CORPORATE ADMINISTRATION

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1. Directors

A corporation is an artificial person which is intangible and invisible. For making any decision and to have knowledge and intention, a living person has a mind and hands by which he carries out his actions. But a corporate body being an artificial person has none of these. So it needs to act through a living person. The company's business is entrusted in the hands of directors.

A director is the member of the Board of Directors.

Sec 2(34): Director means a director appointed to the board of a company.

Sec 2(10): According to the companies' act states the board of directors in relation to a company refers to a collective body of the directors of the company.

Hence, a director is one of those persons, who are responsible for directing, governing and controlling the policy or management of a company. all directors collectively are called as Board of Directors or Board. They are the top administrative organ and the company can operate only through them. They are the brain of the organization responsible for all policy making and decision-making activities.

The position held by the directors in any corporate enterprise is a tough subject to explain as held in the case of **Ram Chand & Sons Sugar Mills Pvt. Ltd.v. Kanhayalal Bhargava**. The position of a director has been cited by Bowen LJ in the case of **Imperial Hydropathic Hotel Co Blackpool v. Hampson** as a versatile position in a corporate body. Directors are sometimes described as trustees, sometimes as agents and sometimes as managing partners. These expressions are from indicating point by which directors are viewed in particular circumstances.

The directors are the professional men of the company who are hired to direct the affairs of the company. They are the officers of a company and not a servant. In the case of **Moriarty v. Regent's Garage Co**, it was held that a director is not a servant of the company, but a controller of the affairs of a company.

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Directors as Agents

In the landmark case of **Ferguson v. Wilson**, it was clearly recognised that the directors are the agents of a company in the eyes of law. The company being an artificial person can act only through the directors. Regarding this, the relation between the directors and the company is merely like the ordinary relation of principal and agent.

The relation between the directors and the company is similar to the general principle of agency. When a director signs on behalf of the company, it is a company that is held liable and not the director. Also, like agents, they have to declare any personal interest if they have in a transaction of the company.

One of the important points to be noted is that they are not agents of its individual members. They are the agents of the institution.

In the case of **Indian Overseas Bank v. RM Marketing**, it has been held that the directors of a company could not be made liable merely because he is a director if he has not given any personal guarantee for a loan taken by the company.

Directors as Trustees

In a strict sense, the directors are not the trustees, but they are always considered and treated as trustees of money and properties which comes to their hand or which is under their control. As observed by the Madras High Court in the case of **Ramaswamy Iyer v. Brahamayya & Co.**, regarding their power of applying funds of the company and for the misuse of power, the directors are liable as trustees and after their death, the cause of action survives against their legal representative.

Another reason due to which the directors are described as trustees is because of their nature of the office. Directors are appointed to manage the affairs of the company for the benefit of shareholders. But, the director of a company is not exactly a trustee, as a trustee of will or marriage settlement. He is a paid officer of a company.

As per the principles laid down in the case of **Percival v. Wright**, directors are not the trustees of the shareholders. They are trustees of the company. The same principle was repeated again in the case of **Peskin v. Anderson** that the directors are not trustees for shareholders and hold no fiduciary duty to them.

Directors as organs of Corporate body

In the case of **Bath v. Standard Land Co. Ltd.**, Neville J. stated that the board of directors are the brain of the company and a company does act only through them.

A corporation has no mind or body and its action needs to be done by a person and not merely as an agent or trustee but by someone for whom the company is liable as his action is the action of the company itself. If we consider a company as a human body, the directors are the mind and the will of the company and they control the actions of the company.

Appointment of Directors

The appointment of Directors of a company is strictly regulated by the Company's Act, 2013.

Company to have Board of Directors

Every company is required to have a Board of directors and it should be consisting of individuals as directors and not an artificial person. Section 149 lays down the minimum number of directors required in a company as follows:

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1. **Public Company**– At least 3 directors
2. **Private company-** At least 2 directors
3. **One person company**– Minimum 1 director

There can be a maximum of 15 directors. A company may appoint more than 15 directors after passing a special resolution.

The Central Government may prescribe a class or classes of a company have a minimum one women director. Every company is also required to have a minimum of one director who has stayed in India in the previous year for a period of 182 days or more.

Independent Directors

The provisions of Independent Directors has been laid down under section 149(4) of the Companies Act, 2013. This section lays down that at least one-third of the total number of directors should be independent directors in every listed company The Central Government may prescribe the minimum number of independent directors in public companies.

Who is an independent director?

Sub-section (6) of section 149, defines that an independent director stands for **a** director other than a managing director, whole-time director or a nominee director:

1. Who is a person with integrity and has relevant expertise and experience.
2. Who has not been a promoter of the company, its subsidiary or holding company either in past or present.
3. Who himself or his relative has no pecuniary relationship with the company, its holding or subsidiary company, directors or promoters.
4. Who himself or his relative, do not hold the position in key managerial personnel, or not an employee of the company.

The independent director has to declare his independence at the first meeting of the Board and subsequently every year at the first meeting of the Board in the financial year.

An independent director holds office for a term of five years on the Board. He is also eligible for being reappointed after passing a special resolution, but no independent director is to hold the office for more than two consecutive terms.

