



## RSMEA NEWSLETTER – COMPANY MEETINGS IN TANZANIA

Company meetings are an effective forum for the board and shareholders to drive the business growth and be aligned. The affairs of a company are usually discussed and decided upon in several different meetings held in a company, therefore, it is imperative to not undermine the importance of company meetings. The Companies Act, [No. 12 of 2002] (the Companies Act) and the Articles of Association (the Articles) of the company govern the procedure to which meetings of a company may take place in addition to matters that may be discussed and how decisions affecting the company can be made. In this article, we'll look at requirements encompassing different types of company meetings.

### Types of Meetings

#### Board Meetings

A board meeting is a meeting of the directors of the company to discuss and decide on matters pertaining to the management and tactical direction of the company. Board meetings are usually presided over by a chairman whom the directors appoint. Procedures of conducting and having board meetings are usually stipulated in the Articles of the company.

The minutes form an important aspect for statutory audits as well as for legal due diligence in the event a company is considering merger, acquisition or sale.

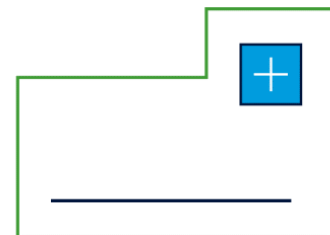
#### Annual General Meetings

An Annual General Meeting (AGM) is a general meeting of the members of the company which is required to take place once a year. Section 133 (3) of the Companies Act provides that not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next. For newly incorporated companies, it is not necessary to hold its first AGM within the year of incorporation. However, the newly incorporated company is required to hold its first AGM within eighteen (18) months of its incorporation.

At the AGM, the company shall whenever practicable transact the following business: –

- to have laid before the members the annual accounts;
- to have laid before the members the directors' report and auditors' report;
- the appointment of auditors for the period up till the next AGM at which accounts are laid;
- re-election of any directors retiring and seeking re-election in accordance with any requirement in the company's Articles;
- the election or confirmation of appointment of any directors in accordance with any requirement in the company's Articles.

Minutes of the AGM and approval from the shareholders are important to avoid future disputes.



## Extra-Ordinary General Meetings

All other general meetings other than AGMs or adjourned meetings are regarded to as Extraordinary General Meeting (EGM). The Articles of the company contains provisions for convening EGM. EGMs are usually called upon to discuss and decide on urgent/special matters affecting the company.

The directors of the company may also convene an EGM on members' requisition. A members' requisition is defined under section 134 (2) of the Companies Act as: -

- (a) for a company with a share capital, it is a requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company; or
- (b) for a company without a share capital, it is a requisition of members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company.

The requisition is required to state the purpose of the meeting and must be signed by the requisitionists and deposited at the registered office of the company. The directors will then be required to convene the meeting within twenty-one days after the requisition is deposited at the registered office of the company. Should the directors fail to convene the meeting within twenty-one (21) days then the requisitionists or any member representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, which should take place within three (3) months.

## Other matters pertaining to company meetings

### Prerequisites of a Company Meeting

It is important to bear in mind that for a company meeting to be valid the following prerequisites must be met: -

- (i) **Notice:** the meeting must be properly convened. Notice of the meeting should be served upon the persons entitled to attend and such notice must state the time and place of the meeting and agenda to be discussed at the meeting.  
For AGMs, the notice should be accompanied by the annual accounts of the company, the directors' report showing the position of the company and the auditor's report on the accounts of the company.

It is to be noted that the Companies Act prohibits the calling of a meeting of the company other than an adjourned meeting by a shorter notice than twenty-one days unless it agreed by all members entitled to vote;

- (ii) **Quorum:** the minimum number of persons (at least two or more people) who are entitled to attend the meeting should be present to constitute the necessary quorum; and
- (iii) **Agenda of the meeting:** the business at the meeting must be validly transacted in accordance with provisions of the Articles and the Companies Act governing the meeting.

*Whilst the above are general prerequisites, the company should always follow the procedures stipulated in the Articles for convening a meeting.*

### Resolutions passed at meetings

Decisions taken at board meetings and AGMs are known as "resolutions". It is imperative to note that some decisions require 51% of votes (ordinary resolutions) in favour to be passed, while others require 75% of votes (special resolutions) in favour to be passed.

The Articles of the company and the Companies Act lay out the matters which require to be decided on by ordinary resolution and those that require a special resolution. The Articles and the Companies Act further prescribe for the manner in which meetings of the company are to take place.

### Penalties

Penalties for default in holding a general meeting in accordance with the law is provided for under section 133 (4) (5) and (7) of the Companies Act. Where a company fails to hold a general meeting once a year as required by law, both the company and every officer of the company who is in default shall be liable to a fine.

Where more than 15 months pass between the date of one AGM and another, a member of the company may make an application to the Minister of Investment, Industry and Trade (the Minister) to call or direct the calling of the AGM of the company.



The Minister shall also give directions as the Registrar of Companies (the Registrar) thinks expedient, to which the company and its officers are bound to comply with.

Such directions include modifying or supplementing directions relating to the calling, holding and conducting of the meeting and the operation of the company's articles. The Minister may further direct that one member of the company who is present in person or by proxy shall be deemed to constitute a meeting of the company. If such an application is made to the Minister and the company defaults in complying with the directions given by the Minister, then the company and every officer of the company who is in default shall be liable to a default fine.

However, it is to be noted that the Companies Act does not specify the amount of the fine which shall be imposed for both cases and the regulations which stipulate penalties are yet to be passed by the Minister.

### Conclusion

It is important for the companies to conduct AGM as required by law to avoid being non-compliant. The non-compliance could seem as a trivial matter, but it could affect future company transactions when a due diligence is done under corporate compliance aspect.

Should you need any assistance/clarifications in respect of the above, please reach out to the below or your usual RSM contact.

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