

Auditors & Meetings

Chartered Accountancy Corporate Level Corporate Law (LAW)

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AUDITORS

Section 154(1) provides that a company shall at each **annual general meeting**, appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and to audit the financial statements of the company and if the company is required to complete group financial statements, those group financial statements.

APPOINTMENT OF AUDITORS

Appointment of First Auditor Sec. 159

The first auditor of a company may be appointed **by the board** of the company **before** the first annual general meeting, and if so appointed, will hold office until the conclusion of that (1st AGM) meeting.

Subsequent Auditors Sec. 158

Except the first auditors appointed **before the first AGM**, all the other Auditors shall be **deemed** to be re-appointed at each annual general meeting of the company, unless—

- (a) he is not qualified for appointment;
- (b) the company passes a resolution at the meeting appointing another person to replace him as auditor; or
- (c) the auditor has given notice to the company that he does not wish to be re-appointed.

However, an auditor is not automatically re-appointed if the person **who it is proposed to replace him**, dies or is or becomes incapable of or disqualified from being so appointed.

Appointing a new Auditor in Place of the Existing Auditor Sec. 160 (removal of auditor)

A company shall not appoint a new auditor in place of an auditor who is qualified for re-appointment, unless—

- a) at least **twenty working days' written notice** of a proposal to do so has been given **to the auditor**; and
- b) the auditor has been given a **reasonable opportunity** to make **representations (statement) to the shareholders** on the appointment of another person, either in writing or by the auditor or his representative **speaking at a shareholders' meeting** (whichever the auditor may choose).

Casual Vacancy Sec. 154 (2)

That is vacancies occurring during the year by death, resignation etc. these vacancies may be filled by the board of directors. A casual vacancy must be filled **within one month of the occurring of such vacancy**. Till the casual vacancy is filled, the surviving or continuing auditors, if any, **may** continue to act as auditor.

If no Appointment is made Sec. 154 (3) Where,

- a) at an annual general meeting of a company **no auditor is appointed or re-appointed**; or
- b) a casual vacancy in the office of auditor is not filled **within one month** of the occurring of such vacancy

Within five working days from either (a) or (b), **the company should give written notice to the Registrar**, and then the Registrar **may appoint an auditor to fill the vacancy**.

Failure to give notice to the Registrar is an **offence** and the company and every officer who is in default shall be liable to a **fine**.

Qualifications of Auditors Sec. 157

A person shall not be appointed or act as auditor of a company, unless that person

- a) is a member of the Institute of Chartered Accountants of Sri Lanka; or
- b) is a registered auditor.

A person shall not be appointed or act as auditor of a company **other than** in a private company or a company limited by guarantee, unless that person is a member of the Institute of **Chartered Accountants of Sri Lanka**.

Appointing a Partnership as an Auditor Sec. 156

A partnership may be appointed by the firm's name to be the auditor of a company, if **the partners are persons who are qualified to be appointed as auditors of the company**. If a partnership is appointed by the firm's name, such appointment is valid notwithstanding a change in the partners of the firm.

Disqualifications of an Auditor

None of the following persons may be appointed or act as an auditor of a company:—

- (a) a director or employee of the company;
- (b) a person who is a partner or in the employment of a director or employee of the company;
- (c) a liquidator or an administrator or a person who is a receiver in respect of the property of the company;
- (d) **a body corporate** (a company);

RIGHTS AND DUTIES OF AN AUDITOR

1. He should be independent and he should not have any conflict-of-interest Sec.162

The auditors are specifically required to be independent and shall not have conflicts of interest with the company. It is to ensure that their judgment is not **biased** by any interest they have in the company. Therefore, an auditor should not have any shares in the company directly or indirectly, hold any posts in the company other than the post of auditor or he should have any business connection with the company

2. He should make an audit report Sec. 163

The auditor should make a report to shareholders on the financial statements audited by him. Such report shall include the basis of opinion, scope and limitation of the audit, whether all required information and explanations were obtained, whether proper accounting records have been kept, whether the financial statements give a **true and fair view** of the matters and whether the financial statements comply with legal requirements.

