groups with gift cards and certificates at a discounted rate.

Here, is the meaning of scrip in relation to stocks and shares. In simple terms, scrip means a share certificate in a company. Scrip means shares which are issued by company from time to time i.e. equity shares and preference shares.

#### **Equity shares are of two types:**

##### **1. Equity shares are of two types**

- a) with normal voting rights,
- b) With differential rights as to dividend and voting

##### **2. Preference shares are of 4 types**

- a) Cumulative and non-cumulative
- b) Participating and non-participating
- c) Redeemable and irredeemable
- d) Convertible and non-convertible

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### 3.10 SUMMARY

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Dematerialization is a process through which shares in physical form are converted into electronic form. The new shares allotted to the investors are credited to their demat accounts. Dematerialization takes 10-12 days for whole procedure. As we have our bank account, we have share account in the form of demat. NSDL and CDSL are our main depositories after the enactment of Depository Act, 1996 acting as custodian of securities. Dematerialization participants are as follows:

- Depository
- Depository participant
- Issuer Company
- Investor

Online transaction increases the speed of buying and selling of securities with the aid of internet. This procedure is different from traditional procedure. It is fully transparent with no errors.

BSE provide multiple services to the investors which in turn facilitate the smooth flow of dealings in securities. BSE introduced BOLT which facilitates online screen based business in securities.

#### **Listing of securities**

It is a process of including the company's names in the official list of stock exchange due to which said securities become eligible for trading on the stock exchange.

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### 3.11 EXERCISE

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1. Explain the advantages of dematerialization.
2. State the Advantages and disadvantages of listing of securities.
3. What is online trading? Explain its advantages in detail
4. Write short notes:
  - a. BOLT b. BOSS
  - c. Scripts d. Depository participant
5. Discuss the secretarial duties regarding listing of securities in brief.
6. What are the features of Demat securities?
7. Explain the need and importance of dematerialization.



## REPORTS AND WINDING UP

### Unit structure:

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Types of Company Reports
- 4.3 Dividends
- 4.4 Secretarial Duties with regard to Payment of Dividend
- 4.5 Charges
- 4.6 Punishment
- 4.7 Winding up of a Company
- 4.8 Specimen
- 4.9 Summary
- 4.10 Exercise

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### 4.0 OBJECTIVES

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After studying the unit the students will be able to:

- Understand Company Reports- Types, Secretarial duties with regard to payment of dividend, Interest, Charges and Penalties.
- Know Winding up of company- Procedure & Statutory provisions, Secretarial role in winding up.
- Understand the following Specimen:
  1. Notice and agenda of Annual General Meeting
  2. Notice and agenda of Board meeting prior to Annual General Meeting, Resolution for appointment of company secretary
  3. Special resolution for alteration of Memorandum of Association
  4. Minutes of Board meeting prior to Annual General Meeting
  5. Minutes of Annual General Meeting

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### 4.1 INTRODUCTION

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During the management of company, various kinds of reports are being made. These reports do play the role of effective communication between the shareholders and directors of the company. For directors it is mandatory to prepare Annual report i.e. Board's report which provide details of annual accounts to the shareholders. Likewise, section 143(2) prescribes for the Auditor's report to be presented by him on the basis of

his examination of accounts and financial statements. Thus, various reports are very important as they provide valuable information.

Report on Annual General Meeting (Section 121) provides, every listed public company needs to prepare and file with the Registrar of Companies, a report on each annual general meeting which confirms that the meeting was convened, held and conducted as per the provisions of the Companies Act 2013 and the rules made there under.

There are two kinds of reports i.e. statutory and non-statutory reports. Statutory reports are mandatory under the companies Act, 2013. E.g. Auditor's report, Board's report etc.

Non-statutory reports are not mandatory under the law but such reports offer convenience in the management and facilitate smooth flow of working of the company. Examples of non-statutory reports are – Committee reports of directors, reports of directors on special proposals to shareholders and secretarial reports for investigation and reporting.

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## 4.2 TYPES OF COMPANY REPORTS

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Following are the different types of company reports:

1. Board Report
2. Auditor's Report
3. Management Analysis and Discussion Report
4. Corporate Governance Report
5. Report on Corporate social responsibility
6. Report on Annual General Meeting

### 1. Board Report: (Director's Report/Annual Report)

Board report provides the useful information about the progress of the company to its shareholders as well as others. It also includes information about the significant changes in the management, major policies and changes in the capital structure of the company. Director's report includes director's responsibility statement.

#### Ingredients s of the board report

- i) Disclosures under various Rules made under the companies Act:
- ii) Disclosures under Section 134
- iii) Disclosure pursuant to listing agreement]
- iv) Other Disclosures under Companies Act, 2013.

#### Normally following matters are highlighted in the Annual report

- i) Chairman's speech.
- ii) Director's report under section 217.

