



PARTNERS BEYOND BOUNDARIES

# ***Companies Act, 2013***

***Important aspects and analysis***

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***December 23, 2017***

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- 3 AGM / EGM – notice / quorum / proxies
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# Introduction

- Company is composed of members, though it has its own identity.
- It is an artificial person and hence cannot act on its own
- Companies express their will or take decisions through resolutions
- Resolutions are passed at validly held meetings
- Chapter VII of the Companies Act, 2013 read with Companies (Management and Administration) Rules, 2014 deals with the legal and procedural aspects of management and administration of companies.
- The 2013 Act provides flexibility in management and administration by recognising the electronic mode for notices and voting, which is in line with the MCA's efforts to give cognisance to use of electronic media, maintenance of registers and returns at a place other than the registered office.



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# Annual return (Introduction)

- An annual return is a snapshot of certain Company information as at the close of the financial year
- Gives extensive disclosure and greater insight into non-financial matters of the Company and the people behind management of the Company
- The basic purpose of filing annual return with the Registrar of Companies ('ROC') is to provide the annual information about the Company to the ROC and its members about the Company's general compliances
- Helps stakeholders to ensure that the Company is administered in a proper way in the interest of its members and creditors.

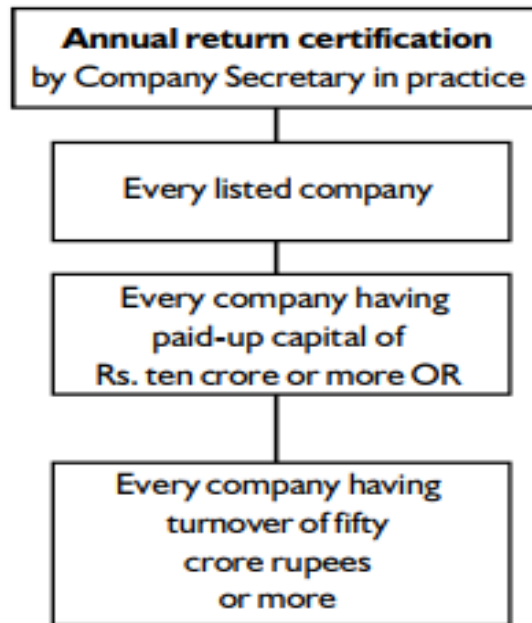
# Annual return (Legal provision : Section 92)

- **Section 92** of Companies Act, 2013 deals with the legal provisions of annual return of the Company
  - 1) The format of annual return is now divided into three forms:
    - i. Form MGT-7 - Annual return [Sec.92]
    - ii. Form MGR-8 - Certification by practising company secretary (PCS)[Sec. 92(2)]
    - iii. Form MGT-9 - Extract of Annual return forming part of Board's report [Sec. 92(3)]
  - 2) Annual return to be filed with the Registrar **within 60 days** from:
    - i. When AGM is **held** – Date of AGM
    - ii. When AGM is **not held** - From the last day on which AGM **should have been held.**
  - 3) As per section 384 (2), section 92 shall also apply to a **foreign company** (Form FC 4)

# Annual return (Legal provision)

## Certification of annual return

- Under sub-section (2) of section 92 of the Act read with rule 11(2) of the Companies (Management and Administration) Rules, 2014, in **Form MGT-8**

