

12. MANAGEMENT & ADMINISTRATION - I

ANALYSIS OF PREVIOUS EXAMINATIONS FOR THEORY QUESTIONS

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SECTION 1: THEORY FOR CLASSROOM DISCUSSION

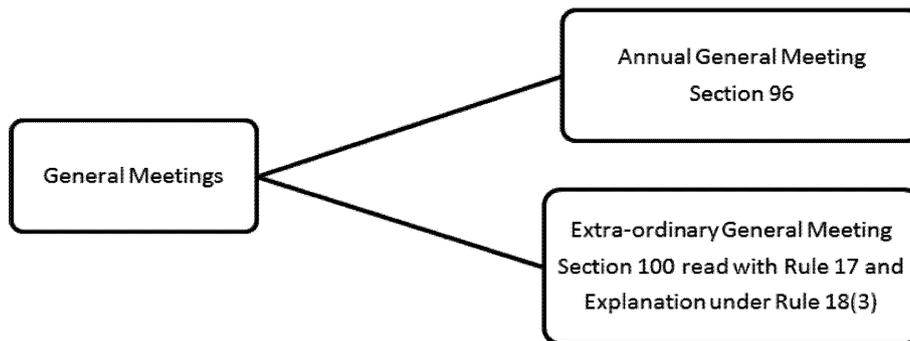
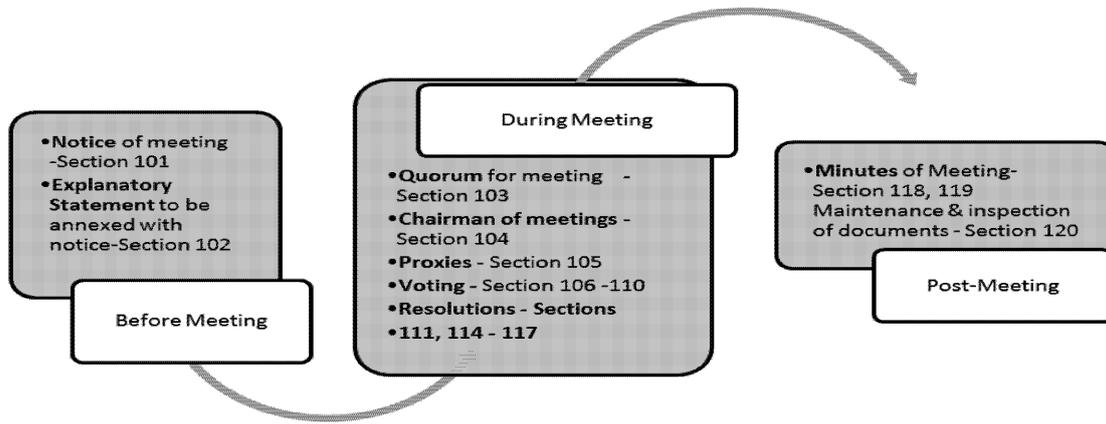
INTRODUCTION:

OBJECT: A General Meeting is an important meeting for safeguarding the interest of shareholders of a company. Since the ultimate control of the company should be in the hands of the shareholders, it is desirable, and necessary that they should meet to review the working of the company and the major decisions affecting the company. This meeting gives an opportunity to the shareholders.

CLASSIFICATION OF MEETINGS: Meeting held under the Companies Act, 2013 may be classified as follows:

- 1) **General Meetings:** The term general meeting is used to describe a meeting of members or shareholders, as per the provisions of the Act;
- 2) **Board Meetings:** Meetings of the board of directors
- 3) **Class meetings:** Meetings of special class of persons, like, creditors, preference shareholders, etc.

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TYPES OF GENERAL MEETING

Q.No.1. Explain the provisions of the Act, with regard to holding of an Annual General Meeting (AGM) by a Company. (A) (NEW SM, OLD SM, OLD PM, N09, N10 – 1M, M12 - 4M)

1) **APPLICABILITY [SEC 96(1)]:** Every Company (whether public or private) shall hold an Annual General Meeting in each year.

Exception: OPC is exempted from holding Annual General Meeting. (Since one person cannot constitute a meeting)

2) **TIME LIMIT OF HOLDING AGM:**

a) **FIRST AGM:**

- i) First AGM shall be held within a period of 9 months from the date of closing of the first financial year of the Company.
- ii) If a Company holds its first AGM within the time limit specified as above then it is not necessary for the Company to hold any AGM in the year of its incorporation.

b) **SUBSEQUENT AGM:**

- i) A company is required to hold an AGM in each year (*i.e., calendar year*).
- ii) Subsequent AGM shall be held within a period of 6 months of closure of relevant financial year.
- iii) The time gap between two successive AGMs shall not exceed 15 months.

NOTE: The above 3 time limits given are separate and cumulative (i.e. need to satisfy all the 3 limits). Non-compliance with any of them would constitute an offence.

Thus, the last date for holding AGM shall be the earliest of the above 3 time limits.

c) **EXTENSION FOR CONDUCTING AGM:**

- i) The ROC may, for any special reason, extend the time period of any AGM.
- ii) The Extension by the ROC shall not exceed 3 months period

NOTE: ROC shall not extend the time period of First AGM.

3) DAY, TIME AND PLACE OF AGM [SEC 96(2)]:

- a) **DAY FOR HOLDING AGM:** AGM shall be held on any day, which is not a National Holiday¹.

NOTE: If any day is declared as national holiday by the Central Government after the issue of the notice convening such meeting then such a day will not be treated as a National Holiday.

- b) **TIME FOR HOLDING AGM:** Every AGM shall be held during business hours. Business hours means – time between 9 a.m. and 6 p.m.

NOTE: The Annual General Meeting has to be called (started) before 6 p.m. However, once meeting commences, it can continue after 6 p.m.

- c) **PLACE FOR HOLDING AGM:** AGM shall be held either at

- i) The registered office of the Company or
- ii) At some other place within the city, town or village in which the registered office of the Company is situated.

- 4) The CG may exempt any class of companies from the above provisions as to day, timings, and venue of AGM subject to certain conditions.

SPECIAL CASES:

- 1) **UNLISTED COMPANIES:** AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

2) GOVERNMENT COMPANY:

- a) The AGM shall be held:

- i) Either at Registered Office of the company, or
- ii) At such other place within the city, town or village in which the registered office of the company is situated or
- iii) At such other place as the CG may approve in this behalf.

- b) However, the Government company has not committed a default in –

- 1) Filing of its financial statements U/s. 137 of companies act, 2013 or
- 2) Annual returns U/s. 92 of said act with the ROC.

- 3) **SEC. 8 COMPANIES:** Day, time, and place of each AGM are decided by BOD subject to the directions, if any, given in this regard by the Company in its GM.

SIMILAR QUESTIONS:

1. A Company was incorporated on 01.04.2018. No GM of the Company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first AGM of the Company and the power of the ROC to grant extension of time for the first AGM? (RTP – M14, MTP - M17)

A. Refer the above provisions.

2. In what way does the Companies Act, 2013 regulate the holding of an Annual General Meeting by a Company? Explain. (OLD PM)

A. Refer the above provisions

3. Explain the provisions of the Companies Act, 2013 relating to holding of Annual General Meeting of the Company with regard to the following: (OLD PM)

- i) Period within which the first and the subsequent Annual General Meetings must be held.
- ii) Business which may be transacted at an Annual General Meeting.

A. Refer Point 2, 3 in the above answer & Q.NO. 12

4. A Company held its last AGM on 26th April 2018. The next AGM was held on 29th September 2019. The Registrar of the Companies raised objection to it as it violates the provisions of the Act. The Company contended that it held the AGM within 6 months from the date of Closing of the Financial Year in respect of which the annual accounts were adopted. Advise the Company.

1) "National Holiday" means and includes a day declared as National Holiday by the Central Government.

A. A company is required to hold an AGM in each year (*i.e., calendar year*). Subsequent AGM shall be held within a period of 6 months of closure of relevant financial year. The time gap between two successive AGMs shall not exceed 15 months.

In view of above provision the General Meeting shall be conducted by 26/07/2019

(IMMEDIATELY REFER PRACTICAL QUESTION CRD NO. 1, 2, 3, 4,5,6)

Q.No.2. What is the effect of failure to convene the AGM. Or State the powers of NCLT in calling for AGM (A) (NEW SM, OLD PM)

POWER OF TRIBUNAL TO CALL OR DIRECT CALLING OF AGM [SEC 97]:

1) APPLICABILITY/ CONDITIONS:

- a) Any default is made in holding the AGM u/s 96
- b) An application is made to the Tribunal by any member

2) CONSEQUENCES:

- a) The Tribunal may call or direct the calling of an AGM of the company. The order may have overriding effect on any other provision of the act or AO A of the company.
- b) The Tribunal may give such ancillary or consequential directions as the Tribunal thinks expedient.
- c) The directions given by the Tribunal may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

3) GM ORDERED BY TRIBUNAL TO BE DEEMED AS AGM [SECTION 97(2)]: If an AGM is held in pursuance of an order of the Tribunal, it shall, subject to any direction of the Tribunal, be deemed to be an AGM of the company.

PUNISHMENT FOR DEFAULT IN COMPLYING WITH PROVISIONS OF SEC 96 TO 98 [SEC 99]:

If any default is made in holding a meeting of the Company as per sec 96 or 97 or 98 in complying with any directions of the Tribunal, then

Who is Punishable	Punishment
Company	Fine which may extend to Rs.1,00,000 and
Every officer of the Company who is in default	In the case of a continuing default with further fine which may extend to Rs. 5,000 for every day during which such default continues?

SIMILAR QUESTION

1. Can NCLT call for the general meeting on its own (suomotu basis)?
- A. No. Refer above answer

Q.No.3. Explain the powers of the Tribunal to call meetings of members of a Company other than the AGM (i. e EGM) (Sec.98). (A) (NEW SM, OLD SM, MTP - M18 (N))

POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS [SEC 98]:

1) CONDITIONS:

- a) When for any reason, it is impractical to call a meeting of a company (other than AGM).
- b) An application is made by any director or member who would be entitled to vote at such meeting.
- c) The Tribunal may, suo moto be of opinion to order such meeting of members.

2) CONSEQUENCES: The Tribunal may-

- a) Order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
- b) Give such ancillary or consequential directions as the Tribunal thinks expedient.
- c) Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- 3) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

SIMILAR QUESTIONS:

1. The Tribunal is empowered to call an EGM. Discuss the procedure u/s 98?
- A. Refer the above answer.
2. Can NCLT convey EGM on suo-moto basis? (Yes)
3. State the provisions of the Companies Act, 2013 regarding calling and holding an EGM with respect to Power of the Tribunal.
- A. Refer the above answer.

Q.No.4. What is meant by Extra-ordinary General Meeting? Who can call an EGM?

