

COMPANY MEETING

A meeting may be defined as a concurrence or coming together of at least a quorum of members to transact either the ordinary or special business of the company.

RULE OF SHARP vs. DAWES

A meeting was defined as an assembly of people for a lawful purpose or the coming together of at least two persons for a lawful purpose.

Exceptions to the RULE OF SHARP vs. DAWES

(MAY 2015 Q1A, MAY 2017 Q2A)

Exceptions to the rule of Sharp vs. Dawes are those circumstances in which one person may constitute a meeting. They include:

1. A meeting convened by the order of the registrar.

In this case, he has statutory powers to direct that a meeting may be held and that one member present in person or by proxy shall constitute a meeting.

2. General meeting summoned pursuant to a court order.

In this case, the court may order the holding of a meeting may be held and that one member present shall be quorum. This actually happens when it seems impracticable to hold a meeting where some members deliberately absent themselves so as to defeat quorum.

3. Class meeting

One person may constitute a particular class of shareholders if the person holds all shares of that class. Any meeting held by him in respect to the shares he solely holds is a valid meeting.

4. Adjourned meeting.

This is continuation of an earlier meeting. If a meeting summoned by the directors has no quorum present within 30 minutes of the appointed time, it stands adjourned to the following week on the same day, time and place unless the directors otherwise resolve. **The adjourned meeting is duly constituted by one members present in person or by proxy.**

5. Creditors meeting

In a creditors winding up meeting where a company has only one creditor, one person constitute a valid meeting and the resolutions thereafter are valid.

6. In a board meeting of a private Company that has a sole director.

Importance of company meetings (June 2012, Q1C)

- 1. To comply with statutory provisions** which require certain general meeting to be held in order to transact a specified business. Such meeting includes the statutory meeting, AGM and class meeting.
- 2. To transact business that may only be transacted at a general meeting of the members** such as reduction of share capital.
- 3. To enable directors and members to exchange views** on the running of **companies affairs** or **resolve some existing disputes.**
- 4. To transact some business which may only be transacted at a meeting of a class of the companies members,** such as variation of a right attached to a class of charges.

Classification of meetings

1. Statutory meetings (under the previous companies Act)
2. Annual general meetings
3. Extra ordinary general meetings (general meetings at other times)
4. Class meetings.
5. Directors meetings.

STATUTORY MEETING.

- This is the first meeting of the shareholders of a public limited company with a share capital.
- Companies Act 2015 provides that an existing company which came into existence before 2015 (under the Repealed companies Act 1948) and has not held statutory meeting has to meet the requirements of the repealed Act in the stated sections. However for companies registered under the 2015 Act, there is no requirement that this meeting be held.
- The meeting is held once in the lifetime of a company. The object of the meeting is to accord shareholders an early opportunity of obtaining material information as to the circumstances of the company's promotion and its immediate prospects.
- The members have a statutory right to discuss any matter relating to the formation of the Company or arising out of a statutory report whether previous notice has been given or not.
- Statutory meeting discuss statutory report
- Private companies are not required to hold statutory meetings

Statutory report

The directors are required to send a statutory report to every member of the company at least 14 days before the date of the meeting. The report must be certified by at least two directors of the company.

Contents of the statutory report

- Total share allotted.
- Total cash received in respect of the shares.
- An abstract of reports and payments made up to a date seven days before the date of the report and matters to which the receipt and payment relate.
- The names, address and occupation of directors, auditors and the secretary of the company.
- The particulars of any contract, the modification of which is to be submitted to the meeting for approval together with particulars of any modifications or proper modifications.

In the event of default in convening a statutory meeting, every director of the company knowingly and willfully guilty of the default is liable a fine up to Sh 1,000.

Similarly, default in delivering the statutory report and holding the statutory meeting is one of the grounds for winding up order against the company although in practice, the court may direct the report to be delivered or the meeting to be held and the costs incurred to be paid by persons in default.

