CFA Institute

CFA Society India

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AN INVESTOR'S GUIDE TO SHAREHOLDER MEETINGS IN INDIA

SECOND EDITION

RIGHTS, RULES, AND RESPONSIBILITIES

ACKNOWLEDGEMENTS

The Investor's Guide to Shareholder Meetings in India: Second Edition was a culmination of effort by a lot of individuals. CFA Institute contracted with Institutional Investor Advisory Services India Limited (IiAS), a proxy advisory firm in India, to conduct research on the latest regulatory developments in India and help update this guide.

Sivananth Ramachandran, CFA, Director of Capital Markets Policy (India), CFA Institute, and Mavia Creado, Company Secretary, Institutional Investor Advisory Services worked together on the content of this edition. Ashwini Damani, CFA, and Abhishek Bhuwalka, CFA, both seasoned investment professionals and volunteers of the CFA Society India, were involved throughout the project and provided practitioner insights on AGMs and critical feedback. Ashwini's inputs on the do's and don'ts of attending online meetings was particularly helpful.

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CFA Institute is the global association of investment professionals that sets the standards for professional excellence. We are a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community.

Our mission is to lead the investment profession globally by promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society.

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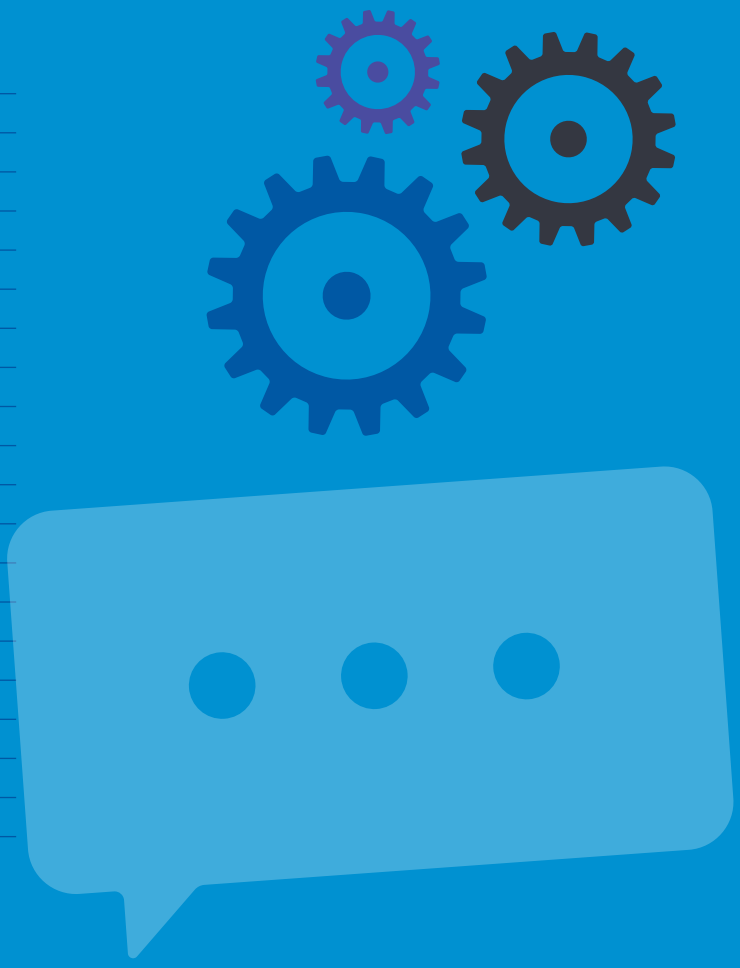


01

INTRODUCTION

Shareholder meetings provide a platform for direct participation by shareholders in the affairs of the company, and hold the directors to account through voting, Q&A and discussion. There are three main functions of the annual general meeting (AGM): to present financial and strategic information to shareholders, to obtain the consent of shareholders for key decisions, and to generate discussion between shareholders and managers.

Shareholder meetings serve a useful purpose. In principle, shareholders have an opportunity to question the board, engage with other shareholders, and seek further information before they vote on resolutions. AGMs are also a social ritual where shareholders get to know the board, understand the company narrative and changes, assess the general power dynamics between the company and its shareholders and the quality of engagement; these insights cannot be gained by merely reading financial statements or company updates. Lastly, shareholder meetings may gain prominence for institutional investors due to two developments – an increase in stewardship responsibilities, and a possible increase in oversight of selective disclosure of information to analysts and investors. Shareholder meetings, owing to their public nature, not only provide an avenue for meeting increased stewardship responsibilities, but also seek information in a manner that would avoid concerns about selective disclosure and insider regulations.

However, there have been some concerns expressed about shareholder meetings. AGMs date back to the joint stock associations of the 19th century, and critics see them as a relic which no longer fits the purpose. Research in another context suggests only a tiny fraction of small shareholders attends an AGM, even in companies facing financial difficulties.[1] Lastly, in the Indian context, cultural sensitivities come in the way of both expressing as well as acknowledging critical views, and most AGMs are reduced to bouts of reverence, slick corporate videos and long speeches, followed by refreshments or gifts.

Covid-19 has re-cast shareholder meetings in fundamental ways, even as the value of transparent engagement during a time of crisis has never been higher. The response – virtual AGMs – has its own advantages and disadvantages over physical AGMs and has been a subject of intense discussion.

Regardless of how the meetings evolve, their effectiveness depends, in part, on well-informed shareholders. CFA Institute believes that shareholders (also known as shareowners[2]) and those who manage shares for others need to know their rights in order to make informed, responsible investment decisions. Raising investor awareness and knowledge ultimately improves market integrity and efficiency, and fits with our mission.

In 2014, the CFA Institute, with the CFA Society India, developed the first edition of the 'An Investor's Guide to Shareholder Meetings In India' to educate Indian investors about their roles, rights, and responsibilities and how to exercise them. The purpose of the guide (and by extension this second edition) is as follows –

[1] *General Meetings: A Dispensable Tool for Corporate Governance of Listed Companies?* CGIR. 2003. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=376565

[2] Although we prefer the term shareowner, which indicates the active nature of ownership, rather than shareholder, we will use the latter term throughout this report to avoid confusion.

This guide is meant to serve as a reference for shareholders to better understand the nature of shareholder meetings, including the activities, procedures, and rules of etiquette of the meetings, as well as other matters, so that they can adequately prepare to engage at these events. For example, we provide an overview of the various types of important resolutions put to vote at shareholder meetings and how shareholders can research and analyse important issues before the meetings. We also encourage shareholders to participate actively to ensure that their interests are not unduly diluted. Finally, we encourage companies to become more responsible towards the interests of minority shareholders and more responsive to their actions. Although this guide may have more general applicability, it pertains mainly to companies listed on the stock exchanges and incorporated in India. The scope of the guide is restricted to the most common business items typically transacted in shareholder meetings. It is not meant to be exhaustive and does not constitute legal advice.

CFA Institute contracted with the Institutional Investor Advisory Services India Limited (IiAS), a proxy advisory firm in India, to conduct research on the latest regulatory developments in India and help update this guide.

ABOUT CFA INSTITUTE

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment in which investors' interests come first, markets function at their best, and economies grow. There are more than 178,000 CFA® charterholders worldwide in 162 markets. CFA Institute has nine offices worldwide and 159 local member societies.

ABOUT CFA SOCIETY INDIA

CFA Society India, registered as Indian Association of Investment Professionals under Section 8 of Companies Act 2013, is a company limited by guarantee. Established in March 2005, with 50 members, today it is one of the leading societies of CFA Institute with more than 3,200 members spread across India. The member base consists of portfolio managers, investment advisors, and other finance professionals. As one of the CFA Institute member societies, CFA Society India connects local members to a global network of investment professionals.

ABOUT IIAS

Institutional Investor Advisory Services India Limited (IiAS) is an advisory firm, dedicated to providing participants in the Indian market with independent opinions, research and data on corporate governance and Environment, Social and Governance (ESG) issues as well as voting recommendations on shareholder resolutions for about 800 companies that account for over 95% of market capitalization. IiAS provides bespoke research and assists institutions in their engagement with company managements and their boards. It runs two cloud-based platforms: SMART, to help investors with reporting on their stewardship activities and ADRIAN, a repository of resolutions and institutional voting patterns.

IiAS with the International Finance Corporation (IFC) and BSE Limited, supported by the Government of Japan, developed a Corporate Governance Scorecard for India. The company-specific granular scores based on an evaluation of their governance practices, together with benchmarks, can be accessed by investors and companies. IiAS has extended this framework to ESG.

CHANGES TO THE SECOND EDITION

The changes to the second edition are three-fold – regulations, shareholder resolutions, and trends.

When we published the first edition, the Companies Act, 2013, was recently notified, and Clause 49 of the SEBI listing agreement between companies and stock exchanges was still in place. Since then, Securities and Exchange Board of India (SEBI) enacted the SEBI Listing Obligations and Disclosure Requirements Regulations, 2014 (LODR), to replace Clause 49, after which the Kotak Committee brought in significant corporate governance reforms. All these changes were made even before the pandemic fundamentally altered how companies conducted their shareholder meetings, and the additional relaxations governing virtual AGMs were imposed. This edition reflects regulations governing shareholder meetings and other areas enacted through the end of 2020.

EXHIBIT 1: KEY MILESTONES SINCE THE FIRST EDITION

Regulatory changes have also changed the format of general meetings to some degree. eVoting, which was optional when the first edition of the Guide was published, is now mandatory. As a result, voting by show of hands has become obsolete. Shareholders can now vote (on a poll) at meetings through mobile and other electronic devices. Companies are also providing web check-in facilities for shareholders. In addition, large companies are required to provide shareholders a one-way live webcast of AGMs. These changes have made shareholder meetings more accessible and less complicated. In addition, the regulations have temporarily permitted virtual-only shareholders meetings, which are discussed in detail in this guide.

The corporate governance reforms enacted since 2014 have gone a long way in protecting the rights of minority shareholders, but there is further scope for improvement. Questionable related party transactions (RPT) are still the main concern, and its scope has expanded to newer areas such as royalty payments to parent companies, and circuitous transactions to avoid shareholder vote. Other issues such as board independence, executive remuneration, and capital raising are gaining in prominence. In our section on 'How to research key shareholder resolutions', we have sorted the list in the order of significance, so that even if readers are unable to go through the considerations for all the resolutions, they can focus on the most significant ones.

Lastly, there are two emerging trends relevant to investors – stewardship and sustainability. Regulators have come up with stewardship codes that impose obligations on institutional investors in the areas of engagement, disclosures, and voting. These go far beyond mandatory voting on resolutions and have implications for engagement and shareholder meetings, as discussed earlier. Sustainability issues have become increasingly important over the recent years, and regulators have responded by mandating detailed disclosures for large companies. These disclosures may, in time, spark additional questions and debate among investors. While it is still early days for Indian investors, we have provided a brief analysis of these trends and how they are impacting shareholder engagement elsewhere in the world.

STRUCTURE OF THIS REPORT

SHAREHOLDER MEETINGS:

briefly introduces shareholder meetings, including the types of meetings and the associated logistics

RIGHTS OF SHAREHOLDERS:

covers the rights and ownership thresholds required for exercising certain rights

TYPES OF SHAREHOLDER RESOLUTIONS:

offers an overview of the types of shareholder resolutions: ordinary, special, or majority of minority

SHAREHOLDER RESOLUTIONS:

showcases 13 matters generally proposed for shareholder approval

VIRTUAL AGMs:

discusses virtual AGMs, the regulations, and best practices to guide investors

KEY TRENDS:

concludes the report with a discussion of ESG and Stewardship

The report is structured as follows: We provide a brief introduction to shareholder meetings, including the types of meetings and the associated logistics (such as dates, notice content, means of communication and voting). We will describe the rights of shareholders, including the ownership thresholds required for exercising certain rights.

We will provide a brief overview of shareholder resolutions and their types: ordinary, special, or majority of minority. The last two typically cover resolutions which are critical from the perspective of minority shareholders, and where, by design, they have a greater say in the outcome. We will then delve into individual resolutions and provide a short description of the regulations, required disclosures, and some considerations for investors in order to make an informed decision. We have covered 13 matters generally proposed for shareholder approval and have listed what we determined as important issues first, and other resolutions such as adoption of accounts later,[3] but the readers can tap into the section relevant to them for guidance.

We have included a discussion of virtual AGMs. The relative merits of virtual AGMs over physical or hybrid AGMs is not the intent of the guide, but we have included the regulations and best practices to guide investors in this area. We conclude the report with a discussion of two key trends which are likely to influence shareholder meetings and resolutions in the years to come – ESG and Stewardship.

[3] While criticality of resolutions is a subjective topic, our listing is based on topics generally considered more controversial. Depending on the company and circumstances, even otherwise-mundane resolutions might become critical.

02

SHAREHOLDER MEETINGS: AN OVERVIEW

02

SHAREHOLDER MEETINGS: AN OVERVIEW

From a traditional perspective, shareholder meetings are a regulatory requirement. A company cannot act on its own. Hence, it expresses its will or makes decisions through resolutions passed at meetings through its shareholders. However, at its best, a shareholder meeting can be the best practical expression of a democratic form of corporate function. Shareholder meetings help facilitate engagement and interaction of public shareholders with the company management and board of directors. Resolutions passed at all such meetings are binding on the company and its stakeholders.

EXHIBIT 2: THE MEETING CYCLE

1	2	3	4
The Board to discuss the business to be transacted and determine the type of meeting	Company to send shareholder notice along with all supporting meeting materials	Board and management to convene the meeting with adequate quorum and ensure shareholder participation and voting	Prepare and publish fair and accurate meeting minutes and voting outcome for individual resolutions

WHAT MATTERS DOES A SHAREHOLDER MEETING ADDRESS?

Shareholders vote to take decisions, appoint board members, elect management, and ratify the company's decisions. They can take the time at AGMs to address issues with management or the board of directors.

WHO CAN ATTEND SHAREHOLDER MEETINGS?

All shareholders have the right to attend the meetings. If unable to do so, they may designate a representative or a proxy[4] to attend and vote on their behalf.

[4] Explained in detail under "Rights of shareholders"

WHAT KINDS OF SHAREHOLDER MEETINGS ARE THERE?

Shareholder meetings are ordinary or extraordinary. Ordinary meetings happen once a year to approve the previous year's financial statements and allocate profits or losses. Extraordinary meetings are held between two AGMs, typically to pass unaddressed resolutions or discuss special business needs.

03

TYPES OF SHAREHOLDER MEETINGS

03

TYPES OF SHAREHOLDER MEETINGS

There are primarily three types of shareholder meetings in India; i.e., Annual General Meeting (AGM), Extraordinary General Meeting (EGM) and meetings convened by the National Company Law Tribunal (NCM). They differ in their frequency and agenda. Except for the AGM, which must be held every year, the others are held to seek shareholder approval on specific resolutions, ranging from electing directors to altering the Memorandum of Association, to raising capital, to increasing borrowing limits or to undertake mergers and acquisitions. Postal ballot is an alternative means for shareholders to approve resolutions without the requirement of having a physical meeting.

1
ANNUAL GENERAL MEETING (AGM)

2
EXTRAORDINARY GENERAL MEETING (EGM)

3
NCLT CONVENED MEETING

4
POSTAL BALLOT

ANNUAL GENERAL MEETING (AGM)

Every company is required to hold, in addition to any other meetings it may have, one general meeting known as the "Annual General Meeting"[5] every year.

AGMs serve three principal functions:

1. Present information to shareholders about the financial performance of the company and key management decisions, and answer questions
2. Seek consent of the shareholders for decisions that are beyond the discretion of the board of directors
3. Provide a forum for discussions between the management of the company and shareholders

The business transacted at an AGM falls into two categories.[6] Ordinary business means the routine business items transacted at the AGM; i.e., adoption of accounts, dividend declaration, reappointment of directors and appointment/reappointment of auditors. All other items are considered as "Special business".

A company should hold its AGM within six months from the close of its financial year, and there should not be a gap of more than fifteen months between two such meetings.[7] Every AGM is to be held during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday, and must be held either at the registered office of the company or in its vicinity.

SEBI LODR

- The top 100 listed entities by market capitalization (as at the end of the previous financial year) are required to hold their AGM within five months from the end of the financial year. This requirement may be subsequently extended to other entities in a phased manner.
- These companies are also required to provide a one-way live webcast of the proceedings of all shareholder meetings.

GLOBAL PRACTICE

Many countries such as South Korea, Thailand, Italy, Singapore, Japan, etc., have timelines as short as four months from the close of the financial year for holding the AGM.

EXTRAORDINARY GENERAL MEETING (EGM)

Any meeting of shareholders called by the company between two annual general meetings is termed an Extraordinary General Meeting.[8] Such meetings are typically held for passing resolutions that have not been addressed at the AGM, i.e., for special business that may arise during the year.

[5] Section 96 of the Act
[6] Section 102 of the Act. Ordinary/Special business is different from Ordinary/Special resolutions.
[7] The Registrar of Companies may permit a further extension of three months for holding the AGM.
[8] Section 100 of the Act
[9] Covered in detail under "Rights of Shareholders"

The Board can call an EGM whenever it deems fit. Shareholders holding not less than 10% of paid-up share capital of the company can demand that the board call an EGM. The board shall, within 21 days from the receipt of a valid[9] requisition, proceed to call a meeting (which is to be held within 45 days from the date of requisition). If the board fails to act within the timeframe, the interested shareholders (those who have demanded the meeting) can by themselves call for an EGM within three months from the date of requesting it. In the case of the latter, all reasonable costs of holding such meeting shall be reimbursed by the company.

An EGM called by the company can be held at any place in India. The requirements of an AGM notice shall mutatis mutandis apply to an EGM notice.

