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Law for Directors & Managers

Lecture 6

Meetings and Resolutions

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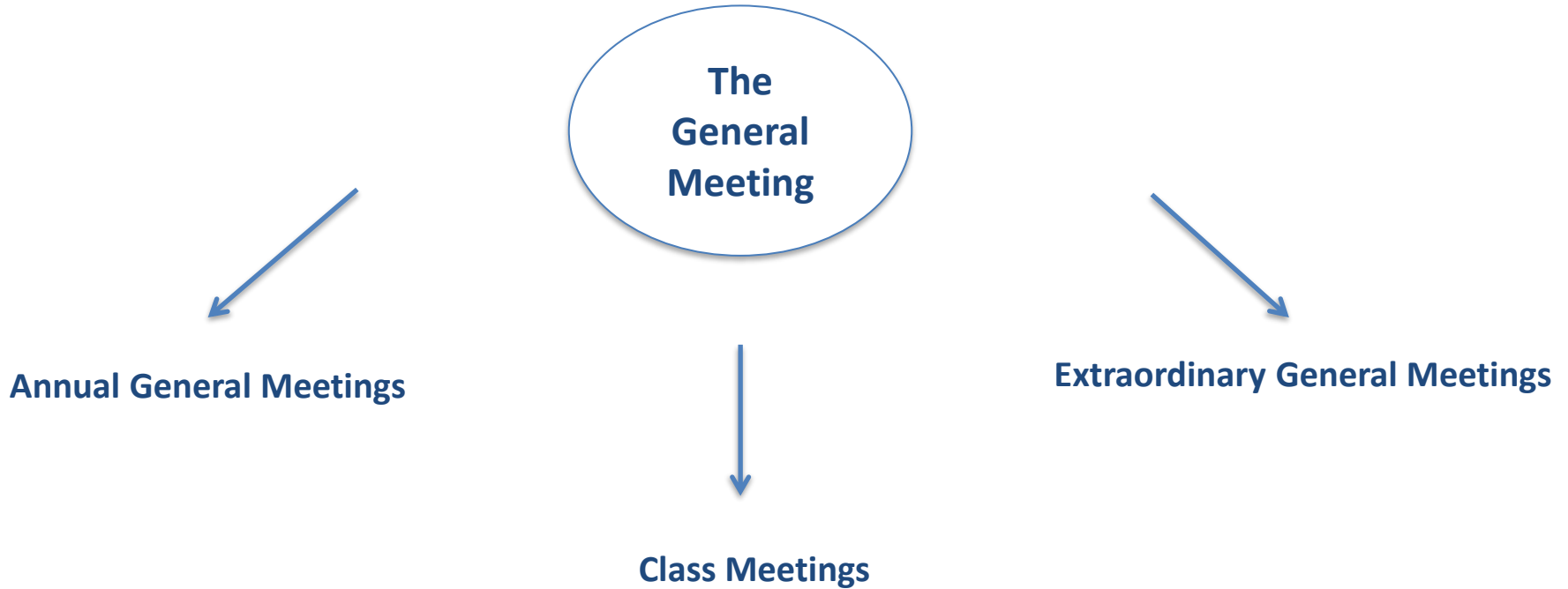
ADVOCATES

Introduction

A company acts through 2 principle organs: **The General Meeting** (the body of shareholders) and **The Board of Directors** (which is usually elected by the shareholders). The directors may exercise all the powers of the company except those which are entrusted by the Companies Act or by the company's M&As to the general meeting.



Meetings



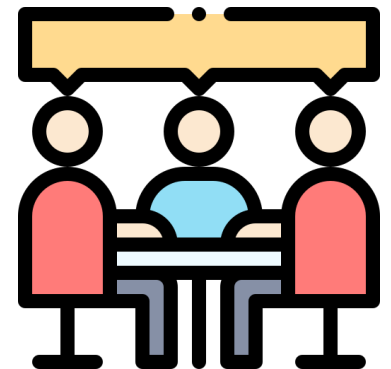
General Meetings and Class Meetings

General Meetings

General meetings pass resolutions that are **binding** on all the members and on the company itself. Unless otherwise provided by the M&As, all members may attend, speak and vote thereat.

Class Meetings

Class meetings are held to pass resolutions that will be binding only on the members of the class concerned, and only such members may attend, speak and vote at such meeting.