Election of Independent Directors

The independent directors are to be selected from a data bank which contains certain information such as name, address and qualifications of persons who are eligible and willing to act as an independent director. The data bank is maintained by anybody, institute or association with expertise in the creation and maintenance of data bank and notified by the

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Central Government. A company has to pick up a person with due diligence, as stated in section 150.

The appointment has to be approved by the company in general meeting, and the manner and procedure for selection of independent directors who fulfil the qualification stated under section 149 may be prescribed by the Central Government.

Appointment of directors through election by small shareholders

A listed company is required to have one director who should be elected by small shareholders as per section 151 of the Companies Act, 2013. Small shareholders in this context are referred to shareholders holding shares of the value of maximum Rs. 20,000.

First Directors

The subscribers of the memorandum appoint the first directors of a company. They are generally listed in the articles of the company. If the first director is not appointed, then all the individuals, who are subscribers become directors. The first director holds the office only up to the date of the first annual general meeting, and the subsequent director is appointed as per the provisions laid down under section 152.

Appointment at the general meeting

Section 152 lays down the provision that directors should be appointed by the company in the General Meetings. The person so appointed is assigned with a director identification number. He also has to make sure in the meeting that he is not disqualified from becoming a director.

The individual appointed has also to file his consent to act as a director within 30 days with the registrar.

Annual Rotation

The retirement of the directors by annual rotation can be prescribed by the company in the Articles. If not so, only one-third of the directors can be given a permanent appointment. The tenure of the rest of them must be determined by rotation.

At an annual general meeting, one-third of such directors will go out, and the directors who were appointed first and has been in the office for the longest period will retire in the first place. When two or more directors have been in the office for an equal period of time, their retirement will be determined by mutual agreement, or by a lot.

Reappointment [section 152]

The vacancies created should be filled up at the same general meeting. The general meeting may also adjourn the reappointment for a week. When the meeting resembles and no fresh

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appointment is made neither there is any resolution for the appointment, then the retiring directors are considered to be reappointed.

The exception to this practice is that the retired directors will not be considered to be reappointed when:

1. The appointment of that director was put to the vote but lost.
2. If the director who is retiring has addressed to the company and its board in writing that he is unwilling to continue.
3. If he is disqualified.
4. When an ordinary or special resolution is required for his appointment.
5. When a motion for appointment of two or more directors by a single resolution is void due to being passed without unanimous consent under section 162.

Fresh Appointment

When it is proposed that a new director should be appointed in the place of retiring director, then the procedure laid down under section 160 of the Companies Act, 2013 is followed:

1. A written notice for his appointment as a director should be left at the office of the company at least 14 days prior to the date of the meeting along with a deposit of Rs.1,00,000.
2. That amount should be refunded to the person if he is elected as a director, or
3. He gets more than 25% of the total valid votes cast.

Appointment by Nomination

The appointment of Directors can also be made with respect to the Company's articles and not only through the general meetings. When an agreement between the shareholders has been included in the articles that entitles every shareholder with more than 10% share to be appointed as a director, then they can be nominated as director.

Also, subject to the articles of the company, the Board can appoint any nominated person by an institution in pursuance of law, as a director.

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Appointment by voting on an individual basis

The appointment of a director is made by voting at the general meeting as laid down under section 162 of the Companies Act, 2013. The candidates have to vote individually and the wishes of the shareholders regarding each proposed director are required.

As held in the case of **Raghunath Swarup Mathur v. Raghuraj Bahadur Mathur**, when two or more directors are appointed on the basis of single resolution and voting then it is considered to be void in the eyes of law.

Appointment by proportional representation

As per section 163 of the Companies Act, 2013, the article of a company can enable the appointment of directors through the system of voting by proportional representation. This system of voting is used to make effective minority votes. This system of proportional representation can be followed by a single transferable vote or by the system of cumulative voting or other means.

Appointment of Directors by Board

Generally, the appointment of the directors is done in the annual general meeting of the shareholders but there are two instances when the Board can also appoint a new director:

1. If the article empowers the Board to appoint additional directors along with prescribing the maximum number.
2. Section 161 of the Act also authorises the directors to fill casual vacancies.

Appointment by Tribunal

Under section 242(j) of the Companies act 2013, the Company Law Tribunal has the power to appoint directors.

Disqualifications

The minimum eligibility requirement for the appointment of directors has been laid down under section 164 of the Companies Act, 2013. The disqualification for a person to be appointed as a director are:

1. Unsoundness of mind.
2. If he is an undischarged insolvent.
3. When is applied to be declared as insolvent and such application is pending.
4. When he is sentenced for imprisonment for an offence involving moral turpitude for a period of a minimum of 6 months.
5. If the Tribunal or court has passed an order disqualifying him for being appointed as a director.
6. If he has not paid his calls in respect to any shares of the company.
7. When he is convicted of an offence which deals with related party transaction.
8. When he has not complied with the requirements of Director Identification Number.

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Removal of directors

The removal of directors takes place by:

1. Shareholders
2. Company Law Tribunal
3. Resignation

Removal by Shareholders

Section 169 of the Companies Act 2013 provides that a director can be removed from his office before the expiration of his term of office by an ordinary resolution. This section does not apply when:

1. The director is appointed by the tribunal in pursuance of section 242.
2. The company has adopted the system of electing two-thirds of his directors by the method of proportional representation.

To remove a director, special notice is required, and such notice should contain the intention to remove the director and the notice should be served at least 14 days prior to such meeting.

