

Lesson 03

OPERATIONS AND GOVERNANCE OF COMPANIES

Part – II (Meetings and Resolutions)

A company is a separate legal entity with its own rights and obligations, distinct from its shareholders. Although it exists independently, it cannot act on its own and must operate through its shareholders and directors. Generally, the management powers of a company rest with the board of directors, while shareholders may exercise such powers only in specific circumstances provided under the company's articles or by law. These reserved powers are typically exercised by shareholders at formal meetings.

a) Types of Meetings

a) Annual General Meeting

An Annual General Meeting (AGM) is a compulsory yearly meeting of an incorporated body's executives, directors, and shareholders.

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The board of directors has a statutory obligation to convene an AGM once every calendar year.

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However, there are **two exceptions** recognized in law where a company is not required to conduct an annual general meeting:

- The first Annual General Meeting (AGM) need not be held in the year of incorporation but must be held within 18 months of incorporation (Section 133(2)).

- Under Section 144(3), an AGM is not required if all matters are completed through a written resolution signed by at least 85% of voting shareholders.

Under Section 133 (3) when a company defaults in holding an AGM the registrar may on application of any shareholder call or direct the calling on an AGM and give such ancillary or consequential directions to the company as he thinks expedient.

Failure to comply with the requirements under 133 (1), (3) and (4) is deemed an offence under the Companies Act.

b) Extraordinary General Meeting

The Annual General Meeting (AGM) is typically the only time during the year when shareholders and executives interact. If a company needs to resolve a problem in between AGMs, it may call an Extraordinary General Meeting (commonly referred as an EGM).

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A company's articles of association usually provide that any meeting convened other than as a company's annual general meeting will be referred to as an "Extraordinary General Meeting".

Convening of Extraordinary General Meetings on requisition are governed by section 134 which provides:

Sec. 134 (1) - Notwithstanding anything in its articles, the directors of a company shall on the requisition of shareholders holding at the date of the deposit of the requisition shares which carry not less than **ten per centum** of the votes which may be cast on an issue, forthwith proceed duly to convene an extraordinary general meeting of the company to consider and vote on that issue. The meeting shall be convened not later than fifteen working days after the date of the deposit of the requisition and held not later than thirty working days after the date of the deposit of the requisition.

In terms of section 134 of the Companies Act, Shareholders holding not less than 10% of the shares with voting rights can make a request to call for an extraordinary general meeting to discuss any issue.

Upon receipt of such request, there is a statutory duty cast upon directors to call an extraordinary general meeting within fifteen working days after the date of such requisition.

section 134(1) requires that the meeting must be held within thirty working days after the deposit of the requisition at the registered office of the company.

If the directors fail to call the meeting within 15 working days after receiving a valid requisition, the requisitionists—holding more than half of the voting rights among them may call the meeting themselves. However, any such meeting must be held within three months from the date the requisition was originally deposited.

c) Quorum

Before a meeting of shareholders begins, it is essential to ensure that a quorum is present, for the reason that without a quorum no resolution can be passed, and no business can be done.

The Act is silent as to the number of shareholders required to constitute a quorum. It is up to a company to decide, in its articles, the number of shareholders required to be present to constitute a quorum. If the Articles are silent or in the absence of provisions in Articles; for private companies – 02 and for other companies – 03 (Section 136).

In a single shareholder company, it is obvious that the single shareholder would constitute the quorum for a shareholder meeting. In companies that have adopted the Model Articles, a quorum for a meeting is present the shareholders or their proxies present between them would be able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

The Model Articles further provide that if a quorum is not present within thirty minutes after the time appointed for the meeting, the meeting should be adjourned to the same day in the following week, at the same time and place, or to such other date, time and place as the directors may appoint. If at the adjourned meeting a quorum is not present within thirty minutes after the time appointed for the meeting, the shareholders present or their proxies shall be deemed to form the quorum.

d) Notice of Meetings

Statutory notice periods ensure members have sufficient time to consider proposed business before a meeting.

The Companies Act No. 07 of 2007 specifies minimum periods that must be strictly observed. You calculate these periods accurately to prevent meetings from being declared invalid.

135. (1) *Any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than—*

(a) ; and

(b) *in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, ten working days' notice in writing in the case of a company other than a private or an unlimited company and five working days' notice in writing in the case of a private or an unlimited company.*

A company, however, has the discretion in its articles to provide for a longer notice period. If a meeting is called by notice of a shorter duration of time than that specified in section 135 (2) of the Act or in the company's articles generally the meeting would be null and void and resolutions passed thereunder would be of no force or effect in law.

