COMPANIES ACT, 2013

MANAGEMENT AND ADMINISTRATION
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Introduction

A company is composed of members, though it has its own entity distinct from members. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. However, a company, being an artificial person, cannot act on its own. It, therefore, expresses its will or takes its decisions through resolutions passed at validly held Meetings. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures.

The decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. General Meetings of the Members provide a platform to express their will in regard to the management of the affairs of the company.

Convening of one such meeting every year is compulsory. Holding of more general meetings is left to the choice of the management or to a given percentage of shareholders to exercise their power to compel the company to convene a meeting. Shareholder Democracy, Class Action Suits and Protection of interest of investors are the essence and attributes of the Companies Act, 2013.

Chapter VII of the Companies Act, 2013 read with Companies (Management and Administration) Rules, 2014 deals with the legal and procedural aspects of management and administration of companies.

Register of Members, etc.

Section 88 requires every company to keep and maintain the following Registers along with the Index thereof:

— register of members for each class of equity and preference shares (separately);
— register of debenture holders;
— register of any other security holders; and
— foreign register of members and debenture holders etc.

Every company shall, from the date of its registration, keep and maintain a register of its members in one or more books in Form No. MGT.1.

In case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

Further, in the case of a company not having share capital, the register of members shall contain the following particulars in respect of each member -

(a) name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father’s/Mother’s/Spouse’s name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;

(b) date of becoming member;

(c) date of cessation;

(d) amount of guarantee, if any;

(e) any other interest if any; and

(f) instructions, if any, given by the member with regard to sending of notices etc.

In the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules.

**Register of Debenture Holders or any other Security Holders**

Every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in one or more books in Form No. MGT.2.
Maintenance of the Register of Members etc.

Every company shall maintain the Registers of members, Register of debenture holders or any other security holders in the following manner:–

(1) Entries in the registers maintained under section 88 shall be made within seven days after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(2) The registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than one-tenth of the total members entered in the register of members reside.

(3) Consequent upon any forfeiture, buy-back, reduction, subdivision, consolidation or cancellation of shares, issue of sweat equity shares, transmission of shares, shares issued under any scheme of arrangements, mergers, reconstitution or employees stock option scheme or any of such scheme provided under this Act or by issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made within seven days after approval by the Board or committee, in the register of members or in the respective registers, as the case may be.

(4) If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, entries thereof explaining the change shall be made in the respective register.

(5) If any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.

(6) If any order is passed by any judicial or revenue authority or by Security and Exchange Board of India (SEBI) or Tribunal attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary
reference of such order shall be indicated in the respective register.

(7) In case of companies whose securities are listed on a stock exchange in or outside India, the particulars of any pledge, charge, lien or hypothecation created by the promoters in respect of any securities of the company held by the promoter including the names of pledgee/pawnee and any revocation therein shall be entered in the register within fifteen days from such an event.

(8) If promoters of any listed company, which has formed a joint venture company with another company have pledged or hypothecated or created charge or lien in respect of any security of the listed company in connection with such joint venture company, the particulars of such pledge, hypothecation, charge and lien shall be entered in the register members of the listed company within fifteen days from such an event.

Index of Names to be included in Register

Every register maintained under sub-section (1) of section 88 shall include an index of the names entered in the respective registers. The index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found.

The company shall make the necessary entries in the index simultaneously with the allotment or transfer of any security in such Register.

The maintenance of index is not necessary in case the number of members is less than fifty.

Foreign Register of Members, Debenture Holders, other Security Holders or Beneficial Owners residing outside India

— In terms of sub-section (4) of Section 88, a company, if authorized by its Articles of Association, can also keep any part of the Register in any other country. Hence, in all such countries, where the Company has large number of shareholders, a Register of Members containing information about the members from that particular country may be kept. To be called “foreign register”, this Register should contain the names and particulars of the members, debenture holders, other security holders or beneficial owners residing in that country.
The Rules provides as under with regard to the foreign register, the company shall, within thirty days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No.MGT.3 along with the fee where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within thirty days from the date of such change or discontinuance, as the case may be, file notice in Form No.MGT.3 with the Registrar of such change or discontinuance.

A foreign register shall be deemed to be part of the company’s register of members or of debenture holders or of any other security holders or beneficial owners, as the case may be. The foreign register shall be maintained in the same format as the Principal Register.

A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.