As soon as the company receives such notice, the copy of such notice is furnished to the director concerned. Then the concerned director has the right to make a presentation against the resolution in the general meeting. If a director makes a representation, then its copy needs to be circulated among the members.

Removal of Directors by Company Law Tribunal

The removal of directors by the Company Law Tribunal can be done under section 242(2)(h). When an application is made to the tribunal for relief from oppression or mismanagement, then it may terminate any agreement of the company which has been made with a director. When the appointment of a director is terminated then he cannot serve the managerial position of any company for five years without leave of the Tribunal.

Resignation

Earlier, there was no provision for the resignation that by what procedure a director can resign. The resignation was recognised under the provisions laid down under section 318 of the Companies Act, 1956. Under this section, it was held that when a director resigns his office, he is not entitled to compensation.

If the articles mention the provisions for resignation then it will be followed. In the case of **Mother Care (India) Pvt. Ltd. v. Ramaswamy P Aiyar,** the court held that the resignation of a director is effective even if he is the only director in the office.

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Now, after the Act of 2013, section 168 lays down the provisions that:

1. The director can resign from his office by giving written notice to the company.
2. On receiving the notice, the board has to take notice of it.
3. The registrar needs to be informed by the company within the prescribed time period.
4. The fact of resignation needs to be placed by the company in the director's report in the immediately following general meeting.
5. The director has to send his copy of the resignation to the registrar along with the detailed reasons within 30 days of the resignation.

Even after resignation, the director is held responsible for any wrong associated with him and which happened during his tenure.

Powers of Directors

General powers vested under section 179

Section 149 of the Companies Act, 2013 empowers the directors with the general power vested in the Board. The Board of directors is entitled to exercise all the powers and do all required actions which a company is authorised to exercise. But, such action is subject to certain restrictions.

The powers of directors are co-extensive with the powers of the company itself. The director once appointed; they have almost total power over the operations of the company.

There are two limitations on the exercise of the power of directors which are as follows:

1. The board of directors are not competent to do the acts which the shareholders are required to do in general meetings.
2. The powers of directors are to be exercised in accordance with the memorandum and articles.

The individual directors have powers only as prescribed by memorandum and articles.

The intervention of shareholders in exceptional cases

In following exceptional situations the general meeting is competent to act in matters delegated to the Board:

1. When directors have acted *mala fide*.
2. When directors have due to some valid reason become incompetent to act.
3. The shareholders can intervene when directors are unwilling to act or there is a situation of deadlock.

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4. The general meetings of shareholders have residuary powers of a company.

Restrictions on powers under the statutory provision

The Companies Act 2013 also lays the manner in which the powers of the company is to be exercised. There certain powers which can be exercised only when its resolution has been passed at the Board's meetings. These powers such as the power:

1. To make calls.
2. To borrow money.
3. To issue funds of the company.
4. To grant loans or give guarantees.
5. To approve financial statements.
6. To diversify the business of the company.
7. To apply for amalgamation, merger or reconstruction.
8. To take over a company or to acquire a controlling interest in another company.

The shareholders in a general meeting may impose restrictions on the exercise of these powers.

Powers to be exercised with general meeting approval

Section 180 of the Companies Act 2013 states certain powers which can be exercised by the Board only when it is approved in the general meeting:

1. To sale, lease or otherwise dispose of the whole or any part of the company's undertakings.
2. To invest otherwise in trust securities.
3. To borrow money for the purpose of the company
4. To give time or refrain the director from repayment of any debt.

When the director has breached the restrictions imposed under the sections, the title of lessee or purchaser is affected unless he has acted in good faith along with due care and diligence. This section does not apply to the companies whose ordinary business involves the selling of property or to put a property on lease.

Power to constitute an Audit committee

The board of directors are empowered under section 177 to constitute an audit committee. It needs to be constituted of at least three directors, including independent directors. In the committee, the independent directors need to be in the majority. The chairperson and members

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of the audit committee should be persons with the ability to read and understand the financial statements.

The audit committee is required to act in accordance with the terms of reference specified by the Board in writing.

Power to constitute Nomination and Remuneration Committees and Stakeholders Relationship Committee

The Board of directors can constitute the Nomination and Remuneration Committee and Stakeholders Relationship Committee under section 178. The Nomination and Remuneration Committee should be consisting of three or more non-executive directors out of which one half are required to be independent directors.

The Board can also constitute the Stakeholders Relationship Committee, where the board of directors consist of more than one thousand shareholders, debenture holders or any other security holders. The grievances of the shareholders are required to be considered and resolved by this committee.

Power to make a contribution to charitable or other funds

The Board of directors of the company is empowered under section 181 to contribute to the bona fide charitable and other funds. When the aggregate amount of contribution, in any case, exceeds the 5% of the average net profit of the company for the immediately preceding financial years, then the prior permission of the company in a general meeting is required.

Power to make a political contribution

Under section 182 of the Companies Act 2013, the companies can make a political contribution. The company making a political contribution should be other than a government company or a company which has been in existence for less than three years.

Also, the amount of contribution should not exceed 7.5% of the company's net profit in the three immediately preceding financial years. The contribution needs to be sanctioned by a resolution passed by the Board of Directors.