- iii) Auditor's report under section 227.
- iv) Balance sheet, Profit and loss account, schedules forming part of balance sheet and profit and loss account, cash flow statement.
- v) Accounts of the subsidiary under the section 212 duly signed by directors and secretary of the company on behalf of board of directors and corporate governance.

## **2. Auditor's Report:**

Auditor's report is statutory report of the company which states whether the accounts of the company are made in accordance with provisions of the Act and it must reflect true and fair view of the state of affairs of the company.

Section 143 (3) The auditor 's report shall also state—

- (a) Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) whether the report on the accounts of any branch office of the company audited under sub-section (4) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- (d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- (e) whether, in his opinion, the financial statements comply with the accounting standards;
- (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
- (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

- (i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls; such other matters as may be prescribed

Thus, different kinds of reports are made in the company as per needs and legal provisions under the statutes but Board's report and Auditor's reports are the two main important reports used in the company.

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## 4.3 DIVIDENDS

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### 4.3.1 Meaning of Dividend

The term 'dividend' has been defined under Section 2(35) of the Companies Act, 2013. The term "Dividend" includes any interim dividend. It is an inclusive and not an exhaustive definition. According to the generally accepted definition, "Dividend" means the profit of a Company, which is distributed among the Shareholders in proportion to the amount paid-up on the shares held by them.

### 4.3.2 Declaration and Payment of Dividend under the Companies Act, 2013

Following are the certain provisions laid down for declaration of dividend under the Companies Act, 2013:

- Section 51 permits Companies to pay dividends proportionately, i.e. in proportion to the amount paid-up on each share when all shares are not uniformly paid up, i.e. pro rata. Pro rata means in proportion or proportionately, as per certain rate. The Board of Directors of a company may decide to pay dividends on pro rata basis if all the equity shares of the company are not equally paid-up.
- But the permission given by this section depends upon the Company's Articles of Association (AOA) expressly authorizing the Company in this matter.
- Final Dividend is generally declared at an AGM at a rate not more than what is recommended by the Directors in accordance with the AOA of a Company.
- In accordance with Section 134(3) (k), Board of Directors must state in the Directors' Report the amount of dividend, if any, which it recommends to be paid.
- The dividend recommended by the Board of Directors in the Board's Report must be 'declared' at the AGM of the Company. This constitutes an item of Ordinary Business to be transacted at every AGM.
- No dividend shall be declared or paid by a Company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with section 123(2) of



the Act or out of profits of the Company for any previous financial year/years arrived at after providing for depreciation in accordance with the provisions of above sub section and remaining undistributed or out of both [Section 123(1)].

- A Company may before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the Company.
- If owing to inadequacy or absence of profits in any year, a Company proposes to declare dividend out of the accumulated profits earned by it in any previous financial years and transferred to reserves, such declaration of dividend shall not be made except in accordance with the Companies (Declaration and Payment of Dividend) Rules, 2014.
- Depreciation, as required under Section 123(1) of the Companies Act has to be provided in accordance with the provisions of Schedule II to the Act.
- The amount of dividend (final as well as interim) shall be deposited in a separate bank account **within 5 days** from the date of declaration. [Section 123(4)]
- Dividend has to be paid within **30 days** from the date of declaration.
- If dividend has not been paid or claimed within the 30 days from the date of its declaration, the Company is required to transfer the total amount of dividend which remains unpaid or unclaimed, to a special account to be opened by the Company in a scheduled bank to be called “Unpaid Dividend Account”. Such transfer shall be made within 7 days from the date of expiry of the said period of 30 days.
- Any money transferred to the unpaid dividend account of a Company in pursuance of section 124 which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the Company to the Investor Education and Protection Fund and the company shall file a statement in “Form DIV-5” to the Authority constituted under the Act to administer the fund and such authority shall issue a receipt to the company as evidence of such transfer. [Section 124(5)]
- Where a dividend has not been paid by the Company within 30 days from the date of declaration, every Director shall, if he is knowingly a party to the default, be punishable with imprisonment for a term which may extend to 2 years and shall also be liable to a fine of rupees 1000 for every day during which default continues and the Company shall be liable to pay simple interest @ 14% per annum during the period for which such default continues. [Section 127]
- If the Company delays the transfer of the unpaid/unclaimed dividend amount to the unpaid dividend account, it shall pay interest @ 12% p.a. till it transfers the same and the interest accruing on such amount

shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. [Section 124(3)]

- Any dividend payable in cash may be paid by cheque or warrant through post directed to the registered address of the shareholder who is entitled to the payment of the dividend or to his order or in any electronic mode sent to his banker. [Section 123(5)].