Annual General Meeting



Annual General Meetings (AGMs)

- Every company must hold an AGM in each year.
- The AGM need not be held on the anniversary of the previous AGM, but not more than 15 months should elapse between one AGM and another.
- However, as long as the company holds its first annual general meeting within eighteen months of its registration it need not hold one in the year of its registration or in the following year.
- Where the directors fail to convene an AGM, the members appear to be unable to convene it themselves. Any member may however file an application requesting the court to order the meeting to be called, held and conducted in such manner as the court thinks fit.

Business to be transacted at AGMs

The business of a particular AGM may go beyond the matters that are generally regarded as the “ordinary” business of the meeting.

- An AGM may therefore transact business that goes beyond the declaration of dividends, the consideration of the annual accounts and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors.

There is no limit to the type of business which may be transacted at an AGM – as long as it is business that can properly be put to a general meeting.

Circulation of annual accounts

The company is required by the CA to ensure that not less than **14 days** before the date of the AGM at which the annual accounts are to be laid, a copy of the accounts is to be sent to:

- i. Every member of the company;
- ii. Every holder of the company's debentures; and
- iii. All other persons who are entitled to receive notice of general meetings.

If copies of the annual accounts are sent less than 14 days before the date of the meeting, they shall still be deemed to have been duly sent if it is so agreed by all the members entitled to attend the meeting who received them late.

Listed companies

While listed companies are obliged by the Listing Rules to send out notices of general meetings not later than the 21st day prior to the day when the meeting is due to be held, it appears that the Listing Rules do not require a copy of the annual accounts to be sent out at the same time, and that the 14 day requirement set out in the CA accordingly applies.

Printing of annual accounts – *exception under the Companies Act*

Unless otherwise provided in the memorandum and articles of association of the company, the annual accounts need not be sent to members of a company who have been duly given notice of a general meeting of the company at which the company's annual accounts shall be laid, and where the company has **made available to its members an electronic copy of such annual accounts**, either on its website or otherwise, and has informed its members accordingly.

— Extraordinary General Meeting



Extraordinary General Meeting

General meetings other than the AGMs are EGMs

Extraordinary General Meetings (EGMs)

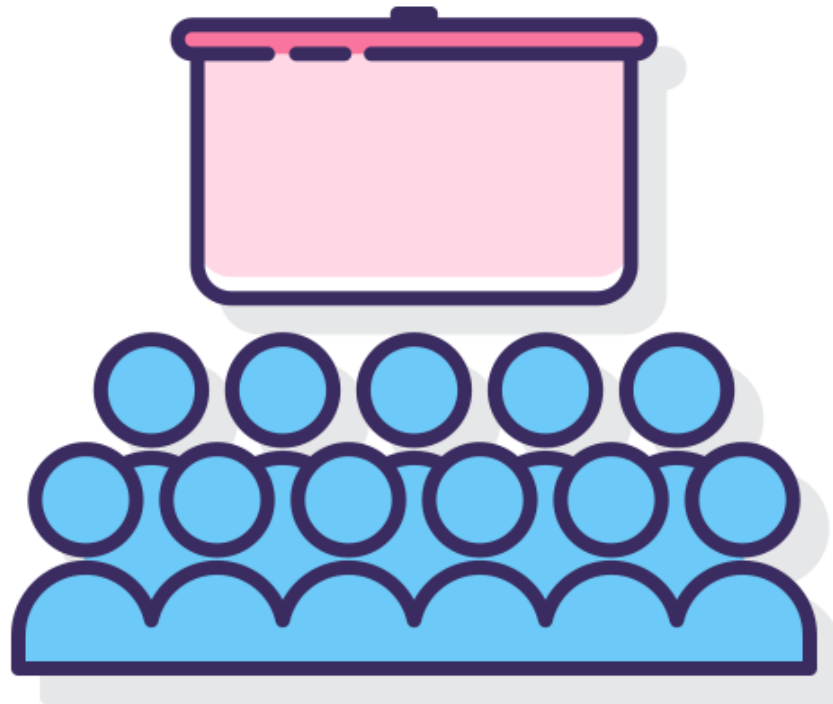
Although the Companies Act does not list out the matters to be considered and discussed at an EGM, reference is made to two matters. Such reference is clearly made in a non-exhaustive manner:

1. When a **resigning auditor** requests an EGM to receive his notice of resignation and to consider the reasons for such resignation.
2. **Company recovery procedure** – if the members of a company undergoing a company recovery procedure are satisfied, at an EGM, that the affairs of the company have improved to the extent that it is in a position to pay its debts, then they may submit an application to the court, accompanied by appropriate supporting documentation and information, confirming that they are so satisfied, and requesting the court to issue an order for the termination of the company recovery procedure.