Power to contribute to National Defence Fund

The Board of Directors is empowered to make contributions to the National Defence Fund or any other fund approved by the Central Government for the purpose of National defence under section 183 of the Companies Act 2013. The amount of contribution can be the amount as may be thought fit. This total amount of contribution made should be disclosed in the profit and loss account during the financial year which it relates to.

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2. Corporate Social Responsibility (CSR)

Corporate Social Responsibility can be defined as a Company's sense of responsibility towards the community and environment (both ecological and social) in which it operates. Companies can fulfil this responsibility through waste and pollution reduction processes, by contributing educational and social programs, by being environmentally friendly and by undertaking activities of similar nature. CSR is not charity or mere donations. CSR is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits. They use CSR to integrate economic, environmental and social objectives with the company's operations and growth. CSR is said to increase reputation of a company's brand among its customers and society.

The Companies Act, 2013 has formulated Section 135, Companies (Corporate Social Responsibility) Rules, 2014 and Schedule VII which prescribes mandatory provisions for Companies to fulfil their CSR. This article aims to analyse these provisions (including all the amendments therein).

Applicability of CSR Provisions

- On every Company including its holding or subsidiary having:
  - Net worth of Rs. 500 Crore or more, or
  - Turnover of Rs. 1000 crore or more, or
  - Net Profit of Rs. 5 crore or more
- during the immediately preceding financial year.

A foreign company having its branch office or project office in India, which fulfils the criteria specified above

However, if a company ceases to meet the above criteria for 3 consecutive financial years then it is not required to comply with CSR Provisions till such time it meets the specified criteria.

CSR Committee

Every Company on which CSR is applicable is required to constitute a CSR Committee of the Board:

- Consisting of 3 or more directors, out of which at least one director shall be an independent director. However, if a company is not required to appoint an independent director, then it shall have in 2 or more directors in the Committee.
- Consisting of 2 directors in case of a private company having only two directors on its Board.

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- Consisting of at least 2 persons in case of a foreign Company of which one person shall be its authorised person resident in India and another nominated by the foreign company.

Functions of CSR Committee

The CSR Committee shall:

- Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the Company
- Recommend the amount of expenditure to be incurred on the activities referred to in clause (i)
- Monitor the CSR Policy of the company from time to time
- Institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

Responsibility of Board of Directors

The Board of Directors of every company on which CSR is applicable shall:

- after considering the recommendations made by the CSR Committee, approve the CSR Policy for the Company and disclose contents of such Policy in Board report.
- ensure that the activities as are included in CSR Policy of the company are undertaken by the Company.
- shall disclose the composition of the CSR Committee in Board Report.
- ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding financial years, in pursuance of its CSR Policy. The CSR projects/programs/activities undertaken in India only shall amount to CSR Expenditure.

Note: The Company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities and shall specify the reasons for not spending whole of earmarked amount (if it fails to spend some) in Board Report.

CSR Policy

The CSR Policy of the company shall, inter-alia, include the following namely :-

- A list of CSR projects or programs which a company plans to undertake specifying modalities of execution of such project or programs and implementation schedules for the same
- Monitoring process of such projects or programs

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- A clause specifying that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of the company.

CSR Activities

- The CSR activities shall be undertaken by the company, as per its CSR Policy, excluding activities undertaken in pursuance of its normal course of business.
- The Board of Directors may decide to undertake its CSR activities approved by the CSR Committee, through
- a section 8 company or a registered trust or a registered society, established by the company, either singly or along with any other company, or
- a section 8 company or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature
- a section 8 company or a registered trust or a registered society, other than those specified in clauses (a) and (b) above, having an established track record of 3 years in undertaking similar programs or projects;
- collaboration with other companies,

for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs.

The CSR projects or programs or activities not to be considered as CSR Activities:

- Expenses for the benefit of only the employees of the company and their families; and
- Contribution of any amount directly or indirectly to any political party.

Display of CSR Activities on its Website

The Board of Directors shall disclose contents of CSR policy in its report and the same shall be displayed on the company's website, if any.

Schedule 7

Activities which may be included by companies in their Corporate Social Responsibility Policies relating to:

- Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

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- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.
- Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts.
- Measures for the benefit of armed forces veterans, war widows and their dependents.
- Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports.
- Contribution to the Prime Minister's national relief fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women.
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the central govt.
- Rural development projects.
- Slum area development.

3. Meetings

The Oxford Dictionary defines a meeting as

An assembly of number of people for entertainment, discussion or the like.

A meeting therefore, can be defined as a lawful association, or assembly of two or more persons by previous notice for transacting some business. The meeting must be validly summoned and convened. Such gatherings of the members of companies are known as company meetings.

Essentials of Company Meetings

The essential requirements of a company meeting can be summed up as follows:

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i. **Two or More Persons**: To constitute a valid meeting, there must be two or more persons. However, the articles of association may provide for a larger number of persons to constitute a valid quorum.
ii. **Lawful Assembly**: The gathering must be for conducting a lawful business. An unlawful assembly shall not be a meeting in the eye of law.
iii. **Previous Notice**: Previous notice is a condition precedent for a valid meeting. A meeting, which is purely accidental and not summoned after a due notice, is not at all a valid meeting in the eye of law.
iv. **To Transact a Business**: The purpose of the meeting is to transact a business. If the meeting has no definite object or summoned without any predetermined object, it is not a valid meeting. Some business should be transacted in the meeting but no decision need be arrived in such meeting.

