

**PAPER NO. CS 43**

**SECTION FOUR**

**CERTIFIED SECRETARIES (CS)**

**LAW AND PROCEDURE OF MEETINGS**

**STUDY NOTES**

# KASNEB SYLLABUS

## GENERAL OBJECTIVE

This paper is intended to equip the candidate with the knowledge skills and attitude that will enable him/her to prepare and manage meetings in both public and private sectors

## 12.0 LEARNING OUTCOMES

A candidate who passes this paper should be able to:

- Demonstrate an understanding of the Law and procedure of meetings
- Plan and manage meetings in various environments including at county levels
- Support the Chairman undertake his/her responsibilities during the meeting
- Relate with various stakeholders during meetings

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# CHAPTER 1

## MEETING IN GENERAL

### Introduction

One dictionary defines a meeting as an act or process of coming together as an assembly for a common purpose.

A meeting is a gathering of two or more people that has been convened for the purpose of achieving a common goal through verbal interaction, such as sharing information or reaching agreement. Meetings may occur face to face or virtually, as mediated by communications technology, such as a telephone conference call, a skyped conference call or a videoconference.

Thus, a meeting may be distinguished from other gatherings, such as a chance encounter (not convened), a sports game or a concert (verbal interaction is incidental), a party or the company of friends (no common goal is to be achieved) and a demonstration (whose common goal is achieved mainly through the number of demonstrators present, not verbal interaction).

Commercially, the term is used by meeting planners and other meeting professionals to denote an event booked at a hotel, convention center or any other venue dedicated to such gatherings. In this sense, the term meeting covers a lecture (one presentation), seminar (typically several presentations, small audience, one day), conference (mid-size, one or more days), congress (large, several days), exhibition or trade show (with manned stands being visited by passers-by), workshop (smaller, with active participants), training course, team-building session and kick-off event.

**E-meeting** A meeting that takes place over an electronic medium rather than in the traditional face-to-face fashion. The most common form of an e-meeting is done through web-based software which allows individuals and groups from around the globe to facilitate meetings without physically travelling to an agreed upon location.

### TYPES OF MEETINGS

Common types of meeting include:

- Ad hoc meeting, a meeting called for a special purpose
- Board meeting, a meeting of the Board of directors of an organization
- Investigative Meeting, generally when conducting a pre-interview, exit interview or a meeting among the investigator and representative
- Kickoff meeting, the first meeting with the project team and the client of the project to discuss the role of each team member
- Management meeting, a meeting among managers

- Off-site meeting, also called "offsite retreat" and known as an Awayday meeting in the UK
- One-on-one meeting, between two individuals
- Pre-Bid Meeting, a meeting of various competitors and or contractors to visually inspect a jobsite for a future project. The meeting is normally hosted by the future customer or engineer who wrote the project specification to ensure all bidders are aware of the details and services expected of them. Attendance at the Pre-Bid Meeting may be mandatory. Failure to attend usually results in a rejected bid
- Staff meeting, typically a meeting between a manager and those that report to the manager
- Stand-up meeting, a meeting with attendees typically standing. The discomfort of standing for long periods helps to keep the meetings short.
- Team meeting, a meeting among colleagues working on various aspects of a team project
- Work Meeting, which produces a product or intangible result such as a decision

### **Meeting frequency options**

Since a meeting can be held once or often, the meeting organizer has to determine the repetition and frequency of occurrence of the meeting. Options generally include the following:

- A *one-time meeting* is the most common meeting type and covers events that are self-contained. While they may repeat often, the individual meeting is the entirety of the event. This can include a 2006 conference. The 2007 version of the conference is a stand-alone meeting event.
- A *recurring meeting* is a meeting that recurs periodically, such as an every Monday staff meeting from 9:00AM to 9:30 AM. The meeting organizer wants the participants to be at the meeting on a constant and repetitive basis. A recurring meeting can be ongoing, such as a weekly team meeting, or have an end date, such as a 5-week training meeting, held every Friday afternoon.
- A *series meeting* is like a recurring meeting, but the details differ from meeting to meeting. One example of a series meeting is a monthly "lunch and learn" event at a company, church, club or organization. The placeholder is the same, but the agenda and topics to be covered vary. This is more of a recurring meeting with the details to be determined.

### **REQUISITES OF A VALID MEETING**

A meeting can validly transact any business if the following requirements are satisfied:-

- i. Proper authority.
- ii. Proper notice.
- iii. Quorum must be present.
- iv. Chairman must preside.
- v. Minutes of the meeting must be kept.
- vi. These are explained below: -

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**(i) Proper Authority-**

A meeting to be valid must be convened by a proper authority. It is the Board of Directors who has the authority to call a meeting, be it statutory, annual or extra ordinary. If the Board do not call the meeting the members of the company may call the meeting.

Even if the meeting of the Board at which it is resolved to call a General Meeting is not properly constituted, the general meeting called by the Board can act.

**(ii) Proper Notice**

The second requirement of a valid meeting is that all those who are concerned with the business of the meeting and are entitled to attend, are communicated of the date, time, place and business of the meeting. Such communication is called notice.

The length of notice required by Section 133 for calling a general meeting is 21 days. Section 133, since statutory, overrides any provision in the articles for a shorter notice, but articles can validly provide for longer notice than that laid down by statute.

The meeting can however be called by giving a shorter notice in the following cases:-

- a) In case of an Annual General Meeting, by the consent of all the members entitled to attend and vote.
- b) In case of any other meeting, by the consent of the members holding not less than 5% of paid-up capital of the company or not less than 95% of voting power.

If members agree to accept a shorter notice, a resolution to that effect must be recorded in the minutes of the meeting with sufficient details of voting

Case Law: Bailey, Hay & Co. Re (171)

The notice of a meeting for the Voluntary winding up of a company was short by one day. All the five members attended. The necessary resolution was passed by the votes of two members, the other three abstained from voting. It was held that the resolution was validly passed with the unanimous assent of all the members and those who abstained were treated as having acquiesced in the winding up.

**Omission to give Notice**

Deliberate omission to give a notice even to one member may invalidate the meeting. An accidental omission or non-receipt of notice by any member does not invalidate the proceedings at the meeting. “Accidentals loss –not deliberate”.