(C) (NEW SM, OLD SM)

- 1) **MEANING:** All General Meetings other than the Annual General Meeting are called as Extra-ordinary General Meetings.
- 2) **PURPOSE:** An EGM is convened for transacting some special or urgent business that may arise in between two AGMs. *Examples: Change in Object clause, Removal of auditor.*
- 3) **SPECIAL BUSINESSES:** All business to be transacted at EGMs are special business.
- 4) **Who can call an EGM?** It can be called by –
 - a) Board of Directors on their own motion (suomotu)
 - b) Board of Directors on requisition filed by the Requisitionists (applicant)
 - c) Requisitionists (if Board of directors failed to call EGM based on requisition)
 - d) National Company Law Tribunal (NCLT)

Q.No.5. State the provisions of the companies act regarding calling and holding an EGM with respect to:

- i) Calling of EGM by Board of Directors on Suo-moto.
- ii) Calling of EGM by Board of Directors on requisition made by requisitionists

(B) (NEW SM, OLD SM).

1) EGM BY BOARD AT ITS OWN MOTION [SEC 100(1)]:

EGM of the Company can be called by the Board of Directors, whenever it deems fit.

A valid Board Resolution is required for this purpose.

a) PLACE OF EGM:

- i) An EGM of the company shall be held at a place within India.
- ii) **Exception:** The wholly owned subsidiary of a company incorporated outside India can also conduct EGM at a place outside India.

b) TIME FOR HOLDING EGM: EGM can be held at any time. It is not necessary that EGM should be held within business hours.

c) DAY FOR HOLDING EGM: EGM can be held on any day. It means, EGM can be held on public holiday or national holiday.

2) EGM BY BOARD ON REQUISITION OF MEMBERS [SEC 100(2)]: The Board shall call an EGM, at the requisition made by requisitionists.

a) WHO CAN MAKE A VALID REQUISITION?

- i) **Company having a share capital:** members holding at least $\frac{1}{10}^{\text{th}}$ of paid-up share capital of the Company as on the date of the receipt of the requisition.
- ii) **Company not having a share capital:** members holding at least $\frac{1}{10}^{\text{th}}$ of the total voting power of all the members as on the date of receipt of the requisition.

b) ESSENTIALS OF A VALID REQUISITION [SEC 100(3)]:

- i) The requisition shall specify the matters for the consideration of which the meeting is to be called
 - ii) The requisition shall be signed by
 - All the requisitionists
 - A requisitionist duly authorised, by all other requisitionists.
 - iii) The requisition shall be sent to the registered office of the Company.
 - iv) The requisition shall be in writing or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- c) Time period for calling the meeting:** On receipt of a valid requisition, the Board shall –
- i) Call a meeting within 21 days from the date of receipt of a valid requisition,
 - ii) Convene a meeting within 45 days of such deposit of the requisition with the Company.

SIMILAR QUESTIONS:

1. Write short note on the significance of EGM and who are empowered to call EGM under the Companies Act, 2013.
 - A. Refer the above answer.
2. Reliance Industries Ltd. has its registered office at Mumbai. The Company desires to hold an EGM in New Delhi. Examine the validity of the Company's desire with reference to the relevant provisions of the Companies Act, 2013. (OLD PM)
 - A. The Company may hold the EGM at any place within India and no restriction is imposed in the Companies Act, 2013.
3. Explain in brief about calling of EGM by various authorities?
 - A. BOD should call EGM on the request of members and if they fail, the requisitionists themselves call an EGM u/s 100. BOD can themselves call an EGM, at its own motion, if the articles of the Company provides. However, Tribunal also has the power to call an EGM u/s 98 on some specified reasons.

Q.No.6. Discuss the rules relating to calling of EGM by requisitionists. (A) (NEW SM, OLD SM)**EGM BY REQUISITIONISTS THEMSELVES [Sec 100(4)]**

- 1) If the Board fails to call the EGM within 21 days of the date of receipt of a valid requisition but not later than forty-five days from the date of receipt of such requisition then the requisitionists themselves can call and hold a meeting.
- 2) **RIGHTS OF REQUISITIONISTS:**
 - a) The requisitionists shall be entitled to receive a list of members from the company.
 - b) The List of members together with their registered address made as on 21st day from the date of receipt of valid requisition shall be provided to the Requisitionists within 45 days from the date of receipt of valid requisition.
- 3) **TIME PERIOD FOR HOLDING EGM:** The EGM shall be held within 3 months from the date of requisition.
- 4) **MANNER OF CALLING EGM:** The Requisitionists shall call the EGM in the same manner as may be called and held by the Board.
- 5) **NOTICE:**
 - a) **Notice to whom:** The notice of the meeting shall be given to those members whose names appear in the list of members within 3 days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
 - b) **Length of Notice:** Requisitionists have to send notice calling for EGM with atleast 21 clear days' prior to the date of meeting.
 - c) **Mode of Notice:** Notice shall be in writing, delivered through speed post or registered post or through electronic mode.

d) Contents of Notice:

- i) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.
- ii) If a SR is proposed, the notice shall be given as required by sec. 114(2).

e) Signature: The notice shall be signed by:

- i) All the requisitionists or
- ii) a requisitionists duly authorized in writing by all other requisitionists on their behalf or

f) Explanatory Statement as required u/s 102 need not be annexed. Reasons for the resolution may be disclosed.**g) Any accidental omission** to give notice to or the non-receipt of it by any member shall not invalidate the proceedings of the meeting.**6) Place, Day/ Date:**

- Requisitionists should convene meeting at registered office or in the same city or town where registered office is situated and
- Such meeting should be convened any day except National holiday and during 'business hours'.

7) Reimbursement of expenses in calling a meeting:

- Any reasonable expenses incurred by the requisitionists in calling a meeting, shall be reimbursed by the Company and
- The sums so reimbursed shall be deducted from any fee or other remuneration payable (u/s 197) to such of the directors who were in default in calling the meeting.

SIMILAR QUESTION:

1. The Board of a Company has refused to conduct a GM on requisition of the members. What is the recourse available to the requisitionists?

A. Refer Above Answer

(IMMEDIATELY REFER PRACTICAL QUESTION CRD NO. 7, 8, 9,10,11,12)

REQUISITES OF VALID MEETING

Q.No.7. What are the essentials of a valid General Meetings? OR What are the requisites of a Valid Meeting (C) (OLD PM)(MTP(N)-19)

THE ESSENTIALS OF A VALID MEETING ARE THAT THE MEETING SHOULD BE:

1) PROPERLY CONVENED:

- a) *The meeting must be called by a proper authority*
- b) *Proper notice must be served in the manner specified under act*

2) PROPERLY CONSTITUTED:

- a) *Proper chairman must preside the meeting.*
- b) *Proper quorum must be present in the general meeting.*

3) PROPERLY CONDUCTED:

- a) *The chairman must conduct the proceeding in accordance with the law relating to general meetings under the various provisions of the Companies Act, 2013.*
- b) *The business must be validly transacted at the meeting. Proper minutes of meeting must be prepared.*

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Q.No.8. Who is having authority to issue Notice calling for the General Meeting?

(B) (NEW SM, OLD PM)

NOTICE OF A MEETING [SEC 101]: Notice is intimation to the members who are entitled to attend the meeting. It gives information as to the time, place, and date of the meeting to be held.

PROPER AUTHORITY TO ISSUE NOTICE CALLING FOR GENERAL MEETING:

1) BOARD OF DIRECTORS

- a) Board has the power to call any GM.
- b) An Individual director has no power to call a GM
- c) Notice of a GM given by a secretary or a director without Board Resolution is invalid. However, Board of Directors can ratify it before the meeting.

2) MEMBERS

- a) Members who fulfill the requirements of Section 100 are eligible to requisition an EGM.
- b) In case of failure of the Board to call the EGM within the time limits given u/s 100, the members may themselves call an EGM.

3) Tribunal: NCLT can call or direct for -

- a) AGM in case of default u/s 96.
- b) EGM upon a petition of any member or suo-moto.

Q.No.9. Who is entitled to receive the notice of the GM. Also state the modes of service of notice? State the effect of omission of giving notice to the persons entitled to receive notice?

(B) (NEW SM, OLD PM)

NOTICE OF A MEETING [SEC 101]: Notice is intimation to the members who are entitled to attend the meeting. It gives information as to the time, place, and date of the meeting to be held.

1) CONTENTS OF NOTICE: Every notice must specify –

- a) Date, Day, Place and Time of the GM
- b) Business to be transacted at the GM.

2) PERSONS ENTITLED TO RECEIVE NOTICE [SEC 101(3)]: Notice of the meeting shall be given in writing or electronic mode:

- a) To every member of the Company, legal representative of any deceased member or the assignee of an insolvent member;
- b) To the Statutory Auditor or Cost Auditors and Secretarial Auditor of the Company, and
- c) To Every director of the Company.

3) FAILURE OR OMISSION TO GIVE NOTICE [SEC 101(4)]: Notice must be served to all the persons who are entitled to receive notice of the meeting or else any decision taken in that meeting is not a valid one.

However,

- a) An accidental omission to serve notice or
- b) non-receipt of such notice by any person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

4) APPLICABILITY TO PRIVATE COMPANIES:

- a) Section 101 shall apply, unless otherwise specified in respective sections or AOA of the company provide otherwise.
- b) This exception is applicable to a private company which has not committed a default in filing its financial statements u/s 137 or annual return u/s 92, with the Registrar (ROC)

SPECIAL CASES:**1) JOINT HOLDING:**

- a) In case of Joint Holders, Service of notice may be valid by serving it on the one whose name appears first in the register of members.
- b) But this does not prevent the Company from issuing notice or other document to other joint holders also at its discretion, if the circumstances of any case require the same.

2) NOTICE TO PREFERENCE SHAREHOLDERS:

- a) It is not necessary that all the members of a Company are entitled to receive notice of meetings of the Company,
- b) The Articles frequently provide that preference shareholders shall not be entitled to receive notice of and vote at GM of the Company, except in certain circumstances.
- c) There is a statutory obligation to send notice to preference shareholders when their dividend is not paid for 2 years or more [Sec 47(2) of the Companies Act, 2013].

SIMILAR QUESTIONS:

1. Who is entitled to get notice for the GM called by a public Ltd Company registered under the Act? Does the non-receipt of a notice of the meeting by any one, who is entitled to such notice, invalidates the meeting and the resolutions passed thereat? What is the effect of accidental omission to give notice to a member on proceedings of the Company?
(MTP - M18(N)) (OLD PM)
- A. Refer above Answer.
2. Hari Ltd. issued notice for its AGM. However, the names of 2 members out of 378 members were accidentally omitted. Will the meeting be considered valid? What is the consequence of the resolution passed thereat? What will be your answer if the omission was not accidental but a deliberate omission by the Company?
- A. Only accidental omission to give notice to, or non-receipt of notice by any member will not invalidate the proceedings of the meeting. Therefore, in the second case, deliberate omission to give notice even to single member may invalidate the meeting. [Smith Vs. Darley]
3. Board of Directors of ABC Ltd., called for EGM on 14th January, 2010. Mr. M who is newly appointed as Company Secretary confused over the issue sending notices joint shareholders of the Company. Advise Mr. M by referring to the provisions of Companies Act, 2013.
- A. Refer Above Answer

Q.No.10. What are the statutory provisions relating to length of Notice (A) (NEW SM, OLD SM)

PROVISIONS RELATING TO "LENGTH OF NOTICE" OF A 'GENERAL MEETING' UNDER SEC 101 OF THE COMPANIES ACT, 2013:**1) LENGTH OF NOTICE [SEC 101(1)]:**

- a) Any GM of a Company may be called by giving 'not less than 21 clear days' notice
- b) The notice may be either in writing or through electronic mode in prescribed manner.