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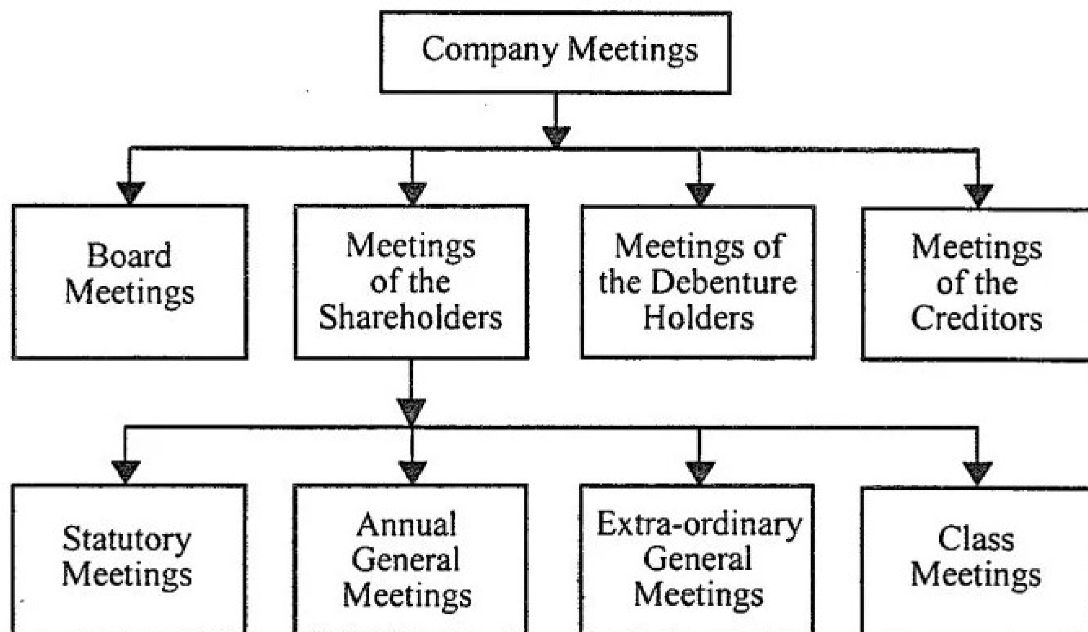
Kinds of Company Meetings

The meetings of a company can be broadly classified into four kinds.

1) Meetings of the Shareholders.
2) Meetings of the Board of Directors and their Committees.
3) Meetings of the Debenture Holders.
4) Meetings of the Creditors.



I. Meeting of the Share Holders

The meetings of the shareholders can be further classified into four kinds namely,

i. Statutory Meeting,

ii. Annual General Meeting,

iii. Extraordinary General Meeting, and

iv. Class Meeting.

Statutory Meeting

Statutory meeting is the first meeting which company conducts afters its commencement. Conduction of statutory meeting is compulsory. Public limited company is required to hold such meeting within a period not less than one month and not more than six months from the date of commencement. The directors of company also need to make statutory report. Every members also must be given a copy of report at least 21 days before the date of the meeting and a copy is also to be sent to the Registrar for registration.

Section 165(3) provides that the Statutory Report must contain the following particulars:

i. The total number of fully paid-up and partly paid-up shares allotted;
ii. The total amount of cash received ;
iii. the receipts, classifying them and also the expenses incurred for commission, also brokerage etc.
iv. The names, addresses and also occupations of directors, auditors, managers and secretaries and also changes of the names, address etc.
v. Particulars of contracts with proposed modifications presented at meeting for approval;
vi. The arrears of calls;
vii. Commissions and brokerages paid to directors and managers.

Every director or any other officer of the company who is in default shall be punishable with a fine which may extend to Rs. 500.

Annual General Meeting (AGM)

Under Section 96 of the companies act, every company shall hold a general meeting as annual general meeting every year. Except one person company. There should not be a gap of more than fifteen months between two AGM.

Notice of AGM can be either in writing or also in electronic form. The member should get the notice at least fore 21 clear days. . The notice should consist of place, day, date and the proper hour of the meeting. It should also contain agenda of meeting. Every member of the company, legal representative of deceased and assignee of insolvent member, auditor and every director of the company should get notice. Section 101 of the Companies act 2013, deals with the provision of Notice for the AGM.

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Extra-ordinary General Meetings (EOGM)

Statutory Meeting and Annual General Meetings are called the ordinary meetings of a company. All other general meetings other than these two are called Extraordinary General Meetings. As the very name suggests, these meetings are convened to deal with all the extraordinary matters, which fall outside the usual business of the Annual General Meetings.

EOGMs are generally called for transacting some urgent or special business, which cannot be postponed till the next Annual General Meeting. Every business transacted at these meetings is called Special Business.

Persons Authorized to Convene the Meeting

The following persons are authorized to convene an extraordinary general meeting.

1. The Board of Directors.
2. The Requisitions.
3. The National Company Law Tribunal.
4. Any Director or any two Members.

Class Meetings

Class meetings are those meetings, which are held by the shareholders of a particular class of shares e.g. preference shareholders or debenture holders.

