

# INTENSIVE STUDY COURSE ON COMPANIES ACT, 2013

ANNUAL RETURN \* AGM / EGM –NOTICE / QUORUM /  
PROXIES \* POSTAL BALLOT / E-VOTING \* ORDINARY &  
SPECIAL RESOLUTION

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# ANNUAL RETURN (SECTION 92)

- Provisions with regard to Annual Return are contained in **Section 92** and **Rules 11 to 16 (excluding 13)** of the Companies (Management and Administration) Rules, 2014.
- Annual Return is yearly statement which gives essential information about a firm's composition, activities, and financial position, and which must be filed by every active incorporated or registered firm with an appropriate authority. Every company shall prepare an annual return in **Form No. MGT. 7** containing the particulars as they stood on the close of the financial year.

# ANNUAL RETURN

- Contents of Annual Return
  - Registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
  - Shares, debentures and other securities and shareholding pattern;
  - Indebtedness
  - Detail of members and debenture-holders
  - Detail of promoters, directors, key managerial personnel
  - Meetings of members
  - Remuneration of directors and KMP
  - Penalty or punishment imposed on the company, its directors or officers, if any and details of compounding of offences and appeals
  - Certification of compliances, disclosures
  - Details of Foreign Institutional Investors, if any who held shares of the Company

# ANNUAL RETURN

## ○ Authentication of Annual Return

- The annual return of OPC and Small Company shall be signed by a CS or where there is no CS the return shall be signed by the director of the company.
- Companies other than OPC and Small Company, the annual return shall be signed by a director and the CS, or where there is no company secretary, by a PCS.

## ○ Certification of Annual Return

The rules to this section provides that the return, filed by a **listed company** or a company paid-up share **capital of Rs.10 crores** or more or the **turnover of Rs. 50 crores** or more, shall be certified by a Secretary in practice and the certificate shall be in Form No. **MGT.8** stating that the annual discloses the facts correctly and adequately that the company has complied with all the of this Act.

# ANNUAL RETURN

- Extract of Annual Return – **Rule 12**

The extract of the annual return to be attached to the Board's Report in Form No. **MGT. 9** shall form part of Board's Report.

- Filing of Annual Return – **Rule 13**

Every company shall file with the Registrar a copy of the annual return, within **60 days** from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 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 a period of **270days**.

- Inspection of Annual Return – **Rule 14**

Copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide, 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( reasonable time of not less than two hours on every working day shall be considered by the company).

# ANNUAL RETURN

- Preservation of Annual Return – **Rule 15**

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.

- Copies of Annual Return – **Rule 16**

Copies of annual return filed under section 92 shall 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 specified in the Articles of Association of the company but not exceeding Rs.10 for each page and such copy shall be supplied by the company within a **period of 7 days** from the date of deposit of fee to the company.

- **Penalty**

- Co. - Fine Rs.50,000/- but which may extend to Rs5,00,000/-
- Officer in default - Imprisonment which may extend to 6 months or Fine Rs.25,000/- but which may extend to Rs.5,00,000/- or with both.
- PCS - Fine which shall not be less than Rs.50,000/- but which may extend to Rs.5,00,000/-

# ANNUAL GENERAL MEETING

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:

- Annual general meeting should be held **once every year**. (Sec. 96(1))
- 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. (Sec. 96(1))
- Subsequent annual general meeting of the company should be held within **6 months** from the closing of the financial year. (Sec. 96(1))
- The gap between two annual general meetings should not exceed **15 months**. (Sec. 96(1))

# ANNUAL GENERAL MEETING

- Extension of validity period of AGM – **Section 96(1)**

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 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 AGM – **Section 96(2)**

An annual general meeting can be called **during business hours** i.e. 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).



# ANNUAL GENERAL MEETING

## ○ **Default in holding the AGM – Section 99**

- 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

## ○ **Business to be transacted at AGM – Section 102(2)**

All other businesses transacted at an AGM 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.