EXCEPTION: In case of Section 8 companies, time limit for notice is "14 days".

NOTE:

- a) Clear days imply full or complete days excluding date of service of notice and date of meeting.
- b) If a notice is sent by post then it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted.
- c) A Company cannot reduce the length of 21 clear days by its articles of association.

2) SHORT NOTICE [PROVISO TO SEC 101(1)]: A general meeting may be called at a shorter notice provided:

- a) In the case of an AGM - not less than 95% of the members entitled to vote has given their consent;

- b) In the case of any other general meeting (EGM),
- i) Company having share capital - majority in number of members entitled to vote and who represent not less than 95% of paid-up share capital of the company
 - ii) Company having no share capital – members having not less than 95% of the total voting power exercisable at that meeting.

Note: However, If any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of short notice in respect of the former resolution or resolutions and not in respect of the latter.

- c) Such consent is given in writing or in electronic form.
- d) Consent to the shorter notice may be given either at the meeting or before the meeting.

SIMILAR QUESTIONS:

1. What is the length of the notice for meetings under the Companies Act, 2013? Can the members reduce the length of the notice than this prescribed length?
A. Refer the above answer.
2. What is short notice in relation to meetings under the Companies Act, 2013?
A. Refer the above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD NO. 13,14,15,17)

Q.No.11. Discuss the contents that needs to be disclosed in a notice of an AGM.

(B) (NEW SM, OLD SM)

PROVISIONS RELATING TO “CONTENTS THAT NEED TO BE DISCLOSED IN A NOTICE OF A MEETING”:

- 1) **CONTENTS OF NOTICE:** Every notice of a meeting shall specify the
 - a) Place of meeting,
 - b) Date and Day of meeting,
 - c) Time of the meeting and
 - d) Agenda (i.e., list of businesses to be discussed).
- 2) It must be issued on the authority of the Board of Directors under the name of an authorized official.

STATEMENT TO BE ANNEXURE TO NOTICE [SEC 102]: It provides that a statement setting out all the material facts (*Explanatory statement*) concerning each item of special business to be transacted at a GM shall be annexed to the notice calling such meeting.

Q.No.12. What are the types of Business which may be transacted at an AGM?

(A) (NEW SM, OLD SM, M12, M14 – 4M)

TYPES OF BUSINESS [SEC 102(2) OF COMPANIES ACT, 2013]:

- 1) **ORDINARY BUSINESS:**
 - a) Consideration of Financial Statements and the reports of the BOD and auditors;
 - b) Declaration of any dividend;
 - c) Appointment of directors in place of those retiring;
 - d) Appointment of the auditors, and the fixation of their remuneration.
- 2) **SPECIAL BUSINESS:** All other business scheduled to be transacted at the meeting shall be deemed to be special.

Explanatory statement should be annexed to notice calling such meeting u/s 102 in case of every special business matter.

NOTE: *The provisions of this section shall apply to Private Company unless otherwise specified in respective sections of the articles of the Company.*

SIMILAR QUESTIONS:

1. State the ordinary business which may be transacted at an AGM of a public ltd. Company incorporated under the Companies Act, 2013? (OLD PM)(M12 - 4M, MTP - M17)
 2. State the matters to be considered as 'Ordinary businesses and 'Special businesses for various types of meetings under the companies Act, 2013 and what kind of resolution is required to be passed for such businesses in an AGM under the Act? (M14 - 4M)
 3. Referring to the provisions of the Companies Act, 2013 state the matters relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company. What kinds of resolutions need to be passed to transact the 'Ordinary Business' and the 'Special Business' at the Annual General Meeting of the Company? Explain.
- A. Refer the above answer for types of business matters under the Act. (OLD PM, MTP - M17)

Q.No.13. When is an explanatory statement required to be annexed to the notice calling the GM of a Company? Also discuss the provisions relating to the explanatory statement.

(A) (NEW SM, OLD SM)

EXPLANATORY STATEMENT [Sec 102]:

- 1) **WHEN REQUIRED:** Every item of special business in General Meeting requires an Explanatory Statement to be sent as an annexure to the notice. Hence, Explanatory statement is applicable for-
 - a) **AGM** – only if it contains any special business.
 - b) **EGM** – since all business are special businesses.
- 2) **MATTERS TO BE COVERED IN THE EXPLANATORY STATEMENT:**
 - a) **Material Facts [Sec 102(1)]:** All material facts concerning the items of business shall be annexed to the notice calling such meeting, namely:
 - i) Nature and extent of interest (financial or otherwise) of every director or manager and Every KMP; and relatives of the director/ manager of the company in the business.
 - ii) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.
 - b) **Transactions with other Company [Proviso to Sec 102(2)]:**
 - i) In case of any transaction with a company in which any promoter, director, manager or any KMP holds atleast 2% of the paid up share capital of that company
 - ii) Then such percentage of shareholding to be disclosed.
- 3) **DETAILS OF INSPECTION OF DOCUMENTS [SEC 102(3)]:**
 - a) Where any item of business refers to any document,
 - b) which is to be considered at the meeting,
 - c) Then the time and place where such documents can be inspected shall be specified in the statement.
- 4) **CONSEQUENCES OF NON-DISCLOSURE:**
 - a) **Compensation to Company:**
In case of non-disclosure or insufficient disclosure in any statement made by the promoter, director, manager or other KMP which results into any benefit for themselves or their relatives then they shall -

- i) Hold such benefit in trust for the Company,
 ii) Be liable to compensate the Company to the extent of benefit received by him.

b) **Penalty for contravention [Sec 102(5)]:**

Persons liable	Punishment
Every promoter, Every director, Every manager Any Key Managerial Person who is in default	Higher of a) Fine up to <u>Rs. 50,000</u> or b) <u>5 times</u> the amount of benefit to person liable

SIMILAR QUESTIONS:

- A Company not disclosed some matters in an explanatory statement, which is required to be annexed to a notice of GM proposed to be held. What are the consequences of non-disclosure of such matters under the Companies Act, 2013?
A. Refer point 4 above
- Glowing Products Ltd. wishes to sell one of its lines of business and decides to call an EGM and to pass a resolution thereat. State the material facts to be set out in the statement to be annexed to the notice of the EGM on this special business to be transacted at the meeting? (RTP – M17)
A. Refer the above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 18)

Q.No.14. What are the provisions of the Companies Act, 2013 relating to service of notice of a meeting? (A) (NEW SM, OLD SM)

PROVISIONS RELATING TO 'SERVICE OF NOTICE' (SEC 26 OF THE COMPANIES ACT, 2013):

- MODE OF SERVICE OF NOTICE:** Notice of general meeting can be served to individual members either by way of:
 - Registered post;
 - Electronic mode; or
 - Other modes as may be prescribed.
 In case of joint holders, it may be served to one, whose name appears first in the register of members.
- SPECIFICATION BY MEMBER:**
 - If, a member has requested for delivery of the notice through a particular mode (*by certificate or by registered post with or without acknowledgment due or speed post*) and
 - Has deposited money with the Company to compensate the incidental expenditure, then the notice must be served accordingly.
 - Otherwise, service of notice will not be deemed to have been effected.
- SERVICE THROUGH POST:**
 - Service of notice shall be deemed to have been effected in the case of notice of meeting on the expiry of 48 hours since the posting of the same.
 - Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice.
- PLACE TO BE SERVED:**
 - To the registered address of the members and
 - In the absence of any registered address in India, to the address, if there be any, within India furnished by him to the Company for the purpose of serving notice to him.
- NOTICE THROUGH ADVERTISEMENT:** When a notice is advertised in a newspaper circulating in the neighborhood of the registered office of the Company,

- a) It is regarded as having been served on the day on which the advertisement appears,
- b) On every member having no registered address in India and who has not supplied to the Company an address within India for giving notice to him.

SIMILAR QUESTION:

1. Explain the different modes of servicing notices to members. Can a member opt for sending his notice in a specific manner to the Company?
- A. Refer the above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD. 16)

**Q.No.15. What are the statutory provisions as regards to quorum for calling general meetings?
(A) (NEW SM, OLD SM, M16 - 2M)**

MEANING: Quorum means the “minimum number of members” who must be present in order to constitute a meeting and transact business thereat.

Exemption to Private Companies: The provisions of this section shall not be applicable to Private Company unless otherwise specified in the AOA of the Company provide otherwise.

PROVISIONS RELATING TO ‘QUORUM FOR MEETINGS’ [SEC 103]:

1) QUORUM IN CASE OF PUBLIC / PRIVATE COMPANIES [SEC 103(1)]:

a) Public Company-

Number of members as on date of a meeting	Required Quorum
Not more than 1,000	5 members personally present
More than 1000 but up to 5000	15 members personally present
Exceeds 5000	30 members personally present

AOA may provide for a larger number as the Quorum

b) Private Company –

- 2 members personally present shall be the quorum.
- AOA may provide for a larger number as the Quorum

c) In case of OPC, the resolution to be passed at GM shall be agreed upon by the sole member. (Regulation 48 of Table F) Thus, holding actual meeting is not necessary.

2) WHO ARE COUNTED AND WHO ARE NOT?

a) **Proxy:** Proxies are not counted since personally present exclude proxies.

b) **Representative:**

- The representative of a body corporate appointed u/s 113 or
- The representative of the President of India or Governor of a State referred u/s 112 is treated as a member ‘personally present’ for purpose of counting a quorum.

c) **Person present in multiple capacities:** In case two or more corporate bodies, who are the members of a Company are represented by single individual, then each of the body corporate will be treated as personally present by “the individual representing it”.

d) **Joint holders:** In the case of joint holders, any one of them may be counted in a quorum.

e) Auditors, Practicing Company secretary, director who is not shareholder, employee of the Company consultant etc., cannot be counted for quorum. However, if directors and employees are also members then they are counted for quorum.

3) **VALIDITY OF MEETING WITHOUT QUORUM:** If no quorum is present, then there is no meeting and the proceedings in such a meeting are invalid.

EXAMPLE: Debentures issued at a meeting of directors where there was an insufficient quorum.

- 4) **WHEN QUORUM IS IMMATERIAL:** If all the members are present, it is immaterial that the quorum required is more than the total number of members.

(IMMEDIATELY REFER PRACTICAL QUESTION. SSP NO. 12)

NOTE:

- 1) **Model Articles:** As per Regulation 44 of Table-F of Companies Act, 2013, No business shall be transacted at any GM unless a quorum is present at the time when the meeting proceeds to business.
Therefore the quorum should be present -
- At the commencement of the meeting and
 - Subsequent absence thereof will not invalidate the proceedings.
- 2) **Own Articles:** In case of own AOA, in the absence of a provision similar to Regulation 44, then it is presumed that quorum should be present throughout the meeting.

Q.No.16. State the consequences of no Quorum in General Meeting?