Case Law: Mussel white vs. CH Mussel white & Sons Ltd (1962)

M sold shares in M Ltd to D. The payment was to be made by D to M by instalments. M was to remain on the register of members until the last instalment was paid. Before the last instalment was paid, an annual general meeting was held, but M did not receive the notice of the meeting as the directors erroneously believed that M was no longer a member.

It was held that the failure to give notice was not incidental and the meeting held without notice was void.

### **Contents of the Notice;-**

- i. Specify the date, place and hour of the meeting.
- ii. Statement of the business to be transacted/agenda, with sufficient details.

### **Special Notice**

Certain powers which are exercisable by members by ordinary resolution or special resolution, requires “special notice”.

A special notice is required for the following resolutions:-

- i. Removing a director.
- ii. Authorising a director who is over 70 years.
- iii. Appointment of an auditor.
- iv. Providing expressly that a retiring auditor shall not be appointed.

### **(iii) Quorum**

Quorum means the minimum number of members who must be present in order to constitute a valid meeting. The quorum is generally stated by articles.

Articles 53 Table A provides that no business shall be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business.

Three persons/members present in person shall be quorum.

Thus those members who intend to vote by proxy are not taken into account when determining whether or not a quorum is present.

Where no provision is made as to quorum in the articles, Section 134 (c) prescribes two members in case of private company and in other cases three.

If the articles provide that proxies be included in quorum, then it can be counted.

**Rule:** If no quorum is present, there is no meeting and any business conducted is invalid.

Unless otherwise provided in the articles, if within half an hour from the time appointed for holding a meeting of the company, a quorum is not present the meeting:-

- a) If called upon by the requisition of members stand dissolved
- b) Other cases stand adjourned to the same date in the next week at the same time, as the directors may determine.

Note: If the quorum is not present at the adjourned meeting, then the present members shall be quorum.

Quorum should be present at the time the meeting proceeds to business not present throughout or at the time of voting.

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## **SHARP VS. DAWES RULE**

One person, except in exceptional cases cannot constitute a quorum. The word “meeting” prima-facie means a coming together of more than one person. Strictly speaking therefore, one shareholder cannot constitute a meeting. This is Sharp vs. Dawes rule.

### Case Law: Sharp vs. Dawes (1876)

A general meeting of a company was called for the purpose of making a call. Only one shareholder attended. The business of the company was carried through including a call on the shareholders. Dawes was sued for the call he failed to pay. In his defence, Dawes argued that the call had not been validly made at a general meeting. It was held that one person could not constitute a meeting.

Melish L.J. said, “according to ordinary English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no share holder at all had attended. No business could be done at such a meeting.

Re. Sanitary Carbon Co. (1877) appeared to lend support to the above decision as it was held that a meeting of a company attended by one shareholder only was not validly constituted, even though that shareholder held the proxies of all other members.

Therefore, as a general rule, one individual alone does not constitute a meeting even if he/she represent two or more members, for example, by being both a member and a proxy for another member.

### **(iv) Chairman**

The chairman:-

- i. Conducts a meeting.
- ii. He is the presiding officer.
- iii. Keeps order and conducts the meeting.
- iv. Must give members present a reasonable chance to discuss any proposed resolution.
- v. Should not adjourn the meeting without the consent of the members.

### **(v) Minutes of the Meeting**

Section 145 of the Act states that every company must keep minutes containing a fair and correct summary of all proceedings of general meetings and directors in books kept for that purpose.

The term “minutes” means official record of all the meetings of a company. These are summary of the business transacted, decisions and the resolutions arrived at the meeting.

Any minute purporting to be signed by the chairman of a meeting is evidence of the proceedings of the meeting in which it relates.

## **PROXIES**

A proxy is an authority to represent and vote for another person at a meeting. It is also an instrument appointing a person as a proxy. The person so appointed is known as a proxy.

A proxy is not entitled to act contrary to the instructions of the appointer. Notice calling a meeting must contain the right to attend and speak at the meeting. The right to appoint a proxy is provided under Section 136 and any clause purporting to take away this right is void.

### **Voting and Poll**

Voting by show of hands: - Questions arising in a general meeting are to be decided in the first instance by show of hands. On a show of hands, each member has one vote irrespective of the number of shares, and a proxy cannot vote unless the articles otherwise provides.

Since voting by show of hands does not always reflect the true interests of a member upon a “value” basis, a provision has been made in Section 137 by virtue of which, except on the question of election of chairman or an adjournment of meeting, the members have a statutory right to demand that a poll be taken.

The demand for a poll may be made effective:-

- (i) By the chairman.
- (ii) By not less than five members having the right to vote at the meeting.
- (iii) By a member representing not less than 1/10<sup>th</sup> of the total voting rights.

Vote by show of hands is not an accurate method of ascertaining the wishes of the members of the company because the votes of those voting by proxy are not counted. Also it does not pay due regard to the wishes of a member holding a large number of shares since he/she has only one vote on a show of hands method.

A poll is more proper and effective means of arriving at the wishes of all the members. A poll may be demanded before or on the declaration of the result of the voting on a show of hands.

## **RESOLUTIONS**

Decisions of the company are made by resolutions of its members passed at meetings of members. A proposal when passed and accepted by the members becomes resolution.

There are three kinds of resolutions:-

- i. Ordinary resolution
- ii. Special resolution
- iii. Resolutions requiring a special notice

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### **(i) Ordinary Resolution**

This is one passed by members at a general meeting by a simple majority of members entitled to vote therein. Simple majority means that the votes cast either by show of hands or on a poll in favour of a particular proposal including the casting vote of the chairman, exceeds the votes cast against it. Votes may be cast by members in person or by proxy.

A proper notice should be given, that is, 21 days notice.

For example, in a general meeting of a company, out of 1,000 members entitled to vote, only 700 were present. Of the 700, 251 members vote in favour of a resolution, 250 against it and 199 abstained from voting. The resolution was passed by a simple majority.