MEETINGS CONVENED BY THE NATIONAL COMPANY LAW TRIBUNAL (NCM)

The National Company Law Tribunal (NCLT) was established on 1 June 2016. Beginning 15 December 2016, all shareholder meetings to consider schemes of arrangement (mergers, acquisitions, amalgamations, winding up proposals, etc.) are to be convened as per the directions of the NCLT.[10]

Schemes of arrangement are primarily submitted to the NCLT, which directs the company to call an NCM. The resolutions proposed at NCMs need to be approved by a majority of persons representing at least 75% in value of all shareholders who exercise their vote either in person or by proxy – i.e., present and voting or voting through eVoting. The shareholder approval is then submitted to the NCLT. Once the NCLT approves it, the scheme is binding on all shareholders, creditors, directors and every other person associated with the company.

In case of listed entities, the schemes additionally require in-principle approval from the capital market regulator – SEBI before being submitted to the NCLT. Further, in certain cases of schemes of arrangement, SEBI LODR requires a listed company to seek separate approval of public shareholders (i.e., the non-promoter /non-controlling shareholders) through an Ordinary resolution. These include:

- Where additional shares have been allotted to promoter/promoter group or their related parties/ associates/subsidiaries
- Where the scheme involves any entity involving promoter/promoter group or their related parties/ associates/subsidiaries
- Where the parent company has acquired the equity shares of the subsidiary from any of the shareholders of the subsidiary promoter/promoter group or their related parties/associates/ subsidiaries of the parent company, and if that subsidiary is being merged with the company
- Where the scheme involving merger of an unlisted company results in reduction in the voting share of pre-scheme public shareholders of the company in the transferee/resulting company by more than 5% of the total capital of the merged entity
- Where the scheme involves transfer of whole or substantially the whole of the undertaking[11] of the listed entity, and the consideration for such transfer is not in the form of listed equity shares

POSTAL BALLOT

Postal Ballot[12] is not a meeting, but a process where ballot forms are annexed to the notice containing the proposed resolutions and shareholders are given an option to communicate their assent or dissent to the company via post or alternately through remote eVoting. At its conceptualization, in order to encourage wider participation from all investors, the Central Government had listed certain business

[10] Schemes of arrangement were previously steered by the High Courts of the respective states. Shareholder meetings to approve such schemes were traditionally called 'Court Convened Meetings (CCM)'. These powers have now been transferred to the National Company Law Tribunal (See Glossary).

[11] "Substantially the whole of the undertaking" in any financial year shall mean 20% or more of value of the company in terms of consolidated net worth or consolidated total income during previous financial year.

[12] Section 110 of the Act

items that are to be mandatorily approved by postal ballot instead of a physical meeting for listed companies and companies having more than 200 members. These include:

a. Alteration of the Object clause of Memorandum of Association (MoA)
b. Alteration of Articles of Association (AoA) to change the type of company (public or private)
c. Change in the utilization of unused proceeds raised from public issues
d. Buy-back of shares
e. Issue of shares with differential rights and/or variation in rights of existing shares
f. Sale of undertaking or substantially the whole of an undertaking of the company
g. Granting of loans or extending guarantee or providing security in excess of the prescribed limits
h. Shifting of registered office outside local limits of any city, town or village
i. Election/Appointment of a small shareholder-director

In addition, any item of business (other than ordinary business, i.e., adoption of accounts, dividend declaration, reappointment of directors and appointment/reappointment of auditors made at the AGM and any business in respect of which directors or auditors have a right to be heard at any meeting) may be transacted by means of postal ballot, instead of transacting such business at a general meeting. The resolutions proposed through postal ballot are deemed to be passed at a duly convened general meeting, if assented to by the requisite majority of shareholders, i.e., ordinary or special majority[13] as the case may be. For this, shareholders need to submit the postal ballot form to the company before the scheduled deadline (which shall not be later than 30 days from the date of dispatch of notice). Alternatively, shareholders can also cast their vote online.

The votes are counted by the scrutinizer(s) – a person who verifies and validates the votes received and is not in employment of the company. The scrutinizer(s) will have to submit his report within seven days, or 48 hours in the case of listed companies, after the last date of receipt of ballot forms.

The concept of a postal ballot was introduced in the early 2000s to ensure that companies could propose resolutions and shareholders would get a chance to vote on these resolutions without the requirement of holding a physical meeting. With the advent of eVoting, the concept of sending votes through post has become redundant to an extent. Thus, the business agenda which could only be transacted through postal ballot, can now be transacted at any general meeting for which eVoting facility is made available.

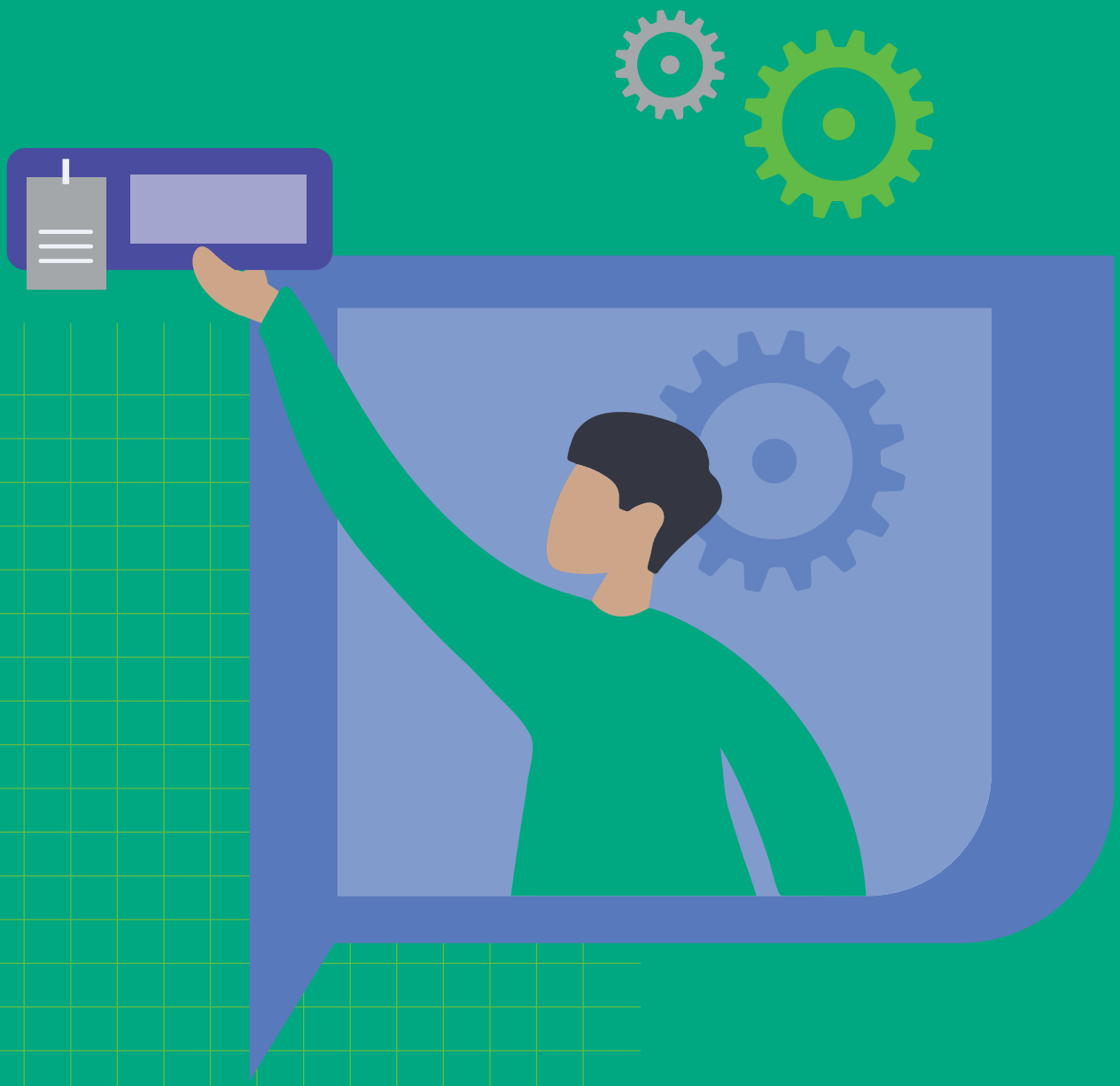
EXHIBIT 3: SECTION SUMMARY

	AGM	EGM[14]	NCM	POSTAL BALLOT
SECTION OF THE COMPANIES ACT	Section 96	Section 100	Section 230-232	Section 110
BUSINESS TYPE	Ordinary/Special	Special	Special	Special
TYPE OF RESOLUTIONS PASSED	Ordinary/Special	Ordinary/Special	Special	Ordinary/Special
PERIODICITY	Annual	Need based	Need based	Need based
CALLED BY	Company	Company/ Shareholders	National Company Law Tribunal	Company
MODE OF VOTING	Poll/eVoting	Poll/eVoting	Poll/eVoting/ Postal Ballot	Ballot Paper/ eVoting

[13] See "Types of Shareholder Resolutions"
[14] Includes extraordinary general meetings requisitioned by shareholders

04

GENERAL MEETING NOTICE

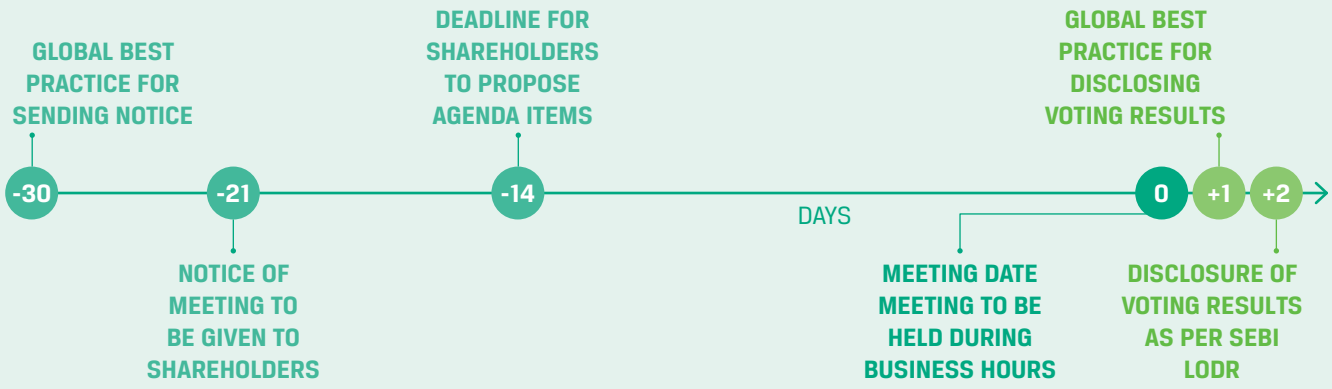


04

GENERAL MEETING NOTICE

Notice of general meeting should be sent to all shareholders at least 21 days (excluding the date of the notice and the date of the meeting) prior to the date of the meeting.[15] Exhibit 4 provides an overview of the timeline for the meeting, including notice dates.

EXHIBIT 4: TIMELINE FOR SHAREHOLDER MEETING



SHORTER NOTICE

General meetings can also be conducted by giving a shorter notice period (i.e., less than 21 days), if consent in writing or by electronic mode is obtained from 95% or more of the shareholders who are entitled to vote at such meetings.

GLOBAL PRACTICE

A comparison of the timeline for sending shareholder meeting notices in various jurisdictions is provided below:

TIMELINE	JURISDICTION
>28 days	Canada, Czech Republic, Hungary, Italy, Netherlands, United States
22-28 days	Australia, Indonesia
15-21 days	Chile, China, Columbia, Denmark, Estonia, Finland, France, India, Ireland, Israel, Luxembourg, Malaysia, Norway, Poland, Russia, Saudi Arabia, South Africa, Switzerland, United Kingdom

Source: OECD Corporate Governance Factbook 2019

[15] Section 101, 102 of the Act

REQUIREMENTS

i. All general meeting notices shall state the following:
   - Place, date, day and hour of the meeting
   - Business agenda, which lists the various items to be transacted at a meeting
   - Explanatory Statement (for each special business item), which discloses
     - Material facts for each item;
     - Any interest, financial or otherwise, of director or key management personnel[16] and their relatives;
     - Any other information for the members to understand the scope and take an informed decision.

ii. Documents required to be attached with the AGM notice include – copy of the financial statements[17] including the consolidated financial statements, Auditor's report, Director's report, and proxy form. Where a company has subsidiaries, it should provide separate audited financial statements in respect of each of its subsidiary on its website and provide a copy to any shareholder who requests it.

iii. All attachments mentioned above should be made available for inspection by shareholders at the company's registered office as well as the corporate office during business hours for a period of 21 days before the meeting. In addition, listed companies shall make all the above-mentioned documents available on their website.

iv. A statement regarding provision of eVoting facility by the company, with information regarding the process, period and login details for eVoting, should also form a part of the notice.

v. The notice should also contain a route map to the meeting venue, attendance slip and proxy form.

SEBI LODR

- The explanatory statement should contain a clear affirmation that the resolution set forth therein is recommended by the Board for approval of shareholders. Where the Board does not provide such an affirmation, it should disclose the nature of exceptional circumstances that have arisen, and their deliberations that explain their views on the proposed resolution.
- Annual Reports should be displayed on the stock exchange and company website simultaneously when these are sent to shareholders.
- Financials of subsidiaries should be placed on the company website at least 21 days before the AGM.

MODES OF DELIVERY

Notice of the meeting can be given either through:

i. Post or Courier, or

ii. Electronic mode (email attachment/URL)

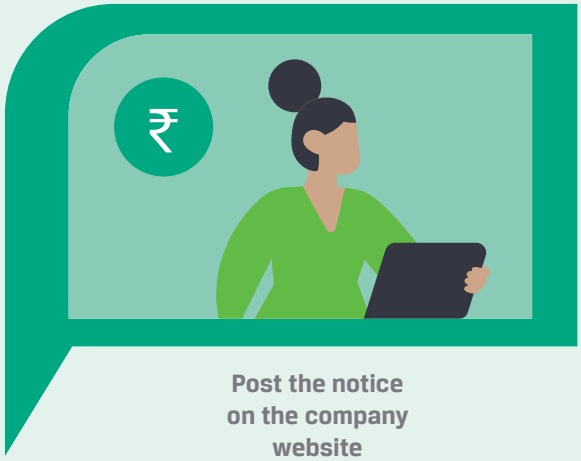
Since most shares are held in the dematerialized form, the notice is generally sent to shareholders at their registered email addresses with the company through the depositories/depository participants (custodians). The notice is simultaneously placed on the website of the company and intimated to stock exchanges. Additionally, every listed company must inform the stock exchanges about all shareholder meetings. The notice is also advertised in at least one leading national daily English newspaper and one leading daily newspaper in the language of the region where the registered office of the company is situated.

[16] Key Managerial Personnel includes Chief Executive Officer/Managing Director/Manager; Company Secretary; Whole-time director; Chief Financial Officer; other persons not more than one level below the directors in whole-time employment, designated as key managerial personnel by the Board.

[17] Financial Statement includes Balance Sheet, Profit and Loss account, Cash flow statement, Statement of changes in equity and any explanatory note annexed to or forming part of the listed documents.

Meeting notice is generally sent to registered email address

Meeting notices can be sent via post and courier



Post the notice on the company website

Notify the stock exchange about the shareholder meeting

Advertise the notice in at least one leading English newspaper and one leading daily newspaper in the regional language where the company offices are situated

SPECIAL NOTICE

Shareholders have the right to propose certain business items by giving a special notice to the company.[18] These and other rights are covered in the next section.

[18] Section 115 of the Act

05

RIGHTS OF SHAREHOLDERS

05

RIGHTS OF SHAREHOLDERS

The separation of ownership and control and dispersal of shareholders all over the globe make it of considerable importance to know the rights, privileges and liabilities of the shareholders. Shareholders maintain oversight on the functioning of the management, pass key resolutions in general meetings, propose amendments to resolutions and possess the right to inspect company documents. Further, they also have the right to call an EGM to discuss special or ordinary resolutions. These rights are discussed in detail below (not intended to be exhaustive):

APPOINT A PROXY OR AN AUTHORIZED REPRESENTATIVE

A proxy[19] refers to the agent appointed by the shareholders to attend the general meeting and vote (in a Poll) on their behalf. A proxy might be used if a shareholder wants to vote on a resolution but is unable to attend the meeting in person. A proxy need not be a shareholder of the company.

The document by which such an agent is appointed is known as a proxy form. This form is provided along with the notice of the meeting and should be submitted to the company at least 48 hours before the meeting (public holidays are also included in the computation of 48 hours). Notice of every general meeting shall include a statement providing instructions relating to the appointment of a proxy.

The various rights and restrictions of a proxy are described below:

- Proxies are not considered to determine the quorum of a general meeting.
- Proxies do not have the right to speak or seek clarifications at a general meeting. They are eligible to participate in a poll voting (including electronic poll) or show of hands.
- A single proxy holder can represent a maximum of 50 shareholders (holding less than 10% of the total share capital of the company). However, a shareholder holding more than 10% of total share capital may appoint a single person as proxy, and such person shall not act as a proxy for any other shareholder.
- If a company accepts defective/incomplete proxy forms, the resolutions passed at the concerned meeting may be held invalid by the courts.
- A proxy can be revoked by the shareholder anytime, and the revocation must be communicated to the company before the meeting.

Institutional/Corporate shareholders can appoint an 'authorized representative'[20] to attend general meetings and vote on their behalf. An authorized representative is entitled to the same rights and powers as any other shareholder. The authorization can be given by the board of the Institution/Corporate. Such representatives are not proxies and hence are taken into account to determine the quorum of the meeting.