Entries in the foreign register maintained under sub-section (4) of section 88 shall be made simultaneously after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

The company shall—

(a) transmit to its registered office in India a copy of every entry in any foreign register within fifteen days after the entry is made; and

(b) keep at such office a duplicate register of every foreign register duly entered up from time to time.

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

The company shall transmit to its registered office in India a copy of every entry in any foreign register within fifteen days after the entry is made; and keep at such office a duplicate register of every foreign register duly entered up from time to time.
The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company in the same part of the world or to the principal register.

**Authentication of Entries in the Registers**

The Rules provide that the entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose and the date of the board resolution authorising the same shall be mentioned.

Entries in the foreign register shall be authenticated by the person authorized by the Board by appending his signature to each entry.

**Shares held by the Members in Electronic Mode**

Sub-section (3) of Section 88 provides that in the case of shares held by the members in electronic mode, the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index.

**Declaration in Respect of Beneficial Interest in any Shares**

Section 89 provides that a declaration is to be given to the company by any person who is a member but not holding the beneficial interest in such shares stating therein the name and other particulars of the person holding the beneficial interest. The declaration to that effect is required to be filed in Form No.MGT.4 in within thirty days from the date on which his name is entered in Register of members. In case of any change, the registered owner is required to make a declaration of the change in ownership within thirty days of such change.

Further, the person holding beneficial interest (beneficial owner) shall declare the nature of his interest and particulars on the person in whose name shares stand registered. The beneficial owner is required to make the declaration within thirty days after acquiring the beneficial interest. Likewise, in case of any change, the beneficial owner is required to make a declaration to the company within thirty days of such change.

Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as “the beneficial owner”) shall file with the company, a declaration disclosing such interest in Form No.
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MGT.5 in duplicate, within thirty days after acquiring such beneficial interest in the shares of the company.

In terms of section 89(6), where any declaration is received by the company, the company shall make a note of such declaration in the register of members and shall file, within thirty days from the date of receipt of declaration by it, a return in Form No. MGT. 6 with the Registrar in respect of such declaration with fee.

Section 90 provides that the Central Government may appoint one or more competent persons to investigate and report as to the beneficial ownership with regard to any share or class of shares.

**Closure of Register of Members etc.**

In terms of Section 91, a company may close its Register of members or Register of Debenture holders or Register of other security holders for a period not exceeding forty five days in a year. However, the Register can not be closed for more than thirty days at any one time.

A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice or such lesser period and in such manner, as may be specified by Securities and Exchange Board, if such company is a listed company or companies intends to get its securities listed. The notice shall be by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company as provided in the Rules.

The requirement of advertisement giving notice of closure of register of members is not applicable to a private company provided that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members/debenture holders/other security holders.

**Annual Return**

Provisions with regard to Annual Return are contained in section 92 and Rules 11 and 12. Every company shall prepare an annual return
in **Form No. MGT. 7** as prescribed in Rules containing the following particulars:

(a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) its shares, debentures and other securities and shareholding pattern;

(c) its indebtedness;

(d) its members and debenture-holders along with changes therein since the close of the previous financial year;

(e) its promoters, directors, key managerial personnel along with changes therein;

(f) meetings of members or a class thereof, Board and its various committees along with attendance details;

(g) remuneration of directors and key managerial personnel;

(h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(k) such other matters as may be prescribed,

The annual return of one Person Company and small company shall be signed by a Company Secretary or where there is no Company Secretary the return shall be signed by the director of the company.

Sub-section 2 of Section 92 states that (2) the annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act. **The rules to this section provides that the annual return, filed by a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form No. MGT.8.**
The extract of the annual return to be attached with the Board’s Report in **Form No. MGT. 9** shall form part of Board’s Report.

The extract of the annual return to be attached with the Board’s Report and a copy of the annual return shall be filed with the Registrar with prescribed fee within thirty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within thirty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.

If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Company Secretary in practice shall be punishable with fine which shall not be less than fifty thousand but may extend to five lakh rupees if he certifies otherwise than in conformity of this section or relevant rules.

**Return of Changes in Shareholding position of Promoters and top ten Shareholders**

In terms of section 93 read with rules, every listed company is required to file with the Registrar, a return in **Form No. MGT. 10** along with the fee with respect to changes relating to either increase or decrease of two percent, or more in the shareholding position of promoters and top ten shareholders of the company in each case, either value or volume of the shares, within fifteen days of such change.