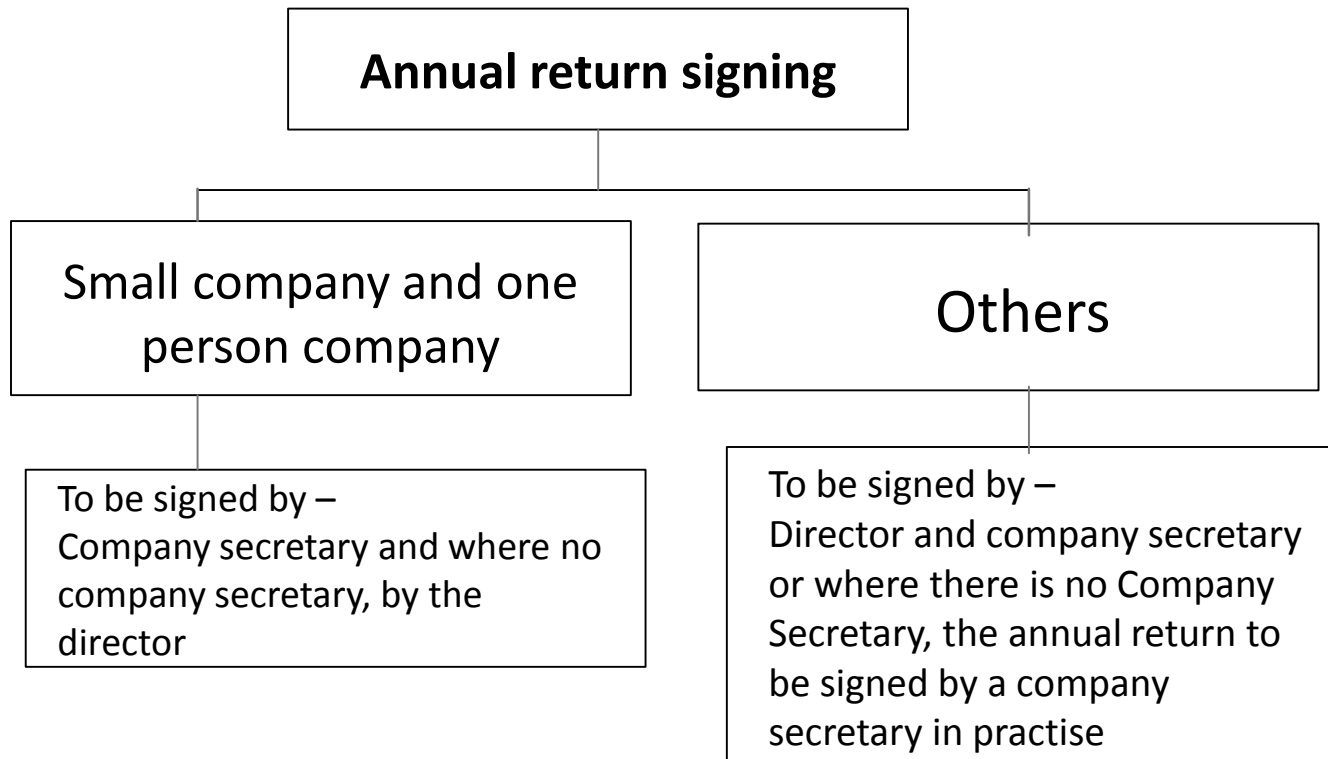


- The **certificate shall state** that the annual return discloses the facts correctly and adequately and that the Company has complied with **ALL** the provisions of this Act.

# Annual return (Legal provision)

## Signing of annual return

- Under sub-section (1) of section 92 of the Act





# Annual return (Legal provision)

## Information covered

1. Principal business activities of the Company;
2. Particulars of holding; subsidiary and associate companies;
3. Details of other securities issued in addition to share capital and debentures;
4. Turnover and net worth of the Company;
5. Promoters, directors, Key Management Personnel (KMP)s along with changes therein since the last annual return;
6. Dates of meetings of members, directors and various committees of directors along with attendance details;
7. Remuneration of directors and KMP;
8. Penalties and punishment imposed on the Company, its directors and KMPs;
9. Particulars of compounding of offences, appeals made against any penalty/prosecution;
10. Details of certification of compliances and disclosures;
11. Disclosures providing particulars of declaration of dividend, inter-corporate loans and investments and related party transactions etc.;
12. Details of shares held by or on behalf of the Foreign Institutional Investors (FII)
13. Separate disclosures on corporate social responsibility;
14. Disclosures of directors;

# Annual return (Penal provisions)

## Preservation of annual return

- Copies of all annual returns prepared under section 92 and copies of all documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with ROC. [Rules 15 ( 3 ) of Companies (Management and Administration) Rules, 2014]

## Penal provisions

1. Certification of annual return by Company Secretary in practice otherwise than in conformity with the requirements of the Companies Act, 2013 or the Rules there under. [Section 92(6) of Companies Act 2013 ]
  - Minimum – Rs. 50,000
  - Maximum – Rs. 5,00,000

# Annual return (Penal provisions)

2. Failure to file annual return on time and additional time specified. [Section 92(5) of Companies Act 2013]
  - i. Company fine
    - Minimum – Rs. 50,000
    - Maximum – Rs. 5,00,000
  - ii. Every Officer of the Company who is in default
    - Minimum – Rs. 50,000
    - Maximum – Rs. 5,00,000
    - Imprisonment for a term which may extend to 6 months or fine or Imprisonment or both
3. Refusal for inspection or making any extract or taking required copy [Section 94(4) of Companies Act 2013] Penalty of Rs.1,000 for every day subject to a maximum of Rs.1,00,000 during which the refusal or default continues.

# Annual return – memory test

- *ABC Private Limited called its Annual General Meeting on 30<sup>th</sup> September, 2016 for laying down the financial statement for approval of its shareholders' for the financial year ended 31<sup>st</sup> March, 2016. However due to want of quorum, the meeting could not take place and was cancelled. The company has not filed the annual financial statements, or the annual return for the year ending March 2016, with the ROC till date. The director is of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of section 92.*
- **Answer** – The director is incorrect in holding that there is no contravention of the provisions of the Companies Act, 2013. Section 92 states that every Company has to file an annual return with the ROC in Form MGT -7 within 60 days of date on which annual general meeting was held or the date when it must be held. In the above case, the annual general meeting of ABC Private Limited should have been held by 30<sup>th</sup> September, 2016, but it did not take place. Thus, the Company has contravened the provisions of section 92 of the Companies Act, 2013 and shall be liable for a penalty as specified in Section 92(5) of the Act.

