

CHAPTER NINE: RESOLUTIONS

LEARNING OUTCOME:

- To understand the different types of resolution of a meeting.
- List and explain the characteristics of different types of resolution.
- Describe the procedure governing the passing of different types of resolution.
- To be familiar with the timeframe imposed on the registration of special resolution.

RESOLUTION

- A motion that has been accepted or voted and agreed by the necessary majority.
- A proposal submitted to a meeting that has been carried at the meeting by a poll or by a ballot.
- A decision or expression of intention of a meeting.
- A resolution that is passed at the meeting will be recorded in the minutes of the meeting.

TYPES OF RESOLUTION

DIRECTORS' RESOLUTION

- Directors of a company must act collectively as a board on behalf of the company.
- The board of directors exercises its power by passing resolution either in the meeting of director or by resolution in writing.
- The articles regulate the mode of transacting business at a meeting of directors.
- The articles usually empower the directors as a body to regulate their meeting, as they think fit.
- A simple majority of votes is required and a determination by a majority of directors shall for all purposes be deemed the board's determination.
- The chairman may vote in the event where there is an equality of votes.
- Directors do not vote by proxy.
- Most articles provide that a director may appoint any person to be an alternate to exercise all powers of the appointor in his place in the absence of the appointor.

ORDINARY RESOLUTION

- Common law rule - a simple majority of those voting at the meeting are in favour of the adoption.
 - Most common form of resolutions of members and are used for all routine business at the general meeting of a company.
 - An ordinary resolution is passed by a simple majority of those present and voting on a show of hands or by a poll.
 - It's the majority of those members who actually voted on the resolution and not those who have attended the meeting.
 - Those members who were absent from the voting at the meeting are not taken into account in determining the votes cast.
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- If the Companies Act 1965 requires a resolution to be passed without expressly stating it to be special, then an ordinary resolution will suffice, unless the Articles of Association provide otherwise.
- But the Companies Act 1965 provides that for the following situation there must be a majority of 75%:
 - Appointment of an over-aged person as director of a public company or subsidiary of a public company.
 - Appointment of another person who is nominated at the meeting where there is a removal of company's auditor?

SPECIAL RESOLUTION

- Must be passed by a majority of 75% of members who are entitled to vote and voting in person or by proxy at a general meeting.
- Notice must be 21 days in advance before meeting.
- Intention of resolution as special resolution is specified in the notice of meeting.
- The requisite of 21 days' notice for a special resolution may be varied if agreed by a majority in number of the members having the right to attend and vote at that meeting whose voting right together make up to not less than 95% of the total voting right of the company.
- When the majority on a poll demanded for passing a special resolution, reference shall be made to the resolution and to the number of votes to which each member is entitled by the Companies Act 1965 or the articles.
- Every special resolution passed must be registered with the Registrar of Companies.
- Amendments of a proposed special resolution are possible.

➤ Example of special resolution required by Companies Act 1965:

1. Alteration of any restriction on rights to transfer company's shares.
2. Alteration or deletion of clause in the memorandum.
3. Change of the company's name.
4. Re-registration of an unlimited company as a limited company.
5. Re-registration of public company to a private company and vice-versa.
6. Change of the objects of the company.
7. Alteration of articles of association.
8. Creation of reserve liability.
9. Reduction of share capital.
10. Approval for payment of interest out of capital.
11. Members' voluntary winding up.
12. Arrangement entered into between a company and its creditors in the course of winding up.

RESOLUTIONS THAT REQUIRE SPECIAL NOTICE (S1153 COMPANIES ACT 1965)

- Removal of auditor from office.
 - Removal of director from office before expiration of his term.
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- Appointment of director.
- Removal of a liquidator in a members' voluntary winding up.
- If special notice is required and it's not complied with then the resolution would not be effective.
- What is a special notice?
- Notice of the intention of the company's member to move the resolution proposed which is served to the company not less than 28 days before the meeting at which the resolution is to be moved.
- If after the special notice has been given to the company, a meeting is called for a date 28 days or less after the special notice. The special notice in such a case, although not given to the company within 28 days, shall be deemed to be properly given.
- The company upon receipt of any resolution coupled with special notice is required to give its members notice of the said resolution in the same manner.
- If it is impracticable to give notice then the company shall give notice in any manner allowed by the articles.
- A resolution requiring special notice is a resolution that requires special notice to be given by the members to the company of their intention to move such resolution at the meeting.

REGISTRATION OF RESOLUTION

- Every special resolution, which effectively binds any class of the shareholders whether agreed to by all the members of their class or not.
- The registration of resolution is by all the members of their class or not.
- The registration of resolution is by way of filling Form 11.
- The registration must be registered within 1 month.
- Exception to general rule:
 1. Altering of memorandum - within 14 days
 2. Change of company's name - within 14 days
 3. Registration of unlimited company to limited company - within 14 days
 4. Change from public company to private company - 14 days
 5. Alteration of company's share - 14 days
 6. Resolution of voluntary winding up - 7 days
 7. Alteration of object clause - 14 days.

EXERCISES:

1. What is resolution?
 2. Explain the differences between a minute and a resolution passed.
 3. Make a comparison between special resolution and a resolution that requires special notice.
 4. Write short notes on director's resolution.
 5. List 5 types of resolution that need to be registered and the timeframe imposed on each of these types of resolution.
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