ASK QUESTIONS

Shareholders may ask questions during the general meeting or send them in advance to the company. Every resolution is first discussed in the meeting before being put to vote. During such discussions, the shareholders (but not proxies) can ask questions of the board or the management. Shareholders are encouraged to send the questions related to facts and figures in advance to the company management/board/secretary. This gives the company time to gather additional information, review the financial statements and come prepared to the meeting.

In order to streamline the meeting process, shareholders intending to ask questions should notify the company at the start of the meeting. Some

[19] Section 105 of the Act. Annexure F provides specimen of a proxy form.
[20] Section 113 of the Act. See Annexure G for the format of an authorisation letter.

companies may also require shareholders who wish to speak at the meeting to register themselves as speakers in advance. There may be situations where, due to lack of time, the Chairperson may decide to respond later to the shareholders with the relevant answers.

CALL FOR AN EXTRAORDINARY GENERAL MEETING

Shareholders holding not less than 10% of paid-up share capital of the company can call for an EGM.[21] The board shall, within 21 days from the receipt of a valid requisition, proceed to call a meeting (which is to be held within 45 days from the date of requisition). The conditions for a valid requisition are that (a) the requisitionists should clearly set out the matters which will be considered at the meeting; (b) the requisition must be signed by all the requisitionists or by a requisitionist duly authorised in writing by all other requisitionists on their behalf; (c) the requisition shall be sent to the company in writing or through electronic mode at least 21 days prior to the proposed date of the EGM.

If the board fails to act within the timeframe, the interested shareholders can by themselves call for an EGM within three months from the date of the requisition, and all reasonable costs of holding such a meeting shall be reimbursed by the company.

EXHIBIT 5: TIMELINE FOR CALLING AN EGM

The dotted line represents the timeframe within which the Board must call the EGM, while the solid line represents the timeframe within which shareholders can call the meeting by themselves.

REQUEST FOR INCLUSION OF AGENDA ITEMS/CIRCULATION OF SHAREHOLDER RESOLUTION

While the board enjoys the primacy in setting the agenda of meetings, shareholders who own more than 10% of a company's paid-up share capital (singly or jointly) can also request the insertion of an agenda item at a forthcoming EGM/AGM. On receipt of the request, the company shall give its shareholders a notice with reference to the resolution which may be moved at the meeting and circulate a statement with respect to the matters referred to in the proposed resolution.

[21] Section 100 of the Act

The following pre-conditions need to be met by shareholders before requesting an agenda item:
a) A copy of the notice requesting a fresh resolution to be moved, signed by all the requisitionists, needs to be deposited at the registered office of the company, at least 6 weeks prior to the meeting. Additional documents/ statements forming a part of the proposed resolution must be sent at least 2 weeks prior to the meeting.

b) Shareholders who request inclusion of an agenda item must deposit a certain amount with the company to meet the expenses to give effect to the request. The amount shall be reasonably sufficient to meet the company's expenses and will vary from case to case.

As a rule, no items of business other than those specified in the notice can be taken up at a shareholders' meeting. Therefore, whilst shareholders can specify the matters to be considered at any meeting to be requisitioned by them, once a notice has been issued, no further amendments can be made unless a fresh notice of 21 clear days is issued.

PROPOSE BUSINESS ITEMS

Shareholders who own at least 1% of the total voting power or hold fully paid-up shares of an aggregate face value of Rs.500,000 have the right to propose certain business items by giving a special notice to the company.[22] These business items include:

i. Resolution for removal of an auditor before the expiry of the term
ii. Resolution to appoint another auditor in place of the removed/retiring auditor
iii. Resolution to remove a director before the expiry of his/her period of office
iv. Resolution to appoint another director in place of the removed/retiring director
v. Any other resolution which the Articles of Association of the company may require

The special notice should be given not earlier than 3 months and at least 14 days before the date fixed for the meeting. Immediately following receipt of the special notice, the company is required to provide all shareholders with notice of the resolution prior to holding the general meeting where the resolution is to be given effect following the procedure laid down under Section 169 of the Act.

SEEK APPOINTMENT AS DIRECTOR

Shareholders of a company can propose their own name, or that of any other person, for appointment as a director[23] through a separate application.

Such an application must be delivered to the registered office of the company at least 14 days prior to the meeting along with the deposit of Rs.100,000 (or

[22] Section 115 of the Act
[23] Section 160 of the Act
[24] Section 151 of the Act

such higher amount as may be prescribed by MCA). This deposit is refunded if the person proposed is elected as a director or receives more than 25% of the total votes. On receipt of the application, the company shall inform other shareholders about the candidacy at least 7 days prior to the meeting.

ELECT A SMALL SHAREHOLDER DIRECTOR

In a listed company, small shareholders (shareholders holding shares of face value less than Rs.20,000) can nominate a representative on the board.[24] Such an application can be made by a minimum of 1000 small shareholders or an aggregate of 1/10th of the total number of small shareholders (whichever is lower). The proposed representative is elected by Postal Ballot. The directors are appointed for a term not exceeding three consecutive years and are not eligible for re-appointment after the expiry of their term.

ACCESS TO COMPANY DOCUMENTS AND OTHER INFORMATION

Shareholders have the right to inspect key documents of the company.[25]

Some of the documents that can be examined include:

- Company's register of shareholders, register of directors, registers of charges
- Minutes of shareholder meetings
- Memorandum of Association (MoA) and Articles of Association (AoA)
- Agreements relating to appointment of managerial personnel (till the date of the AGM)

They can take extracts of these documents or ask for a copy of them on payment of fees. Shareholders are entitled to receive audited financial statements (including consolidated financial statements) of the company for every financial year before the AGM. Companies are also required to publish separate financial statements of each of the company's subsidiaries.[26]

In addition, the SEBI LODR requires companies to disclose the following information on their websites, including:

- Basic information about the company and details of its business
- Terms and conditions of appointment of independent directors
- Composition of various committees of board of directors
- Code of conduct of board of directors and senior management personnel
- Details of establishment of vigil mechanism/Whistle Blower policy
- Email address for grievance redressal and other relevant details
- Contact information of designated officials responsible for assisting and handling investor grievances
- Credit ratings obtained including revisions if any
- Schedule of analyst or institutional investor meetings and presentations made at the meetings

[25] As per section 94 of the Act
[26] Section 136 of the Act
[27] Every company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders, needs to mandatorily constitute a Stakeholders Relationship Committee, which is responsible for developing an adequate mechanism to address the grievances of the security holders.

SEBI LODR

The disclosures made by a company shall be given to the stock exchanges in XBRL format in accordance with the guidelines specified by the stock exchanges and displayed on its website in any format that allows users to find relevant information easily through a searching tool (except for statutory documents which may not be searchable).

SEEK GRIEVANCE REDRESSAL

If a shareholder feels any of his/her rights have been denied, they can register their grievances with the Stakeholders Relationship Committee of the company.[27] The SEBI LODR also provides for listed companies to formulate a Grievance Redressal Mechanism to address shareholder grievances.

INITIATE OPPRESSION AND MISMANAGEMENT PROCEEDINGS

Not less than 100 members or not less than 1/10th of the total number of members, whichever is less, or any member or members holding not less than 1/10th of issued share capital have the right to apply to the NCLT in case of oppression and mismanagement.[28] The shareholders of a company can approach the NCLT when the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to shareholders or in a manner prejudicial to the interests of the company.

FILE A CLASS ACTION

To protect the interests of minority shareholders, the Act also provides for class action[29] by members of a company seeking restraining orders against certain actions of the company and for claiming damages or compensation from the company, its directors, auditors or any expert, adviser or consultant for any wrongful act or for any incorrect or misleading statement made to the company. In case of a company with share capital, (a) at least 5% of the total members/100 members, whichever is less, or (b) members holding at least 5% of the issued share capital in case of an unlisted company, and holding at least 2% in case of a listed company, may prefer the suit.

[27] Every company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders, needs to mandatorily constitute a Stakeholders Relationship Committee, which is responsible for developing an adequate mechanism to address the grievances of the security holders.

[28] Section 241 of the Act

[29] Section 245 of the Act

06

SHAREHOLDER RESOLUTIONS

06

SHAREHOLDER RESOLUTIONS

A shareholder resolution is a proposal submitted by the management or shareholders of a company to be voted on at the shareholder meeting, directing the board to take some form of action. A resolution proposed at the meeting, once passed by shareholders, is a legally binding decision made by the company.

The Companies Act categorizes shareholder resolutions into either Ordinary or Special.[30] However, certain resolutions, which are of interest to the majority or controlling shareholders, may require the concerned or 'interested' shareholders to abstain from voting (majority of Minority). Exhibit 6 lists the types of shareholder resolutions with a few examples for each. Annexure A provides a detailed list. In the next chapter, we will delve into select shareholder resolutions, including the regulations, obligations and best practices on the part of companies to make necessary disclosures, and pointers for shareholders to support their voting decisions.

EXHIBIT 6: TYPES OF SHAREHOLDER RESOLUTIONS

RESOLUTION TYPE	THRESHOLD	EXAMPLES
ORDINARY (Simple majority)	Will be passed if the number of votes cast in favor of the resolution exceeds the number of votes cast against the resolution	Approval of accounts, payment of dividend, appointment of auditors, (re) appointment of directors, etc.
SPECIAL (Special majority)	Will be passed if the number of votes cast in favor of the resolution is not less than three times the number of votes cast against the resolution	Alteration to charter documents, issuance/modification of employee stock schemes, buy-back proposals, etc.
MAJORITY OF MINORITY	Will be passed if the number of votes cast in favor of the resolution exceeds the number of votes cast against the resolution. Interested/related parties must abstain from voting	Related party transactions, schemes of arrangement (in certain cases)
OTHERS	Ordinary or special resolution with additional conditions[31]	Delisting of shares, re-classification of promoters

[30] Section 114 of the Act
[31] See Annexure A for details

All resolutions (both Ordinary and Special) go through the following life cycle at an AGM/EGM/NCM:

1 INTRODUCE A MOTION

Any resolution, before voted upon, is proposed in the form of a 'motion'.

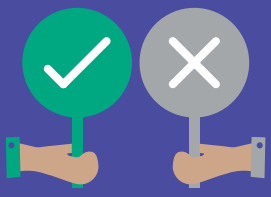
2 PROPOSE MOTION

A motion is generally proposed by one shareholder and seconded by another. The motion is then discussed in detail by shareholders, debating the pros and cons of the concerned matter.

3 DISCUSSIONS WITH THE MANAGEMENT

A question and answer session is then conducted. All the related queries are answered and resolved to the satisfaction of shareholders before the motion is put to a vote. A shareholder has the right to move an amendment to the proposed motion which, if approved by the Chairperson, is debated and discussed.

4 VOTING



The resolution, with or without amendment, is then put to a vote and is passed or rejected. The resolutions can be ordinary or special, as prescribed by law.

07

HOW TO RESEARCH ON KEY SHAREHOLDER RESOLUTIONS

07

HOW TO RESEARCH ON KEY SHAREHOLDER RESOLUTIONS

Please note that this section does not provide an exhaustive list of resolutions passed at general meetings or a list of all related questions. Contents of this section and document should not be construed as legal advice. Refer to the applicable laws (e.g., the Companies Act, 2013; SEBI LODR) for complete details. Depending on the individual company, there may be other issues that are more important and that should be further analyzed by shareholders.

Some of the agenda items proposed at general meetings are explained below. Based on criticality of the matter, these agenda items are divided into three buckets: Purple – highly important; Blue – moderately important and Green – routine business agenda.

A
DIRECTOR REMUNERATION

B
RAISING EQUITY/ DEBT

C
RELATED PARTY TRANSACTIONS

D
ALTERATION TO CHARTER DOCUMENTS

E
BOARD APPOINTMENTS

F
EMPLOYEE STOCK OPTION SCHEMES

G
RECLASSIFICATION OF PROMOTERS

H
SLUMP SALE

I
SCHEMES OF ARRANGEMENT

J
ADOPTION OF ACCOUNTS

K
AUDITOR (RE) APPOINTMENT

L
DIVIDEND DECLARATION

M
INCREASING BORROWING LIMITS

A. DIRECTOR REMUNERATION

REGULATORY PROVISIONS

Resolution Type	Ordinary/Special
Provision in Companies Act, 2013	Section 197, 198

Remuneration of directors, both executive and non-executive, must be approved by shareholders. The total board remuneration in any financial year should not exceed 11% of the net profits[32] of that company for that financial year. The breakup of this limit is provided below:

a. Up to 10% of the net profits for executive directors (subject to a cap of 5% per director)
b. Up to 1% for non-executive directors (3% where there is no executive director)

These limits can be exceeded with shareholder approval obtained via a special resolution. The remuneration is exclusive of any fees paid to the directors to attend the meeting as well as perquisites.

SEBI LODR

- Shareholder approval by a special resolution shall be obtained where executive directors being promoters or belonging to the promoter group are paid:

  a. annual remuneration exceeding Rs. 5 crores or 2.5% of the net profits of the company (higher of the two) OR
  b. the aggregate annual remuneration to all executive promoter directors exceeds 5% of the net profits.

- Approval of shareholders by a special resolution shall be obtained every year in which the annual remuneration payable to a single non-executive director exceeds 50% of the total annual remuneration to all non-executive directors, giving the details of such remuneration.

COMPANY OBLIGATIONS/BEST PRACTICES

Companies should ensure that the level of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully. At the same time, the remuneration must be commensurate to the nature and size of the business. Incentive schemes should be designed around appropriate performance benchmarks and provide rewards for improved company performance.

While proposing a remuneration structure, the company should clearly disclose:

a. Detailed breakup of all the remuneration components including basic and variable pay, stock options, retirement benefits and other perquisites and allowances
b. New performance benchmarks/criteria
c. Extent of fulfilment of previously set performance benchmarks
d. Ratio of managerial remuneration to average/median employee remuneration

[32] This cap can be increased by obtaining shareholder approval through an ordinary resolution.

GUIDELINES FOR SHAREHOLDERS

For the purpose of evaluation, shareholders should analyze the above information from the annual report. In addition, they can examine the following:

- Increase in remuneration vs increase in profitability
- If remuneration level is higher than comparable industry peers
- If there is a low proportion of variable pay (viz., performance related incentives, bonus, commissions, etc.) in the overall salary (especially for professional directors), shareholders can question the management
- Some promoters choose to award inexperienced family members with high salaries that are not justified by their role and position in the company. Shareholders should seek an explanation from the independent directors for their agreement with such a decision
- If the director is receiving remuneration from multiple sources
- Whether an overall cap has been specified (applies to non-executive directors)

In PSUs[33], the remuneration paid to directors, both executive and non-executive, is generally fixed by the respective Ministry and is subject to the Pay Revision Guidelines issued by the Department of Public Enterprises. Therefore, while director appointments are subject to shareholder approval, director remuneration is not.

B. RAISING EQUITY / DEBT

REGULATORY PROVISIONS

Resolution Type	Special
Provision in Companies Act, 2013	Section 42, 62, 71

As per the Act, issuance of shares on a pro-rata basis to existing shareholders (rights issue) will not require shareholder approval. However, if the issuance is to any other entity, it requires approval through a special resolution. This includes both public issues (initial and follow-on public offers) and preferential allotments. Such approvals are valid for a period of one year. A company may also issue fully paid-up bonus shares to its shareholders out of its free reserves, securities premium account, or the capital redemption reserve.

Companies may use non-convertible securities, generally debt instruments (debentures), to augment its capital base. A company requires shareholder approval through a special resolution if such securities are offered on a private placement basis.

COMPANY OBLIGATIONS

The shareholders must be provided with the following information in the notice and explanatory note:

a. The objects of the issue
b. The total number of shares or other securities to be issued
c. The price or price band at/within which the allotment is proposed
d. The basis on which the price has been arrived at along with report of the registered valuer
e. The class/classes of persons to whom the allotment is proposed to be made
f. The pre-issue and post-issue shareholding pattern of the company
g. The proposed time within which the allotment shall be completed
h. The names of the proposed allottees and the percentage of post preferential offer capital that may be held by them (in case of preferential issue)

[33] PSU (public-sector undertaking) means a Government company - any company/bank in which not less than 51% of the paid-up share capital is held by the Central Government or by any State Government(s) and/or jointly by both and includes a subsidiary company of a Government company.

GUIDELINES FOR SHAREHOLDERS

Public issues are monitored by SEBI as per the SEBI (ICDR) Regulations. Thus, the red flags in case of public issues are minimal. Similar is the case with bonus issues as these are beneficial to shareholders.

Shareholders must scrutinize the following while voting on resolutions for raising capital:

- Use of proceeds
- Extent of dilution
- Urgency of funds
- Debt levels and available cash with the company
- Whether the proposal includes any issue of warrants
- Whether the issue is within the borrowing limits of the company (in case of debt instruments)
- Debt servicing capacity and past repayment history
- Leverage ratios and credit rating

C. RELATED PARTY TRANSACTIONS (RPT)

REGULATORY PROVISIONS

Resolution Type	**Ordinary**
Provision in Companies Act, 2013	Section 188

Transactions with a related party will require approval of the shareholders. The regulations prohibit interested/related parties from voting on such resolutions.

As per the Companies Act, transactions which are entered into by the company in its ordinary course of business and are at arms-length pricing are exempted from this requirement. However, as per SEBI LODR, for listed companies, all material[34] RPT (irrespective of its nature) shall require prior approval of shareholders. Transactions entered between two PSUs are exempt from shareholder approval.

SEBI LODR

Shareholders' approval will be required for royalty/brand payments to related parties exceeding 5% of consolidated turnover. The limit will be considered within the overall materiality threshold.