Ordinary resolution is necessary for the following among other purposes:

- i. To authorise the issue of shares at discount – Section 59.
  - ii. To increase the share capital.
  - iii. To appoint an auditor.
  - iv. To appoint directors.
  - v. To declare dividend
  - vi. To approve accounts
- (vii) To wind up voluntarily where provision to that effect is provided by articles

### **Extra ordinary Resolution**

This is one which has been passed by a majority of not less than  $\frac{3}{4}$ th of such members, as being entitled to do, vote in person or where proxies are allowed, vote by proxy at a general meeting of which notice specifying the intention to propose the resolution as extraordinary has been duly given. This resolution is not in Kenya.

### **(ii) Special Resolution**

A resolution shall be a special resolution, says the Act, Section 141 when:-

- (i) The intention to propose the resolution as special resolution has been duly specified in the notice.
- (ii) The notice required under the Act, of 21 days has been duly given
- (iii) The votes cast in favour of the resolution by members entitled to vote either in person or by proxy are not less than three fourths of such members as being entitled to vote in person or by proxy, where proxies are allowed.

The votes may be cast either by show of hands or by poll.

Special resolutions are the most vital part of the mechanism of the company. It is by and through this instrument that the companies carry out vital administrative and executive acts. The aim of passing special resolution is to ensure that every important change shall be made only after due deliberations and with the sanction of the greater body of shareholders of the company.

The articles may provide certain types of business that requires special resolutions as follows:-

- i. To alter the objects of a company- Section 8.
- ii. To alter the articles – Section 13.

- iii. To change the name of the company – Section 20.
- iv. To create new reserve liability – Section 62.
- v. To alter the provisions of the memorandum for changing the place of registered office from one state to another.
- vi. To reduce share capital of a company – Section 69.
- vii. To appoint inspectors to inspect or investigate the affairs of the company - Section 166.
- viii. To resolve that a company be wound up by order of the court -Section 271.
- ix. To institute members' voluntary winding up – Section 280.
- x. To authorise the liquidator to accept shares in consideration for the sale of company's sharers.

### (iii) Resolutions requiring “Special Notice”

This resolution requires a special notice to be given to the members. A resolution requiring a special notice may be passed by the members at a general meeting by a simple majority or ¾th majority.

A special resolution, for which special notice will be invalid, unless 28 days notice before the meeting at which the resolution is to be moved, is given to the company by a member.

Special notice is required by the Act in the following matters:-

- i. A resolution at an Annual General Meeting appointing as an auditor a person other than a retiring one- Section 60.
- ii. A resolution at an Annual General Meeting to provide that a retiring auditor shall not be appointed.
- iii. A special resolution to appoint a director who is over any applicable age limit.
- iv. A special resolution to remove a director before the expiry of his period of office or to appoint another director in place of the removed director – Section 185(2).

## USE OF COMMUNICATION TECHNOLOGY IN MEETINGS

**Communication technology** is advancing day by day. For any **business** to succeed, it has to use improved communication tools, communication helps in the flow of information which in return accelerates the rate of **decision making** in an organization or business. Virtual meetings are becoming more popular, many business owners and organizations are resorting to virtual meetings because they save time. You can use web-conferencing tools to communicate with employees, customers, suppliers and business partners. All web-conferencing tools support video chat, so both parties will see each other and this will make the communication so real and effective. Most of these virtual conferencing tools will require participants to install a web conferencing software on their devices, some can even be used on smart-phones, so you simply download a virtual meeting mobile Application and start attending meeting via your Smartphone.

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Below is a list of the best 10 virtual meeting tools any one can use to improve business or **organizational communication**. Some of these tools are available for free, yet others will require a small monthly subscription.

5 Best Virtual Meeting Technologies includes

### 1. **SKYPE:**

Many professionals have found skype as the best virtual meeting technology; skype can be used by businesses, families, organizations and individuals. Skype has a free package and a paid package. For the free package, both parties have to install skype on their devices and then connect with each other via the network; calls made from skype to skype are free of charge. You can decide to turn on a video call so that you both see each other. Then the paid version, will allow a skype user to call a non skype user on mobile phone or landline. All smart devices have webcams, so you don't have to spend extra cash on webcam. For small businesses, you can create a company group account, so that you all collaborate at the same time during the meeting, you can share screens with each other via skype.

#### **Why is skype good?**

- Its free
- Easy to use
- Works on mobile phones
- Low costs
- Supports group video conferencing
- Comes in different languages

### 2. **Watchitoo:**

Unlike Skype, Watchitoo is a web based video conferencing tool, you don't need to download or install any software. Simply login and start inviting your team members to join you. Its collaboration tools will enable you chat live with each other in video format, you will also be in position to share screens, text chat each other. If you want to make a copy of the meeting, you easily record the all video chat session. Also Watchitoo has both free and paid packages. The free version will support only 5 users, the paid version supports 25 users at \$39 per month, 50 users package will go for \$49 per month. So if you own a small business of only 5 people, then you will benefit from the free package. Medium sized business with over 25 – 50 employees can opt for the premium package.

#### **Why is Watchitoo good?**

- Has a free trial version for 30 days
- No installations requires
- Easy to use
- Can record all video chat sessions

### 3. Infinite

You can meet, train and present virtually from anywhere with Infinite Conferencing tools. Infinite specializes in phone and web conferencing solutions. Infinite is a web based virtual meeting tool which requires no software installation. Simply create a free account and start inviting your team or workmates for a virtual meeting. For those who want to record video chat sessions, you will need to pay an extra \$1.99 per minute. You can also carry out a survey using a polling feature, this will help your team collaborate well, but this function comes at a price, it will cost you \$100.

What makes Infinite good?

- No software installation
- 30 days free trial
- Supports VIOP
- Record Session
- Create meeting reports
- Supports polling & surveys

#### 1. 4. GoToWebinar

This is an online conference tool which will allow you to perform any type of virtual meeting from anywhere. With GoToWebinar you can create your own custom account with your company logo, so your team can join via your account page. I like the idea of adding a company logo on a custom account page; it makes the all process look professional. You can easily conduct a do-it-yourself webinar with up to 1,000 people at one single flat rate, so this means you will do more with less.

When it comes to inviting your team, the application comes with an automated email templates and webinar registration pages. GoToWebinar will also allow you too record all sessions and also be in position to post-meeting reports. The price is some how fair, for 100 people you will pay \$99/month, then for 1000 people you will pay \$499/month.