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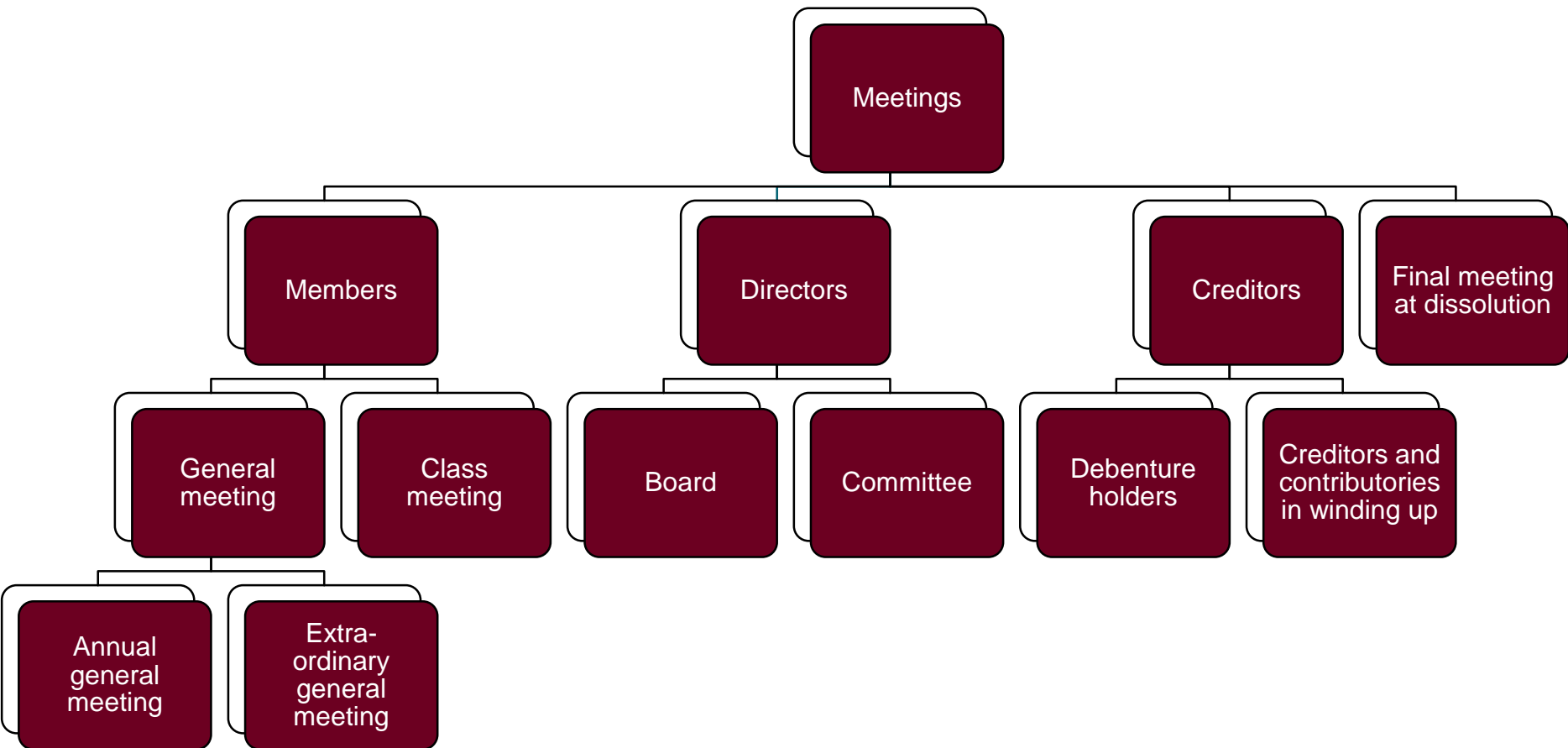
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5 Ordinary & Special resolutions

