

## Extra-ordinary General Meeting (Sec 100)

### 1. Power of the board

Sub-section (1) of section 100 empowers the board of directors to call extraordinary general meeting as and when it is deemed necessary. The board may call such extraordinary meeting depending upon the exigencies of the conduct of the business of the company. Such meeting may be held at any place within India as provided in para 1.2.4 of Secretarial Standard-2.

Companies (Amendment) Bill, 2016 proposes to relax this rule for a wholly owned subsidiary of a company incorporated outside India by inserting the following proviso after sub-section (1) of section 100:

“Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.”

### 2. Right of shareholders for requisition of an extraordinary general meeting

According to sub-section (2) of section 100, the board is under obligation to call extraordinary general meeting on the requisition made by the following number of members:

In the case of company having share capital	Member(s) holding on the date of receipt of the requisition 10% or more of the paid up share capital carrying voting rights in regard to the subject matter of the resolution which it is intended to be proposed
In the case of company not having share capital	Member(s) holding on the date of receipt of the requisition 10% or more of the voting power in regard to the subject matter of the resolution which it is intended to be proposed

Such meeting shall be convened within the time prescribed under sub-section (4) of section 100.

Regarding the nature of the right of shareholders, it was held in *Life Insurance Corporation of India v. Escorts Ltd.* [(1986) 59 Com Cases 548] that “every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting nor are the reasons for the resolutions subject to judicial review.”

### 3. Rights of state or its instrumentalities as a shareholder

While placing state or other institutions which are held to be state on terms with other shareholders and rejecting the application of Article 14 so as to mandate disclosure of reasons, it was held in *Life Insurance Corporation of India v. Escorts Ltd.* [(1986) 59 Com Cases 548] that “When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the Company like any other shareholder.”

### 4. Requisites of a valid requisition

The requisitionists shall set out the matters for the consideration of which the meeting is to be called on the requisition. The requisition shall be signed by the requisitionists and sent to the registered office of the company. The mode of service of the requisition shall be in writing or through electronic mode at least clear 21 days prior to the proposed date of such extraordinary general meeting.

### 5. Board to call extraordinary general meeting upon requisition

Sub-section (4) of section 100 casts a duty on the board to call the extraordinary general meeting within 21 days from the date of receipt of a valid requisition. Such meeting shall be convened on a day not later than 45 days from receipt of such requisition.

While interpreting the word “valid”, it was held in *Cricket Club of India v. Madhav L. Apte* [(1975) 45 Com Cases 574], “The word or the adjective “valid” in section 169 has no reference to the object of the requisition but rather to the requirements in that section itself. If these requirements indicated in the earlier part of the section are satisfied, then the requisition deposited with the company must be regarded as a valid requisition on which the directors of a company must act.”

However, in *B. Sivaraman And Others vs Egmore Benefit Society Ltd.* [(1992) 75 Com Cases 198, 221, 224 (Mad)] the point of validity of requisition and remedies available thereof was discussed. It was held that “The word “valid” provided in this sub-section clearly indicates that the requisition which was made must be valid and lawful. In other words, such a requisition was for consideration of a resolution which would amount per se to a valid requisition; otherwise, it would clearly mean that the directors were not required to call a meeting. May be true that the word “valid”, adopted in this section, has no reference to the object of the requisition but rather to the requirements in that section itself. Therefore, it is clear that what is required to be seen is whether the requisition deposited with the first respondent was in accordance with the provisions of this section, as to its contents and other aspects. But, if it is considered to be valid, then the directors of the company shall

not refuse to act on the requisition, but if the object for which the requisition was made is not for carrying out a valid purpose, then it may provide a speculation or a deadlock in this context. .... There is no provision, barring the jurisdiction of the civil court in matters where relief is sought for in respect of the personal rights of the shareholders, directors and so on, such denial of their right of voting or attending the general meeting and so on. It has to be seen further that the ordinary civil courts are not deprived of their jurisdiction to decide the rights of parties except where the Companies Act expressly excludes it such as in matters relating to winding up. It is, therefore, clear that in the present context, section 9 of the Code of Civil Procedure can be made applicable to cases of this nature, except where the jurisdiction of the civil court is expressly excluded.”

