

SCHOOL OF STUDIES IN COMMERCE
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SUBJECT : corporate legal framework

TOPIC : MEETINGS AND RESOLUTIONS

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INTRODUCTION OF MEETING

During the life of your company, you may have to hold general meetings and board meetings when important decisions need to be made by members and directors. At such times, certain rules and procedures must be followed to ensure the execution of these formal meetings complies with company law.

A company is an association of several persons. Decisions are made according to the view of the majority. Various matters have to be discussed and decided upon. These discussions take place at the various meetings which take place between members and between the directors. Needless to say, the importance of meetings cannot be under-emphasized in case of companies. The Companies Act, 1956 contains several provisions regarding meetings. These provisions have to be understood and followed.

For a meeting, there must be at least 2 persons attending the meeting. One member cannot constitute a company meeting even if he holds proxies for other members

Any resolutions (decisions) that are taken during the course of a general or board meeting must be recorded accurately. In some circumstances, directors also have to report certain matters to Companies House.

If you are the sole director and shareholder of your company, you are still required to hold 'meetings' in some situations. Yes, meetings with just yourself. It seems bizarre but it is simply a matter of formality to satisfy corporate compliance regulations.

Kinds of Company Meetings

Broadly, meetings in a company are of the following types :-

I. Meetings of Members :

These are meetings where the members / shareholders of the company meet and discuss various matters. Member's meetings are of the following types:-

A. Statutory Meeting :

A public company limited by shares or a guarantee company having share capital is required to hold a statutory meeting. Such a statutory meeting is held only once in the lifetime of the company. Such a meeting must be held within a period of not less than one month or within a period not more than six months from the date on which it is entitled to commence business i.e. it obtains certificate of commencement of business. In a statutory meeting, the following matters only can be discussed:-

1. Floatation of shares / debentures by the company
2. Modification to contracts mentioned in the prospectus

The purpose of the meeting is to enable members to know all important matters pertaining to the formation of the company and its initial life history. The matters discussed include which shares have been taken up, what money has been received, what contracts have been entered into, what sums have been spent on preliminary expenses, etc. The members of the company present at the meeting may discuss any other matter relating to the formation of the Company or arising out of the statutory report also, even if no prior notice has been given for such other discussions but no resolution can be passed of which notice have

not been given in accordance with the provisions of the Act.

A notice of at least 21 days before the meeting must be given to members unless consent is accorded to a shorter notice by members, holding not less than 95% of voting rights in the company.

A statutory meeting may be adjourned from time to time by the members present at the meeting.

The Board of Directors must prepare and send to every member a report called the "Statutory Report" at least 21 days before the day on which the meeting is to be held. But if all the members entitled to attend and vote at the meeting agree, the report could be forwarded later also. The report should be certified as correct by at least two directors, one of whom must be the managing director, where there is one, and must also be certified as correct by the auditors of the company with respect to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company. A certified copy of the report must be sent to the Registrar for registration immediately after copies have been sent to the members of the company.

A list of members showing their names, addresses and occupations together with the number shares held by each member must be kept in readiness and produced at the commencement of the meeting and kept open for inspection during the meeting.

If default is made in complying with the above provisions, every director or other officer of the company who is in default shall be punishable with fine upto Rs. 500. The Registrar or a contributory may file a petition for the winding up of the company if default is

made in delivering the statutory report to the Registrar or in holding the statutory meeting on or after 14 days after the last date on which the statutory meeting ought to have been held.

Contents of Statutory Report must provide the following particulars:- (a) The total number of shares allotted, distinguishing those fully or partly paid-up, otherwise than in cash, the extent to which partly paid shares are paid-up, and in both cases the consideration for which they were allotted.

(b) The total amount of cash received by the company in respect of all shares allotted, distinguishing as aforesaid.

(c) An abstract of the receipts and payments upto a date within 7 days of the date of the report and the balance of cash and bank accounts in hand, and an account of preliminary expenses.

(d) Any commission or discount paid or to be paid on the issue or sale of shares or debentures must be separately shown in the aforesaid abstract.