Class meetings are generally conducted when it is proposed to alter, vary or affect the rights of a particular class of shareholders. Thus, for effecting such changes it is necessary that a separate meeting of the holders of those shares is to be held and the matter is to be approved at the meeting by a special resolution.

For example, for cancelling the arrears of dividends on cumulative preference shares, it is necessary to call for a meeting of such shareholders and pass a resolution as required by Companies Act. In case of such a class meeting, the holders of other class of shares have no right to attend and vote.

II. Meetings of the Directors

Meetings of directors are called Board Meetings. These are the most important as well as the most frequently held meetings of the company. It is only at these meetings that all important matters relating to the company and its policies are discussed and decided upon.

Since the administration of the company lies in the hands of the Board, it should meet frequently for the proper conduct of the business of the company. The Companies Act therefore gives wide discretion to the directors to frame rules and regulations regarding the holding and conduct of Board meetings.

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The directors of most companies frame rules concerning how, where and when they shall meet and how their meetings would be regulated. These rules are commonly known as Standing Orders.

III. Meetings of Debenture Holders

The debenture holders of a particular class conduct these meeting. They are generally conducted when the company wants to vary the terms of security or to modify their rights or to vary the rate of interest payable etc. Rules and Regulations regarding the holding of the meetings of the debenture holders are either entered in the Trust Deed or endorsed on the Debenture Bond so that they are binding upon the holders of debentures and upon the company.

IV. Meetings of the Creditors

Strictly speaking, these are not meetings of a company. They are held when the company proposes to make a scheme of arrangements with its creditors. Companies like individuals may sometimes find it necessary to compromise or make some arrangements with their creditors, In these circumstances, a meeting of the creditors is necessary.

4. The Balance of Powers within Companies

Balance of power in the company raises the question of the relationship between the company in general meeting and the Board of Directors. All these bodies have distinct powers and controls of the company provided for in the Companies Act, and or the memorandum and articles of Association of the Company. The general meeting is principally responsible for election of the directors while directors are principally concerned with the management of the company. The question is which of the two bodies; Board and shareholders in general meeting has more powers in the control of the company and what should happen if one body misuses its powers to the detriment of the other.

The control of a company is divided between two bodies: the board of directors, and the shareholders in general meeting. The amount of power exercised by the board varies with the type of company. In small private companies, the directors and the shareholders will normally be the same people, and thus there is no real division of power. In large public companies, the board tends to exercise more of a supervisory role, and individual responsibility and management tends to be delegated downward to individual professional executive directors (such as a finance director or a marketing director) who deal with particular areas of the company's affairs. The board also tends to have more de facto power.

The question is which of the two bodies; Board and shareholders in general meeting has more powers in the control of the company. Some have argued that the shareholders in general meeting can direct directors on how to run the affairs of the company whereas others have argued that the directors alone have the powers and right to manage the company.

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Either line of argument would leave one body with a lot of powers that may need to be checked outside the law. The lack of proper check on such powers has been attributed to failures in corporate governance that led to the collapse of some corporations like the GM motors, AIG among others which has been argued to be behind the recent financial crisis.

Consequently, there has been a surge of interest in the principles of good corporate governance. Business community and other leaders all over the world wish to minimize the risk of indifferent governance in the future. Several governments and corporations have taken steps to enhance the enabling environment for corporate business. It has been felt that a set of principles at the heart of good corporate governance should be enunciated with a view of checking on the excesses of powers of the company management. This is hoped that a well-managed company will effectively serve the interest of all its stakeholders effectively.

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Definitions

Board of Directors

A board of directors is a group of people elected by the owners of a business entity, who have decision-making authority, voting authority, and specific responsibilities which in each case is separate and distinct from the authority and responsibilities of owners and managers of the business entity.

Board structures and procedures vary from one country to another. Some countries like German have two-tier boards that separate the supervisory function and the management functions into different bodies. Such systems typically have a “supervisory board” composed of non-executive board members and a “management board” composed entirely of executives. Other countries have “unitary” boards, which bring together executive and non-executive board members.

Directors

Directors are the members of a board of directors. They must be individuals who can be owners, managers, or any other individual elected by the owners of the business entity. Directors who are owners and/or managers are sometimes referred to as inside directors, insiders or interested directors. Directors who are managers are sometimes referred to as executive directors. Directors who are not owners or managers are sometimes referred to as outside directors, outsiders, disinterested directors, independent directors, or non-executive directors.

Corporate Governance

Corporate governance is concerned with the establishment of an appropriate legal, economic and institutional environment that would facilitate and allow business enterprises to grow, thrive and survive as institutions for maximizing shareholder value while being conscious of and providing for the well-being of all other stakeholders and society.

A business author Gabrielle O'Donovan defines corporate governance as 'an internal system encompassing policies, processes and people, which serves the needs of shareholders and other stakeholders, by directing and controlling management activities with good business savvy, objectivity, accountability and integrity. Sound corporate governance is reliant on external market place commitment and legislation, plus a healthy board culture which safeguards policies and processes. O'Donovan goes on to say that 'the perceived quality of a company's corporate governance can influence its share price as well as the cost of raising capital.

The Corporate Board: Confronting the Paradoxes defines it as ‘the process by which corporations are made responsive to the rights and wishes of stakeholders. The stakeholders include; shareholders, creditors, employees and suppliers.