(A) (NEW SM, OLD SM)

1) **CONSEQUENCES OF NO QUORUM [SEC 103(2)]:**

- a) If the quorum is not present within half-an-hour (30 Minutes) from the time fixed for holding the GM then:
- If the meeting is called by requisitionist's u/s 100 then it shall stand cancelled.
 - The meeting shall stand adjourned
 - Automatically to the same day in the next week at the same time and place, or
 - To such other date, time and place as the Board may determine.
- b) **Notice of an adjourned meeting:**
- The Company shall give a notice of not less than 3 days where –
 - A meeting is adjourned as above
 - A change is made w.r.t. day, time and place of meeting
 - Such notice to members shall be given either individually or by publishing in two newspapers; one in English and one in Vernacular language

- 2) **NO QUORUM IN AN ADJOURNED MEETING [SEC 103(3)]:** If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

SIMILAR QUESTIONS:

- What is the course of action in case Quorum not present at adjourned meeting?
 - Refer provisions relating to adjourned Meetings. [Sec 103 (3)] (Point No. 4) in the above.
- Quorum for a valid meeting is 2 or more persons. Discuss the exceptions?
 - Refer the above provisions. Exceptions for the quorum are available either in case of class meetings (if all shares / securities held by single security holder) or in case of directions given by Tribunal u/s 97 (for AGM) or 98 (for EGM).
- Advise on the following matters in case of adjourned GM:
 - Issue of fresh notice for adjourned GM
 - Consideration of new business at the adjourned GM
 - Members appointing fresh proxy for adjourned GM
 - Refer provisions relating to adjourned Meetings. [Sec 103 (2), (3)] in the above

(IMMEDIATELY REFER PRACTICAL QUESTION. CRD NO. 19, 20, 21,22,23)

SECTION 2: QUESTIONS FOR ACADEMIC INTEREST SELF STUDY

Q.No.1. Distinguish between extra ordinary general meeting and annual general meeting. (A)

DISTINGUISH BETWEEN EXTRA ORDINARY GENERAL MEETING AND ANNUAL GENERAL MEETING.

Extraordinary General Meeting (EGM)	Annual General Meeting (AGM)
All General Meetings other than Annual General Meeting are EGMs.	AGM is the annual meeting of members where ordinary businesses are transacted.
EGM can be called at any time.	AGM can be called only after closing of financial year.
EGM may be called by Board or Board on the requisition or by requisitionists themselves.	AGM may be called by Board.
EGM can be held at any place with in India.	AGM should be held either at registered office of Company or within same city or town where registered office of Company is situated.
Company can convey any number of EGM in one year. Generally it is called to discuss the business for which Company cannot wait till next AGM.	Company can convey one AGM in one year. Following four businesses are ordinarily discussed at AGM: <ul style="list-style-type: none"> • To approve financial statement • To declare dividend, if any • To appoint or re-appoint director • To appoint auditor, fixation of auditor remuneration. Apart from above four ordinary businesses, any other business can be discussed at AGM.

Q.No.2. What are the rules relating to service of notice in electronic mode? (C) (NEW SM, OLD SM)

AS PER THE RULE 18 OF THE COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES, 2014, THE COMPANY MAY SERVE THE NOTICE IN ELECTRONIC MODE IN FOLLOWING MANNER:

1) MEANING OF ELECTRONIC MODE:

- a) The expression “electronic mode” shall mean any communication sent by a Company through its authorized and secured computer programme
- b) Which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the latest e-mail address provided by the member?

2) NOTICE THROUGH E-MAIL: A notice may be sent through e-mail as a text or as an attachment to e-mail or as a notification providing e-link or URL (*Uniform Resource Locator*) for accessing such notice.

3) MANNER OF SENDING, REGISTRATION OF E-MAIL ETC.:

- a) **Addressed to:** The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the Company or as provided by the depository:
 - i) *The Company shall provide an advance opportunity atleast once in a financial year, to the members to register his e-mail address and changes therein and*
 - ii) *Such request may be made by only those members who have not got their email id recorded or to update a fresh email id and not from the members whose email ids are already registered.*
- b) **Subject line:** The subject line in e-mail shall state
 - i) The name of the Company,
 - ii) Notice of the type of meeting,
 - iii) Place, date and the time on which the meeting is scheduled.

c) Format for sending:

- i) If notice is sent in the form of a non-editable attachment to e-mail,
- ii) Such attachment shall be in the PDF (Portable Document Format) or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

d) Obligations of Company:

- i) The Company's obligation shall be satisfied when it transmits the e-mail and the Company shall not be held responsible for a failure in transmission beyond its control.
 - ii) If a member entitled to receive notice fails to provide or update relevant e-mail address to the Company or to the depository participant as the case may be, the Company shall not be in default for not delivering notice via e-mail.
- e) **Display on Website:** The notice of the GM shall be simultaneously placed on the website of the Company if any and on the website as may be notified by the CG.

Note: For the purpose of this rule, it is hereby declared that the EGM shall be held at a place within India.

SIMILAR QUESTION:

1. What are the obligations of the Company in relating to service of notice in electronic mode?

A. Refer the above answer.

SECTION 3: PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION

Q.No.1. 30th Jun & 31st Dec have been declared as Public holidays under the Negotiable Instrument Act, 1881. Hence, AGM of Any Company shall not be held on these dates.

Provision and Analysis: Date, Time and Place of AGM [Sec 96(2) of Companies Act, 2013]:

- a) Every AGM shall be called during business hours, that is, between 9 A.M. and 6 P.M. on any day that is not a National Holiday and
- b) AGM shall be held either at the registered office of the Company or at some other place within the city, town or village in which the registered office of the Company is situated.

Meaning of National Holiday: Here, "National Holiday" means and includes a day declared as National Holiday by the CG.

Conclusion: 30th Jun & 31st Dec have been declared as public holiday under the Negotiable Instrument Act, 1881 only for the limited purpose of closing of accounts of banks/treasuries etc, and, thus, these 2 dates shall not be treated as public holiday for the purpose of holding AGM of the Company. Hence the given statement is false.

Q.No.2. M/s Low Esteem Info Tech Ltd. was incorporated on 01.04.2016. No GM of the Company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first AGM of the Company and the power of the ROC to grant extension of time for the first AGM. (OLD PM, MTP- M18 (O), M17)

PROVISION AND ANALYSIS:

First AGM [Sec 96 of Companies Act, 2013]: In case of the first AGM, it shall be held within a period of 9 months from the date of closing of the first financial year of the Company.

Provided further that if a Company holds its first AGM as aforesaid, it shall not be necessary for the Company to hold any AGM in the year of its incorporation.

Extension for conducting AGM: The ROC may, for any special reason, extend the time within which any AGM, shall be held, by a period not exceeding 3 months. However, the ROC cannot provide extension in case of the first AGM.

CONCLUSION: Presuming first financial year for 01.04.2016 - 31.03.2017. So, first AGM should hold on or before 31.12.2017. Thus, the Company and its directors will be liable for the default if the AGM was held after 31st Dec. 2017.

Q.No.3. Answer the following:

(OLD PM)

- a) Can an AGM be held on a National holiday?
- b) An AGM is called on a fixed day. After the sending of the notice of the meeting, the Govt. notifies that date as a national holiday. Can the meeting proceed as scheduled?

PROVISION AND CONCLUSION FOR POINT (A): An AGM cannot be held on a national holiday. As per 96(2) of the Companies Act, 2013 every AGM shall be called during business hours, that is, between 9 A.M and 6 P.M on any day that is not a National Holiday. A national holiday has been defined in the explanation to sec 96 as a day declared as National Holiday by the CG.

A day may be declared to be a national holiday after the notices calling the meeting for the day have already been issued. To avoid the difficulties that may be caused from such a situation, no day declared by the CG to be a national holiday shall be deemed to be such a holiday in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting.

PROVISION AND CONCLUSION FOR POINT (B):

Yes. The meeting can proceed, as scheduled. As per sec. 96 of the Companies Act, 2013 and AGM must be held on a day which is not a national holiday. But if the date of AGM becomes a national holiday after issue of notice - Meeting can be held on such national holiday.

Q.No.4. An AGM of a Company was convened in Nov 2015. It was adjourned and the adjourned meeting was held in Mar 2016. The next AGM was held in March, 2017. The Company was held liable for an irregularity in holding the AGM's. Decide? (OLD PM)

PROVISION:

Time limit for conducting Second and subsequent AGM.

- a) Company shall hold one AGM in each calendar year.
- b) AGM shall be held within a period of 6 months from the date of closing of the relevant financial year.
- c) Interval between 2 AGM's: Not more than 15 months shall elapse between the date of one AGM of a Company and that of the next. The maximum interval in between 2 AGMs can be 15 months.

ANALYSIS: In the given situation Company held AGM in the month of Nov 2015 and adjourned to Mar 2016. Company not held any original meeting in the year of 2016 which is in violation of the above provisions.

CONCLUSION: Company and BOD shall be liable for non conducting AGM in the year of 2016 as per sec.99 of the Companies Act, 2013

Q.No.5. Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time First Annual General Meeting.

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech should have been held on or before 31st December, 2017. Further, the Registrar does not have the power to grant extension to time limit

Q.No.6. MR Company Limited could not hold its first AGM within 9 months from the close of the financial year. The BOD of the Company by a resolution decide not to call first AGM at all on the ground that most of the directors were outside India on a business trip and since the Company was under gestation period it would cost the Company heavily. Referring to the provisions of the Act, examine whether:

- a) The BOD decision is legally justified.
- b) What course of Action is open to the Company if one of the members writes to the Company for holding the meeting though the statutory time limit is over?

PROVISION: Sec 96 of Companies Act, 2013 – holding of AGM

Sec 97 of Companies Act, 2013 - Power of Tribunal to call AGM

Holding of AGM [Sec 96]: In case of the first AGM, it shall be held within a period of 9 months from the date of closing of the first financial year of the Company. However, if a Company holds its first AGM as aforesaid, it shall not be necessary for the Company to hold any AGM in the year of its incorporation.

Extension for conducting AGM: The ROC may, for any special reason, extend the time within which any AGM, shall be held, by a period not exceeding 3 months. However, the ROC cannot provide extension in case of the first AGM.

Power of Tribunal to call AGM [sec 97]:

- a) If any default is made in holding an AGM of a Company u/s 96, the Tribunal may,
 - Notwithstanding anything in this Act, or in the Articles of the Company,
 - On the application of any member of the Company
 - Call or direct the calling of an AGM of the Company and gives such ancillary or consequential directions as the Tribunal thinks necessary
- b) Even such directions, may include a direction that one member of the Company present in person or by proxy shall be deemed to constitute a meeting.
- c) The AGM so held shall, subject to any directions of Tribunal, be deemed to be an AGM of the Company.

ANALYSIS: By applying the above provisions in the given case -

- a) The BOD had passed a resolution not to call first AGM due to several reasons. But holding of first AGM is a statutory requirement and no Company can be exempted from this.
- b) The course of action open is that any member should apply to the NCLT, which in turn shall call or direct the calling of the Company with necessary directions and a meeting held according shall be an AGM.