# ANNUAL GENERAL MEETING

## ➤ Report on Annual General Meeting – **Rule 31**

(1) The report in pursuance of the provisions of section 121 (1) shall be prepared in the following manner, namely:-

(a) the 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 and company secretary of the company;

(2) The copy of the report prepared shall be filed with the Registrar in Form No. **MGT.15 within 30 days** of the conclusion of the AGM along with the fee.

## ANNUAL GENERAL MEETING – CASE

- **Case:1** When the first and the subsequent Annual General Meeting must be held ?
- What business may be transacted at an Annual General Meetings ?
- **Case: 2** Does the Companies Act, 2013 regulate the holding of Annual General Meeting by a public limited company differently ?

# EXTRAORDINARY GENERAL MEETING

- Calling of Extraordinary General Meeting – **Section 100**
  - a) **By Board** {Section 100 (1)} - The Board may, **whenever it deems fit**, call an EGM of the company.
  - b) **By Board on requisition** {Section 100 (2)} - The Board must call an EGM on receipt of the requisition from the following number of members:
    - i. in the case of a **company having a share capital**, such number of members who hold, on the date of the receipt of the requisition, **not less than one-tenth of such of the paid-up share capital** of the company as on that date **carries the right of voting**;
    - ii. in the case of a company **not having a share capital**, such number of **members** who have, on the date of receipt of the requisition, **not less than one-tenth of the total voting power** of all the members having on the said date a right to vote. 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.
  - c) **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.

# EXTRAORDINARY GENERAL MEETING

- **Rule 17** provides as under with regard to calling of EGM by requisitionists:
  - The members may requisition convening of an EGM in accordance with section 100(4), by providing **such requisition in writing or through electronic mode** at least **clear 21 days** prior to the proposed date of such EGM.
  - 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 authorized in writing by all other requisitionists 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 EGM convened by the requisitionists **and** the requisitionists **may disclose the reasons for the resolution(s)** which they propose to move at the meeting.

# EXTRAORDINARY GENERAL 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 EGM.
- 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 **21 days** from the date of receipt of valid requisition together with such changes, if any, before the expiry of the **45 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**.

## EXTRAORDINARY GENERAL MEETING – CASE STUDY

- To remove the Managing Director, 40% members of Global Ltd. submitted requisition for holding extra-ordinary general meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the managing director did not allow the holding of meeting at the registered office of the company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed. Examine the validity of the said meeting and resolution passed there in the light of the provision of the companies Act, 2013.

## NOTICE OF THE MEETING (SECTION 101)

- 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. {Section 101(1)}
- 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. {Section 101(1)}
- Every notice of a meeting shall **specify the place, date, day and the hour** of the meeting and shall contain a **statement of the business to be transacted** at such meeting. {Section 101(2)}
- Notice through Electronic Mode – **Rule 18**  
A company **may give notice through electronic mode**. 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.



# NOTICE OF THE MEETING

- **Some Conditions for notice send through e-mail are as under:**
  - The e-mail shall be **addressed to the person entitled** to receive such e-mail as per the records of the company.
  - The **subject line** in e-mail shall state the **name** of the company, notice of the type of meeting, **place** and the **date** on which the meeting is scheduled.
  - Notice sent in **non-editable attachment** shall be in **PDF**.
  - When notice or notifications of availability of notice are sent by e-mail, **the company should ensure confirmation of the total number of recipients e-mailed** and a record of each recipient to whom the notice has been sent and “**proof of sending**”.
  - The company’s **obligation** shall be satisfied when it **transmits** the e-mail and the company shall **not be held responsible for a failure in transmission** beyond its control.
  - If the **member doesn’t provide or update relevant e-mail address - Company is not in default, if notice is not delivered via e-mail.**
  - The **company may send e-mail** through **in-house** facility or its **registrar** and transfer agent or authorize any **third party** agency providing **bulk e-mail** facility.
  - Notice through **electronic link/URL/Website** be readable, and copy can be **retained**.

# NOTICE OF THE MEETING

➤ Persons entitled to receive Notice –

According to 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 of the proceedings meeting. {Section 101(4)}

➤ Statement to be Annexed to Notice – Section 102

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:

- (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 director, the manager and other key managerial personnel

# NOTICE OF THE MEETING

(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**.

