25.0 EXTRAORDINARY GENERAL MEETINGS (EGMs)

[25.01] Apart from a company’s AGMs, the Companies Acts do not require that any other “mid-year” general meetings of a company’s members be held as a matter of course.\textsuperscript{463}

[25.02] However, the law also recognises that occasions may arise where members may need to meet together formally on other occasions, in between AGMs. Such general meetings of the company are known as extraordinary general meetings of the company (EGMs).

[25.03] It is important to note that the term extraordinary, when used in relation to members’ meetings, is not meant to signify that EGMs can/should be held only in the most remarkable, exceptional or unusual circumstances. The word ‘extraordinary’ is used merely to distinguish such meetings from the company’s AGMs\textsuperscript{464} and this is reflected in a provision which appears in most management company’s articles of association along the following lines—

“All general meetings other than annual general meetings shall be called extraordinary general meetings.”\textsuperscript{465}

Who can convene an EGM?

Directors on their own initiative

[25.04] Where the management company’s articles contain a provision along the lines of regulation 50 of Part I of Table A or regulation 7 of Table C\textsuperscript{466} then the management company’s directors have a general power to convene EGMs on their own initiative. Both of those provisions provide as follows—

“The directors may, whenever they think fit, convene an [EGM] … If at any time there are not within the State sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an [EGM] in the same manner as nearly as possible as that in which meetings may be convened by the directors.”

As few as two members where insufficient directors remain in the State

[25.05] In the exceptional circumstances where fewer directors of the company remain in the State than are capable of forming a directors’ quorum,\textsuperscript{467} an EGM may be convened by as few as “any two members of the company” where regulation 50 of Part I of Table A or regulation 7 of Table C applies.\textsuperscript{468}

Specified numbers of members: even against the wishes of the directors

[25.06] Where a management company is a company limited by guarantee not having a share capital, then—

“The directors … shall, on the requisition of … members of the company representing not less than one-tenth of the total voting rights of all the members having [at the date of the deposit of the requisition] a right to vote at general meetings of the company, forthwith proceed duly to convene an [EGM] of the company.”\textsuperscript{469}

[25.07] Where a management company is a company limited by shares, then—

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\textsuperscript{463} See paragraphs [24.01] to [25.24].

\textsuperscript{464} Historically AGMs were sometimes referred to as the ordinary general meetings of the company.

\textsuperscript{465} Regulation 49 of Part I of Table A; Regulation 6 of Table C.

\textsuperscript{466} See paragraph [9.05] concerning the extent to which the articles of association of any particular management company may not necessarily include all of the regulations contained in Table A or C.

\textsuperscript{467} See paragraph [23.20] to [23.21].

\textsuperscript{468} See paragraph [9.05] concerning the extent to which the articles of association of any particular management company may not necessarily include all of the regulations contained in Table A or C.

\textsuperscript{469} Section 132(1) of the Companies Act 1963.
“The directors … shall, on the 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 … forthwith proceed duly to convene an [EGM] of the company.”

[25.08] In either case, the members’ requisition must—

“state the objects of the meeting and must be signed by the requisitionists and deposited at
the registered office of the company and may consist of several documents in like form each
signed by one or more requisitionists”.

[25.09] On receipt of such a requisition the company’s directors are generally required to convene an
EGM within 21 days from the date on which the requisition was deposited at the company’s registered
office, such EGM to be held within 2 months from that same date.

[25.10] However in some unusual circumstances it may be permissible for directors who receive such
a requisition to decline to convene an EGM if it has been requested for a purpose which, in the
directors’ view, the company cannot lawfully implement. However, it is advisable for directors to
take legal advice before adopting such a position because, if they fail to convene a properly
requisitioned EGM, they not only breach a statutory duty, but also their failure may be a basis on
which the costs incurred by the requisitionists in convening the meeting themselves may fall to be
recouped from certain sums due to the directors by the management company.

[25.11] If within 21 days from the date of the deposit of a requisition properly seeking an EGM, the
directors have not proceeded to duly convene such a meeting, the requisitionists (or any of them
representing more than half of the total voting rights of all of them), may themselves convene a
meeting. That meeting must be held within 3 months from the date of deposit of the requisition. Any
reasonable expenses incurred by the requisitionists in so convening an EGM (by reason of the failure
of the directors to do so on foot of a requisition) must be repaid to the requisitionists by the
company.

The High Court

[25.12] In certain limited circumstances the High Court may order that an EGM of a company be held. However, this applies only when—

“it is impracticable to call a meeting of [the] company in any manner in which meetings of that
company are to be called, or to conduct the meeting of the company in manner prescribed by
the articles [of the company] or [the Companies Acts].”

[25.13] Such an application can be brought before the High Court by any director of the management
compny or any member of the management company who would be entitled to vote at the meeting.