#### Why is GoToWebinar good?

- No software installation
- Automatically creates your invitation and registration
- People can register using your customized registration form
- Reminder emails are automatically sent to your registrants
- You can practice before your webinar to polish your presentation
- Record all sessions
- Price is fair

- Free trial for 30 days
- Post meeting reports

## **5. Zoho Meeting:**

Use ZOHO meeting to conduct web based virtual meetings from any platform. Small business owners you can use ZOHO to meet your customers online and provide them with live demos of your services or products from anywhere, this type of collaboration will improve your customer service and it will also strengthen your relationship with your customers. Say no to downloads, ZOHO MEETING is web based, just login and join a session. If you want to look professional, you can brand your meeting portal using your company logo. If you have a company website, you can integrate ZOHO MEETING with your website, so all meetings can be performed via your company website.

ZOHO MEETING supports screen sharing via desktop; it supports multiple presenters, text chat, video chat and VOIP. You can as well record all sessions. ZOHO MEETING an affordable virtual meeting tool compared to most virtual meeting services. 5 participants will pay only \$12/month, 100 participants will pay only \$100/month. This is a good price for small businesses and individuals.

### **What makes ZOHO MEETING good?**

- No installations or downloads
- Web based
- It is too affordable
- Easy to use
- Can be integrated on your website or blog
- You can brand your meeting platform

## **REVIEW EXERCISES**

1. Discuss the legal effect of memorandum and article of association
2. Discuss the laws relating to other types of meetings
3. Discuss the legal position of a director and a company secretary
4. Give a detailed definition of a company
5. Discuss the rights and restrictions required while holding a company meeting
6. Discuss the points of order in a company meeting.
7. Define the meeting in common law
8. Discuss the following in relation to meetings
  - i. Proper Authority
  - ii. Proper Notice
  - iii. Quorum
  - iv. Chairman
  - v. Minutes
9. Discuss the various classification of meeting
10. Differentiate between article of association and memorandum of association
11. Explain the features of a company
12. Explain the differences between
  - i. Member and director
  - ii. Member meeting and board meeting
  - iii. Annual General meeting and Extraordinary meeting
13. Define the following terms
  - i. Directors
  - ii. Insider directors
  - iii. Outside directors
  - iv. Non-executive directors

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## **CHAPTER 2**

### **CONDUCT AND MANAGEMENT OF MEETINGS**

#### **Introduction**

Since a company is an artificial legal entity distinct from that of its members, the affairs of the company are practically run by the Board of Directors. The Board of Directors in carrying out the day-to-day affairs of the company has to perform the role within their limited powers and the powers, which are granted to them. Certain powers can be exercised by the board-of their own and with the consent of the company at the general meeting. The shareholders as owners of the company ratify the actions of the board at the meetings of the company. The meetings of the shareholders serve as the focal point for the shareholders to converge and give their decisions on the actions taken by the directors.

Meetings constitute an integral and important portion in the Companies Act, 1956. It gives an opportunity for the shareholders to know about the state of affairs of the company and also deliberate on various issues. There are different kinds of meetings that have to be called upon by the company and statutory requirements have to be complied with in calling, convening and conduct of the meetings.

A meeting is defined as the coming together of two or more persons for the transaction of a common lawful order of business. Deliberative assemblies, such as committees, meet to make decisions or to develop recommendations. There are two main classes of meetings:

#### **Public**

These are meetings that members of the public are entitled to attend by virtue of their interest and by their payment of funds as outlined in the organization's charter, e.g.,

- The annual meeting at which all interested people are invited to attend and consider past performance
- The election of officers; and
- The regular business of the association or society.

#### **Private**

These are meetings that relate to matters of private concern; members of the public are not entitled to attend unless they have been specifically requested to do so by the organization. Many are monthly meetings, with only officers or board members in attendance.

A meeting is properly constituted and valid when the following conditions are satisfied:

- the person calling the meeting has the authority to do so
- proper notice was given to every person entitled to attend the meeting
- a quorum is present; and
- The rules and regulations—or the bylaws—of the organization or society are observed.

Meetings should only be called when there is a sufficient volume of business

## CONVENING OF GENERAL MEETINGS

General meetings are normal!)” convened by the Board of Directors pursuant, to the relevant provision of the company's articles, such as Table A, Article 49.

- a) Table A, Article 49 empowers any director or any two members of the company to convene an extraordinary general meeting if at any time there are not within Kenya sufficient directors capable of acting to form a quorum. Such a meeting is to be convened in the same manner as nearly as possible as that in which meetings may be convened by the directors.
- b) Sec. 132(3) empowers members holding not less than one-tenth of the paid-up capital of a company, or representing not less than one-tenth of the total voting rights of all the members, to convene an extra-ordinary general meeting of the company if the directors have failed to do so despite their requisition.”
- c) Sec. 134 (b) empowers two or more members holding not less than one-tenth of the issued share capital, not less than live per cent in number of the members of the company, to call a meeting of the company if the articles do not provide otherwise.

The company secretary or other officer of the company has no power to call a general meeting In the case of State of Wyoming Syndicate a company was governed, so far as the calling of meetings was concerned, by Table A (in Schedule 1 to the Act of 1862), clause 32 of which provided that "the directors may, whenever they think fit.... convene an extraordinary general meeting."

By the articles of association two directors constituted a quorum. A requisition was sent to the directors in accordance with Companies Act, requesting them to convene a meeting to pass an extraordinary resolution for voluntary winding-up. Within the twenty-one days allowed to the directors, by s. 13, for convening the meeting, the secretary of the company, without the authority of the directors, summoned the meeting. At the meeting two directors, the requisitionists, and many shareholders were present, and the resolution was passed by the required majority.

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At the hearing of a petition by a creditor for the compulsory winding-up of the company, the defence was set up that a voluntary winding-up was pending, and that the petitioner did not show that he was thereby prejudiced.

The court held that the secretary had no power to issue the notices, that there was no ratification of his act, that the so-called ratification of the company was invalid, and that a compulsory winding-up order must be made. However, the directors may ratify the unauthorized act.

### **Good Faith**

The directors must act in good faith when calling a meeting. In **Cannon v Tasks**, the directors called the annual general meeting at an earlier date than was usual for the company to hold it. Their intention in doing so was to ensure that transfers of shares to certain persons who were likely to oppose some of their proposals would not be registered in time so that they would be unable to vote.

