

## Annual General Meeting (Sec 96)

### 1. **Company to hold annual general meeting every year**

Every company other than a one person company shall hold a general meeting as its annual general meeting in each year in addition to any other meetings. As provided in clause (a) of sub-section (1) of section 102, four businesses transacted at such meeting are treated as ordinary businesses while other businesses, if any, are deemed to be special businesses.

Convening annual general meeting is a statutory requirement. A company may have more than one general meeting but it should name one general meeting as annual general meeting to transact businesses mandated by the Act and the Board may fix day, date time and place for conduct of such meeting may delegate authority to its managing director or any other director to take steps for conduct of annual general meeting.

### 2. **Exemption to OPC**

As provided in sub-section (1) of section 96, one person company is not required to hold Annual General meeting. The manner of passing resolutions required to be passed is contained in section 122 of the Act.

### 3. **Due date for holding annual general meeting**

Combined reading of sub-section (1) of section 96 and its proviso gives 3 conditions for holding of annual general meeting. The annual general meeting shall be held every year, not more than 15 months shall elapse between the two annual general meetings and annual general meeting shall be held within a period of six months from the date of closing of the financial year. The annual general meeting is required to be held within the earlier period of the above conditions.

In case of first annual general meeting of the company, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation when the meeting is held within a period of nine months from the date of closure of the first financial year of the company.

Hence, for a company incorporated on 01.01.2015, the first financial year should be closed on 31.03.2016 as provided in clause (41) of section 2. The annual general meeting in such case shall be required to be convened on or before 31.12.2016. The said meeting shall be treated as the annual general meeting for the year 2015 and 2016. However, for a company incorporated on 31.12.2014, the first financial year shall be closed on 31.03.2015 and annual general meeting shall be convened on or before 31.12.2015.

#### **4. Time and place for annual general meeting**

Every annual general meeting shall be called during business hours on any day that is not a National Holiday. The business hours are prescribed to mean the time period between 9 a.m. and 6 p.m. The venue of the meeting shall be either the registered office of the company or some other place within the city, town or village in which the registered office of the company is situated. Central Government has been empowered to exempt any company from the provisions of this sub-section subject to such conditions as it may be impose.

It is to be noted that the meeting needs to be called during business hours. It may extend and conclude beyond business hours.

The explanation appended to sub-section (2) of section 96 provides that “National Holiday” means and includes a day declared as National Holiday by the Central Government. This is further clarified in secretarial standard – 2 which defines “National Holiday” as including Republic Day, i.e., 26th January, Independence Day, i.e., 15th August, Gandhi Jayanti, i.e., 2nd October and such other day as may be declared as National Holiday by the Central Government.

According to a clarification issued by circular no. 1/1/80 CL – 5 date 16- 2- 1981 under the earlier Act, the ministry has clarified that postal or municipal limits, whichever is wider is permissible for the conduct of Annual general meeting. Ministry further clarified that postal limit may be construed to mean city postal delivery area officially accepted by the postal authority (Letter 2/M-1594/74 dated 29.04.1988). This clarification though issued by ministry under the earlier Act, may be considered for this relevant provision also until a fresh clarification issued by the ministry under this Act.

The Companies (Amendment) Bill, 2016 proposes to allow unlisted companies any place in India if consent is given in writing or by electronic mode by all the members in advance.

#### **5. Exemption to Government Company**

In case of Government Company, the words “some other place within the city, town or village in which the registered office of the company is situate” are to be substituted with “such other place as the Central Government may approve in this behalf”. This substitution is made vide notification no. G.S.R. 463(E) dated 05.06.2015.

#### **6. Applicability to section 8 company**

In case of section 8 companies, the time, date and place of each annual general meeting are to be decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in

general meeting. This proviso is inserted after the first proviso to sub-section (2) by notification no. G.S.R. 466(E) dated 05.06.2015.

