

Module 4: Corporate Meeting and Liquidation

17 Company Meeting - Types of meeting and requirements of valid meeting

Concept of Corporate Meetings

An artificial legal person cannot act dynamically on its own. Its statutory intentions are expressed through resolutions formulated at validly convened sessions. A corporate meeting is an official administrative gathering of the company's members or its directors to collectively debate, evaluate, and cast binding votes on corporate transactions and regulatory objectives.

Core Classifications of Company Meetings

Corporate forums are structured under the Act into distinct administrative tiers based on the executing stakeholders:

- **1. Shareholder Meetings (General Meetings):**
 - **Annual General Meeting (AGM) [Section 96]:** A mandatory statutory session required to be executed once every single calendar year by every company (except an OPC). The first AGM must be hosted within 9 months of closing the initial financial year. Subsequent AGMs must be conducted within 6 months from the closing of the financial year, with a strict statutory maximum gap of **15 months** between consecutive AGMs. Ordinary business conducted includes layout approval of financial statements, dividend declarations, directorial appointments, and auditor selections.
 - **Extraordinary General Meeting (EGM) [Section 100]:** A special general meeting called to handle urgent, unexpected material business components that cannot wait until the next scheduled AGM (e.g., modifying the Objects Clause of the MOA). It can be convened directly by

the Board of Directors on its own accord or upon a formal written requisition submitted by members holding at least one-tenth of the paid-up voting capital.

- **2. Board Meetings (Meetings of Directors) [Section 173]:**

The primary administrative forum where the elected directors manage day-to-day operations. The first board meeting must be completed within 30 days of the date of corporate incorporation. Subsequently, a minimum of **four board sessions must occur every year**, ensuring that a maximum gap of ****120 days**** is never exceeded between two consecutive board sessions.

- **3. Class Meetings:**

Sessions hosted exclusively for a specific class of security holders (e.g., Preference Shareholders). These are convened explicitly when the company proposes to alter the specific financial rights or structural privileges associated with that specific class of stock.

Prerequisites of a Legally Valid Meeting

If a corporate session fails to satisfy any of these statutory requirements, the entire meeting is deemed irregular, and all resolutions passed are legally void and non-binding:

- **Properly Convened Authority:** The meeting must be called by a recognized authority possessing legal clearance—typically via a formal resolution passed by the Board of Directors.
- **Statutory Notice [Section 101]:** A clear written or electronic notice of ****at least 21 days**** must be delivered to every eligible member, auditor, and director. The notice must explicitly state the geographical venue, exact calendar date, starting hour, and the specific agenda (business to be transacted).
- **Quorum Requirements [Section 103]:** The minimum number of qualified members required to be personally present to legally activate the session.
For Public Companies: 5 members present if membership is under 1,000; 15 members if membership is between 1,001 and 5,000; 30 members if membership exceeds 5,000.
For Private Companies: Two members personally present form a valid quorum.
- **Appointment of Chairman [Section 104]:** A proper presiding officer must take the chair to oversee, manage, and maintain orderly conduct throughout the debates and voting blocks.
- **Official Minutes [Section 118]:** A complete, objective written chronicle of the proceedings and resolutions must be accurately entered into the official corporate Minutes Book within ****30 days**** of the conclusion of the session.

18 Winding up of Companies: Mode of winding up of the Companies

Legal Meaning of Winding Up

Winding up (or Liquidation) represents the final legal process through which the corporate life of a company is brought to a formal conclusion. During this procedure, the management of the asset portfolio is stripped from the directors and handed over to a state-appointed official known as the ****Company Liquidator****.

The liquidator is charged with a structural mandate: realize all physical and intangible assets, collect pending capital balances, settle outstanding debts according to statutory priority rules, and distribute any remaining surplus capital to the shareholders in proportion to their stock holdings.

Crucial Legal Distinction: Winding up does ***not*** equal immediate corporate dissolution. During the winding-up phase, the company's separate legal entity status and corporate powers persist intact. The company is only officially dead when the Tribunal passes a formal ****Order of Dissolution****, deleting its name from the registry of companies.

Modes of Winding Up

Following historical adjustments and the enforcement of the *Insolvency and Bankruptcy Code (IBC), 2016*, the modes of winding up have been structurally streamlined under Indian jurisprudence:

1. Winding Up by the Tribunal

Compulsory Liquidation

Executed under a direct judicial mandate issued by the National Company Law Tribunal (NCLT) based on specific structural grounds outlined under Section 271 of the Companies Act.