CONCLUSION:

- a) The BOD decision is not legally justified.
- b) The member should approach the Tribunal and seek its assistance to fulfill his demand.

Q.No.7. The paid up share capital of ABC Limited is Rs. 5 lakhs consisting of 50,000 equity shares of Rs.10 each fully paid-up. Certain members of the Company holding the following shares requisitioned an EGM on 1.2.2017: A - 2,250 shares, B - 2,000 shares including 500 bonus shares C - 1,000 shares including 500 rights shares. The directors have failed to call the meeting on the contention that the articles have not permitted the same. What is the course of Action open to the aforesaid members?

PROVISION: Sec. 100 of the Companies Act, 2013 – Calling of EGM on requisition.

The members of a Company may also ask for an EGM to be held. A requisition for convening an EGM may be made by member(s) -

- a) Holding 10% of the paid up share capital of the Company and having a right to vote at the date of deposit of requisition, on the matter to be discussed.
- b) Company has no share capital members having 10% of the voting power if all members having a right to vote at the date of deposit of the requisition, on the matter to be discussed.

ANALYSIS: In the given case, the total paid up share capital of the Company – 5,00,000/- 10% of it, - 50,000 and the total capital held by requisitionists – 52,500.

The capital held by requisitionists exceeds 1/10th of total paid-up capital as on the date of requisition. Bonus and right shares at par with ordinary shares are to be included in arriving at the eligible value.

The members can call themselves an EGM called requisitionists meeting satisfying the conditions like time limit, number of required members, etc.

CONCLUSION: Hence, the said requisition is a valid one. The contention of Directors is not tenable.

Q.No.8. Examine the validity of the following:

- a) The BOD of a Company refuses to convene the EGM of the members on the ground that the requisitionists have not given reasons for the resolutions proposed to be passed at the meeting.
- b) The BOD refuse to convene the EGM on the ground that the requisitions have not been signed by the joint holder named first in the register in respect of the shares held by the joint share holders.
- c) Adjournment of EGM called upon the requisition of members on the ground that the quorum was not present at the meeting. (RTP - N18(N)(O) (OLD PM))

PROVISION:

- 1) As per Sec 100(2) of the Companies Act 2013, the BOD must convene a GM upon requisition by the stipulated minimum number of members.
- 2) As per Sec 100(3) the requisition, made for convening an EGM of members, shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the Company.
- 3) The requisitioning members are not required to give reasons for the resolutions proposed so long as the matters are to be dealt with at the meeting are disclosed and the statement in terms of sec 102(1), setting out all material facts relating to each item of business to be transacted is attached to the requisition.
- 4) This is essential as each such business transacted will be a special business and will require such statement to be sent along with the notice for the meeting.

ANALYSIS AND CONCLUSION: Based on the above provisions of the Companies Act, 2013 the validity of the cases presented in the question would be as under:

- a) In view of the above law, the BOD cannot refuse to convene the meeting if the reasons for the resolution are not given.

What is required to be stated is the objects of the meeting, i.e., the matters for the consideration of which the meeting and resolutions to be passed.

It is also reasonable to assume that the statement of all material facts on the proposed resolution should also be given by the requisitionists as the Board may not be able to prepare such statement as it is not proposing the resolution in the first place.

The material information regarding the resolution basically means the justification for the resolution which need not be given.

The BOD cannot refuse to convene the meeting because the reason for the resolution is not given.

- b) Where 2 or more persons hold any shares or interest in a Company jointly, a requisition, or notice calling a meeting, signed by one or some of them shall have the same force and effect as if it had been signed by all of them. On the basis of above, BOD has no right to refuse to convene the meeting.

- c) As per Sec 103(2)(b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the Company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the meeting stands cancelled and the stand taken by the BOD to adjourn it is improper.

Q.No.9. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company. (RTP Nov' 18)/ (MT Mar' 19)

According to section 100 of the Companies Act 2013, where the members have made a requisition to call an EGM the Board of directors must call such meeting. For a meeting to be valid quorum must be present. Quorum is the minimum number of members present to form a valid meeting.

As per Section 103 of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. In the above case the Board of Shrey Ltd. had called an EGM on a requisition made by the members. The quorum was not present and the meeting was adjourned. When the meeting is called on a requisition and the quorum is not present the meeting shall be cancelled.

Therefore, the meeting shall stand cancelled and the decision taken by the Board of Directors to adjourn it is not proper.

Q.No.10. Following data pertains to X LTD.

10,000 shares of Rs.10 each Rs.8 called up	80,000
Less: Calls in arrears on 1000 shares @ Rs.2	<u>2,000</u>
Paid up capital	<u>78,000</u>

State the minimum number of members entitled to make requisition in each of the following alternative cases:

Case i). Where AOA are silent.

Case ii). Where AOA provide that no member shall be entitled to vote at any GM unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.

Case iii).Where AOA provides that all members whose names appear in the register of members are entitled to vote at GM.

CASE I. Where Articles are silent on a particular point then Table F of Companies Act, 2013 will be applicable and according to Regulation 55 if any calls or sums payable on shares are not paid then that member shall not be entitled to vote. Hence members having 1/10th of the paid up capital (excluding the amount paid up on 1000 shares on which calls are in arrears)

I.e. $1/10^{\text{th}}$ of $[(10,000 - 1,000) \times 8]$ are entitled to make a requisition.

Alternatively, $1/10^{\text{th}}$ of 72000 (i.e. Rs.78,000- Rs.6000).

CASE II. Same answer as in case (i) because Articles provides similar provision as in Table F.

CASE III. Members having $1/10^{\text{th}}$ of the paid up capital i.e. $1/10^{\text{th}}$ of Rs.78,000 are entitled to make a requisition.

Q.No.11. To remove the MD, 40% members of Global Ltd. submitted requisition for holding EGM. The Company failed to call the said meeting and hence the requisitionists held the meeting. Since the MD did not allow the holding of meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the MD was passed. Examine the validity of the said meeting and resolution passed therein in the light of the companies Act, 2013.
(OLD PM, MTP- M18 (O), N-17-4M, M13 – 4M)

PROVISION: Sec 100 – Calling of EGM.

Provisions of sec 100 of Companies Act, 2013 are stated below:

- a) If the Board fails to call the EGM in the time period provided then the requisitionists may call an EGM themselves within 3 months from the date of requisition.
- b) A meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.
- c) **Reimbursement of expenses in calling a meeting:** Any reasonable expenses incurred by the requisitionists in calling a meeting, shall be reimbursed to the requisitionists by the Company and the sums so paid shall be deducted from any fee or other remuneration payable (u/s 197) to such of the directors who were in default in calling the meeting.
- d) Further resolutions passed properly at such a meeting are binding on the Company.

ANALYSIS: In the given case, the requisition is valid assuming that the requisitionists hold atleast 10% of the paid up share capital of the Company.

Holding of EGM at a place other than the registered office is valid since the Board failed to call the EGM within the time prescribed and MD didn't allow the holding of meeting at the registered office of the Company (*R. Chatter v. M. Chatter*).

Moreover the EGM was called held and conducted properly and the resolution removing MD was passed in accordance with the Companies Act 2013.

CONCLUSION: The meeting with the resolution removing MD is valid.

Q.No.12. Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis.

Advise the Board of Directors on the following:

EGM be held in India

EGM be held in Netherlands

(RTP May' 19)

According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company. An extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the above case Primal Ltd. a company incorporated India had two subsidiaries incorporated outside India. In Privy Ltd. it held 75% of the shares and Malvy Ltd. was its wholly owned subsidiary. As Primal Ltd. is incorporated in India as per the provisions of the Act the company can call the EGM anywhere in India.

In the light of the above provisions:

- a) The Board of Directors can call the EGM in India.
- b) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

Q.No.13. In Pallavi Chemicals Ltd. resolution for issue of bonus shares in the general meeting was put to remote e-voting and requisite majority has approved but quorum is not, present at the general meeting. What would be the implications?

PROVISIONS OF LAW: Quorum refers to the minimum number of members required to constitute a valid meeting.

Members need to be personally present at a meeting to constitute the quorum. Proxies shall be excluded for determining the quorum. Members who have voted by remote e-voting have the right to attend the General Meeting and accordingly their presence shall be counted for the purpose of quorum.

The stipulation regarding the presence of a quorum does not apply with respect to items of business transacted through postal ballot.

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

- a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine: or
- b) the meeting, if called by requisitionists (under section 100), shall stand cancelled:

CONCLUSION: In the Instant Case, as there is no quorum, meeting shall get adjourned as stated above.

Q.No.14. STD Ltd. convened its BOD meetings on 1st Aug, 2016. During the course of the meeting the date for calling AGM was discussed but no decision could be taken on it in the meeting. However, the Secretary of the Company issued the notice for calling the AGM of the shareholders without taking any authority from the BOD. State who is the proper authority to issue the notice for calling the AGM and to whom such notice is to be given. (N12 – 4M)

PROVISION: Sec 101 of the Companies Act, 2013 – Notice of meeting.

ANALYSIS:

- a) GM of a Company may be called by giving not less than 21 days' notice u/s 100.
- b) The AGM of a Company can be called by a proper authority. i.e. BOD in present case.
- c) It may be called by passing necessary resolution in the BM or by circular.
- d) It cannot be called by any individual director or some of the directors or by secretary.

In the given case, the secretary made a call for convening AGM without any authorization from the Board. If however a notice has been issued without authority such a notice may be ratified by the BOD before the meeting is convened.

PERSONS ENTITLED TO NOTICE [SEC 101(3)]: Notice of the meeting shall be given:

- a) To every member of the Company, legal representative of any deceased member or the assignee of an insolvent member;
- b) To the auditor or auditors of the Company, and
- c) To Every director of the Company.
- d) To Person legally entitled to represent the member

In addition to the above the copy of notice is to be sent to financial institution. Foreign collaborators trustees for holders of debentures, if company has entered into any agreement with them which may provide for sending of notices of GM to them.

CONCLUSION: The secretary is not authorized to call AGM of the Company. The proper authority is BOD.

Q.No.15. XYZ Limited called its Annual general meeting on 28th September, 2014. The notice of the meeting was posted on 6th September, 2014. With reference to the provisions of the Companies Act, 2013 examine whether the notice given by the company was valid.

Day of holding the AGM - 28th September, 2014

Day of despatch of notice - 6th September, 2014

Days to be excluded -

- Day of holding the AGM i.e 28th September, 2014
- Day of despatch of notice i.e 6th September, 2014
- 2 days for service of notice i.e 7th and 8th September, 2014

Number of days notice given - 19 days

Number of days notice required u/s 101 -21 days

AGM has not been validly called - Sine 21 days notice of the AGM has not been to the members.

The notice is short - by 2 days

The shortfall may be condoned - If consent is given for such shorter notice at least 95% of the members entitled to vote of such AGM.

Q.No.16. Dinesh, a director in a Company, gave in writing to the Company that notice for any GM and the BOD Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The Company sent 2 notices to him, of such meetings, by ordinary mail, under certificate of posting. Dinesh did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013:

- i) Whether the contention of Dinesh is valid?
- ii) Would you answer be still the same in case Dinesh remained outside India for 2 months (when such notices were given and meetings held). **(RTP – N17, OLD PM)**

PROVISION AND ANALYSIS: Sec 101 of Companies Act, 2013 – Length of notice of meeting.