(e) The names, addresses and occupations of directors, auditors, manager and secretary, if any, of the company and the changes which have taken place in the names, addresses and occupations of the above since the date of incorporation.

(f) Particulars of any contracts to be submitted to the meeting for approval and modifications done or proposed.

(g) If the company has entered into any underwriting contracts, the extent, if any, to which they have not been carried out and the reasons for the failure.

(h) The arrears, if any, due on calls from every director and from

the manager.

(i) The particulars of any commission or brokerage paid or to be paid, in connection with the issue or sale of shares or debentures to any director or to the manager.

The auditors have to certify that all information regarding calls and allotment of shares are correct.

B. Annual General Meeting

Must be held by every type of company, public or private, limited by shares or by guarantee, with or without share capital or unlimited company, once a year. Every company must in each year hold an annual general meeting. Not more than 15 months must elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. In such a case, it need not hold any annual general meeting in the year of its incorporation as well as in the following year only.

In the case there is any difficulty in holding any annual general meeting (except the first annual meeting), the Registrar may, for any special reasons shown, grant an extension of time for holding the meeting by a period not exceeding 3 months provided the application for the purpose is made before the due date of the annual general meeting. However, generally delay in the completion of the audit of the annual accounts of the company is not treated as "special reason" for granting extension of time for holding its annual general meeting. Generally, in such circumstances, an AGM is convened and held at the proper time. All matters other than the accounts are discussed. All other resolutions are passed and the meeting is adjourned to a later

date for discussing the final accounts of the company. However, the adjourned meeting must be held before the last day of holding the AGM.

A notice of at least 21 days before the meeting must be given to members unless consent is accorded to a shorter notice by members, holding not less than 95% of voting rights in the company. The notice must state that the meeting is an annual general meeting. The time, date and place of the meeting must be mentioned in the notice. The notice of the meeting must be accompanied by a copy of the annual accounts of the company, director's report on the position of the company for the year and auditor's report on the accounts. Companies having share capital should also state in the notice that a member is entitled to attend and vote at the meeting and is also entitled to appoint proxies in his absence. A proxy need not be a member of that company. A proxy form should be enclosed with the notice. The proxy forms are required to be submitted to the company at least 48 hours before the meeting.

The AGM must be held on a working day during business hours at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. The Central Government may, however, exempt any class of companies from the above provisions. If any day is declared by the Central government to be a public holiday after the issue of the notice convening such meeting, such a day will be treated as a working day.

A company may, by appropriate provisions in its articles, fix the time for its annual general meeting and may also by a resolution

passed in one annual general meeting fix the time for its subsequent annual general meetings.

Companies licensed under Section 25 are exempt from the above provisions provided that the time, date and place of each annual general meeting are decided upon beforehand by the Board of Directors having regard to the directions, if any, given in this regard by the company in general meeting.

In case of default in holding an annual general meeting, the following are the consequences:-

1. Any member of the company may apply to the Company Law Board. The Company Law Board may call, or direct the calling of the meeting, and give such ancillary or consequential directions as it may consider expedient in relation to the calling, holding and conducting of the meeting. The Company Law Board may direct that one member present in person or by proxy shall be deemed to constitute the meeting. A meeting held in pursuance of this order will be deemed to be an annual general meeting of the company. An application by a member of the company for this purpose must be made to the concerned Regional Bench of the Company Law Board by way of petition in Form No. 1 in Annexure II to the CLB Regulations with a fee of rupees fifty accompanied by (i) affidavit verifying the petition, (ii) bank draft for payment of application fee.
2. Fine which may extend to Rs. 5,000 on the company and every officer of the company who is in default may be levied and for continuing default, a further fine of Rs. 250 per day during which the default continues may be levied.

Business to be transacted at Annual General Meeting:

At every AGM, the following matters must be discussed and

decided. Since such matters are discussed at every AGM, they are known as ordinary business. All other matters and business to be discussed at the AGM are special business.