COMPANY OBLIGATIONS

Details of all material transactions with related parties must be disclosed quarterly along with the compliance report on corporate governance. The company must also disclose the policy on dealing with RPTs on its website and provide a link in the Annual Report.

In addition, while seeking shareholder approval for any RPT, the company should clearly state the following in the meeting notice:

a. Parties to the transaction
b. Level/degree/nature of association with related parties
c. Nature, material terms, monetary value and particulars of the transaction
d. Economic benefit for all interested related parties
e. Any other information relevant or important for the members to take a decision on the proposed resolution

[34] Exceeding 10% of the annual consolidated turnover of the company as per its last audited financials

GUIDELINES FOR SHAREHOLDERS

The interests of minority shareholders should be protected before voting on a RPT. Shareholders should look out for companies providing preferential terms to specific shareholders/other parties thereby transferring value from public shareholders to elsewhere. Shareholders should analyze the following:

- The rationale for the transactions
- Whether an independent opinion has been obtained on the valuation/pricing aspects
- Whether the approval sought is for an indefinite amount or an undefined time period
- Whether the quantum of royalty has been decided by an independent evaluation
- Track record on royalty payouts and alignment with performance of the brand

They should closely analyze the information provided by the company and seek clarifications from the management if they are unsure about the full implications of the transaction.[35]

D. ALTERATION TO CHARTER DOCUMENTS

REGULATORY PROVISIONS

Resolution Type	Special
Provision in Companies Act, 2013	Section 13, 14, 61

The Memorandum of Association (MoA) of a company states the:

- Name of company
- State in which the registered office is to be situated
- Objects for which the company is incorporated
- Liability of members – whether limited or unlimited
- Capital of the company, stating the number of shares

The Articles of Association (AoA) of a company contain regulations for management of the company and may also include grant of special rights to certain classes of investors.

A company may alter the provisions of its MoA only by obtaining shareholder approval by a special resolution.[36] Any change in the name of a company shall be subject to approval by the Central Government. Approval of the Central Government shall also be required for alteration of the memorandum relating to shifting the place of the registered office from one State to another.
A company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company. In such cases, the dissenting shareholders (i.e., not less than 10% of the shareholders who voted on the resolution in the general meeting) shall be given an opportunity to exit by the promoters and shareholders having control in accordance with the regulations specified by SEBI. [37]

[35] For research on related party transactions in India, please refer to the CFA Society India presentation on the subject - A STUDY ON RELATED PARTIES TRANSACTIONS IN INDIA. 2019. https://www.arx.cfa/~/media/C909DD5AC10B4341AF34E4F9E439E99D.ashx.
[36] Except for alteration to Capital Clause which is to be approved by an Ordinary resolution under Section 61 of the Act
[37] Refer to Schedule XX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

A company may, subject to shareholder approval, alter its capital by (a) increasing its authorised share capital; (b) consolidating and dividing all or any of its share capital into shares of a larger amount; (c) converting all or any of its fully paid-up shares into stock and vice versa; (d) subdividing its shares, or any of them, into shares of a smaller amount; (e) cancelling shares which have not been taken or agreed to be taken by any person.

Every alteration to the AoA of a company shall be made only by obtaining shareholder approval by a special resolution.

COMPANY OBLIGATIONS/BEST PRACTICES

The company should highlight the changes in the shareholder notice and make the draft MoA/AoA available on its website. The SEBI LODR requires companies to disclose Amendments to MoA/AoA in brief.

GUIDELINES FOR SHAREHOLDERS

Shareholders should keep in mind the following points while analyzing resolutions for alteration to charter documents:

- Resolutions for change in name, objects or share capital are operational in nature and do not impact shareholder rights to a large extent. Regulations require companies to hold their general meetings in the city/town/village of the registered office. Companies, therefore, must take every effort to ensure that the registered office is situated within the local limits of the nearest city or town.
- The AoA may provide special/overriding powers to a particular individual or group, which are susceptible to potential misuse and/or are prejudicial to the interests of minority shareholders. Shareholders must watch out for:
  - Board nomination rights
  - Non-rotational board seats, especially in case of promoter directors
  - Requirement of specific individual(s) to form a quorum for board or general meetings
  - Inclusion of clauses forming a part of investor/shareholder agreements

E. BOARD APPOINTMENTS

REGULATORY PROVISIONS

Resolution Type	**Ordinary**
Provision in Companies Act, 2013	Section 149, 152

The appointment of every director should be approved by the company in its general meeting. Regulatory provisions regarding board composition including the eligibility, tenure and other board memberships of independent directors are listed below.

BOARD SIZE

The board of every public company shall comprise at least three and at maximum fifteen directors. However, a company may appoint more than fifteen directors after passing a special resolution. The board of directors of the top 2000[38] listed entities (based on market capitalization) must comprise not less than six directors.

[38] Effective 1 April 2020

BOARD-MIX CRITERIA

Every listed public company shall have at least one-third of the total number of directors as independent directors. As per SEBI LODR, 50% of the board should comprise independent directors if the chairperson of the board is an executive director or part of the promoter group. Otherwise, 33% of the board should be independent. Further, companies should appoint at least one woman director on the board.

ELIGIBILITY FOR AN INDEPENDENT DIRECTOR

As per the law, an independent director is a director who is not a nominee director and:

i. is not or was not an employee or promoter (or relative of promoter) of the company
ii. has not had any significant association or pecuniary relationship with the company or their promoters or directors in the last two financial years or the current financial year
iii. whose relatives have not had any significant association or pecuniary relationship with the company or their promoters or directors, amounting to 2% or more of its gross turnover or total income or Rs. 5,00,00,000 (whichever is lower) in the last two financial years or the current financial year
iv. who (or whose relatives) have not been employee or key managerial personnel of the company in the preceding three financial years
v. who (or whose relatives) have not been an employee or proprietor or partner in any firm of auditors, practicing company secretaries or cost auditors of the company in the preceding three financial years
vi. has not been an employee or proprietor or partner in any legal firm or consulting firm which has had material transactions with the company (>10% of gross turnover of the firm) in the preceding three financial years
vii. is not a director/CEO of any non-profit organization that receives more than 25% of its receipts from the company and/or its related parties or holds 2% or more of the total voting power of the company
viii. holds (together with his relatives) less than 2% of the voting capital of the company
ix. is at least 21 years of age
x. who is not a non-independent director of another company on the Board of which any non-independent director of the company is an independent director

The term 'company' in the above points (except point viii and ix) refers to the company, along with its holding, subsidiary and associate companies.

TENURE OF AN INDEPENDENT DIRECTOR

As per the Act and SEBI LODR, the tenure of an independent director can stretch up to a maximum of two consecutive terms of five years each (aggregate tenure of ten years or two terms, whichever is earlier). These directors are eligible for reappointment only after a cooling-off period of three years.[39]

NUMBER OF OTHER DIRECTORSHIPS

The Act restricts the total number of directorships for any director on the board to twenty. Of this, a maximum of ten can be public companies (foreign companies and non-profit companies are excluded).[40] As per the SEBI LODR, the maximum number of boards an independent director can serve on listed companies is restricted to seven; and three in case the person is serving as a whole-time director in a listed company. Further, a director shall not be a member in more than ten committees or act as Chairperson of more than five committees across all companies in which he/she is a director[41] (private and foreign companies are excluded).

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[39] The Act computes the tenure on a prospective basis from the applicability of this provision, i.e., 1 April 2014.
[40] Section 165 of the Act
[41] For the purpose of determination of limit, chairpersonship and membership of the audit committee and Stakeholders' Relationship Committee alone shall be considered.

COMPANY OBLIGATIONS

The company should ensure compliance with all the above provisions. The company should create a code of conduct for the board and train its board members in the business model of the company and their responsibilities as directors. They should also conduct a periodic performance evaluation of the entire board, board committees and individual directors, with granular details on the evaluation criteria and method of evaluation. The SEBI LODR further requires companies to disclose a mapping of the names of individual directors with a skill set matrix as the Board deems fit for the company.

In its notice to shareholders, the company should explain its rationale for choosing the appointee for appointment as director. Additionally, in case of appointment of a new director or re-appointment of an existing director, the shareholders must be provided with the following information:

a. A brief resume of the director – Director Identification Number, Age, Qualification
b. Date of first appointment on the Board
c. Nature of his/her expertise in specific functional areas
d. Disclosure of relationships between directors inter-se
e. Details of other directorships and the membership of Committees of other Boards
f. Shareholding in the company
g. Attendance at board meetings during the financial year (wherever applicable)

SEBI LODR

No listed company shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of 75 years unless shareholder approval is obtained through a special resolution and the explanatory statement annexed to the notice for such motion indicates the justification for appointing such a person.

GUIDELINES FOR SHAREHOLDERS

The board of a company acts as the primary interface between the company management and its shareholders. Hence, shareholders should carefully review the profiles of the directors on the board, especially of those seeking appointment/reappointment. Before approving any candidate, shareholders must ensure that:

- The director, if nominated as an independent director, is truly independent and not merely a representative of company management or promoters or has any potential conflict of interest. To test this, shareholders can check for director interlinkages between group companies, direct/indirect business relationships with the company, interlinkages between directors and promoters, etc.
- The director satisfies the other eligibility criteria laid down in the Act/SEBI LODR
- The director has relevant professional qualifications and/or business experience so as to add value to the company and its board
- The director does not carry a reputation risk or is not classified as a willful defaulter
- Track record of attendance at board/committee meetings during the past three years
- Number of other directorships held by the director

BEST PRACTICE/GUIDANCE

Director attendance – The Kotak Committee on Corporate Governance had recommended that if a director does not attend at least 50% of board meetings over 2 financial years on a rolling basis, his/her continuance on the board should be ratified by the shareholders at the next AGM. This recommendation was subsequently withdrawn. Additionally, proxy advisory firms at a global level are increasingly looking at director attendance as a test of the director's commitment to the company. For example, Glass Lewis considers an attendance level of a minimum of 75% of the board and/or committee meetings while voting on director (re)appointments. As a benchmark, shareholders could check if the director has attended at least 75% of the board meetings in the concluded financial year.

Other directorships - Directors should have the necessary time to fulfil their duties towards shareholders and overcommitment can pose a material risk to this. While the regulatory thresholds keep a check on this, shareholders could check the association of directors as managing partners at a firm of auditors, company secretaries in practice, cost auditors or law firms – as these could be considered equivalent to wholetime directorships.

F. EMPLOYEE STOCK OPTIONS (ESOPs)

REGULATORY PROVISIONS

Resolution Type	**Special**
Provision in Companies Act, 2013	Section 62

All ESOP schemes must be approved by shareholders by passing a special resolution in the general meeting.

Independent directors cannot be granted stock options. SEBI (Share Based Employee Benefits) Regulations, 2014, also contain a similar provision and prohibit the following persons from participating in the Employee Stock Option Schemes (ESOP):

a. Members of the promoter group
b. Directors who, along with their associates, hold more than 10% stake in the company

COMPANY OBLIGATIONS

The Nomination and Remuneration Committee will be responsible for administration of the ESOP plans.[42] In addition, the following disclosures need to be made in the notice to shareholders:

a. The total number of options to be granted
b. Classes of employees entitled to participate in the ESOP scheme
c. The vesting period
d. Exercise price or pricing formula
e. Exercise period and process of exercise
f. The appraisal process for determining the eligibility of employees to the ESOP scheme
g. Maximum number of options to be issued per employee and in aggregate
h. Valuation method – fair value or intrinsic value
i. Impact on financial statements (expenses for the year and provision for liabilities)
j. The triggers/basis of granting ESOPs to employees

[42] As per SEBI (Share Based Employee Benefits) Regulations, 2014

GUIDELINES FOR SHAREHOLDERS

Shareholders need to be mindful of the following aspects while voting on ESOP schemes:

- **Dilution:** The conversion of ESOPs into equity shares will raise the issued capital of the company, which may dilute the interests of minority shareholders. While moderate dilution will not significantly impact them, shareholders should question the company further if the proposed grant leads to a higher level of dilution.
- **Exercise Price:** Currently the companies have the option to value the options, either at intrinsic value (difference between the market price of the stock and the exercise price of the option) or fair value (the market value of the option, generally computed using an option pricing model). However, as per Ind AS[43], the options must be valued only at fair value on the date of grant, calculated as per Black Scholes Model. The difference between the fair value of the option on the date of grant and grant price will be borne by the company as an expense. Shareholders should therefore question the management in case of significant deviations between the exercise price and market price on date of grant. It must be remembered that the higher the cost, the greater will be the impact on profitability.
- **Modification of exercise price:** Sometimes companies revise the exercise price downwards after significant fall in market price. Employee stock option schemes are incentive measures to ensure the active participation of company employees in the growth of the company. If the company is not able to grow at its anticipated pace, such revisions should be questioned and carefully evaluated.

G. RECLASSIFICATION OF PROMOTERS[44]

REGULATORY PROVISIONS

Resolution Type	**Ordinary**
Provision in Companies Act, 2013	Governed by SEBI LODR

SEBI has introduced guidelines on promoter re-classification under Regulation 31A of the SEBI LODR. The regulations mandate the board to provide its view on the reclassification. Promoters seeking reclassification are not allowed to vote on the proposal. Further, the regulations stipulate multiple provisions to ensure that special rights of such individuals/groups are taken away and they are not able to exercise influence or control over the company after the reclassification.

COMPANY OBLIGATIONS

Companies should follow the following procedure in case of re-classification of promoters:

1. Promoters seeking re-classification should make a request to the company
2. The Board must analyse such a request and place it before the shareholders along with the Board's view on the request
3. The company should obtain shareholder approval in a general meeting where the promoters seeking re-classification and persons related thereto shall not vote to approve such resolution

[43] Indian Accounting Standard (abbreviated as Ind-AS) is the accounting standard adopted by companies in India and issued under the supervision of the Accounting Standards Board.

[44] The SEBI LODR, in 2015, introduced the concept of "promoter re-classification" for Indian companies. Shareholders are classified under two broad categories, i.e., the promoter/promoter group and the public. The idea was to provide persons who may have been promoters but are no longer involved in day-to-day control and management and have a low shareholding, to opt out of being a promoter. The reasons are varied – family separation agreements, avoiding constant scrutiny, exemption from possible litigation on charges like insider trading and other legal responsibilities involving the company.

4. The promoter along with persons related thereto should:
   a. not hold more than 10% of the voting rights in the company
   b. not directly or indirectly exercise control over the affairs of the entity
   c. not have special rights under any formal/informal arrangements
   d. not be represented on the Board (including having a nominee director)
   e. not act as KMP[45] in the company
   f. not be categorised as a "willful defaulter" under RBI guidelines
   g. not be a fugitive economic offender
5. The company should:
   a. comply with the minimum public shareholding requirements
   b. not have trading in its shares suspended
   c. not have outstanding dues to the Board, stock exchange or depositories
6. Promoters seeking re-classification shall continue to – (a) not hold more than 10% of the voting rights; (b) not directly or indirectly exercise control and (c) not have special rights at all times from the date of re-classification, failing which he/she shall automatically be reclassified as promoter
7. Promoters seeking re-classification shall continue to not be represented on the Board or act as key managerial personnel for at least 3 years from the date of re-classification, failing which he/she shall automatically be reclassified as promoter

GUIDELINES FOR SHAREHOLDERS

Shareholders should analyze the following:

- Whether the company has confirmed that it has abided by the regulatory provisions
- Whether the change is due to a takeover, change in company ownership, restructuring of shareholding or open offer
- Whether the outgoing promoters could potentially exercise any management control
- Whether the re-classification is proposed following a family separation agreement

H. SLUMP SALE

REGULATORY PROVISIONS

Resolution Type	**Special**
Provision in Companies Act, 2013	Section 180(1)(a)

As per the Act, a company cannot sell, lease, or dispose of any of its undertaking or substantially the whole of any undertaking[46] without getting prior approval from shareholders through a special resolution.

Under SEBI LODR, a listed company shall obtain shareholder consent through a special resolution (except where this is carried out under a scheme of arrangement) to:

- dispose-of shares in its material subsidiary[47] resulting in reduction of its shareholding (individually or together with other subsidiaries) to less than 50% or cease the exercise of control;
- sell, dispose of, and lease assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year.

[45] Key Managerial Personnel (KMP) includes Chief Executive Officer/Managing Director/Manager; Company Secretary; Whole-time director; Chief Financial Officer; other persons not more than one level below the directors in whole-time employment, designated as key managerial personnel by the Board.

[46] Undertaking refers to an asset of the company in which the investment of the company exceeds 20% of its net worth as per the audited balance sheet of the preceding financial year or which has generated 20% of the total income of the company during the previous financial year. "Substantially the whole" of any undertaking refers to 20% or more of the value of the undertaking as per the audited balance sheet of the preceding financial year.

[47] Material Subsidiary means a subsidiary whose income or net worth exceeds 10% of the consolidated income or net worth, respectively, of the company and its subsidiaries in the immediately preceding accounting year.

COMPANY OBLIGATIONS/BEST PRACTICES

Companies should clearly disclose the following:

a. Rationale for the sale
b. The financials of the business/undertaking being sold
c. Use of sale proceeds
d. Market value of aggregate assets to be disposed – ideally accompanied with a valuation report from an independent third party
e. Expected price
f. Details of the buyer

GUIDELINES FOR SHAREHOLDERS

Shareholders should only approve such proposals if the transaction is not detrimental to their interests.

