

Recid-Map:

A) Note-book only - This topics are not to be referred from anywhere except notebook. This topics may or may not be important but in exhaustively (in detail) covered in notebook and therefore, notebook is sufficient.

i) Registers	[sec-88]
ii) Beneficial owner	[sec-89]
iii) Significant beneficial owner	[sec-90]
iv) Notice	[sec-101]
v) Explanatory statement	[sec-102]
vi) Proxy	[sec-105]
vii) Restriction on voting right	[sec-106]
viii) Remote e-voting	[sec-108]
ix) Poll	[sec-109]
x) Postal Ballot	[sec-110]
xi) Minutes	[sec-118]
xii) AGM Report	[sec-121]
xiii) AGM	[sec-96]
xiv) EGM	[sec-100]

B) Sec-115 - Resolution requiring special notice is common with Audit Subject and therefore, no need to refer before Audit Subject is completed.

C) Topics to be referred from ICAI → Must

Topics	Section	ICAI
closure of register	91	7.16
Annual Return	92	7.17
Quorum	103	7.27

D) Topics to be referred from ICAI → optional

Topics	Section	ICAI
place of keeping Register	94	7.19
Register as evidence	95	7.2)

Pnc-requisite of member	101	7.21
chairman	104	7.29
Resolution		7.50
Ordinary resolution & special resolution	114	7.55
Filing of resolution	117	7.54
one person company	122	7.68
Document in E-form	120	7.60

E) During branch exam preparation :-

- i) Read Notebook thoroughly
- ii) Follow point above (c)
- iii) It is optional for a Ranker student to follow point - D.
- iv) Refer Summary - page no :- 7.69 (ICAI)
- v) Refer Test your knowledge :- Page no. :- 7.70 (ICAI)
- vi) Refer past 3 attempt's RTPS and MTPs

F) Day before final ICAI Intermediate exam ;

- i) Read Notebook in depth
- ii) Follow point (c)
- iii) Refer test your knowledge - page no :- 7.70 (ICAI)
- iv) Refer current attempt RTP and MTP.

G) Penalty [LBH]

- > Learn By Heart the penalty of section - 92 and section - 99.
- > Rest all penalties is optional for students to remember
- > This does not mean that most penalties will not be asked, but a student can take a calculated risk by ignoring most penalties.

## Section list [PART - A :- MEETINGS]

- 96 AGM :- (1) Timelimit  
(2) Day, Date, Time & Place
- 97 AGM by NCLT
- 98 EGM by NCLT
- 99 Punishment for contravention of Sec - 96 or 97 or 98
- 100 EGM
- 101 Notice of AGM/ EGM
- 102 Types of Business at GM
- 103 Quorum
- 104 chairman
- 105 Proxy
- 106 Restriction on voting right
- 107 Show of hands
- 108 Remote e-voting
- 109 Poll
- 110 Postal Ballot
- 111 Circulation of Resolution
- 112 Representation of president of India & Governor of state
- 113 Representation of Body corporate
- 114 Ordinary Resolution & Special Resolution
- 115 Resolution requiring special notice
- 116 Resolution passed at Adjourned Meeting
- 117 Filing of Resolution
- 118 Minutes
- 119 Minutes inspection
- 120 Records in E-Form
- 121 AGM report by listed public company
- 122 Applicability to OPC

## PART-B : REGISTERS &amp; RETURNS

Section:

- 88 Register of members
- 89 Declaration in respect of beneficial interest in any share
- 90 Significant Beneficial Owners [SBO]
- 91 Power to close register of member or debenture-holders or other security holder
- 92 Annual Return
- 95 Registers, etc. to be evidence

list of forms :

MGT = Management

Form MGT

- 1 Register of member
- 2 Register of debenture holders & other security holders
- 3 Intimation to ROC ceboard :
  - opening
  - opening
  - opening
- 4 Declaration by RO to RCO (Relevant company)
- 5 Declaration by BO to RCO (Relevant company)
- 6 Return of BO to RCO
- 7 Annual return
- 7A AR for small co. 215 2(85) & OPC 215 2(62)
- 8 Certification of AR by practicing CS
- 9 Extract of AR
- 10 - (omitted)
- 11 Proxy form 215 (105)
- 12 Poll paper
- 13 Poll report
- 14 Filing of agreement and resolution including special resolution 215 (117)
- 15 Report on AGM by listed companies 215 (121)

} of investors in India & foreign Domestic (Indi-principal) & foreign Register

} of foreign register

} Section-89

} Section-90

} Section-109

\* BEN = BENeficiary

Form BEN

- 1 Declaration by SBO to Relevant / Reporting company.
- 2 Return of SBO by Reporting company to ROC.
- 3 Register of SBOs.
- 4 Notice by Reporting company to prospective SBO.

Part - A Meetings of Company : [sec - 96 to 122]

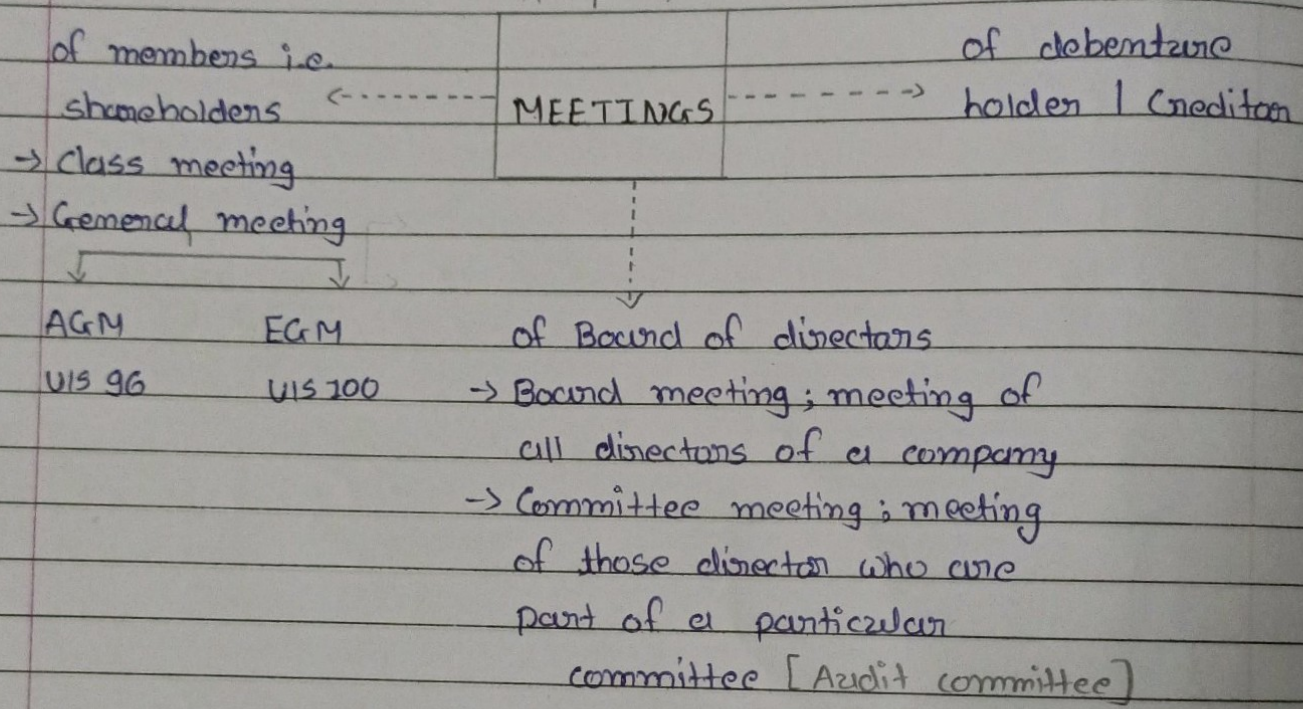
\* Types of Meetings :



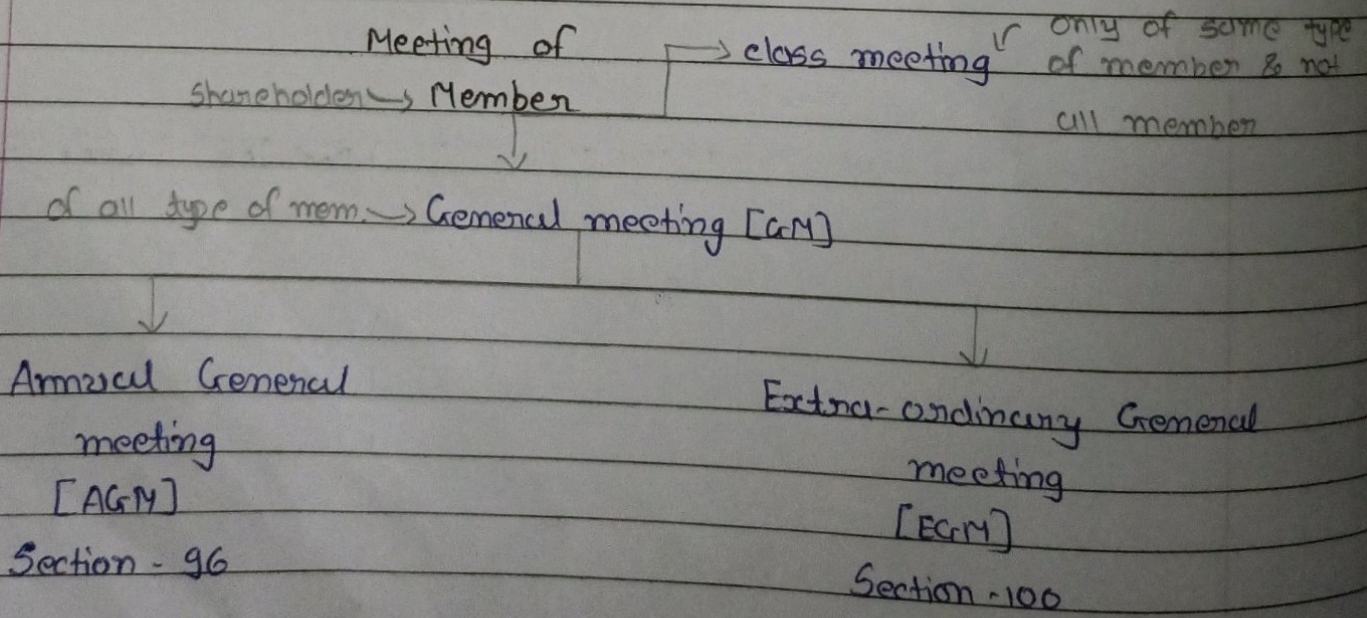
A gathering of all people

Convened by Tribunal

UIS 97/98



\*



\* Annual General Meeting [sec - 96]

Provision:

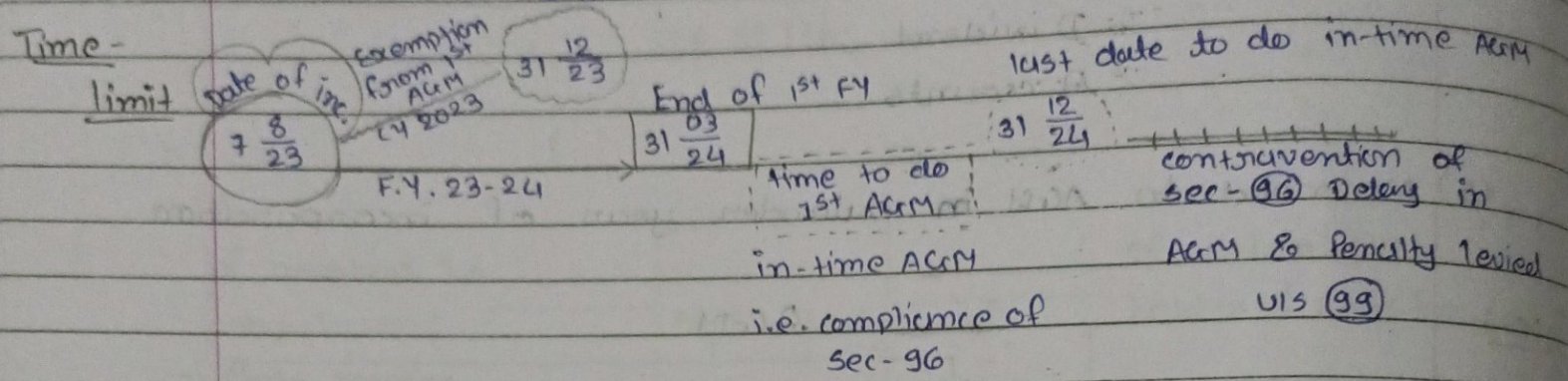
- (1) It is a General meeting which is to be convened by each company in a calendar year except in OPC.
- (2) Mainly following <sup>matters</sup> business will be transacted:
  - Director
  - Auditor
  - Dividend
  - Accounts
- (3) No need to AGM in calendar year of incorporation.

Types:

	AGM	
	First AGM	Subsequent AGM(s)
1st AGM after incorporation of co.	←	↳
Time-limit	Within <u>9 months</u> from end of its 1st F.Y. [Refer Ex-2]	All the AGM after 1st AGM on or before the earliest of following: <ul style="list-style-type: none"> <li>a) <u>Within 6 months</u> from end of F.Y.</li> <li>b) <u>Gap between two (2) consecutive AGM(s) is Maximum 15 months.</u></li> <li>c) <u>1 AGM in 1 calendar year.</u></li> </ul> [Refer Ex-2]
Condition of delay by ROC	NO	Decision making power Yes at discretion of ROC on special grounds but not exceeding <u>3 months.</u>

Example-1	Date of incorporation	Calendar Year	1 <sup>st</sup> F.Y.	Time limit	Date upto which 1 <sup>st</sup> AGM ought to be held i.e. Due date
	7/8/2023	7 <sup>8</sup> / <sub>23</sub> to 31 <sup>12</sup> / <sub>23</sub>	7 <sup>8</sup> / <sub>23</sub> to 31 <sup>3</sup> / <sub>24</sub>	9 month	7/8/24 31/12/24
	31/12/2024	14 <sup>3</sup> / <sub>24</sub> to 31 <sup>12</sup> / <sub>24</sub>	14 <sup>8</sup> / <sub>24</sub> to 31 <sup>3</sup> / <sub>25</sub>	9 month	31/12/24 31/12/25

end of 1<sup>st</sup> C.Y.



Example-2 Spunk co. Ltd. was incorporated on 7/8/23. It convened its 1<sup>st</sup> AGM on 7/8/24 (in-time). Till which date co. to convene its subsequent AGM i.e. 2<sup>nd</sup> AGM?

Solution:

Condition-1 :- Within 6 months from end of F.Y.

	F.Y.	A/G adoption?
1 <sup>st</sup>	2023-24	✓ in AGM on 7/8/24
2 <sup>nd</sup>	2024-25	Pending
		31-03-25
		06
		30-09-25

Condition-2 :- Gap between 2 consecutive AGM, Max. 15 months.

Date of 1<sup>st</sup> AGM = 7/8/24

15

7/11/25

Condition-3 :- 1 AGM in 1 calendar year.

	Calendar year	AGM done?
1 <sup>st</sup>	2023	No need ∵ 1 <sup>st</sup> F.Y. of incorporation
2 <sup>nd</sup>	2024	Yes on 7/8/24
3 <sup>rd</sup>	2025	Pending
		31/12/25



-> Due to Rule of Harmonious construction,  
 [Interpretation of statutes - other laws],  
 on / before earliest of all conditions

-> Co.'s 2<sup>nd</sup> AGM on / before 30/9/2025

\* Points to be noted :-

- (1) Every annual general meeting shall be called during business hours, i.e. between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall 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 situated.
- (2) "National Holiday" means and includes a day declared as National Holiday by the Central Government.
- (3) AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.
- (4) The central Government may exempt any company from the provision of this sub-section subject to such conditions as it may impose.
- (5) In case of section-8 company, time, date and place of each AGM are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.
- (6) In case of Government company, 'Every AGM shall be called during business hours, i.e. between 9 a.m. to 6 p.m. on any day i.e. not a National Holiday and shall be held either at the registered office of the company or at such other place within the city, town or village in which the registered office of the company is situated or such other place as the central government may approve in this behalf.
- (7) The above mentioned exception / modification / adaptation (i.e. (5) & (6)) shall be applicable to section 8 company and government company which has not committed a default in filing of its

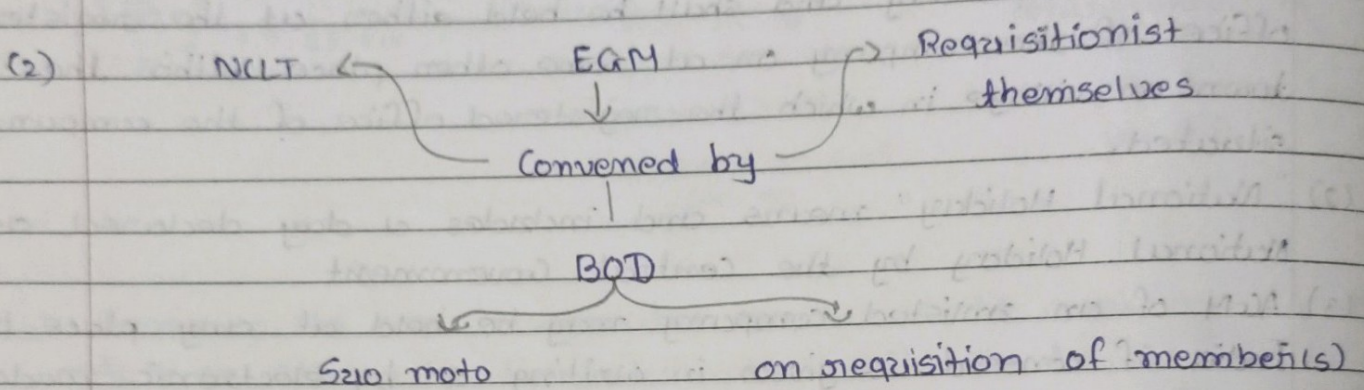
Financial Statement 21/5 137 (AOC-4) and annual return U/S 92 (MGT-7) with the registrar.

Sec-98 EGM by NCLT :

(1) → EGM convened by NCLT :

- on requisition of :- BOD or Member

→ Provision of section - 97 (AGM by NCLT) apply mutatis mutandis to section 98 (EGM by NCLT)



(3) Timeline :

Date of deposit of	to do arrangements	21 days
Valid Requisition	EGM held by BOD	45 days
	EGM by Requisitionist if BOD fails	3 months

Sec-100 Extra-Ordinary General Meeting :

Meaning Meetings:

- ① EGM is :
  - an GM after than AGM or
  - all GM(s) between 2 consecutive AGM(s)
- ② All business transacted at EGM shall always be special Business u/s 102

B] Types:

- ① EGM convened by BOD suo moto.
- ② EGM convened by BOD on requisition (request) of member(s).
- ③ EGM convened by BOD Requisitionist themselves.
- ④ EGM convened by NCLT 2113 (98)

C] EGM convened by BOD suo moto:

1. A Director cannot convene EGM, it is convened by BOD.
2. BOD to convene Board Meeting and
3. In BM a resolution to be passed to convene EGM.

D] EGM convened by BOD on Requisition of Member(s):

1. Requisition by :-
  - company with without sharecapital  $\geq 10\%$  voting power
  - Company with sharecapital  $\geq 10\%$  share capital
2. Requisition shall be :
  - in writing
  - Specifying matter (purpose)
  - Not specifying reasons
  - Signed by requisitionists
  - Deposited at registered office of company.
  - at least 21 clear days prior to postponed date of such EGM
3. Timelimit :
  - BOD shall make arrangement within 21 days (of date of deposit of valid requisitions)
  - BOD shall conduct EGM within 45 days (of date of deposit of valid requisitions)

E] EGM convened by Requisitionists themselves:

- Request to convene EGM when BOD fails to convene EGM on time.
- Request to convene EGM within 3 months from date of deposit of valid requisition.
- Request to convene EGM in same manner as BOD does.

- Expenses of EGM :

- Incurred by requisition
- Reimbursed by company
- Recovered from remuneration of directors who are in default

Sec - 101 Notice of a AGM / EGM :

- A] To whom :
- ① BOD
  - ② Auditor(s)
  - ③ CS, if any
  - ④ Preference shareholder, if any matter effect "PSC"
  - ⑤ Equity share holder
  - ⑥ Member is deceased - Legal Representative
  - ⑦ Member is insolvent - official Assignee

- B] Mode of service :
- ① Hand Delivery,
  - ② Post,
  - ③ Registered post,
  - ④ Courier,
  - ⑤ Electronic mode. (like Email)

- C] Contents :
- ① Day, Date, Time & place of GM
  - ② Business to be transacted i.e. Agenda.
  - ③ If any special business is to be transacted, explanatory statement u/s 702

D] Short notice :

→ A GM may be called after giving shorter notice than 21 clear days if consent is accorded (given) either in writing or by electronic mode by :

General Meeting

Annual General Meeting

other than AGM  
i.e. EGM

Minimum 95% of members

entitled to vote

Other than AGM i.e. EGM

Company with share capital

Company without share capital

- Members
- Majority in number
- Representing mini. 95% of paid up capital

- Members
- Exercising mini. 95% of voting power (based on amount of guarantee)

E] Omission :

-> Following if done accidentally or by in-advertence or unintentionally, shall not invalidate the proceedings at the GM:

- ① Omission to give notice or
- ② Non-receipt of notice by members

-> The onus (burden) is on company to prove that omission was not deliberate (intentional).