ANNUAL GENERAL MEETING (AGM)

- Every public company is required to hold Annual General Meeting every year.
- Private companies are not required to have an AGM each year and therefore their business is usually conducted through written resolution.
- Failure for a public company to hold AGM is a criminal offence punishable by a maximum fine of KES 1,000,000/=
- Any member may apply to the registrar to call or direct the calling of AGM.

Requirements of notice of AGM

- Notice of AGM is 21 days in writing, in case of other general meeting at least 14 days' notice to members
- An AGM may be convened by shorter notice than 21 days required companies Articles allow and if all the members entitled to attend and vote at the meeting agree to the shorter notice.

Ordinary business of AGM (NOV 2016,Q5B)

1. Consideration of accounts and reports of an auditor
2. Declaration of a dividend
3. Appointment or re-appointment of auditors and the fixing of their remuneration.
4. Election or re-election of directors

EXTRA ORDINARY GENERAL MEETING

- This is a general meeting which a company may hold at any time when need arises. It generally considers special business and may be summoned by directors, requisitionists, or pursuant to a court order.
- Requisitionists convene EOGM if directors fail to convene the meeting within 21 days upon request by requisitionists.
- When making a requisition, requisitionists must state the purpose of the meeting
- All requisitionists must sign the requisition.
- All business transacted at this meeting is called special business.

CLASS MEETING

These are meetings of a particular class of shareholders. They are convened by either the company or by the court to effect variation in the rights of a particular class of shareholders or in connection with a scheme of arrangement or at the time of winding

DIRECTORS MEETING

- This is a meeting of members of the board and may be held at any time when need arises
- The meeting may be summoned by a director or the company or the company secretary if instructed by a director.
- Quorum for such meeting is fixed by the directors failing which is two for public companies and one for private companies.
- The meeting must have a chairman within 5 minutes of the appointed time

Business transacted at board meeting

- a) Borrowing,
- b) Recommending dividends
- c) Payment of interim dividends
- d) Appointment of the managing director
- e) Appointment of company secretary

REQUISITES (ESSENTIALS) OF A VALID MEETING

In order to transact legally binding business, the meeting must be validly held. The essentials of a valid meeting include:

- 1. Proper convening authority
- 2. Proper notice
- 3. Requisite quorum
- 4. Proper person to be the chair
- 5. Maintenance of minutes

PROPER AUTHORITY

The following are proper authority in convening respective meetings: **(DEC 2014, Q2A)**

- 1. Board-Convene AGM as well as board meeting
- 2. Registrar-Can convene AGM if a public company fails to hold one
- 3. Court-On application by minority members
- 4. Liquidator-Winding up meetings
- 5. Requisitionists-In the event directors fail to convene an extra ordinary general meeting, requisitionists can proceed and convene the meeting.

PROPER NOTICE (MAY 2016, Q7C)

- AGM at least 21 days' notice to members
- any other general meeting at least 14 days' notice to members
- The notice must be given to all members entitled to attend the meeting
- A shorter notice may suffice if all members entitled to attend a meeting agree;

Contents of notice (NOV 2015, Q4A)

- i. The time and date of the meeting,
- ii. The type of the meeting;
- iii. The place of the meeting
- iv. The general nature of the business to be dealt with at the meeting

Entitlement to Notice of meeting (Who are entitled to notice of meeting?)

- 1. Director
- 2. Shareholders
- 3. Auditor
- 4. Personal representative
- 5. Trustee in bankruptcy

Service of Notice

1. Through registered post
2. Can be served personally to members
3. Through print media in case of AGM of public company
4. Through electronic means e.g. website or email supplied by a member
5. Serving notice on the personal representative of a deceased member
6. Serving notice on the trustee in bankruptcy of a bankrupt member

REQUISITE QUORUM

A quorum is the scientific number of qualified persons (members) whose presence is necessary for transacting legally binding business at the meeting. **The following rules relate to a quorum:**