They should analyze the following:

- Rationale for the sale
- Use of sale proceeds
- Expected impact on sales/profits for next three years
- Value of assets to be disposed
- Independent fairness opinion on the valuation
- Involvement of related parties

I. SCHEMES OF ARRANGEMENT

REGULATORY PROVISIONS

Resolution Type	**Special**
Provision in Companies Act, 2013	Section 230-234

Schemes of arrangement for a company refer to the following:

a. Reorganization of the company's share capital
b. Compromise between a company and its creditors or any class of them (e.g., Corporate Debt Restructuring)
c. Scheme for the reorganization of the company involving any merger or amalgamation
d. Demerger

Applications for schemes of arrangement need to be submitted to the National Company Law Tribunal (NCLT) for approval. The NCLT, at its discretion, may direct the company to convene a meeting of its shareholders and creditors and get their approval through a special resolution. Additionally, SEBI LODR requires separate approval of public shareholders to be obtained through postal ballot (or eVoting) in case of schemes of arrangement where there has been a change in the promoter shareholding, or the transaction involves promoter-held companies.

COMPANY OBLIGATIONS

The notice of such an NCLT-convened meeting is required to be sent to all shareholders and creditors, accompanied by a statement disclosing the details of the arrangement, including:

a. A draft of the proposed scheme
b. Report from the Audit Committee approving the scheme of arrangement
c. Valuation report from an independent third party
d. Fairness opinion from a Merchant Banker

e. Pre- and post- amalgamation shareholding
f. Audited financials for the last 3 years
g. Auditors' certificate on compliance with applicable accounting standards

The notice and other documents shall also be placed on the website of the company. In case of a listed company, these documents shall be sent to SEBI and stock exchange(s) where the securities of the companies are listed, for placing on their website.

GUIDELINES FOR SHAREHOLDERS

Shareholders should vote after analyzing the following:

- The method and assumptions used to arrive at the valuation and final price
- The opinion of independent directors on the deal
- The mode of payment – cash or share swap (and resultant dilution)
- The underlying rationale of the scheme
- The impact on financial and leverage ratios
- The dilution of stake and change in shareholding pattern

J. ADOPTION OF ACCOUNTS

REGULATORY PROVISIONS

Resolution Type	**Ordinary**
Provision in Companies Act, 2013	Section 129

Every company is required to prepare the financial statements for each year and get them approved at the AGM of the company. The term 'financial statements' includes Balance Sheet, Profit and Loss accounts, Cash Flow statement, Statement of Changes in Equity and Notes to Accounts. The statutory auditors of the company are expected to scrutinize the accounts and include their opinion on the fairness, compliance and accuracy of the financials in the annual report.

COMPANY OBLIGATIONS

A copy of financial statements (including consolidated financial statements containing the auditors' report and directors' report) must be sent to every shareholder at least 21 days before the meeting. The financials of its subsidiaries and associates shall also be published on the website of the company. The financial statements shall also be open for inspection during business hours for a period of 21 days before the date of the meeting. Further, the company shall dispatch the full annual reports in soft copy to all those shareholders who have registered their email address for the purpose.

GUIDELINES FOR SHAREHOLDERS

The following parameters can help guide shareholders to analyze the financial performance of the company:

- Leverage profile including the company's credit rating
- Related party transactions
- Liquidity position
- Audit integrity including qualifications raised by the auditor (if any)
- Accounting policies
- Qualifications, if any, raised in the report of the Secretarial Auditor

- Transparency checks
  - Movement in CFO/EBITDA
  - Miscellaneous expenses to total income
  - Contingent liabilities as a % of net worth
  - Interest expense as a % of average debt
  - Receivable days

If the shareholders are unsure of the implications of some of these parameters, they should take it up with the management and auditors during the general meeting and seek additional clarification in this regard. If they are not satisfied with the response from the management, they have the right to engage with the independent directors to understand the steps taken by them to form an independent opinion over the management actions of the company.

PRESENTATION OF FINANCIAL STATEMENTS ACCORDING TO INDIAN ACCOUNTING STANDARDS (IND AS)

Indian Accounting Standards converge with the global International Financial Reporting Standards (IFRS). In February 2015, the MCA provided the road map for the implementation of Ind AS by companies other than the insurance companies, banking companies and NBFCs, in a phased manner from 1 April 2016 (See Exhibit 7 below).

In the early stages of implementation in the Indian corporate sector, companies were required to provide last year comparatives, prepared in accordance with Ind AS while presenting their financial statements as per Ind AS.

EXHIBIT 7: IND AS IMPLEMENTATION SCHEDULE

PHASE	WAS MADE APPLICABLE FROM	LISTED/UNLISTED	COMPANY NET WORTH (RS. BN)
Phase 1	1-Apr-16	Listed & Unlisted	〉= INR 5.0 bn
Phase 2	1-Apr-17	Listed	〈 INR 5.0 bn
		Unlisted	〉= INR 2.5 bn but 〈 INR 5.0 bn

Also applicable to all holding companies/subsidiaries/joint ventures or associates.

The Reserved Bank of India (RBI) has deferred the applicability of Ind AS for banks and non-banking finance companies until further notice. Similarly, the Insurance and Regulatory Development Authority of India (IRDAI) has deferred the applicability of Ind AS to the insurance sector until further notice. Additionally, the insurance companies are no longer required to submit proforma Ind AS financial statements to IRDAI on a quarterly basis as was earlier required. Voluntary adoption of Ind AS is not permitted.

While there is no direct impact on shareholders, adoption of Ind AS will improve the quality of financial reporting and bring the financial statements closer to economic reality. Adoption of Ind AS is expected to enhance the comparability of financial statements of Indian companies with global standards.

K. AUDITOR (RE)APPOINTMENT

REGULATORY PROVISIONS

Resolution Type	Ordinary
Provision in Companies Act, 2013	Section 139, 142, 144

The Act mandates the rotation of the audit firm in every 10 years (after two consecutive terms of 5 years each) and of the individual auditor in every 5 years.[48] Once the term ends, a firm cannot be reappointed as the statutory auditor before a cooling-off period of 5 years has elapsed. Firms which have common audit partners with the retiring audit firm or which fall under the same network of audit firms will not be eligible for appointment during the cooling-off period. In case of privately-owned banks[49], statutory auditors can be appointed for two terms not exceeding 4 years each which will follow a mandatory cooling-off period of 6 years, and all auditor appointments shall be subject to RBI approval.

The Act requires the auditor remuneration to be fixed in the company's annual general meeting.[50]

The appointment of auditors in PSUs directly vests with the Comptroller and Auditor-General of India (CAG). Public-sector banks (PSBs) appoint auditors selected from a list prepared by the CAG and approved by the Reserve Bank of India and are required to appoint multiple auditors depending on the PSB's size. In PSUs/PSBs, shareholder approval is only required to approve the remuneration of the statutory auditors.

The most important duty of an auditor is to report any detected fraud which is likely to materially affect the company. Materiality in this context may refer to frauds that are happening frequently or frauds where the amount individually involved or likely to be involved is not less than Rs. 1 Crore.

The Act specifically debars the auditors in providing accounting, bookkeeping, internal audit, actuarial, investment advisory, investment banking, designing and implementation of financial information systems and management services to the company.[51]

COMPANY OBLIGATIONS/BEST PRACTICES

The company should provide the date of first appointment of the auditor and the audit partner. The company must also provide details on the auditor including their profile, nature of previous audits, track record and number of senior partners.

For all companies, central Government approval is mandatory to remove an auditor before the expiry of their term. The company also needs a special resolution[52] to be passed by shareholders. Since the removal of an auditor raises a red flag, company management must give full disclosure stating the reasons for initiating the removal process.

[48] As per the MCA rules, the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the overall tenure.
[49] Section 30 of the Banking Regulation Act, 1949 and RBI circular dated 27 July 2017
[50] Section 142 of the Act
[51] Section 144 of the Act
[52] Section 140 of the Act

SEBI LODR

- The notice being sent to shareholders for an annual general meeting, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice:
  a. Proposed fees payable to the statutory auditor(s) along with terms of appointment and, in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;
  b. Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.
- In case of resignation of the auditor a company, detailed reasons for resignation of auditor, as given by the auditor, shall be disclosed by the company to the stock exchanges within 24 hours of receipt of the information.

GUIDELINES FOR SHAREHOLDERS

Shareholders should note that a prolonged association with the company may compromise the independence of the auditor/audit partner. In order to preserve the integrity of the audit process, they must ensure the following:

- The auditor to be (re)appointed has good market standing
- The information on the audit firm and the audit partner experience available publicly
- The auditor remuneration is in line with the size and scale of operations and comparable to other peers

BEST PRACTICE

Audit committees must be encouraged to assess audit quality by using tangible metrics while (re) appointing auditors or ratifying their audit appointments. SEBI has opined that this issue falls under the purview of ICAI/NFRA; and these institutions will examine and implement as they deem fit.

L. DIVIDEND DECLARATION

REGULATORY PROVISIONS

Resolution Type	**Ordinary**
Provision in Companies Act, 2013	Section 123

The Act states that dividend can be declared or paid by a company only out of the profits of the company for that year or any previous financial year(s) after providing for depreciation and in accordance with the relevant provisions and rules. Dividend may be of two types – interim and final. While dividend declared in the middle of the year (out of surplus in the profit & loss account) is termed as interim, the dividend declared out of the profits of the complete year is termed as final. The company is prohibited from declaring dividend from any reserves apart from its free reserves. Further, while final dividend is declared at the AGM and approved by shareholders, interim dividend is declared and approved by the Board of directors and disclosed in the company's annual report.

According to the 2016 guidelines released by the Department of Investment and Public Asset Management on Capital Restructuring of Central Public-Sector Enterprises, every Central Public-Sector Enterprise shall pay 30% of profit after tax or 5% of net worth, whichever is higher, as dividend to shareholders. PSUs are required to justify dividend payout if it is lower than the specified limit.

COMPANY OBLIGATIONS

The dividend must be paid within 30 days from the date of declaration. Even though not mandated by law, companies should clearly explain the rationale behind choosing the quantum of dividend to be paid for the year. SEBI LODR now mandates listed companies (top 500 companies based on market capitalization) to formulate a comprehensive dividend policy to shareholders, with detailed disclosures on the following:

a. the circumstances under which the shareholders may or may not expect a dividend
b. the financial parameters that shall be considered while declaring dividend
c. internal and external factors that shall be considered for declaration of dividend
d. policy as to how the retained earnings shall be utilized
e. deviations from the policy, if any, to be disclosed along with rationale for the same

BEST PRACTICE

The dividend policy should also include (a) estimated dividend payout (dividend/profits) range for the next three years; (b) usage plans for retained earnings in the next three years and (c) usage plans for surplus cash available due to sale of assets/businesses.

GUIDELINES FOR SHAREHOLDERS

Shareholders should analyze:

- if growth in dividend is commensurate with the financial health of the company
- if growth in dividend is commensurate with growth in managerial remuneration
- if the dividend payout ratio is comparable to peers
- the company's dividend policy, where the company has one
- future investment plans/opportunities
- cash/debt position

If shareholders feel that the company has enough reserves to increase its dividend, they should engage with the company and seek clarifications on how the management intends to use the idle cash on its books.

In some circumstances, higher dividends may not be in the best interest of shareholders. These include when borrowing levels are high or instances when the company has been paying dividends from their retained earnings consistently over a period of time.

M. INCREASING BORROWING LIMITS

REGULATORY PROVISIONS

Resolution Type	**Special**
Provision in Companies Act, 2013	Section 180(1)(c)

As per the Act, a company needs prior shareholder approval through a special resolution to raise debt more than the aggregate of its paid-up share capital and free reserves and securities premium account. Temporary loans obtained from banks in the ordinary course of business shall be exempted from the computation of the overall borrowings. Once approved, the borrowing limit will continue until it is breached or revised.

COMPANY OBLIGATIONS/BEST PRACTICES

Companies should state the rationale and need for additional borrowings. The level of disclosure should be more granular for leveraged companies and those seeking to raise the existing borrowing limits by a significant amount. They should clearly disclose:

a. Current debt level as a percentage of existing borrowing limit
b. The timeframe within which the borrowing process is expected to be completed
c. Project-level details on areas where the borrowed funds are proposed to be deployed
d. Breakup of long-term and short-term borrowings for the proposed amount
e. Any change in credit rating and rating category after the announcement

GUIDELINES FOR SHAREHOLDERS

While companies do need some flexibility to raise funds to manage their operations, shareholders should vote only after analyzing the following:

- Rationale and need for additional borrowings
- Existing headroom available to raise debt under the current limit
- Financial performance of the company
- Operating cash flows including cash balances
- Leverage ratios (Debt/Equity, Interest Coverage, etc.)
- Effective interest rates
- Past repayment history and track record
- Credit rating

08

VOTING AT GENERAL MEETINGS

08

VOTING AT GENERAL MEETINGS

Various resolutions are put before shareholders to be voted upon at a general meeting. Voting is the legal mechanism for shareholders to express their views and let their voices be heard. This helps shareholders communicate their opinions to the board members. It represents the shareholders' perspectives on the matters proposed by the Board. The various ways by which shareholders can vote[53] in a general meeting are explained below.

SHOW OF HANDS

A resolution put to vote at any general meeting may be decided by a show of hands[54]. This type of voting follows the principle of one vote per person (unlike in a poll, where it is one vote per share). Shareholders interested in voting for the proposals raise their hands to signify their approval or disapproval.

POLL

As a default position under the Act, a poll can be demanded by members holding at least 10% of voting power or paid-up face value of shares worth Rs. 500,000/-.

However, following the introduction of electronic voting (eVoting), the MCA has clarified that since eVoting follows the 'proportional principle', i.e., one share – one vote, the provisions of requiring a show of hands or demanding a poll are redundant for companies that are mandatorily required to provide eVoting; which means that companies providing remote eVoting to shareholders must conduct a poll at the meeting.

POLLING PROCESS

- Appointment of scrutinizer
  The Chairperson of the meeting shall appoint a scrutinizer(s) who is not in the employment of the company to oversee the poll process and to report to him.

- Mode of polling – physical versus electronic
  The Board should decide whether voting at the meeting venue will be carried out electronically or physically.

Physical voting is carried out by the distribution of poll papers to the members present to complete and post their votes in a ballot box.

On the other hand, companies which provide remote eVoting to shareholders generally opt for electronic polling. The two major depositories in India: namely, Central Depository Services Limited (CDSL) and National Securities Depository Limited (NSDL), along with the private players, Link Intime India Private Limited and Karvy Computershare Private Limited (Karvy) have, in addition to remote eVoting platforms, introduced tablet-based voting systems at general meetings which allow

[53] A shareholder who has call money arrears or other dues cannot vote at general meetings.
[54] Show of hands as a method of voting is only applicable to unlisted companies with less than 1000 shareholders.

shareholders to cast their votes using handheld devices with internet connectivity at the meeting venue. Increasingly, shareholders are being given the option to vote at the meeting venue using mobile applications.

- Disclosure of results
  The votes cast by shareholders are counted by the scrutinizer in the presence of two witnesses. The law specifies the report of the polling process to be provided in a particular format. In addition, the results of eVoting and polls need to be disclosed to stock exchanges in the format provided by SEBI for this purpose and simultaneously hosted on the website of the company.

VOTING BY ELECTRONIC MEANS (EVOTING)

The Act requires every listed company (or a company having not less than 1000 shareholders) to provide a method for voting by electronic means to its shareholders[55] for all types of meetings, including AGM, EGM, NCM and for Postal Ballots. As per the SEBI LODR, eVoting is to be mandatorily provided for all shareholder resolutions by listed companies.

The eVoting platform for shareholder meetings is required to be kept open for a minimum period of 3 days and to close at 5:00 p.m. on the date preceding the meeting date. In the case of postal ballots, shareholders are provided a 30-day eVoting period. Where a shareholder casts his/her vote in electronic mode, this is considered as his/her final vote – he/she cannot change it subsequently. A person who has cast a vote electronically is not barred from attending the meeting but cannot vote again at the meeting.

The board appoints a scrutinizer(s), who is not in the employment of the company, to oversee the voting entire process.

Companies are required to disclose the voting results[56] along with a copy of the Scrutinizer's Report. This should be submitted to the stock exchanges within 48 hours from the conclusion of the meeting as well as made available on the company's website.

BEST PRACTICE RECOMMENDATION

eVoting is generally applicable to all listed companies and those unlisted companies that have every company having 1000 shareholders or more. However, in India, certain public-sector banks which have been established under their respective independent Acts, have not been providing eVoting facilities to shareholders. A uniform mechanism should be put in place to tackle such issues.

GLOBAL PRACTICE

In some jurisdictions such as Australia, Brazil, Columbia, Denmark, Korea, Luxembourg, Malaysia, Singapore, and the United Kingdom, the voting results must be published within 24 hours of the shareholder meeting. In other jurisdictions like Canada, Germany, Hong Kong, India, Japan, and the United States, the timeframe ranges between 2 to 5 days from the conclusion of the meeting.

Source: OECD Corporate Governance Factbook 2019

[55] Section 108 of the Act
[56] Format of disclosure of voting results as per SEBI LODR is provided under Annexure C.

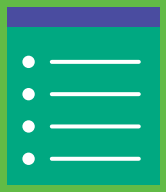
EXHIBIT 8: EVOTING PROCESS

1
LOGIN

Shareholders can login to the e-voting systems using their User-ID (i.e., demat account number/Folio number), PAN and password.

2
SELECT EVSN

During the e-voting period, shareholders can select the relevant EVEN/EVSN for voting.



3
ANALYSE RESOLUTIONS

Shareholders can view and analyse the detailed resolution proposed by the company.