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#### **4.4 SECRETARIAL DUTIES WITH REGARD TO PAYMENT OF DIVIDEND**

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1. Issue notice for holding Board meeting: As per section 173 notices must be issued stating the date, time and venue of the meeting.
2. Notification to the stock exchanges at least 2 days in advance of the meeting, in case of listed companies where the securities are listed.
3. Holding board meeting for approving the annual accounts and recommending the amount of final dividend and sources available to pay the dividend.
4. Fixing the day, date and time, venue holding next AGM of the company for declaring the dividend recommended by the Board.
5. Approving notice for AGM and Authorising the Company secretary of any other competent person if no Company secretary is appointed to issue the notice of AGM on behalf of Board.
6. Determining the date of closure of register of members and the share transfer register of the companies to fulfil the requirements of section 91 of the companies Act, 2013.
7. Ensuring the necessary amount of profit to be transferred to company's reserves.
8. Publishing notice of book closure in a newspaper (in case of listed company) circulating in the district in which the company's registered office is situated at least 7 days before the date of commencement of book closure.
9. Closing the register of members and share transfer register of the company.
10. Director's report will reflect the amount of dividend recommended by Board of directors.
11. Holding board meeting or committee meeting for approving registration of transfer or transmission the shares prior to the commencement of book closure.
12. Holding AGM and passing ordinary resolution for declaring the payment of dividend to the shareholders of the company.

13. Preparing the statement of dividend in case of all shareholders.
14. Ensuring that the dividend tax is paid to the tax authorities within stipulated date.
15. Opening separate bank account for making dividend payment.
16. Making arrangements with the banks for payment of dividend warrants at par.
17. Dispatching dividend warrants within 30 days of the declaration of the dividend.
18. Arranging the transfer of unpaid or unclaimed dividend to a special account “Unpaid Dividend Account” within 7 days after expiry of the period of 30 days of declaration of final dividend.
19. Transferring unpaid dividend amount to investor education and protection fund (IEPF) after the expiry of 7 years from the date of transfer to unpaid dividend account.

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## 4.5 CHARGES

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### 4.5.1 Definition of Charge

Under section 2(16) of Companies Act, 2013 “ A Charge as an interest or lien created on the assets or property of a Company or any of its undertaking as security and includes a mortgage”. Companies require substantial amount of capital which is in the form of share capital as well as borrowed capital. Such capital is acquired in the form of loans and advances from banks and financial institutions. Banks and financial institutions create charge i.e. right on the assets of the borrowing company that is nothing but charge.

Companies Act, 1956: Section 125 specifies only 9 types of charges to be registered. Companies Act, 2013: Section 77 states that Companies are required to **register** ALL TYPES OF CHARGES, with ROC within 30 days of its creation.

It does not matter if the charge created is –

- i) within or outside India;
- ii) on its property or assets or any of its undertakings;
- iii) whether tangible or otherwise; and
- iv) situated in or outside India.

### Following are the two main kinds of Charges

1. **Fixed charge:** remains fixed and it is identified with a specific and clear asset at the time of the creation of such charge. The company is not supposed to transfer this kind of a charge unless the charge holder is paid off his due for the same.

2. **Floating charge:** This charge is not fixed charge. The nature of these kinds of charges keeps changing from time to time. The floating charge can convert into a fixed charge if there is a crystallisation of the company or the undertaking cease to be a going concern. Floating or the circulating nature of properties of a company, like sundry debtors or stock in trade, can be deemed as floating charges.

Sr. No.	E-Form	Purpose
1.	CHG-1	Creating or Modifying charge (for other than Debentures)
2.	CHG-2	Certificate of Registration of charge.
3.	CHG-3	Certificate of Modification of charge.
4.	CHG-4	Intimation of the satisfaction to the Registrar.
5.	CHG-5	Memorandum of satisfaction of charge.
6.	CHG-6	Notice of appointment or cessation or receiver or manager.
7.	CHG-7	Register of charges.
4.	CHG-4	Application for condonation of delay shall be filed the Central Government.
9.	CHG-9	Creating or modifying the charge in (for debentures including change in rectification)
10.	CHG-10	Application for delay to the registrar.

#### 4.5.2 Process for registration of charge

1. Company has to register charge with Registrar within 30 days of creation of charge in Form CHG-1.
2. If not registered within 30 days then within 300 days of such creation with additional fees.
3. If company fails to register with in period of 300 days, then it has to seek extension from Central Government (Regional Director) in Form CHG-4
4. File the approval received with Registrar in Form INC-24.
5. If registrar is satisfied, he shall issue a certificate of registration in Form CHG-2

6. If company fails to register, without prejudice to its liability to offence, the person in whose favour charge is created may apply to registrar to register.
7. Any change / modification in terms of the charge is also to be filed in Form CHG 1, on whose registration ROC shall issues Form CHG 3

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## 4.6 PUNISHMENT

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### 4.6.1 Meaning

If company or any officer of company contravenes any provision regarding registration, satisfaction of charge or any other provision regarding charge under Companies Act, 2013 and rules there to then company or officer who is in default shall be punishable, and punishment shall be On Company - Fine which shall not be less than Rs. 1 Lac rupees but which may extend to Rs. 10 Lacs On Officer in Default -Imprisonment which may extend to 6 months; or Fine which shall not be less than Rs. 25,000 but which may extend to Rs 1 lac; or Both

**Penalties:** Section 447, 444, 449, 450, 451, 452 and 453 Section 447.

**Punishment for fraud:** Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

***Explanation.* —For the purposes of this section**

- i) fraud in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- ii) wrongful gain means the gain by unlawful means of property to which the person gaining is not legally entitled;
- iii) wrongful loss means the loss by unlawful means of property to which the person losing is legally entitled.