### **An injunction stopping the meeting from being held was granted.**

However, once the directors have called the meeting they cannot postpone or cancel it. For example, in **Smith v Paringa Mines Ltd**, a notice was issued purporting to postpone the holding of a general meeting of shareholders which had previously been duly convened. One of the directors of the company who was in disagreement with the remainder of the board attended the meeting together with several shareholders. The court held that resolutions passed at the meeting were valid and effective. The purported postponement of the meeting was inoperative since the articles pursuant to which the meeting had been convened did not give specific power to postpone a convened meeting.

The proper course is for the meeting to be held and, with the consent of the majority of those present and voting, adjourned.

### **Proper Authority**

A meeting to be valid must be convened by a proper authority. It is the Board of Directors who has the authority to call a meeting, be it statutory, annual or extra ordinary. If the Board does not call the meeting the members of the company may call the meeting. Even if the meeting of the Board at which it is resolved to call a General Meeting is not properly constituted, the general meeting called by the Board can act.

## **NOTICE**

For a meeting to be valid, a notice of meeting must be sent to all persons entitled to attend. Apart from special provisions in the rules of the organization, even accidental omission to give notice will invalidate the proceedings.

The by-laws of the company should state the preferred method of giving notice; if they are silent on this point, notice should be given by ordinary mail, fax or electronic mail. Notices sent by post are deemed to be effected 24 hours after mailing, if properly addressed.

Send a notice of meeting well in advance of the date to allow the people concerned to plan ahead and allocate time. If a meal is planned, you may want to follow up to ascertain who will attend; it is costly to plan a meal for 20 and have only six show up.

If the bylaws of an organization stipulate that a certain number of days' notice must be given, the word "days" is taken to mean clear days, i.e., excluding the day the notice is mailed and the day the meeting is to be held. The notice must include the following details:

- Date
- Time; and
- Location of the meeting.

The time and location must be reasonable, otherwise the meeting could be ruled invalid. The notice of meeting also should include the major items on the agenda. Many organizations send the agenda with the notice.

Sec. 133 (1) provides that any provision of a company's articles shall be void in so far as it provides for the calling of a meeting of the company (other than an adjourned meeting) by a shorter notice than 21 days. The notice must be in writing.

Sec. 133(2) provides that, except in so far as the articles of a company make other provision in that behalf (not being a provision avoided by S. 133(1), a meeting of the company (other than an adjourned meeting) may be called giving twenty-one days notice in writing. This in effect means that a company's articles may provide for a longer period of notice than twenty-one days but cannot provide for a shorter period.

By Sec. 133(3) a meeting of a company, if called by a shorter period of notice than that prescribed in Sec. 133(1) or by the company's articles, shall be deemed to have been duly called if it is so agreed -

- a) in the case of the annual general meeting, by all the members entitled to attend and vote at the meeting; and
- b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote at the meeting; or in the case of a company not having a share capital, a majority together representing no less than 95% of the total voting rights at that meeting of all the members.

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It was explained in **Re: Pearce Duff & Co. Ltd** that the mere fact all the members are present at the meeting and pass a particular resolution, either unanimously or by a majority holding 95% of the voting rights, does not imply consent to short notice. Anyone who voted for the resolution can therefore change his mind afterwards and challenge it.

S.133 does not indicate whether the days of notice must be "clear days". However, Table A, Article 50 provides that the notice "shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given".

### **Service of Notice**

Section 134 (a) provides that, unless the articles of the company make other provision in that behalf, notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A. Where the company's articles provides, as S. 134(a) does, that notice of the meeting shall be served on every member, a failure to give notice to a single member would render the meeting a nullity at common law. In *West Canadian Collieries Ltd Plowman, J.* stated: "It is well settled that as regards a general meeting failure to give notice to a single person entitled to receive notice renders the meeting a nullity".

The primary purpose of the common law rule appears to be to impose on the company's officers who are entrusted with the power of convening its meetings the obligation of acting fairly towards every member of company. They must invite all the members to the meeting and not just those whom they believe are likely to support private property to be run according to their personal whims.

Although it might at first sight appear unfair to invalidate a meeting at which a majority of the company's members passed relevant resolutions, it should be borne in mind that those who attended the meeting and voted might not, after all, have voted the way they did if the aggrieved member had been present and drawn their attention to some aspect of the matter which they did not advert to during their deliberations. Needless to say, a single member can influence the entire general meeting without necessarily having to be a Mark Anthony. And it is vital for the proper management of the company's affairs that no decision of its members should be adopted as its own, and implemented, unless there is some reasonable assurance that, as it were, 'no stone was left unturned' during the process of arriving at the particular decision.

The common law rule applies irrespective of whether the failure to give notice of the meeting was deliberate or unintentional. However, it is competent for the company's members to reflect on the matter and, if they deem it appropriate, amend the company's articles by incorporation, therein of a suitable provision. For example, Table A, Article 51 provides that "the accidental omission to give notice of a meeting to.... any person entitled to receive notice shall not invalidate the proceedings at that meeting". In such a case, notice of the meeting would be deemed to have been given despite an "accidental omission " to give the notice: *Re: West*

Canadian Caollieries Ltd(90) commenting on the apparent attempt of the article to validate "the proceedings at" the meeting rather than the meeting itself, Plowman, J. stated:

"It must, I think, be implicit., that a meeting, the proceedings of which are to be taken to be valid notwithstanding the omission to be deemed to have been duly convened for the purposes of the articles... in the absence of such an implication, there would be no meeting the proceedings of which would be validated by the articles".

In **Musselwhite v C, H. Musselwhite & Son Ltd** it was explained that a deliberate failure to give notice of a meeting to a member on the mistaken grounds that the member was not entitled to the notice would not be regarded as an "accidental omission" within the relevant article, since it was a mistake of the law. The meeting was therefore declared null and void.

Table A, Article 134 provides that notice of every general meeting shall be given to -

- a) Every member of the company except those members who (having no registered address within Kenya have not supplied to the company an address within Kenya for the giving of notices to them;
- b) The personal representation or trustee in bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting, and
- c) The auditor for the time being of the company.