4
CAST VOTE

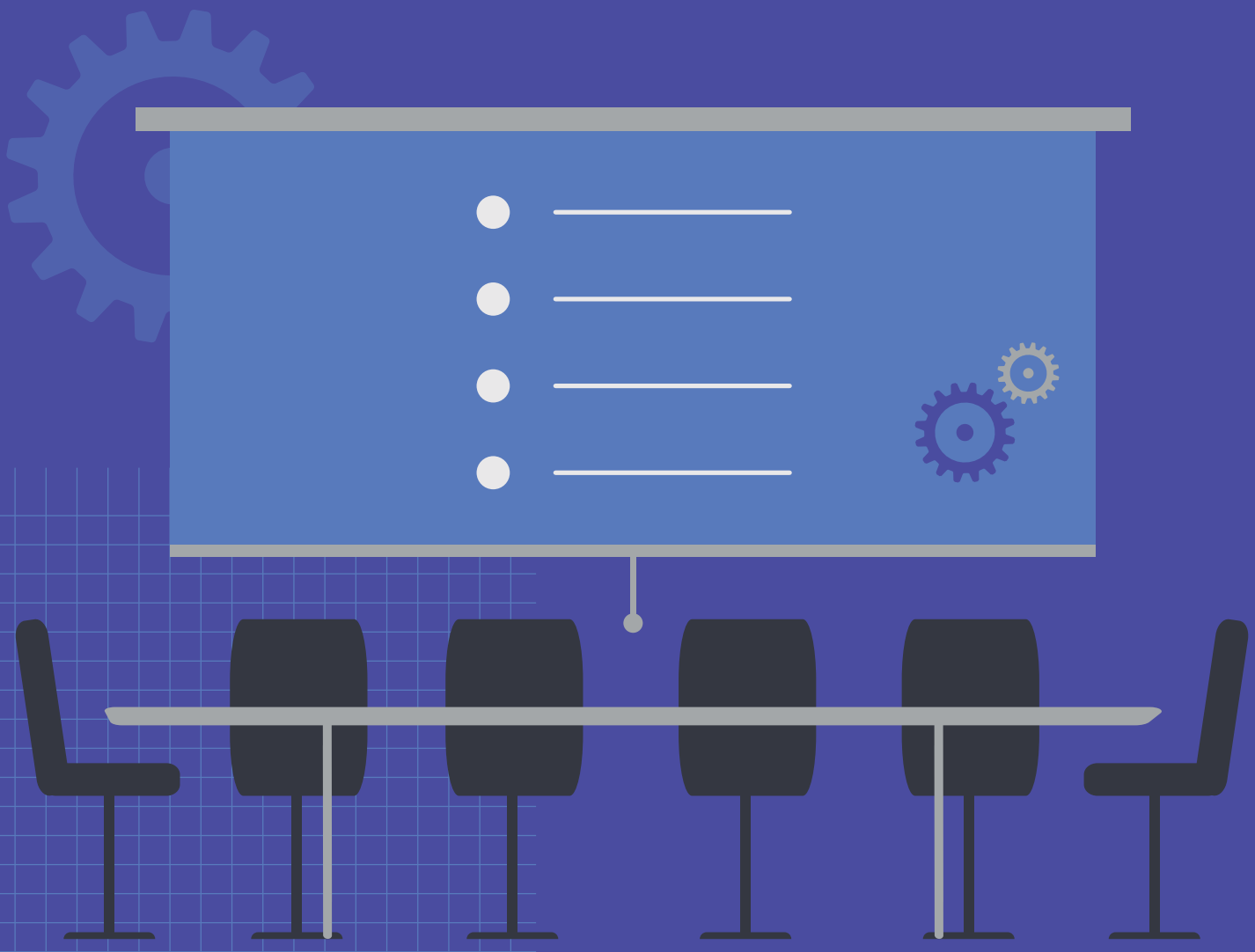
Shareholder may decide to vote FOR or AGAINST the resolution or abstain from voting.

5
CONFIRM AND SUBMIT

On casting his/her vote, shareholder is directed to a confirmation screen, where he/she is asked to confirm the vote; votes cast are then locked.

09

ADJOURNMENT AT MEETINGS



09

ADJOURNMENT AT MEETINGS

A shareholder meeting may be adjourned to a later date if any of the business items in the agenda cannot be discussed for want of quorum[57] or other exigencies. If the requisite quorum is not present within half an hour from the time appointed for the meeting, the meeting shall automatically be adjourned[58] to the same day in the following week, at the same time and place, or to such other date, time and place as the board of directors may determine.

A shareholder meeting may also be adjourned due to various exigencies like power outage, natural calamities, or other external disruptions beyond the control of the company.

The power of adjournment vests in the majority of those present at the meeting. The Chairperson cannot arbitrarily adjourn the meeting. However, the Chairperson may adjourn a meeting at which a quorum is present in the following circumstances:

a. with the consent of the members, when circumstances warrant, or
b. if, in the Chairperson's opinion, it is necessary to facilitate orderly conduct at the meeting (the adjournment should only be for such period necessary to restore order), or
c. where so directed by a majority of the members.

If a meeting is adjourned, the company shall inform its shareholders at least three days in advance 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 located. If a general meeting is adjourned sine-die or for a period of thirty days or more, a fresh notice of the adjourned meeting shall be given.

In the adjourned meeting, if the quorum is not present within half an hour from the time appointed for the meeting, the shareholders present will constitute the quorum and no further adjournment is required. All the matters discussed at such a meeting are valid.

Since an adjourned meeting is a continuation of the original meeting, all procedural requirements relating to calling a shareholder meeting must be complied with at the adjourned meeting for it to be valid, including the following:

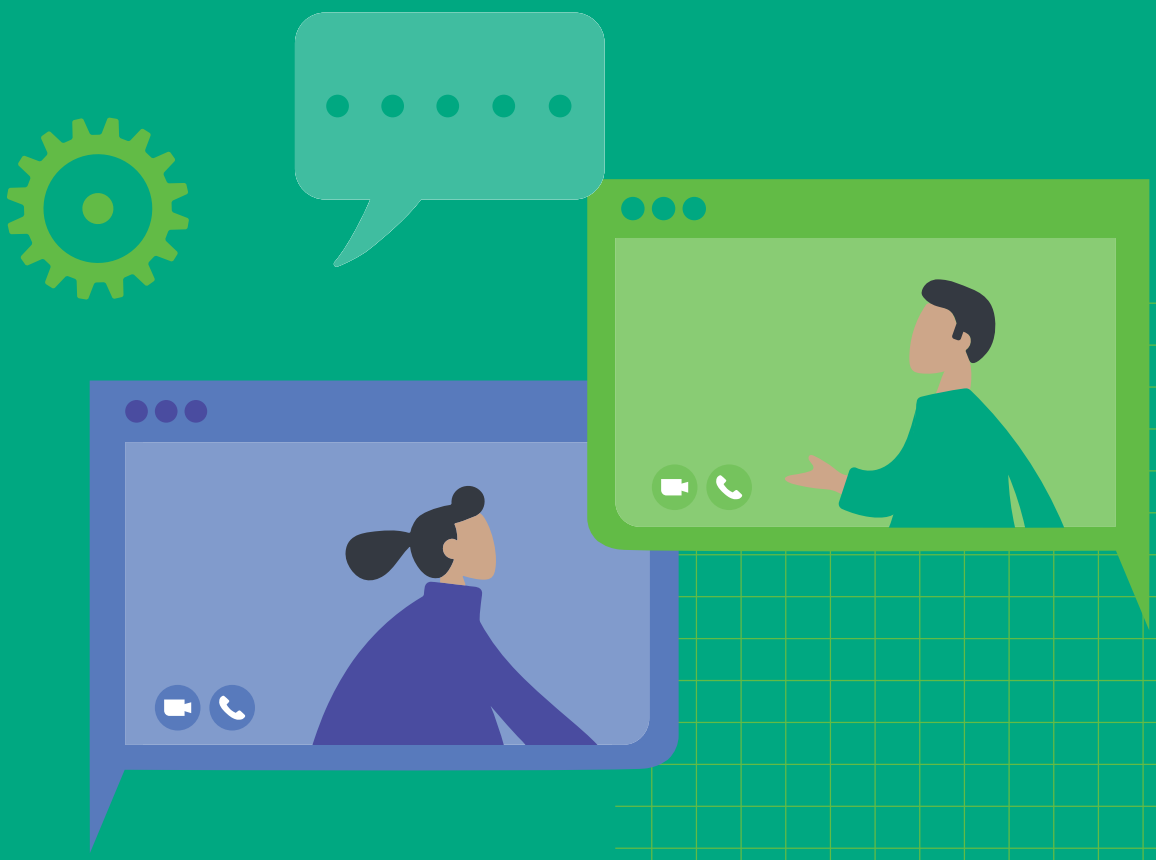
- All shareholders are entitled to attend the adjourned meeting (even if they were not present at the original meeting)
- The same quorum will be required for the adjourned meeting as for the original meeting. If no quorum is present at the adjourned meeting, the shareholders present will constitute the quorum and no further adjournment is required

[57] As per Section 103 of the Act
[58] Quorum should be present throughout the meeting. If quorum is not present in an adjourned meeting requisitioned by shareholders, the meeting shall stand cancelled.

- Unless duly amended and/or revoked and subject to any contrary provision in the proxy/authorization letter, proxies and authorisations received with respect to the original meeting continue to remain valid
- No business shall be transacted at an adjourned meeting other than business that might properly have been transacted at the original meeting had the adjournment not taken place. In short, the meeting shall only consider business left incomplete at the original meeting. If new business outside the scope of the original meeting is to be considered, fresh notice would be required
- Any resolution passed at the adjourned meeting is deemed to have been passed at the date of the adjourned meeting

10

VIRTUAL MEETINGS



10

VIRTUAL MEETINGS

Physical meetings are the most widely accepted mode of holding general meetings across countries. Hybrid meetings, i.e., allowing shareholders to choose between attending the meeting in person at a physical venue and attending the meeting online, is gaining prevalence in many countries. A virtual-only meeting is where shareholders are given the opportunity to attend the meeting using an online platform which allows shareholders to vote, ask questions and participate entirely electronically in real time, rather than attend the meeting at a physical venue.

Exhibit 9 shows the format of shareholder meetings of select countries in the pre-covid era. Virtual meetings were allowed only in three of them, Hong Kong, United Kingdom, and USA, and adoption was sparse. The 2020 AGM season largely coincided with the Covid-19–induced disruptions, limiting the ability of companies – generally obliged to hold their meeting within six months of their financial year-end – to hold the meetings in person. With travel bans and restrictions on indoor gatherings to curb the spread of the coronavirus, regulators around the world dispensed with the requirements of physical meetings and allowed companies to hold entirely virtual general meetings, by way of temporary relaxations. However, given limited experience, there was a steep learning curve for both companies and investors adapting to virtual meetings.

EXHIBIT 9: FORMAT OF SHAREHOLDER MEETINGS OF SELECT COUNTRIES PRIOR TO THE PANDEMIC

COUNTRY	PHYSICAL	HYBRID	VIRTUAL
Austria	✔		
China	✔	✔	
Hong Kong[59]	✔	✔	✔
India	✔		
Italy	✔	✔	
United Kingdom	✔	✔	✔
United States of America[60]	✔	✔	✔

From an Indian context, electronic voting and live one-way webcast of AGMs had become commonplace in recent times, at least for large companies. Owing to the pandemic, the MCA approved a temporary relaxation[61] to companies to hold virtual general meetings. Not only India, but companies all around the world have welcomed this reform, at least for the present. Virtual meetings face legislative and attitudinal hurdles. Its acceptance has been a challenge not only in India, but also in many developing economies around the world.

A virtual format has the potential to democratize access to shareholder meetings, which are often poorly attended, to a wider pool of investors. And it is accelerating the adoption of new technology as even companies that resisted embracing the digital era were left with no choice. Reformers see the coronavirus as a catalyst for a wider debate over the future of AGMs at a time when companies face heightened scrutiny over their resilience in the face of the pandemic, and their response to environmental, social, and governance issues.

[59] Subject to provisions in a company's bylaws and Articles of Association

[60] Allowed in most states

[61] Refer to MCA circular dated 8 April 2020 summarised in Exhibit 10 which was subsequently extended up to 30 June 2021 for EGMs/ Postal Ballot and 31 December 2021 for AGMs

In many countries, officials were keen to point out that the move to online AGMs was a short-term measure to help companies and their shareholders through the pandemic. There is a potential downside of a more constricted, narrower and less constructive debate, if companies use these tools to muzzle dissent. The practices introduced in 2020 could become the norm as companies push ahead with virtual and hybrid meetings with both a physical and online option. But doubts exist over how effectively management can be challenged with such arrangements and whether the tone of difficult questions might be sanitised for public consumption by a company. Even if questions can be asked live, it is unclear how shareholders can ensure that difficult issues are not disregarded.

In some countries, as an outcome of the 2020 pandemic, companies have sought or are seeking other alternatives – with the approval of investors – to conduct hybrid general meetings whereby shareholders may participate electronically in the AGM in conjunction with a physical meeting. Some have already held the meetings and have adopted amendments that will make virtual meetings a permanent option.

Traditional AGMs are becoming increasingly outmoded and inefficient. Trends illustrate that attendance rates have been declining steadily and participation preferences are readily changing. When it comes to hybrid and virtual meetings, the law has lagged technological developments. Companies looking to incorporate technology into their AGMs also need to make sure that their regulations permit the use of electronic communication devices and that their online platforms are up to the task. The format of AGMs needs to be revised for the 21st century, embracing the technological trends. Boards/regulators have been slow to adapt, and the need to do so is clear.

EXHIBIT 10: MCA REQUIREMENTS FOR HOLDING VIRTUAL GENERAL MEETINGS

- General meetings may be held through video conferencing ("VC") or other audiovisual means ("OAVM") and a recorded transcript of the meeting shall be maintained by the company. In the case of a public company, the transcript shall also be posted on the website of the company.
- Convenience of persons in different time zones must be kept in mind while scheduling a meeting.
- Companies must ensure that meetings through VC or OAVM allow for two-way conferencing and that participants are allowed to pose questions or given time to submit questions in advance on the e-mail address of the company.
- The online participation facility must have a capacity to allow at least 1000 members on a first-come–first-served basis with the exception of large shareholders (holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, chairpersons of audit committee, nomination and remuneration committee and stakeholders relationship committee, auditors, etc., who shall be allowed to attend the meeting.
- The facility for joining the meeting shall be kept open for at least 15 minutes before the scheduled time of meeting and shall not be closed for 15 minutes till after the expiry of the scheduled time.
- The facility of remote eVoting shall be provided before the date of meeting in accordance with regulatory provisions.
- Attendance of members through VC or OAVM will be counted towards quorum.
- The facility of appointment of proxies of members will not be available for virtual meetings. However, representatives of members may be appointed by institutional shareholders.
- At least one independent director and auditor (or his representative) shall be present for the meeting.

- Only members who are present through VC or OAVM and have not cast their vote on resolutions through remote eVoting and are otherwise not barred, shall be allowed to vote through eVoting system in the meeting.
- Chairperson: If the company does not have a designated chairperson, where there are less than 50 members present, the chairperson shall be appointed with a show of hands. In other cases, the chairperson shall be appointed by a poll conducted through eVoting system.
- Manner of voting: Where there are less than 50 members, voting shall be conducted through eVoting system (if a demand for poll is made) or by a show of hands. In all other cases, voting shall be through eVoting system.
- Notice: Notices to members may be given only through e-mails registered with the company or with the depository participant/depository. The company must also provide a process for registration of e-mail addresses of members and state so in a public notice. The notice shall contain clear instructions as pointed out in the MCA Circular and contain helpline numbers for assistance with technology. A copy of the notice shall be displayed prominently on the website of the company. Due notice should be made to the stock exchanges.

We asked our members their experiences of attending online meetings. Here are some of the takeaways.

1. Remember to register yourself as a speaker. If you don't register in a timely manner, you will not get an option to ask questions anytime later. In a physical AGM, all you must do is show up.
2. Some companies also ask that questions be submitted beforehand. This allows them to prepare, but potentially creates a situation where management can screen out tough questions.
3. Companies may have more control over the engagement in Virtual AGMs, but unless they have the right intent, it doesn't result in a higher quality of engagement. There are always those who sing poems, ask frivolous queries, or want free gifts, who get priority over others who want to ask more pertinent questions.
4. In a physical AGM, shareholders can judge body language of management in response to sensitive queries. In virtual AGMs, management often shut off their cameras.
5. Some companies had a limit of 1000 shareholders. This can be a limitation where the demand for attendance is higher, and you may need to log in early.
6. There is no way to force management to answer questions. In a physical setting it is a lot easier (in a polite yet firm way) to get companies to answer your questions.
7. There is no way to collaborate with other shareholders on an issue. In physical AGMs, we have banded together to ensure management listens to our concerns. In virtual AGMs, you are almost always alone.

The above points show some of the limitations of virtual AGMs, but also offer an opportunity for good companies to differentiate themselves from the rest, in terms of effective and broad-based engagement.