**Place of keeping Registers**

Section 94 provides that the registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92 shall be kept at the registered office of the company. The registers or copies of returns may also be kept at any place in India in which more than one-tenth of the total number of members entered in the register of members reside if approved by a special resolution passed at general meeting of the company and the Registrar has been
given a copy of the proposed resolution at least one day before the date of general meeting of the company in Form No. MGT. 14.

**Inspection etc. of Registers, Returns etc.**

The registers and copies of return shall be open for inspection during business hours by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not exceeding ten rupees for each page.

**Copies of the Registers and Annual Return**

Copies of the registers maintained under section 88 or entries therein and annual return filed under section 92 may be furnished to any member, debenture-holder, other security holder or beneficial owner of the company or any other person on payment of such fee as may be prescribed in the Articles of Association of the company but not exceeding rupees ten for each page.

**Preservation of Register of Members etc. and Annual Return**

The provisions with regard to preservation of records are contained in Rule 15

— The register of members along with the index shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose; and

— The register of debenture holders or any other security holders along with the index shall be preserved for a period of 15 years from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.

— Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the Registrar.
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— The foreign register of members shall be preserved permanently unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture holders or any other security holders shall be preserved for a period of 15 years from the date of redemption of such debentures/securities. The foreign register shall be kept in the custody of the person authorized by the Board for authentication of the entries made therein.

Members’ Meetings

A company is required to hold meetings of the members to take approval of certain business items, as prescribed in the Act.

The meetings to be held for seeking approval to ordinary business and special business are called annual general meeting and extraordinary general meeting. In certain cases, a company may have to hold a meeting of the members of a particular class of members.

Annual General Meeting

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year. Following are the key provisions regarding the holding of an annual general meeting:

Holding of annual general meeting

1. Annual general meeting should be held once every year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
4. The gap between two annual general meetings should not exceed 15 months.

**Extension of validity period of AGM**

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

**Time and place for holding an annual general meeting**

An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should 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 situate. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.

“National Holiday” for this purpose means and includes a day declared as National Holiday by the Central Government.

**Default in holding the annual general meeting**

Section 99 provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues.

If any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to 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. 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.

**Business to be transacted at annual general meeting:**

Sub-section (2) of Section 102 provides that all other businesses transacted at an Annual General Meeting except the following are special business:

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;
(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors.

**Extra Ordinary General Meeting**

All general meetings other than annual general meetings are called extraordinary general meetings.

**Calling of EGM**

All businesses items can be transacted at the extraordinary general meetings are special business. Following are the key provisions, provided in section 100, regarding calling and holding of an extraordinary general meeting:

(I) **By Board**

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

(II) **By Board on requisition**

The Board must call an extraordinary general meeting on receipt of the requisition from the following number of members:

(a) in the case of a company having a share capital: 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: 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.

The requisition should set out the matters to be considered at the proposed meeting and the same should be signed by the requisitionists and sent to the registered office of the company.
The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

(III) By requisitionists

If the Board does not within 21 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 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves. However in such case, the meeting should be held within a period of 3 months from the date of the requisition.

Reasonable expenses incurred by the requisitionists in calling such a meeting shall be reimbursed by the company to the requisitionists. The company in turn recover such expenses from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting.

In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled.

Rules 17 provides as under with regard to calling of extraordinary general meeting by requisitionists:

— The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.

— The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. The requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day.

— If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.

— The notice shall be signed by all the requisitionists or by a requisitionists duly authorised in writing by all other
requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

— No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

— The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.

— Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition.

— The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

(IV) By Tribunal

Section 98 provides that if for any reason it is impracticable to call a meeting of a company or to hold or conduct the meeting of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting:

order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company.
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. Meeting held pursuant to such order shall be deemed to be a meeting of the company duly called, held and conducted.

**Notice of Meeting**

A general meeting of a company may be called by giving not less than 21 clear days’ notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed.

**Short notice**

A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

**Contents of Notice**

**Place of meeting**

The notice should state the place where the general meeting is scheduled to be held. In case of an annual general meeting, the place of the meeting has to be either the registered office of the company or some other place within the city, town or village in which the registered office of the company is situated. No such restriction applies to an extraordinary general meeting.

**Day of meeting**

The day and date of the meeting should be clearly stated in the notice. In case of an annual general meeting, the day should be one that is not a National Holiday. An extraordinary general meeting can however be held on any day.