The Companies act, 2013 received assent of President of India on 29<sup>th</sup> August, 2013 which introduced new provisions resulting in stringent penalties for non-compliance of rules under the new Act. Offence and penalty go hand in hand. So whenever any offence is committed by company following sections of Companies Act, 2013 provides for the penalty for the committed offence.

**Section 444. Punishment for false statement.** Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement,

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

**Section 449. Punishment for false evidence.** Save as otherwise provided in this Act, if any person intentionally gives false evidenc-

- (a) upon any examination on oath or solemn affirmation, authorised under this Act; or
- (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees

**Section 450. Punishment where no specific penalty or punishment is provided.**— If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

**Section 451. Punishment in case of repeated default.**— If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence

**Section 452. Punishment for wrongful withholding of property.**

- (1) If any officer or employee of a company
  - (a) wrongfully obtains possession of any property, including cash of the company; or
  - (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which

shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years

**Section 453. Punishment for improper use of Limited or Private Limited.** If any person or persons trade or carry on business under any name or title, of which the word Limited or the words Private Limited or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

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## **4.7 WINDING UP OF A COMPANY**

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### **4.7.1 Meaning**

As company takes birth with its incorporation, winding up of a company is the last stage of company in which its existence for past several years is dissolved, its life comes to an end and all its assets are used to pay off the creditors, shareholders and other liabilities.

As per section 270 of the Companies Act 2013, the procedure for winding up of a company can be initiated either

- a) By the tribunal or,
- b) Voluntary.

Winding up of a company may be required due to a number of reasons including closure of business, loss, bankruptcy, passing away of promoters, etc., The procedure for winding up of a company can be initiated voluntarily by the shareholders or creditors or by a Tribunal.

#### **a) Winding up of a Company by Tribunal**

As per Companies Act 2013, a company can be wound up by a Tribunal, if:

- The company is unable to pay its debts.
- The company has by special resolution resolved that the company be wound up by the Tribunal.
- The company has acted against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality.
- The Tribunal has ordered the winding up of the company under Chapter XIX.

## b) Voluntary Winding up of a Company

- The winding up of a company can also be done voluntarily by the members of the Company, if:
- If the company passes a special resolution for winding up of the Company.
- The company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period of its duration, if any, fixed by its articles of association or on the occurrence of any event in respect of which the articles of association provide that the company should be dissolved

### 4.7.2 Steps for Voluntary Winding up of a Company

The following are the steps for initiating a voluntary winding up of a Company:

- **Step 1:** Convene a Board Meeting with two Directors or by a majority of Directors. Pass a resolution with a declaration by the Directors that they have made an enquiry into the affairs of the Company and that, having done so, they have formed the opinion that the company has no debts or that it will be able to pay its debts in full from the proceeds of the assets sold in voluntary winding up of the company. Also, fix a date, place, and time agenda for a General Meeting of the Company after five weeks of this Board Meeting.
- **Step 2:** Issue notices in writing calling for the General Meeting of the Company proposing the resolutions, with suitable explanatory statement.
- **Step 3:** In the General Meeting, pass the ordinary resolution for winding up of the company by ordinary majority or special resolution by 3/4 majority. The winding up of the company shall commence from the date of passing of this resolution.
- **Step 4:** On the same day or the next day of passing of resolution of winding up of the Company, conduct a meeting of the Creditors. If two thirds in value of creditors of the company are of the opinion that it is in the interest of all parties to wind up the company, then the company can be wound up voluntarily. If the company cannot meet all its liabilities on winding up, then the Company must be wound up by a Tribunal.
- **Step 5:** Within 10 days of passing of resolution for winding up of company, file a notice with the Registrar for appointment of liquidator.
- **Step 6:** Within 14 days of passing of resolution for winding up of company, give a notice of the resolution in the Official Gazette and also advertise in a newspaper with circulation in the district where the registered office is present.
- **Step 7:** Within 30 days of General Meeting for winding up of company, file certified copies of the ordinary or special resolution passed in the General Meeting for winding up of the company.



