

M.COM. – FIRSTYEAR

(II SEMESTER)

Paper: Corporate Laws and Governance

UNIT -III: The Company Act, 2013

Topic: Meeting of the company (Annual General Meeting and its Legal provisions)

Lecture: 12

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Annual General Meeting of Company and Its Features

Annual General Meeting (AGM) is a meeting conducted by every Private Limited Company or Limited Company that provides an opportunity to the shareholders to meet every year and discuss matters relating to the Company. The AGM ensures the interest of the shareholders is protected.

1. Introduction

Annual General Meeting (AGM) is a meeting conducted by every Private Limited Company or Limited Company that provides an opportunity to the shareholders to meet every year and discuss matters relating to the Company. The AGM ensures the interest of the shareholders is protected. Additionally for listed entities SEBI vide recent notification provided that the top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year. The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings. Explanation: The top 100 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.(Notified on 9th May, 2018 effective from April 1, 2019). **One person company is exempt from holding an AGM.**

2. Purpose for Annual General Meeting

Annual General Meeting is a statutory requirement for Private Limited Company and Limited Company in India. Every Company whether, public or private, limited by shares or guarantee, with or without share capital or unlimited company is required to hold an AGM every year. Annual General Meeting is an annual meeting conducted by the shareholders and Directors of the Company. In the Annual General Meeting, the audited accounts of the Company are approved, appointment of auditors and Directors are finalized. Other items that can be decided in an AGM include compensation of officers, confirmation of proposed dividends and any other issue raised by shareholder.

3. First Annual General Meeting

The first annual general meeting of the company must be held within 18 months from the date of incorporation of Company. Even a Company that has no activity is required to conduct a annual general meeting. Subsequent AGM should be held on the earliest of the following dates:

1. 15 months from the date of last annual general meeting.
2. The last day of the calendar year (December 31st).
3. 6 months from close of the financial year (September 30th).

All company must hold an annual general meeting in every calendar year. However, if the first annual general meeting is held within 18 months from the date of its incorporation, it is not necessary to hold any annual general meeting in the year of incorporation or in the following year.

4. Subsequent AGM

1. There must be one meeting held in each year, i.e. financial year. In other words, one separate and distinct meets every year.
2. Where a meeting called and held on a day in one year is adjourned to a date in the next year, and held on that date, does not become meeting of that year.
3. The gap between two AGM's must not be more than fifteen months.
4. AGM must be held not later than 6 months from the close of the financial year (*i.e. from the date of Profit & Loss Account and Balance Sheet*). Whichever is Earlier

REQUISITES OF A VALID ANNUAL GENERAL MEETING

1. Notice for Annual General Meeting

The notice for annual general meeting must be sent to all the member, auditors and debenture **trustees at least 21 days clear days before the meeting** along with the annual report of the Company. It excludes:

- (i) The day of service of the notice;
- (ii) The day on which the meeting is to be held.

Notice is deemed to have been received by the members at the expiration of 48 hours after the letter containing it is posted. In nut shell, a notice must be sent 25 days before the meeting to the effective.

Annual general meeting may be held with a shorter notice if it is so agreed by at least 95% the members entitled to vote in the meeting. The consent for a shorter notice may be obtained either before or after the meeting.

The notice shall state the meeting to be an annual general meeting specifically.

2. Quorum for Annual General Meeting

Quorum means the minimum number of persons who being entitled to attend a meeting must be present at the meeting so that the business of the meeting can be transacted validly

In case of public company	
No of members as on the date of meeting	Quorum
Not more than 1000	Five members
More than 1000 but upto 5000	Fifteen members
More than 5000	Thirty members
In case of private company	
2 members should be personally present in the meeting	

Moreover quorum needs to be present only at the commencement of General Meeting. The proxies cannot be counted for the purpose of quorum.

3. Consequences if the Quorum being not present

If within half an hour from the time appointed for holding a meeting, the quorum is not present, the meeting,

1. Shall stand adjourned to the same day in the next week at the same time and place, or such other day, time and place as the Board of Directors may determine.

2. If at the adjourned meeting also, a quorum is not present within half an hour from the appointed time, then the members present shall be the quorum.

4. Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

According to section 96(1) of the **Companies Act, 2013** **gap of not more than 15 months shall elapse between the date of one annual general meeting of the company and that of the next year.** According to third proviso to section 96(1), 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 of not exceeding three months. The company may apply to the Registrar for extension for holding AGM, justifying it as a special reason. **The registrar may, after considering it as a special reason, extend the time within which an AGM shall be held which shall be a period not exceeding three months.** Accordingly, the gap between the two AGMs shall not elapse a period of 15 months unless the Registrar for special reason has extended the time for holding the AGM. Such extension cannot be more than 3 months.

5. Date, Time and place for holding an annual general meeting

1. An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.
2. It should 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.
3. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.
4. 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.
5. In case of Government Company, the Central Government may approve such other place for holding AGM, if the place is other than registered office.
6. In case of Section 8 Company, the time, date and place of each AGM are decided upon before-hand by the Board having regard to the directions, if any, given in this regard by such company in the general meeting.

“National Holiday” for this purpose means and includes a day declared as National Holiday by the Central Government. According to SS–2, National

Holiday means 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.

6. Business to be transacted at annual general meeting:[Section 102]

Section 102(2)(a) provides that all other businesses transacted at an **Annual General Meeting** except the following are special business:

1. the consideration of financial statements and the reports of the Board of Directors and auditors;
2. the declaration of any dividend;
3. the appointment of directors in place of those retiring;
4. the appointment of, and the fixing of the remuneration of, the auditors.

Accordingly, above mentioned four businesses are ordinary business rest shall be deemed to be special business. Explanatory statement is not required for transacting any item of ordinary business. All business except specified above shall be deemed as special business at an AGM. In case of meeting other than AGM, all business shall be deemed to be special. Explanatory statement must be annexed to the notice for transacting every items of special business. In case of non-disclosure or insufficient disclosure in Explanatory statement, any benefit accrues to a promoter, director, manager or other key managerial personnel or their relatives, such person shall hold such benefit in trust for the company, and shall compensate the company to the extent of benefit derived by him.

7. Penalty for default in holding the annual general meeting [Section 99]

Section 99 provides that if any default is made in complying or holding a meeting of the company

1. 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 case of continuing default, with a further fine which may extend to **five thousand rupees** for each day during which such default continues.
2. If any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

3. Every listed entities, under Regulation 30 of **SEBI (LODR) Regulation, 2015**, 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.**

8. Convening of a valid general meeting

The business at a meeting is said to have been “validly transacted” if the members of the organisation or body concerned, whether or not they were present, are bound by the decision made there at. They cannot be so bound unless the meeting is validly held. The essentials of a valid meeting are that the meeting should be:

2. Properly convened:

- a. The meeting must be called by proper authority; and
- b. Proper notice must be served in the manner specified under Section 101 and 102 of the Act.

3. Properly constituted:

- a. Proper quorum must be present in the general meeting (Section 103 of the Act)
- b. Proper chairman must preside the meeting (Section 104 of the Act)

4. Properly conducted:

5. The business must be validly transacted at the meeting i.e. resolutions must be properly moved and passed, and voting by show of hands and on poll.
6. Proper minutes of the meeting must be prepared. (Section 118 of the Act)