### Short Notice

It should be noted that a meeting of a company, if called by a shorter period of notice than that prescribed in the Companies Act or by the company's articles, shall be deemed validly called if:

- In the case of the annual general meeting, all the members entitled to attend and vote there at agree
- in the case of any other meeting, it is agreed by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 Per cent in nominal value of the shares giving a right to attend and vote at the meeting; or in the case of a company not having a share capital, a majority representing 95 per cent of the total voting rights at the meeting

Since in both (a) and (b) above all the members of the company with voting rights would have to be hi attendance the concession is in practice confined to meetings of private companies.

Furthermore, the court held in **Re Pearce Duff eo Ltd** that the mere fact that all the members are present at the meeting and pass a particular resolution, either unanimously or by a majority holding 95 per cent of the voting rights, does not imply consent to short notice and anyone who voted for a resolution in these circumstances can later challenge it. In practice a document setting out the agreement of the members to short notice should be signed by members at the meeting if

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all are present or, if not, consent can be given by means of a number of documents sent out to members and returned by post. There would appear to be no reason why this should not be done after a meeting called by inadequate notice has taken place. The days of notice must be 'clear days', i.e. exclusive of the day of service and the day of the meeting.

In *Bailey, Hay & Co. Re* case the notice of a meeting for the voluntary winding up of a company was short by one day. All the five members attended. The necessary resolution was passed by the votes of two members; the other three abstained from voting, it was held that the resolution was validly passed with the unanimous assent of all the members and those who abstained were treated as having acquiesced in the winding up.

### **Method of Service**

Article 131 provides that a notice may be given by the company to any member either personally or by sending it by post to him at his registered address or at the address, if any, for the giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected within 72 hours of properly addressing, prepaying and posting a letter containing the notice.

Article 132 provides that a notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

Under Article 133, a notice may be given to the personal representative or trustee in bankruptcy by sending it through the post in a prepaid letter addressed to them by name, or by any official description, at the address, if any, within Kenya-supplied by them for the purpose, if no address has been supplied, the notice shall be given in any manner in which it might have been given if the death or bankruptcy of the registered holder had not occurred.

Table A provides for service of notice and this sort of procedure is generally followed. These provisions are as follows:

- i. A notice may be given by the company to any member or his representative either personally or by sending it by post to his registered address.
- ii. A notice may be given to joint holders by giving notice to the first joint holder named in the register of members. The minimum number of days which must intervene between the day of posting the notice and the day of the meeting is not affected by the length of time which it takes for the Post Office to deliver the notice. The articles must, of course, be looked at but a notice of meeting is deemed to have been effected 48 hours after posting.

Thus under Table A an annual general meeting due to be held on 25 March would be validly convened by notices sent on 1 March whether by first or second class mail. It will be recalled that days of notice must be 'clear days'.

However, such a provision will not always be applied. In **Bradman v Trinity Estates Public Limited Company** [1989] BCLC 757, the High Court refused to accept deemed delivery of notices posted to shareholders outside London during a postal dispute. Those who attended the meeting were members with London addresses who received their notices by courier. Mr Bradman, a shareholder, asked for and obtained an injunction to prevent the company from acting on a resolution passed at the meeting.

If the letter containing the notice has clearly not been delivered, as where it is returned to the company, the notice would still be regarded as having been given. Evidence of proper posting is, under that regulation, 'conclusive' evidence that notice was given and this cannot be rebutted as is the case with all evidence which is regarded as conclusive. Other articles may not carry a provision regarding the conclusive nature of receipt of notice and evidence of non-delivery would prevent the deeming provisions from applying.

### **Contents of the Notice**

The notice of a general meeting must state the time and date of the meeting and the place of the meeting. Notice of a general meeting of a company must state the general nature of the business to be dealt with at the meeting. The articles generally specify what the notice must contain, but Table A provides that it must specify the time and place of the meeting, and the general nature of the business to be transacted.

The notice convening a meeting must be clear and explicit so that the person receiving it may be in a position to decide whether or not he ought in his own interest to attend the meeting. In **Tiessen v Henderson** case the Violet Consolidated Gold Mining Co. Ltd was in difficulty, and meetings were summoned to put before the shareholders alternative schemes for reconstruction. The scheme which was approved was one in which certain of the directors had a strong financial interest, but this fact was not disclosed in the notice convening the meeting. The notice merely stated that the "guarantors" of the new scheme were to have a "right of call" or share option on 50,000 of new shares of the company without telling the shareholders that three of the directors were interested as such "guarantors". Kekewich, J. held the resolution invalid. This is the fundamental legal requirement.

In practice, however, the articles generally mention some of the items that have to be stated in the notice. For example, Table A, Article 50 states that the notice "shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business". If the meeting is the annual general meeting, the notice must "specify the meeting as such" as prescribed by Sec. 131(1). If the meeting is convened to pass a special resolution the notice must specify "the intention to propose the resolution as a special resolution".

If the meeting is the annual general meeting of a public company, the notice must say so. If it is convened to pass a special resolution, it must say so and the resolution(s) must be set out verbatim (**McConnell v Prill** [1916] 2 Ch 57), as must ordinary resolutions of which special

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notice is required and resolutions put on the agenda of the annual general meeting by shareholders. In addition, the notice must be adequate to enable members to judge whether they should attend the meeting to protect their interests. Thus in **McConnell v Prill [1916] 2 Ch 57** a notice of a meeting called to increase the nominal capital of the company did not say by how much. It was held that the notice was invalid because the eventual issue of the new shares (and there were no preemption rights then) could affect the rights of existing shareholders and they were therefore entitled to know by how much the nominal capital was to be increased. The notice must clearly state the right of a member to appoint a proxy

### **Waiver of Notice**

An individual may waive the right to receive notice of one particular meeting or of a series of meetings to be held in the future. Such a request must be precise and must be submitted in writing. Notice to attend a meeting convened for the discharge of legal duties, either common law or statute, cannot be waived.

The giving of notice may be waived by the meeting, if all entitled participants are present and agree that the failure to send the notice be waived and the meeting be held. If even one member dissents, the meeting is invalid.

### **Persons to Whom Notice Must Be Given**

Notice of a general meeting must be sent to every member of the company and every director. For instance, Table A provides that notice of general meetings shall be given to all the members, to all persons entitled to a share in consequence of the death or bankruptcy of a member, and to the directors and auditors.