F] Length of service of Notice :

-> Atleast 21 clear days in advance before the date of GM.

-> Exclude the following from 21 days:

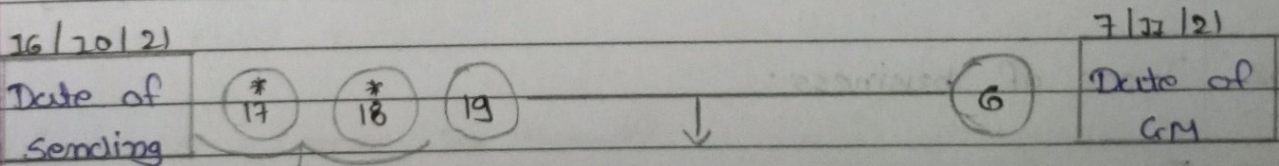
- i) Date of sending
- ii) Date of GM

-> Sec-20: when notice is served by post it is deemed 48 hours in transit.

Example :- Date of AGM -> 7/11/2021

Date of Posting Notice -> 16/10/2021

\* Excluded from 21 days



Actual days = 19

Statutory days = 21

short by (late) = 2 days

∴ Posted, so deemed, in-transit

[Sec-20]

Sec-112 & 113 Representation of a member in a GM [Sec-112 & 113]

113 (A)

(1) Concept :-

Member of company	can member attend GM?	can member appoint proxy s115 (105)?	will proxy get all right of member?	will proxy be counted in Quorum s115 (105)?
Individual / Natural person	✓	✓ optional	X	X
President of India or Governor of state	X	✓	✓	✓ s115 (112)
Body corporate or foreign co.	X	✓	✓	✓ s115 (113)

(2) President of India or Governor of state, if he is a member of a company, may appoint such person as he thinks fit to act as his representative.

(3) Where a body corporate is a member and it authorises any person as its representative at any meeting, such representative shall be entitled to exercise the same rights and power.

(4) Such other person shall be entitled to exercise the same rights and powers as a member of the company.

Sec-102 Types of business:

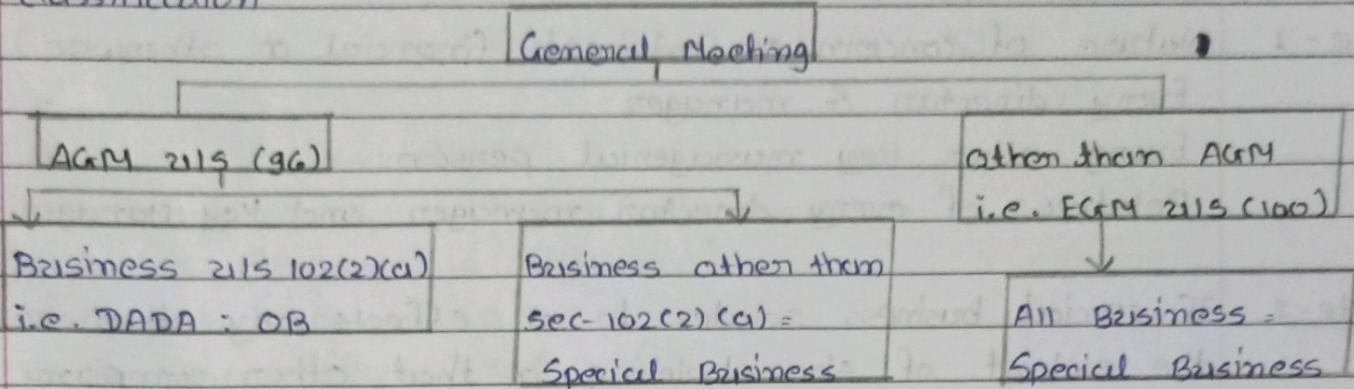
I. Types :

- i) Ordinary Business (OB)
- ii) Special Business (SB)

II Section - 102 (2) (a)

- Director
- Auditor
- Dividend
- Accounts

III. classification



IV Example:

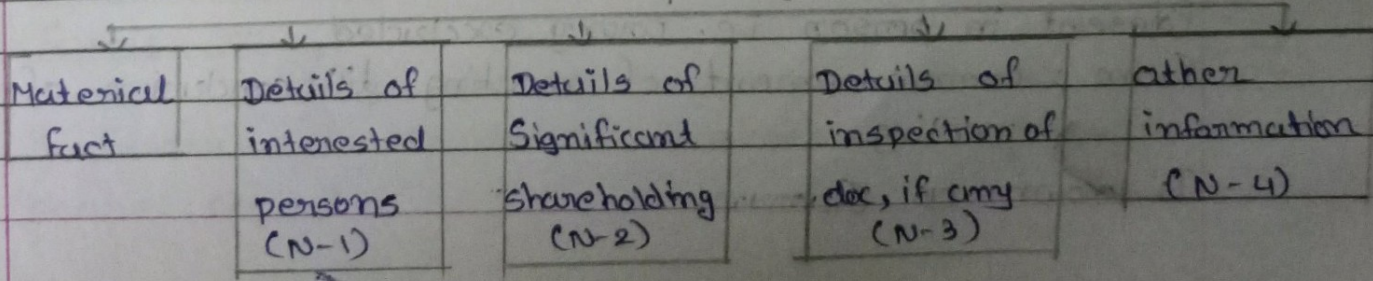
	Agenda	AGM	EGM
i	Director	OB	SB
ii	Auditor	OB	SB
iii	Dividend	OB	SB
iv	Accounts	OB	SB
v	Taking plant on lease	SB	SB

V. Purpose / Need :

	OB	SB
- Disclosure of type of business in notice	X	✓
- Details with respect to business in notice	Summary	Detailed
- Explanatory statement annexed - to notice 215 (10)	X	✓

VI. Contents [Learn By Heart]

Contents of Explanatory Statement



VII. Non-Disclosure:

→ If, as a result of non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a promoter, director, manager or other KMP or their relatives, such person shall hold such benefit in trust for the company and shall compensate the company to the extent of benefit derived by him:

Note-1 Nature of concern or interest (financial or otherwise) of-

- Every director & manager
- Every other key managerial person
- Relatives of every director, manager and Key Managerial person

Note-2 If special business relates to, or effects, any other company, the extent of shareholding in that other company of every promoter, director, manager and every other Key Managerial Person shall be disclosed, if the extent of such shareholding is 2% or more of the paid up share capital of that other company.

Note-3 If special business refers to any document which is to be considered at the GM, at the time and place where such document can be inspected shall be specified in the explanatory statement.

Note-4 Any other information and facts that may enable members to understand the meaning, scope and implication of the items of business and to take decision thereon.

Sec-103: Quorum (A)

A. Meaning:

- Min. number of members
- Present in person i.e. proxy excluded
- From: Commencement of meeting till conclusion of meeting

(A) - Is known as Quorum.



B. Quorum:

- a) Private co. = Min. 2 members
- b) Public co.

Total no. of members in co. at time of GM	Min. no. of members
7 - 1000	5
1000 - 5000	15
5000 - $\infty$ (infinite)	30

C. Articles of Association:

- AOA may specify a higher Quorum:

$\therefore$  Effective Quorum is higher of:

a) Quorum as per Act

b) Quorum as per AOA

Ex: In Spunk co. Ltd. [Public co.] there were 7,000 members. Its AOA require a Quorum of 50 members.

a) Quorum as per Act = 30 member

b) Quorum as per AOA = 50 member

$\therefore$  Quorum = 50 members min.

$\rightarrow$  One member will be a valid Quorum in case AGM/EGM is convened by NCLT, 215 (97/98), i.e.: one man meeting.

D. Inclusions & Exclusions:

$\rightarrow$  Exclusion:

- Proxy of a member, who is individual.

$\rightarrow$  Inclusion in Quorum:

- Proxy of a member who is:

President of India.

Governor of state

Body corporate

Foreign co.

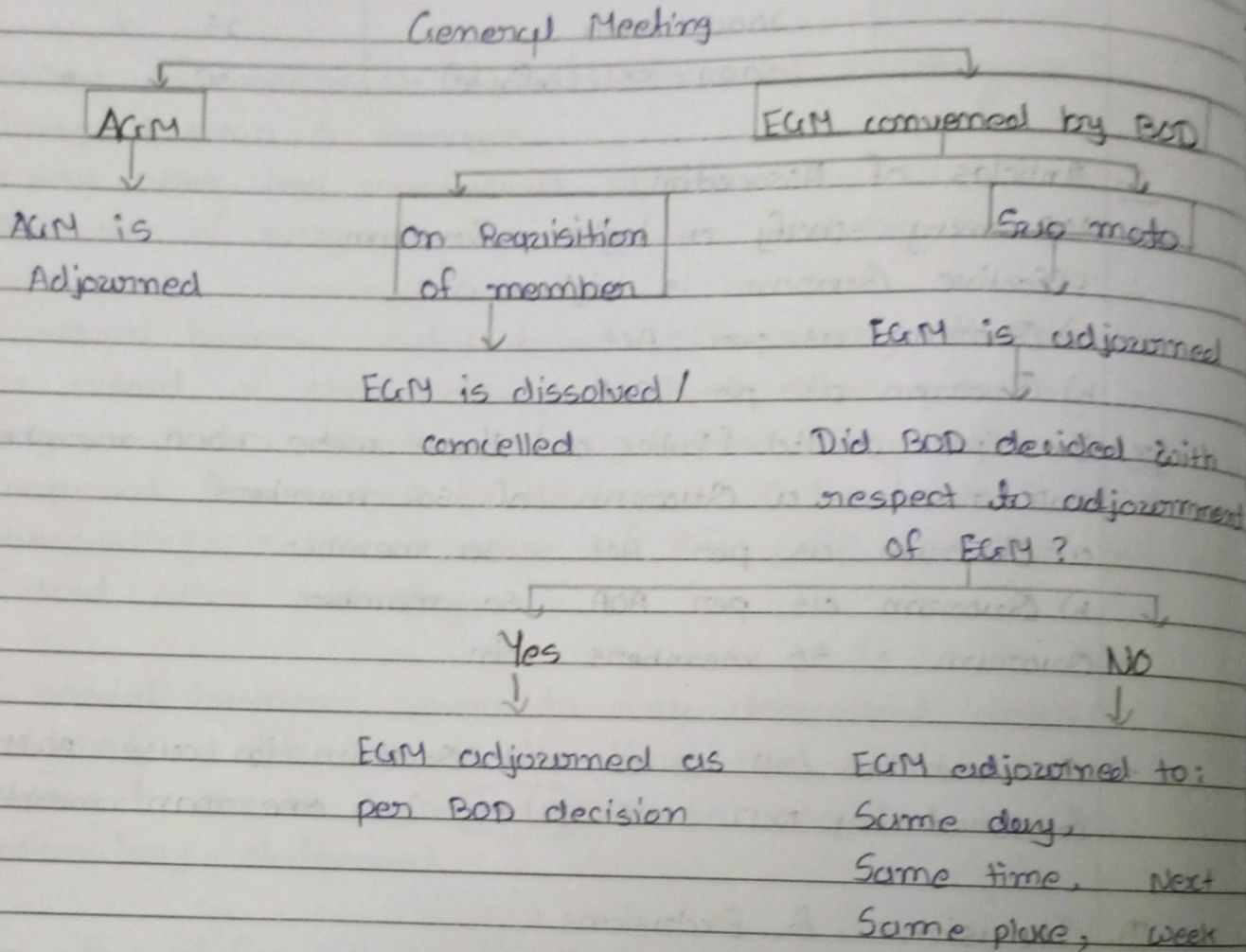
- Member casting vote by electronic means 215 (108)
- Preference shareholder if business affecting preference share capital.