Convening of EGMs

1. By directors
2. Following requisition by members
3. On serious loss of capital
4. At the request of the resigning auditor

General Meetings



Date, time and place of the General Meeting

The directors may determine the date, time and place of a general meeting.

- In doing so, directors are obliged to exercise their discretion in the interests of the company.
- Once a meeting has been duly convened it would appear that the board has no power to postpone or cancel it and the meeting may be held notwithstanding its postponement or cancellation.

Convening a general meeting by the Court

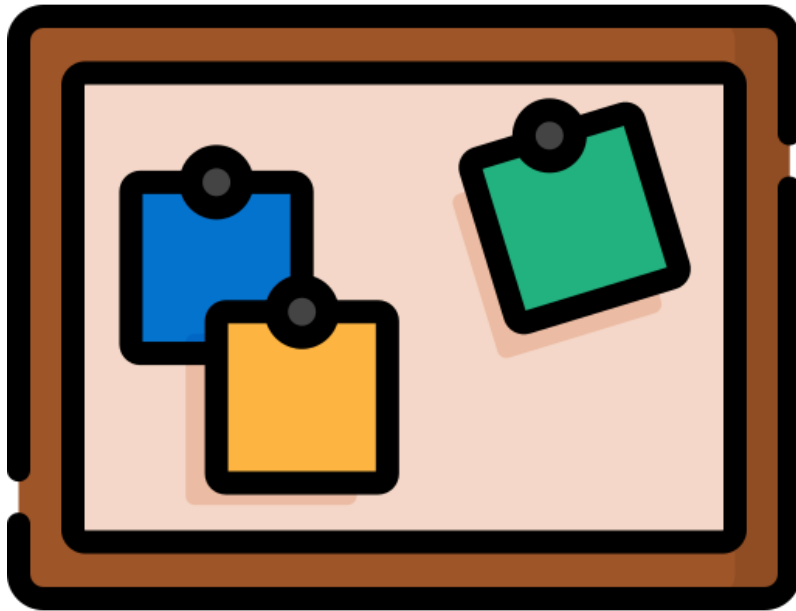
General meetings may, in particular circumstances, be convened, held and conducted as directed by the Civil Court. The Court may exercise this power if, for any reason, it is impracticable:

- (i) to call a meeting in the methods in which meetings are usually called; or
- (ii) to conduct the meeting in the manner prescribed by the AoA of the Companies Act.

The Court may exercise its power either:

- (i) on its own motion or on demand of either of parties appearing in proceedings before it; or
- (ii) in the absence of such proceedings, on the application of any director or any member entitled to vote at the meeting.

Notice of general meetings



A general meeting cannot be validly held unless proper notice has been given. Notice should be given by at least **14 days' notice in writing**, and it should be given to every member, irrespective of his authority to attend the meeting and vote or not. Notice should also be given to the company's **auditors and to its directors**.

- Articles of association often provide that the accidental omission to give notice to a member, or his failure to receive it, will not invalidate the proceedings at the meeting.

Notice of class meetings

In the case of a proposed class meeting, the CA does not specifically require notice thereof to be given to each member of the class concerned, but such requirement should be viewed as inherent to the rights of such members.

- The Articles of Association do however commonly provide that notice of a class meeting called for the purpose of consenting to an alteration of the rights of a class must be given to each class member.

How are notices of general meetings served?

Article 131(a) of the Companies Act states, inter alia, that the notice shall be served in the manner prescribed by the First Schedule. The latter stipulates that a notice may be given to a member personally or by post, or by any other manner prescribed by the company in a general meeting.

As for listed companies, the rules governing the sending of notices of general meeting are modified and clarified by the Listing Rules.

- _ The general rule is that a listed company is bound to send the notices of general meetings by pre-paid mail to its members at their last known residential address.
- _ A listed company may however publish the notice either on its website or on the website of the regulated market on which its shares are listed, provided that the shareholders have been notified and have given their consent.

Length of the notice

For a general meeting (annual or extraordinary) to be duly convened, a **14 days'** notice has to be given in writing. The AoA often provide that the notice should specify the place, the day and the hour of the meeting and in the case of 'special business', the general nature of that business.