3. Access to information Sec. 164

An auditor of a company is entitled to access to the accounting books and other records of the company at all times, and may require from a director or employee of the company, any information and explanations as he thinks necessary for the performance of his duties as auditor.

4. Attendance at shareholders' meeting Sec. 165

The auditor of the company has a right to attend every meeting of shareholders of the company. The auditor is entitled to receive the notices and communications that a shareholder is entitled to receive relating to a meeting of shareholders and the auditor may be heard at a meeting of shareholders which the auditor attends on any part of the business of the meeting which concerns him as auditor.

5. Statement by person ceasing to hold office as auditor Sec.161

If an auditor resigns or ceases for any other reason to hold office, he shall deliver to the company a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the shareholders or creditors of the company, or if he considers that there are no such circumstances, a statement that there are none.



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MEETINGS

In every company there are two types of meetings.

1. Directors Meetings (Board Meetings)
2. Shareholders Meetings (General Meetings)

DIRECTORS MEETINGS (BOARD MEETINGS)

Directors meetings can be convened (called) whenever the directors think it is necessary. Shareholders (Members) cannot take part in directors' meetings. In these meetings decisions regarding the day-to-day management of the company are made. Procedures regarding these meetings are governed by the Articles.

SHAREHOLDERS MEETINGS (GENERAL MEETINGS)

There are 2 classes of General meetings. They are -

- i. Annual General Meeting (AGM) and
- ii. Extraordinary General Meeting (EGM)

ANNUAL GENERAL MEETING (SECTION - 133)

Every company in each calendar year must hold a meeting called its annual general meeting for its shareholders. As per sec.133, it is the board of directors who should call this meeting.

The annual general meeting must be held not later than **six months after the balance sheet date** of the company, here the balance sheet date means as per sec.529, the **31st day of March** or such other date as the board adopts.

A company **is not required** to hold its **first** annual general meeting in the **calendar year of its incorporation**, but it should hold its **first** annual general meeting **within eighteen months** from the date of its incorporation.

Subsequent annual general meetings must be held within fifteen months from the previous Annual General Meeting.

Consequences if there is a Default

1. If default is made in holding the meeting, on the application of any shareholder of the company, the Registrar may call or direct the calling of an annual general meeting of the company and he may give any directions including a direction to the effect that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.
2. Where default is made in holding a meeting of the company or in complying with any directions of the Registrar.
 - (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding Rupees One Hundred Thousand; and
 - (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding Rupees Fifty Thousand.

Period of notice

According to sec.135 the minimum period of notice for the calling of an Annual General Meeting is **15 working days** for both Public and Private Companies.

However, if it is agreed by **all the shareholders** entitled to attend and vote at such meeting shorter notice than those specified above is permitted.

Substitute for an AGM

As per sec.144, It shall not be necessary for a company to hold an annual general meeting of shareholders, if everything required to be done at that meeting is done by **a resolution in writing signed by not less than eighty-five per centum of the shareholders** who are be entitled to vote at that meeting.

That is, without holding an AGM, by way of a written resolution signed by not less than eighty-five *per centum* of the shareholders matters of an AGM can be performed.

EXTRA ORDINARY GENERAL MEETING (EGM)

Extraordinary General Meetings are the common general meetings in a company which are held depending on the requirements.

Convening the EGM

An EGM can be convened by the directors, by the shareholders or by the court.

By the Directors

Optional

- If articles permit, these meetings may be convened by the directors whenever they think it is necessary.

Generally to call an EGM in a **Private Company** **Five working days** notice should be given by the directors. In **Public Companies** **Ten working days** notice should be given. However at the EGM if any Special Resolution is going to be passed **Fifteen working days** notice should be given in both companies.

However if shareholders holding **ninety five percent (95%)** of the voting rights agree shorter notice than specified above can be given.

Compulsory

- But under sec.134, the directors must hold the EGM, if a **requisition** is made by the **shareholders** holding not less than **ten per centum** of the votes.