U/s 101, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the Company for the purpose of servicing notice to him.

Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants to notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the Company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

CONCLUSION:

- i) The contention of Dinesh shall be tenable, for the reason that the notice was not properly served and meetings held by the Company shall be invalid.
- ii) The Company is not bound to send notice to Dinesh at the address outside India. Therefore, answer in the second case shall differ from the first one.

Q.No.17. The date of approval of financial statements by the Board of Directors of KMP Ltd. is 17th July, 2016 and the date of notice of Annual General meeting (AGM) is 25th August, 2016. Accountant of KMP Ltd. has advised that the time gap between date of approval of financial statements by the Board of Directors and the date of notice of AGM should be 45 days. The Directors have approached you to advise them regarding the same in view of the provisions of Companies Act, 2013. **(RTP May' 17)**

As per section 101 of the Companies Act, 2013 a general meeting of a company may be called by giving at least clear 21 days' notice. However, the Companies Act, 2013 does not prescribe the time limit between the date of approval of financial statements by the Board of Directors of a company and the date of notice of Annual General Meeting. Hence, in the given question, the Board of directors of KMP Ltd. should ensure that the gap between the board meeting in which the financial statements are approved and the AGM, should have a minimum gap of 21 clear days (in order to ensure at least 21 days' clear notice), unless the meeting is at a shorter notice.

Q.No.18. M.H. Company Limited served a notice of GM upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M.H. Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M.H. Company Limited regarding issue of sweat equity shares valid under the provisions of Companies Act, 2013? Explain in detail.

(NEW SM, OLD PM, N09 – 5M, RTP – M15)

(OR)

Zoarb limited served a notice of General meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

(RTP M 18) (MTP OCT 18)

PROVISION: U/s 102(2)(b) in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further u/s 102(1), a statement setting out the following material facts concerning each item of special business to be transacted at a GM, shall be annexed to the notice calling such meeting, namely:-

- a) The nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - i) Every director and the manager, if any;
 - ii) Every other KMP; and
 - iii) Relatives of the persons mentioned in sub-clauses (i) and (ii);
- b) Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

ANALYSIS: From the above provision and the conditions for issue of sweat shares the resolution must specify the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued. Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice.

CONCLUSION: Thus, the objection of the member is valid since the complete details about the issue of sweat equity should be sent with the notice. The notice is, therefore, not a valid notice u/s 102 of the Companies Act, 2013.

Q.No.19. At an adjourned EGM of a public Limited Company only 3 members are personally presents. Comment. (OLD PM)

PROVISION:

No quorum in an adjourned meeting [Sec 103(3)]

- a) If at the adjourned meeting also, a quorum is not present within ½ Hour from the time appointed for holding meeting, the members present shall be the quorum.
- b) A single member present shall not constitute quorum at an adjourned meeting.

ANALYSIS AND CONCLUSION: Assuming that the given situation, i.e. adjournment of the meeting is caused because of absence of quorum, the above stated position will prevail. Accordingly, three members personally present shall constitute a valid quorum to conduct the meeting.

But if adjournment has taken place for any reason other than absence of quorum, the quorum as per Articles or at least 5 members must be present.

Q.No.20. Abbey Limited has 2300 members and the annual general meeting of the Company is due to be held on 23rd February 2017 at 10.30 a.m. On the day of the meeting, 18 members were personally present by 11.00 a.m. and the Chairman proceeded to initiate the chronicles of the meeting. There were 5 special businesses to be discussed at the said meeting and by 2.30 p.m. Agenda 1 to 3 had been discussed and appropriate resolutions were passed. However, due to some emergency, 4 of the members had to leave around 3 p.m. The Chairman granted them the permission and proceeded to discuss Agenda 4 & 5 and accordingly passed resolution as per the consent of the remaining members. Comment whether the meeting is a properly convened meeting as per the provisions of section 103 of the Companies Act, 2013.

In the above case, while the appropriate quorum was present at the time when the meeting started as per section 103 of the Companies Act, 2013, the quorum was not present at the time of deciding Agenda 4 & 5. It has been held that where at the time of transacting business, the number of members is less than the quorum fixed for the meeting, the business cannot be transacted and shall be a nullity.

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Q.No.21. The Board of Directors of ABC Limited called an Extra-ordinary General Meeting of the company to transact certain urgent matters. The meeting could not be held for want of requisite quorum. As a result, the meeting was adjourned to next week. Again, at the adjourned meeting also the requisite quorum was not present. Members present at this meeting held the meeting and passed certain resolutions.

With reference to provisions of Companies Act, examine the validity of the meeting and state whether resolutions passed at such meeting shall be binding upon the company and its members.

THE RESOLUTIONS PASSED AT THE EGM ARE VALID AND BINDING: since if an EGM is adjourned for want of quorum, and the required quorum is again not present in the adjourned EGM, then, the members present shall be deemed to be the quorum [Sec. 103(3)].

Q.No.22. The AOA of X Ltd., require the personal presence of six members to constitute of GM. The following persons were present at the time of commencement EGM to consider the appointment of 'MD'.

Mr. G. the representative of Governor of Gujarat.

Mr. A and Mr. B shareholders of Preference shares.

Mr. L., representing M Ltd N Ltd and X Ltd.,

Mr. P, Mr. Q, Mr. R and Mr. S who were proxies of shareholders.

Can it be said that quorum was present? Discuss. (NEW SM, OLD PM, MTP- M18 (O),N18(N&O))

PROVISION: Sec 103 of Companies Act, 2013 – quorum for meeting.

Sec 113 of Companies Act, 2013 – Representation of corporations.

Sec 112 of Companies Act, 2013 – Representation of President and Governor.

As per sec 103, unless the AOA of the Company provide for a large number, 5 members personally present shall constitute quorum in case of a public Company.

For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting. Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purpose of quorum.

As per sec.113, If a Company is a member of another Company, it may authorize a person through resolution to act as its representative at a meeting of another Company. In such a case, he shall be deemed to be a member present in person and counted for the purpose of quorum. Where 2 or more companies appoint a single person all their representative, then each of such Company will be counted for quorum at a meeting of the latter Company.

As per sec.112, The President of India or Governor of state, if he is a member of a Company may appoint such person as he thinks fit, to act as his representative at any meeting of the Company. A person so appointed shall be deemed to be a member of such a Company and thus considered as member personally present.

ANALYSIS:

- a) Mr. G. shall be treated as a member personally present as he is a representative of the Governor of Gujarat.
- b) Mr. A and Mr. B are not members personally present since preference shareholders can vote only to relation to such matters which directly affect their rights and the appointment of 'MD' does not directly affect the rights of preference shareholders.
- c) Mr. L shall be treated as three members personally present since each of the three bodies shall be treated as a member personally present.
- d) Mr. P, Mr. Q, Mr. R and Mr. S are not members personally present since the word 'Personally present' excludes proxies.

The total no. of members present personally = 1 + 3 = 4.

But, quorum required by AOA is 6.

CONCLUSION: Since the quorum was less than that is prescribed in the AOA of the Company, the quorum in the given case was not present.

Q.No.23. Examine the following with reference of the provisions of the Companies Act, 2013. The Articles of Association of DJA Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

A, the representative of Governor of Uttar Pradesh.

D, representing Y Ltd. and Z Ltd.

E, F, G and H as proxies of shareholders.

Determine whether the quorum was present in the meeting? (MT Aug' 18)

Quorum is the minimum number of members that should be present in a meeting to make it valid. According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number the quorum in case of a public company shall be five

members personally present if the number of members as on the date of meeting is not more than one thousand. The term personally present means only the persons who are entitled to vote at the meeting shall be counted. Proxies of a member shall not be counted for the purpose of quorum. As per section 112 if the President of India or the Governor of any state is the member of the company he may send a representative to the meeting. Such representative shall be counted as a member personally present. As per section 113 if a body corporate is a member of a company and it sends a representative to attend the meeting such representative shall be counted as a member personally present for each such body corporate.

In this case the articles specify that the quorum for the meeting shall be 7 members personally present. As the articles specify a higher number quorum shall be the higher number i.e. 7. The total number of members present is 3.

A, the representative of Governor of Uttar Pradesh shall be counted	1
D, representing Y Ltd. and Z Ltd shall be counted for each body corporate	2
E, F, G and H as proxies of shareholders shall not be counted	nil

The articles provide presence of 7 members and only 3 members are personally present.

Thus we can conclude that the quorum is not present.

SECTION 4: PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTICE

Q.No.1. BOD of ABC Ltd., called for EGM on 14th Jan, 2017. Mr. M who is newly appointed as Company Secretary is confused over the issue of sending notices to joint shareholders of the Company. Advise Mr. M by referring to the provisions of Companies Act, 2013. (OLD PM)

In the case of joint shareholders, notices will be deemed to be properly served if the service is effected on the first named of the joint holders as entered in the register of members. As per Sec 20 and Sec 101 of the Companies Act, 2013.

Q.No.2. Abby rush Limited was incorporated on 11th December 2018. When should the Company hold its AGM?

According to section 96(1), the Company's financial year will close on 31st March 2019. The Company may hold its first AGM by 31st December 2019, i.e. within 9 months of the close of its financial year, unless an extension of maximum 3 months is granted by ROC to hold the AGM.

Sec 96(2) states that every AGM shall be called during business hours, i.e. between 9 a.m. to 6 p.m. on any day which is not a National Holiday and shall be held either at the registered office of the Company or at some other place within the city, town or village in which the registered office of the Company is situated.

Q.No.3. The Board of directors of Illusions Private Limited, a Company registered in New Delhi, has decided to call an extra-ordinary general meeting in Madrid, Spain on 2nd October 2016. Discuss whether the general meeting can be convened on the said date.

No, the meeting cannot be convened in the manner as stated in the facts of the question. As per *Rule 17(2) of the Companies (Management and Administration) Rules, 2014*, the requisitionists should hold the meeting in the registered office of the Company or in the same city or town in which the registered office is situated and it should be any day other than National holiday.

Q.No.4. The members of the Blumove Peacocks Private Limited, holding 1/10th voting power of the Company, requisitioned a meeting on 14th August, 2016 to the Board of Directors. However, the directors did not pay any heed to such a requisition and did not call an extra-ordinary meeting. Discuss the consequences of the contravention of the same in accordance with the Companies Act, 2013.

Where the Board, after the receipt of the requisition, does not within 21 days call for a meeting within 45 days of the date of requisition, then the requisitionists may themselves call and convene the meeting.

Q.No.5. Asia Pacific Co. Ltd., called its Annual General Meeting on 30th September 2001 and adjourned it to 31st December 2001 due to delay in completion of audit of accounts for year ended 31st March 2001. At the adjourned meeting, the meeting was further adjourned to 31st March 2002. Subsequently, the Annual General Meeting was held on 28th January 2002. State whether the Company has complied with section 96 and, if not, whether the Company is liable to default and conviction.