Not the ODCE

[25.14] It is sometimes thought that the ODCE has power to direct the holding of an EGM of a
company. This is not correct. The ODCE’s only power to direct a general meeting of any company is

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470 Section 132(1) of the Companies Act 1963.
471 Section 132(2) of the Companies Act 1963.
472 Section 132(3) of the Companies Act 1963.
473 Rose v. McGivern [1998] 2 BCLC 593. However the fact that the directors are merely not supportive of the
purpose which the requisitionists wish to achieve is not a sufficient basis on which to decline to hold an EGM
in compliance with the directors’ statutory duty under Section 131(1).
474 This follows from Section 132(5) of the Companies Act 1963 which contains a stipulation that any such sums
are to be retained by the management company out of any sums due or expected to fall due from the
company by way of fees or other remuneration in respect of their services due to such of the directors as were
in default. However, as fees and remuneration are not usually paid to management company directors, this
stipulation is not likely to be of any relevance in so far as most management companies are concerned.
475 Section 132(3) of the Companies Act 1963.
476 Section 132(5) of the Companies Act 1963.
477 Section 135(1) of the Companies Act 1963.
our power to direct AGMs.  

The notice which must be given of an EGM

[25.15] This is usually dealt with in the management company’s articles of association but those articles must be consistent with minimum limits set out in the Companies Acts.  

Those minimum limits are 21 days notice in the case of an EGM convened to pass a special resolution, and for other EGMs, 14 days notice where the company is limited by guarantee and does not have a share capital, and 7 days where the company is a private company limited by shares.

[25.16] It is possible for a company to adopt articles of association which provide for longer periods of notice. However it is the minimum limits which apply where the management company’s articles include regulation 4 of Part II of Table A, or regulation 8 of Table C.

[25.17] The articles cited in paragraph [25.16] contain the statement 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 and shall specify the place, they day and the hour of the meeting and, in the case of special business, the general nature of that business and shall be given, in manner hereinafter mentioned, to such persons as are under the regulations of the company, entitled to receive such notices from the company.”

The meaning and scope of this type of regulation has been discussed above in paragraphs [24.08] to [24.18].

Describing the intended business of the EGM

[25.18] As outlined in paragraph [25.17], where a management company has adopted regulation 51 of Part I of Table A or regulation 8 of Table C then the notice is required to specify “in the case of special business, the general nature of that business”.

[25.19] Where the management company has adopted regulation 53 of Part I of Table A or regulation 10 of Table C then—

“All business shall be deemed special that is transacted at an [EGM] …”.

[25.20] Accordingly, where regulations of this sort are applicable, it is essential that the notice of an EGM should specify the general nature of the business which the EGM is going to be asked to transact. Where the intended business is the passing of a special resolution, the intention to propose the resolution as a special resolution should be expressly specified and the entire text or the entire substance of the proposed resolution should be set forth. That level of formality is not necessarily required as regards proposed ordinary resolutions. As noted by leading commentators—

“… it suffices that the notice calling the meeting gives sufficient details as to the nature of the business to be transacted to enable members to decide whether or not they should attend”.

but those same commentators go on to note that—

“the company may be restrained from holding a general meeting (whether for the purpose of passing ordinary resolutions or special resolutions) where the notice convening it, or any

478 See paragraph [24.07].
479 See Section 141 of the Companies Act 1963 concerning EGMs convened to pass special resolutions and Section 133(1)(b) concerning other EGMs.
480 See paragraph [9.05] concerning the extent to which the articles of association of any particular management company may not necessarily include all of the regulations contained in Table A or C.
481 The word ‘regulations’ appears in regulation 51 of Table A. The equivalent word used in regulation 8 of Table C is ‘articles’.
482 Section 141(1) of the Companies Act 1963..
483 See pg 268 of Companies Acts 1963 – 2006, General Editors Lyndon MacCann and Thomas B Courtney (Tottel Publishing, 2007) and the various cases cited there.
accompanying circular is inaccurate or misleading.\textsuperscript{484}

**Convening an EGM at less than the usual period of notice**

[25.21] In the typical management company, this is difficult to achieve, but not impossible.

[25.22] One of the effects of Section 133(3) of the Companies Act 1963 is that an EGM of a company can always be deemed to have been duly called, even though less than the usual period of notice has been given, if it is so agreed by—

(a) all the members of the company entitled to attend and vote at the meeting,\textsuperscript{485} and

(b) the statutory auditors of the company.\textsuperscript{486}

[25.23] Furthermore where the purpose of the meeting is to pass a special resolution (but not, however, an ordinary resolution) the resolution may be validly proposed and passed at an EGM of which less than 21 days' notice in writing has been given if it is so agreed—

(a) in the case of a private company limited by shares, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together holding 90% or more in nominal value of the shares giving rise to the right to attend and vote at the meeting, or

(b) in the case of a company limited by guarantee not having a share capital, by a majority in number of the members together representing 90% or more of the total voting rights at that meeting of all the members.

Even in this case, however, it remains the case that the statutory auditors of the company must be given notice of the meeting.\textsuperscript{487}

**Consequences of any failure to give proper notice of the EGM**

[25.24] The considerations here are largely the same as those which apply in respect of AGMs.\textsuperscript{488}

**The necessary quorum for an AGM**

[25.25] Here again the position is largely the same as that which applies in the case of a company's AGM.\textsuperscript{489}

**The EGM is limited to dealing with the special business specified in the notice convening the meeting**

[25.26] As noted above,\textsuperscript{490} it is typically the case in most management companies that all business transacted at an EGM is to be classified as ‘special business’ and the general nature of that special business must have been outlined in the notice convening the meeting.