The following matters constitute ordinary business at an AGM:-

1. Consideration of annual accounts, director's report and the auditor's report
2. Declaration of dividend
3. Appointment of directors in the place of those retiring
4. Appointment of and the fixing of the remuneration of the statutory auditors.

In case any other business (special business) has to be discussed and decided upon, an explanatory statement of the special business must also accompany the notice calling the meeting. The notice must should also give the nature and extent of the interest of the directors or manager in the special business, as also the extent of the shareholding interest in the company of every such person. In case approval of any document has to be done by the members at the meeting, the notice must also state that the document would be available for inspection at the Registered Office of the company during the specified dates and timings.

C. Extraordinary General Meeting

Every general meeting (i.e. meeting of members of the company) other than the statutory meeting and the annual general meeting or any adjournment thereof, is an extraordinary general meeting. Such meeting is usually called by the Board of Directors for some urgent business which cannot wait to be decided till the next AGM. Every business transacted at such a meeting is special business. An explanatory statement of the special business must also accompany the notice calling the meeting. The notice must should also give the nature and extent of the interest of the

directors or manager in the special business, as also the extent of the shareholding interest in the company of every such person. In case approval of any document has to be done by the members at the meeting, the notice must also state that the document would be available for inspection at the Registered Office of the company during the specified dates and timings.

The Articles of Association of a Company may contain provisions for convening an extraordinary general meeting. eg. It may provide that "the board may, whenever it thinks fit, call an extraordinary general meeting" or it may provide that "if at any time there are not within India, directors capable of acting who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting".

Extraordinary General Meeting on Requisition :

The members of a company have the right to require the calling of an extraordinary general meeting by the directors. The board of directors of a company must call an extraordinary general meeting if required to do so by the following number of members:

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- 1. Members of the company holding at the date of making the demand for an EGM not less than one-tenth of such of the voting rights in regard to the matter to be discussed at the meeting ; or**
- 2. If the company has no share capital, the members representing not less than one-tenth of the total voting rights at that date in regard to the said matter.**

The requisition must state the objects of the meetings and must

be signed by the requisitioning members. The requisition must be deposited at the company's registered office. When the requisition is deposited at the registered office of the company, the directors should within 21 days, move to call a meeting and the meeting should be actually be held within 45 days from the date of the lodgement of the requisition. If the directors fail to call and hold the meeting as aforesaid, the requisitionists or any of them meeting the requirements at (a) or (b) above, as the case may be, may themselves proceed to call meeting within 3 months from the date of the requisition, and claim the necessary expenses from the company. The company can make good this sum from the directors in default. At such an EGM, any business which is not covered by the agenda mentioned in the notice of the meeting cannot be voted upon.

Power of Company Law Board to Order Calling of Extraordinary General Meeting:

If for any reason, it is impracticable to call a meeting of a company, other than an annual general meeting, or to hold or conduct the meeting of the company, the Company Law Board may, either i) on its own motion, or ii) on the application of any director of the company, or of any member of the company, who would be entitled to vote at the meeting, order a meeting to be called and conducted as the Company Law Board thinks fit, and may also give such other ancillary and consequential directions as it thinks fit expedient. A meeting so called and conducted shall be deemed to be a meeting of the company duly called and conducted.

Procedure for Application under Section 186:

An application by a director or a member of a company for this purpose is required to be made to the Regional Bench of the Company Law Board before whom the petition is to be made in Form No 1 specified in Annexure II to the CLB Regulations with a fee of Rs200. The petition must be accompanied with the following documents -

- 1. Evidence in proof of status of the applicant.**
- 2. Affidavit verifying the petition.**
- 3. Bank draft evidencing payment of application fee.**
- 4. Memorandum of appearance with copy of the Board's resolution or executed vakalat nama, as the case may be.**

D. Class Meeting

Class meetings are meetings which are held by holders of a particular class of shares, e.g., preference shareholders. Such meetings are normally called when it is proposed to vary the rights of that particular class of shares. At such meetings, these members discuss the pros and cons of the proposal and vote accordingly. (See provisions on variations of shareholder's rights). Class meetings are held to pass resolution which will bind only the members of the class concerned, and only members of that class can attend and vote.

