

Corporate Management

Management of the company

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Corporate Management

➤ Management of the company is carried on by the **shareholders' meeting, BOD & general manager.**

➤ **2 approaches** of conferring powers to BOD and general meeting of shareholders.

1. Liberal approaches:- to confer **specific power to general meeting** like altering statute of the co., appointment and removal of BOD, and conferring all other powers to BOD.

➤ Common in USA legal system

2. Restrictive approaches:- to confer the power to BOD and general meeting by **specifying in MOA or AOA.**

➤ **BOD has limited power.**

➤ Common in **continental Europe legal system** - French company law, which is also model of CCE, confers the powers specifically to BOD.

Shareholders' meetings

- ❖ The proper functioning of any association of persons, large or small, requires that the members of the association come together from time to time to discuss matters of common interest and to take decisions by common consent or by a majority as may be possible.
- ❖ Like any others association, a company must also hold meetings for its proper functioning.
- ❖ A company meeting may be defined as an assembly of persons connected with the company who wish to discuss and decide matters related to it.

Types of meetings - Article 365 .

- 1. General meetings:**
- 2. Special meetings:**

1. General meetings

❖ Ordinary general meeting

- consists of shareholders or all classes.
- are classified into **ordinary** and **extra ordinary general meetings**.
- held once every year to discuss **financial and administrative** affairs of co. [article 393]
- Decisions concern **financial matters** - approving annual accounts and management report (other than alteration of the capital) and **administration of the co.(appointing BOD, determining remuneration and approving any transactions)** – [Article 394]
- May take all **decisions within the competence** of the shareholders, except those which are required to be taken by an extra ordinary meeting [Article 394(5)].

➤ First call can be held only if the shareholders present or represented at least **one-quarter of the Capital of the company** of the voting shares [Article 398]

➤ When called for a second time, the meeting may be held and decisions made without regard to the number of voting shares represented. [Art. 398 (3)]

Resolution is passed by a **simple majority** present or represented. Accordingly, a shareholder who abstains is disregarded [Art 398(4)]

❖ **Extra-ordinary general meeting** – to consider a particular matter specially ***amendment of the statutes*** – [Article 400]

➤ ***Change of nationality*** of the co. or ***shareholder to increase investment*** in co. needs the present of all holders of all shares having voting right and unanimous voted [Article 402 (2) & (3)].

➤ are subject to stricter **rules** as to **quorum** and

Without prejudice to the above provisions:- **Art. 402 (4)**

- a) at first meeting, where shares carrying voting right representing not less than one third of the capital of the company are present or represented;
- b) at a second meeting, where shares carrying voting rights representing not less than one fourth of the capital are present or represented and
- c) at a third meeting, without regard to the amount of capital represented by shares carrying voting rights in so far as shareholders or their proxies are present.

2. Special meeting - Article 404.

➤ is a meeting that consists of ***shareholder's of particular class*** to transact business affecting their interest only - (Eg. the holders of ***preference share***).

- The rules as to quorum for special meeting:-
 - ✓ at a first meeting, not less than one half,
 - ✓ in second meeting, not less than one-third,
 - ✓ in the third meeting, not less than one quarter of the capital of the company represented, by the class concerned;
- Majority required to pass resolutions are the same as the rules governing **extra-ordinary meeting**.

Procedural rules common to all meetings

Calling of meetings

- Calling of the meetings are governed by ***statutes of the co.***
- Meeting may be called by ***BOD, the auditors, the liquidators or by officer of the court*** - [Article 366]
- Meetings can be called by **publication** in a legal newspaper notice setting out the name and form of the co., date, times, place and nature of the meeting , the agenda and other particulars [Article 371]
- Notices for first general or special meeting shall be given **twenty four days** before the date of such a meetings [Art. 370]

Quorum

The quorum in relation to the capital is as laid down for each class of meeting under this Code; For all meetings, the quorum shall be calculated on all the

Setting of agenda - Article 372

- The **agenda** of the meeting is determined by **its caller**.
- **Resolutions** passed based on the agenda.
- If the meeting has to be called for a second time because a quorum is not present on the first occasion, the agenda cannot be amended for the second meeting. However, meetings may remove any director and appoint other persons to replace them without these matters appearing in the agenda.

Voting by proxy - Art. 373

- Shareholder may take **part in and vote** either personally or by proxy.
- Where the shareholder appoints proxy, he may not vote personally.
- The form, place and time of deposit of the proxy, is determined by BOD - **Article 377**

Substantial rules common to all meetings

➤ **Right to information** - Shareholders are entitled to be given relevant information - Art 381 & 382.

➤ **Right to vote** - Art 383

Directors - Article 296

- Are persons by whom the business of co. is carried on.
- **BOD:-** group of directors as an institution.
 - ✓ is the managerial body.
 - ✓ It is established by general assembly from among the **shareholders and non-shareholders**
 - ✓ However, the number of non-shareholder directors may not exceed one-thirds of the total membership of the board of directors [art. 296 (2)].
 - ✓ The no. of directors is set in statutes, not less than 3 and not more than 12.
 - ✓ Individuals or legal entities can become directors. If a legal entity is appointed as a director, it must appoint an individual person [Art 296(4)]

Requirements to Qualify as a Director- Article 297

- ✓ Minimum age specified by a memorandum of association or law, if any;
- ✓ Be of good moral character;
- ✓ No record of conviction;
- ✓ Compliance with other requirements set by the memorandum of association or another law, if any.