The notice period for **listed companies** is longer than that required for non-listed. As a rule, they are obliged by the Listing Rules to send out notices of general meetings not later than the **21st day** prior to the day when the meeting is due to be held.

Content of the notice

The notice of a general meeting need only specify the nature of the business to be transacted to the extent of enabling members to decide whether to attend in person or by proxy in order to safeguard their interests.

If the meeting is convened to pass an extraordinary resolution, the notice must say so and the proposed resolution must be set out verbatim. The notice must also indicate the principal purpose of the resolution.

Length and content of the notice – *listed companies*

Significant additional requirements apply to listed companies in relation to the contents of the notice convening a general meeting (annual or extraordinary).

The notice must specify at least the following:

1. The venue, date and commencement time of the meeting
2. The proposed agenda for the meeting
3. The procedures – set out clearly and precisely, that the members must comply with in order to be able to participate in and to vote at the general meeting
4. Where and how the general meeting and draft resolutions may be obtained
5. The address of the internet site on which certain information will be made available
6. The ‘record date’ with an explanation that only those who are members on that date will have the right to participate and vote in the general meeting

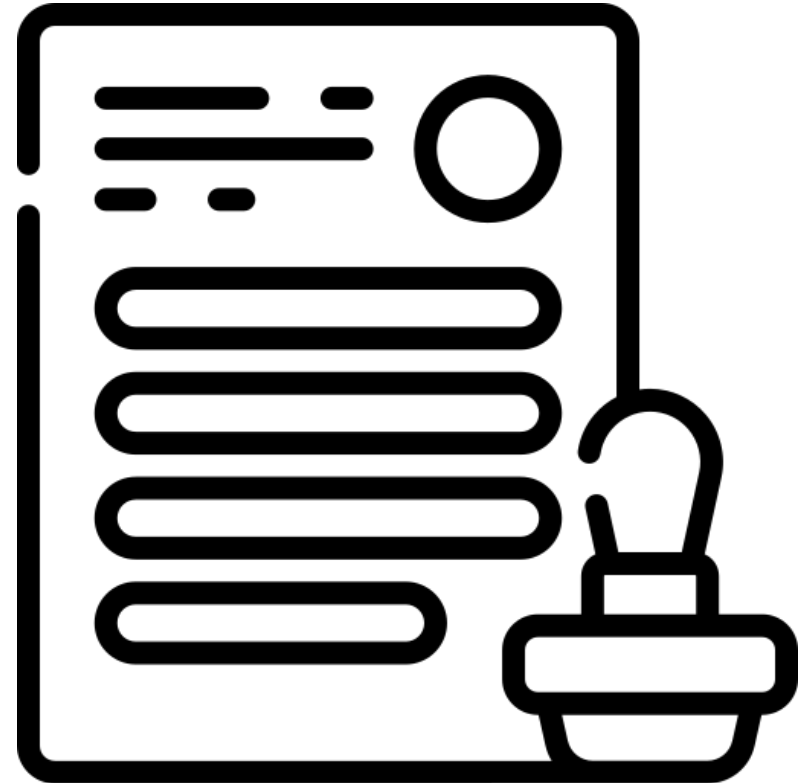
Proxies

Proxy has two different meanings:

- It refers to a mandatary appointed by a member to vote on his behalf at a general meeting
- It refers to the actual document by which such mandatary is appointed

Listed companies

Listed companies are required to send a proxy form with the notice convening a general meeting to each member entitled to vote at the meeting.



Quorum



A meeting cannot proceed to business unless a quorum of members is present. Unless the AoA provide otherwise, two members personally present form a quorum.

- Proxies, therefore, do not count towards the quorum unless the articles provide that they are to be so counted.
- Typically, articles of association **do** provide that members represented by proxy count towards a quorum.

Voting



Voting on a proposed resolution is usually taken by means of a show of hands.

- Each member present in person typically has one vote independently of the number of shares held by him.
- Unless the M&As otherwise provide, a proxy cannot vote on a show of hands, but if they do so provide, he will have one vote.

Dissolution and adjournment of meeting

The model articles contain a regulation (which is adopted by the articles of most companies) providing that the chairman may, with the consent of any meeting at which a quorum is present, and must, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

- However, no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- The regulation also provides that if the meeting is adjourned for 30+ days, notice of the adjourned meeting is to be given as in the case of an original meeting and that it will otherwise not be necessary to give any notice of an adjourned meeting or of the business to be transacted at such meeting.