11

GLOBAL TRENDS

11

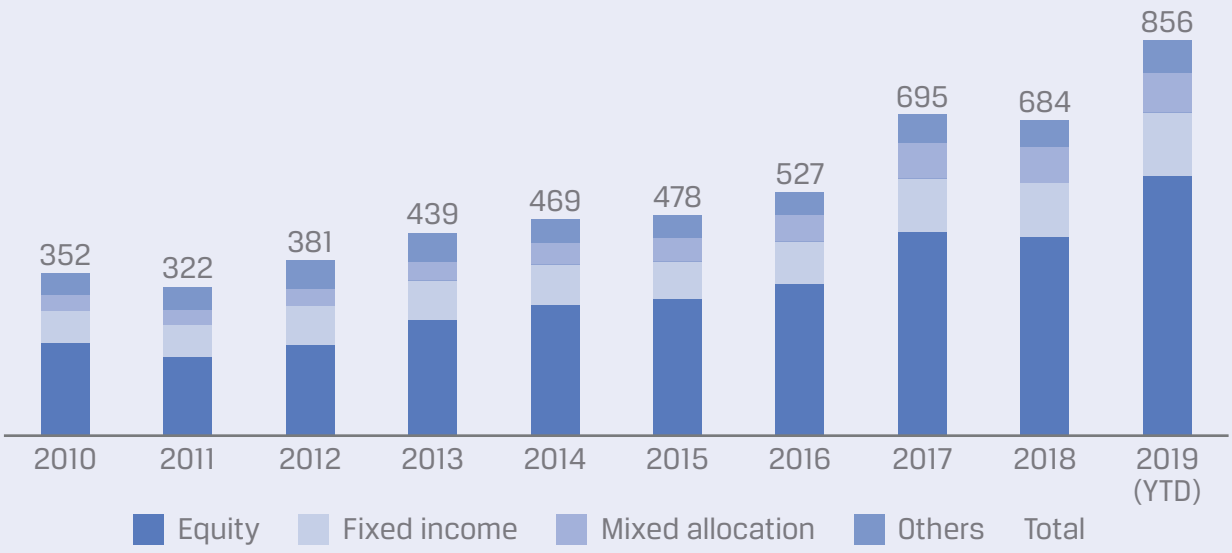
GLOBAL TRENDS

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)

ESG Investing is a holistic approach to investing that incorporates material environmental, social and governance factors into the investment analysis and decision-making process for an organization.

Globally, the assets under management (AUM) under ESG-dedicated investment funds (across equity, debt and other asset classes) has increased to USD 856 trillion as of September 2019 from USD 527 trillion at the end of 2016.

EXHIBIT 11: ASSETS OF ESG LISTED FUNDS[62] (USD BN)



Source: IMF

Corporate disclosure on ESG issues has steadily improved since the launch of the Global Reporting Initiative[63] (GRI) in 2000. Today, 80% of the world's largest corporations use GRI standards. More recently, the International Integrated Reporting Initiative[64] (IIRC) and the US-based Sustainability Accounting Standard Board[65] (SASB) have helped to advance industry sector-specific reporting and its relevance for investors.

[62] Source: https://www.imf.org/~/media/Files/Publications/GFSR/2019/October/English/text.ashx?la=en

[63] GRI is an independent international organization whose framework is widely used by businesses and stakeholders to understand and communicate their impact on sustainability issues such as climate change, human rights, governance, and social well-being. The standards seek information on general management parameters, and specific standards enable reporting as per relevance to business operations.

[64] The International Integrated Reporting Council (IIRC), established in the UK in 2010, has developed the framework which is a principle-based guidance for preparing an Integrated Report (IR). An integrated report is a concise communication about how an organization's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long term.

SHAREHOLDER RESOLUTIONS ON ESG

Resolutions relating to ESG policies and practices are gaining relevance globally. Such resolutions can be proposed either by boards or shareholders. The ability to file non-binding shareholder proposals on ESG issues is an important legal mechanism for investors around the world, with rules varying by jurisdiction, e.g., in the United States, any shareholder or group of shareholders owning $2,000 or more of a company's stock for a minimum of a year can introduce a proposal.

A few of the shareholder resolutions proposed globally on ESG topics include climate change, lobbying, diversity and gender pay-gap, cybersecurity and data protection, and better reporting on ESG.

CASE STUDY: SHAREHOLDERS PUSH FOR CLIMATE-COMPETENT GOVERNANCE AT J.P. MORGAN CHASE

J.P. Morgan Chase & Co. experienced a significant revolt from investors against its climate change position. One of the six shareholder resolutions in its Annual General meeting held on 19 May 2020 asked the bank to issue a report explaining if and how it intends to align its lending practices to goals of the Paris Climate Accord, citing concerns about the bank's record of financing fossil fuel companies and the lack of targets to reduce its lending-related GHG emissions. In the end, 48.6% of the shareholders voted to require the bank to produce a plan to align its business with the goals of the Paris Agreement.

The bank opposed the resolution, telling shareholders in its proxy statement that it is 'prioritizing its commitment to finance sustainable development and supporting companies that are working to strategically transition to a lower carbon economy and that are managing environmental and social risks responsibly.' The bank further said it offers "transparent disclosure" of its strategy and performance on ESG issues, sharing the information on its website and directly with shareholders.

In the face of this backlash and pressure from climate activists, just months later J.P. Morgan Chase & Co. affirmed its commitment towards climate-competent governance and the company in an announcement to align its financing with the goals of the Paris Climate Agreement. As part of its commitment, J.P. Morgan Chase & Co. will establish emissions targets for 2030 for its financing portfolio and begin communicating about its efforts in 2021. It plans to focus on the oil and gas, electric power and automotive manufacturing sectors and set goals on a sector-by-sector basis. The bank plans to share more details in its next climate report, which will be informed by the recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD") and will be published in 2021. The bank has also confirmed it will provide ongoing updates on its progress over time.

ESG DISCLOSURES AND ENGAGEMENT IN INDIA

India has seen a lot of regulatory activity in the area of ESG disclosures and practices. The National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs) were released by the Government in 2011. The NVGs contain nine principles to be adopted by companies as part of their business practices. It provided guidance to businesses on what constitutes responsible business conduct. In order to align the NVGs with the emerging global concerns, the Sustainable Development Goals (SDGs), and the United Nations Guiding Principles on Business & Human Rights (UNGPs), the process of revision of NVGs began in 2018. These were revised and released as the National Guidelines on Responsible Business Conduct (NGRBC) in 2019.

[65] SASB identifies financially material issues, which are the issues that are reasonably likely to impact the financial condition or operating performance of a company and therefore are most important to investors. They are designed for voluntary use in disclosures required by existing US regulations in filings with the Securities and Exchange Commission (SEC).

In 2012, SEBI mandated the top 100 listed companies by market capitalization to file Business Responsibility Reports (BRR) through the erstwhile listing agreement. These disclosures were intended to enable businesses to engage more meaningfully with their stakeholders and encourage them to go beyond regulatory financial compliance and report on their social and environmental impacts. The requirement for filing BRRs was extended to the top 500 listed companies by market capitalization from the financial year 2015-16, and to the top 1000 listed companies from the financial year 2019-20.

With the endeavour to push for better ESG-related disclosures in India, the MCA along with SEBI constituted a Committee on Business Responsibility Reporting, which submitted its report containing a draft of the Business Responsibility and Sustainability Report (BRSR)[66] in August 2020. As part of BRSR, companies are required to report on the number of meetings on responsible business conduct with shareholders in a financial year.

Despite progress on the reporting front, investor engagement on ESG issues is still at a nascent stage, and most decisions on sustainability are made by company boards without consulting institutional or minority shareholders. However, given the global trends in shareholder resolutions in the area of ESG and the growing importance of ESG for both foreign and domestic institutional investors, increased investor engagement can be expected in the years to come.

STEWARDSHIP

Stewardship is the engagement by institutional investors with publicly listed companies to generate long-term value for shareholders.

Stewardship code is a framework that helps institutional investors to fulfil their responsibilities by protecting interest and enhancing value of their clients. Stewardship code is aimed at getting institutional investors to fulfill their fiduciary responsibilities, e.g., by promoting medium- to long-term growth of companies through engagements. The code mandates that institutional investors have a clear and public policy for stewardship, and regularly report to beneficiaries as to how that policy is being adhered to.

KEY COMPONENTS OF STEWARDSHIP

Typically, stewardship codes take the form of best practice principles accompanied by descriptions of how to comply with each principle. Some principles are present in nearly all stewardship codes. These include

- Establishing and disclosing a stewardship policy,
- Having a policy to manage conflicts of interests
- Monitoring and engaging with investee companies
- Disclosing voting policies and voting actions taken and their rationale
- Reporting to clients and beneficiaries on stewardship responsibilities

Annexure H provides a comparison of various stewardship codes put forth by Indian regulators and how it compares with the UK Stewardship Code of 2012.[67]

[66] The format for the Business Responsibility and Sustainability Report can be accessed here.

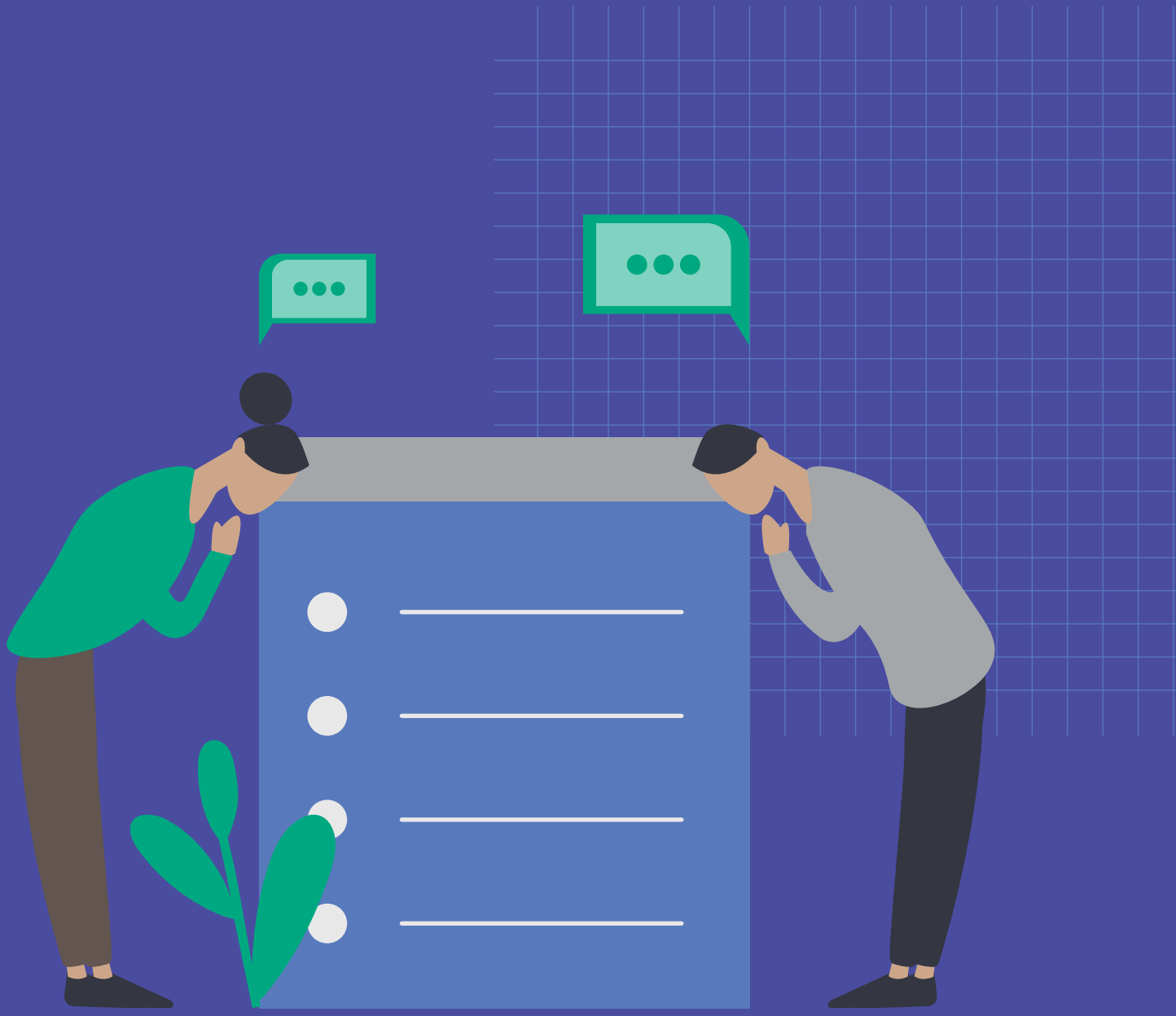
INSTITUTIONAL INVESTOR ENGAGEMENT IN SHAREHOLDER MEETINGS

Presently, institutional investor presence in shareholder meetings is minimal. There are many reasons for this. Institutional investors vote on resolutions prior to the meeting and don't feel the need to attend AGMs. Institutional investors engage with companies selectively on sensitive issues, through investor calls and direct engagement.

The increasing emphasis on Stewardship provides an opportunity for institutional investors to fulfil their fiduciary responsibility in a readily-accessible setting like the AGMs. Institutional investor presence can add gravitas to the proceedings, and companies might be wary of ignoring questions from large investors. The possibility of more virtual AGMs in the future reduces the cost of participation and allows governance teams to participate in more of them. At the same time, increasing scrutiny over investor calls and associated disclosure obligations marginally reduces the appeal for private engagements, even if it remains the preferred choice.

[67] UK Stewardship Code was updated in 2020, and expands the scope to include asset classes beyond listed equities, includes asset owners and service providers in its ambit, and expects the firms that follow the code to describe outcomes of their stewardship activities.

RULES OF ETIQUETTE



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RULES OF ETIQUETTE

EXERCISE VOTING RIGHTS

Attending general meetings is the right but not an obligation of every shareholder. Voting on resolutions provides shareholders the ability to concur with or counter proposals put forth by the board and/or company's management. If for some reason shareholders are unable to attend the meeting, they should appoint a proxy who can vote on their behalf. The procedure to appoint a proxy has already been discussed in the 'Shareholder Rights' section of this guide. In addition, members can also use remote eVoting facilities provided by companies to vote on shareholder resolutions.

WHAT COMPANIES CAN DO?

Companies must encourage shareholders to vote. Detailed instructions on the voting process, both remote eVoting and during the meeting, must be provided to shareholders. This should form a part of the meeting notice. Companies may also provide shareholders a dedicated helpline (email, chat, telephone) to assist shareholders with voting-related queries/issues.

ENCOURAGE PREPARATION

Shareholders are entitled to receive the notice (including explanation of the agenda items) before every general meeting. Shareholders should familiarize themselves with the notice, read the annual report in advance in order to educate themselves and initiate a meaningful discussion/debate. This will ensure that only relevant questions are asked of management during the meeting. This becomes an important factor in the case of virtual meetings, given the paucity of time. At times, one shareholder may act as a voice for other shareholders having the same question who are unable to attend the meeting.

WHAT COMPANIES CAN DO?

Companies must ensure that all relevant documents are sent to shareholders well in advance of the general meeting. Documents should preferably be in searchable format and easily readable. Where circumstances permit, companies should send physical copies of relevant documents if requested. The meeting notice and other relevant documents should also be published in a conspicuous place on the company's website.

AVOID OBSTRUCTIVE BEHAVIOR

Shareholders should ensure that the meeting is not obstructed in any manner, as that would defeat the purpose of the meeting. Shareholders should not interrupt other shareholders when they are speaking or asking questions. They should also be considerate while discussing any question or matter amongst themselves during the discussion. Personal questions or comments should be avoided.

All relevant questions in the meetings should be directed to the Chairperson. When the Chairperson calls for comments from the audience, shareholders should show common courtesy by first seeking the Chairperson's permission to speak.

WHAT COMPANIES CAN DO?

Companies should clearly disclose the manner in which appropriate questions received prior to or during the meeting will be addressed by the Board. Speakers could be asked to register themselves in advance. This will help the management estimate the length of the meeting and at the same time allow for meaningful engagement with the board. Companies must also refrain from utilising emerging technologies to avoid uncomfortable conversations.

ALLOW PARTICIPATION BY ALL SHAREHOLDERS

Shareholders should keep their comments brief and restrict their queries to only the critical items so that a more broad-based discussion, with wider participation from all shareholders, can take place. If required, shareholders can send some of their questions in advance to the management as described in the 'Shareholder Rights' section of this guide.

WHAT COMPANIES CAN DO?

Companies should clearly specify the procedure and requirements to participate in the meeting and/or access the meeting platform, including providing shareholders with technical support. Companies must display rectitude in answering all the questions raised by shareholders. As far as feasible, the board/management must answer all the questions posed during the meeting itself or in a format that is accessible by all shareholders, such as on the company's website.

ENSURE INTEGRITY

Shareholders should ensure they do not accept any gifts, gift coupons, or cash in lieu of gifts from company representatives at the meeting. Distribution of such gifts is not permitted by law.[68]
If shareholders come across such practices, they should bring it to the notice of the Registrar, MCA or any other concerned authority.

WHAT COMPANIES CAN DO?

Companies should refrain from indulging in unethical practices. Rewards to shareholders should be in the form of better dividends, good governance and ultimately creating maximum shareholder value.

[68] Secretarial Standard on General Meetings, 2017. https://www.icsi.edu/media/webmodules/Final_SS-2.pdf.