## 7. Power of Registrar to extend the due date

The Registrar is empowered under third proviso to sub-section (1) of section 96 to extend, upon application by the company, the time within which any annual general meeting is to be held. Such power can be extended by a period not exceeding three months. This power cannot be exercised in case of the first annual general meeting.

## 8. Consequences of holding Annual General Meeting after due date

Companies which are not holding their annual general meeting within the stipulated period as laid down in the Act are contravening the requirements of section 96 of the Act and liable to pay fine under section 99 of the Companies Act, 2013. The offence under this section is a continuing offence till the compliance is made.

It is well settled that the annual general meeting must be called, whether or not the annual accounts are ready for consideration at the meeting. "There is a clear statutory duty on the directors to call the meeting whether or not the accounts the consideration of which is only one of the matters to be dealt with at an Annual General Meeting are ready or not." This was held in *Re. El Sombrero Ltd. (1958)* [*Re. El Sombrero Ltd. (1958)* 3 All ER 1 at 6 (1958) 28 Com Cases 619 (Ch D)].

The question whether the meeting can be held after the due date by the company has left the courts divided. One view being taken in *Hungerford Investment Trust Ltd. v. Turner Morrison & Co. Ltd.* [ILR 1972 (1) Cal 286 as quoted in *Sadhan Kumar Ghosh vs Bengal Brick Field Owners' Association & Others*, GA No. 2281 of 2008 GA No. 4009 of 2008 CS No. 145 of 2008, reportable] is that "The question then arises: What is the appropriate and proper interpretation to be put upon this time limit under s. 166 of the Companies Act, 1956? Is it to be interpreted by saying that if the meeting is held in violation of the time specified under s. 166, then it is invalid or void or illegal for all purposes? Or, whether this prohibition of time limit only makes the Directors who commit default liable only to fine or penalty under provisions like s. 168? Section 168 of the Act provides for the penalty but does not make the meeting illegal. To make the meeting illegal would be, in such circumstances, to perpetuate an endless deadlock with endless penalty without remedy. That is a construction which should be avoided unless the Court is compelled to adopt that construction by reason of the language of the relevant sections of the Companies Act. But, I do not think that the Court is so compelled. I have already described the situation that the Court under the Companies Act, 1956, has no power to extend or grant time for Annual General Meeting. If the Central Government does not sanction under s. 210

of the Companies Act, 1956, such meeting, then the default is without remedy and continuing default, having regard to the provisions in s. 168, would throw open the company's Directors to continuing penalties with fines without remedy. Therefore, I come to this construction that the default regarding time in holding Annual General Meeting is penalisable as by statute and according to the terms thereof. But, the meeting can nevertheless be held and such meeting would not be void. The statutory provisions for fine, which I have quoted above, also show that the meeting is not void. Otherwise, the situation would be impossible in law. Section 168 of the Companies Act, 1956, speaks of continuing default. If the default is to be discontinued, the fine has to be paid under the terms of that section. Payment of the fine under the penalty should cure the default or else the payment of the fine and the penalty would not resolve the difficulty because the company could not hold its meeting by itself. I have already contrasted sections of the Companies Act which say when breach of a section makes the act void, but it does not do so under ss. 166, 167 and 168 of the Companies Act regulating the holding of the Annual General Meeting, its default and the penalty thereof. Sections 166, 167 and 168 do not say that a meeting held by the company itself beyond the time indicated would be void or voidable but they only provide the penalty payable. From my analysis of the sections of the Companies Act it is plain that the statute draws the distinction between the void, voidability and penalisation of the acts of omission or commission of the company. ... I, therefore, hold that the consequence of default in holding Annual General Meeting, even where there is such a default is only liability for penalty and for payment of fine as prescribed by the statute and the further consequence is that the meeting, if held by the company beyond time, cannot be said to be void or illegal. This Court will not read more consequences than the specific penalty specifically provided by the specific terms of ss. 166, 167 and 168 of the Companies Act."

