

## Notice (calling general meetings u/s 101 of the Companies Act, 2013)

### 1. Length of notice of the meeting

As provided in sub-section (1) of section 101, a general meeting may be called by giving not less than 21 clear days' notice in writing or through electronic mode in such manner as may be prescribed.

As provided in para 1.2.6 of secretarial standard-2, for the purpose of reckoning 21 days clear notice, the day of sending the notice and the day of Meeting shall not be counted. Further in case the company sends the notice by post or courier, an additional two days shall be provided for the service of notice. In respect of companies registered under section 8 of the Act, the length of notice was shortened to 14 days vide the notification no. G.S.R. 466 (E) dated 05.06.2015.

Regarding the length of the notice, it was held in *Shailesh Harilal Shah And Others vs Matushree Textiles Ltd. And Other [1995 82 CompCas 5 Bom]* that "Looking to the object, purpose and scope of provisions of section 171(1) of the Act, the conclusion is inescapable that the provision is merely directory and not mandatory." This point was considered again in *Somalingappa Shiva Putrappa v Shree Renuka Sugars Ltd. [2002 110 CompCas 371 Kar]* in the following words:

"Under these circumstances, if 21 days notice contemplated under Section 171 is to be interpreted as mandatory and further it is to be interpreted that from the date of service of notice to each shareholder the meeting is to be held 21 days thereafter, it would be impossible to conduct any general meeting of any company. Such interpretation would result in absurdity, especially when the Legislature consciously did not provide for invalidation of the meeting or resolutions passed in the meeting for want of such 21 days of notice. Therefore, in my opinion, by interpreting Section 171 as mandatory to include in its ambit 21 days' clear notice would be improper. When the notice under Section 171 which otherwise would satisfy the requirements of that section is served on the shareholder and after service if he has reasonable time before the meeting, in my opinion, it would be substantial compliance with the provisions of Section 171. That portion of the provisions regarding service of notice is directory and although compliance with them is also necessary, it is sufficient if the compliance is substantial."

To assuage the factors mentioned above, clear criteria are laid down in the Act and Secretarial Standard-2.

## 2. Shorter notice

As provided in the proviso to sub-section (1) of section 101, a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting. This provision contrasts with sub-section (2) of section 171 of the Companies Act, 1956 on two counts: to hold annual general meeting, the said section required consent of all members entitled to vote thereat and the criteria for consent of holding other meeting was consent of the member holding 95% of the paid up capital of the company.

The provisions of section 101 now mandate the consent of 95% of members entitled to vote in case of any general meeting. Hence, the number of shares held are immaterial. Companies (Amendment) Bill, 2016 proposes to substitute the above proviso with the following to restore the earlier proviso:

“Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—

- (i) in the case of an annual general meeting, by not less than ninety-five per cent. of the members entitled to vote thereat; and
- (ii) in the case of any other general meeting, by members of the company—
  - (a) holding, if the company has a share capital, not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
  - (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting:

Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.”

## 3. Mode of delivery of the notice

Sub-section (1) of section 101 provides that the notice may be given either in writing or through electronic mode. The details of service of notice are contained in rule 18 read with para 1.2.2 of Secretarial Standard-2.

The notice of the general meeting shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means. ‘Electronic means’ means any communication sent by a company through its authorised and secured computer programme which is capable of producing confirmation and keeping record of such communication

addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

In case the notice and accompanying documents are given by e-mail, these shall be sent at the members' e-mail addresses, registered with the company or provided by the depository.

Notice shall be sent to members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

- (a) if the company provides the facility of e-voting;
- (b) if the item of business is being transacted through postal ballot;

If a member requests for delivery of notice through a particular mode, other than one of those listed above, he shall pay such fees as may be determined by the company in its annual general meeting and the notice shall be sent to him in such mode.

In case of delivery of notice by electronic mode, rule 18 provides for detailed procedure for sending the notice through email or through electronic link or Uniform Resource Locator. Further, it provides that the notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Central Government.

A document advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly served on the day on which the advertisement appears, on every member of the company who has no registered address in India and has not supplied to the company an address within India for the giving of notices to him.

If a notice is served by advertisement, as above, it is not necessary to advertise along with such notice, the explanatory statement but it should be mentioned in the advertisement that such explanatory statement has been forwarded to the members of the company.

#### **4. Content of notice**

Sub-section (2) of section 101 read with para 1.2.4 of Secretarial Standard-2 provides that the notice shall specify the day, date, time and full address of the venue of the meeting and also contain complete particulars of the venue of the meeting including route map and prominent land mark for easy location. It shall also specify the nature of the meeting and statement of business required to be transacted thereat. Further, the other particulars required to be mentioned in the notice including statements to be annexed thereto are required to be disclosed in addition to this requirement. Meetings shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a national holiday. A meeting called by the requisitionists shall be convened only on a working day.

Annual general meeting shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas other general meetings may be held at any place within India.

## 5. Persons entitled to receive the notice

Sub-section (3) of section 101 read with para 1.2.1. of secretarial standard-2 provides that notice of every meeting of the company shall be given to (i) every member; (ii) to the legal representative of deceased member; (iii) to the assignee of an insolvent member; (iv) to the auditor or auditors for the time being of the company, (v) to secretarial auditor, (vi) to debenture trustees, if any, (vii) to directors of the company and (viii) any other specified persons if so required and. While certain person may be entitled to receive notice, this provision does not provide them with any rights in addition to their existing rights.

A notice may be served by the company on the joint-holders of a share by serving it on the joint-holder named first in the register in respect of the share.

In case of death of a member, nominee of the single holder or surviving joint holder or the nominee appointed by all the joint holders, as the case may be.

## 6. Accidental omission to give notice

Sub-section (4) of section 101 provides that an accidental omission to give notice to, or the non-receipt of notice by, any member or other person to whom it should be given, shall not invalidate the proceedings of the meeting.

It was held in *Maharaja Exports v. Apparels Exports Promotions Council [(1986) 60, Comp. Case 353 (Delhi)]* That "The 'accidental omission' means that the omission must be not only not designed but also not deliberate. This expression implies absence of intention or deliberate design. The word 'or' appearing in this sub-clause is of great significance. The company has only to prove on record that they have sent the notice to its members on the addresses furnished by them. The non-receipt of the notice under no circumstances shall invalidate the holding of the meeting or the proceedings thereof."

## 7. Applicability of the section to private company

This section applies to a private company unless its articles provide otherwise. This exemption was given by the notification no. G.S.R. 464 (E) dated 05.06.2015. Hence, the articles of the private company may exclude the applicability of this section and make its own regulations as regards the notice of a meeting.

## 8. Punishment and Compoundability

This section does not prescribe any penal provision for contravention of the section. Hence, section 450 of the Act will be applicable. Accordingly, the punishment for contravention, the company and every officer of the company who is in default shall be punishable with a fine upto Rs. 10,000, where the contravention is a continuing one then the fine shall be Rs. 1,000 for every day of contravention. 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.*