**Time of meeting**

Exact time of holding the meeting should be given in the notice. An annual general meeting can be called during business hours only, that is, between 9 a.m. and 6 p.m. There is no need to follow such timings in case of an extraordinary general meeting.

**Agenda**

A statement of the business to be transacted at the general meeting should be given in the notice. In case, the meeting is to transact a special business, a explanatory statement should be attached about such item.
Proxy clause with reasonable prominence

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

Notice through Electronic Mode

A company may give notice through electronic mode. Electronic mode’ means any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

Conditions for notice send through e-mail are as under:

A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link/ Uniform Resource Locator (URL) for accessing such notice.

— The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company. The company has to provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and changes therein and such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose e-mail ids are already registered.

— The subject line in e-mail shall state the name of the company, notice of the type of meeting and the date on which meeting is scheduled.

— If notice is sent in the form of an attachment to e-mail, such attachment shall be in the Portable Document Format (PDF) or electronic documentation format together with a facility for recipient for downloading relevant version of the software for accessing such notice along with instructions for downloading such software and alternative contact details in case of inability of the recipient to open or read the attachment.

— There shall be no difference in the text of the physical version
of the notice and electronic version except in respect of mode of dispatch of notice.

— Sending of notice via e-mail shall be subject to such option being confirmed by the member and e-mail address being updated in writing at least 30 days prior to dispatch of notice. In such cases, the company shall not be under obligation to deliver physical copy of the notice unless specifically requested by the member in writing before the date of the meeting.

— When notice or notifications of availability of notice are sent by e-mail, the company should ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent. A copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as ‘proof of sending’.

— The company’s obligation shall be satisfied when it transmits the e-mail and the company will not be held responsible for a failure in transmission beyond its control. However the company shall, where it is aware of the failure in delivery of the e-mail (and subsequent attempts do not rectify the situation), revert to sending physical copy of the notice at the member’s registered address within 72 hours of the original attempt.

— If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, company shall not be in default for not delivering notice via e-mail.

— Company may send e-mail through in-house facility or authorize any third party agency providing bulk e-mail facility.

— Notice made available on the electronic link/ URL has to be readable, and the recipient should be able to obtain and retain copies. The company shall give the complete URL/address of the website and full details of how to access the document/information.

— The notice is taken to be ‘sent’ on the date the notification is sent. The notice must be available on the electronic link/ URL provided from the date of notification until the conclusion of the meeting. The failure to make notice available throughout
the required period shall be disregarded if it is made available for part of that period and the failure is wholly attributable to circumstances that the company could not reasonably have prevented or avoided.

The notice of the general meeting of the company shall be simultaneously placed on the website of the company and on the website as may be notified by the Central Government.

**Persons entitled to receive Notice**

In terms of Section 101(3), notice of every meeting of the company must 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.

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.

**Statement to be Annexed to Notice**

In case of special business items to be transacted at a general meeting, a statement setting out the following material facts, shall be annexed to the notice calling the meeting:

(I)(a) the nature of concern or interest, financial or otherwise, if any, in respect of each item of:

— every director and the manager, if any;

— every other key managerial personnel; and

— relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key
managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than 2% of the paid-up share capital of that company, also be set out in the statement.

(II) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected.

Where as a result of the non-disclosure or insufficient disclosure in any statement referred as above, being made by a promoter, director, manager, if any, or other key managerial personnel, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly, the promoter, director, manager or other key managerial personnel, as the case may be, shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

**Quorum for Meetings**

Quorum refers to the minimum number of members required to constitute a valid meeting. Following are the minimum numbers provided in section 103, for various categories of companies. However the Articles of Association of the company may provide for a higher number.

(a) *Public company:*

- 5 members personally present if the number of members as on the date of meeting is not more than 1000;
- 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- 30 members personally present if the number of members as on the date of the meeting exceeds 5000.

(b) *Private company:*

2 members personally present, shall be the quorum for a meeting of the company.

**Absence of quorum**

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company:

(a) the meeting shall stand adjourned to the same day in the next
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week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists, shall stand cancelled.

Adjourned meeting

In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than 3 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.

If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Chairman of Meetings

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.

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 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.

Proxies

Appointment of a proxy is an important right of a member of the company. The Act contains elaborate provisions regarding exercise of this right by a member.

Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

Every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, should carry with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. Hence a company not having a share capital can abstain from complying with this provision by incorporating necessary clause in its articles of association.
A proxy shall not have the right to speak at the meeting. A proxy shall be entitled to vote only on a poll.