Unless the articles of the company or a contract binding on the persons concerned otherwise provides, all provisions pertaining to calling of a general meeting and its conduct apply to class meetings in like manner as they apply with respect to general meetings of the company.

II. Meetings of the Board of Directors

- Meeting of the Board of Directors
- Meeting of a Committee of the Board

III. Other Meetings

A. Meeting of debenture holders

A company issuing debentures may provide for the holding of meetings of the debenture holders. At such meetings, generally matters pertaining to the variation in terms of security or to alteration of their rights are discussed. All matters connected with the holding, conduct and proceedings of the meetings of the debenture holders are normally specified in the Debenture Trust Deed. The decisions at the meeting made by the prescribed majority are valid and lawful and binding upon the minority.

B. Meeting of creditors

Sometimes, a company, either as a running concern or in the event of winding up, has to make certain arrangements with its creditors. Meetings of creditors may be called for this purpose. eg U/s 393, a company may enter into arrangements with creditors with the sanction of the Court for reconstruction or any arrangement with its creditors. The court, on application, may order the holding of a creditors' meeting. If the scheme of arrangement is agreed to by majority in number of holding debts to value of the three-fourth of the total value of the debts, the court may sanction the scheme. A certified copy of the court's order is then filed with the Registrar and it is binding on all the creditors and the company only after it is filed with Registrar.

Similarly, in case of winding up of a company, a meeting of creditors and of contributories is held to ascertain the total amount due by the company and also to appoint a liquidator to wind up the affairs of the company.

Requisites of a Valid Meetings

The following conditions must be satisfied for a meeting to be called a valid meeting :-

1. It must be properly convened. The persons calling the meeting must be authorized to do so.
2. Proper and adequate notice must have been given to all those entitled to attend.
3. The meeting must be legally constituted. There must be a chairperson. The rules of quorum must be maintained and the provisions of the Companies Act, 1956 and the articles must be complied with.
4. The business at the meeting must be validly transacted.. The meeting must be conducted in accordance with the regulations governing the meetings.

Notice of General Meeting

A meeting cannot be held unless a proper notice has been given to all persons entitled to attend the meeting at the proper time, containing the necessary information. A notice convening a general meeting must be given at least 21 clear days prior to the date of meeting. However, an annual general meeting may be called and held with a shorter notice, if it is consented to by all the members entitled to vote at the meeting. In respect of any other meeting, it may be called and held with a shorter notice, if at least members holding 95 percent of the total voting power of the Company consent to a shorter notice.

Notice of every meeting of company must be sent to all members entitled to attend and vote at the meeting. Notice of the AGM must be given to the statutory auditor of the company.

Accidental omission to give notice to, or the non-receipt of notice

by, any member or any other person on whom it should be given will not invalidate the proceedings of the meeting. The notice may be given to any member either personally or by sending it by post to him at his registered address, or if there is none in India, to any address within India supplied by him for the purpose. Where notice is sent by post, service is effected by properly addressing, pre-paying and posting the notice. A notice may be given to joint holders by giving it to the joint holder first named in the register of members. A notice of meeting may also be given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company and it shall be deemed to be served on every member who has to registered address in India for the giving of notices to him.

A notice calling a meeting must state the place, day and hour of the meeting and must contain the agenda of the meeting. If the meeting is a statutory or annual general meeting, notice must describe it as such. Where any items of special business are to be transacted at the meeting, an explanatory statement setting out all materials facts concerning each item of the special business including the concern or interest, if any, therein of every director and manager, is any, must be annexed to the notice. If it is intended to propose any resolution as a special resolution, such intention should be specified.

A notice convening an AGM must be accompanied by the annual accounts of the company, the director's report and the auditor's report. The copies of these documents could, however, be sent less than 21 days before of the date of the meeting if agreed to by all members entitled to vote at the meeting.

