

PROPOSED IMPROVEMENTS FOR A STATUTORY MEETING OF A COMPANY

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Abstract

This article relates to statutory meeting of a company. I will try to bring out some weaknesses. Where necessary suggestions have been given for the better functioning of the system. I believe this article will be beneficial for students and law framers of Company Law.

Introduction

The first meeting of the shareholders of a public company is known as a statutory meeting. This meeting can be held within 6 months from the date the company is entitled to commence business. Similarly, the first annual meeting, known as the annual general meeting, is required to be held within 18 months from the date of its incorporation.

There is only one statutory meeting in the lifetime of a public company. Section 157(1) of the Companies Ordinance, 1984¹ requires that every company limited by share and every company limited by guarantee and having a share capital shall within a period of not less than three months, nor more than six months, from the date at which the company is entitled to commence business hold a general meeting of the members of the company, which shall be called the statutory meeting².

A private company, an unlimited company or a company limited by guarantee and having no share capital are not

required to hold statutory meeting³.

The Purpose of a Statutory Meeting

In Palmer's Company Law the importance of a statutory meeting is explained in the following words.

"The obvious purpose of a statutory meeting with its preliminary report is to be put the shareholders of the company in possession of all the important facts relating to the new company, what shares have been taken, what money received, what contract entered into, what sums spent on preliminary expenses, etc. Furnished with these particulars the shareholders are to have an opportunity, of meeting and discussing the whole situation, the management, methods and prospectus of the company⁴

Members are given the liberty to discuss any matter relating to the formation of the company or arising of the statutory report⁵

Time of Statutory Meeting

Companies Ordinance 1984, requires that this meeting must be held within a period of not less than three months, nor more than six months, from the date, at which the company is entitled to commence business.

According to this law the period of holding statutory meeting starts from the date at which the company is entitled to commence business. Actually to commence business and entitled to commence business are different things. To be entitled to commence business, a company needs a certificate for the commencement of business, which can be obtained by filing with the Registrar of Companies certain documents and complying with certain other conditions, which are mere formalities⁶

It is difficult in Pakistan for companies to start business at early stage due to lack of necessary capital for its business and qualified staff, etc, as compared to advanced countries.

It is argued that in order to achieve the main purpose of this meeting the time for holding the meeting should start when the company actually starts business and not when the company is entitled to commence business. In this way the company will be in a better position to provide information to its members⁷

Statutory Report

Under Section 157 (2), the directors shall, at least twenty-one days before the date on which the meeting is held, forward a report, in this Ordinance referred as "the statutory report", to every member⁸

Certification of the Report

According to Section 157, sub-section 3, the statutory report shall be certified by not less than three directors, one of whom shall be the chief executive of the company.

The Ordinance requires the report to be certified by the directors and chief executive of the Company. It seems that the directors will just certify the report and are not responsible to see that the report is correct⁹

But according to Section 157, sub-section 5, the statutory report shall, so far as it relates to the shares allotted by the company, the cash received in respect of such shares and to the receipts and payments of the company, be accompanied by a certificate of the auditors of the company as to the correctness of such allotment, receipt of cash, receipts and payments.

According to this section the auditor will provide the certificate as to the correctness of allotment of shares, receipt of cash, receipts and payments. This section does not put the responsibility on directors as to the correctness of report.

This lucuna has been filled up by Indian Companies (Amended) Act 1959. This act provides that report should be certified as correct both by the auditor and the directors.

It is, therefore, suggested that the amendments be made in law to make the directors responsible to certify the report as correct¹⁰

Contents of Statutory Report

According to Section 157 (3) (d) the report shall contain the names, addresses and occupations of the directors, chief executive, secretary, auditors and legal advisers of the company and the changes. If any, which have occurred since the date of the incorporation.

The above-mentioned section has excluded the particulars of treasurer and other officials of a company. The treasurer plays a very important role in corporate matters. The Indian Companies Act 1956 has provided that the particulars of treasurer be included in statutory report.