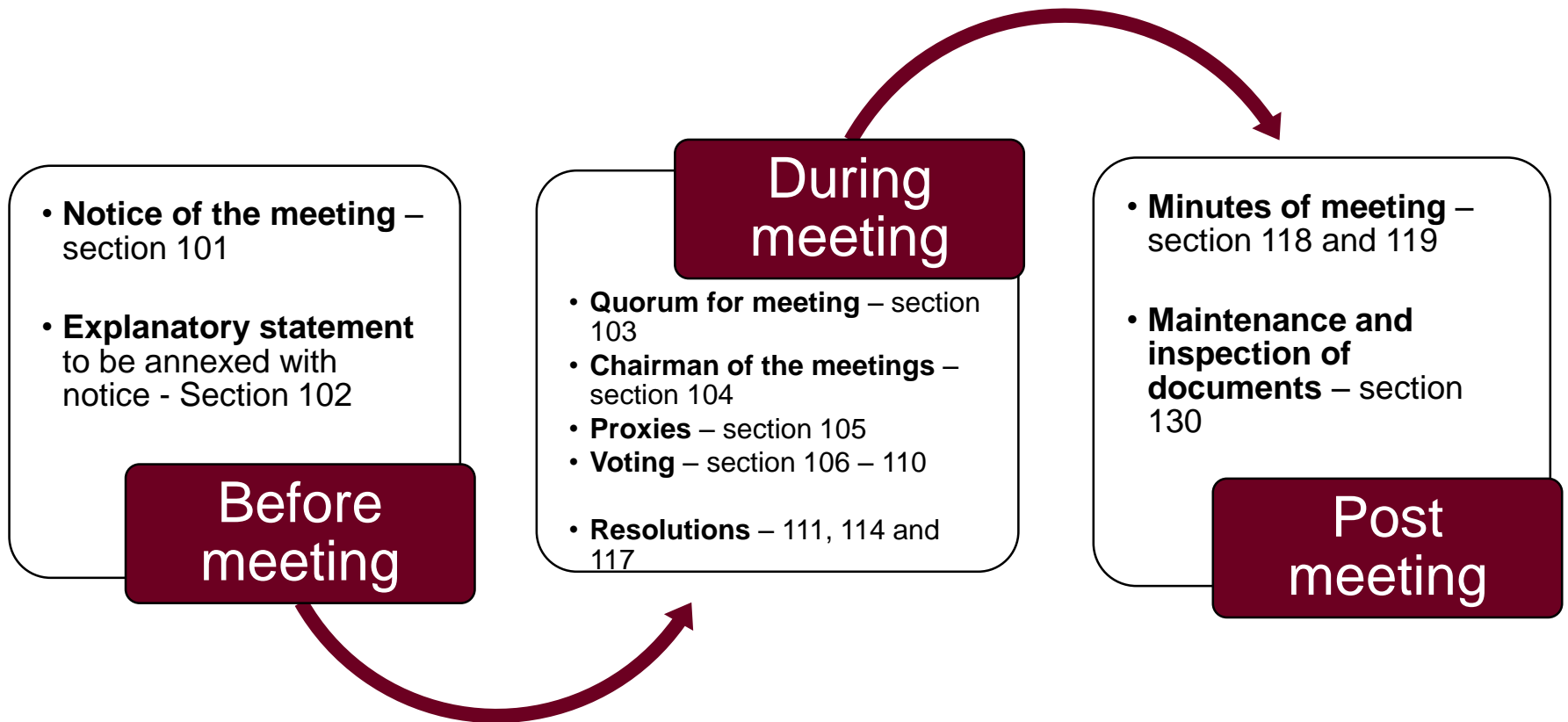
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6 The Companies (Management & Administration) Rules, 2014 & Companies Amendment Act, 2015

# Meetings



# Meetings – An overview



# Meetings – AGM

## AGM – Section 96

- **First AGM** should be held **within nine months** from the date of closing of the first financial year of the Company (Section 96(2) of 2013 Act)
- And **further AGMs** shall be held **within a period of six months**, from the date of the close of the financial year
- **Maximum interval of 15 months** between 2 AGMs.
- It was required to be held within 18 months from the date of incorporation in the Companies Act 1956
- Clear definition of **business hours** by the 2013 Act – 9 am to 6 pm
- Under 2013 Act – Meetings cannot be held on **'National Holidays'**



# Meetings – AGM

## Default in holding AGM – Section 99

- If a Company does not hold an AGM as per Section 96, or does not comply with any directions of the Central Government; then the Company and every officer gets covered under Section 99 of the Companies Act, 2013 and punishable with fine which may extend to Rs. 100,000 and in case of continuing default, it may extend to INR 5,000 per day.
- Section 97 of the Companies Act, 2013, provides for the power of the Tribunal to call an AGM if the Company fails to hold the AGM. Any member of the Company can request the National Company Law Tribunal (NCLT) for calling an AGM. [Section 97(1)].

# Meetings – Extra-ordinary General Meeting

## Extra-ordinary General Meeting (EGM) – Section 100

- a) **Section 100 (1)** - The Board may, whenever it deems fit, call an EGM of the Company.
  
- a) **Section 100 (2)** – An EGM of members shall be called by the Board, on a requisition made by:
  - i. **Company limited by shares:** Members having not less than 1/10<sup>th</sup> paid up share capital (1/10<sup>th</sup> voting rights)
  - ii. **Company not having share capital:** Members not less than 1/10<sup>th</sup> of the total voting power of all members having on the said date a right to vote
  
- c) **Section 100 (4) – if the Board does not, within 21 days from the date of receipt of valid requisition:**
  - i. Proceed to call a meeting;
  - ii. For the consideration of that matter;
  - iii. On a day not later than 45 days from the date of receipt of such requisition;
  - iv. The meeting may be called and held by the requisitioners themselves within a period of 3 months from the date of requisition.