Proxy

In case of a company having a share capital and in the case of any other company, if the articles so authorize, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself. Every notice calling a meeting of the company must contain a statement that a member entitled to attend and vote is entitled to appoint one proxy in the case of a private company and one or more proxies in the case of a public company and that the proxy need not be member of the company.

A member may appoint another person to attend and vote at a meeting on his behalf. Such other person is known as "Proxy". A member may appoint one or more proxies to vote in respect of the different shares held by him, or he may appoint one or more proxies in the alternative, so that if the first named proxy fails to vote, the second one may do so, and so on.

The member appointing a proxy must deposit with the company a proxy form at the time of the meeting or prior to it giving details of the proxy appointed. However, any provision in the articles which requires a period longer than forty eight hours before the meeting for depositing with the company any proxy form appointing a proxy, shall have the effect as if a period of 48 hours had been specified in such provision.

A company cannot issue an invitation at its expense asking any member to appoint a particular person as proxy. If the company does so, every officer in default shall be liable to fine up to Rs1,000. But if a proxy form is sent at the request of a member, the officer shall not be liable. Every member entitled to vote at a

meeting of the company, during the period beginning 24 hours before the date fixed for the meeting and ending with the conclusion of the meeting may inspect proxy forms at any time during business hours by giving 3 days notice to the company of his intention to do so.

The proxy form must be in writing and be signed by the member or his authorized attorney duly authorized in writing or if the appointer is a company, the proxy form must be under its seal or be signed by an officer or an attorney duly authorized by it.

The proxy can be revoked by the member at any time, and is automatically revoked by the death or insolvency of the member. The member may revoke the proxy by voting himself before the proxy has voted, but once the proxy has exercised the vote, the member cannot retract his vote. Where two proxy forms by the same shareholder are lodged in respect of the same votes, the last proxy form will be treated as the correct proxy form.

A proxy is not entitled to vote except on a poll. Therefore, a proxy cannot vote on show of hands.

Quorum

Quorum refers to the minimum number of members who must be present at a meeting in order to constitute a valid meeting. A meeting without the minimum quorum is invalid and decisions taken at such a meeting are not binding. The articles of a company may provide for a quorum without which a meeting will be construed to be invalid. Unless the articles of a company provide for larger quorum, 5 members personally present (not by proxy) in the case of a public company and 2 members personally present (not by proxy) in the case of a private company shall be the quorum for a general meeting of a company.

It has been held by Courts that unless the articles otherwise provide, a quorum need to be present only when the meeting

commenced, and it was immaterial that there was no quorum at the time when the vote was taken. Further, unless the articles otherwise provide, if within half an hour from the time appointed for holding a meeting of the company, a quorum is not present in the person, the meeting :-

1. If called upon the requisition of members shall stand dissolved;

2. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and time as the Board of Directors may determine.

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

In case the Company Law Board calls or directs the calling of a meeting of the company, when default is made in holding an annual general meeting, the government may give directions regarding the quorum including a direction that even one member of the company present in person, or by proxy shall be deemed to constitute a meeting. Similarly the Company Law Board may, direct a meeting of the company (other than an annual general meeting) to be called and held where for any reason it is impracticable to call a meeting and direct that even one member present in person or by proxy shall be deemed to constitute a meeting.

Chairman

The chairman is the head of the meeting. Generally, the chairman of the Board of Directors is the Chairman of the meeting. Unless the articles otherwise provide, the members present in person at the meeting elect one of themselves to be the chairman thereof

on a show of the hands. If there is no Chairman or he is not present within 15 minutes after the appointed time of the meeting or is unwilling to act as chairman of the meeting, the directors present may elect one among themselves to be the chairman of the meeting. If, however no director is willing to act as chairman or if no director is present within 15 minutes after the appointed time of the meeting, the members present should choose one among themselves to be chairman of the meeting. If, after the election of a chairman on a show of hands, poll is demanded and taken and a different person is elected as chairman, then that person will be the chairman for the rest of the meeting.

Duties of the chairman

Without a chairman, a meeting is incomplete. The chairman is the regulator of the meeting. His duties include the following :-

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

convened.