Chairman

Usually, the AoA provide the chairman of the Board of Directors should also preside at every general meeting of the company.

Such chairman is to preserve order, to call on members to speak and to conduct any voting. He also has the power to adjourn the meeting with the consent of the meeting at which a quorum is present and oblige him to adjourn it if so directed by the meeting.



Corporate Members

A body corporate which is a member of a company may be represented at a general meeting by whoever holds its legal representation. The Companies Act requires the Memorandum of a company to state *“the manner in which the representation of the company is to be exercised, and the name of the first person or persons vested with such representation.”*

The person or persons holding the legal representation of the corporate member will obviously have the right to represent the member at any general meeting of the company in which the corporate member holds shares.

Matters to be handled prior to meetings

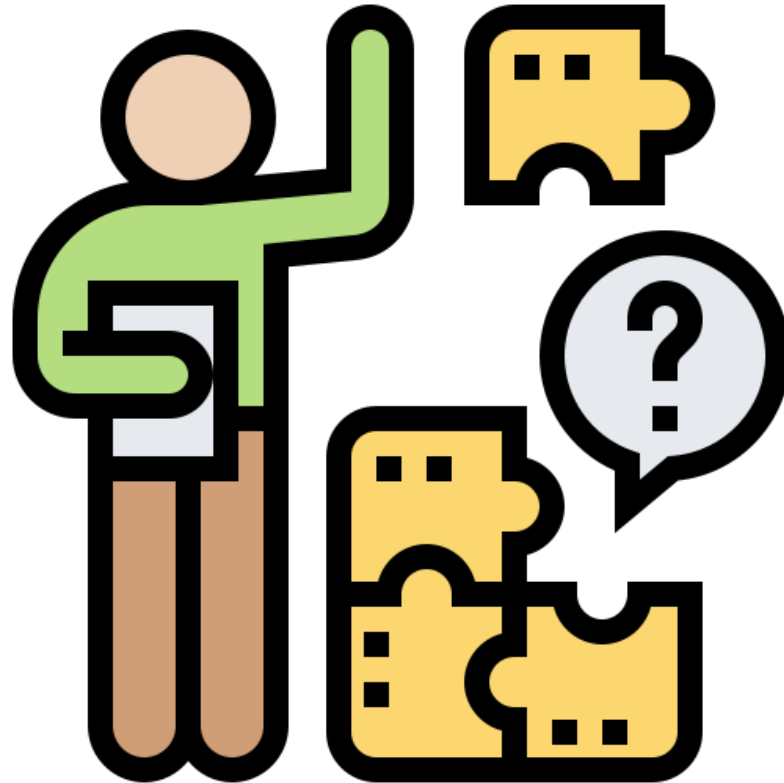
Certain matters need to be handled prior to the actual meeting. Broadly, the company needs to ensure:

- a) That notices and agenda are properly dispatched within the time-limits established by law or by the articles of association
- b) That any documentation that should be distributed in connection with the meeting is duly circulated
- c) That all formalities concerning proxies are complied with; and
- d) That all practical arrangements regarding the meetings are taken care of.

Minutes of the meeting

One of the first items on an agenda is usually the approval of the minutes of the previous meeting. **The company secretary is generally expected to read the minutes**, although the members sometimes ask the chairman to dispense with the reading of the minutes and consider them “as read”. The minutes are then either approved without correction or approved subject to such correction as may be agreed upon during the meeting. Once approved, the company secretary could ensure that the minutes are signed by the chairman of the meeting.

Resolutions



Kinds of resolutions

There are two forms of resolutions may be passed in general meetings, namely **ordinary and extraordinary resolutions**. The kind of resolution appropriate depends on the nature of the decision to be taken, and not on the kind of meeting at which it is passed. Accordingly, both types of resolutions may be passed at either kind of general meeting.

The Companies Act requires certain decisions to be taken by extraordinary resolution. All other decisions may be taken by way of an ordinary resolution, unless the M&As provides otherwise.