# Meetings – Notice

## Notice of a meeting – Section 101

In order to properly call a general meeting, the notice should be sent **at least 21 clear days** before the meeting to:



# Meetings – Notice

## Mode of sending the notice – Rule 18 of the Companies (Management and Administration) Rules, 2014

- Notice can be sent in **print** or **electronic** mode
- The said rule mentions that a notice may be sent **through email as a –**
  - a) Text; or
  - b) As an attachment to e-mail; or
  - c) As a notification providing electronic link; or
  - d) Uniform Resource Locator for accessing such notice.
- The notice shall be placed simultaneously on the **website of the Company**, if any and on the website as may be notified by the Central Government.

# Meetings – Notice

## Meetings held at shorter notice – Proviso to section 101

- Consent – 95% of the members entitled to vote in writing or by electronic mode
- It is also important to note that only the requirement as regards the length of the notice being 21 days, is dispensed with by such consent and not the necessity to call and hold such meeting.

## Contents of the Notice – Section 101(2)

- Place of meeting (Section 96)
- Day of meeting (Section 96)
- Time of meeting (Section 96)
- Agenda of meeting (Section 102)
- Proxy clause with reasonable prominence (Section 105)

# Meetings – Notice

## Omission to send notice – Section 101(4)

- Accidental omission to give notice to, or non-receipt of such notice **shall not invalidate the proceedings of the meeting**
- The **onus is on the Company** to prove that the omission was not deliberate

## Statement to be annexed to notice – Section 102

The 2013 Act states

- Besides directors and managers, the **nature of the concern or interest of every director, manager, any other key managerial personnel and relatives** of such director, manager or any other key managerial personnel in each item of special business needs to be mentioned in the notice of the meeting
- The **threshold of disclosure of share holding interest in the Company** to which the business relates of every promoter, director, manager and key managerial personnel has been **reduced from 20% to 2%**

# Meetings – Quorum

## Public Company



Number of Members less than 1000, quorum – 5 members personally present

If number of members more than 1000 but not up to 5000, Quorum – 15 members personally present

If number of members exceed 5000, Quorum – 30 members personally present

## Private Company



2 members personally present

# Meetings – Quorum

## Absence of Quorum

- **If the quorum is not present within half an hour, from the time appointed for holding the 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 a requisitioner, it shall stand cancelled (Section 100)
- **Quorum not present in adjourned meeting:**

If quorum not present within half an hour, then the members present shall form the quorum



# Meetings – Quorum – memory test

*There are 5400 members of ABC Private Limited. The Company held its annual general meeting on 1<sup>st</sup> July 2017 at 2.00 pm and 28 members were present till 2.45 pm. The Chairman of the meeting proceeded to initiate the meeting and passed the resolutions as discussed in the meeting.*

*Whether the meeting took place as per provisions of the Companies Act, 2013.*

**Answer – As per the provisions of section 103 of the Companies Act, 2013, the quorum for a Private Limited Company shall be two members personally present. Thus, the quorum for the annual general meeting of ABC Private Limited was complied with and the Company is not in contravention with any of the provisions of the Companies Act, 2013**

# Meetings – Quorum

*According to section 103 of Companies Act, 2013, in case of a private limited company, 2 members personally present shall be the Quorum.*

*If Quorum is not present within half an hour from the time appointed for holding a meeting, then the meeting shall stand adjourned, and if at the adjourned meeting also, Quorum is not present, the members present shall be the Quorum.*

*If the private company has only 2 shareholders and out of these, if one cannot attend the AGM then according to above, whether one person attending the adjourned AGM, would be taken as quorum?*

**Answer – No; one person cannot form quorum of an adjourned meeting.**

**However, if the other person attends the meeting through video conferencing, then he will be counted for the purposes of quorum**

# Meetings – Proxies

A limit has been introduced on the number of members which a **proxy** can represent.

- The 2013 Act has introduced a dual limit in terms of number of members being represented by a proxy - prescribed as 50 members along with a limit in terms of number of share holding in the aggregate being not more than 10 % of the total share capital of the Company carrying voting rights [section 105 (1) of 2013 Act].
- Private companies cannot impose restrictions on voting rights of members other than due to unpaid calls or sums or lien [section 106 (1) of 2013 Act].
- Listed companies required to file with the ROC a report on each AGM including a confirmation that the meeting was convened, held and conducted [section 121 of 2013 Act].