Good corporate governance dictates that the Board of Directors governs the corporation in a way that maximizes shareholder value and in the best interest of society. It is neither in the long-term interest of the enterprise or society to short-change customers, exploit labour, pollute the environment or engage in corrupt practices. It is the responsibility of the owners of the corporation to elect competent directors and to ensure that they govern the corporation in a manner consistent with their stewardship.

Shareholders

Shareholders are part of a company. A “Shareholder” denotes a person who holds or owns the shares. In most of the cases, shareholders are also the members of the company. Usually an unlimited company or a company limited by guarantee has no shareholders. But the limited company has its own shareholders. The Memorandum of Agreement is enabling the opportunity to be the shareholders of a company.

A broader definition of Shareholder is:

> *One who owns shares of stock or mutual fund in a corporation along with the ownership come a right to declared dividends and the right to vote on certain company matters, including the board of directors. They are also called Stockholders.*

Types of Shareholders

A limited company has two types of Shareholders:

i. Majority Shareholder
ii. Minority Shareholder

Majority Shareholders: A single shareholders who owns & controls more than half of a corporation’s outstanding shares, or sometimes, a small group of shareholders who own & collectively control more than half of a company’s outstanding shares.

Or we can say, when a person or company has owned the majority of the shares (more than 50%) in a limited company, has the outright control of the company’s operations, especially the election of its board of directors. Usually they are the founder of the company.

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The majority shareholder is most commonly the company's parent but may also be an individual or a group of connected shareholders. This is more common with smaller companies and in emerging market.

Minority Shareholders: Minority shareholders are shareholder who owns minimum percentages shares in a company that is controlled by majority shareholder.

They only have certain basic rights.

Based on the class of stock shareholders are granted extra privileges. It also includes the rights of the voting for example- election to the board of directors, the rights to buy new shares issued by the company, the right to a company's assets during a liquidation of the company, the rights to share in distribution of the company's returns.

The Basic Rights of Shareholder

i. Recognition of basic shareholder rights.
ii. Shareholders have the right to participate in decisions concerning fundamental corporate changes.
iii. Voting rights of shareholders.
iv. Disclosure of disproportionate voting rights of certain shareholders to obtain a degree of control.
v. Markets for corporate control should be allowed to function.
vi. Shareholders should consider the costs and benefits of exercising their voting rights.

Violation of Rights

The basic principal relating to the administration of the affairs of a company is that "the will of the majority prevails or majority is supreme". Except the power vested in the Board of Directors, the overall powers of controlling the issues of the company it's with the shareholders which are exercised in the general meeting of a company. Usually the general rule is that the decision of majority shareholders in a company binds the minority. Therefore, it is only majority of members who can control the board of directors. The majority is in the position where it connected in every parts of the company. They maintain their rights without considering the interests of minority which creates sullen effects. They misuse their power to exploit the rights of minority. In such a case a proper balance of the rights of majority and minority shareholders is essential for the smooth functioning of the company.

In such a case, Oppression of minority or mismanagement by majority can occur where it has some remedial actions.

But the Companies act 1956 has laid down certain provisions which restrict the unbridled supreme majority and confer rights on minority to apply to the National Law Company Tribunal or Central Government in case of Oppression or Mismanagement.

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Oppression

The word oppression has not been defined in Companies act. "When the ownership of rights of a member is violated or he is not given fair play towards his rights, called oppression." Or we can say that when a member does not get the proper ownership power & his rights called oppression. It means not keeping to the accepted standards of honesty and fairness and a lack of regard of other shareholders' interest.

According to Section 397 of the companies Act, there will be oppression if the majority shareholders misuse their rights and take company's business as their personal property resulting loss to the minority shareholders. In oppression the minority shareholder are underneath a burden that is created by majority shareholders where there rights have been violated.

Oppression may be various types. It is not only committed for the economic reason but may committed for seizing power or charge or taking revenge.

Conditions of Oppression

According to decisions of the Courts, some of the conditions of oppression are given below:

i. Where a majority shareholder persistently flouts the decisions of the Board of Directors and makes it impossible for the company to function properly.
ii. Where the majority shareholders try to force new and more risky objects upon an unwilling minority.
iii. Where the members of a company are deprived of their right to vote, to elect directors and to receive dividends.
iv. Where there is an unreasonable and consistent refusal to accept a transfer or transmission of shares, thereby not permitting some shareholders to have voting rights in the company. Refusal once by the company may not be oppressive but a continuous refusal by the company to register the shares with an ulterior motive of retaining control over the affairs of the company may be a case of oppression.
v. Where the affairs of a company are being conducted by the directors doing nothing to defend its interest when they ought to do something.
vi. Where the directors' issue and allot shares in a manner by which an existing majority of shareholders are reduced to a minority.

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Mismanagement

If the affair of the company are being conducted in a manner prejudicial to the interest of the company or public interest , or that by reason of any change in the management of control of the company, it is likely that the affairs of the company will be conducted in that manner it is called mismanagement.

It usually occurs when the majority shareholders, who control the operation, cannot run properly in an effective way to keep up with a sound viable environment where rights of every shareholder are being protected.

Procedures for Prevention of Oppression

I. Application to National Company Law Tribunal: Sec 397 provides that a requisite number of shareholders of a company who are affected by the company's prejudicial manner may apply to NCLT for appropriate relief.