E. Presence of Quorum:

- Quorum shall be present within 30 minutes of scheduled time of GM.

Amended - Then onwards it shall be present till conclusion of GM.

F. Lack of Quorum:



-> The notice of adjourned GM shall be given at least 3 days before adjourned GM by way of advertisement in newspaper.

- English
- vernacular (Regional / Local)

G. Quorum for Adjourned GM:

- Min. 2. members present.

Sec-106 Restrictions on voting Rights : (A)

→ Provision:

Does AOA contains expressly clearly the grounds for restriction on voting right?

Yes

NO

Grounds for restrictions on voting Rights

co. cannot do restriction on voting Rights

i) Amt. due from member on calls or other sum payable to co.

Any other grounds

OR

co. cannot do

ii) co. has exercised the right of lien on shares

restrictions on voting Rights

Restriction on voting Right is valid.

→ Restriction on voting Rights will be valid if:

- Grounds are specified 211S 106 &
- Grounds are specified in AOA.

→ Nature of Restriction:

- Such person cannot vote.
- Such person cannot sign requisition for an EGM 211S 100.
- Such person does not make payment of call money & co. forfeits shares & re-issue such shares. The new allottee being liable to pay balance unpaid on shares will not be entitled to vote so long as any calls presently payable on shares remain unpaid.

Sec - 105 Proxy:

A. Meaning

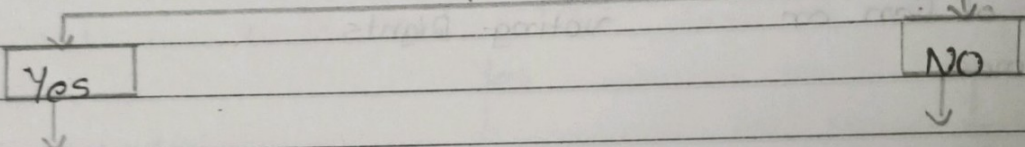
- one or more
- Representatives
- of a member
- to attend the GM &
- Exercise rights available by Act
- is known as proxy

B. Provision:

- Any member of a co. who is entitled to attend and vote at GM of a co. shall be entitled to appoint another person as a proxy to attend and vote at the meeting on behalf of member.

C. Who can be a proxy?

Is co. a section - 8 co.?



Only a member can be a proxy of other member

Any person can be appointed as proxy may or may not be a member of company.

-> Central Government prescribe class (type) of company whose member shall not be entitled to appoint a proxy.

D. Proxy of how many person?

- i) A person can become a proxy in one co. of more than one member subject to:
  - Maximum 50 members in number &
  - shareholders in aggregate max. 10% of total share capital of company.

ii) A member who is holding 10% or more share capital of a co. may appoint a person as proxy subject to:

- Such a person is not a proxy of any other member of co. &
- Such person agrees not to become proxy of any other member of a company.

Case study (Section - 105 read with 103, 112 & 113)

Member not willing to attend GM but willing to appoint Proxy	Proposed proxy	% of VP	No. of mem. can be represented as proxy by proxy	No. of mem. can be represented by proxy	Will proxy be appointed?	Will proxy get all right of member?	Will proxy be counted in Quorum 2/3 (103)?
Avi	Femil	7%	7%	1	✓	X	X
Vinay	Femil	2%	9%	2	✓	X	X
Kanziti	Femil	2%	11% <sup>①</sup>	3	X	X	X
Krishna	Femil	1%	10%	3	✓	X	X
Aditya	Rishi	15%	25% <sup>②</sup>	1	✓	X	X
POI	Bhadrik	7%	7%	1	✓	✓	✓
body (ampo)	Bhoomi	8%	8% <sup>③</sup>	1	✓	✓	✓

- ∴ % of shareholding will exceed 10%.
- It assume Rishi is also a member of co. then Rishi will be counted in Quorum as 1.
- It assume Bhoomi is also a member of co. then Bhoomi will be counted in Quorum as 2.

E. Process of appointing a proxy:

- member has to fill an instrument (Document) appointing a proxy i.e. proxy form which can be either;
  - a proxy form received with notice OR
  - form MGT-11 [Management]

ii) Member to give proxy form to proxy.

iii) Proxy to lodge (submit) proxy form to company in a stipulated time period i.e.

- Before at least 48 hours of scheduled time of GM.
- AOA if specify a timelimit :  
less than 48 hours - Valid  
more than 48 hours - Void

F. Proxy may be changed :

- > Proxy may be revoked, if a member attends GM then presence of member is predominant to presence of proxy & proxy is revoked.
- > Member can vote on decisions on which proxy has not voted.

H. Rights :

Right to	Member Present in	
	Person	Proxy
1. Receive notice 215 101	✓	X
2. Appoint proxy 215 105	✓	X
3. Attend GM	✓	✓
4. Counted in Quorum 215 103	✓	X
5. Can represent or speak	✓	X
6. Can demand poll 215 109?	✓	✓
7. Voting on poll 215 109	✓	✓
8. voting on show of Hands 215 107	✓	X

[Except section 112/113]

I. Inspection of proxy :

- Any member can be the inspection of proxy during business hours during 24 hours before commencement of GM and within conclusion of GM by giving 3 days notice.

Sec-114

Types of Resolution: (A)  
Resolution

ORDINARY RESOLUTION

SPECIAL RESOLUTION

votes casted in favour	Exceeds $\geq$	votes casted in against	votes casted in favour	$\geq$ (not less than 3 times)	votes casted in against
------------------------	----------------	-------------------------	------------------------	--------------------------------	-------------------------

In case of equality of votes, chairman may cast (give) an extra casting vote if AOA empowers chairman.

- Notice shall set out (describe) which resolution require SR.
- The copy of SR to be filed with ROC within 30 days in form MGT-14 215 (17).

Example: Spark Ltd. convened a meeting to transact the business & out of 150 members 10 members were absent, 20 members did invalid voting & 20 members abstained (didn't vote). Rest details are as under: [show of hands i.e. 1 Person = 1 vote]

Present & voting 100 members

Ordinary Resolution	Votes casted in		Special Resolution
	Favour	Against	
X	49	51	X
Depend on casting vote	50	50	X
✓	51	49	X
X	25	75	X
✓	75	25	✓
X	10	90	X
✓	90	10	✓
✓	60	40	X
✓	100	0	✓

Unanimous Resolution [100%]

Sec-107 Show of hands: (B)

- i) The voting shall be done by show of hands in the first instance, unless poll is demanded.
- ii) The declaration by the chairman of the meeting in the minutes book shall be conclusive evidence that the resolution is passed.

Sec-109 Poll: (A)

## A. Provision:

- The chairman may allow poll before or on declaration of result of the voting on any resolution by show of Hands.

## B. Who can demand poll?

i) chairman *suo moto* (on his own) or

ii) on demand by member(s)

a. co. having share capital:

- member(s)

- Present in person or proxy

- having ; voting power  $\geq$  '1/10th' [OR]Shares on which  $\geq$  5,00,000 paid up.

b. Co. is without share capital

- member(s)

- Present in person or proxy

- having min. '1/10th' voting power

## C. Time of taking poll:

- Poll is taken by chairman at his own discretion within 48 hours of demand.
- Poll shall be taken forthwith when demanded on question of:
  - i) change of chairman [OR]
  - ii) Adjournment of CM.



## D. Process of poll:

- The chairman shall have the power to regulate the manner in which a poll shall be taken.
- The polling paper shall be in form no. MGT-12.
- The scrutinizers shall lock and seal an empty box in presence of members and proxies.
- The scrutinizers shall open the polling box in presence of 2 persons as witnesses after the voting process is over.
- In case of ambiguity about the validity of a proxy, the scrutinizers shall decide the validity in consultation with the chairman.
- The scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the chairman.
- The report shall be signed by the scrutinizers and in case there is more than one scrutinizers by all scrutinizers.
- The chairman shall counter-sign the scrutinizers' report.
- The chairman shall declare the result of voting poll.

\* Powerful Member : [Learn By Heart]

## A. Who is Powerful?

- member
- holding minimum
- 10% voting power

## B. How to decide voting Power?

Company's liability limited by

↓  
Share Capital

↓  
Voting power decided based on % of share capital held.

↓  
Guarantee

↓  
Voting power decided based on amount of guarantee

C. When applicable ?

1) Requisition for Extraordinary Meeting 215 (100)

2) Demand of poll 215 (109)

+

25,00,000 paid up capital

3) Circulation of Resolution 215 (112)

\*

Members of passing on Resolution

by convening a GM

without convening a GM

without Remote  
E-voting  
Facility [EVE]

with Remote  
E-voting  
Facility [EVE]

Resolution by postal  
Ballot including E-  
ballot 215 (110)

Members on proxy to  
vote in GM by :

- Raising of hands; or
- Physical ballot; or
- Spot EVE; or
- any other system provided by co.

OR

Members may cast  
vote anytime any-  
where using  
Remote EVE 215

(108)

Sec-108 Voting through Electronic means: (A)

A. Applicability of Remote Voting:

Company is

Listed company

Unlisted Company

Mandatory

Nidhi co. OR SEBI  
Regulated Institutional  
investor  
optional

Any other unlisted company  
is me.  $\geq 1000$ ?