6. He must exercise his power to order a poll correctly and must order it to be taken when demanded properly.
7. He must exercise his casting vote bonafide in the interest of the company.

Voting and Demand for Poll

Generally, initially matters are decided at a general meeting by a show of hands. If the majority of the hands raise their hands in favour of a particular resolution, then unless a poll is demanded, it is taken as passed. Voting by a show of hands operates on the principle of "One Member-One Vote". However, since the fundamental voting principle in a company is "One Share-One Vote", if a poll is demanded, voting takes place by a poll. Before or on declaration of the result of the voting on any resolution on a show of hands, the chairman may order *suo motu* (of his own motion) that a poll be taken. However, when a demand for poll is made, he must order the poll be taken. The chairman may order a poll when a resolution proposed by the Board is lost on the show of hands or if he is of the opinion that the decision taken on the show of hands is likely to be reversed by poll. When a poll is taken, The decision arrived by poll is final and the decision on the show of hands has no effect.

A poll is allowed only if the prescribed number of members demand a poll. A poll must be ordered by the chairman if it is demanded:-

1. In the case of a public company having a share capital, by any member or members present in person or by proxy and holding shares in the company-

- i. which confer a power to vote on the resolution not being less than one-tenth of the total voting power in respect of the resolution, or

- ii. on which an aggregate sum of not less than fifty thousand rupees has been paid up.
- b. in the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy, if more than seven such members are personally present.
- c. in the case of any other, by any member or members present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution.

Motion

Motion means a proposal to be discussed at a meeting by the members. A resolution may be passed accepting the motion, with or without modifications or a motion may be entirely rejected. A motion, on being passed as a resolution becomes a decision. A motion must be in writing and signed by the mover and put to the vote of the meeting by the chairman. Only those motions which are mentioned in the agenda to the meeting can be discussed at the meeting. However, motions incidental or ancillary to the matter under discussion may be moved and passed. Generally, a motion is proposed by one member and seconded by another member.

Amendment

Amendment means any modification to a motion before it is put to vote for adoption. Amendment may be proposed by any member who has not already spoken on the main motion or has not previously moved an amendment thereto. There can be an amendment to an amendment motion also. A motion must be in writing and signed by the mover and put to the vote of the meeting by the chairman. An amendment must not raise any question already decided upon at the same meeting and must be

relevant to the main motion which it seeks to amend. The chairman has the discretion to accept or reject an amendment on various grounds such as inconsistency, redundancy, irrelevance, etc. If the amendment is adopted on a vote by the members, it is incorporated in the body of the main motion. The altered motion is then discussed and put to vote and if passed, becomes a resolution.

Resolutions & its Kinds

Resolutions mean decisions taken at a meeting. A motion, with or without amendments is put to vote at a meeting. Once the motion is passed, it becomes a resolution. A valid resolution can be passed at a properly convened meeting with the required quorum. There are broadly three types of resolutions :-

1. Ordinary Resolution :

An ordinary resolution is one which can be passed by a simple majority. I.e. if the votes (including the casting vote, if any, of the chairman), at a general meeting cast by members entitled to vote in its favour are more than votes cast against it. Voting may be by way of a show of hands or by a poll provided 21 days notice has been given for the meeting.

2. Special Resolution :

A special resolution is one in regard to which is passed by a 75 % majority only i.e. the number of votes cast in favour of the resolution is at least three times the number of votes cast against it, either by a show of hands or on a poll in person or by proxy. The intention to propose a resolution as a special resolution must be specifically mentioned in the notice of the general meeting. Special resolutions are needed to decide on important matters of the company. Examples where special resolutions are required are :-

1. To alter the domicile clause of the memorandum from one

State to another or to alter the objects clause of the memorandum.

2. To alter / change the name of the company with the approval of the central government

3. To alter the articles of association

4. To change the name of the company by omitting "Limited" or "Private Limited". The Central Government may allow a company with charitable objects to do so by special resolution under section 25 of the Companies Act, 1956.

