



Companies Amendment Bill, 2016

Proposed amendments in 'Meetings' related provisions in Companies Act, 2013

Introduction:

With an objective of addressing and resolving the 'shoe-pinching' issues in Companies Act, 2013 ('the Act'), the Government on June 4, 2015, constituted 8 member Company Law Committee. The said Committee was headed by Secretary, Ministry of Corporate Affairs. On February 1, 2016, Committee submitted a 138-page detailed Report and suggested 100+ amendments to the Act. Based on the Report, Government drafted the Companies (Amendment) Bill, 2016 ('Amendment Bill') and presented the same in Lok Sabha on March 16, 2016. The Bill has suggested 87 amendments to the Companies Act, 2013. Such suggestions are in addition to the already issued clarifications, circulars, notifications, amendment in Company Rules, removal of difficulty orders and the Companies Amendment Act, 2015. This article is a compilation and analysis of the proposed amendments in the provisions relating to the meetings (board meeting and general meeting) in the Act.

Meetings of Board of Directors:

Sub-Section (2) of Section 173 of the Act states that the participation of directors in board meeting may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Proviso to sub-section (2) of Section 173 of the Act and Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014 states certain matters cannot be dealt with in a meeting through video conferencing or other audio visual means, which includes: (i) Approval of annual financial statements, (ii) Approval of the Board's report, (iii) Approval of the prospectus, (iv) Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, and (v) Approval of matter relating to amalgamation, merger, demerger, acquisition and takeover.

Vide the Amendment Bill, 2016, the Govt. proposes to introduce a proviso, that creates an exception to the sub-section (2) of Section 173 of the Act and Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014, wherein the above said matters can be discussed through video conferencing or other audio visual means if there is quorum in the board meeting through physical presence of directors. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

AGM of an unlisted company at any place in India:

Section 96 of the Act relates 'Annual General Meeting' ('AGM') and sub-section (2) states that every AGM shall be called during business hours, i.e. between 9 a.m. and 6 p.m. on any day that is not National Holiday and shall be held either at company's registered office or at some other place within the city, town or village in which the company's registered office is situated.

The Amendment Bill proposes to introduce a proviso to sub-section (2) of Section 96, wherein the AGM 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. It is noteworthy that the proposed amendment is applicable to only AGMs (and not other general meetings) of private company and unlisted public company. It is also noteworthy that the consent of all members is required in advance. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

EGM of certain companies at any place in India:

Sub-section (1) of Section 100 of the Act states that the board of directors of the company may, whenever it deems fit, call an extraordinary general meeting ('EGM') of the company.

Vide the Amendment Bill, it is proposed to insert a proviso whereby the EGM of the company, other than of wholly owned subsidiary of company incorporated outside India, shall be held at a place within India. Therefore, it is proposed that EGM of any company can be held at any place in India and the EGM of wholly owned subsidiary of company incorporated outside India can be held any place outside India. However, it is noteworthy that the EGMs of only wholly owned subsidiary (i.e. 100% holding and not subsidiary company) of company incorporated outside India can be held any place outside India. It equally important to note that such 'wholly owned subsidiary' can be private company or public company under the Companies Act. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

Calling of General Meetings on shorter notice:

Pursuant to the provisions of Section 101(1) of the Act, the company's general meeting may be called by giving not less than clear 21 days' notice either in writing or through electronic mode in such manner as may be prescribed. The proviso to Section 101(1) states that the 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. Vide the Amendment Bill, it is proposed that the proviso is to be substituted.

The proposed amendment in the Amendment Bill, 2016 states that the general meeting may be called after giving shorter notice than (i.e. less than 21 days) if consent, in writing or by electronic mode, is accorded thereto, for following meetings:

- (i) In the case of AGM, by not less than 95% 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 95% 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 95% of the total voting power exercisable at that meeting.

The Amendment Bill also proposes another proviso, pursuant to which any member of a company is entitled to vote only on some resolution(s) to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of Sec. 101(1) in respect of the former resolution(s) and not in respect of the latter.

The amendment proposed in the Amendment Bill, 2016 is discussed in the Companies Law Committee Report.
Postal Ballot:

Section 110 of Act relates to 'Postal Ballot', whereby the company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot. Rule 22(16) of Companies (Management and Administration) Rules, 2014, prescribes following items of business that shall be transacted only by means of voting through a postal ballot:

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- a) Alteration of objects clause of memorandum,
- b) Alteration of Articles of association in relation to insertion or removal of provisions which, u/s 2(68), are required to be included in the Articles of a company in order to constitute it a private company;
- c) Change in place of registered office outside the local limits of any city, town or village as specified in Sec 5(12);
- d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised u/s 13(8);
- e) Issue of shares with differential rights as to voting or dividend or otherwise under Sec 43 (a) (ii);
- f) Variation in the rights attached to a class of shares or debentures or other securities as specified u/s 48;
- g) Buy-back of shares by a company u/s 68(1);
- h) Election of a director u/s 151;
- i) Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of Section 180(1);
- j) Giving loans or extending guarantee or providing security in excess of the limit specified u/s 186(3).

The Companies Amendment Bill, 2016 proposes to include a proviso to Section 110(1), whereby any item of business required to be transacted by means of postal ballot (as discussed above), may be transacted at a general meeting (AGM or EGM) by a company which is required to provide the electronic voting facility to members under Section 108 of the Companies Act, 2013. The amendment proposed in the Amendment Bill, 2016 is in line with the recommendations in the Companies Law Committee Report.

Conclusion: The above proposed amendments relate to the meetings of the Board of Directors and General meetings. The same will have corresponding impact on the Secretarial Standards. In the ensuing Parliament session, it is proposed that the Companies (Amendment) Bill, 2016 will be passed in both Houses. 87 amendments proposed by the Amendment Bill in the Companies Act, 2013, is to some extent, a great relief to corporates and compliance officers.