No  
optional

Yes  
Mandatory

To provide E-voting facility to the members in pursuance of sec-108

## B. GM without remote e-voting facility

- i) company to serve notice r/s (101)
- ii) Company to convene GM.
- iii) In GM do voting & can have spot e-voting
- iv) company to prepare minutes r/s (118)

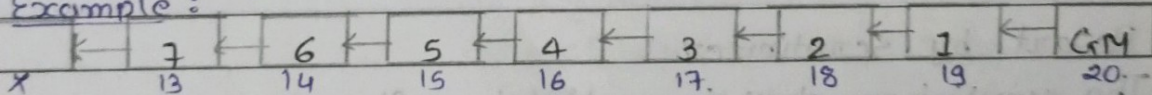
NOTE-1 Appointment of scrutinizer:

- 1) The Board of directors shall appoint one or more scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or company Secretary in practice or an Advocate or any other person who is not in employment of the co.
- 2) Scrutinizer is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner.
- 3) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
- 4) 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 electronic voting system.

NOTE-2 Cut-off date:

- 1) Cut-off date means a date not earlier than 7 days before the date of GM for determining the eligibility to vote by electronics means in the GM.

## 2) Example:

NOTE-3 Additional contents of notice:

- a) Indicate the process and manner for voting by electronic means
- b) Indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
- c) Provide the details about the login ID;
- d) Specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

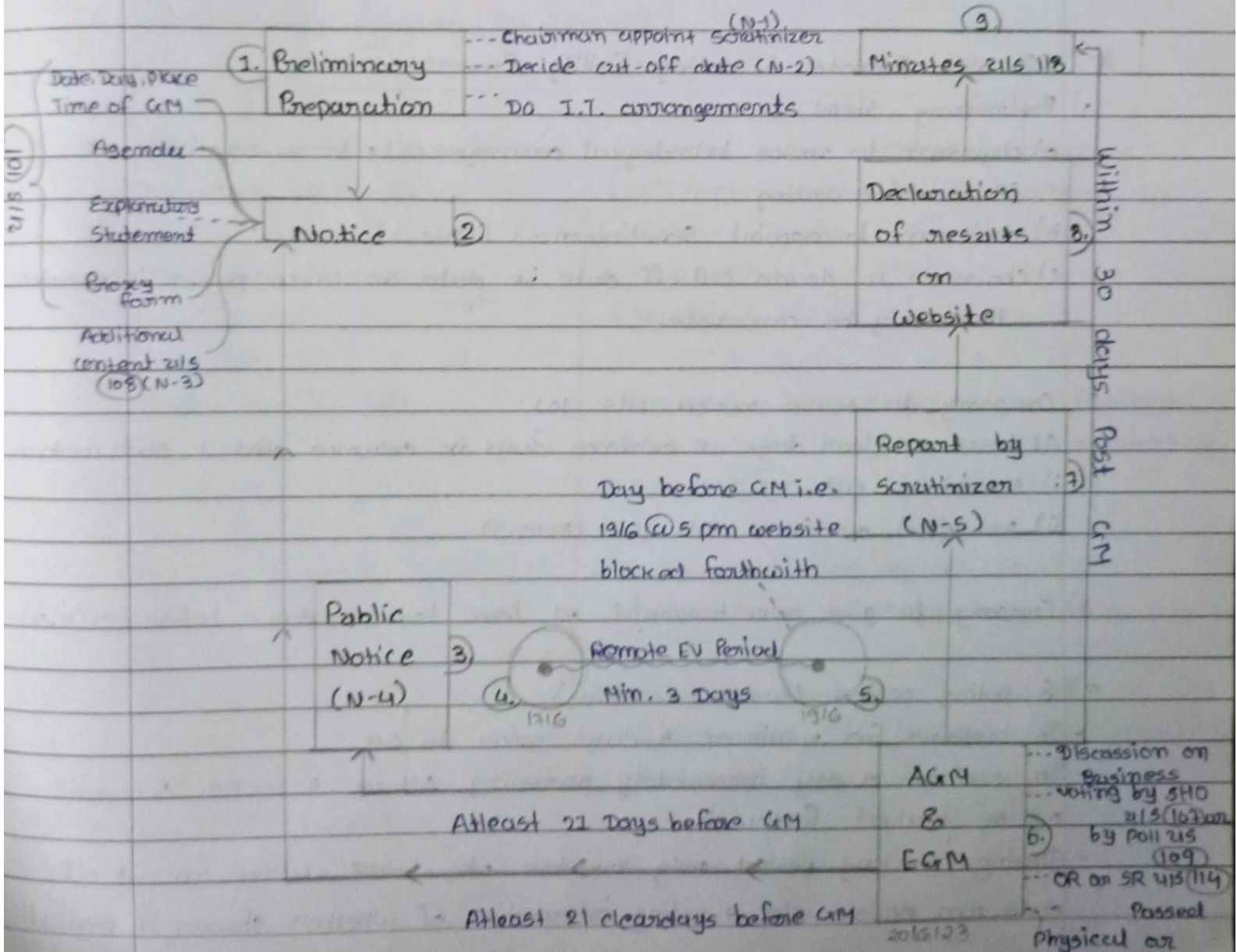
NOTE - 4 Public Notice :

- 1) The company shall cause a public notice by way of an advertisement to be published at least 21 days before the date of AGM, at least once in a vernacular and English newspaper.
- 2) Specifying in the said advertisement, inter-alia, the following matters, namely :-
  - a) Statement that the business may be transacted through voting by electronic means;
  - b) The date and time of commencement of remote e-voting;
  - c) The date and time of end of remote e-voting;
  - d) cut-off date;
  - e) The manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;
  - f) The statement that -
    - (i) Remote e-voting shall not be allowed beyond the said date and time;
    - (ii) A member may participate in the AGM even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting.
  - g) Website address of the company.
  - h) Name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means.
- 3) The public notice shall be placed on the website of the company.

NOTE - 5 Report by Scrutinizer :

- 1) The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting.
- 2) Thereafter unblock the votes cast through remote e-voting in the presence of at least two (2) witnesses not in the employment of the company.
- 3) Make, not later than 3 days of a consolidated scrutinizer's report of the votes cast in favour or against to the chairman who shall countersign the same.

- 4) The chairman shall declare the result of the voting forthwith.
- 5) The scrutinizer shall maintain a register to record the assent or dissent received mentioning the particulars of name, address folio number or client ID of the members, numbers of shares held by them, nominal value and whether the shares have differential voting rights.
- 6) The results declared along with the report of the scrutinizer shall
- 7) In case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the result to stock exchange and it shall place the results on its website.
- 8) Resolution proposed to be considered through voting by electronic means shall not be withdrawn.



### C. GM with Remote E-voting Facility [Summary]

- 1) Preliminary preparation: IT + cut off Date + Scrutinizer
- 2) Notice: contents 215 (101) + Additional contents
- 3) Advertisement
- 4) Remote E-voting period 

}	commence	}	Minimum
	conclude		3 Days
- 5) GM: All can attend including E-voters, but they cannot vote again in GM. They counted in Quorum 215 (103)
- 6) Scrutinizer to unlock website.
- 7) Scrutinizer to prepare consolidated report of votes casted by E-voters & vote casted in GM.
- 8) Scrutinizer to submit report to chairman.
- 9) Chairman to declare result
- 10) Preparation of minutes.

### \* GM with Remote E-voting Facility Process:

- 1) Preliminary steps:
  - a) chairman to make technological arrangements to ensure secure (Protected) e-voting.
  - b) chairman to appoint Scrutinizer(s) [Note-1]
  - c) chairman to decide cut-off date i.e. date on which person is member then only he can vote.
- 2) Company to serve notice 215 101:
  - At least 21 clear days in advance and it shall contain:
    - i) All details 215 (101)
    - ii) Additional disclosure 215 (108) (Note-3)
- 3) Company to give advertisement at least 21 days before GM (11-4)
- 4) E-voting period (Remote E-voting)
  - To continue for minimum 3 days prior to GM.
  - To end on a day immediately preceding GM at 5:00 P.M. & website will be blocked forthwith.
  - During E-voting period only member who holds shares on cut-off date can do remote e-voting irrespective of whether shares in physical

form an demut form.

- 5) Company to convene GM & pass Resolution:
  - Person who has casted e-vote can attend GM but cannot vote.
  - Member may also be provided with spot E-voting facility in the GM.
- 6) Scrutinizer to do counting of votes (Note-5)
- 7) Declaration of result by chairman (note-6)
- 8) Preparation of minutes u/s (118) within 30 days of conclusion of GM.

## Sec-110 Postal: Ballot: (A)

### A. Applicability [Learn By Heart]

#### Company

↓  
OPC or company with member upto 200

↓  
No need of postal  
Ballot

↓  
Resolution by GM

↓  
Other companies

[i.e. com. not cm OPC & member > 200]

→ Ordinary Business u/s 102 (2) (a)  
i.e. ADDA

\* No Postal Ballot i.e. GM

→ Business where directors or creditors have a right to be heard at the meeting

\* No postal ballot i.e. GM.

→ Meeting specified by CG (N-1)

\* Postal Ballot is mandatory i.e. No GM.

→ Any other business items

\* Postal Ballot is optional i.e. postal  
Ballot or GM.

## B. Process

### i) Preliminary steps :

- a) co. to ensure the eligibility of a resolution to be passed by postal ballot [i.e. check applicability]
- b) co. to arrange for ballots.
- c) co. to appoint scrutinizer(s) (N-2)

### ii) Notice :

- co. to send notice of postal ballot to all members along with draft resolution explaining the reason thereof.
- co. to request in notice to send members their assent or dissent within a period of 30 days.
- Notice can be served by post or speed post or courier or E-mail.
- Notice to be hosted on website of company

### iii) Public advertisement (N-3) shall be given by company.

### iv) Voting period :

- A period during which postal ballot shall be received by company.
- Commencement of postal ballot period → conclusion of postal ballot period : 30 days

### v) Counting of votes & reporting (N-4) by scrutinizer appointed.

### vi) Declaration of result of Resolution along with report on website of company.

### vii) The provisions regarding E-voting 2(15) (108) shall apply mutatis mutandis with respect to e-postal ballots.

## NOTE-1 Business when passing of Resolution by postal ballot is mandatory :

- a) Alteration of the object clause of the memorandum.
- b) Alteration of articles of association in relation to insertion or removal of provisions 2(15) 2(68) in the article of a company in order to constitute it a private company.



- c) change in place of registered office outside the local limit of any city, town or village.
- d) change in objects for which a company has raised money from public through prospectus and still has any unutilised amount out of the money so raised.
- e) Issue of shares with differential rights.
- f) Variation in the rights of shares
- g) Buy-back
- h) Election of a director
- i) Sale of the undertaking of a company
- j) Giving loans or guarantee or security.