Notice of every general meeting must be given to the auditors, and if notice of a meeting is not given to every person entitled to notice, the proceedings and any resolution passed at the meeting will be invalid. In **Young v Ladies Imperial Club [1920] 2 KB 523** case, Mrs Young, who was a member of the club, was expelled by a resolution passed by the appropriate committee. The Duchess of Abercorn, who was a member of the committee, was not sent a notice of the meeting, it being understood that she would not be able to attend. In fact, she had previously informed the chairman that she would not be able to attend. Nevertheless, in this action which was concerned with the validity of the expulsion, it was held - by the Court of Appeal - that the failure to send a notice to the Duchess invalidated the proceedings of the committee and rendered the expulsion void. Per Scrutton LJ:

Every member of the committee ought, in my view, to be summoned to every meeting of the committee except in a case where summoning can have no possible result, as where the member is at such a distance that the summons cannot effectively reach the member in time to allow him or her to communicate with the committee. Extreme illness may be another ground, though I should myself require the illness to be extremely serious, because a member of the committee

receiving a notice to attend may either write to ask for an adjournment of the meeting or express his views in writing to the committee, and I should require the illness to be such as to prevent that form of action being taken on receiving notice of such a meeting.

However, the accidental omission to give notice of a meeting, or the non-receipt of notice of a meeting by any person entitled to receive notice, does not invalidate the proceedings at that meeting and any resolutions passed.

In the absence of a provision to the contrary in the articles, preference shareholders without the power to vote have no right to be summoned to general meetings. Where the company has share warrants, some arrangements will have to be made to advertise the meeting if the holders of the warrants have any right to attend under the articles.

The Companies Act sets out certain minimum periods of notice for general meetings. This makes it impossible and therefore unnecessary to send notice to persons becoming members after the notice is sent out. Such persons, do, however, have the right to attend and vote at the meeting or appoint a proxy and if this causes difficulty legal advice should be sought on the drafting of an article which states expressly that notice need not be sent to such persons and also that they cannot attend and vote at the meeting.

### **Notice of Members Resolutions at the Annual General Meeting**

Members representing not less than one-twentieth of the total voting rights of all the members, or 100 or more members holding shares in the company on which there has been paid up an average sum of not less than Sh.100 per member, can, by making a written requisition to the company, compel the company:

- a) To give to members who are entitled to receive notice of the next annual general meeting, notice of any resolution which may be properly moved and which they intend to move at that meeting; and
- b) To circulate to members who are entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at the meeting.

The amount which has been paid up on the shares is not material so, assuming that a company has 300,000 Sh. 1 ordinary shares 50p paid and 100,000 sh 1 preference shares fully paid all with voting rights, then the requisition could be made by the holders of 80,000 shares. If made by 100 requisitionists, then the amount paid up on their shares if added together would have to come to at least 'Sh.10, 000

The requisition must be made and deposited in accord with the Act governing procedures for circulation of resolutions for annual general meetings. The expenses of the company do not need to be paid to the members who requested the circulation of the statement if

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- a) The meeting to which the requests relate is an annual general meeting of a public company; and
- b) Requests are sufficient to require the company to circulate the statement received before the end of the financial year preceding the meeting.

If the expenses of the company must be paid by the members who requested the circulation of the statement unless the company resolves otherwise, and unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

The company is not bound by the above provisions if, on application to the court by the company or any person affected, the court is satisfied that they are being abused in order to secure needless publicity for defamatory or abusive behaviour. The above procedures are confined to resolutions to be proposed at the annual general meetings.

### **Special Notice**

An ordinary resolution of which special notice has been given is required in the following cases:

- a) To remove a director before the expiration of his period of office, regardless of any provision in the articles or in any agreement with him. If it is intended to replace the director if he is removed, special notice must be given of that also. The Act does not prevent companies from attaching special voting rights to certain shares
- b) Removing an auditor before the expiration of his term of office .

Under the Act where special notice is required, the resolution is not effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is to be moved. The notice should be posted or delivered to the registered office of the company. The company must give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if this is not possible, must give them notice of it either by advertisement in a newspaper having an appropriate circulation or by any other method allowed by the articles, not less than 14 days before the meeting. If a meeting is called for a date 28 days or less after the notice has been given, the notice, though not given in time under the section, shall be deemed to have been properly given.

The above provision is designed to protect shareholders who give notice, e.g. to remove a director or auditor, in case the board calls the meeting of members deliberately at less than 28 days so as to frustrate the removal of the director or auditor.>

## Omission to Give Notice

Deliberate omission to give a notice even to one member may invalidate the meeting. An accidental omission or non-receipt of notice by any member does not invalidate the proceedings at the meeting.

In **Musselwhite vs. CH Musselwhite & Sons Ltd (1962)** case, M sold shares in M Ltd to D. The payment was to be made by D to M by installments. M was to remain on the register of members until the last installment was paid. Before the last installment was paid, an annual general meeting was held, but M did not receive the notice of the meeting as the directors erroneously believed that M was no longer a member. The court held that the failure to give notice was not incidental and the meeting held without notice was void.

## QUORUM

A quorum is the minimum number of people required for the meeting to be valid. The Act requires that a quorum be stated in the rules of the association for both general meetings and committee meetings. In the case of sub-committees, the management committee may set the quorum. The quorum is usually set as a percentage of the membership rather than a set number, to allow for changing membership numbers.

If a quorum is not present, the meeting may:

- a) Be reconvened to another date; or
- b) Continue, but the chairperson declares (and the minutes show) that a quorum is not present. The decisions made at the meeting then carry the weight of recommendations to be ratified:
  - Later during the course of the meeting (e.g. if another member arrives and quorum is achieved); or
  - At the next convened meeting where a quorum is present.

Please note that the second option may not be allowed by some rules of association.

Under Table A, no business is to be transacted at a general meeting unless a quorum of members is present "at the time when the meeting proceeds to business". In *Hartly Baird Ltd* the court held that the words "of the time when the meeting proceeds to business" mean that the quorum is required only at the time when the meeting begins. There need therefore be no quorum after the meeting has begun and it may be legally continued - provided there are at least two persons present who would constitute a valid meeting at common law.