The requisition shall state the issue or issues to be considered and voted on at the meeting and shall be signed by the requisitionists and deposited at the registered office of the company.

If such a requisition is made

- Within **fifteen working days** from the date of the deposit of the requisition the directors should give notice regarding the meeting and
- The meeting must be held **within thirty working days** from the date of the deposit of the requisition.

By the Shareholders

- Where the directors do not give notice to call the meeting within fifteen working days from the date of the deposit of the requisition, the requisitionists or any of them representing more than one-half of the total voting rights may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

A meeting convened by the requisitionists shall be convened in the same manner and as nearly as possible as that is convened by the directors. Any reasonable expenses incurred by the requisitionists shall be repaid to the requisitionists by the company, out of any sums due or to become due to the directors who were in default.

- As per sec.136, if the articles do not provide otherwise two or more shareholders holding shares which carry not less than ten *per centum* of the votes which may be cast on an issue, may call a meeting to consider and vote on that issue.

By the Court

- According to sec.137 where for any reason it is **impracticable** to call a meeting in the manner specified by the company's articles or by the Act, the court may either of its own motion or on the application of any director or of any shareholder of the company who would be entitled to vote at the meeting, order a meeting of the company to be called and conducted and may give any direction as it thinks expedient, any such direction may include a direction that one shareholder of the company present in person or by proxy shall be deemed to constitute a meeting.

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There were two shareholders in a company called X and Y. X was holding **51%** of shares and Y held the balance **49%**. As per the articles the **quorum** for a shareholders meeting was two. X wished to remove Y from the post of director, but Y intentionally avoided the meeting knowing that if he attends the meeting he will be removed from the post of director. When the matter was referred to the court, the court (applying a similar provision as sec.137) held that one shareholder is sufficient to constitute a meeting.

RESOLUTIONS

Resolutions mean **decisions** taken by the Shareholders. Under the Companies Act decisions can be taken by Shareholders

1. **At a meeting of shareholders** - by passing resolutions. Such a resolution can be
 - a. An Ordinary resolution - more than 50% of votes or
 - b. A Special resolution - 75% or more votes

1. **Without a meeting** - by **signing**
 - a. a **written resolution** signed by **85%** of the shareholders - applicable to public and private companies
 - b. a unanimous agreement in writing signed by all the shareholders (applicable **only for Private Companies**) -100 % signature

ORDINARY RESOLUTION

An ordinary resolution is defined by section 529 of the Act as follows,

“An ordinary resolution means a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question”. ($\frac{1}{2} + 1$)

All businesses, no matter how important it is, may be done by an ordinary resolution unless the Act or the company's articles require some other form of resolution.

An ordinary resolution can be passed in a Private Company by giving Five working days notice, but in Public Companies Ten working days notice should be given. However if the ordinary resolution is to be passed at an AGM Fifteen working days notice should be given in both companies.

SPECIAL RESOLUTION

Sec 143 (1) defines a special resolution as follows

A resolution shall be a special resolution when it has been passed—

- (a) By a majority of **Seventy-Five** per centum (75%) of those shareholders entitled to vote and voting on the question;
- (b) At a general meeting of which not less than **fifteen working days'** notice, specifying the intention to propose the resolution as a special resolution has been duly given:

However where it is so agreed by the shareholders representing not less than **eighty five per centum** of the total voting rights, 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.

A decision at a meeting has to be made by way of a special resolution **only if** the companies act or the articles require the passing of a special resolution to make that decision. Example: Section 92 requires passing a special resolution in the following circumstances. To

- (a) Alter the company's articles
- (b) Approve a major transaction
- (c) Approve an amalgamation of the company
- (d) Reduce the company's stated capital
- (e) Resolve that the company be wound up voluntarily
- (f) Change the name of a company
- (g) Change the **status** of a company

Within 10 working days after passing the special resolution the company should notify the Registrar by way of Form 39.

WRITTEN RESOLUTION (SECTION - 144)

As per sec144 (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, shall be **as valid** as if it had been passed at a meeting of those shareholders.