#### NOTE - 2 Appointment of scrutinizer:

- 1) The BOD 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.
- 2) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

#### NOTE - 3 Public advertisement:

- An advertisement shall be published at least once in a vernacular and English newspaper having dispatched the ballot paper and specifying therein, inter alia, the following matters, namely:-
- a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
  - b) the date of completion of dispatch of notice;
  - c) the date of commencement of voting;
  - d) the date of end of voting;
  - e) 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;
  - f) 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

- g) Contact details of the person responsible to address the grievance connected with the voting by postal ballot including voting by electronic means.

#### NOTE - 4 Report of scrutinizer:

- 1) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven (7) days thereof.
- 2) 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.
- 3) The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.

#### Sec - 111 Circulation of member's resolution: (A)

##### I. Purpose:

- While the board enjoys the primary in setting the agenda of the meetings, the members are given a right to resolution for consideration at the GM.

##### II. Eligible member to do requisition for circulation of resolution:

#### Company

with share capital

without share capital

i.e. limited by guarantee

- Members

- members

- having minimum

- having minimum

- 10%

- 10%

- Paid up capital

- voting power (based on amount guaranteed)

### III. Pre-requisition:

- The pre-requisition for a valid requisition case is under:
  - a) must be made in writing and signed,
  - b) It must be deposited at the registered office of the company, the same is to be deposited not less than two weeks (14 days) before the meeting,
  - c) A sum reasonably sufficient to meet the company's expenses in giving effects to proposing the resolution is deposited.

### IV. Debarrment:

- 1) Company or any aggrieved person may lodge application to Cr against requisitionist if he is abusing right 215 (111).
- 2) The company shall not be bound to circulate any statement, if on the application Cr, by order, declares that the rights conferred are being abused to secure needless publicity for defamatory matter.
- 3) An order made may also direct that the cost incurred by the company shall be paid to the company by the requisitionist, notwithstanding that they are not parties to the application.

## Sec-115 Resolutions requiring special Notice: (B) (common with ch-10)

### I. Cases requiring special Notice:

- a) Resolution for appointment of an auditor other than retiring auditor at an AGM. (sec-140(4))
- b) Resolution at an AGM to provide that a retiring auditor shall not be re-appointed (sec-140).
- c) Resolution to remove a director before the expiry of his period of office. (sec-169(2))
- d) Resolution to appoint another director in place of the removed director (sec-169(5))

### II. Time-limit:

- Notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved.

### III. Voting Power:

- 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 1% of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.

### IV. Notice to members:

- 1) The company shall immediately after receipt of the notice, give its members notice of the resolution at least 7 days before the meeting.
- 2) Where it is not practicable to give the notice, the notice shall be published in English and vernacular newspaper and shall also be posted on the website of company.

## Sec-116 Resolution and Adjournment of Meeting (B)

### I. Provision:

- Where a resolution is passed at an adjourned meeting of a company, the resolution shall be treated as passed on the day it was actually passed and not on any earlier date.

### II. Example:

Spunk co. Ltd. was to pass 5 resolutions at AGM to be done on 7/8/23. After passing 3 resolutions due to some reason, AGM was adjourned to 17/8/23 & rest resolutions passed thereat.

Resolution number	Valid form
1	
2	7/8/23
3	
4	7/8/23
5	17

### III. Applicability :

- a) Member at General Meeting
- b) Member of class Meeting
- c) Board Meeting.

### Sec-117 Filing of Resolution : (B)

- 1) Lodge Form MGT-4 to ROC by company by annexing explanatory statement 215(102) being special business.
- 2) Timelimit :  
- within 30 days of passing of Resolution.
- 3) Payment of fees prescribed in companies [Registration and fees] Rules, 2014.
- 4) The copy of every resolution which has the effect of altering the articles shall be embodied in an annexed to every copy of the articles issued after passing of the resolution.
- 5) Resolution to be filed : [Learn By Heart]
  - i) Special Resolution 215 114,
  - ii) Resolutions which have been agreed to by all the members of a company,
  - iii) Any resolutions of the BOD or agreement executed relating to the appointment, re-appointment or removal of the MD.
  - iv) Resolutions requiring a company to be wound up voluntarily.
  - v) Any other resolution placed in the public domain (website).

### Sec-118 Minutes : (A)

#### A. Provision:

- Minutes is a fair & correct summary of proceedings that took place in meeting.
- A distinct (Separate) minutes books shall be for each i.e.
  - GM
  - Creditor's meetings
  - Board meetings
  - Committee meetings of directors
- [Ex: Audit committee meeting]

- To observe secretarial standards issued by ICSI with respect to meetings & minutes.

**B. Contents :**

- Any type of appointments done.
- The matter to be included or excluded shall be at absolute discretion of chairman.
- Chairman may exclude some matters from minutes if in his opinion such matter is:
  - immaterial or harmful
  - Detrimental to interest of company or
  - Defamatory (something which decreases fame of someone)

**C. Signing :**

- Each page shall be initialled (short sign) or signed by chairman.
- Last page shall be signed by chairman.
- Minutes shall be signed within 30 days of conclusion of meeting.
- Board meeting :

Is chairman of Board meeting alive or able ?

Yes

Chairman of same Board meeting

No

Chairman of succeeding Board meeting

**d) General meeting**

Is chairman of GM alive or able ?

Yes

Chairman of same General meeting

No

- BOD to convene a Board meeting
- BOD to authorise in BM a director
- Such director to sign minutes of GM.

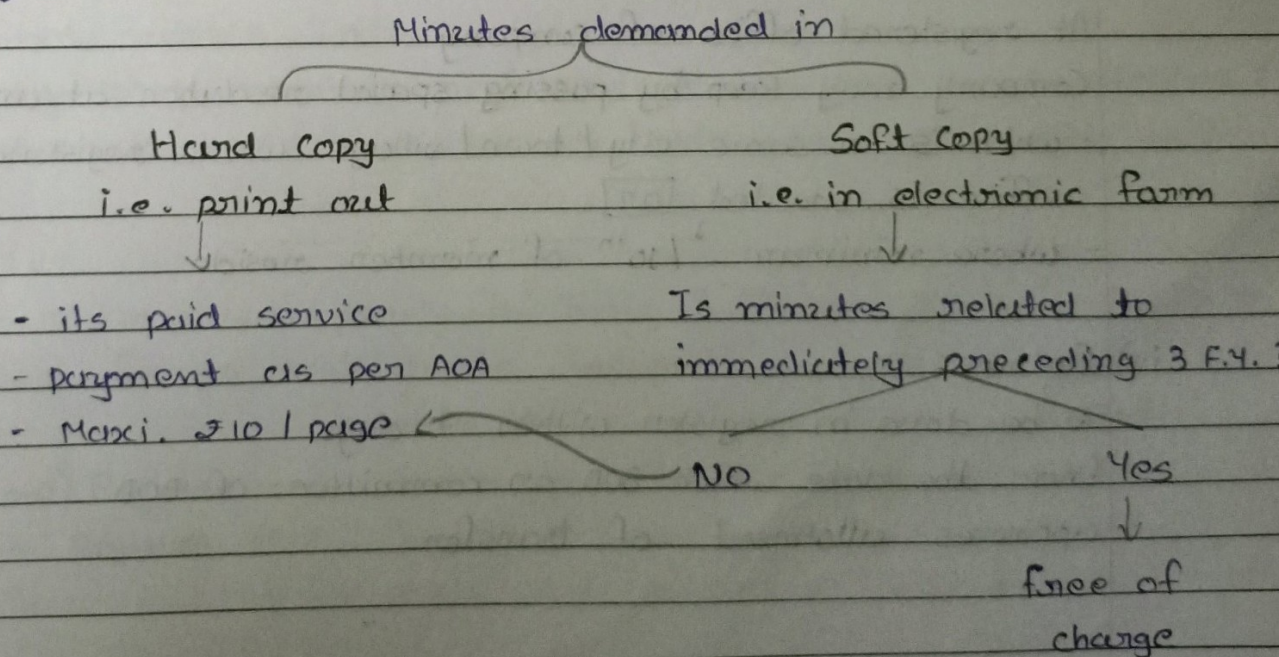
#### D. Preservation:

- Minutes are preserved permanently
- Minutes are preserved at registered office of company.
- Minutes are preserved in custody of:
  - CS of company or
  - Director duly authorized by BOD.

#### Sec-119 Inspection of Minute: (B)

- 1) The books containing the minutes of the proceedings of any CM of a company shall -
  - Be open for inspection, during business hours, by any member, without charge, subject to such reasonable restriction as specified in the AOA, However, at least 2 hours in each business day shall be allowed for inspection.
- 2) Any member shall be entitled to be furnished, within 7 days after he has made a request and on payment of such fees with a copy of any minutes.

#### 3) Charges:



- 4) In the case of any such refusal or default, the Tribunal may by order direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.
- 5) If any inspection refused by the company to the member, or if the copy is not furnished within the time then the company shall be liable to a penalty and every officer of the company who is in default shall be liable to a penalty.

### Sec-88 \* Registers: (B)

#### i) Provision:

- Every company to maintain a register of its:
  - Members [shareholders]
  - Debenture holders
  - Other security holders

#### ii) Format:

- Form MGT-1 = Register of members
- Form MGT-2 = Register of debenture holders & other security holders

#### iii) Place:

- At registered office of company
- Company may keep by passing special resolution at any other place:
  - which is in same city / town / village where registrar office is situated [or]
  - where minimum  $\frac{1}{10}^{\text{th}}$  of member reside.

SR

#### iv) Entries:

- To be done in register within 7 days
- From the date which BOD or committee of BOD
- approves allotment of transfer.



## v) Authentication of Entries:

- It is done by:
  - CS of company or,
  - Any other person who is authorised by BOD.
- When any other person is authenticating entries in register then the date of board resolution authorising him shall also be mentioned.

## vi) Nature of offence:

- offence with respect to registered is a compoundable offence i.e. a request may be made to authority to reduce amount of fine.

## vii) Preservation:

- Register of members to be preserved permanently.
- Register of debenture holder & other security holders for a period of 8 years from date of redemption.
- Same provision apply to Index.
- Register to be preserved in custody of CS of company OR Any other person, who is authorised by BOD.

\* Foreign Registers (A)

## i) Provision:

- If a company issue share capital or debenture or other securities outside India.
- company may maintain register with respect to shareholders / debenture holders / other security holder residing outside India.

\* Logic:

Spunk Co. Ltd. issues equity in India & Japan. It is optional to maintain foreign register in Japan.