2. Voluntary Winding Up

Solvent Liquidation

Initiated directly by the choices of members or creditors. Note: All insolvency-driven liquidations are now routed via the IBC corporate insolvency framework, while the winding up of solvent entities remains controlled via specific regulatory filing tracks.

19 Compulsory Winding up under the Order of the Tribunal /

Voluntary winding up

I. Compulsory Winding Up by the Tribunal [Section 271]

The National Company Law Tribunal (NCLT) possesses the exclusive judicial authority to mandate the compulsory winding up of a company upon receiving a petition from the company, its creditors, its contributories, or the Registrar of Companies (ROC). The statutory grounds include:

- **Sovereignty and Integrity of the Nation:** If the company has actively operated against the national sovereignty, safety, or core integrity of India, security of the State, or friendly relations with foreign states.
- **Fraudulent Affairs:** If upon investigation, the Tribunal finds that the company's business was conducted to perpetrate active fraud, or the company was created explicitly for unlawful purposes, or its promoters are guilty of systemic misfeasance.
- **Default in Filing Financials:** If the company makes a continuous default in preparing and filing its mandatory financial statements or annual returns with the ROC for **five consecutive financial years** immediately preceding.
- **Just and Equitable Ground:** A broad judicial discretionary clause. The Tribunal will order liquidation if it finds that the core "substratum of the company" has completely vanished, or there is an absolute deadlock in management preventing operations, or the business is a complete commercial impossibility.

II. Voluntary Winding Up (Solvent Liquidation Protocol)

Voluntary winding up occurs when a corporate entity decides to dissolve its operations smoothly on its own initiative without requiring hostile judicial intervention. Under contemporary laws, this is executed through the following protocol:

- **Declaration of Solvency:** A mandatory requirement. The majority of the directors must execute a formal affidavit affirming that they have made a full inquiry into the company's affairs and have formed the opinion that the company has no debts, or that it will be fully capable of paying off all its liabilities within a period not exceeding three years from the start of liquidation.
- **Corporate Resolution:** The members must pass an **Ordinary Resolution** in a general meeting if the company's pre-set duration has expired, or a **Special Resolution** (requiring a 75% voting majority) stating that the company should be wound up voluntarily.

20 Contributories - Payment of Liabilities

Definition and Status of a Contributory [Section 2(26)]

The term **Contributory** refers to any person liable to contribute financially to the asset base of a company in the event of its liquidation. This concept is vital for gathering remaining funds to settle corporate debts.

Contributories are divided into two operational listings managed by the liquidator:

- **List A (Present Members):** Consists of individuals who are registered shareholders at the exact moment winding up begins. Their liability is limited strictly to any unpaid amount on the shares they currently hold. If their stock is fully paid up, their active liability is zero.
- **List B (Past Members):** Consists of individuals who ceased to be members within ****one year preceding**** the date winding up started. A past member is called to contribute ***only if*** present List A members fail to clear their required financial balances, and only to settle debts incurred before they officially exited the company registry.

Payment of Liabilities: The Priority Waterfall Mechanism

During liquidation, the company liquidator cannot distribute funds arbitrarily. Proceeds collected from asset realizations must be distributed according to a strict legal hierarchy under corporate and insolvency laws:

Priority Rank	Claim Category	Statutory Execution Rules & Balances
Rank 1	Liquidation & Insolvency Costs	All costs incurred to run the liquidation process, including professional fees for the liquidator and asset preservation expenses, must be paid first.
Rank 2	Workmen Dues & Secured Creditors	Ranks equally (Pari-Passu). Covers workmen's wages outstanding for a maximum of 24 months preceding, alongside debts owed to secured creditors who chose to relinquish their security interest to the liquidator.

Priority Rank	Claim Category	Statutory Execution Rules & Balances
Rank 3	Employee Salaries	Unpaid wages and salaries due to standard staff members (other than workmen) for a period not exceeding 12 months prior to winding up.
Rank 4	Unsecured Financial Debts	Settlement of outstanding accounts for general unsecured creditors, trade vendors, and suppliers who hold no physical collateral.
Rank 5	Statutory Government Revenues	All central and state government taxes, local municipal rates, and duties due within 12 months preceding the liquidation date.
Rank 6	Preference Shareholders	Payment of outstanding preference dividends and return of preference share capital. They hold priority over equity owners.
Rank 7	Equity Shareholders	The residual owners of the company. They receive any remaining surplus funds in proportion to their paid-up capital holdings. If funds are exhausted at Rank 4, they receive nothing.

End of Module 4 • Corporate Meeting and Liquidation