- It is the duty of the chairman of the meeting to determine whether a quorum is present by the time the meeting proceeds to business.
- The quorum must be effective, i.e. only persons who are entitled to participate are counted.
- A meeting with no quorum is a legal nullity (null and void) and so are its purported proceedings.
- If within half an hour from the time appointed for meeting, a quorum is not present, it shall be adjourned to the same day in the next week, at the same time and place, or such other time and place as the directors may determine.
- An adjourned meeting is a continuation of an earlier meeting
- A meeting adjourned for lack of quorum is duly constituted by one member present in person or in proxy.
- A meeting adjourned for more than 30 days requires a new notice

PROPER PERSON TO BE THE CHAIR

- There must be a chairman to preside over the proceedings of the meeting.
- The chairman of a general meeting is responsible for conducting the business of the meeting.
- Members present at a general meeting may by ordinary resolution elect one of the members to preside at the meeting.

Duties and functions of the chairman

1. To maintain order in the conduct of those present at the meeting.
2. He must inform himself of the business of the meeting
3. He must satisfy himself that the meeting is duly constitute
4. He must satisfy himself that a quorum of members is present at the time the meeting proceeds to business.
5. Frame issues for discussions by the meeting
6. Determine whether proposed amendments are in order
7. Confine discussions within the issue and reasonable limits of time
8. Ensure that the sense of the meeting is kept by asking relevant questions
9. Ensure that minutes of the meeting are kept.
10. Conduct voting by show of hands, or poll
11. Sign the minutes of the meeting or previous meeting.

Powers of the chairman

- To call the meeting to order.
- To determine who speaks and for how long.
- To use a second or casting vote in the event of a tie.
- He has power to order the removal of any person who has no right to be present.
- To adjourn the meeting in the event of disorder or inadequate space.
- To close the meeting at the appropriate time.
- To declare the outcome of the voting by show of hands or by poll.

The chairman may adjourn the meeting in the following circumstances.

- When at the appointed time, the meeting there was no quorum.
- When he moves a motion of adjournment before the meeting and the meeting approves it
- When it is impracticable to conduct the business of the meeting due to animosity between members or inadequacy of space.

MAINTENANCE OF MINUTES

Minutes refer to a concise and accurate official record of the business transacted at company meetings. They only include resolution actually passed. The minutes signed by the chairman of the meeting at which the proceedings took place or by the next chairman in the succeeding meeting, are evidence of its proceedings and are presumed correct.

Every company shall keep the following;

- Copies of all resolution of members passed otherwise than at general meeting.
- Minutes of all proceedings of general meetings
- Details provided to the company where decisions are taken by a company that has a sole director.

Contents of minutes

- The nature of the meeting.
- The date, time and. place of the meeting,
- The names of, the chairman and secretary
- Names of the members present at the meeting with a view of indicating the presence of quorum,
- All resolutions passed at the meeting.
- Vote of thanks
- The chairman's signature with a date in its own hands

Inspection of the minute book of a general meeting

- Section 320 requires companies to keep its records available for inspection at its registered office and open for inspection by members without charge for at least two hours every business day, subject to restriction imposed by the Articles or the general meeting.
- A member who applies for the copies of any minute is entitled to be furnished with the same within 14 days of the application.
- It is a criminal offence for the company to deny any member the right to inspect the minute book or furnish copies thereof.
- The company and every officer in default are liable to default fine. The high court has jurisdiction to compel the company to;

a) Furnish copies of minute as requested,

b) Facilitate immediate inspection of the minute book.

Rules when drafting minutes (NOV 2016,Q5B)

1. They only include resolutions actively passed
2. They are drafted in past tense
3. They must be signed by the chairman
4. They must be concise and brief

VOTING

It means an expression of the wish or opinion of the members.

Methods of voting.

1. **Show of hands**
2. **By poll**

Show of hands -Each member present in person has one vote and each proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote. It is the duty of the chairman to count the hands and decide the outcome.