Section 135 (3) This can be rectified if it is agreed upon;

(a) in the case of the meeting called as the annual general meeting, by all the shareholders entitled to attend and vote at such meeting ; and

(b) in the case of any other meeting, by the shareholders having a right to attend and vote at the meeting, being shareholders together holding shares which carry not less than ninety-five *per centum* of the voting rights, on each issue to be considered and voted on at that meeting.

e) Drafting Notice Content for AGMs and EGMs

Vague or incomplete information can prevent shareholders from making informed decisions and may provide grounds for legal challenge.

Factors to consider:

- State the date, time, and venue of the meeting clearly, and distinguish between ordinary business (such as approval of accounts and director elections) and any special business requiring specific resolutions.
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- Specify the exact business for an EGM, ensuring the notice is strictly limited to the urgent matters for which the meeting was convened, as no other business can be legally transacted.

f) Power of court to order meeting -section 137

The Court is vested with the power to order a meeting to be called, held and conducted in a manner that Court seems appropriate. Such order may be granted where it is impractical to call a meeting in a manner in which meetings are to be normally called or to conduct a meeting in a manner specified by the Articles of the company or the Companies Act.

The Court may order a meeting to be called on its own motion or upon an application made by a director or a shareholder who has the right to vote at such a meeting.

The court is empowered to make orders as to the manner in which the meeting will be conducted and in doing so the court may give directions for the conduct of the meeting.

g) Proxies

This mechanism protects shareholder voting rights and ensures participation regardless of physical presence. For example, a shareholder residing abroad may appoint a local representative through a properly executed proxy form to exercise their voting rights at the meeting.

The proxy appointed will have the same rights as the shareholder to vote on a show of hands or on a poll and to speak at the meeting. Unless articles otherwise provide a shareholder shall not be entitled to appoint more than one proxy to attend on the same occasion.

Special provisions have been made in the Act where Government of Sri Lanka holds shares in a company in the name of the Secretary to the Treasury.

Notwithstanding anything in this Act, where the Secretary to the Treasury is the holder of more than ten per centum of the shares, the Secretary to the Treasury shall be entitled to appoint another person as his proxy for every ten per centum or part thereof of the shares held by the Secretary to the Treasury.

Provided where the Secretary to the Treasury is a holder of a golden share in a company in terms of its articles, notwithstanding anything in this Act, the Secretary to the Treasury as the golden shareholder thereof shall be entitled to appoint not more than three other persons as his proxies to attend on the same occasion.

A Company is statutorily compelled to inform its shareholders, when notifying them of a meeting of their right to appoint a proxy to attend and vote at that meeting. The notice must prominently state this right of every shareholder and failure to do so is an offence under the Act.

h) Voting

Unless the company's articles otherwise provide, voting at a company's meeting is by show of hands. Each shareholder has one vote irrespective of the number of shares held by him in the company.

The other common method of voting is by poll. In a poll every shareholder has one vote in respect of each share held by him.

According to section 140 (1) Any provision contained in a company's articles shall be void, in so far as it would have the effect either —

- a) of excluding the right to demand a poll at a general meeting on any question, other than the election of the chairman of the meeting or the adjournment of the meeting; or
- b) of making ineffective a demand for a poll on any such question which is made either;
- by at least 5 shareholders who have the right to vote at the meeting, or
 - by Shareholders holding at least 10% of the total voting rights.

Summary – Notice Period for Meetings

	Private Limited Companies	Other Companies
AGM	Not less than 15 days notice	Not less than 15 days notice
Meeting to consider special resolution or resolution requiring special notice		Not less than 15 days notice
Other meetings	Not less than 05 days notice	Not less than 10 days notice
Waiver of notice for AGM	By all shareholders	By all shareholders
Waiver of notice for meetings to consider special resolutions		Shareholders with 85% of voting rights
Waiver of notice for other meetings	Shareholders with 95% of voting rights	Shareholders with 95% of voting rights

2. Resolutions

Resolutions are classified primarily by the voting threshold required for their passage, which reflects the significance of the corporate action being approved.