Appointment- Art 298

- The **first directors** may be appointed in the *statute* & confirmed by first meeting of subscribers.
- If not confirmed, **subsequent directors** may be appointed by **general meeting** of shareholders.
- **Term of office - 3 years**, re-election may be made.
- ***Directors may appoint new directors*** to replace departing or resigning directors & be ratified by ordinary general meeting – **Art. 303**
- If the replacement is not confirmed, general meeting may appoint other directors.

Powers, Duties and Liabilities of BOD (Art 315 and ff)

- BOD has power given to it by ***statute*** and ***decision of general meeting. Acts of BOD binds the co.***
- ***In practice***, the business of the co. is taken care of by the chairman and general manager and BOD merely defines the general policies to be followed by the co.; takes or approves strategic decisions and controls its chairman.
- Duties of BOD are:
 - ✓ Organizing management and meeting records;
 - ✓ Keeping of accounts and books;
 - ✓ Calling shareholder's meeting;
 - ✓ Establishing reserve fund required by the law and statutes;
 - ✓ Applying to the court where the company is

Agreements between co. & directors - Art 355-357.

- To regulate *conflicts of interest* between co. and directors. There are 2 types of agreements:

1. Prohibited agreements

- Directors are strictly prohibited to be **partners** with *joint and several liabilities in rival companies* nor do they compete against the co. on their own behalf or on behalf of 3rd party [Article 319]
- Directors can not enter any form of *loan agreement* with company unless the transaction has been approved in advance by a resolution of a general meeting of the company. Art. 307 (1)
- The prohibition of entering into contract of *loan or guarantee* does not apply when the *director is legal entity or the co.* operates a *banking*

2. Regulated agreements

- Disclosure of potentially conflicting relationship [Art. 321]
- The regulation applies to agreements:
 - ✓ directly or indirectly between the co. and its directors
 - ✓ between the co. and another entity in which one of the directors is owner, partner, agent, director or manager of such entity. [Art. 320]
- Dealings made between a company and persons or organizations affiliated with the company requires **prior approval** by BOD & **notice to the auditors**.
- The **auditors must prepare special report** on the agreement [Art. 306 (2)]

Directors' liability - Art 328- 330.

➤ Directors may be liable to the co. and to 3rd party.

A. Liability to the company:

➤ directors are agents and trustees of the co. & jointly and severally liable to the co. and its shareholders.

B. Liability to the creditors:

➤ Directors have duty to preserve the capital of the co. intact to protect co. & 3rd party.

Proceedings against the directors

A company may not institute proceedings against its directors without a resolution of a general meeting of shareholders to this effect [Art. 328]

➤ If the company fails to institute proceedings within 3 (three) months, proceeding by shareholders against directors conducted by shareholders representing at least ten percent of the capital [Art. 328 (2)]

➤ The company's decision not to institute proceedings against the directors shall not affect the creditor's rights to sue such directors.

So, creditors may bring the case to the court where capital of the co. is insufficient to cover the debt. See Art. 329 (3)

Removal - Art. 305

➤ Directors may be removed by general meeting at any time before the expiry of term of office.

Supervisory Board- Art. 331

- A company may have a supervisory board where the memorandum of association provides for that.
- Not less than three or more than five members
- Appointed by a general meeting of shareholders.
- The general meeting may revoke the appointment of members of the supervisory board at any time.
- Only shareholders may be elected as members of a supervisory board.
- They have powers to causing submission of documents and information and examine the same, calling and leading of general meeting where bod is unable to this, take part and give opinion to BOD's meeting without voting right and others [see Art. 332]
- **Read art 333- 336**

General Manager

- Carry on *day to day activities* of a co. & represents the co. in relation to 3rd parties [Art. 338]
- Is appointed by the BOD and accountable for the same - Art 337(1).
- The board may revoke the appointment of the general manager
- The general manager is an employee of the company;
- he may be a member of the board of directors;
- He may not be the chairperson of the board.

Powers, duties, liabilities and Removal

Powers:

- the power is delegated by the BOD. Board of directors decides on substantial policy issues. Such is implemented by general manager. see Article 338

Duties:-

- to perform all his activities according to the power delegated to him, and according to the statutes and the law.
- occupies the position of a trustee for the co. and he has to safeguard the interest of the shareholders and the co.

Liabilities

- Liable to the co. or 3rd party for damage resulting from infringement of his power or violation of law, statutes.

Secretary- Art. 340.

- A company shall have a secretary.
- The hiring and firing of the secretary shall be approved by the board of directors upon the recommendation of the general manager.
- The secretary shall be accountable to the general manager.
- The secretary shall be liable to the company, shareholders or third parties for any breaches of his duties

❖ Powers and Duties of the Secretary -see Article 341.