The above judgment eventually went into appeal and was reversed although no comment was made for the para quoted above. This judgment along with other judgments was considered in Sadhan Kumar Ghosh vs Bengal Brick Field Owners' Association & Others [GA No. 2281 of 2008 GA No. 4009 of 2008 CS No. 145 of 2008, reportable], and it was held that "If the requirement to hold an AGM is an obligation of a company and if such duty can be enforced by a solitary member complaining of default and carrying an application to the Company Law Board under Section 167 of the Act, it is difficult to comprehend as to how such obligation can remain suspended indefinitely upon the mere passing of the statutory hold-by date. Though there is considerable force in the view expressed by the trial court in Hungerford Investment Trust Ltd., since the judgment was set aside in its entirety, it no longer has any more value than persuasive submission. In any event, the Division Bench view in Ambari Tea Company Ltd, although prima facie since it was at an interlocutory stage, is unqualified in its interpretation of law that a company and its directors were precluded from holding an AGM beyond the period prescribed by statute. It is the same view that is expressed in the unreported judgment of Shree Hanuman Properties & Finance (P) Ltd. and in

the Division Bench judgment in Bejoy Kumar Karnani. In view of the binding precedents, it is not open to hold at this stage that a company has the *suomotu* authority to hold its AGM beyond the time prescribed by statute. The legal question may require to be revisited, but at a different level.”

## 9. Compliance of provisions of Secretarial Standard-2

With effect from 01.07.2015, Secretarial Standard – 2 issued by ICSI is applicable to all types of General Meetings of all companies except One Person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification.

## 10. Reporting under SEBI (LODR) Regulation, 2015

As provided in regulation 30 read with Schedule III Part A of SEBI (LODR) Regulations, 2015, every listed company is required to disclose the proceedings of annual & extraordinary general meeting to the stock exchange where its securities are listed within 24 hours of the event.

## 11. Punishment and Compoundability

For default in compliance of a provision, penal provisions are contained in section 99 of the Act.

Section 99 seeks to provide punishment for default in compliance of sections 96, 97 and 98. It covers cases of default made in holding a meeting of the company (whether annual general meeting or extraordinary general meeting) in accordance with the provisions of section 96 or section 97 or section 98 or any default made in complying with any directions of the Tribunal. Section 96 deals with the provisions of annual general meeting while section 97 and 98 empower the Tribunal to call annual general meeting and general meeting of the company respectively. The company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues. The offence under this section continues till meeting is held. The object of the section was explained in *Sadhan Kumar Ghosh vs Bengal Brick Field Owners' Association & Others* [GA No. 2281 of 2008 GA No. 4009 of 2008 CS No. 145 of 2008, reportable] in the following words: If the requirement of a company to hold its AGM is seen as a duty cast on the company by the governing statute, as is evident from the provisions of the said Act, then it is necessary that such obligation be required to be discharged at the earliest. A puny member in a large company has been conferred a right by Section 167 of the Act to approach the Company Law Board for a direction on the company to hold its AGM. That would demonstrate that there is a duty on the company's part to hold its AGM and

even a solitary shareholder may enforce the same. For a civil court's jurisdiction, both as to receiving actions and passing orders, to be curbed, there has to be an express provision in a statute or one that can necessarily be implied. The object of Sections 166, 167 and 168 of the Act is to ensure that a company holds its AGMs and holds the same within time."

It was held in *Dineker Rai D. Desai And Others vs R.P. Bhasin And Others* [1986 60 CompCas 14 Delhi] that subsequent appointees cannot be made liable for default committed by the previous board. It was stated that "The directions of the court are that the meeting is to be conducted by three persons who are not directors. It is open to the court to appoint these three persons as directors of the company when they will be liable for the default, if any. We fail to understand how they can be made responsible for holding a meeting which under law has to be held by the existing board of directors."

The offenses committed by company and officer, being punishable only with fine, are compoundable under section 441 of the Act.

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*