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Laws on Annual General Meeting: A Comparative Study of India and Singapore

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ABSTRACT

Transparency between shareholders and management is something very crucial since it helps the company in gaining the trust and confidence of the shareholders. An Annual General Meeting conducted once a year helps in ensuring transparency since most of the important aspects are discussed in the meeting. From announcing the dividends to the financial performance of the company, everything is discussed in the meeting. This allows the shareholders to seek justification for unsatisfactory performance and holds the management accountable to the shareholders and investors.

While the objectives of holding an Annual General Meeting remain the same in every country, the laws majorly differ in every country. Every country has its own set of laws that govern the legal requirements related to Annual General Meetings.

This research article aims to illustrate the difference in laws pertaining to Annual General Meetings in India and Singapore. In India, The legal provisions concerning Annual General Meetings are governed by the Companies Act, 2013, and are enshrined in Sections 96 to 99 of the Act. On the other hand, the same is governed by the Companies Act, 1967 in Singapore and is specified under Section 175 of the said Act.

Keywords: *Shareholders, Annual General Meeting, Company, Voting right, proxy.*

I. INTRODUCTION

The annual general meeting is conducted between the management of the company and its shareholders on an annual basis. Usually, the board of directors and shareholders meet each other and the company's annual report containing the records of performance, strategies, and financial reports are presented to the shareholders. The company's performance is analyzed and discussed in the meeting. An Annual General Meeting provides the shareholders with an opportunity to seek answers for unsatisfactory performance. An annual general meeting is important as it promotes transparency between the company and its shareholders. Additionally, Shareholders with voting rights vote on the company's current issues and decisions.

There are several reasons which necessitate the holding of an annual general meeting. The major reasons why companies hold Annual general meetings are to elect the board of directors, to

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review financial statements of the company, and to discuss the company's performance. It may also hold an Annual General Meeting to make announcements such as an announcement of dividends or changes in the management team. It is also held to seek shareholders' decisions on important issues by way of voting.

II. STATUTORY PROVISIONS

In India, the provision of annual general meetings is governed by the Companies Act, 2013.² On the other hand, the same is governed by the Companies Act, 1967.³ Now, we will be discussing the differences between the two laws concerning Annual General Meetings.

The concept of Annual General Meetings has been introduced through Sec 96 of the Companies Act which provides that each company except One Person Company (OPC) shall hold its Annual General Meeting every year. The Act makes it obligatory for the company to hold an annual general meeting within six months from the end of the previous financial year. However, if it is the first Annual general meeting of the company, it must be held within nine months from the end of the previous financial year.

In Singapore, the concept of Annual General meetings has been enshrined in Section 175 of Singapore's Companies Act 1967. It states that the companies must hold an Annual general meeting within four months from the end of each financial year in the case of a listed public company and within six months in the case of other companies.

III. POWER OF THE REGISTRAR

In both countries, the registrar may extend this period if there are, in the opinion of the registrar, any special reasons to do so. However, in India, this time can not be extended for a period exceeding 3 months.

(A) Punishment for default in holding AGM

It is absolutely binding for companies in both countries to hold an annual general meeting as per the requirements of their respective legal statutes. However, If any company fails to hold an annual general meeting as per the requirements provided in their respective Acts, each country penalizes such a default by the company.

In India, if any company makes a default in holding an annual general meeting in accordance with the provisions of the Companies Act, 2013, a fine exceeding up to 1 lakh is imposed on the company and every officer who is in default. Further, a fine not exceeding rupees 5000 for

² Companies Act, 2013 (India).

³ Companies Act, 1967 (Singapore).

each day is imposed on the company if the default is not rectified by the company.

Singapore's Companies Act, on the other hand, imposes a fine not exceeding \$5,000 and a default penalty on the company if a default is made in holding an Annual General Meeting.

IV. CALLING OF MEETINGS

In India, a notice of at least twenty-one days is given for calling a general meeting. However, a shorter notice can be given if at least 95% of the members entitled to vote at such a meeting consent to the same in writing or through electronic mode. Aforementioned notice of a meeting is given to all the members of the company, the legal representative of any deceased member, auditors of the company, the assignee of an insolvent member, and all the directors of the company.

On the contrary, In Singapore, a notice of at least 14 days is given for calling a meeting. An annual general meeting can however be called on shorter notice if all the members who are entitled to attend and vote at the meeting consent to the same. Additionally, a notice is served to every member who has the right to attend the meeting.

(A) Quorum at Meetings⁴

The term Quorum refers to the minimum acceptable number of people necessary under the law to hold meetings. Quorum is the most important condition to constitute a valid meeting.

Companies Act 2013 provides that in case of a public company, five members must be present in the meeting unless the articles of the company provide for a larger number. If the number of members in the company is up to one thousand, fifteen members if the members are up to five thousand and thirty if the number of members is more than five thousand. However, two members should be the quorum of the meeting in the case of a private company.

Singapore's Companies Act on the other hand provides that two members must be personally present to form the quorum.

In both countries, the members of the meeting elect any one of the present members as the chairman of the meeting.

(B) Proxies

The shareholders have the right to cast their votes by proxy, that is, they can appoint another

⁴ Rupal Jain, Annual General Meeting (AGM) Under Company Act, 2013 (Sep, 26, 2021), <https://taxguru.in/company-law/annual-general-meeting-agm-company-act-2013.html>.

person to attend and vote in the meeting on their behalf.