Accounts and audit

1. Out of capital payment

- Directors must prepare **annual accounts** and a **management report** for submission to the general meeting (Art 426). Including:
 - *balance sheet,*
 - *profit and loss statement, and*
 - *report on the activities and affairs of the co.* (remuneration of the directors, auditors and proposal for the distribution of **dividend**, if any)
- **Dividend** is only paid to shareholders where there is net profit shown in the approved balance sheet and such **profit** is declared to be paid by the **general assembly** - Art 438 (1) & (3)
- If **no profit, no payment of dividend** out of capital.
- If dividend is paid from capital it shall be deemed as

Reserve funds – Art. 433

❖ Legal reserve:- Art. 434

- is reserve ***required by law & net profit mandatorily*** be allocated on a ***long-term basis*** to the company's operation.
- is ***5% of annual profit*** until the amount of legal reserve is equal at least 5% the company's capital.
- ***can not be distributed*** to the shareholders nor be used for the ***repurchase*** or ***redemption*** of the co. shares.

❖ Supplementary reserve:-

- Created by an ordinary general meeting and it must be allocated to the co.'s operation on long-term basis by application of MOA. Art. 433(2) b.
- Can not be distributed to the shareholders

❖ **Optional reserves:-**

➤ Correspond to ***profits allocated to the co.'s*** operation by a decision of the ordinary general meeting according to MOA.

❖ **Free reserve:-**

➤ Created by an ***ordinary general meeting*** there being no special provision in the law or memorandum of association.

➤ Sometimes it is known as "***revaluation reserve***",

➤ Corresponds to ***difference revealed*** in asset revaluation between the historical book value of certain tangible assets (such as immovable or trade marks) and their real market value.

Profits and dividends

❖ Profits:- Art. 436

- Is the net receipts after deduction of general costs and other changes.
- After the legal reserve and if appropriate other reserves have been funded, the annual meeting is free to use any remaining part of the profit by allocating them to the shareholder as dividends.

❖ Dividend:- Art. 438

- Is the return that a shareholder gets from the company out of its profits.
- It may be a fixed annual percentage as in the case of preference shares or it may be variable as in the case of equity shares.
- The time and manner of payment of dividends is decided on by the annual meeting (Art 438/3/).
- Claim only after the same is declared by the co. in

Appointment of auditors - Art. 343

- are appointed by General meetings of shareholders and entrusted with the external control of the co.
- Their main functions are:
 - *to audit the accounts of the co.,*
 - *certify certain information provided to the shareholders, and*
 - *prepare reports which must be submitted to the shareholders.*
- Company may elect one or more auditors and assistant auditor.
- Body corporate may be appointed as an auditor[art. 343 (3)]
- ***The first auditors*** - appointed by the subscribers of the co. & hold the office until the first annual general meeting.

➤ ***Requirement to be auditor:- Art. 345***

- *Professional license*
- *Good moral character*
- *Not shareholder or employee of co.*
- *is not a person affiliated with the company as defined under Article 306 Sub-Article (6)*

➤ ***Incompetent persons to be an auditor (Art. 306 (6))***

- ***Founders, contributors in kind, beneficiaries enjoying special benefits/preferred rights/ BOD*** or one of its subsidiaries or its holding co.;
- ***Blood relatives*** or in-laws of any person mentioned above;
- ***Persons who receive*** from persons mentioned in above a salary or periodical remuneration in connection with duties other than those of an auditor.

Dissolution of co. - Art. 473

- Co. are rarely dissolved & shareholders usually prefer to sell their shares – Sometimes dissolution become unavoidable.
- Causes of dissolution of a co./partnership/, common to all kinds of B.O.
- Dissolution by:-
 - ***application of law, statutes co./ partnership***
 - ***agreement of members to dissolve/***
 - ***judicial decision for just cause.***

❑ **Dissolution by law:-** [Art 473 (1) a-c].

➤ If the ***no. of members*** of B.O is below the minimum required by the law, B.O be dissolved and failure to make up it.

➤ Upon application by any interested party where the company does not have the required administrative organs

➤ loss of three-quarters of the capital

➤ **Dissolution by agreements**

➤ Co. may be dissolved ***prematurely*** by the agreement of ***members***.

➤ Co. may be dissolved by resolution of an ***extra - ordinary general*** meeting without alteration of its statutes - Art 473 (3).

➤ Dissolution may be made as laid down in the statutes, they may relate to its ***duration*** or its ***objects***(achieved or unable to achieve).

❑ **Dissolution by court order**

❖ **Liquidation of share company - Art. 475-491**

✓ comprises all the operations required to complete its current transaction, to collect and realize its assets, to discharge its liabilities and repay its capital and to distribute any surplus of assets among its members.

A large, solid blue shape with irregular, wavy edges, resembling a stylized cloud or a piece of paper with torn corners. It is centered on a white background.

**Private Limited
Company(PLC)
CHAPTER NINE**