As per section 96, earliest of following date is deadline for holding Annual General Meeting by Company:

- Within 6 months from end of financial year; or
- Within 15 months from the date of earlier Annual General Meeting, whichever is earlier?

Accordingly, Company should convey its AGM on or before 30th September 2001. (Assuming Company's financial year end on 31st March)

Adjourned meeting is nothing but continuous of original meeting. It means, adjourned Annual General Meeting should be concluded on or before 30th September 2001. Here, Annual General Meeting is adjourned twice and concluded on 28th January 2002. It is held beyond the stipulated time period. Company has committed default in this regard.

Q.No.6. Articles of Association of a Company reserved the powers for calling the Annual General Meeting. The Managing Director of the Company, without reference to the Board, called an Annual General Meeting. Is the Annual General Meeting validity called? If not, what should be done to make it valid? Discuss with reference to case law, if any?

(OR)

Yogesh, the Company Secretary of Big leap Ltd. convened a General Meeting of the Company after discussing the matter with some of the directors even though there was no express approval of the Board for convening such a meeting. Discuss the validity of such a meeting.

Any Annual General Meeting can be called only with the authority of Board. Appropriate course of an action is to pass board resolution and authorize CS/MD/Director to issue notice to call Annual General Meeting. If MD/CS/Director calls a meeting without the authority of the Board of directors, it will not be effective unless Board ratifies it. Ratification shall be made before meeting is held. Here, if notice issued is not ratified by Board before Annual General Meeting, notice and meeting will not be considered as valid in eye of law.

Q.No.7. Mr. Abeer filed a complaint against the Company, Elixir Private Limited since it did not serve the notice to him for attending the annual general meeting. The Company, in turn, provided the proof that they had sent the notice, by way of an email to Mr. Abeer, inviting him to attend the annual general meeting of the Company. Abeer alleges that he never received the email. State whether the Company is liable as guilty for contravening the provisions of section 101 of the Companies Act, 2013 read with rules.

As per Rule 18(3) of the Companies (Management & Administration) Rules, 2014, the Company's obligation shall be satisfied when it transmits the e-mail and the Company shall not be held responsible for a failure in transmission beyond its control.

Also, if the member entitled to receive the notice fails to provide or update relevant e-mail address to the Company, or to the depository participant as the case may be, the Company shall not be in default for not delivering notice via e-mail.

Q.No.8. Mr. DP, Secretary, of City Handicrafts Ltd. called an EGM of the Company on the requisition of some members. Mr. DP, Secretary of the Company, issued notice of the meeting without the authority of the BOD. Discuss on the validity of the notice issued by Mr. DP, Secretary of the City Handicrafts Ltd. (OLD PM, N12 – 4M)

PROVISION: Sec 101 of the Companies Act, 2013 – Notice of meeting.

The AGM or EGM can be called only with authority of BOD i.e. by passing necessary resolution in the BM or by resolution by Circulation.

RELEVANT CASE LAWS: “Al Amin Seatrains Ltd. Vs. Owners and Party Interested in Vessel M V “Loyal Bird” - Unless the Secretary is specifically authorized either by the BOD or by the articles, any meeting called by him and the business done there at it would be null and void.

“Hooper vs. Kerr. Stuart & Co.” - However, the notice of the meeting may be ratified by the BOD of the Company before the meeting is held to make it good.

ANALYSIS: An AGM or EGM cannot be called by an individual director or some of the directors or by secretary. Now, in the instant case, Mr. DP, Secretary of City Handicrafts Ltd., called an EGM on requisition of some members. He issued notice of the meeting without the authority of the BOD. The Secretary of the Company does not have the power to call the meeting by himself by issuing notices.

CONCLUSION: Thus, the notice issued by Mr. DP may be ratified by the BOD of City Handicrafts Ltd., to make it valid.

Q.No.9. ABC Ltd. called its AGM on 7th Apr 2016. The notice of AGM was posted on 16th Mar 2016. One member holding 20 shares wishes to challenge the resolutions passed at the AGM on the ground that the notice was not valid. What advice would you give to him? (OLD PM)

PROVISION: Sec 101 of Companies Act, 2013 – Length of notice of meeting.

ANALYSIS: As per Sec 101 of Companies Act, 2013:

Length of notice [Sec 101(1)]: A GM of a Company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed.

In case the notice of the GM is sent by post, service of notice of the meeting shall be deemed to have been effected at the expiry of 48 hours after it was posted.

Short Notice [Proviso to Sec 101(1)]: However, a GM may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

Relevant Case Law: “Saliesh Harilal Shah v. Matushree Textiles Ltd”

The Bombay High Court held that the requirement of the section as length of notice is directly only and not mandatory. A couple of shareholders cannot be permitted to defeat the interest of the large body of shareholders by saying that the duration of the notice was not sufficient even if the short notice does not indicate any prejudice to the complaining shareholders.

ANALYSIS: In the instant case, the notice was short of 2 days as per the sec:

No of days between 16th March to 7th April	23 days
Less: Date of service and date of meeting	(2 days)
Less: 48 hours from the time of its posting	(2 days)
Net length between posting and meeting dates	19 days

CONCLUSION:

- a) Therefore, the meeting was invalid and the resolutions passed were invalid. However in case AGM, where at least 95% of the members entitled to vote consent to a shorter notice in writing or by electronic mode, have so consented the meeting may be held on shorter notice.
- b) Therefore, the member may be advised to explore whether he has suffered any prejudice by the short notice before proceeding to challenge the validity of the resolution.

Q.No.10. Any document sent to the member by the Company will be deemed to have been delivered to him on expiry of 48 hours from the time of delivery.

False, Sec 20 of Companies Act, 2013 provides that the notice of a meeting shall be deemed to have been served on members at the expiration of 48 hours after the letter containing the same is posted and in case of any other documents to be served on members it shall be deemed to have been delivered at the time at which the letter would be delivered to him in the ordinary course of post.

Q.No.11. The annual general meeting of Ameren Makeovers Private Limited is to be held on 5th April, 2017 at 3.00 p.m. What should be the appropriate time to send the notice by post, so that the provisions of section 101 are not contravened?

As per section 101 of the Companies Act, 2013 read with Rule 35(6) of the Companies (Incorporation) Rules, 2014, service shall be deemed to have been effected at the expiry of 48 hours after it is posted.

In case the general meeting is to be held at 3.00 p.m. on the 5th April, 2017, the service of notice shall be deemed to have been duly effected if it is dispatched by post at any time before 3.00 p.m. on 12th March 2017. This will satisfy the requirement of 21 days clear notice as well as the 48 hours for transmission by post.

Q.No.12. A GM of a Public Company was adjourned by the chairman for want of quorum. Fresh notice was not served for the adjourned meeting. Do you feel that notice is required for the adjourned meeting? Referring to the provisions of the Companies Act, 2013 state the minimum number of members required to be present in the adjourned meeting. (OLD PM)

As per sec 103(2) of the Companies Act, 2013 if the quorum is not present within $\frac{1}{2}$ hour from the time appointed for holding a meeting, the meeting shall stand adjourned to the same day in the next week, at the same time and place unless the directors determine otherwise. Fresh notice is not required for holding such adjourned meeting.

Further, U/s 103(3) of the Companies Act, 2013, if at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting; the members present shall be the quorum. Therefore, there is no necessity for a minimum number of members to be present in the adjourned meeting.

However, if all the members are present, it is immaterial that the quorum required is more than the total number of members [Re. *Express Engineering Works Ltd.*].

Q.No.13. Whether the following persons can be counted for the purposes of quorum in a GM of a Public Company

- a) Both the joint owners of shares or present at the meeting.
- b) A single member present at the meeting.
- c) A person representing 3 member companies.

(OLD PM)

- a) For the purpose of quorum, joint shareholders will be collectively regarded as one shareholder.
- b) The single member present at the meeting will be counted as one in the computation of the quorum.
- c) A representative of a body corporate appointed under Sec.113 of Companies Act, 2013 is a member personally 'present' for purposes of counting of quorum. If one individual represents three member Companies, his presence be counted as three members being present in person for purpose of quorum.

Q.No.14. Even a single person present in the AGM held on instructions of the Tribunal (NCLT) constitutes valid quorum.

True. Sec.97 of the Companies Act, 2013 provides that the NCLT, while issuing instructions for holding the AGM on a complaint of a member may also issue a direction that even a single member present in the meeting shall constitute a valid quorum.

Thus, where special orders are made by the Tribunal, single member present in the meeting shall constitute quorum.

Q.No.15. Will a person representing one Company u/s 113 of Companies Act, 2013, in addition to representing himself as a member in GM of a Company, is counted as 2 persons for the purpose of quorum?

Yes. The person representing one Company u/s 113 of Companies Act, 2013 and also himself as a member shall be counted as two persons for purposes of quorum at GM of a Company.

This is because of the fact that a person representing a Company u/s 113 of Companies Act, 2013 is deemed to be a member of the Company.

So, as he presents himself in two different capacities, he is to be counted as 2 persons.

Q.No.16. If the GM is adjourned for want of Quorum, then in case of change in the day, time, place of the adjourned meeting, the Company is required to give not less than 7 days of notice to the members individually or by press announcement. Comment whether the given statements is correct or incorrect as per the Companies Act, 2013: (N14 - 1M)

(Or)

A meeting was properly convened and was subsequently adjourned by the Chairman. No fresh notice is given for the adjourned meeting which is held subsequently. State whether the adjourned meeting is valid.

PROVISION AND ANALYSIS: Sec 103 of Companies Act, 2013 – Quorum for meeting

As per sec 103, A quorum is not present within 15 minutes from the time appointed for holding a meeting of the Company, the meeting shall stand adjourned to the same day in the next week, at the same time and place unless the directors determine otherwise.

Notice of an adjourned meeting: Where the meeting stands adjourned to the same day in the next week at the same time and place, or to such other date, time and place as the Board may determine, and then the Company shall give at least 3 days' notice to the members either individually or by publishing an advertisement in the newspapers.

CONCLUSION: Thus, in both the cases, adjourned meeting in question is not valid.

Q.No.17. Ashok Ltd issued a notice for holding its AGM on 7th Nov. Notice was posted to Members on 16th Oct. Some of the Members alleged that the Company had not complied with the Act as regards period of Notice and as such meeting was not validly called. Decide:

- Whether the meeting has been validly called?
- If there is a shortfall in the number of days by which notice falls short of the statutory requirement, explain by how many days notice fall short of statutory requirement?
- Can the shortfall, if any, be condoned? **(Or)**

Dev Limited issued a notice for holding of its AGM on 7th Nov, 2017. The notice was posted to the members on 16.10.2017. Some members of the Company allege that the Company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide:

- Whether the meeting has been validly called?
- If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?
- Can the short fall, if any, be condoned? **(OLD PM)**

According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

- i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- ii) As explained in (i) above, notice falls short by 2 days.
- iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Q.No.18. Mr. X a shareholder of 100 equity shares of P Limited sent a letter to the Company that the notice of AGM is to be sent to him only by registered post. Is Company under obligation to accept such a request from the shareholder?