**Where as a result of the non-disclosure** or insufficient disclosure in any statement, 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, be liable to compensate the company to the extent of the benefit received by him.

If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with **fine which may extend to Rs. 50000/- or 5 times** the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

# NOTICE OF THE MEETING – CASE STUDY

- Dev. limited issued a notice for holding of its annual general meeting on 7<sup>th</sup> November, 2014. The notice was posted to the members on 16.10.2014. Some members of the company allege that the company had not complied with the provision of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. Referring to the provision of the Act, decide –
  - (1) whether the meeting has been validly called?
  - (2) Is there a shortfall in the numbers of the days by which the notice falls short of the statutory requirement ?
  - (3) Can the shortfall, if any, be condoned?

# QUORUM FOR MEETINGS (SECTION 103)

Quorum refers to the minimum number of members required to constitute a valid meeting.

- Minimum number for quorum
- 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**.
- **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 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**.

# QUORUM FOR MEETINGS

## ➤ Adjourned meeting

In case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than **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.**

## QUORUM FOR MEETINGS – CASE STUDY

- The articles of association of X Pvt Ltd. require the personal presence of 7 members to constitute quorum of general meetings. The following persons were present in the extra-ordinary general meeting to consider the appointment of Managing Director:
  - (1) A, The representative of Governor of Madhya Pradesh.
  - (2) B and C, shareholder of preference share,
  - (3) D, representing Y ltd. and Z Ltd
  - (4)E, F, G and H as proxies of shareholders.
- Can it be said that the quorum was present in the meeting?

# PROXIES (SECTION 105 AND RULE 19)

## ○ Proxies

- Appointment of a proxy is an important right of a member of the company. 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. In this regard, **if any default made by any officer then he shall be punishable with fine which may extend to Rs. 5000/-.**
- **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** (companies with charitable objects, etc.) shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.



# PROXIES

- A person appointed as proxy shall not act as proxy on behalf of **more than 50 members** and members holding in the **aggregate more than 10%** of the total share capital of the company carrying voting rights.
- A member holding **more than 10% of the total share capital** of the Company carrying voting rights **may appoint a single person as proxy** and such person shall not act as proxy for any other person or shareholder.
- 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**. For execution of proxy, the Articles of Association of a company can not specify any special requirement to be complied with.

# PROXIES

- 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.
- If for the purpose of any meeting of a company, **invitations to appoint as proxy a person or one of a number of persons** specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, **every officer of the company who knowingly issues the invitations as aforesaid or willfully authorizes or permits their issue shall be punishable with fine which may extend to one lakh rupees.**

## PROXIES – CASE STUDY

- K, a member of the MNO Limited appoints L as his proxy to attend the general meeting of the company. Later he (K) also attends the meetings. Both K (the proxy) vote on a particular resolution in the meeting k's vote was declared invalid by the Chairman stating that since he has appointed the proxy and L's vote has been considered as valid. K objects to decision of the Chairman.
- Decide, under the provision of the companies Act, 2013 whether K's objection shall be tenable.
- A, a shareholder, of a company, appointed B, as a proxy, to attend the general meeting of the shareholders. Later on, A, himself, attended the meeting and voted on a resolution. Decide, whether A can do so?

# E-VOTING (SECTION 108 AND RULE 20)

## E-voting – Section 108

- **Rule 20(1):** Every listed company/ not less than 1000 shareholders, shall provide to its members facility to exercise their right to vote at GM by electronic means.
- **Rule 20(2):** A member may exercise his right to vote at any GM by electronic means and company may pass any resolution by electronic voting system.

**Expl: '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 favor 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'.

- **Rule 20(3): Procedure** for E-voting:
  - The **notices** of the meeting shall be sent to all the members, auditors of the company, or directors either by registered post or speed post / through e-mail id/ through courier service.
  - The notice shall also **be placed on the website** of the company.
  - The notice of the meeting shall clearly mention that the **business may be transacted.**

# E-VOTING

- The notice shall clearly **indicate the process and manner for voting** 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 newspaper** in the **principal vernacular language** 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;
  - **contact details** of the **person responsible** to address the grievances connected with the electronic voting;

# E-VOTING

- The e-voting shall remain **open for not less than 1 day and not more than 3 days**. Provided that in all such cases, such voting period shall be completed 3 days prior to the date of the GM;
- 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 **CA/CS/Cost Accountant** in practice or an advocate. 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 favor or against**, if any, forthwith to the Chairman

## E-VOTING

The scrutiner 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 scrutiner till the chairman considers, approves and signs the minutes. Thereafter, the scrutiner shall return the register and other related papers to the company.