The Companies Act, No. 7 of 2007, establishes different types of resolutions, each with distinct procedural requirements and applications. The fundamental distinction lies between ordinary resolutions for routine business and special resolutions for significant corporate changes. Additionally, private companies may utilise written resolutions as an alternative to holding physical meetings.

I. Types of Resolutions

a) Ordinary Resolutions

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 According to the Companies Act, No. 7 of 2007, this requires more than 50% of the votes cast to be in favour. Ordinary resolutions are the standard mechanism for conducting routine company business and enabling efficient corporate governance.

Common applications include the appointment of directors and auditors at Annual General Meetings, approval of annual financial statements, and declaration of dividends. The procedure for passing an ordinary resolution requires first verifying that the proposed action is appropriate for this resolution type according to the company's articles and the Companies Act. The votes must then be calculated to confirm that more than 50% of those cast are in favour. Finally, the full text of the passed resolution must be accurately recorded in the company's minute book.

b) Special Resolution

A special resolution is required for significant corporate actions that fundamentally affect the company's structure or constitution. As defined by the Companies Act, No. 7 of 2007, it is a resolution passed by a majority of not less than seventy-five per cent of the votes of those shareholders entitled to vote and voting on the matter.

This higher threshold serves to protect minority shareholder interests in major decisions.

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The notice of the meeting must specify the intention to propose the resolution as a special resolution and must include the full text of the proposed resolution. At the meeting, it must be verified that at least 75% of (after giving not less than 15 working days' notice) the votes cast are in favour.

Provided that, where it is so agreed by the shareholders having the right to attend and vote at any such meeting, being shareholders together representing not less than eighty-five per

centum of the total voting rights at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than fifteen working days' notice has been given.

Following passage, a copy of the special resolution must be filed with the Registrar of Companies (ROC) using Form 39.

c) Resolution in lieu of meeting

Under Section 144 (1) , subject to the provisions contained in the company's articles, a resolution in writing signed by not less than eighty-five *per centum* of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, who together hold not less than eighty-five *per centum* of the votes entitled to be cast on that resolution, shall be as valid as if it had been passed at a meeting of those shareholders.

When a resolution is passed in writing in lieu of a meeting, a company must within five working days of the resolution being passed, send a copy of the resolution passed to every shareholder who did not sign the resolution.

It shall not be necessary for a company to hold an annual general meeting of shareholders under section 133, if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with section 144 of the Act.

d) Resolution in writing of all shareholders of a Private Company

Where all the shareholders of a private company agree in writing to any action which has been taken, or is to be taken by the company;

- (i) the taking of that action is deemed to be validly authorized by the company, notwithstanding any provision in the articles of the company to the contrary; and
- (ii) the provisions contained in the list of sections of this Act specified in the Second Schedule hereto shall not apply to and in relation to that action. (Section 31).

II. Resolution requiring special notice

Where any provision in the Act stipulates that a resolution to be passed requires a special notice, then for such resolution to be effective notice of the intention to move it has to be given to the company not less than twenty-eight days before the date of the meeting at which it is to be moved.

The company shall give its shareholders notice of any such resolution at the same time and in the same manner as it gives notice of the meeting. Where it is not practicable to do so, the company can give its shareholders notice thereof either by advertisement in a newspaper having an appropriate circulation or in any other manner allowed by company's articles not less than fifteen working days before the date of the meeting.

III. Resolutions passed at adjourned meetings

Where after the appointed date, a resolution is passed at an adjourned meeting of—

- (a) a company ;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date

IV. Minutes of proceedings of meetings of shareholders and directors

Any such minutes purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of such proceedings.

Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting, or a meeting of directors of the company, as the case

may be, then until the contrary is proved, the meeting shall be deemed to have been duly held and convened and all appointments of directors, managers or liquidators, made at the meeting, shall be deemed to be valid.

V. Resolution Preparation and Statutory Compliance

A resolution is the enduring legal record of a corporate decision, subject to scrutiny by courts, regulators, and stakeholders long after it is made. Because any ambiguity can invite challenges or obstruct implementation, it must be drafted with absolute clarity to reflect the members' true intention.

Steps to be followed;

- Start with a clear statement of the resolution type (e.g., "IT IS HEREBY RESOLVED AS A SPECIAL RESOLUTION") and include the date of the meeting
- Define the specific action in unambiguous language, including all necessary details such as names, dates, and amounts to make the resolution self-contained
- Reference to the specific section of the Companies Act or the company's articles that authorizes the action, ensuring the resolution has proper legal foundation

Director Appointment Resolution

The appointment of a director changes the company's governance structure and must be formally documented and reported to maintain an accurate public record. This action requires both shareholder approval and statutory notification to the Registrar of Companies (ROC).