In *Queens Kuries And Loans (P.) Ltd. vs Sheena Jose And Ors.* [1993 76 *CompCas* 821 *Ker*], the meeting was held to be requisitioned validly but the resolutions passed thereat were held to be invalid.

## 6. Right of requisitionists to call and convene the meeting

In case the board fails to call the extraordinary general meeting within 21 days or convenes a meeting later than 45 days from the receipt, the requisitionists may convene and hold extraordinary general meeting within 3 months from the date of requisition. As provided in explanation to rule 17 (2), such meeting needs to be held at registered office or in the same city or town where registered office is situated. Further, the meeting shall be convened on a working day. It was held in *Rathnavelusami Chettiar vs M.R.S. Manickavelu Chettiar* [AIR 1951 *Mad* 542] that where a meeting was called by the requisitionists and the registered office is not made available to them for holding the meeting, they may hold the meeting elsewhere.

Sub-section (5) of section 100 provides that the requisitionists shall call and hold the meeting in the same manner as called and held by board. Such meeting shall comply with all the requirements of the Act and Secretarial Standard-2.

## 7. Notice of extraordinary general meeting

Rule 17 (2) to (8) contain the provisions for convening of the meeting, details to be contained in the notice and mode to send the notice.

Such notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting. The provisions of sub-section (2) of section 114 are required to be complied with in case of special resolutions. However, no explanatory statement as required under section 102 need be annexed. The requisitionists may simply disclose the reasons for the resolution(s) which they propose to move at the meeting. This was also ruled in *Life Insurance Corporation of India v. Escorts Ltd.* [(1986) 59 *Com Cases* 548] in the following words:

“It is true that under s. 173(2) of the Companies Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein, of every director, the managing agent if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, all material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before them. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting.”

The notice shall be signed by all the requisitionists or by a requisitionist duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

The notice of the meeting shall be given to those members whose names appear in the Register of members of the company. Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on 21<sup>st</sup> day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the 45 days from the date of receipt of a valid requisition.

The mode of delivery of notice is speed post or registered post or through electronic mode. Any accidental omission or non-receipt shall not invalidate the proceedings of the meeting.

The company also is not bound to attach any such explanation unless the company gives its own notice. As long as it merely forwards the requisitionists' notice, it does not have to attach any explanatory statement. The role of the Board on receiving a requisition is to act only as a channel of communication for convening the meeting. In convening a requisitioned meeting, the Board plays the limited role of forwarding the material as received by it from the requisitionists to all the members. The CLB found no legal infirmity in the notice issued by the company *Vijay M. Porval v. Pentokey Organly (Inalia) Ltd.*, (1996) 87 Com Cases 331 (CLB-NR). Followed in *Karealla Sura, vanaiayarta v. Ramaclas Motor Transport Ltd.*, (1999) 98 Com Cases 518 (CLB-PB) so as to hold that when a meeting is requisitioned and the company forwards the requisitionist agenda to the members with the notice, the company has not to comply with the requirement of explanatory statement.

## **8. Re-imburement of expenses**

Where the requisitionists call a meeting due to failure of the board to call the meeting, reasonable expenses incurred by the requisitionist in convening the meeting shall be reimbursed by the company. The expenses so reimbursed shall be deducted from any fee or other remuneration under section 197 payable to

directors who were in default. Section 197 is not applicable to a private company. Hence, such expenses may be deducted from any remuneration or other entitlements payable to the directors.

## 9. 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 its annual & extraordinary general meeting to the stock exchange where its securities are listed within 24 hours of the event.

## 10. 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.*