

Practical Aspects in conducting Annual General Meeting and SS-2

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By Nilesh A. Pradhan

Practicing company secretary

Purpose of AGM.....

- ▶ Updating to the Members as to the financial performance of the Company.....
- ▶ Obtaining approval of the Members on important matters.....
- ▶ Dialogue with the Board of Directors with respect to the functioning of the Company...
- ▶ Forum to discuss about the performance and future plans of the Company....

Annual General Meeting ... General Meaning

► **What Is an Annual General Meeting (AGM)?**

An Annual General Meeting (AGM) is a yearly gathering of a company's interested shareholders.

Annual General Meeting (AGM)

Section 96

- ▶ Every company other than a One Person Company shall in each year hold in addition to any other meetings, **a general meeting as its annual general meeting** and shall specify the meeting as such in the notices calling it, and **not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:**
- ▶ **Provided** that in case of the **first annual general meeting**, it shall be held **within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year :**
- ▶ **Provided further** that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:
- ▶ **Provided also** that the Registrar may, for any special reason, **extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.**

Applicability of SS-2

- ▶ This Standard is applicable to all types of General Meetings of all companies incorporated under the Act **except One Person Company (OPC) and a company licensed under Section 8 of the Companies Act, 2013** or corresponding provisions of any previous enactment thereof.
- ▶ However, Section 8 companies need to comply with the applicable provisions of the Act relating to General Meetings.

Pre-AGM Checkpoints....

- ▶ Rechecking the circulars issued by MCA/SEBI....
- ▶ Completion of Audit
- ▶ Availability of Directors /Members.....
- ▶ Co-ordinating with various agencies involved in AGM such as Depositories , RTA , E-voting agencies, banks , advertisement agencies
- ▶ Checking the date of last AGM....

Authority

- ▶ Board
- ▶ National Company Law Tribunal

Minimum number of members for making application to the NCLT ?

Time & venue

- ▶ Existing Company
- Within 6 months from the financial year end
- Gap between two meetings shall not exceed 15 months
- Registrar of Companies may grant extension of 3 months for any special reason

- ▶ Newly incorporated Company.....
- Within 9 months from the date of closing of first financial year...

Cont...

- ▶ AGM 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.

Group Companies ????

Membership & Directorships in other than group Companies???

Checking local festivals and other events at the time and venue of the AGM ???

Foreign members??

Cont...

- ▶ Every 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 situate...

Provided that annual general meeting of **an unlisted company** may be held at any place in India **if consent is given in writing or by electronic mode by all the members in advance.**

Checking the location of the venue of the AGM???

Consent in advance ?? Authority ??

Members Equity ????? Preference ??

Notice & Related....

► Contents of Notice

- Day , date & time
- Venue
- Nature & serial number of meeting
- Mode of meeting (Physical /VC)
- Business to be transacted at Meeting (Ordinary / Special)

Cont...

- Explanatory statement
- Details of Directors in case of In all cases relating to the appointment or re-appointment and/or fixation of remuneration of Directors including Managing Director or Executive Director or Whole - time Director or of Manager or variation of the terms of remuneration,
- Attendance slip
- Proxy Form
- Route map

Cont...

- ▶ **Notice Period**
- ▶ Clear 21 days notice
- ▶ Shorter Notice can be given if consent is obtained by not less than ninety-five per cent. of the members entitled to vote thereat.

When to obtain ??

Consent in case of foreign shareholders??

Compliance with the proxy provisions ??

Cont....

- ▶ Notice to be given to
 - ❑ Every Member, , legal representative of any deceased member or the assignee of an insolvent member;
 - ❑ Auditor & Secretarial Auditor (If applicable)
 - ❑ Every Director
 - ❑ Debenture Trustee

Cost Auditor????

Any specific person mentioned in SHA???

Cont...

► **Dispatch of Notice**

Notice 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.

Proof of Dispatch ?

Obtaining the Acknowledgments ???

Email address- Register of member ???

Specific manner given by the Shareholder???

Quorum & Attendance by Auditors..

- ▶ Private Company : Two Members

- ▶ in case of a public company :

- (i) **five Members** personally present if the number of Members as on the date of Meeting **is not more than one thousand;**

- (ii) **fifteen Members** personally present if the number of Members as on the date of Meeting is more than **one thousand but up to five thousand;**

- (iii) **thirty Members** personally present if the number of Members as on the date of the Meeting **exceeds five thousand;**

Cont...

Continual???

SHA/Articles provisions???

Proxy & quorum???