[25.27] Accordingly, where an EGM has been convened to transact the business specified in the notice of the meeting, the ordinary rule is that it is not within the power of the EGM to purport to take decisions in relation to any other items of such business which a member or members seeks to raise at the meeting – even if it claimed that they are of an important and pressing nature.

[25.28] The rationale for this rule is the same as for the corresponding rule regarding the discussion

\textsuperscript{484} Ditto.

\textsuperscript{485} Not simply all the members who attend the meeting called at short notice: unless this happens to represent also the entirety of those members who were entitled to be present there.

\textsuperscript{486} The auditors' agreement must be obtained even if is not expected that they would be likely to wish to attend the meeting.

\textsuperscript{487} Section 141(4) of the Companies Act 1963 and Section 193(5) of the Companies Act 1990.

\textsuperscript{488} See paragraphs [24.23] to [24.26].

\textsuperscript{489} See paragraphs [24.27] to [24.30].

\textsuperscript{490} Paragraphs [25.18] to [25.20].
of special business at AGMs, details of which have not been specified in the notice convening the AGM.  

[25.29] However, as with AGMs, this rule does not apply at EGMs where all the members entitled to attend and vote on the question are present at the EGM and are unanimously agreeable to dealing with the proposed additional special business. However, as noted at paragraph [24.49] and [24.50] this will rarely be the case and the unavailability of this derogation where even one person is opposed to dealing with the matter, or is not present, should be noted carefully.

**Suggested form of a notice to convene an EGM**

[25.30] While obviously it is a matter for each management company to decide on what is appropriate for it, the ODCE suggests that something along the following lines should usually be enough—

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16 Parnell Square Owners' Management Company Limited  
Company Number 987654321  
Registered Office: 16 Parnell Square, Dublin 1  

YOU ARE HEREBY NOTIFIED that an Extraordinary General Meeting of the above-named company will be held at [insert the relevant address] on [insert the relevant day of the week] the [insert the relevant date] day of [insert the relevant month and year] at [insert the relevant time] p.m. and that the intended business of the meeting will be as follows—

(1) to consider and if thought fit to pass the following ordinary resolutions—

   (a) “that, pursuant to regulation 48 of the company’s articles of association, Teresa O’Connor be removed as a director of the company”;

   (b) “that, pursuant to regulation 49 of the company’s articles of association, Paul McCarthy be appointed a director of the company in place of the said Teresa O’Connor”;

(2) to consider and if thought fit to pass the following special resolutions—

   (c) “that the company’s articles of association be amended by insertion therein between regulation 7 and regulation 8 by an additional regulation numbered 7A in the following terms—

      (7A) General meetings of the company shall take place at a location which is not more than 10 kilometres from the multi-unit development at Parnell Square in the City of Dublin with which the company is associated.”

   (d) “that the company’s articles of association be amended by the deletion of regulation 23 (which currently provides that no member shall be entitled to vote at any general meeting of the company unless all moneys immediately payable by him to the company have been paid)”.

By order of the Board

Signed  
Company Secretary
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491 See paragraph [24.48].
492 Obviously this is appropriate only if the EGM is being convened on the authority of the board of directors. If the EGM is being convened by members pursuant to their powers under Section 133(3) the notice should be amended appropriately.
Important Notes:

(1) A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead. A proxy need not be a member of the company. 493

(2) A proxy should be in the form that accompanies this notice, or as near thereto as circumstances permit. 494

(3) An instrument appointing a proxy should be deposited at the company’s registered office not less than 48 hours before the time stipulated above for holding the EGM. 495

Directors’ Attendance at an EGM

[25.31] Just as it is not legally obligatory that management company directors attend an AGM, 496 so neither is it mandatory for them to attend an EGM. However, in the ODCE’s view deliberate non-attendance by management company directors at EGMs is as problematic as non-attendance at AGMs, and we repeat the comments made at paragraph [24.59].

Records of EGMs

[25.32] The rules regarding the keeping of minutes of EGMs, and the entitlement of management company members to inspect such minutes are essentially the same as those which apply in the case of minutes of AGM. 497

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493 Section 136(3) of the Companies Act 1963 requires that a note along these lines should be included in the case of a notice calling an EGM of a management company which is incorporated as a private company limited by shares. An equivalent note is not necessarily required where the management company is a company limited by guarantee not having a share capital. However, if (as is usually the case) such a company’s articles permit members to appoint proxies to it, it would seem sensible that a similar note should also be included in the Notice convening any EGM of such a company. For further information about proxies, and the extent of their entitlements, see paragraphs [27.01] to [27.16].

494 Include a blank proxy form along the lines required by the company’s articles of association. See paragraphs [27.01] to [27.16].

495 The terms of this stipulation should accord with whatever is provided in the company’s own articles of association. See paragraphs [27.01] to [27.16].

496 See paragraphs [24.57] to [24.62].