	Maintain in	Entry of S.H.	format
(Principal) Register	→ India	→ India + Japan	→ MGT-1
Foreign Register	→ Japan	→ Japan	→ MGT-1

ii) Intimation

- when a company maintains foreign register it shall intimate to ROC in form MGT-3 about foreign register within 30 days of:
  - opening OR
  - change OR
  - Discontinueof foreign register

iii) Foreign register is always maintained in addition to Indian Register known as principal register.

iv) Format:

Form MGT-1 = Register of members

Form MGT-2 = Register of debenture holder & other security holder

v) The foreign register shall be maintained in same manner as principal register.

vi) A foreign register shall be open to inspection and may be closed and extracts may be taken therefrom and copies thereof may be required, except that the advertisement before closing the register shall be inserted in at least 2 newspaper circulating in the place wherein the foreign register is kept. [Based on section-91]

vii) Where a foreign register is kept by a company the decision of the appropriate competent authority in regard to the rectification of the register shall be binding.

viii) Entries in foreign register shall be made simultaneously after the BOD or its duly constituted committee approves the allotment or transfer of shares, debenture or any other securities, as the case may be.

ix) Within 15 days of any entry made in foreign register, the company shall transmit a copy of such entry to its registered office in India.

x) Every duplicate register shall, for all the purposes of this act, be deemed to be part of the principal register.

Sec-91 Power of company to close register on book closure period or book closure date or record date (A)

I. Purpose:

- In order to enable company to decide the member, who are entitled to corporate benefit such as Bonus, Rights, Dividend etc.

II. Period:

- At a time = Maximum 30 days

- In FY = Maximum 45 days

III. A company closing the register shall give at least 7 days previous notice by advertisement at least once in a vernacular and English newspaper and publish the notice on the website.

IV. The private companies have been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of the register.

V. If the register is closed without giving the notice or after giving a shorter notice or for a continuous period or an aggregate period in excess of the limit specified the company and every officer of the company who is in default shall be liable to a penalty the offence is a compoundable offence.

VI. The offence is a compoundable offence.

Sec-92 Annual Return (A)

I. Concept:

- A return - document disclosing information with respect to co.
- filed by company to ROC
- on annual basis - showing status as on 31/3
- is Annual Return

### III. Timelimit:

IS AGM done in time as per sec-96?

Yes

Annual return lodge to ROC within 30 days of conclusion of AGM.

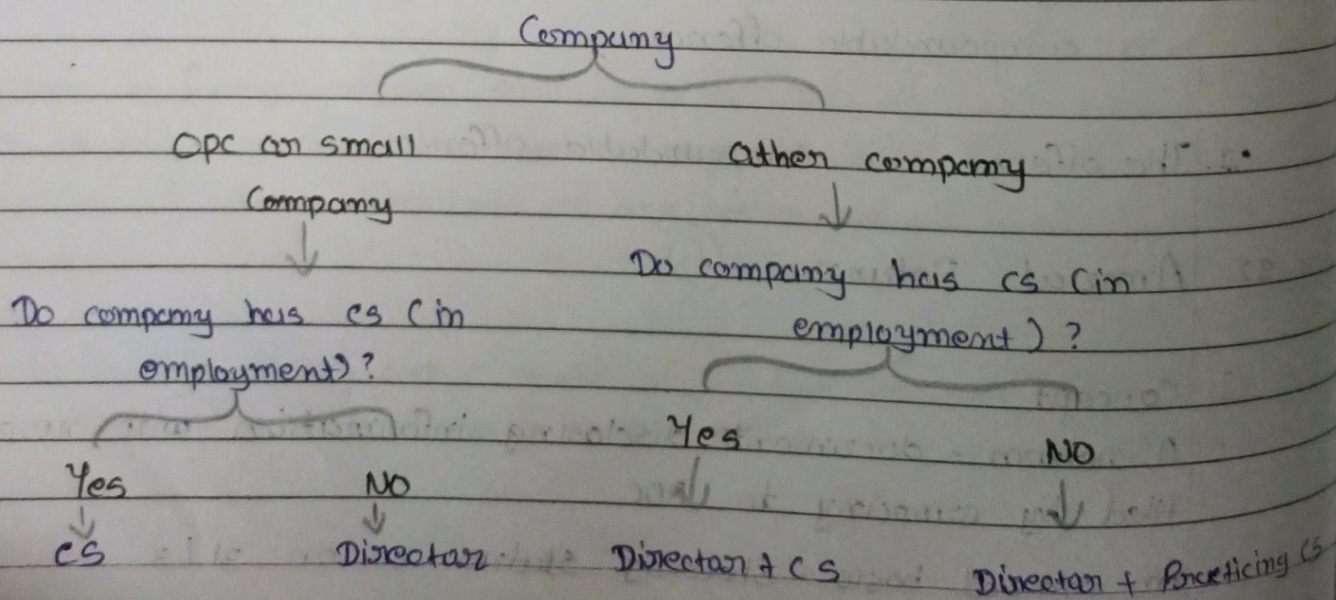
No

Annual return lodge to ROC within 30 days of date upto which AGM ought to have been held + show reason for delay in AGM

### II. Content [Learn By Heart]:

- its registered office, principal business activities, particulars of its holding, subsidiary and associate company;
- its shares, debenture and shareholding pattern;
- its members and debenture-holders along with changes since the close of the previous financial year;
- its promoters, directors, KMP along with changes;
- meetings along with attendance details;
- remuneration of directors and KMP;
- Penalty or punishment imposed and details of compounding of offence and appeals made;
- details in respect of shares held by foreign institutional investors;
- Such other matters as may be prescribed.

### III. Signing:



v. Format:

Form	MGT	listed public company	Unlisted co. [Public   Pvt.]		
			Paid-up capital $\geq 10$ cr.	Turn over $\geq 50$ cr.	other i.e. unlisted co. with P. up. cap. $< 10$ cr. & Turnover $< 50$ cr.
7	Annual Return	✓	✓	✓	✓
7A	AR for small co. 215 2(85) & OPC 215 2(62)	✓	✓	✓	✓
8	Certificate of AR by practicing CS	✓	✓	✓	-X
9	Extract of AR as a content in Board report 215 (121) [ch-9]	✓	✓	✓	✓

## Sec-29 Securities to be in Dematerialised form [useful in ch- 3, 4, & 7]

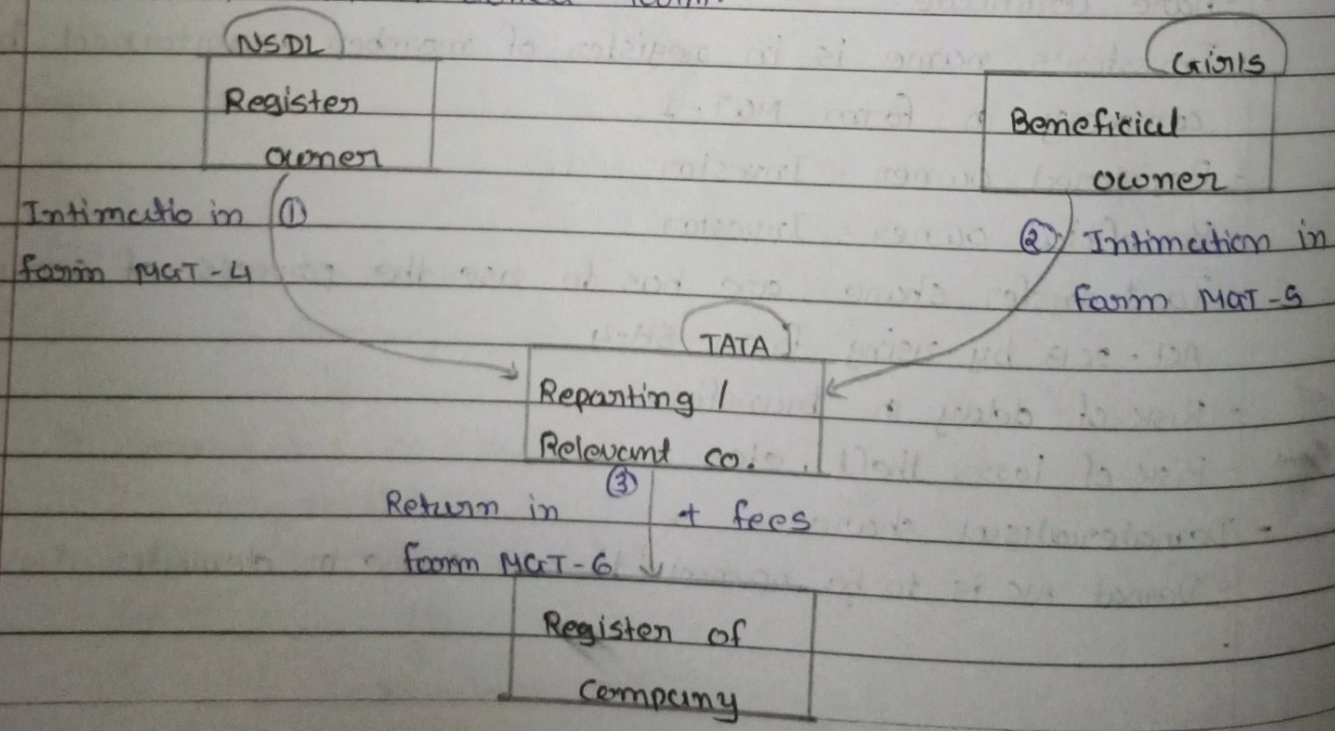
### A. Basic concept:

- Securities / shares can be held in :
  - a) physical form :- share certificate **[OR]**
  - b) Electronic form :- shares in demat account
- share certificate :
  - Investor's name is in register of member maintained by company in form MGT-1
  - Registered owner = Investor
  - Beneficial owner = Investor
  - To transfer share, one has to use the process of companies Act - 2013 by using form SH-4
  - Risk of delay in transfer
  - Risk of loss, theft, etc.
- Dematerialised shares :
  - Demat A/c is to be opened to hold share in dematerialised form.

- Depository is a place where demat AC is opened such as:
    - National Securities Depository Ltd. [NSDL]
    - Central Depository Services Ltd. [CDSL]
  - Depository Participant [DP] is an agent of depository acting to serve investors such as Angel Broking, Religare etc.
  - Investor opens demat AC in depository via depository participant.
  - Depository will enter name of investor in register of beneficial owner.
  - Investor's name is removed from register of member maintenance by company & name of depository is entered.
  - Registered owner = Depository &
  - Beneficial owner = Investor [SH]
- company Benefit → Depository → Credit → Investor  
Benefit in demat AC
- Transfer will take place online in real time online basis on stock exchange.
  - No risk of delay in transfer.
  - No risk of loss, theft, etc.
- The whole system of depository is driven by The Depository Act - 1996 (Not in CA course)

\* Case study of Section 89:

→ Crisla opens a demat AC in NSDL via Religare. Crisla buys equity shares of TATA in demat form.