A member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

A person appointed as proxy shall not act as proxy on behalf of more than fifty members and members holding in the aggregate more than ten percent of the total share capital of the company carrying voting rights.

The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

The instrument appointing a proxy must be in Form No. MGT. 11. It needs to be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument should be under its seal or be signed by an officer or an attorney duly authorised by the body corporate. For execution of proxy, the Articles of Association of a company can not specify any special requirement to be complied with.

Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, is entitled to inspect the proxies lodged with the company, if at least 3 days notice is given to the company. Such inspection can be taken during the period beginning 24 hours before the time fixed for the commencement of the meeting, during the business hours of the company, and ending with the conclusion of the meeting.

Restriction on Voting Rights

A member shall not exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or on which company has exercised any right or lien. No member can be prohibited from exercising his voting right on any other ground.

Voting by Show of Hands

At any general meeting, a resolution put to the vote of the meeting shall in the first instance be decided on a show of hands. A declaration by the Chairman of the meeting of the passing of a resolution or otherwise, by show of hands shall be conclusive evidence of the fact of
passing of such resolution or otherwise, unless a poll is demanded before or immediately on declaration by Chairman.

**Voting through Electronic Means**

Every listed company or a company having five hundred or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system.

It may be noted that ‘voting by electronic means’ or ‘electronic voting system’ means a ‘secured system’ based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate ‘cyber security’.

‘Secured system’ means computer hardware, software, and procedure that –

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures.

“Cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosures, disruption, modification or destruction.

A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure:

— The notices of the meeting shall be sent to all the members, auditors of the company, or directors either - (a) by registered post or speed post; or (b) through electronic means like registered e-mail id; (c) through courier service.

— The notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members.

— The notice of the meeting shall clearly mention that the business
may be transacted through electronic voting system and the company is providing facility for voting by electronic means.

— The notice shall clearly indicate the process and manner for voting by electronic means and time schedule including the time period during which the votes may be cast, address of places for casting votes duly sorted in order of name of states or union territories, where the members can cast their votes electronically.

— The company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, inter alia, the following matters:

— statement that the business may be transacted by electronic voting;
— the date of completion of sending of notices;
— the date and time of commencement of voting through electronic means;
— the date and time of end of voting through electronic means;
— the statement that voting shall not be allowed beyond the said date and time;
— website address of the company and agency, if any, where notice of the meeting is displayed; and
— contact details of the person responsible to address the grievances connected with the electronic voting;

— The e-voting shall remain open for not less than one day and not more than three days. Provided that in all such cases, such voting period shall be completed three days prior to the date of the general meeting;

— During the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically. Once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently
— At the end of the voting period, the portal where votes are cast shall forthwith be blocked.

— The Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner. It may be noted that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

— The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

— The scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses and make a scrutinizer’s report of the votes cast in favour or against, if any, forthwith to the Chairman.

— The scrutinizer shall maintain a register either manually or electronically to record the consent or otherwise, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

— The register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the register and other related papers to the company.

— The results declared along with the scrutinizer’s report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members.

— Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

**Demand for Poll**

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the
Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the following person(s):

(a) in the case a company having a share capital: by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000/- or such higher amount as may be prescribed, has been paid-up; and

(b) in the case of any other company: by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

The demand for a poll may be withdrawn at any time by the persons who made the demand.

Time for taking poll and declaring the result

A poll shall be taken forthwith, if it is demanded for adjournment of the meeting or appointment of Chairman of the meeting.

A poll shall be taken at such time, not being later than 48 hours from the time when the demand was made on any other question.

Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.

The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

Manner the Chairman of Meeting get the poll process scrutinised and Report thereon

Rule 21 provides that the chairman of a meeting shall ensure that –

— The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.

— The Scrutinizers are provided with all the documents received by the Company.

— The Scrutinizers initial the Polling papers and distribute them to the members and proxies present at the meeting. In case of joint shareholders, the polling paper shall be given to the first
named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. The Polling paper shall be in Form No. MGT.12.

— The Scrutinizers keep a record of the polling papers issued.

— The Scrutinizers lock and seal an empty polling box in the presence of the members and proxies.

— The Scrutinizers open the Polling box in the presence of two persons as witnesses after the voting process is over.

— In case of ambiguity about the validity of a proxy, the Scrutinizers decide the validity in consultation with the Chairman.