By poll-This is voting on the basis of the shares held, each shares carries one vote. This method is used by companies with share capital.

Documents required when casting vote by poll

1. Polling papers
2. Register of members
3. Attendance register
4. Proxy register
5. Specimen signature of members
6. Proxy forms received
7. Board resolutions

Persons entitled to vote at general meeting.

1. Persons whose names appear on the register are prima facie **members** and are entitled to vote,
2. The vote of a corporation which is a member is given by its **authorized representatives**.
3. A person of unsound mind votes through the **manager appointed** under the mental Health Act
4. A **bankrupt member** whose name remains the register may vote.
5. Joint holders of a share determine who among them is to vote failing which the member whose name appears first on the register votes
6. **Proxy**

PROXIES

- A proxy is an authority to represent or vote for another at a meeting.
- It may also be an instrument appointing a person as a proxy

There are two types of proxies; (June 2012, Q7A)

1. **General proxy;** This is a proxy empowered to vote as he wishes having regard to the discussion at the meeting
2. **Special proxy;** This is a proxy appointed to vote either for or against a particular resolution before the meeting. He votes as instructed by the appointing authority.

Rights of a proxy

- a) The right to attend the meetings
- b) Right to join other proxies or member to demand voting by poll
- c) Right to vote by poll
- d) Right to speak in the case of private company meetings

Revocation of authority of a proxy

Authority of a proxy can be revoked on the following grounds:

1. When the proxy form is not presented within 48 hours before the meeting
2. When the member personally attends the meeting
3. When the appointing authority revokes the proxy form
4. When the appointing authority dies or becomes bankrupt before the meeting

RESOLUTIONS

Decisions of the company are made by resolutions of its members passed at meetings of the members.

Kinds of resolutions

- i. Ordinary resolutions
- ii. Special resolutions
- iii. Resolutions requiring special notice
- iv. Written resolutions

1. Ordinary resolution

- It is a resolution in meeting of a company passed by a **simple majority of members** i.e. Votes cast for exceeding votes cast against it.
- The required notice is 21 days.
- They are not registrable

Ordinary resolution is necessary for the following matters:

- a) To increase the share capital
- b) To appoint an auditor.
- c) To elect a director
- d) To approve accounts
- e) To declare dividend

Special resolution (Dec 2010 Qn 5a (i))

- It requires a qualified majority of 3/4 to pass.
- The resolution to be passed should be set out in the notice convening the meeting.
- Not less than 21 days/ notice is required,

A special resolution is needed for the following matters: (Dec 2010 qn 5a(ii))

- To alter the objects of the company.
- To alter the articles of association.
- To change the name of the company
- To change the registered office of the company.
- Reduction of share capital.
- To issue shares at a discount
- To petition for investigations into the affairs of the company.
- To institute a member's voluntary winding up of the company

Resolution requiring special notice

- For certain matters, the Act requires that a special notice of an ordinary resolution must be given.
- Notice of the intention to move it must be given to the company not less than 28 days.

The Act requires special notice for the following resolution: (June 2009 Q3)

- To appoint or re-appoint a director who is over the age limit of 70 years.
- To remove a director before his period of office has expired
- To remove an auditor before his period of office has expired.
- To prevent a retiring auditor from being re-appointed.
- To appoint another director in place of the removed director.

Written resolution.

- A resolution of the members or, of a class of members of a private company may be passed either as a written resolution or at a meeting of the members.
 - The following may not be passed as a written resolution.
- a) A resolution removing a director from office before the end of the director's period of office;
 - b) A resolution removing an auditor before the end of the auditor's term of office,

- Either the directors or members of a private company, may propose resolution, as a written resolution.
- A written resolution has effect as if passed by the company or by a meeting of a class of members of the company.
- A written resolution may be passed with the simple majority (ordinary resolution) or a majority of not less than 75% (special resolutions).