As per sec144 (2) Subject to the provisions contained in the articles, **any matter** that is required by the Act or by the articles to be decided at a meeting of the shareholders may be validly done by way of a written resolution.

As per sec144 (3) It shall **not** be **necessary** for a company **to hold an annual general meeting** of shareholders, if everything required to be done at that meeting (by resolution or otherwise) is done by a **written resolution**.

Sec.144 (4) provides that **within five working days** of passing a written resolution, the company shall send a copy of the resolution **to every shareholder who did not sign** the resolution.

As per sec.144 (6) where a company fails to comply with this requirement, the company and every officer who is in default shall be guilty of an offence and be liable on conviction to a fine.

A written resolution may be signed under sec. 144 (1) or sec. 144 (2) without any prior notice being given to shareholders.

As per sec144 (8) Notwithstanding any provision in the Companies Act, where the Secretary to the Treasury is the holder of a share of a company, no written resolution shall be valid unless the consent in writing of the Secretary to the Treasury is also obtained in favour of such resolution.

NOTICE FOR CALLING MEETINGS AND TO PASS RESOLUTIONS

- **For AGM** - 15 working days for both pvt and public cos.
- **For EGM** - 10 w. d. for public co. and 5 w. d. for pvt co.
- **For ordinary resolution** - 10 w. d. for public co. and 5 w. d. for pvt co.
- **For special resolution** - 15 working days for both pvt and public cos.

PROVISIONS AS TO MEETINGS AND VOTES (SECTION -136)

The following provisions shall have effect in so far as the articles of the company do not make other provisions in that behalf

- (a) **Notice of the meeting** of a company shall be **served** on every shareholder of the company in the manner in which notices are required to be served under the provisions of the model articles; as per the model articles notice should be given to
 - every shareholder
 - every director and
 - the auditor
- (b) two or more shareholders holding shares which carry not less than ten *per centum* of the votes which may be cast on an issue, may call a meeting to consider and vote on that issue ;
- (c) in the case of a private company two shareholders, and in the case of any other company three shareholders, present in person or by an authorized representative shall be a quorum ;
- (d) any shareholder elected by the shareholders present at a meeting may be the chairman thereof ;
- (e) where voting is by show of hands, each shareholder shall have one vote and on a poll every shareholder shall have one vote in respect of each share held by him.

VOTING

There are two methods of voting.

1. Show of hands
2. Poll (ballot)

Show of Hands - Unless the articles provide otherwise, the common law rule is that a resolution put to the meeting is decided in the first instance by a show of hands. As per sec.136, where voting is by show of hands, each shareholder shall have one vote.

Poll - There is a common law rule that **on the declaration of the result** of voting on a show of hands, a poll may be **demande**d. On a poll every shareholder shall have one vote in respect of each share held by him.

Who can Demand a Poll (Section - 140)

- a. by not less than **five shareholders** having the right to vote at the meeting; or
- b. by **a shareholder** or **shareholders** representing not less than **one-tenth** of the total voting rights.

As per section 140 (2) a demand by a proxy shall be the same as a demand by the shareholder.

PROXIES (SECTION - 139)

Any shareholder of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a shareholder or not) as his proxy to attend and vote instead of him. A proxy so appointed shall have the same right as the shareholder to vote on a **show of hands** or on a **poll** and to **speak** at the meeting:

Unless the articles provides otherwise, a shareholder shall not appoint more than one proxy to attend on the same occasion.

In every notice calling a meeting there should be a statement that '**a shareholder entitled to attend and vote, is entitled to appoint a proxy to attend and vote instead of him and that a proxy need not also be a shareholder**'.

In order to make the appointment effective, a proxy form should be received by the company at least **forty-eight hours** before a meeting or **adjourned** meeting.

When a Company is a Shareholder

As per sec.138, where a company is a shareholder of another company, it may by a **resolution of its directors** authorise any person to act as its representative at any meeting of the company. A person who is authorised shall be entitled to exercise the same power on behalf of the company as if the company were an individual shareholder.