

Practice Note 2/2008 - Change of Financial Year
Frequently Asked Questions

Question 1:

Following an approved application under section 143(2) of the Companies Act 1965 (CA 1965), can a company hold its Annual General Meeting (AGM) for the preceding calendar year and the current calendar year on the same date?

Answer:

A company is allowed to convene the AGM for the current calendar year on the same date the AGM for the preceding calendar year is held. However, the rules pertaining to the proper constitution of the AGM must be observed including the giving of proper notices to shareholders for each AGM to be held. Chronologically, the AGM for the preceding calendar year must first be convened before convening the AGM for the current year.

A separate notice must be given for the AGM of calendar year 2007 and another for AGM of calendar year 2008 by specifying the place, date and time of meeting. As far as public listed companies are concerned, they still need to strictly observe the requirements under paragraph 7.17 of the Listing Requirements of the Bursa Malaysia Securities Berhad pertaining to notices of meetings, including the requirement to advertise the notice of meetings etc.

Question 2:

Pursuant to the operation of section 143(2) of the CA 1965 (due to a change in the financial year), an AGM held beyond the calendar year will be deemed to be held in the calendar year it was supposed to be held. What is the AGM date to be stated in the annual return?

Answer:

The date to be stated in the annual return shall be the date when the AGM was actually held.

Question 3:

In what circumstance will an annual return of a company need not be accompanied with an audited account?

Answer:

An annual return lodged must be accompanied with a copy of the audited accounts. However, if by operations of the provisions under sections 143(2) and 169(2) of the CA 1965, have resulted in a situation where there is no accounts to be laid before the AGM, the annual return shall be accompanied with a copy of the approval of the extension of time. An annual return which is not accompanied with a copy of audited accounts or approval of extension of time will not be accepted.

Question 4:

As Practice Note 2/2008 (PN2/2008) allows an annual return to be submitted without a copy of the audited account, will this pose an inconsistency with PN1/2008 that requires all annual returns to be accompanied with a copy of the audited account?

Answer:

There is no inconsistency between PN1/2008 and PN2/2008.

PN1/2008 reiterates the general rule that the submission of an annual return accompanied with a copy of the audited account following the laying of the audited accounts before an AGM in compliance with section 169 of the CA 1965.

PN2/2008 is an exception to the general rule where the submission of an annual return will be accepted without a copy of the audited account **ONLY** by virtue of the operations of sections 143(2) and 169(2) of the CA 1965 following a change in the financial year. Instead, the annual return must be substantiated with a copy of the approval for an extension of time.

Question 5:

How does a company determine the period in which the next AGM is to be held following an extension of time under section 143(2) of the CA 1965?

Answer:

Section 143(1) of the CA 1965 states that a company is required to convene an AGM once in a calendar year and not more than 15 months after the holding of the last AGM.

If an extension of time has resulted in an AGM being held beyond the calendar year, the period of 15 months runs from that date. Notwithstanding, the company must observe the requirement to convene an AGM for that current calendar year.

Question 6:

Will a compound be issued when no audited account is tabled at an AGM following an approved extension of time under section 143(2) of the CA 1965?

Answer:

Where no account is laid before the AGM pursuant to the operations of sections 143(2) and 169(2) of the CA 1965, no compound will be issued. This is because the audited account due for tabling for the extended period will be adopted at the AGM held pursuant to the extension granted.