3. Resolution requiring Special Notice :

There are certain matters specified in the Companies Act, 1956 which may be discussed at a general meeting only if a special notice is given regarding the proposal to discuss these matters at a meeting. A special notice enables the members to be prepared on the matter to be discussed and gives them time to indicate their views on the resolution. In case special notice of resolution is required by the Companies Act, 1956 or by the articles of a company, the intention to propose such a resolution must be notified to the company at least 14 days before the meeting. The company must within 7 days before the meeting give the notice of the proposed resolution to its members. Notice of the resolution is required to be given in the same way in which notice of a meeting is given, or if that is not practicable, the company may give notice by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by the articles, not less 7 days before the meeting.

The following matters requiring Special Notice before they are discussed before the meeting :-

1. To appoint at an annual general meeting appointing an

auditor a person other than a retiring auditor.

2. To resolve at an annual general meeting that a retiring auditor shall not be reappointed.

3. To remove a director before the expiry of his period of office.

4. To appoint another director in place of removed director.

5. Where the articles of a company provide for the giving of a special notice for a resolution, in respect of any specified matter or matters.

Please note that a resolution requiring special notice may be passed either as an ordinary resolution (Simple majority) or as a special resolution (75 % majority).

Circulation of Member's Resolution

Generally, the Board of Directors prepare the agenda of the meeting to be sent to all members of the meeting. A member, by himself has very little say in deciding the agenda. However, there are provisions in the Companies Act which enable members to introduce motions at a meeting and give prior notice of their intention to do so to all other members of the company. If members having one twentieth of the total voting rights of all members having the right to vote on a resolution or if 100 members having the right to vote and holding paid-up capital of Rs1,00,000 or more, require the company to do so, the company must :-

1. Give to the members entitled to receive notice of the next annual general meeting, notice of any resolution which may be properly moved and is intended to be moved at that meeting; and
2. Circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution, or any business to be dealt with at that meeting.

The expenses for this purpose must be borne by the requisitionists and must be tendered to the company. The requisition, signed by all the requisitionists, must be deposited at the registered office of the company at least 6 weeks before the meeting in the case of resolution and not less than 2 weeks before the meeting in case of any other requisition together with a reasonable sum to meet the expenses. However, where a copy of the requisition requiring notice of resolution has been deposited at the registered office of the company and an annual general meeting is called for a date six weeks or less after the requisition is deposited, the copy though not deposited within the prescribed time is deemed to have been properly deposited.

The company is required to serve the notice of resolution and/or the statement to the members as far as possible in the manner and so far as practicable at the same time as the notice of the meeting ; otherwise as soon as practicable thereafter.

However, a company need not circulate a statement if the Court, on the application either of the company or any other aggrieved person, is satisfied that the rights so conferred are being abused to secure needless publicity or for defamatory purposes. Secondly a banking company need not circulate such statement, if in the opinion of its Board of directors, the circulation will injure the interest of the company.

Registration of Resolutions and Agreements

A copy of each of the following resolutions along with the explanatory statement in case of a special business and agreements must, within 30 days after the passing or making thereof, be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Registrar of Companies who shall record the same :-

1. All special resolutions
2. All resolutions which have been unanimously agreed to by all the members but which, if not so agreed, would not have been effective unless passed as special resolutions
3. All resolutions 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
4. All resolutions or agreements which have been agreed to by all members of any class of members but which, if not so agreed, would not have been effective unless passed by a particular majority or in a particular manner and all resolutions or agreements which effectively bind all members of any class of shareholders though not agreed to by all of those members
5. All resolutions passed by a company conferring power upon its directors to sell or dispose of the whole or any part of the company's undertaking; or to borrow money beyond the limit of the paid-up share capital and free reserves of the company; or to contribute to charities beyond Rs50000 or 5 per cent of the average net profits
6. All resolutions approving the appointment of sole selling agents of the company
7. All copies of the terms and conditions of appointment of a sole selling agent or sole buying or purchasing agent
8. Resolutions for voluntary winding up of a company

Adjournment

Adjournment means suspending the proceedings of a meeting for the time being so that the meeting may be continued at a later date and time fixed in that meeting itself at the time of such adjournment or to be decided later on. Only the business not finished at the original meeting can be transacted at the adjourned meeting.