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1. **Extraordinary Resolutions**
 2. **Ordinary Resolutions**
 3. **Resolutions in Writing**

Extraordinary resolutions – *public companies*

Public companies have 2 requirements:

1. It has been taken at a general meeting of which notice specifying the intention to propose the text of the resolution as an extraordinary resolution and the principal purpose thereof has been duly given;
2. It has been passed by a member or members having the right to attend and vote at the meeting holding **in the aggregate not less than 75% in nominal value of the shares represented and entitled to vote at the meeting** AND at least **51%**, or such other higher percentage as the memorandum or articles may prescribe, in **nominal value of all the shares entitled to vote** at the meeting

Extraordinary resolutions – *public companies (if requirements are not satisfied)*

If one of the aforesaid majorities is obtained, but not both:

1. another meeting shall have to be convened within **30 days** in accordance with the provisions for the calling of meetings to take a fresh vote on the proposed resolution.
2. At the second meeting, the resolution may be passed by a member or members having the right to attend and vote at the meeting holding **in aggregate not less than 75% in nominal value of the shares represented and entitled to vote at the meeting (first requirement)**. However, if more than half in nominal value of all the shares having the right to vote at the meeting is represented at that meeting, a simple majority in nominal value of such shares so represented shall suffice.

Extraordinary resolutions – *private companies*

Two requirements also need to be met for a resolution to be considered extraordinary in the case of a **private company**:

1. it has been taken at a general meeting of which notice specifying the intention to propose the text of the resolution as an extraordinary resolution and the principal purpose thereof has been duly given;
2. It has been passed by a member or members having the right to attend and vote at the meeting holding an aggregate of not less than **51% in nominal value of the shares**

Extraordinary resolutions

Decisions which by law require extraordinary resolutions include:

- decisions to alter the M&As of a company (with some exceptions);
- decisions whereby a company acquires its own shares;
- decisions whereby class rights are varied;
- decisions to change the currency in which the share capital is designated;
- decisions to voluntarily wind up a company or to have the company wound up by the court;
- decisions to nominate and remove a liquidator;
- decisions to convert to a commercial partnership; and
- decisions relating to the amalgamation and division of companies.

Ordinary resolutions

- _ No distinction between public companies and private companies
- _ Must be passed by a member or members that have a right to attend or vote in the general meeting and that hold more than **50% or more of the voting rights.**
- _ The AoA may however prescribe a higher percentage

Ordinary resolutions – weighted voting

- **Article 131** – unless specified in the company’s articles or in the company’s terms of issue *“every member shall have one vote in respect of each share”*. Therefore a share may carry more than 1 vote
- **Extraordinary resolution (public and private company)** – Voting power is linked with the nominal value of the shares. Weighted voting is forbidden in respect of extraordinary resolutions
- **Ordinary resolution (public and private)** – voting is linked to “voting rights” attached to the shares, each share will carry one vote independently of its nominal value. The article may link the voting power to the shares’ nominal value. Weight voting is allowed in the case of ordinary resolutions.

Resolutions in writing



- Can only be used for private companies
- Must be signed by **all** the members having the right to receive notice of an to attend and vote at general meetings of the company
- Valid and effective as if the meeting was duly convened and held
- Cannot be used for the removal of directors and auditors

Meetings of Directors



Introduction

Meetings of directors, as opposed to meetings of members, are only lightly regulated by the Companies Act.

- _ In contrast, directors require neither the level of protection afforded to members nor the level of detailed regulation applicable to general meetings

The need for meetings

As a general rule, the powers of directors should be exercised through the meetings of the board of directors.

- _ The board should meet in some place where the directors may be present and therefore have the opportunity of discussing the issues before them and of expressing their assent or dissent.

***a meeting need not be a formal one – it is however essential that the directors regard what takes place as a meeting of the board.**

Duty to attend and participate

In the exercise of their functions, directors are obliged to exercise the required degree of care, diligence and skill. And it is submitted that these duties infer an obligation on their part to generally attend board meetings and to participate in such meetings.

Who may convene a meeting?

There is no rule in the CA, but the model articles provide that a director may, and the company secretary on the requisition of a director, must, at any time summon a meeting of the directors.

_ In the absence of any provision in the M&As, any director would have the right to do so.

Addressees of notice

As a general rule, the notice of a board meeting must be given to all the directors, even if their presence would not affect the decision.

- If however, the date and place of a board meeting would have been decided upon at the previous board meeting, any director who was present at that meeting should be regarded as having had notice of the meeting, but a director who was not so present has the right to be given notice of the next meeting.

Failure to give a proper notice of a board meeting would render the proceedings of the meeting null.

- In the case of a director whose whereabouts are unknown, the notice could be sent to his last known address or to the address supplied by the director himself.