# Meetings – Proxies

## Proxies – Section 105

- It is a **right of a member** of the Company to appoint a proxy
- Proxy shall not have the right to speak and shall not be entitled to vote except on a poll
- Person appointed as a proxy shall act on behalf of such members or number of members
  - a) Not exceeding 50; and
  - b) Holding in aggregate not more than 10% of the total share capital of the Company

## Rule 19(3) of the Companies (Management and Administration) Rules, 2014

- *A member holding > 10% of the total share capital of the company shall appoint **only one person as proxy***
- *Appointment of proxy* → **Form MGT 11**
- **Only a member** can be a proxy holder in a company registered under **Section 8**

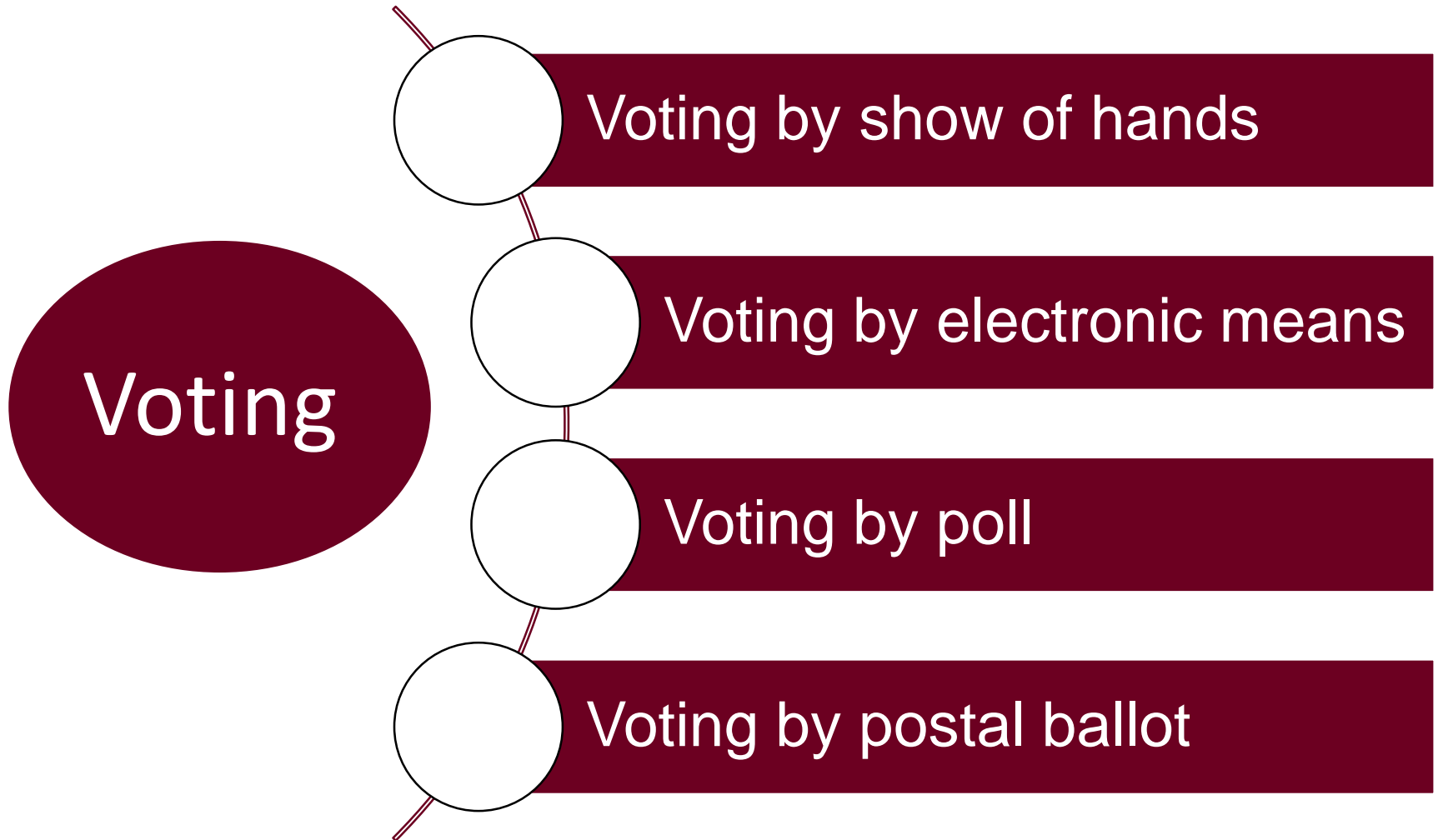
# Meetings – Proxies

- Notice calling a meeting → Statement with reasonable prominence
- Rule 20 of the Companies (Management and Administration) Rules, 2014
  - a) Applicable to listed companies
  - b) Proviso to Rule 20(3)(vii) – member who has cast his vote will not be entitled to vote at AGM as once a vote is cast the member will not be entitled to change it subsequently.
- **Inspection of proxies – Section 105(8)**
  - a) during the meeting; and
  - b) 24 hours before the meeting before its commencement; and
  - c) inspection to be given only during business hours
  - d) 3 days notice in writing

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# Voting



# Voting

## Voting by show of hands – Section 107

- At AGM, a resolution put to vote shall in the **first instance** be decided on a show of hands
- Declaration by the chairman – Conclusive evidence of the fact of passing of such resolution unless a poll is demanded (Section 106)

## Voting by show by electronic means - Section 108

- Electronic voting (e-voting) is a term encircling several different types of voting, implementing both electronic means of casting a vote and electronic means of counting votes