Registration of resolutions

- It is provided that a certified copy under the signature of an office of the company of the following resolutions and agreements must be registered with the registrar, within 30 days of passing the resolutions.
- Failure to register a registrable resolution renders the company and every officer in default liable to a default fine.

Registrable resolutions include:

- a) All special resolutions
- b) Resolution which have been agreed upon by all members of the company but which in the absence of such agreements will have to be passed as special resolutions.
- c) Resolutions or agreements which have been approved by all members of a class of shareholders.
- d) All resolutions or agreements which bind all the members of a class of shareholders though not approved by all these members.
- e) Resolutions requiring a company to be voluntarily wound up.

THE COMPANY SECRETARY

Appointment/Qualifications of a company secretary

- The Company Secretary is appointed by the Directors
- The company secretary must be a registered member of the Institute of Certified Secretaries of Kenya (ICSK)
- The company secretary must be a holder of CS qualification offered by KASNEB.
- The company secretary must be of good ethical and governance standing,
- The company secretary must be knowledgeable in financial aspects of a company

Persons not qualified to hold office as a company secretary.

(May 2015, Q4C, June 2013 Q6A)

- He has been convicted by a of competent jurisdiction of an offence fraud or dishonesty.
- He is undischarged bankrupt.
- If he is unsound mind
- Under any such terms as the registration, board may determine.

Legal position of a company secretary (May 2016 Q3A)

- **Servant of the company**- He is a servant whose duty is to act in accordance with instructions given to him by the directors.
- **Agent of the company**-He has authority to enter into contracts on behalf of the company.
- **Officer of the company**-He may incur liability to statutory penalties because of non-compliance with the requirements of the statutory meeting and filling the statutory report.

Duties of a company secretary (Sept 2015 Q3C)

- To ensure that' the statutory books & registers are kept up to date in good order & available for inspection
- To ensure safe custody and correct use of the company's seal.
- To ensure that the annual return is accurate and submitted on time.
- To attend and take minutes of the meetings of shareholders and the board.
- To ensure that the company complies with the provisions of the companies act, legislation, MOA and AOA.
- To ensure compliance with the securities exchange requirements.
- To ensure that changes in the membership are handled correctly and that valid do vouchers are issued.
- To ensure that statutory accounts are sent to the shareholders and that a copy where necessary is send to the register
- Witnessing documents together with directors
- Issue shares and debenture certificates

Liability of a company secretary (When can CS be held liable?)

(Dec 2011, Q7A, Dec 2014 Q7 B, Nov 2019, Q6ii)

- Omissions for which a company secretary might be held to be criminally liable.
- Failure to publish the company's name as required;
- Failure to register charges.
- Failure to make annual returns.
- Destroying or falsifying the company's books with intent to defraud.

Particulars in the register of secretaries if the secretary of a public company is a company or a firm (Nov 2016 Q3A)

- a) The name of the company or the firm;
- b) The registered or principal office of the company or the firm
- c) The legal form of the company or firm and the law by which it is governed; and
- d) In the case of a company or a firm that is incorporated, register in which it is recorded (including the place where the register is kept) and its registration number in the register..

If all the partners in a firm are joint secretaries, it is to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

Removal of a company secretary (May 2017 Q 7B)

- a) Directors must pass resolution to remove a secretary; this can be done at a board meeting or by written resolution.
- b) The directors must immediately give the notice to the secretary concerned
- c) Record the removal or resignation in the company's register of secretaries.
- d) Notify the bank that the secretary is no longer an authorized on the business bank account.
- e) Notify the registrar of the removal within 14 days.

Contents of an annual return (May 2016 Q3A)

- Type of company and its private activities.
- Address of its registered office.
- Particulars of directors and secretaries.
- Any person appointed as authorized signatories.
- Total amount of indebtedness in respect of all registerable charges.
- Financial statement or exemption statement where applicable.
- Names and addresses of these who were members as at the date of the return.
- Number of shares held by each members stating the shares transfers since the date of the last return.