According to Sec 399, the requisite number of members who may apply to the NCLT is as follows:

- In the case of a company having a share capital
- Not less than 100 members or not less than 1/10th of total member, whichever is less, or
- A member or members holding not less than 1/10th of the issued share capital of the company on which all calls and other sums have been paid.

In the case of company not having a share capital; not less than 1/5th of the total number of members.

II. To Give Reasonable Order: When the NCLT is satisfied that the charges mentioned in the application are true and winding up the company would unfairly prejudice such member or members it may pass such order to prevent.

The NCLT may give relief if it is of the opinion:

- That the company's affairs are being conducted in manner prejudicial to public interest, or in a manner oppressive to any member or members.
- That the facts justify the compulsory winding up order on the ground that it is just and equitable that the company should be wound up.
- That to wind up the company would unfairly prejudice the applicants.

III. Information to Central Government by Tribunal: Under Sec. 400, the NCLT is required to give notice of every application made to it under Sec. 397 or 398 to the Central Government. It has also to take consideration the representation, if any, made to it by the Central Government before passing a final order.

Prevention of Mismanagement

Section 398 provides for relief against mismanagement. The procedure is:

I. Application to National Company Law Tribunal

According to Sec 399, the requisite number of members who may apply to the NCLT is as follows:

That the company's affairs are being conducted in manner prejudicial to public interest.

That by reason of a material change in the management or control of the company, the affairs of the company, is likely to be conducted in a manner prejudicial to the public interest or in a manner prejudicial to the interests of the company.

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II. To Give Reasonable Order

According to Sec 397, the requisite number of members who may apply for relief is as follows:

- In the case of a company having a share capital
- Not less than 100 members or not less than 1/10th of total member, whichever is less, or
- A member or members holding not less than 1/10th of the issued share capital of the company on which all calls and other sums have been paid.

In the case of company not having a share capital; not less than 1/5th of the total number of members.

Number less than the requisite number of members, if so, authorized by the Central Government.

Role of Central Govt. Central Government: Under Sec. 400, the NCTL is required to give notice of every application made to it under Section 397 or 398 to the Central Government. It has also to take consideration the representations, if any, made to it by the Central Government before passing a final order.

<u>Protection of Minority Rights</u>

It is one of the important objects since the companies' act 1956 was passed.

The minority shareholders should be protected from the unjust or unfair conduct of the majority shareholders. The restrictive character of the Rule in Foss v/s. Harbottle has led to the creation of statutory remedies for minority shareholders. The most impressive thing of this power is the permission to go to the court to prevention of oppression or mismanagement.

The minority shareholders are protected under:

i. The Common Law
ii. The provision of the Companies Act, 1956

Protection under the Common Law

The principal of the supremacy of majority of the rule in Foss v/s. Harbottle is not absolute and sometimes it has some exceptions. These exceptions restrict the powers of the majority shareholders.

In nutshell, the company cannot confirm:

i. Any act which is ultra vires the company or illegal
ii. Any act which is fraud on the minority
iii. Any act passed with simple majority which requires special majority
iv. Any wrong act done by those who are in control
v. Any act infringes the personal membership rights

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vi. Any act which amounts to breach of duty by directors
vii. Any act which amounts to oppression of minority or mismanagement of the company.

Protection under the provision of the Companies Act, 1956

It usually takes place when:

An aggrieved shareholder can appeal to the company law board against the arbitrary action of the board of directors in refusing to register the transfer of shares. (Sec. 111)

A specified number of members can apply to the Central Government for the appointment of such number of persons as directors of the company as the Central Government may specify to look after the interest of oppressed minority. (Sec. 408)

Even a contributory of a company is entitled to present a petition to court for its winding up on just and equitable ground. (Sec. 439)

Any member can hold up the reconstruction of amalgamation of a company. (Sec. 494)

An arrangement between a company and its creditors may be amended varied, confirmed or set aside by the Court on the application of any creditor or contributory. (Sec. 517)

In the course of winding up of a company, the liquidator or any creditor or contributory may apply to the court to examine into the conduct of a delinquent officer and take action. (Sec. 543)

Protection of Majority Rights

According to Sec. 397 and 398 is confined a majority shareholder who are oppressed may also apply. In an appropriate case, if the Court is satisfied about the acts of oppression or mismanagement, the relief application can be granted, who have been rendered completely ineffective by the wrongful acts of a minority groups.

Recommendation

In order to maintain a viable sound environment within a company & to run the company effectively and efficiently following rights of the shareholders should be confirmed. In this case, majority shareholders of the company or Board of Directors have to ensure its future where any of the shareholders from the minority group cannot oppress or their interests should not be under prejudice. *These are:*

i. The right to vote for the election of directors and on certain extraordinary matters affecting the corporation.
ii. The right to expect the officers and directors of their corporation to perform their duties in accordance with established standards of conduct.
iii. The right to question the action of officers, directors and majority shareholders.
iv. The right to inspect certain records and to receive certain reports and other information from the corporation.

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v. The right to benefit from corporate operations.
vi. The right to maintain their percentage ownership of stock in the corporation.
vii. The right to force the dissolution of the corporation.
viii. The right to participate in distributions from the corporation upon its dissolution.
ix. To further develop their relationship through the use of a Shareholders' Agreement.

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