# Voting

## Two main types of e-Voting can be identified:

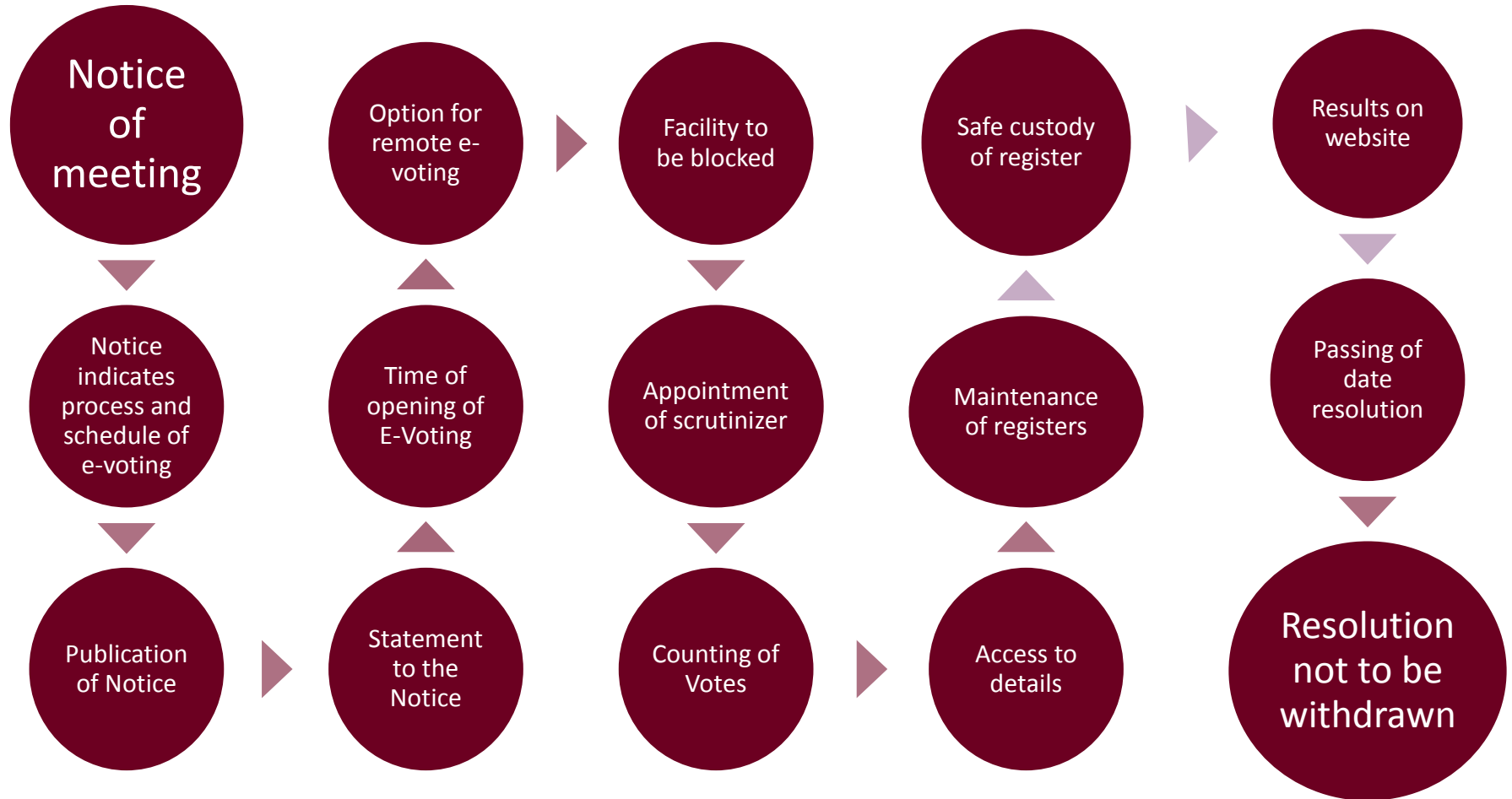
- E-voting which is physically supervised by representatives of governmental or independent electoral authorities (e.g. electronic voting machines located at polling stations);
- Remote e-Voting where voting is performed within the voter's sole influence, and is not physically supervised by representatives of governmental authorities (e.g. voting from one's personal computer, mobile phone, television via the internet)

## Voting through electronic means.-

- Every listed company or a company having not less than one thousand shareholders, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.
- A member may exercise his right to vote at any general meeting by electronic means and Company may pass any resolution by electronic voting system in accordance with the provisions of this rule

# Voting

- **Rule 20 of the Companies (Management and Administration) Rules, 2014 provides detailed procedure for electronic voting**



# Voting

## **Voting by Postal Ballot – Section 110 read with Rule 22 of the Companies (Management and Administration) Rule, 2014**