One representative for different body corporatesmeeting by VC ??

different login id ???

Obtaining Attendance Register ??

Exemption letter /email ??

Chairman

- ▶ Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.

Minutes??

Proxy

- ▶ Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf:

Provided that a **proxy shall not have the right to speak** at such meeting and shall not be entitled to vote except on a poll:

Provided further that, unless the articles of a company otherwise provide, this sub-section shall not apply in the case of a company not having a share capital:

*Provided also that the Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy:

*Provided also that a person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.

Cont...

- *Who can appoint ??*
- *Can body corporate appoint proxy??*
- *Proxy & authorized representative ???*
- *Whether counted for quorum ??*
- *Whether have a right to vote in case of voting by show of hands?*
- *Register of proxies?*

Voting

- Proposing and seconding a resolution except in case of e-voting or Poll.
- **Methods of Voting**
- ☐ **E-voting**
 - Listed entities other than SME listed entity or listed on the institutional platform
 - Company having more than 1000 shareholders
- ☐ **Voting at the Meeting**
 - Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting.
 - E-voting will prevail in case of double voting

Cont..

❑ **Show of Hands**

- Every company shall, at the Meeting, put every Resolution, except a Resolution which has been put to Remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.

❑ **Poll**

- The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.

Cont...

- ▶ *Whether the Proxy can propose or second resolution ?*
- ▶ *Whether electronic voting facility can be provided to Members for voting at the Meeting ?*
- ▶ *Whether the quorum is required to be present at the time of Ballot process?*
- ▶ *Whether Proxy can vote by show of hands?*
- ▶ *Whether Proxy can demand Poll?*
- ▶ *Whether there is any format for Polling papers ?*

Voting Rights

- ▶ Every Member holding equity shares and, in certain cases as prescribed in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.

Can a preference shareholders vote on all resolution ?

- ▶ A Member who is a related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.

Applicability for private Company ?

E-voting

- ▶ E-voting facility for the Members irrespective of mode of holding..
- ▶ E-voting Facility shall open for minimum three days .
- ▶ **Board Approval**
 - Appointment of scrutinizer
 - Appoint an Agency for e-voting
 - Deciding the cut-off date
- ▶ **Notice**
 - ▶ Advertisement of e-voting in the newspaper
 - ▶ Placing of Notice on the website of Company
 - ▶ Declaration of Results

Cont...

- *Can e-voting agency different than depository ?*
- *Cut-off date ?*
- *Advertisement when to publish ? After dispatch...*
- *Results to be submitted in 3 / within 2 working days ? Unlisted ...listed...*

Conduct of Poll

- Confirmation of validity of demand of Poll.
- Appointment of Scrutinizer
- Declaration of Results
- Display of results of Poll

Can Scrutinizer for Poll and E-voting be same ?

When the results of Poll to be declared?....7 days

Resolutions & Report

- ▶ Prohibition on Withdrawal of Resolutions
- ▶ Rescinding of Resolutions
- ▶ Modifications to Resolutions
- ▶ Reading of Reports of Statutory Auditor & Secretarial Auditor

Adjournment of Meeting

- ▶ When a meeting can be adjourned ?
- ▶ Notice in case of Adjournment :
 - For more than 30 days : Notice as per SS-2
 - For less than 30 days : Either individually or in newspaper

Minutes

- ▶ Minutes shall be recorded in books maintained for that purpose.
- ▶ A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act.
- ▶ A company may maintain its Minutes in physical or in electronic form.
- ▶ The pages of the Minutes Books shall be consecutively numbered.

Minutes

- ▶ Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.
- ▶ Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically at least once in every three years.
- ▶ Minutes Books shall be kept at the Registered Office of the company.

Contents of Minutes

- ▶ Name of the Company, Day , date , venue and time of commencement of meeting.
- ▶ Name of Directors and Company Secretary Present for meeting
- ▶ Specific Contents
- ▶ Recording of Minutes
- ▶ Entry in the Minutes Book
- ▶ Signing and dating of Minutes
- ▶ Inspection and Extracts of Minutes
- ▶ Preservation of Minutes

General Points

- ▶ Article of Association...
- ▶ Documentation....
- ▶ Drafting
- ▶ Back-up of documents
- ▶ UDIN...

General Points

- ▶ Communication...
- ▶ Co-ordination....
- ▶ Speak carefully...
- ▶ Gauge potential disputes cases ...
- ▶ Cross section principal....

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NILESH A. PRADHAN & CO., LLP

Email: info@napco.in

Cell : 98337 85809