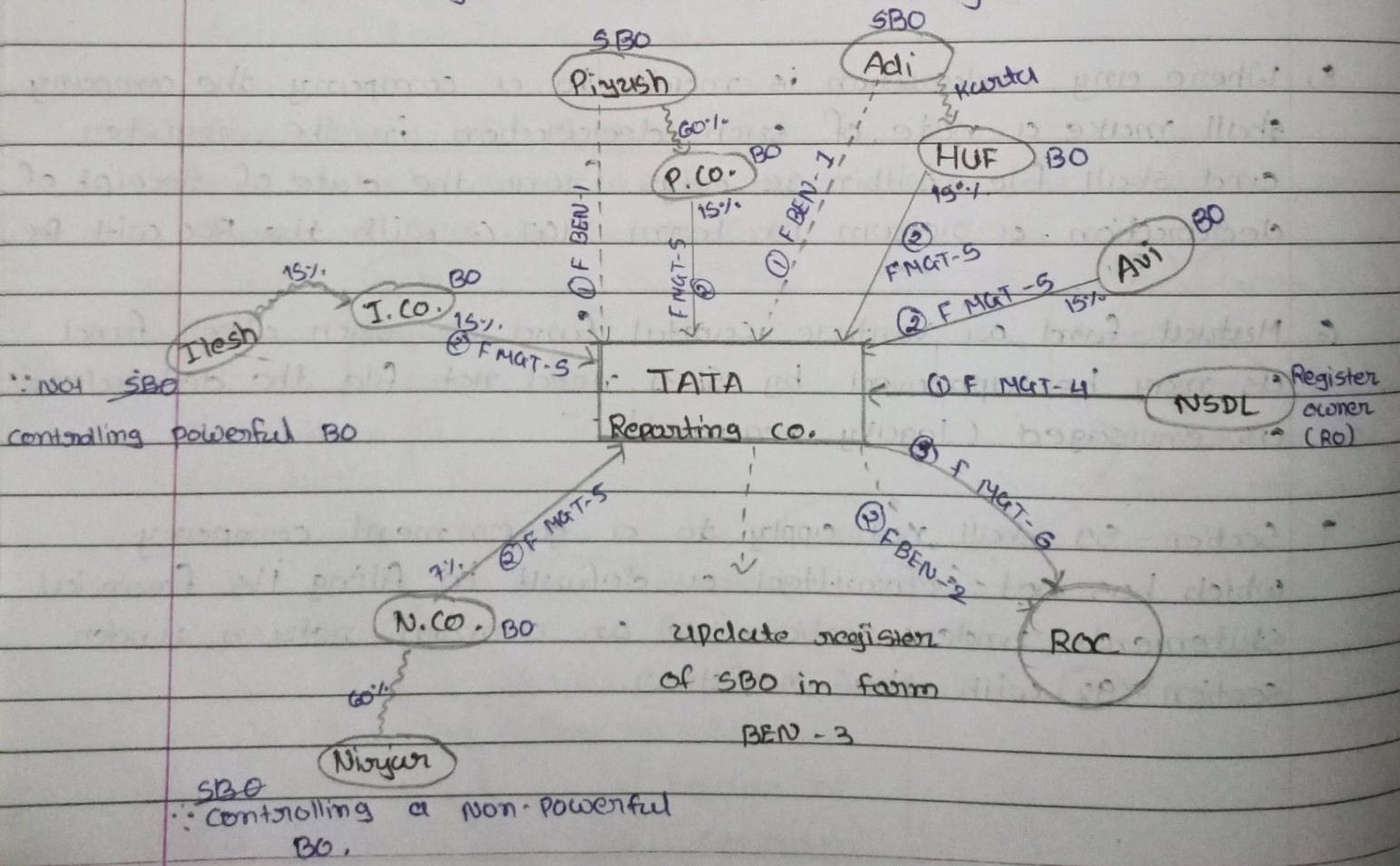
(A)  
Sec-89 Declaration in respect of beneficial interest in any share

1. A person whose name is entered in the register as the holder of shares but who does not hold the beneficial interest in shares shall file with the company, a declaration to that effect in form MGT-4 within a period of 30 days.
2. Every person who holds a beneficial interest in share of a company shall make a declaration to the company in form MGT-5, within 30 days.
3. Where any change occurs in the beneficial interest then, within 30 days of such change, a declaration is to be made to the company in form MGT-4 and form MGT-5 by register owner and beneficial owner respectively.
4. Where a declaration is not filed by the beneficial owner, then any right with respect to such shares shall not be enforceable by the beneficial owner.
5. Where any declaration is made to a company, the company shall make a note of such declaration in the register and shall file, within 30 days from the date of receipt of declaration, a return in Form MGT-6 with the ROC with fee.
6. Mutual fund or Venture capital fund or such other fund as may be approved by SEBI need not file the declaration as envisaged (legally required).
7. Section - 89 shall not apply to a government company which has not committed a default in filing its financial statements under section - (137) or annual return under section - (92) with the registrar.

Sec-90 Case-study of SBO [significant Beneficial owner]

n.w. Sec-89

- ① Avi opens his demat AC in NSDL. Avi buys 15% E.S. of TATA.  
 Avi 15% → TATA
- ② Adi opens a HUF & Adi is Karta. HUF buys demat AC in NSDL. HUF buys 15% E.S. of TATA. Adi → HUF 15% → TATA
- ③ Piyush incorporated P. company. Piyush holds 60% E.S. of P. company. P. company opens demat AC in NSDL. P. company buys 15% E.S. of TATA. Piyush 60% → P. company 15% → TATA
- ④ Ilesh incorporated I. company. Ilesh holds 15% E.S. of I. company. I. company opens demat AC in NSDL. I. company buys 15% E.S. of TATA. Ilesh 15% → I. company 15% → TATA  
 [assuming no member holds > 50% share capital in I. company]
- ⑤ Niraj incorporated N. company. Niraj holds 60% E.S. of N. company. N. company opens demat AC in NSDL. N. company buys 7% E.S. of TATA. Niraj 60% → N. company 7% → TATA





Name of member	Type of member	Powerful Member	controller of Powerful member?
Avi	Natural	✓	X
HUF	Artificial	✓	✓ (Karta)
P co.	Artificial	✓	✓ (M. Sec 501)
I co.	Artificial	✓	X
N co.	Artificial	X	X

### Sec-90 Significant Beneficial owner: (A)

A. Concept (not imp for exam)

B. Compliance (imp. for exam)

#### [A] Concept:

(i) Significant Beneficial owner

- An individual
- who acting alone or together or through one or more persons.
- Possesses one or more following rights in a reporting company.
- Holds indirectly or together with the direct holding:
  - Minimum 10% of share capital or
  - Minimum 10% of voting rights or
  - Rights to receive minimum 10% of dividend or
  - Exercises significant control or
  - Exercises significant influence.

(ii) Significant Influence [13H]

- Power
- To participate
- directly or indirectly
- In the financial & operating policy decisions of reporting co.
- but is not control or joint control over the policies.

## (iii) Majority stake:

- Majority stake means holding > 50% of share capital
  - [OR]
  - Voting right
  - [OR]
  - Right to receive dividend
- } of a body corporate

## (iv) Direct shareholding:

- A person will be treated as direct share-holder if he satisfies any of the following criteria:

a) holds share in reporting co. in his own individual name,

[OR]

b) holds beneficial interest in shares of reporting company & has made declaration to reporting company in form MGT-5.

→ When an individual holds any rights or entitlement directly in reporting company then such individual shall not be considered as significant beneficial owner.

## (v) Indirect shareholding:

- When a individual holds:
- Majority stake in body corporate or
- Karta, if HUF or
- Partner, if partnership firm or
- Trustee / beneficiary / settler, if trust

## [B.] Compliance:

## I. Reporting

## a) Initial reporting (now not relevant)

- Every individual, who is significant beneficial owner (SBO) in reporting company as on commencement of rules, shall file a declaration to reporting company in form BEN-1 [Beneficial] within 90 days from commencement of rules.

- Reporting company to file declaration to ROC within 30 days in form BEN-3.

### b) Subsequent Disclosure (Important)

- Any individual, who subsequently becomes SBO in reporting co. or whose significant beneficial ownership undergoes any change, such person to file a declaration to reporting company within 30 days of change or acquisition in form BEN-1.
- Reporting company to file declaration to ROC within 30 days in form BEN-2.

### c) Notice to prospective (likely) SBO :

- Notice by :- Registered company in form BEN-4.
- Requiring to file declaration in form BEN-2.
- By following type of persons who is yet not registered as SBO with register company but register company knows on his reasonable cause to believe :
  - to be a SBO
  - to be having knowledge of identity of SBO
  - to have been a SBO of the company at any time during 3 immediately preceding years from date of notice.

### \* Register : Register :

- > Every company shall maintain a register of SBO in form BEN-3.
- > shall be open for inspection during business hours, at such reasonable time of not less than 2 hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding 50 ₹ for each inspection.

### \* Application to Tribunal [Section - 90(7)]

- The company shall,
  - a) where that person fails to give the company the information required by,

- b) where the information given is not satisfactory.
- Apply to the tribunal within a period of 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer suspension of the right to receive dividend, suspension of voting rights in relation to the shares in question any other restriction on all or any of the rights attached with the shares in question.
- > The tribunal may after giving an opportunity of being heard to the parties concerned make such order restricting the rights attached with the shares within a period of 60 days of receipt of application.
- > The company or the person aggrieved by the order of the tribunal may make an application to the tribunal for relaxation of the restrictions placed within a period of 1 year from the date of such order.
- > If no such application has been filed within a period of 1 year from the date of the order such shares shall be transferred to the authority.

\* Reporting co. to serve notice to prospective SBO in Form BEN-4 requesting to lodge (filed) form BEN-1

Did SBO lodge Form BEN-1 within 30 days of notice?

Yes

NO

Company to lodge Form BEN-2 to ROC

within 15 days from expiry of 30 days of notice, ROC can lodge case against SBO in NCLT requesting to pass a Restriction order [RO] on SBO.

Co. to update register of SBO in form BEN-3

NCLT will conduct hearing & will pass RO on SBO.

NCLT to seek RO

SBO/RO to file aggrievance on RO

Did SBO lodge FB-1 within 1 year of RO

Yes

Did SBO lodge Form BEN-1 within 1 year of RO?

NO → Transfer share of SBO to authority constituted 2/15 (125) [ch-8]

(I) Investor  
(E) Education &  
(P) Protection  
(F) Fund

### \* Non-Applicability:

→ The Rules will not be applicable where the shares of the Relevant company are held by:

- (a) the investor Education and Protection Fund Authority;
- (b) the government (s) or any local authority;
- (c) an entity controlled by the government (s);
- (d) investment vehicles such as mutual funds, alternative investment funds (AIFs) registered with and regulated by the SEBI;
- (e) investment vehicles regulated by RBI and IRDAI.
- (f) government company which has not committed a default in filing its financial statement 2/15 (137) or annual return 2/15 (92) with ROC.