It would be better to follow the Indian example and the particulars of treasurer and other officials should also be mentioned in statutory report.

This section also requires that the statutory report must state names, addresses and occupations of the directors etc. The repealed Companies Act of 1913 lays down that the statutory report must state the names, addresses and other descriptions of directors etc. But, in Company Ordinance, 1984 the word "description" has been replaced with the word "occupation". It is difficult to justify this

change because the word description bears a much broader connotation than occupation.

Miller J. said "every acknowledged dictionary in the English language would sanction as an accurate definition of description a representation that gives a view of things intended to be represented." It was said that the description of a person is that which tells what he is. Obviously, it needs more than a mere mention of a person occupation to tell what he is. By virtue of its broader connotation, the description of a person, in this context, includes not only his occupation but also other material information affecting his business potential and general personality. If the description of company's official is required to be given, the members would come to know, apart from the present occupation of the official described, his religion, nationality and other achievements he has had to his credit (or discredit) in the past. The object of such a provision is to bring the members as close as possible to the management, because the more a member knows about the people incharge of the company affairs the better he is able to estimate the value of his investment.

It is, therefore, recommended that the word "occupation" used in Section 157 (3) (d) be replaced with the word "description"¹¹

Resolution in Meeting

Under Section 157 (8), the members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

According to this section members can discuss any matter relating to formation of a company but cannot move

resolution unless the previous notice has been given according to Articles. The requirement of notice creates problem for a member who wants to move resolution. It will be difficult for concerned member to issue notices to the other members within the time described by the Articles. Even if he decides to do so he will have to incur the cost of circulating notices. He will have to find out the names and address of members. Keeping in view our communication system, it is very difficult for him to communicate his resolution to all the members within the required time. In order to overcome this problem, the company should help such member in this case. He should be allowed to use the company's machinery. The Indian Companies Act, 1956 for example has made provisions for the circulation of member's resolutions at the company's expense. Actually they have followed Section 140 of the English companies Act 1948. This privilege has been restricted to the annual general meeting.

It would be better to incorporate in the Pakistani Companies Ordinance 1984 provisions similar to section 140 of the English Companies Act, 1948. Moreover, the provisions should be extended to all the meetings of the company¹²

Default of Holding a Statutory Meeting

Under Section 157 (11), in the event of any default in complying with the provisions of any of the preceding subsection, the company and every officer of the company who knowingly and wilfully authorises or permits such default shall be liable:

- a. If the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of a continuing default to a further fine not exceeding

two thousand rupees for every day after the first during which the default continues; and

- b. If the default relates to any other company, to a fine not exceeding five thousand rupees and in the case of a continuing default to a further fine not exceeding two hundreds rupees for every day after the first during which the default continues.

According to above-mentioned section in case of default the fine for listed company is different from than that of non-listed company. In my opinion there is not justification of such difference. Keeping in view the importance of meeting, it is suggested that the fine for not holding the statutory meeting should be equal for both, the listed and non-listed companies¹³

Conclusion

All the above-mentioned problems can be solved in the following ways.

1. The Purpose of statutory meeting should be to discuss the whole situation including the management, methods and prospectus of the Company.
2. It is pertinent to note that sometimes-financial constraints may come in the way of starting the business of the company. If so, then the time of holding the statutory meeting should be the time, when the business has been started and not from the date, at which the company is entitled to commence the business.
3. I will suggest that instead of the auditor certifying the statutory report, it should be done by him alongwith the directors of the Company.
4. Additionally, however, the particulars of the treasurer and other officials should also be mentioned in the statutory report.

5. Moreover, it would be better to incorporate in the Pakistani Companies Ordinance, 1984 provisions similar to Section 140 of the English Companies Act, 1948 which pertains to issuance of the notice to member for moving the resolution, if need be. Expenses for such notices to any member should be borne by the company and not by the member who will issue such notices.

References

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