The required procedures are:

- Draft an ordinary resolution stating the director's full name and specifying the effective date of appointment.
- Obtain the director's signed, written consent to act before the resolution is passed at the meeting.
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Dividend Declaration Resolution

A dividend declaration authorizes the distribution of company profits to shareholders, but this action is legally conditional upon satisfying strict solvency requirements.

The Companies Act, No. 7 of 2007 prohibits any distribution that would render the company unable to pay its debts as they become due. You must ensure the resolution is supported by the board's formal certification of solvency to protect both creditors and directors from liability.

The required procedures are:

- Confirm the board has passed a resolution certifying that the company will satisfy the solvency test immediately after the dividend payment.
- Draft an ordinary resolution specifying the exact dividend amount per share (e.g., Rs. 2 per share), the record date for determining eligible shareholders, and the payment date.
- Record both the shareholder resolution and the board's signed solvency certificate in the company's minute book to create a complete compliance record.



[COMPANY NAME]

Company Name

RESOLUTION OF THE

[MEMBERS / BOARD]

Meeting Type

Date:

[DATE]

Type of Resolution:

[ORDINARY / SPECIAL]

Resolution Type

IT IS HEREBY RESOLVED THAT:

[Specific action and details of the resolution]

[Include all relevant particulars, amounts,]

[names, dates, and conditions as applicable]

Main Body

Signed in accordance with the Companies Act

Chairman:

Company Secretary:

Signatures

3. Form Submission Requirements and Regulatory Compliance

Regulatory form submission involves filing statutory documents with the Registrar of Companies to maintain an accurate public record and preserve the company's legal good standing. Timely and precise filings reflect strong corporate governance and ensure ongoing compliance with statutory obligations.

The Companies Act sets strict, non-negotiable deadlines for all statutory filings, and any delay triggers automatic penalties and creates an adverse compliance record. Effective compliance management requires the establishment of a comprehensive system to track

and meet all filing obligations. This involves creating and maintaining an annual compliance calendar that documents all key ROC filing dates, including the Annual Return (Form 15), special resolutions (Form 39), and changes in directors (Form 20) or registered office (Form 13).

Key Regulatory Deadlines

Event	Deadline
Annual General Meeting (AGM)	Within 6 months of balance sheet date
Filing of Annual Return (Form 15)	
Filing of Financial Statements	Within 30 working days of AGM (Must be completed and signed within six months from the balance sheet date)
Filing of Special Resolutions	Within 10 working days of passing



FORM 39

THE COMPANIES ACT NO. 7 of 2007
NOTICE OF A SPECIAL RESOLUTION*¹

No. of Company

Company Name

The Company forwards a printed copy of a
Special

Resolution passed by the company on day of
.....20.....

Signature of Director/Secretary*

Full Name of Director/Secretary*

Date:
 Day Month Year

Presented by

Email (Optional)

Telephone:

Facsimile:

NOTE

- *¹ The notice should be sent within 10 days after passing of the Special Resolution thereof (Including that passed under Section 15(2) but excluding that passed under section 8(1))
2. Resolution: - Text of the resolution must be printed or printed copy annexed hereto and be certified by a Director / Secretary
* Delete what is not applicable

TEST YOUR KNOWLEDGE

1. You are the Junior Legal Counsel of Emerald (Pvt) Ltd., a diversified company engaged in hospitality, leisure, and property development. At the upcoming EGM, three significant corporate actions are being proposed for approval as part of the company's strategic restructuring plan.
 - a. Sale of a hotel property owned by the company to a multinational corporation as part of a divestment strategy. The hotel represents a substantial portion of the company's asset base and has been classified as a "key undertaking" in previous annual reports.
 - b. Amendment of the Articles of Association, specifically to revise the company's business objectives to include real estate consultancy and facilities-management services, enabling the company to diversify into new revenue streams.
 - c. Appointment of a new director to the Board to strengthen governance and bring industry expertise, following the resignation of a long-standing non-executive director.
 - i. Advise the Board on what type of shareholder or board resolutions are required for each of the above matters under the Companies Act.
 - ii. Draft a formal Resolution for item (c) relating to the appointment of the new director.