- **Step 4:** Wind up affairs of the company and prepare the liquidators account of the winding up of the company and get the same audited.
- **Step 9:** Call for final General Meeting of the Company.
- **Step 10:** Pass a special resolution for disposal of the books and papers of the company when the affairs of the company are completely wound up and it is about to be dissolved.
- **Step 11:** Within two weeks of final General Meeting of the Company, file a copy of the accounts and file an application to the Tribunal for passing an order for dissolution of the company.
- **Step 12:** If the Tribunal is satisfied, the Tribunal shall pass an order dissolving the company within 60 days of receiving the application.
- **Step 13:** The company liquidator would then file a copy of the order with the Registrar.
- **Step 14:** The Registrar, on receiving the copy of the order passed by the Tribunal then publishes a notice in the Official Gazette that the company is dissolved.

#### 4.7.3 Winding up by Tribunal

- National Company Law Tribunal can be initiated by an application by way of petition for winding up order.
- It should be chosen when other means of healing an ailing company are of absolutely no avail.
- Remedies are provided by the statute on matters concerning the management and running of the company.
- It is primarily the NCLT which has jurisdiction to wind up companies under the Companies Act, 2013.
- There must be strong reasons to order winding up as it is a last resort to be adopted.
- Grounds on which a Company may be wound up by the Tribunal

Under Section 271, a company may be wound up by the tribunal if-

- Company is unable to pay the debts;
- If the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- If the company has acted against the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order;
- If the Tribunal has ordered the winding up of the company under Chapter XIX;
- If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the tribunal is of opinion that affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent or unlawful purpose or the persons concerned in formation

misfeasance or misconduct in connection therewith and that it is proper that company be wound up;

- If the company has made default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;
- If the tribunal is of the opinion that it is just and equitable that the company should be wound up.

#### 4.7.4 Who may file petition for winding up

A petition for winding up may be presented by any of the following persons under Section 272 of The Companies Act, 2013-

- The company; or
- Any creditor or creditors, including any contingent or prospective creditor or creditors; or
- Any contributory; or
- All or any of the above three specified parties; or
- The Registrar; or
- Any person authorised by Central Government in this behalf;
- By the Central Government or State Government in case of Company acting against the interest of sovereignty and integrity of India.

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## 4.8 SPECIMEN

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### A. Notice and agenda of Annual General Meeting:

ABC COMPANY LIMITED  
(Address of the Registered Office)

**NOTICE IS HEREBY GIVEN THAT THE** Thirty-ninth Annual General Meeting of \_\_\_\_\_ will be held at the \_\_\_\_\_ on 20 at \_\_\_\_\_ p.m. to transact the following business:

1. To receive and adopt the Directors' report and audited Balance Sheet and Profit and Loss Account for the year ended \_\_\_\_\_ 20\_\_\_\_.
2. To declare a dividend.
3. To appoint a Director in place of Mr. \_\_\_\_\_, who retires by rotation and is eligible for re-appointment.
4. To appoint a Director in place of Mr. \_\_\_\_\_, who retires by rotation and is eligible for re-appointment.
5. To appoint auditors and to fix their remuneration.
6. To appoint Branch Auditors and to fix their remuneration.

By Order of the Board of Directors  
For PQR COMPANY LIMITED

Mumbai

Dated:

Sd/-

Secretary

**Notes:**

1. A MEMBER ENTITLED TO ATTEND AND VOTE IS ENTITLED TO APPONT A PROXY TO ATTEND AND VOTE INSTEAD OF HIMSELD AND A PROXY NEED NOT BE A MEMBER.
2. The Register of Members and Transfer Books of the company will be closed form \_\_\_\_\_ to \_\_\_\_\_ both days inclusive.
3. The dividend when sanctioned will be made payable on or after \_\_\_\_\_ to those shareholders whose names will appear as members in the books of the company on \_\_\_\_\_.

**B. Notice & Agenda of First Board Meeting**

**ABC COMPANY LIMITED**

(Address of the Registered Office)

Ref. No. \_\_\_\_\_

Date:

Mr./ Mrs. \_\_\_\_\_

(Name and Address of Director)

**Sub: Notice of the First Board Meeting**

**Dear Sir,**

I am directed to inform you that the **First Meeting of the Board of Directors of the Company** will be held at the Registered Office of the Company on \_\_\_\_\_ at \_\_\_\_\_ a.m. / p.m.

Please make it convenient to attend the meeting. A copy of the Agenda is enclosed herewith for your information and reference.

Yours Faithfully,

Sd/-

Encl: As above

(\_\_\_\_\_)

Secretary

**AGENDA**

1. To elect the Chairman of the meeting.
2. To elect the Chairman of the Company.
3. To record the Certificate of Incorporation of the Company.
4. To appoint:

- a) Managing Director
- b) Secretary
- c) Bankers
- d) Auditors
- e) Underwriters to the issue
- f) Registrar and Brokers to the issue.
5. To pass a resolution authorizing some of the directors to operate the bank accounts and to decide the method of operating bank accounts.
6. To consider and approve the draft prospectus.
7. To decide on sending an application to the Stock Exchange for listing of equity shares of the company.
8. To approve and adopt the Common Seal of the company.
9. To adopt preliminary agreements, if any, with the vendors.
10. To consider any other business with the permission of the Chair.
11. To fix the date of the next Board meeting.