The majority of members at a meeting may move an adjournment motion at a meeting. If the chairman adjourns the meeting, ignoring the views of the majority, the remaining members can continue the meeting. The chairman cannot adjourn the meeting at his own discretion without there being a good cause for such an adjournment. Where the chairman, acting bona fide within his powers, adjourns the meeting as per the view of the majority, the minority members cannot continue with such meeting and, if they do the proceedings there will be null and void.

An adjourned meeting is merely the continuation of the original meeting and therefore, a fresh notice is not necessary, if the time, date and place for holding the adjourned meeting are decided and declared at the time of adjourning it. If a meeting is adjourned without stipulation as to when it will be continued, fresh notice of the adjourned meeting must be given.

Postponement

Postponement of a meeting means deferring the holding of the meeting itself at a later date. Postponement is done by the Board of Directors or by the person convening the meeting. In case of adjournment, it is the decision of the majority of the members present at the meeting itself.

Dissolution

Dissolution of a meeting means termination of a meeting. The meeting no longer exists once it has been dissolved. If within half an hour after the time appointed for holding a general meeting; the quorum is not present, the meeting shall stand dissolved if it was called on requisition by members.

Minutes of Proceedings of Meetings

Every company must keep minutes of the proceedings of general meetings and of the meetings of board of directors and its committees. The minutes are a record of the discussions made at

the meeting and the final decisions taken thereat.

Every company must keep minutes containing details of all proceedings at the meetings. The pages of the minute books must be consecutively numbered and the minutes must be recorded therein within 30 days of the meeting. They have to be written directly on the numbered pages. Pasting or attaching of papers is not allowed. Each page of every such minutes books must be initialed or signed and last page of the record of proceedings of each meeting in such books must be dated and signed by :-

1. In the case of the meeting of the Board of directors or committee thereof, by the chairman of that meeting or that of the succeeding meeting, and
2. In the case of a general meeting, by the chairman of the same meeting within the aforesaid 30 days or in the event of the death or inability of that chairman within the period, by a director duly authorized by the Board of directors for the purpose.

The Company Law Board, however, may not object if minutes are maintained in loose leaf form provided all other procedural requirements are complied with and all possible safeguards against manipulation or interpolation of the minutes are ensured. The loose leaves must be bound at reasonable intervals. Entering the minutes in a bound minute book by a chemical process, which does not amount to attachment to any book by pasting or otherwise is permissible provided on the mechanical impression of the minutes, the original signatures of the Chairman are given on each page. All appointments of officers made at any of the meetings must be included in the minutes of the meeting. In the case of a meeting of the Board of directors or its Committee, the

minutes must also state the names of directors present at the meeting and the names of directors, if any, dissenting from, or not concurring with a resolution passed at the meeting.

The chairman may exclude from the minutes any matters which are defamatory, irrelevant or immaterial or which are detrimental to the interests of the company. The discretion of the Chairman with regard to the inclusion or exclusion of any matter is absolute and unfettered.

Where minutes of the proceedings of any meeting have been kept properly, they are, unless the contrary is proved, presumed to be correct, and are valid evidence that the meeting was duly called and held, and all proceedings thereat have actually taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

The minute books of the proceedings of general meetings must be kept at the registered office of the company. Any member has a right to inspect, free of cost during business hours at the registered office of the company, the minutes books containing the proceedings of the general meetings of the company. Further, any member shall be entitled to be furnished, within 7 days after he has made a request to the company, with a copy of any minutes on payment of Rupee One for every hundred words or fraction thereof. If any inspection is refused or copy not furnished within the time specified, every officer in default shall be punishable with fine up to Rs. 500 for each offence. The Company Law Board may also by order compel an immediate inspection or furnishing of a copy forthwith. But the minutes books of the board meetings are not open for inspection of members.

