

ADJOURNEMENT OF ANNUAL GENERAL MEETING

Yes there is no doubt that an Annual General Meeting held in accordance with section 166 can be adjourned. But as per **DCA Clarification** the adjourned annual general meeting must itself be held within the statutory period (including the period of extension thereof, if any allowed) as provided in section 166(1).

Extract of DCA Clarification

In case the accounts are not placed thereat, the same not being ready, it is no doubt open to the company concerned to adjourn the said annual general meeting to a subsequent date for laying the accounts but then, the adjourned annual general meeting must itself be held within the statutory period (including the period of extension thereof, if any allowed) as provided in section 166(1). That being so, procedure of adjourning the annual general meeting cannot be so adopted as to avoid the provisions of section 210 of the Act.

Thus, in case the accounts are not placed at the annual general meeting or the adjourned annual general meeting, in either case, within the statutory period laid down in sub-section (3) of section 210 of the Act, the defaulting directors are liable for prosecution under sub-section (5) thereof.

You are requested not to take literal interpretation of this clarification as this is not limited to non-preparation of Annual Accounts.

DELAY IN AUDIT OF ACCOUNTS AS A VALID GROUND FOR EXTENSION OF AGM??

Delay in audit of accounts **may be considered** as a valid ground for extension of AGM. So file an application to ROC regarding extension for holding AGM under proviso to section 166(1).

The Registrar shall grant an extension of time for holding the annual general meeting of a company under the second proviso to sub-section (1) of section 166 only when the application for such extension is made to him before the expiry of the period laid down in sub-section (1) of that section.

Where it is not possible for a company to hold the Annual General Meeting within six months from the conclusion of the financial year, **make an application in E-Form 61 with the Registrar** before the due date for holding the said meeting. The application should be made by a letter giving full justification for seeking extension of time.

However let me tell you that ROC is quite strict regarding extension of AGM on the ground of delay in audit due to the DCA clarification below:

Delay in completion of audit not a special reason for extension of time for holding Annual General Meeting

The liberal policy of granting extension of time to companies to enable them to call their AGMs on the ground that the audit of their account has not been completed or that their accounts have not yet been compiled or cast for submission to the auditors or for other similar reasons indicating slackness, negligence or deliberate default on the part of the managements or the auditors of companies, **can no longer be justified.** The law contemplates that the permissible interval between two consecutive AGMs should not be lightly extended. The Government has accordingly decided that delay in the completion of the audit of the annual accounts of a company **should not ordinarily constitute a "special reason" justifying the grant of extension** of time for holding its AGM. Companies are, therefore requested to take all suitable steps to ensure that their annual accounts are audited in good time so that their AGMs may be called within the statutory time-limit.

Source: Press Note, dated 29-1-1959.

DIFFERENCE BETWEEN NON-FINALISATION OF ACCOUNTS AND DELAY IN AUDIT OF ACCOUNTS

For the purpose of compliance of section 166 read with section 210, there is a difference between non-finalisation of accounts and delay in Audit of accounts. Kindly observe DCA clarification mentioned above regarding sufficient cause for AGM extension.

Please find below sample Board resolution for seeking extension of time for holding AGM:

SAMPLE BOARD RESOLUTION FOR SEEKING EXTENSION OF TIME FOR HOLDING AGM

“RESOLVED THAT an application under Section 166 of the Companies Act, 1956 be submitted to the Registrar of Companies for extension of time for holding the annual general meeting upto the period of 3 months i.e. December 18, 2010

RESOLVED FURTHER THAT Mr. Mukesh Mittal, Director of the Company be and is hereby authorised to comply with all other formalities in this regard and to submit e-Form 61 with the Registrar of Companies.”

Trust this write up would be of some help in your professional working.

Thanks