**C. Notice and Agenda of Board Meeting prior to Annual General Meeting**

**SUNLIGHT INDUSTRIES LIMITED**

Opera House, Mahatma Phule Road,  
Bandra Kurla Complex, Mumbai-40021

Ref. No. fCM/ DC/ 146

Date:

Mr. R.D. Patel

21, Gurukripa, Kansai section,  
Ambernath(E) 421501

**Dear Sir,**

I am directed to inform you that the meeting of the Board of Directors, prior to the annual general meeting, will be held at the registered office of the company on Tuesday, the 17<sup>th</sup> October, 2017, at 4.00 p.m. to consider the following agenda.

You are requested to make it convenient to attend the meeting and oblige.

Yours faithfully,

Sd/-

( )

Secretary

## **AGENDA**

1. To confirm the minutes of the last Board meeting held on 17th August, 2017.
2. To consider the leave of absence of Mr. S.K. Kan (Director)
3. To consider and approve Director Report and Annual Accounts of the Company for the year 2016-2017.
4. To authorize the Chairman to sign the Directors' Report on behalf of the Board of Directors.
5. To recommend the rate of dividend.
6. To decide date and others details of annual general meeting and to authorize the secretary to make suitable arrangements for the meeting and also to send notice of the meeting to all members along with the Directors' Report, Auditor Report and the Annual Accounts.
7. To decide the period during which the Register of Members and the Share Transfer Register will remain closed and also to authorize the secretary to issue notice regarding the closure of the Register of Members and the Share Transfer Register.
8. To consider any other item with the permission of the Chair.
9. To decide the date of the next meeting of the Board of Directors.

### **D. Resolution for appointment of company secretary**

“RESOLVED THAT Mr. / Ms. \_\_\_\_\_, Associate/Fellow Member of the Institute of Company Secretaries of India having ACS / FCS No. \_\_\_\_\_ be and is hereby appointed as Company Secretary of the Company w.e.f. \_\_\_\_\_ pursuant to the provisions of Section 203 of the Companies Act, 2013 read with Companies (Appointment and Remuneration) Rules, 2014 and any amendment made thereto.

“RESOLVED FURTHER THAT (Name of the person(s) authorized) be and are hereby severally authorized to file e-form DIR 12 / MR-1 with Registrar of Companies and do all the acts, deeds and things which are necessary to give effect to this resolution.”

### **E. Special Resolution for alteration of Memorandum of Association Change of name of the Company**

“Resolved That the name of the company be changed from “**The Eureka Forbes Software Limited**” to “**The Exotic Apparels Limited**” and that the secretary be and is hereby authorized to communicate with the Central Government for obtaining their suitable consent to such alteration.”

### **F. Minutes of Board meeting prior to Annual General Meeting**

**MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS  
OF [NAME OF THE COMPANY] HELD ON [DATE] AT [TIME]  
AT [ADDRESS OF REGISTERED OFFICE]**

**DIRECTORS PRESENT**

[Name of the directors' present]

**IN ATTENDANCE**

[Name of the Company Secretary]

**Chairman of the Meeting**

[Name of the Chairman], with the consent of the Board, took the Chair and presided over the meeting. He welcomed all the Directors to the meeting of the Board of Directors. Thereafter, he ascertained the quorum, and declared that the meeting was duly convened and properly constituted and agenda of the meeting was taken up.

**Leave of Absence**

[Name of the director] expressed his unwillingness to attend the Board Meeting, hence leave of absence was granted to him.

**1. To take Note of the Minutes of the Last Board Meeting**

The minutes of the last meeting of Board of Directors duly initialed by the Chairman were placed before the Board and board took note of the same.

**2. Approval of the Draft Annual Accounts of the Company for the Year Ended 31<sup>st</sup> March \_\_\_\_\_.**

The Chairman informed the Board that Annual Accounts of the Company for the year ended 31<sup>st</sup> March \_\_\_\_\_ had been finalized and the same is placed before the Board for their approval. After having approval of the Board of Directors, these accounts were sent to the Auditors of the Company i.e. [Name of the Statutory Auditors], Chartered Accounts for their report. After discussion the following resolution was passed.

**“RESOLVED THAT** pursuant to the provisions of section 215 (3) of the Companies Act, 1956 Profit & Loss Account for the year ended 31<sup>st</sup> March, \_\_\_\_\_ and the Balance Sheet as at 31<sup>st</sup> March \_\_\_\_\_ together with Schedules and Notes on Accounts as placed before the Board and initialed by the Chairman for the purpose of identification be and is hereby approved and adopted”.