Length of notice

There is no mandatory minimum notice period requirement. An urgent matter may occasionally arise which may require immediate attention and decision. The law therefore imposes **no mandatory notice period but prudently leaves the matter to be determined by the articles.**

Where a specific number of days' notice is set out in the articles, the number of days is calculated by excluding the day on which the notice is given and the day on which the meeting is held.

Form of notice

There is no particular form for the notice of a board meeting – and in the absence of any provision in the articles, it would appear that notice of a board meeting need not be given in writing; a telephone call should be sufficient.

Contents of the notice - agenda

Notice of board meetings frequently include a formal agenda, but it is not necessary for the notice to set out the business to be transacted at the meeting since the directors need not work to an agenda.

- _ However, if an indication of the business to be transacted is given, it must **not be misleading**.

Documents to be circulated

Documentation relating to the matters to be transacted at the board meeting should, as a matter of good corporate governance, be copied and circulated to directors as early as possible before the meeting.

- _ Sometimes, the chairman or managing director of a company tries to distribute such documents either during the meeting itself or on the eve of the meeting.

Quorum



In order for a board meeting to proceed to business, a quorum must be present. The quorum is generally determined by the articles of association and many different variations are found in practice.

- The articles may also specify different quorums for different types of businesses – but this is rarely inserted in practice.

Voting

Typically, articles of association provide that questions arising at any meeting should be decided by a majority of votes and that in the case of an equality of votes, the chairman would have a second or a casting vote.

- _ There is however nothing to prevent the M&As from giving each director more than one vote.

Adjournment

The directors are usually free to adjourn the meeting as they deem fit.

- _ It is the board which generally has the power to adjourn the meeting. However, in exceptional circumstances, the chairman may have a power to adjourn.

Convening of board meetings by the court

Board meetings may be convened, held and conducted as directed by the Civil Court. It may exercise this power, if, for any reason, it is impracticable to call a board meeting in any manner in which such meetings may be called, or to conduct the meeting in the manner prescribed by the articles of the CA.

Minutes

The CA requires every company to cause minutes of all board meetings to be taken and to be kept in minute books. Such minutes, if purporting to be signed by the chairman of the meeting at which proceedings were held, or by the chairman of the next succeeding meeting, are to be considered as evidence of the proceedings.

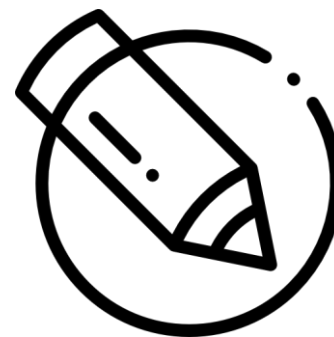
There is no objection to meetings being held by audio or audio-visual links.



Resolutions in writing

The articles of association invariably provide that *“a resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.”*

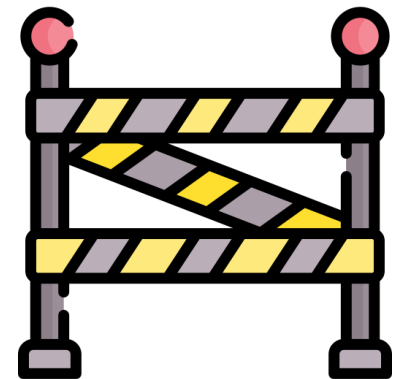
- _ Any type of decision may be passed by means of a resolution in writing.
- _ The advantage is that it avoids the need to meet to decide on a matter than can be more expeditiously dealt with by means of a resolution in writing mechanism.



Resolving deadlock situations

A variety of measure or mechanisms could be adopted to resolve deadlock situations:

1. Have a chairman with a second or casting vote.
2. Having a chairman independent of the members (a person appointed jointly by two members and who would enjoy the confidence and trust of both members).
3. Creating a mechanism whereby in the event of deadlock, the particular matter would be referred to an independent person whose decision on the matter would be final. This clause would need to be accurately drafted to enable the deadlock to be effectively resolved.
4. A rather uncommon way would also be a mechanism whereby in the event of a deadlock which has remained unresolved for a specified period of time, any one of the members would be entitled to offer to sell his entire shareholding to the other member for a certain price. The other shareholder can then either accept this offer, or, in turn, offer to sell his entire shareholding on the same terms to the first shareholder who must accept to acquire such shares.





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