— The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy’s vote shall be disregarded.

— The Scrutinizers count the votes cast on poll and prepare a report thereon addressed to the Chairman.

— Where voting is conducted by electronic means, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.

— The Scrutinizers’ report state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

— The Scrutinizers submit the Report to the Chairman who shall counter-sign the same.

— The Chairman declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

The scrutinizer/s appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT No. 13. The report shall be signed by the scrutinizer / all the scrutinizers, in case there is more than one scrutinizer, and be submitted by them to the Chairman of the meeting within 7 days from the date the poll is taken.

**Postal Ballot**

As per section 2(65) “postal ballot” means voting by post or through any electronic mode.
The Act provides that a company shall in respect of such items of business as the Central Government by notification declare shall be transacted only by postal ballot.

Rule 22 provides as under with regard to conducting business through postal ballot.

The rules provide that the following items of business shall be transacted only by means of voting through a postal ballot–

(a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

(b) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;

(c) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

(d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;

(f) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(g) Buy-back of shares by a company under sub-section (1) of section 68;

(h) Election of a director under section 151 of the Act;

(i) Sale of the whole or substantially the whole of an undertaking of a company as specified

(j) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (3) of section 186;

Section 110(1)(b) further provides that a company may pass any item of business, other than ordinary business and any business in respect of which director or auditors have a right to be heard.
Procedure for conducting business through postal ballot

(1) Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot or by electronic means within a period of thirty days from the date of dispatch of the notice.

(2) The notice shall be sent either (a) by Registered Post or speed post, or (b) through electronic means like registered e-mail id or (c) through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

(3) An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters:

— a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;

— the date of completion of dispatch of notices;

— the date of commencement of voting;

— the date of end of voting;

— the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;

— a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and

— contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

(4) The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the
members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

(5) The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner. (6) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

(7) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

(8) Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer. After the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.

(9) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof;

(10) The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid;

(11) The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company who shall preserve such ballot papers and other related papers/register safely;

(12) The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received;

(13) The results shall be declared by placing it, along with the scrutinizer’s report, on the website of the company;
(14) The resolution shall be deemed to be passed on the date of declaration of its result;

(15) The provisions regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis in respect of the voting by electronic means.

If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf. In case of One Person Company and other companies having members upto fifty are not required to transact any business through postal ballot.

**Circulation of Members’ Resolution**

As per Section 111, a company shall, on requisition in writing of certain number of members, give notice to members of any proposed resolution intended to be moved in the meeting or circulate any statement with respect to matters referred in proposed resolution. The company shall be bound to give notice of resolution only if the requisition is deposited not less than six weeks before the meeting. In case of other requisition not less than 2 weeks before the meeting. The statement need not be circulated if the Central Government declares that the right conferred is being abused to secure needless publicity for defamatory matters. If default is made the company and every officer of the company shall be punishable with fine.

**Representation of President and Governors in Meetings**

Section 112 of the Act provides that President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit, to act as his representative at any meeting of the company. The person so appointed shall be deemed to be a members and have the same rights including the right vote by proxy or postal ballot, as the President or Governor could exercise as a member of the company.

**Representation of Corporations at Meeting of Companies and of Creditors**

In terms of Section 113, where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.
Ordinary and Special Resolutions

Section 114 provides with regard to Ordinary and Special Resolution

Ordinary Resolution

A resolution shall be an ordinary resolution if the notice has been duly given and it is required to be passed by the votes cast, in favour of the resolution, including the casting vote, if any, of the Chairman, exceed the votes, if any, cast against the resolution.

Special Resolution

A resolution shall be a special resolution when:

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution.

Resolutions requiring Special Notice

Section 115 provides that where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.

Procedure for special notice:

— A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up on the date of the notice.

— Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
— The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.

— Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

**Resolutions passed at Adjourned Meeting**

As per Section 116 where a resolution is passed at an adjourned meeting of a company; or the holders of any class of shares in a company; or the Board of Directors, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

**Resolutions and Agreements to be filed with the Registrar**

Section 117 provides that a copy of every resolution and an agreement in respect of matters specified therein together with an explanatory statement shall be filed in Form No. MGT.14 with the Registrar within thirty days of its passing. The Registrar shall register the same and in case of any default, a company and every officer who is in default including the liquidator shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

*Resolutions and agreements to be filed with the Registrar are as under:*

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
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(d) resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members;

(e) resolutions passed by a company according consent to the exercise by its Board of Directors of any of the powers under clause (a) and clause (c) of sub-section (1) of section 180;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of section 304;

(g) resolutions passed in pursuance of sub-section (3) of section 179; and

(h) any other resolution or agreement as may be prescribed and placed in the public domain.