**“RESOLVED FURTHER THAT** the same be signed by any two directors of the company on behalf of the board of Directors of the Company.”

**“RESOLVED FURTHER THAT** the same be sent to Auditors for their report thereon.”

**3. Approval of the Audited Annual Accounts for the Year ended 31<sup>st</sup> March \_\_\_\_\_.**

The Chairman placed before the board, the Audited profit & Loss account for the year ended 31<sup>st</sup> March \_\_\_\_\_ and the balance sheet as at 31<sup>st</sup> March \_\_\_\_\_. After discussions, the following resolution was passed:

**“RESOLVED** that the Audited Profit & Loss account for the period ended 31<sup>st</sup> March 1994 and the Balance Sheet as at 31<sup>st</sup> March \_\_\_\_\_ as placed before the Board initialed by the Chairman for the purpose of identification be and is hereby approved and the same is recommended to the members for adoption in the forthcoming ensuring Annual General Meeting.”

**“Resolved further that** [Name of the person(s) authorized] be and are hereby authorized jointly / severally to take such steps as may be necessary in relation to the above and file such documents with the Registrar of Companies, [concerned state].”

#### **4. Approval of the Auditors Report on the Annual Accounts for the year ended 31<sup>st</sup> March \_\_\_\_\_.**

The Chairman placed before the board, the Auditors Report on the Profit & Loss account for the year ended 31<sup>st</sup> March 1994 and the balance sheet as at 31<sup>st</sup> March \_\_\_\_\_. After discussions, the following resolution was passed:

**“RESOLVED** that the Auditors Report on the Profit & Loss account for the year ended 31<sup>st</sup> March \_\_\_\_\_ and the balance sheet as at 31<sup>st</sup> March \_\_\_\_\_ as placed before the Board and initialed by the Chairman for the purpose of identification be and is hereby approved and the same is recommended to the members for adoption in the forthcoming ensuring Annual General Meeting.”

**“Resolved further that** [Name of the person(s) authorized] be and is hereby authorized to take such steps as may be necessary in relation to the above and file such documents with the Registrar of Companies, [concerned state].”

#### **5. Approval of the Draft Directors Report for the Year ENDING 31<sup>st</sup> March \_\_\_\_\_.**

The Chairman Placed before the Board, the draft Directors Report of the Company for the Financial Year ending 31<sup>st</sup> March \_\_\_\_\_. The Board considered the same and passed the following resolution:

**“Resolved that** the Directors’ Report of the Company for the Financial year ending 31<sup>st</sup> March 1994 be and is hereby approved and [Name of the person(s) authorized] Chairman be and is hereby authorized in terms of section 217(4) of the Companies Act, 1956 to sign the same on behalf of Board of Directors of the Company.”

**“Resolved further that** [Name of the person(s) authorized] be and is hereby authorized to take such steps as may be necessary in relation to the above and file such documents with the Register of Companies, [concerned state].

## 6. Approval for the re-appointment of Statutory Auditors

The Chairman apprised the Board that in terms of Section 224 of The Companies Act, 1956 the Statutory Auditors are to be appointed, subject to the approval of the members in the forthcoming Annual General Meeting for auditing the Annual Accounts of the Company for Financial Year \_\_\_\_\_. He further informed that a certificate under Section 224 (1B) of the Companies Act, 1956, has been received from the existing auditors [Name of the Auditors], Chartered Accountants. The Board after taking note of such certificate and the brief discussion passed the following resolution: -

**“RESOLVED THAT** pursuant to the provisions of Section 224(1) of the Companies Act, 1956 and subject to the approval of the members at the Annual General Meeting of the Company [Name of the Auditors], Chartered Accountants, be and are hereby appointed as the Auditors of the Company to hold office, from the conclusion of ensuring Annual General Meeting to the conclusion of the next Annual General Meeting of the Company at a remuneration as may be decided by the Board with the mutual consent of the auditors.”

## 7. Regularization of Mr. Avdhesh Mittal as Director of the Company

Director on the Board of the Company, will expire at the ensuing Annual General Meeting. The Board recommended the appointment of [Name of the director] as director of the company to the shareholders of company by passing the following resolution:

**“RESOLVED THAT** subject to the approval of shareholders of the company [Name of the director] who has been inducted as additional director of the company by the Board of directors in their meeting held on [date of meeting of appointment] be and is hereby appointed as director of the company not liable to retire by rotation.”

## 8. Approval of the Draft Notice for Calling of the First Annual General Meeting of the Company

The Chairman apprised the Board that the First Annual General Meeting of the Members of the Company is to be held, and placed before the Board for its approval, the draft text of the notice calling the same along with explanatory statement thereon. After considering the same and after few deliberations the Board passed the following resolution:

**“Resolved that** pursuant to the provisions of Section 166 read with Section 210 of the Companies Act, 1956, the First Annual General Meeting of the Company be held on [Day], the [Date] at [Time] at [Place] the Registered office of the Company to transact the business as given in the draft notice issued for the same as per Section 171 and Section 173 of the Companies Act, 1956.”