ANNEXURES

ANNEXURES

A. REGULATORY THRESHOLDS FOR COMMON SHAREHOLDER RESOLUTIONS

S.No	TYPE OF RESOLUTION	RESOLUTION CATEGORY	TYPE OF MEETING	SECTION OF COMPANIES ACT 2013
1	ORDINARY	Adopt financial statements including the Boards' Report and Auditors' Report	AGM	129
2	ORDINARY	Approve payment of dividend	AGM	123
3	ORDINARY	Appoint or re-appoint auditors of the company and fix their remuneration	AGM	139/142
4	SPECIAL / ORDINARY	Remove an auditor / Fill casual vacancy in the office of an auditor caused by resignation	EGM	140
5	ORDINARY	Ratify remuneration paid to Cost Auditors	AGM	148
6	ORDINARY	Appoint/re-appoint director (including independent director)	AGM/EGM/PB	152/160/149
7	SPECIAL	Re-appoint an independent director	AGM/EGM/PB	149
8	SPECIAL	Change in board size beyond 15 directors	AGM/EGM/PB	149(1)
9	ORDINARY	Elect a Small Shareholder Director	AGM/EGM/PB	151
10	ORDINARY	Remove a director	EGM/PB	169
11	ORDINARY[69]	(Re)Appointment and payment of remuneration to Executive directors	AGM/EGM/PB	196, 197

[69] Special resolution is required if managerial remuneration exceeds prescribed thresholds

S.No	TYPE OF RESOLUTION	RESOLUTION CATEGORY	TYPE OF MEETING	SECTION OF COMPANIES ACT 2013
12	ORDINARY[70]	Approve payment of remuneration/commission to Non-executive directors	AGM	197
13	SPECIAL	Waiver of recovery of managerial remuneration	AGM/EGM/PB	197(10)
14	MAJORITY OF MINORITY	Approve related party transactions	AGM/EGM/PB	188
15	ORDINARY	Alteration to share capital of a company	AGM/EGM/PB	61
16	SPECIAL	Alteration to Memorandum of Association	AGM/EGM/PB	12/13/16
17	SPECIAL	Alteration to Articles of Association	AGM/EGM	14
18	SPECIAL	Approve further issue of equity shares	AGM/EGM/PB	62
19	ORDINARY	Issue bonus shares	AGM/EGM/PB	63
20	SPECIAL	Approve issue of debentures	AGM	71/72
21	SPECIAL	Delisting of Equity shares	EGM/PB	SEBI Delisting Regulations
	SPECIAL	Approve issue of ESOPs/ESPSs/SARs (including modification to existing schemes)	AGM/EGM/PB	SEBI ESOP Guidelines
22	SPECIAL	Approve sale or disposal of undertaking/material subsidiary of the company (Slump Sale)/Mortgage of company's assets	AGM/EGM/PB	180
23	SPECIAL	Approve increase in borrowing limits of a company	AGM/EGM/PB	180
24	SPECIAL	Approve the Schemes of Arrangement between companies (through NCLT)	NCM	230-234
25	SPECIAL	Approve inter-corporate transactions (exceeding limits)	AGM/EGM/PB	186
26	SPECIAL	Approve buyback of shares	EGM/PB	68
27	ORDINARY[71]	Approve re-classification of promoters	AGM/EGM/PB	SEBI Reg

[70] Special resolution is required if managerial remuneration exceeds prescribed thresholds
[71] Promoter(s) seeking re-classification and his/her related persons shall not vote to approve such re-classification.

B. SAMPLE NOTICE

Dear Shareholder,

Sub: Notice of 27th Annual General Meeting of *** Limited and Annual Report for the financial year ended March 31, 20**

Ref.: Folio / DP Id & Client Id No: IN*****

The 27th Annual General Meeting of *** Limited is scheduled to be held on Thursday, ***, 20**, at 3.30 p.m. at ******, to transact the businesses as detailed in the Notice of the Annual General Meeting.

We are pleased to enclose the Annual Report of *** comprising Directors' Report, Auditors' Report and Audited Financial Statements for the year ended December 31, 20**.

ORDINARY BUSINESS

1. Adoption of Accounts

To receive, consider and adopt the audited Profit & Loss Account of the Company for the year ended December 31, 20** and the Balance Sheet as at that date, together with the Report of the Board of Directors and the Auditors thereon.

2. Declaration of Dividend

To confirm the payment of interim dividends on the equity shares for the year ended December 31, 20** and declare the final dividend and special dividend for the year 20** on equity shares.

3. Appointment of Auditors

To consider and if thought fit, to pass, with or without modifications, the following resolution, as an Ordinary Resolution:

"RESOLVED THAT M/S ***, Chartered Accountants, be and are hereby appointed as Statutory Auditors of the Company to hold office for a period of 5 consecutive years from the conclusion of this Annual General Meeting on such remuneration as may be decided by the Board of Directors and approved by the members of the company."

SPECIAL BUSINESS

3. Appointment of Director

To consider, and if thought fit, to pass the following resolution, with or without modification, as an Ordinary Resolution:

"RESOLVED THAT Mr. ***, who was appointed as an Additional Director of the Company with effect from *** by the Board of Directors of the Company pursuant to Section 161 of the Companies Act, 2013 and the Articles of Association of the Company and in respect of whom, the Company has received a notice under Section 160 of the Companies Act 2013, be and is hereby appointed as a Director of the Company, liable to retire by rotation."

By order of the Board

For *** Limited
Company Secretary

Place: ******
Date: ******

C. SAMPLE EXPLANATORY STATEMENT

Item No. 4
Mr. *** who has been appointed as an Additional Director of the Company under Section 161 of the Companies Act, 2013 effective *** holds office up to the date of this Annual General Meeting and is eligible for appointment as Director as provided under Article 129 of the Articles of Association of the Company. The Company has received notice under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr. *** for the office of Director.

Mr. *** does not hold any shares in the Company. The Board of Directors considers it in the interest of the Company to appoint Mr. *** as a Director. None of the Directors and Key Managerial Personnel of the Company or their relatives, except Mr. ***, is in any way interested or concerned in this resolution.

D. SAMPLE VOTING OUTCOME

Date of the AGM/EGM:
Total number of shareholders on record date:
No. of shareholders present in the meeting either in person or through proxy:
Promoters and Promoter Group:
Public:
No. of Shareholders attending the meeting through Video Conferencing:
Promoters and Promoter Group:
Public:
(Agenda-wise)
Details of the Agenda:
Resolution required: (Ordinary/Special)
Whether promoter/promoter group are interested in the agenda/resolution:

Promoter/ Public	Mode of voting	No. of shares held (1)	No. of votes polled (2)	% of votes polled on outstanding shares (3) = (2)/ (1) *100	No. of votes – Favor (4)	No. of votes – Against (5)	% of votes in favor on votes polled (6) = [(4)/ (2)] *100	% of votes against on votes polled (7) = [(5)/ (2)] *100
Promoter & Promoter group	eVoting Poll Postal Ballot Total							
Public – Institutional holders	eVoting Poll Postal Ballot Total							
Public – Others	eVoting Poll Postal Ballot Total							
Total								

E. SAMPLE POSTAL BALLOT FORM

Polling Paper
[Pursuant to section 109(5) of the Companies Act, 2013 and rule 21(1)(c) of the Companies (Management and Administration) Rules, 2014]

Name of the company:
Registered office:

BALLOT PAPER

S.no	Particulars	Details
1.	Name of the first named shareholder	
2.	Postal address	
3.	Registered folio No./*client ID no. (*Applicable to investors holding shares in dematerialized form)	
4.	Class of share	

I hereby exercise my vote in respect of Ordinary/Special resolution enumerated below by recording my assent or dissent to the said resolution in the following manner:

S.no	Item no.	No. of shares held by me	I assent to the resolution	I dissent from the resolution

Place:
Date: (Signature of the shareholder)

F. SAMPLE PROXY FORM

Proxy form
[Pursuant to section 105(6) of the Companies Act, 2013 and rule 19(3) of the Companies (Management and Administration) Rules, 2014]

CIN:
Name of the company:
Registered office:

Name of the member(s):

Registered address:

E-mail Id:

Folio No/Client Id:

DP ID:

I/We, being the member (s) of ..... shares of the above-named company hereby appoint

1. Name: .....

Address:

E-mail Id:

Signature: ..... , or failing him

2. Name: .....

Address:

E-mail Id:

Signature: ..... , or failing him

3. Name: .....

Address:

E-mail Id:

Signature: ..... ,

as my/our proxy to attend and vote (on a poll) for me/us and on my/our behalf at the ..... Annual general meeting/Extraordinary general meeting of the company, to be held on the ..... day of ..... at ..... a.m. / p.m. at ..... (place) and at any adjournment thereof in respect of such resolutions as are indicated below:

Resolution No.

1.....

2.....

Signed this ..... day of 20....

Affix Revenue Stamp

Signature of shareholder

Signature of Proxy holder (s)

Note: This form of proxy in order to be effective should be duly completed and deposited at the Registered Office of the Company, not less than 48 hours before the commencement of the Meeting.

G. SAMPLE AUTHORISATION LETTER

Date:

To:
The Company Secretary
**** Limited
Regd. Office Address:

Sub: Authorisation for the *** Annual General Meeting being held on (day), (date) at (time) at the registered office of the company at (registered office address)/ being held through video conferencing/other audio-visual means

Dear Sir,

This is with reference to our holding of *** equity shares in the company.

Pursuant to Section 113 of the Companies Act, 2013, we hereby authorise Mr./Ms. *** to attend the ***th Annual General Meeting of the company to be held on (day), (date) and vote on our behalf therein. The authorisation provided to *** in this letter relates solely for the purpose of the AGM described herein.

For and on behalf of *** Limited (shareholder),

Sd/-
Name: ***
Authorised signatory

Place: ***
Date: ***

H: STEWARDSHIP PRINCIPLES: UK, IRDAI, PFRDA AND SEBI

The UK Stewardship Code of 2012	IRDAI Guidelines on Stewardship Code for Insurers	PFRDA Common Stewardship Code and SEBI Stewardship Code
PRINCIPLE 1	**PRINCIPLE 1**	**PRINCIPLE 1**
Institutional investors should publicly disclose their policy on how they will discharge stewardship responsibilities	Insurers should formulate a policy on the discharge of their stewardship responsibilities and publicly disclose it	Institutional investors should formulate a comprehensive policy on the discharge of their stewardship responsibilities, publicly disclose it, review and update it periodically
PRINCIPLE 2	**PRINCIPLE 2**	**PRINCIPLE 2**
Institutional investors should have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed	Insurers should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it	Institutional investors should have a clear policy on how they manage conflicts of interests in fulfilling their stewardship responsibilities and publicly disclose it
PRINCIPLE 3	**PRINCIPLE 3**	**PRINCIPLE 3**
Institutional investors should monitor their investee companies	Insurers should monitor their investee companies	Institutional investors should monitor their investee companies
PRINCIPLE 4	**PRINCIPLE 4**	**PRINCIPLE 4**
Institutional investors should establish clear guidelines on when and how they will escalate their stewardship activities	Insurers should have a clear policy on intervention in their investee companies	Institutional investors should have a clear policy on intervention in their investee companies. Institutional investors should also have a clear policy for clear collaboration with other institutional investors, where required, to preserve the interest of the ultimate investors, which should be disclosed
PRINCIPLE 5	**PRINCIPLE 5**	
Institutional investors should be willing to act collectively with other investors where appropriate	Insurers should have a clear policy for collaboration with other institutional investors, where required, to preserve the interests of the policyholders (ultimate investors), which should be disclosed	
PRINCIPLE 6	**PRINCIPLE 6**	**PRINCIPLE 5**
Institutional investors should have a clear policy on voting and disclosure of voting activity	Insurers should have a clear policy on voting and disclosure of voting activity	Institutional investors should have a clear policy on voting and disclosure of voting activity
PRINCIPLE 7	**PRINCIPLE 7**	**PRINCIPLE 6**
Institutional investors should report periodically on their stewardship and voting activities	Issuers should report periodically on their stewardship activities	Institutional investors should report periodically on their stewardship activities

GLOSSARY

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- **Act**

The Act means the Companies Act, 2013. It consolidates and amends the law relating to companies in India. The Companies Act, 2013 has been notified in the Official Gazette on 30 August 2013.

- **Articles of Association (AoA)**

Articles of Association of a company is a document that contains the purpose and bye-laws of the company as well as the duties and responsibilities of its members defined and recorded clearly.

- **Board of directors**

Board of directors (board) refers to a collective body of individuals, elected by the shareholders, who jointly oversee the activities of the company and take decisions on their behalf.

- **Executive/Whole-time directors**

Executive directors are directors appointed in the full-time employment of the company, who devote all their time and attention to the management of the company.

- **Independent directors**

Independent directors are non-executive directors who do not have any material relationship with the promoters, the company and/or its stakeholders[72]. Their primary role is to safeguard the interests of public shareholders by providing an independent judgment on critical issues.

- **Institute of Company Secretaries of India (ICSI)**

The Institute of Company Secretaries of India (ICSI) is constituted under the Company Secretaries Act, 1980. ICSI is the only recognized professional body in India to develop and regulate the profession of Company Secretaries in India. ICSI, along with Ministry of Corporate Affairs (MCA) and other regulatory bodies, frame various rules and regulations for managing the corporate sector.

- **Listing Agreement**

Any company intending to list its securities on the stock exchange for trading, shall enter into an agreement with the stock exchange. This agreement is called the listing agreement. While the requirements of the listing agreement are laid down by the SEBI, it is primarily administered by the stock exchanges. The standard format of the listing agreement can be accessed here. The listing agreement has now been replaced with the SEBI LODR.

- **Memorandum of Association (MoA)**

Memorandum of Association is a document which states the name, objects for which the company is formed, state of incorporation, liability of members and contains the rights, privileges and powers of the company.

- **Ministry of Corporate Affairs (MCA)**

The MCA regulates and administers corporate affairs in India through the Companies Act, 1956, 2013 and other allied Acts, Bills and Rules.

[72] Eligibility requirements for independent directors have been explained in detail above.

- **National Company Law Tribunal (NCLT)**

The Companies Act, 2013 introduced the concept of NCLT. All procedures relating to schemes of arrangement as well as any disputes related to the Companies Act shall now be handled by NCLT. It is meant to remove hurdles of multiple court jurisdictions and to speed up the proceedings of corporate disputes. In effect, it replaces other bodies like the Company Law Board (CLB) and Board of Industrial and Financial Reconstruction (BIFR).

- **Nominee director**

Such a director is normally appointed to represent the interest of any financial institution/government/ body corporate that has either invested in or extended loans to the company. They are considered to be at par with other directors except that in certain cases the Articles of Association of companies may provide that these directors cannot be removed from their office.

- **Non-Executive directors**

This refers to any member of the board who is not in the full-time employment of the company. Unlike executive directors, non-executive directors do not engage themselves in the day-to-day management of the company, but they are involved in policy making and formulating the overall strategy for the company. Non-executive directors are further classified into independent and non-independent directors.

- **Promoter**

Promoter refers to any person(s) who has been named as such by the company. It also includes people who have control over the affairs of the company and in whose accordance the board of the company is accustomed to act (except when a person is acting merely in a professional capacity).

- **Quorum**

Quorum is the presence of the minimum number of shareholders required to commence a meeting. As per the Companies Act 2013, a quorum of minimum 5 shareholders is required if the company has less than 1000 shareholders, and a quorum of minimum 15 shareholders is required if the company has more than 1000 shareholders but up to 5000 shareholders. If the company has more than 5000 shareholders, a minimum quorum of 30 shareholders is required. The Articles of Association of the company can provide for a higher quorum than that mentioned in the Act.

- **Registrar of Companies (ROC)**

Registrar of Companies has the duty of registering companies and ensuring that such companies comply with statutory requirements under the Companies Act, 2013.

- **Related Party**

A related party is a person/entity which is directly or indirectly related to the company and has the ability to control or exercise significant influence over the company. This includes:

i. Any director/key managerial personnel (along with their relatives)
ii. Any firm/private company, in which a director, manager or his relative is a partner/member
iii. Any public company in which a director or manager is a director or holds, along with his relatives, more than 2% of its paid-up share capital

iv. Any person/body corporate whose board, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager (except for advice, directions or instructions given in a professional capacity)
v. Same group companies (which means that each parent, subsidiary and fellow subsidiary is related to the others) associate and joint venture companies

- **PAN** – Permanent Account Number
- **Demat Account Number** – Details of the account held with the depository participant (where shares are held in dematerialised form)
- **Folio Number** – Number of share certificate (where shares are held in physical form)
- **EVEN** – E-voting Event Number, EVSN – E-voting Sequence Number (EVSN and EVEN are often used interchangeably)

- **Resolution**

Decisions of a company are taken through resolutions passed at the meetings. Every resolution describes a new business item, which is then discussed in the meeting and put to vote. Once the resolution is voted in favor by the requisite majority, it comes into effect immediately and the company is bound to act on it. A sample resolution is provided in Annexure B.

- **SEBI LODR**

SEBI LODR refers to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 issued by the Securities and Exchange Board of India (SEBI) to oversee the functioning of companies having their securities listed on stock exchanges. These were made effective from 1 December 2015 and have been modified occasionally.

Please note that this section is provided for ease of understanding and reference purposes only and may not exactly correspond with the legal definitions.

RESOURCES

RESOURCES

- The Companies Act, 2013, http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf
- Companies (Amendment) Act, 2015, http://mca.gov.in/Ministry/pdf/AmendmentAct_2015.pdf
- Companies (Amendment) Act, 2017, http://mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf
- Companies (Amendment) Act, 2019, http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, https://www.sebi.gov.in/legal/regulations/sep-2015/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-january-08-2021-_37269.html. Retrieved 22nd March 2021.
- SEBI Issue of Capital and Disclosure Requirements (ICDR) Regulations, 2009, http://www.sebi.gov.in/cms/sebi_data/commondocs/icdr27feb2013_p.pdf
- SEBI (Delisting) Regulations, 2009, http://www.sebi.gov.in/acts/delisting2009.pdf
- SEBI (Share Based Employee Benefits) Regulations, 2014, https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jun-2020/1591600094228.pdf
- ICSI Secretarial Standards, http://www.icsi.edu/SecretarialStandards.aspx
- Institutional Investor Advisory Services, www.iias.in
- OCED Corporate Governance Factbook, 2019, https://www.oecd.org/corporate/Corporate-Governance-Factbook.pdf
- Uday Kotak Committee Report (Recommendations) on Corporate Governance, https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html
- U.S. Securities and Exchange Commission, https://www.sec.gov/edgar/searchedgar/companysearch.html
- Reserve Bank of India, https://www.rbi.org.in/home.aspx

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