PROVISION: Sec 20 of Companies Act, 2013 – Service of documents

ANALYSIS: As per to Sec 20, Notice may be served on the members either personally or by post to the address within India supplied by him to the Company. However if the member has intimated to the Company in advance that notice should be sent to him under a certificate of posting or registered post and has deposited with the Company a sum sufficient to meet the expenses of doing so service of document shall be made only like such.

In the given case the Company is under obligation to accept such requests subject to the condition that the expenses incurred by the Company for giving the notice by registered post are deposited by the member with the Company in advance. In the given case, X has not deposited any such amount with the Company.

CONCLUSION: Company is under no obligation to accept the request.

Q.No.19. KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2018 at 11:00 A.M. The company has 900 members. On 11th March, 2018 following persons were present by 11:30 A.M.

P1, P2 & P3 shareholders

P4 representing ABC Ltd.

P5 representing DEF Ltd.

P6 & P7 as proxies of the shareholders

Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.

What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.? In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.

What happens if there is no Quorum in the Adjourned meeting? (Nov' 18)

Quorum is the minimum number of members that should be present at the meeting, to make the meeting valid. According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000. The term personally present implies only the person who has a right to vote at the meeting shall be counted. As per section 113 if a body corporate is a

member of a company and it sends a representative to attend the meeting such representative shall be counted as a member personally present for each such body corporate. If the quorum is not present within half an hour from the time scheduled for the meeting the meeting shall be adjourned to the next week same day same time. In case of meeting adjourned due to lack of quorum the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper. If at the adjourned meeting also the quorum is not present the members present shall constitute the quorum.

In the above case KMN Ltd. with 900 members called a meeting of its shareholders. The time scheduled for the meeting was 11:00 A.M. by 11:30 the number of member present were 5

- P1, P2 & P3 shareholders shall be counted 3
- P4 representing ABC Ltd shall be counted 1
- P5 representing DEF Ltd shall be counted 1
- P6 & P7 as proxies of the shareholders (proxies nil

shall not be counted)

The required quorum is 5 under the Act and the members present are 5, so quorum is present

Thus the quorum is present.

- a) If P4 the representative of ABC Ltd. arrives after 11:30 AM the quorum is not present as the quorum should be present within half an hour from the time scheduled. Thus the meeting shall stand adjourned to the next week, same day and time.
- b) If the meeting is adjourned for lack of quorum and at the adjourned meeting also the quorum is not present the members present shall constitute the quorum.

Q.No.20. The AOA of M/s. QPR Private Limited provides that 5 members present in person constitute the quorum. The total number of members of the Company is also 5. A GM of the Company was held on 25th Jan 2017 and it was attended by 4 members as the 5th member had expired sometime earlier. In the said meeting a resolution was passed by a majority of 3 to 1 removing one Mr. Doubtful as a director for indulging in Anti-Company Activities. Mr. Doubtful challenges the validity of the resolution on the ground of lack of quorum in terms of the AOA. Discuss with reference to the relevant provisions of Companies Act whether the contention of Mr. Doubtful is correct?

PROVISION: Sec 103 of Companies Act, 2013 – Quorum for meeting.

As per sec 103, the Quorum can be

- a) In case of public Company –

Quorum for the meeting	Number of members as on date of a meeting
5 members personally present	not more than 1,000
15 members personally present	more than 1000 but up to 5000
30 members personally present	exceeds 5000

- b) In case of Private Company – 2 members personally present.

However, AOA may provide for a larger quorum than the above provided it cannot specify a smaller quorum.

The general principle is that if no quorum is present the meeting then the proceedings of such meeting is void. However, if all the members are present, it is immaterial that the quorum required is more than the total numbers of members present.

ANALYSIS: In the given case all the members are present personally except the person who had expired. So there is a valid quorum and so the resolutions passed are also valid.

CONCLUSION: Mr. Doubtful cannot successfully challenge the resolution.

Q.No.21.The AGM of KMP Limited was held on 30-06-2017. The AOA of the Company is silent regarding the quorum of the GM. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the Company. The chairman adjourned the meeting for want of quorum. Referring to the provisions of the companies Act, 2013, examine the validity of chairman's decision.
(NEW SM, OLD PM, M15 – 4M)

PROVISION: Sec 103 of Companies Act, 2013 – Quorum for meeting

As per Sec 103(1), where the AOA of the Company do not provide for a larger number, the quorum of a public Company shall depend on such number of members as on date of a meeting as follows –

Quorum for the meeting	Number of members as on date of a meeting
5 members personally present	not more than 1,000
15 members personally present	more than 1000 but up to 5000
30 members personally present	exceeds 5000

Consequences of no quorum u/s 103(2): If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the Company:

- i) The meeting shall stand adjourned -
 - Automatically to the same day in the next week at the same time and place, or
 - To such other date, time and place as the Board may determine; or
- ii) The meeting, if called by requisitionist's u/s 100, shall stand cancelled.

ANALYSIS: In the instant case, KMP Limited is a public Company with total number of 2,750 Members. Hence atleast 15 members should have been personally present in order to constitute a valid quorum for the AGM. But only 10 members are present in the given case.

Sec 103 of the said Act itself provides for automatic adjournment of the meeting to the same day in the next week at the same time and place, rather the Chairman preventing to take a decision on the matter of the meeting. The question of validity of Chairman's decision does not arise.

CONCLUSION: The decision of the chairman for adjournment is valid for want of Quorum. But the chairman can't independently decide the date, time and place of adjourned meeting.

Q.No.22. The quorum for a GM of a public Company is 15 members personally present as per AOA of the Company. Examine with reference to the provisions of the Companies Act, 2013 whether there is proper quorum at a GM of the Company which was attended by the following persons.

- i) 13 members personally present,
- ii) 2 members represented by proxies who are not members of the Company,
- iii) One person representing two member companies. **(OLD PM)**

PROVISIONS OF LAW: Sec 103 of Companies Act, 2013 – Quorum for meeting

Sec 113 of Companies Act, 2013 – Representation of corporations.

As per Sec 103(1), where the AOA of the Company do not provide for a larger number, there the quorum of a public Company shall depend on such number of members as on date of a meeting as follows -

Quorum for the meeting	Number of members as on date of a meeting
5 members personally present	not more than 1000
15 members personally present	more than 1000 but up to 5000
30 members personally present	exceeds 5000

ANALYSIS:

- i) Members personally present are only considered for quorum. Hence, 13 persons personally present shall be considered for quorum.
- ii) Proxies are considered only when they are represented by companies and governor or president. Hence, 2 members represented by proxies shall not be considered for quorum.

- iii) Where a person is representing more than one Company, each of the Company shall be counted for the purpose of quorum. Hence 1 person representing two member companies shall be counted as 2 members for quorum.

Thus the total no. of members persons present = 13 + 2 = 15, which is equal to the quorum as provided by the AOA of the Company.

CONCLUSION: Hence there is a proper quorum at a GM in the given case.

Q.No.23. DJA Company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the Company for amending the terms of these shares. Mr. A, was the only preference shareholder who attended the meeting. He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 2013, examine the validity of the meeting and the resolution passed thereat. (OLD PM)

PROVISION:

Sec 48 of Companies Act, 2013 – Variation of rights of holders of special classes of shares

Sec 103 of Companies Act, 2013 – Quorum for meeting

RELEVANT CASE LAWS: Sharp Vs Dawes

East Vs Bonnet Brother Ltd.

As per sec.48, Class meetings (*whether equity shares or preference shares*) are generally held for gathering a particular class of shareholders for altering the rights or terms or conversion of one class into another. The AOA generally provides that rights of different classes of shares can be varied by resolutions at separate meetings of the holders of that class.

In sharp Vs Dews, it was held that a meeting means coming together of more than one person i.e. one member cannot constitute a meeting, where there are more than one person.

However, where all the shares of a particular class are held by one person, such person may alone do what meetings of shareholders of that class do under the AOA (i.e. one person shall form the quorum.) (*East Vs Bonnet Brother Ltd*).

As per Sec 103, where the articles of the Company do not provide for a larger number, the quorum of a public Company shall depend on such number of members as on date of a meeting as follows:

Quorum for the meeting	Number of members as on date of a meeting
5 members personally present	not more than 1,000
15 members personally present	more than 1000 but up to 5000
30 members personally present	exceeds 5000

ANALYSIS: In the given case, the meeting is a class meeting of preference shareholders. Moreover in the given case, East Vs Bonnet Brother Ltd. case will not be applicable because all the shares are not held by one person.

The quorum is not present since presence of a single member doesn't constitute a meeting.

CONCLUSION: The meeting and resolution passed there at are not valid.

SECTION 5: SECTION NUMBERS

S. No	CONCEPT	Sec. No.
1)	Holding of AGM	96
2)	Power of Tribunal to call AGM	97
3)	Power of Tribunal to call meeting of members	98
4)	Punishment for default in complying with provisions of sec 96 to 98	99
5)	Calling of EGM	100
6)	Notice of meeting	101
7)	Statement to be annexed to notice (Explanatory statement)	102

PENALTIES AND PUNISHMENTS

Section	Particulars	Penalty
Section 99- Punishment for default in complying with provisions of sections 96 to 98	If Company defaults in holding meeting in accordance with Sections 96, 97 and 98 or the directions of Tribunal	Company, Officer in Default Company Fine: May extend to Rs 1 Lac In the case of a continuing default: With a further fine which may extend to Rs 5,000/ day during which default continues
Section 102- Statement to be annexed to notice	If default is made in complying with the provision of Sec 102	Every promoter, director, manager or other Key managerial personnel of the company who is in default: Penalty- Rs 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.

DURATION

1)	Time limit for calling AGM	<p>First AGM: Must be held within a period of 9 months from the date of closing of the first financial year of the Company.</p> <p>Subsequent AGM:</p> <ul style="list-style-type: none"> • One meeting must be held in each calendar year • Must be held within a period of 6 months, from the date of closing of the relevant financial year. • Registrar may, for any special reason, extend the time within which any AGM, shall be held, by a period not exceeding 3 months
2)	Time gap between two AGM	Maximum interval of 15 months between two AGMs.
3)	Time limit for calling the EGM by BOD on receipt of requisition from requisitionists	Board is required to proceed to call a meeting within 21 days from the date of receipt of requisition, to convene a meeting which should be held within 45 days of such deposit of the requisition with the Company.
4)	Notice for convening of EGM by members themselves.	Notice in writing or through electronic mode at least clear 21 days prior to the proposed date of such EGM.
5)	Time limit for the requisitionists to hold the meeting, if the board fails to call the EGM in the time	Within 3 months from the date of requisition
6)	Service through post	Deemed to have been effected in the case of notice of meeting on the expiry of 48 hours since the posting of the same.
7)	Time limit for sending statement of Accounts, Auditors Report etc. as per Sec136	Statement of account, auditors' report together with all necessary annexures or attachments shall be sent to members not less than 21 days before the date of meeting.
8)	Length of notice [Sec 101(1)] for GM.	<p>Not less than clear 21 day's notice either in writing or through electronic mode in such manner as may be prescribed.</p> <p>However, In case of sec 8 companies, clear "14 days" notice is sufficient.</p> <p>Short Notice: GM may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.</p>

THE END