S. 134(c) provides that, unless the articles otherwise provide -

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- a) The quorum for a private company shall be two members present in person. This provision is modified by Table A, part II, Article 4 which states that the members may be present in person or by proxy.
- b) The quorum for a public company shall be three members personally present. Table A, Article 53, adopts this provision.

Where the articles prescribe a quorum of at least two members, and there is no quorum, there would also be no valid meeting. This is so because as was explained in *Sharp v Dawes*, "the word 'meeting' prima facie means a coming together of more than one person".

In the **Sharp v Dawes** case a meeting of a cost-book mining company governed by the Stannaries Acts was summoned for the purpose, inter alia, of making a call. It was attended by only one member, Silversides, and the secretary (who was not a member); and the following proceedings took place, as recounted in a notice sent to all members:

At a general meeting of the shareholders, held at 2, Gresham Buildings, Basinghall Street, London, E.C., on Wednesday, the 30th day of December, 1874, pursuant to notice, R.H. Silversides, Esq., in the chair, the notice convening the meeting having been read, the minutes of the last meeting were confirmed. The financial statement, ending the 28th of November, showing a balance of £83 11s. 5d. against the shareholders, having been read, it was

*Resolved - 'That the same be received and passed.'*

*Captain William Taylor's report having been read, it was*

*Resolved - 'That the same be received and passed, and, together with the financial statement, be printed and circulated among the shareholders.'*

*Resolved - 'That a call of 4s. 6d. per share be now and is hereby made payable to the secretary, and that a discount of 5 per cent be allowed if paid by the 20th of January, 1875.'*

*Resolved - 'In consequence of the death of Lieut-Col. W.T. Nicolls, and until the appointment of a shareholder to act in his stead, that all cheques be signed by Mr.R.H. Silversides and Mr.Granville Sharp jointly.'*

*(Signed) R.H. Silversides, Chairman.*

*Resolved - 'That a vote of thanks be given to the chairman.'*

*(Signed) Granville Sharp, Secretary.*

The call was in due course made on a shareholder, Dawes, who refused to pay it. The court held that the meeting was a nullity and that therefore the call was invalid.

At one time it was considered essential that the required quorum should remain present throughout the proceedings. But in **Hartly Baird Ltd. (1955) Ch. 143**, the court held that where the company's articles were similar to Table A, a quorum need be present only when the meeting commenced, and it was immaterial that there was no quorum at the time when the vote was taken. This decision follows from • the wordings of Article 53 of the English Act, which states that no business shall be transacted unless quorum present when the meeting proceeds to transact business Regulation 49(1) of Table A of Schedule 1 of the Act also contains an identical provision.

### **Exceptions**

A valid meeting may be constituted by the presence of one person in the following cases:

- i. If the meeting is an annual general meeting which was called by, or on the direction of, the registrar pursuant to S. 131(2). In such a case, the section empowers the registrar to direct "that one member of the company present in person or by proxy shall be deemed to constitute a meeting".
- ii. If the meeting is one which has been called pursuant to a court order under S. 135(1). The section empowers the court to direct that "one member of the company present in person or by proxy shall be deemed to constitute a meeting". This is illustrated by El Sombren Ltd case. The applicant held 900 of the 1,000 shares in the company, while the remaining shares were held as to 50 each by the two respondents, who were its only directors. The applicant had twice requisitioned a meeting of the company for the purpose of exercising the power given by s. 184 of the Companies Act 1948 to remove the directors by ordinary resolution, but on each occasion the respondents had absented themselves in order to ensure that the quorum of two members (as fixed by the articles) was not present. He sought an order under s.135 and a direction that one person should be deemed to constitute a quorum at such meeting. The court, overruling the decision of the registrar, made an order accordingly
- iii. If the meeting is a class meeting held pursuant to the provisions of the articles for the purpose of authorizing a variation of a right to those shares and all the shares are held by one member, as in East v Bennett Brothers Ltd case. The memorandum of association authorised the company to increase its capital by the creation (inter alia) of new shares to rank pari passu with existing classes of shares, provided that the issue was sanctioned by an extraordinary resolution of the existing holders of shares of the class in question at a separate meeting of such holders. A fresh issue of preference shares was made at a time when all the existing preference shares were held by Joseph Bennett, who gave his approval at a 'meeting' attended, according to the minute-book only by himself. This action was held to be equivalent to the resolution required by the memorandum.
- iv. If the meeting is an adjourned meeting and the articles provide that "the member or members present shall be a quorum".

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Rule: If no quorum is present, there is no meeting and any business conducted is invalid.

Unless otherwise provided in the articles, if within half an hour from the time appointed for holding a meeting of the company, a quorum is not present the meeting:-

- a. If called upon by the requisition of members stand dissolved
- b. Other cases stand adjourned to the same date in the next week at the same time, as the directors may determine.

**Note:** If the quorum is not present at the adjourned meeting, then the present members shall be quorum.

Quorum should be present at the time the meeting proceeds to business not present throughout or at the time of voting.

### **Sharp Vs. Dawes Rule**

One person, except in exceptional cases cannot constitute a quorum. The word “meeting” prima-facie means a coming together of more than one person. Strictly speaking therefore, one shareholder cannot constitute a meeting. This is Sharp vs. Dawes rule.

### **Case Law: Sharp vs. Dawes (1876)**

A general meeting of a company was called for the purpose of making a call. Only one shareholder attended. The business of the company was carried through including a call on the shareholders Dawes was sued for the call he failed to pay. In his defence, Dawes argued that the call had not been validly made at a general meeting. It was held that one person could not constitute a meeting.

Melish L.J. said, “according to ordinary English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended. No business could be done at such a meeting.

**Re. Sanitary Carbon Co. (1877)** appeared to lend support to the above decision as it was held that a meeting of a company attended by one shareholder only was not validly constituted, even though that shareholder held the proxies of all other members.

Therefore, as a general rule, one individual alone does not constitute a meeting even if he/she represent two or more members, for example, by being both a member and a proxy for another member.

### **Alternative Provisions-**

Many companies state a higher quorum for their meetings. This may be particularly important where articles are drafted to ensure the ability of certain parties to attend any meeting.

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