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## Provisions related to Notice to Shareholders u/s 101 read with 136 of CA 2013

Dear Professional Colleague,

In this write up we shall discuss about the requirement of sending certain statutory documents to shareholders like Notice of General Meeting under section 101 of Companies Act 2013 and financial statements, including consolidated financial statements, auditor's report etc. under section 136 of Companies Act 2013. In comparison to erstwhile Companies Act 1956 the new Companies Act 2013 contained comprehensive provisions to protect the interest of shareholders. Before going through the relevant provisions of Companies Act 2013 it is better to go through the legislature enactment. So please find below the text of Section 101 and 136 as per Companies Act 2013:

### Notice of meeting [Section 101]

*(1) A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed:*

***Provided*** that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent of the members entitled to vote at such meeting.

*(2) Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.*

*(3) The notice of every meeting of the company shall be given to—*

- (a) every member of the company, legal representative of any deceased member or the assignee of an insolvent member;*
- (b) the auditor or auditors of the company; and*
- (c) every director of the company.*

*(4) Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.*

### Right of member to copies of audited financial statement [Section 136]

*(1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are*

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*to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:*

***Provided*** that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

***Provided further*** that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:

***Provided also*** that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:

***Provided also*** that every company having a subsidiary or subsidiaries shall,—

(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;  
(b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

(2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.

(3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

### **Analysis of the Provisions related to Notice to Shareholders**

Section 101 of the Companies Act, 2013 specifically provides that a company shall give a clear notice of not less than 21 days for calling a general meeting, whether annual general meeting or any other general meeting. This time section specifically mentioned the word **clear 21 days** which were not there in Companies Act 1956.

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### **Service of Notice Provisions**

Provisions related to Service of Notice are given in section 20 of the Companies Act 2013 read with rule 35 of Companies (Incorporation) Rules, 2014. As per section 20(1), a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. Both section 101 and 20 suggests that notice of meeting may be sent through electronic mode.

As per rule 35(6), in case of **delivery by post**, such service shall be deemed to have been effected:

- (i) in the case of a notice of a meeting, at the expiration of forty eight (48) hours after the letter containing the same is posted; and
- (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

### **Manner of counting 21 days for notice of a General Meeting**

For notice of meeting sent by post, period of 21 days is to be counted from expiry of 48 hours after posting. As provided in section 101, an advance notice of not less than 21 days shall be given for calling a general meeting of members. The requirement of 21 days means 21 clear days, exclusive of the day when notice is served and the day when the meeting is held. Thus, there should be at least 23 clear days for the dispatch of a notice for a general meeting.

**For example** if the date of AGM is September 30, 2014, than note of AGM should have been dispatched latest by September 06, 2013 thereby maintaining 23 days gap. (21 clear days as per section 101 + 2 days (48 hours) as per rule 35 read with section 20). In this example day of dispatch i.e. September 06, 2014 and day of AGM i.e. September 30, 2014 shall not be counted.

### **Calling of a general meeting at shorter notice**

Proviso to section 101(1) a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five (95) per cent of the members entitled to vote at such meeting. In erstwhile Companies Act, 1956 for calling AGM on shorter notice consent of 100% members was required.

No form has been prescribed for taking consent of members for holding General Meeting at shorter Notice. The consent shall be obtained from the members entitled to attend the meeting either before or at the time of the meeting. You may find the format for obtaining shorter notice consent at the end of this write up.

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### **Post meeting consent by shareholders**

It was held in *Self Help (P) Industrial Estate (P) Ltd., In re* (1972) that shareholders may validate a general meeting by post consent a resolution passed at a meeting called on a shorter notice.

Even though consent of shareholders to shorter notice for meeting at which a special resolution is passed, is not obtained prior to meeting, the consent obtained thereafter would validate the resolution. [*Parikh Engg. & Body Building Co. Ltd., In re* (1975)]

### **Connectivity of Section 101 with Section 136**

Section 136 of the Companies Act 2013, talked about right of member to copies of audited financial statements. As per section 136(1), **without prejudice to the provisions of section 101**, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, shall be sent to every member of the company along with other specified persons, not less than twenty-one (21) days before the date of the meeting.

Both section 101 and 136 prescribed the limit of 21 days. Accordingly most of the Companies send notice of AGM along with Financial Statements together to comply with the time line of 21 days.

### **Compliance with section 136 in case of Meeting at shorter notice**

In case Accounts are not ready on time, Company can propose to call AGM on shorter notice. In this scenario one can easily comply with the provisions related to calling of AGM on shorter notice. But now how to comply with the time line of 21 days given in section 136?

There might be a question that if a meeting called on shorter notice, that would result into the violation of section 136 regarding sending of financial statements, including consolidated financial statements, if any, auditor's report etc. to members of the company, not less than twenty-one days before the date of the meeting. In case of shorter notice, company would not be able to send financial statements 21 days before the meeting as desired by section 136. But this is not the case and there will not be any violation of section 136.

As per my understanding both the sections are in consonance with each other, once you take consent of the members its shall be deemed consent for shorter notice of sending of financial statements as well. Moreover, section 136 starts with "Without prejudice to the provisions of section 101....." which further strengthens above views.

The term "without prejudice "has to be distinguished from "a non obstante" clause in law. A provision enacted in the law ""without prejudice" to another provision has not the effect of affecting the operation of the other provision and any action taken under it must not be inconsistent with such other provision. Hence section 136(1) doesn't override section 101.

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Otherwise the provisions relating to holding of meeting at short notice would have been rendered infructuous and 136 would be in conflict with 101. Hence when a meeting is called at shorter notice, 136(1) cannot be applied. A non obstante clause runs like this "Notwithstanding anything contained".

### **Format for obtaining shorter notice consent**

**The Companies Act, 2013  
Consent by shareholder for shorter notice  
{Pursuant to section 101(1)}**

To,

The Board of Directors  
ABC Private Limited  
Registered Office Address

Dear Sir,

I, Lokesh Gupta, S/o Mr. Amarnath Gupta, R/o \_\_\_\_\_, holding 1,970 Equity shares of Rs. 10/- of the company, as shareholder, hereby give consent, pursuant to section 101(1) of the Companies Act, 2013, to hold the Annual General Meeting on Wednesday, September 30, 2014 at 11.00 a.m. at shorter notice.

**(LOKESH GUPTA)**

**Date:** September 29, 2014

**Place:**

#### **Disclaimer:**

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavours under Companies Act, 2013. Kindly share your opinion.

Thanks

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**Sept. 17, 2014**