- Notice along with the draft resolution requesting all shareholders to send their ascent or descent in writing on a postal ballot or by electronic means within 30 days from the date of dispatch of notice
- Advertisement
  - (a) Vernacular newspaper (b) English newspaper
- Notice of postal ballot to be placed on the website of the Company
- Appointment of scrutinizer by the Board
- Resolution assented by majority shareholders – It shall be deemed to have been duly passed
- Submission of report by the scrutinizer not later than 7 days after the last date of receipt of postal ballot
- Maintenance of register
- Receipt of postal ballot after 30 days – shall be treated as if reply from the member has not been received
- Resolution shall be deemed to be passed on the date of declaration of its results

# Voting

The company shall transact the following business only by means of **postal ballot**:

Section	Description
<b>13</b>	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>2 (68)</b>	Alteration of articles of association in relation to insertion or removal of provisions which are required to be included in the articles of a company in order to constitute it a private company
<b>12(5)</b>	Change in place of registered office outside the local limits of any city, town or village.
<b>13(8)</b>	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
<b>43(a)(ii)</b>	Issue of shares with differential rights as to voting or dividend or otherwise
<b>48</b>	Variation in the rights attached to a class of shares or debentures or other securities
<b>68(1)</b>	Buy-back of shares by a Company
<b>151</b>	Election of a director
<b>180(1)(a)</b>	Sale of the whole or substantially the whole of an undertaking of a Company
<b>186(3)</b>	Giving loans or extending guarantee or providing security in excess of the limit

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# Resolution

## Ordinary resolution

- Votes in favour of resolution including the casting vote shall exceed the votes cast against the resolution

## Special resolution

- When there is an intention to propose the resolution as special resolution
- The notice shall be given
- The vote cast in favour of the special resolution shall not be less than 3 times the number of votes cast against the resolution
- Form MGT 14 to be filed along with explanatory statement

## Resolution requiring special notice

- Passed only if required by provisions of Companies Act 2013 or the Articles of the Company
- Notice to move the resolution shall be given to Company
- Special notice to be sent by members to the Company not earlier than 3 months but 14 days before the meeting
- The Company on receiving the notice shall give notice to the members at least 7 days before the meeting

# Resolution

## Resolutions passed at adjourned meeting – Section 116

- Resolution passed at adjourned meeting of
  - a) A Company; or
  - b) The holder of any class of shares in a Company; or
  - c) The Board of Directors of a Company,

*Then the date of passing of the resolution shall be the date on which it is actually passed and not an earlier date*

# Resolution – memory test

*In the annual general meeting of XYZ Limited, the notice contained the agenda for 8 special businesses to be transacted. The Chairman decided to move all the resolutions at one time in order to save time of the members present at the meeting. Whether two or more resolutions can be moved together as per the provisions of the Companies Act, 2013.*

**Answer – For the sake of avoiding confusion and mixing up, the resolutions are moved separately. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately or unless a poll in respect of any.**

**The only case where a resolution should be moved separately is the one pertaining to the appointment of directors at a general meeting of a public or private company, where two or more directors may not be appointed as directors by a single resolution.**



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# Highlights on Companies (Amendment) Act, 2015

- **Requirement of Minimum Paid up Share Capital – Section 2(68) and Section 2(71)**
  - The requirement of having a minimum paid up share capital by a Company has been done away with.
  - Private or public company can be incorporated without the need for minimum paid up share capital of one lakh or five lakh rupees respectively.
- **Common Seal made optional – Section 9, 12, 22, 46 and 223**
  - The requirement of having a common seal has been made optional.
- **Commencement of Business – Omission of section 11**
  - The relevant section has now been omitted and the requirement of filing a declaration before commencement of business has been done away with.
- **Punishment for Contravention of Section 73 and Section 76 of Companies Act, 2013 for Acceptance of Deposits by Companies (New section 76 A inserted)**

# Highlights on Companies (Amendment) Act, 2015

- **Obtaining copies of Board Resolution**
  - As per the amendment, no person shall be entitled under Section 399 to inspect or obtain copies of Board Resolutions passed by a Company.
- **Declaration of Dividend – Section 123(1)**
  - Additional proviso has been inserted in Section 123 in accordance with which no Company shall declare dividend unless carried over past losses and depreciation in previous year or years are set off against profit of the Company for the current year.
- **Loans to directors – Section 185**
  - **Prohibition is not applicable to:**
    - Loans given to managing director or whole time director as part of the conditions of services extended by the Company to all its employees or, pursuant to any scheme approved by the members by a special resolution
    - Companies which provide loans or give guarantees or securities in the ordinary course of its business.

# Highlights on Companies (Amendment) Act, 2015

- **As per the amendment, the following are added to the above mentioned exceptions:**
  - Loan made by the holding company to its wholly owned subsidiary; or
  - Guarantee given or security provided by the holding company in respect of loan made by the bank or financial institution to its subsidiary.

*(Provided the loans made above are utilised by a subsidiary for its principal business activity)*

- **Related party transaction – Section 188**
  - As per the amendment, the requirement of passing special resolution for approving certain related party transactions has been done away with. With this, certain related party transaction can now be approved through ‘a resolution’ instead of ‘special resolution’



Thank you