The results declared along with the scrutiner'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.

# POSTAL BALLOT (SECTION 110 AND RULE 22)

- ❖ **Postal Ballot** –As per section 2(65) “postal ballot” means voting by post or through any electronic mode.
  - The Act provides that a co. shall in respect of such items of business as the Central Government by notification declare shall be transacted only by postal ballot.
  - Pursuant to Rule 22(16) and Section 110(1)(a), 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, section 2(68), 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 section 12(5);
    - (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 of section 13(8);



# POSTAL BALLOT

- (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 section 68(1);
- (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 of section 186(3);

One Person Company and other companies having members up to 200 are not required to transact any business through postal ballot.

- 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.

# POSTAL BALLOT

- **Procedure** for conducting business through postal ballot – **Rule 22**
  - ❑ Rule 22 (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 because postal ballot means voting by post or through electronic means within a period of **30 days** from the date of dispatch of the notice.
  - ❑ Rule 22(2): The notice shall be sent either by Registered Post or speed post/through e-mail id/through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of 30 days.
  - ❑ Rule 22(3): An adv. shall be published at least once in a newspaper in the principal vernacular language 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:

# POSTAL BALLOT

- 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.
- Rule 22(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.

# POSTAL BALLOT

- ❑ Rule 22(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.
- ❑ Rule 22(6):**The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.**
- ❑ Rule 22(7):**If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including e-voting, it shall be deemed to have been duly passed at a GM convened in that behalf.**
- ❑ Rule 22(8):**Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer** and 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.
- ❑ Rule 22(9):**The scrutinizer shall submit his report** as soon as possible after the last date of receipt of postal ballots but **not later than 7 days** thereof.
- ❑ Rule 22(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.

# POSTAL BALLOT

- ❑ Rule 22(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 and thereafter**, the scrutinizer shall return the ballot papers and other related papers or register **to the company who shall preserve** such ballot papers and other related papers or register safely.
- ❑ Rule 22(12):**The assent or dissent received after 30 days** from the date of issue of notice shall be treated **as if reply from the member has not been received**.
- ❑ Rule 22(13):**The results shall be declared by placing it**, along with the scrutinizer's report, **on the website of the company**.
- ❑ Rule 22(14):**The resolution shall be deemed to be passed on the date of at a meeting convened in that behalf**.
- ❑ Rule 22(15):The provisions regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis (the things being changed which need to be changed) 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 GM convened in that behalf.

# POSTAL BALLOT – CASE STUDY

- Whether the following matters can be transacted by getting a resolution passed through Postal Ballots:
- Issue of shares with differential voting rights .
- Sale of whole of the undertaking of a company.
- Buy-back of own shares by the company.

## ORDINARY AND SPECIAL RESOLUTION (SECTION 114)

### ❖ 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.

# ORDINARY AND SPECIAL RESOLUTION

## ❖ Resolution requiring Special Notice – Section 115

□ 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 (**Rule 23**)

— 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.



# ORDINARY AND SPECIAL RESOLUTION

— 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 and agreements to be filed (Rule 24)**

A copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in **Form No. MGT.14** along with the fee.

## ORDINARY & SPECIAL RESOLUTION - CASE

- At a general meeting of a company, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed.
- With reference to the provision of the companies Act, 2013 examine the validity of the Chairman's declaration .
- For a resolution in a company's general meeting, 10 voted in favour, 2 against and 4 abstained. The chairman declared the resolution as passed. It is a valid resolution as per the provision of the Companies Act, 2013.

**when we are no longer able  
to change a situation,**

**we are challenged to change  
ourselves!”**

**Victor Frank**

**THANK YOU.....**

**CA DURGESH KABRA**

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