**“Resolved further that** [Name of the person(s) authorized] be and is hereby authorized to sign and issue such notice to the members of the



Company and to do, all other necessary acts for the conduction of the First Annual General Meeting of the Company.”

## **9. Vote of Thanks**

There being no other business to transact, the meeting concluded with vote of thanks to the chair

**Dated: CHAIRMAN**

## **G. Minutes of Annual General Meeting**

Minutes of the Annual General Meeting of \_\_\_\_\_ Limited Held on Tuesday, 7<sup>th</sup> August 2017 at 01.00 P.M. at \_\_\_\_\_  
(Address) Members Present.

1. Mr. A Chairperson
2. Mr. B Member
3. Mr. C (Representation of \_\_\_\_\_ Limited)
4. Mr. D (Representation of \_\_\_\_\_ Limited)
5. Mr. E (Representation of \_\_\_\_\_ Limited)

Mr. A, Chairperson took the chair and declared that the required quorum was present to convene the meeting. The Chairperson read the speech highlighting the operation & Prospects of the company. After the Chairperson speech, Mr. Z, Company Secretary read the Auditor’s Report. The Accounts & Director’s Report having already been circulated was taken as read. The following resolutions were passed:

1. To receive, consider and adopt the balance sheet as at March 31<sup>st</sup>, 2017 and profit and loss account for the year ended on that date and the report of directors and auditors thereon. Mr. C proposed and Mr. D seconded and the following resolution was passed as an ordinary resolution: “Resolved that Audited Annual Accounts as on 31<sup>st</sup> March, 2017 together with Auditor’s Report thereon having been already circulated to the shareholders and produced at the meeting be and the same are hereby approved and adopted.” On being put to vote by show of hands, the resolution was carried unanimously.

### **2. Re-Appointment of Auditors**

Mr. E proposed and Mr. D seconded and the following resolution was passed as an ordinary resolution: “RESOLVED THAT the retiring Auditors M / s. \_\_\_\_\_ & Associates, Chartered Accounts, \_\_\_\_\_ (Auditor’s address) be and are hereby reappointed as Auditors of the company to hold office till the conclusion of next Annual General Meeting at a remuneration as the Board of Directors may determine.” On being put to vote by show of hands, the resolution was carried unanimously.

### **3. Appointment of Director**

Mr. E proposed and Mr. D seconded and the following resolution was passed as an ordinary resolution: “RESOLVED THAT Mr. Ram, who

was appointed as an Additional Director with effect from April 17, 2002 on the Board of the Company in terms of Section 260 of the Companies Act, 1956 and Article 67 of Article of Association of the Company and who holds office up to the date of this Annual General Meeting, and in respect of whom a notice has been received from a Member in writing, under Section 257 of the Companies Act, 1956, proposing his candidature for the office of a Director, be and is hereby appointed as a director of the Company.” On being put to vote by show of hands the resolution was carried unanimously.

#### 4. Vote of Thanks

There being no other business, the meeting was terminated with a vote of thanks to the chair proposed by Mr. Rajkumar Gupta and seconded by Mr. J. Kumar.

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### 4.9 SUMMARY

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Company reports are very important as it serves as a medium of communication between the directors and shareholders. Company reports must be drafted according to the provisions of Companies’ Act 2013. The secretary plays a crucial role in reports drafting.

#### **Dividend:**

Section 123 of Companies Act, 2013 has special provisions relating to dividend payment.

#### **Charges:**

Section 2(16) of the companies Act, 2013 has defined the term charge. Section 77 of Companies Act, 2013 states that Companies are required to **register ALL TYPES OF CHARGES**, with ROC within 30 days of its creation. Charges are of two types; Fixed and floating charge.

Section 447, section 444, section 449, section 450, section 451, section 452, section 453 are the stringent penalty provisions in the Companies Act, 2013.

Winding up is the death of the company. At this stage, realizing debts and paying off the debts is an important thing as the administration of the company is transferred in the hands of liquidator. Thus after dissolution of company, it ceases to exist.

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### 4.10 EXERCISE

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1. What is the procedure for voluntary winding up of the company?
2. Explain the secretarial duties regarding declaration and payment of dividend?
3. Write short notes on the following:
 

a. Charges	b. Penalties
c. Annual Report	d. Audit Report

4. Explain the procedure of winding up company by tribunal.
- 5. Give the Specimen of the followings:**
  - a. Notice and agenda of Annual General Meeting
  - b. Notice and agenda of Board meeting prior to Annual General Meeting, Resolution for appointment of company secretary
  - c. Special resolution for alteration of Memorandum of Association
  - d. Minutes of Board meeting prior to Annual General Meeting
  - e. Minutes of Annual General Meeting