Maintenance of Minutes of Meetings

Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share holders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution. The chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company’s interest in the minutes. Minutes kept shall be evidence of the proceedings recorded in a meeting.

As per section 118(10) every company shall observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Rule 25 contains provisions with regards to minutes of meetings.

A distinct minute book shall be maintained for each type of meeting namely:

(i) general meetings of the members;
(ii) meetings of the creditors;

(iii) meetings of the Board; and

(iv) meetings of the committees of the Board.

It may be noted that resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting. In no case the minutes of proceedings of a meeting or a resolution passed by postal ballot shall be pasted to any such book.

In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer’s report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.

Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by:

— in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;

— in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose;

— in case of every resolution passed by postal ballot, by the chairman of the Board or the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Minute books of general meetings shall be kept at the registered office of the company. Minutes of the Board and committee meetings shall be kept at the registered Office or at such other place as may be approved by the Board.
Minutes books shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as the members may decide by passing special resolution pursuant to requirement of section 88 read with section 94 of the Act.

**Inspection of Minute book of General Meeting**

In terms of Section 119, the minute’s book of general meetings shall be kept at the registered office of a company and shall be open for inspection to members during business hours without any charge subject to such restrictions as the company may impose. A member shall be entitled for a copy of any minutes subject to payment of fees as may be specified in the Articles of Association of the company, but not exceeding a sum of ten rupees for each page or part of any page. The copy should be made available to him within seven days of his making request.

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of the company but not exceeding a sum of ten rupees for each page or part of any page. A member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period of immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

Where the company refuses inspection or fails to furnish a copy of minutes within specified time, the Tribunal is empowered to direct immediate inspection or sending a copy of minutes in the matter and the company and every officer of the company shall be punishable with fine.

**Maintenance and Inspection of Document in Electronic Form**

According to section 120 the documents, records, registers, minutes may be kept and inspected in electronic form.

According to Rule 27, every listed company or a company having not less than one thousand share holders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.
The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit, provided that—

— the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;

— the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;

— the records must be capable of being readable, retrievable and reproducible in printed form;

— the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;

— the records, once dated and signed digitally, shall not be capable of being edited or altered;

— the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updation shall be capable of being recorded on every updation;

it may be noted that the term “records” means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

**Security of Records maintained in electronic form**

The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

The person who is responsible for the maintenance and security of electronic records shall—

— provide adequate protection against unauthorized access, alteration or tampering of records;

— ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;

— ensure that the signatory of electronic records does not repudiate the signed record as not genuine;

— ensure that computer systems, software and hardware are
adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;

— ensure that the computer systems can discern invalid and altered records;

— ensure that records are accurate, accessible, and capable of being reproduced for reference later;

— ensure that the records are at all times capable of being retrieved to a readable and printable form;

— ensure that records are kept in a non-rewritable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;

— ensure that at least two backups, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;

— limit the access to the records to the managing director, company secretary or any other director or officer as may be authorized by the Board in this behalf;

— ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;

— arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and

— take necessary steps to ensure security, integrity and confidentiality of records.

**Inspection and Copies of Records maintained in Electronic Form**

Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be.

**Penalty**

If any default is made in compliance with any of the provisions of this rule, the company and every officers or such other person who is
in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

**Report on Annual General Meeting**

In terms of section 121(1) every listed public company required to prepare 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 the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in **Form No. MGT. 15** within thirty days of the conclusion of annual general meeting along with the prescribed fee.

According to Rule 31, the report shall be prepared in the following manner:

(a) A report under this section shall be prepared in addition to the minutes of the general meeting.

(b) The report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one.

(c) Such report shall contain the details in respect of the following:
- The day, date, hour and venue of the annual general meeting.
- Confirmation with respect to appointment of Chairman of the meeting.
- Number of members attending the meeting.
- Confirmation of quorum.
- Confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting.
- Business transacted at the meeting and result thereof.
- Particulars with respect to any adjournment, postponement of meeting, change in venue.
- Any other points relevant for inclusion in the Report.

(d) Such Report shall contain fair and correct summary of the proceedings of the meeting.