In India, any member who is entitled to attend and vote at the meeting can appoint any other person as proxy to attend and vote at the meeting on their behalf. However, the person acting as proxy does not have the right to speak at the meeting nor does he will be counted as a quorum.

As per the Companies Act 2013, a person can act as a proxy for only 50 members at a meeting. Additionally, An invitation shall not be issued at the company's expense to any member who is entitled to have a notice of meeting, to appoint any person or persons specified in the invitation as proxies. In case of default in complying with this provision, a fine exceeding up to one lakh rupees will be imposed on every officer of the company who knowingly issues, authorizes, or permits the invitations. The officer shall not be liable if the invitation is made at the request of the members seeking the list of persons willing to act as proxies. The person appointed as a proxy need not be a member of the company but such proxy shall be a member of the company if the company is a charitable company under Section 8 of the Act. ⁵

In Singapore, any member of the company who has the right to attend and vote at the meeting can appoint any person, whether a member or not, as a proxy to attend and vote at the meeting on their behalf. In contrast to India, the proxy has the right to speak at the meeting in Singapore. Very similar to India, If any person in Singapore authorizes or permits an invitation at the company's expense to the member of the company who is entitled to receive the notice of the meeting to appoint a person or persons specified in the invitation as a proxy, such person shall be guilty of an offense and liable to pay a fine not exceeding \$2,000. However, this liability does not apply in a case where the invitations are issued at the request of the members.

(C) Power of Judicial Institutions to call for Meeting

The judiciary has a significant role to play in ensuring better public governance regardless of the country in question. Judiciary has the power to call for Annual general meetings in both countries.

In India, it is the tribunal that has the power to call for meetings including the Annual general meeting. As per Section 97 of the Companies Act, 2013, if the company fails to organize an annual general meeting as per the provision of the Act, the Tribunal may call for an annual general meeting on the application of any member of the company. The tribunal may give ancillary or consequential directions as it may deem fit.

⁵ Rakesh Biswal, proxy provisions under Companies Act, 2013 (Jan, 23,2022) <https://taxguru.in/company-law/proxies-provisions-companies-act-2013.html>.

Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a valid meeting.

While the tribunal has the power to call for meetings in India, this power is vested with the court in the case of Singapore. Section 182 of the Companies Act, 1967 states that If it is not possible for any reason to call a meeting or to conduct the meeting in the manner prescribed by the constitution or said Act, the Court has the power, either on its own or on the application of any director or of any member who is entitled to vote at the meeting, to order a meeting to be called, held and conducted in the manner as the Court thinks fit. Like India, the court may give ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a valid meeting.

(D) Members' Rights in an Annual General Meeting

The members, including shareholders, of the company enjoy plenty of rights in both countries. These rights include the rights of the members in an annual general meeting. The members of the company have a right to attend any general meeting of the company and to speak on any resolution before the meeting. Members also have the right to cast their vote in a company's decision. Members can also appoint any person as a proxy, regardless of whether the person is a member or not, to attend an annual general meeting and vote on their behalf.

However, India's Companies Act, 2013 put certain restrictions on the rights of members to vote. The voting right of members may be forfeited if there's an amount unpaid by them in respect of the shares registered under their name or if the company exercises the right of lien. Right of lien in simple terms refers to the legal right of a person to possess another person's property till the time the debts are repaid. Members can also appoint any person as a proxy, regardless of whether the person is a member or not, to attend an annual general meeting and vote on their behalf.

Similarly, in Singapore, all of the members have the right to vote. However, the company may, by sending a notification to the member, deny him the right to vote in case of non-payment of shares registered in his name. Additionally, The members in both countries can elect one member among themselves as the chairman of the meeting.

V. RELAXATION TO PRIVATE COMPANIES IN SINGAPORE⁶

Unlike India, A private company may not be obligated to hold an annual general meeting in

⁶ Exemptions from Holding an AGM (March, 7, 2023, 23:01 PM), <https://www.acra.gov.sg/how-to-guides/annual-general-meetings/exemptions-from-holding-an-agm>.

Singapore if all the members agree on the dispensation of the meeting by passing a resolution. However, they still need to send their financial statements to the members within five months from the end of the previous financial year. This relaxation came into effect on 31st August 2018.

However, if a member makes a request to hold an annual general meeting and notifies the company about the same within fourteen days before the end of the sixth month after the end of the previous financial year, the company has to comply with the request and hold an annual general meeting within six months after the end of the financial year. However, this deadline can be extended with the approval of the registrar.

Once the financial statements are out, any member or auditor may request an annual general meeting within 14 days and the Private companies are entitled to hold a general meeting within 14 days of such request to lay the financial statements.

Private dormant relevant companies are exempted from preparing financial statements and need not hold Annual general meetings, subject to the above exceptions.

VI. CONCLUSION

As discussed above, There exists a lot of differences as well as similarities in laws pertaining to annual general meetings in both countries. While the Companies Act 2013 makes it mandatory for the companies to hold an Annual General Meeting every year, The private companies in Singapore may be exempted from holding one if all the members reach a consensus on such dispensation. However, Such a meeting may be conducted even if one member requests for the same. By this, we can conclude that both countries have tried their best to make a mandatory provision for the Annual General Meeting to protect the interests of the shareholders and investors. Even if Singapore exempts private companies from holding an Annual General Meeting, it focuses on protecting the interests of the shareholders.
