



**HOLDING OF URGENT EGMs IN THE ERA
OF SOCIAL DISTANCING**

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The Ministry of Corporate Affairs (MCA) has issued a General Circular No. 14/2020 (Circular) on April 8, 2020, providing clarification on how to pass an ordinary and special resolution of urgent nature, taking into consideration the present scenario of coronavirus disease (COVID- 19). The Circular has been issued to enable the companies to hold the meetings of their members so that urgent matters are taken up and business does not get disrupted because of social distancing norms.

Although the Companies Act 2013 ('Act') does not have any specific provisions regarding holding of meetings of the members through Video Conferencing (VC) and/or other audio- visual means (OAVM), however there are some provisions in the Act which provide for e-voting (Section 108). Rule 20 of the Companies (Management & Administration) Rules 2014 ('Rules') specifically states that all listed companies and every company having 1000 or more members shall mandatorily provide their members with facility to exercise their right to vote by electronic means.

It is hereby clarified that the Circular is applicable only for holding an extra ordinary general meeting (EGM) to be held on or before June 30, 2020. The MCA has stressed in the Circular that only those EGMs be conducted during this period by adopting the procedure prescribed in the Circular which are unavoidable.

The Circular is not applicable for conducting annual general meeting (AGM). This could be for the reason that a company is required to hold its AGM within 6 months from the close of its financial year which in most of the cases is 31st March.

The Circular divides the companies into two parts. Firstly, those companies which are required to provide for facility of e-voting or any other company which opts for such facility voluntarily. The second part covers the rest other companies.

Part I: Procedure for companies required to provide for e-voting or those companies which have opted for e-voting:

- a. EGM's may be done through VC or OAVM and recorded transcript of the same will be kept in safe custody by the company. Public companies shall publish the recorded transcript on their website as soon as possible.
- b. Persons in different time zones will be taken into consideration before scheduling a meeting.
- c. Two- way teleconferencing must be enabled for ease of participation. Arrangements shall be made to allow the participants to pose questions either concurrently or in advance via email.

- d. The VC or OAVM facility must have a capacity to allow at least 1000 members to participate in the meeting on first come first serve basis, provided that the first come first serve basis will not apply to large shareholders (shareholders holding 2% of more), promoters, institutional investors, directors, key managerial personnel, chairpersons of various committees of the company, auditors, etc. It shall be mandatory for the companies to ensure attendance of their auditor or his authorised representative in the meeting. For companies requiring to appoint independent directors, at least one independent director shall be required to attend the meeting. Institutional investors of the company would be encouraged to attend the meeting. The attendance of members present through VC or OAVM shall be counted to compute the quorum.
- e. The facility shall allow an attendee to log on to the VC or OAVM at least 15 minutes before the scheduled time. Subject to capacity constraints as stated above, arrangements shall be made that a person may be able to join the meeting at least upto 15 minutes after the scheduled time.
- f. Where there are less than 50 members present in the meeting, chairman shall be appointed as per section 104 of the Act, in other cases chairman will be appointed by poll conducted via e-voting during the meeting. Provided however, if the articles of a company provide for a specific person to be appointed as a chairman, then notwithstanding the foregoing, such person only shall be appointed as the chairman for the meeting.
- g. Before the date of meeting, facility for remote e-voting shall be provided in accordance with the Rules. For members who are present in the meeting through VC/OAVM and have not cast their votes via remote e-voting, such members shall be allowed to vote via e-voting system or by show of hands. The chairman of the meeting shall ensure that the facility of e-voting is available for the purpose of conduct of poll during the meeting. In case of less than 50 members present in the meeting, voting will be done either via e-voting system or by show of hands, provided that in case of demand of poll is made u/s 109 of the Act, voting shall be conducted via e-voting. In all other cases (more than 50 members) voting will be via e-voting system.
- h. There is no need for appointment of proxy as per section 105 of the Act as there is no physical presence. Therefore, the facility for the same will not be available. However, in pursuance of section 112¹ and 113² of the Act, representatives of members may be appointed to vote via remote e-voting or through VC/OAVM.

1. Section 112 deals with representation of President of India or Governor of a State in a meeting in which the President of India or Governor of a state is a member.

2. Section 113 deals with representation of a body corporate (which is a member or creditor) in meetings.

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- i. The notice of the meeting (copy of which to be prominently displayed on the website and in case of listed companies, intimation to be made to exchanges) shall contain disclosures regarding the Circular and also provide clear instructions on how to participate in the meeting. Additionally, a help line number shall be provided via registrar & transfer agent or the technology provider for the meeting for those shareholders who may need assistance for using technology before or during the meeting.
 - j. In case notice for a meeting has been served prior to the date of the Circular, the framework proposed in the Circular may be adopted, by issuing a fresh notice, if it is possible to obtain the consent of the members to hold meeting at short notice u/s 101 (1) of the Act.
 - k. All resolutions passed according to the mechanism provided in the Circular shall be filed with ROC within 60 days of meeting, indicating that mechanism as laid down in the Circular has been followed along with compliance of other provisions of the Act and applicable Rules.

Part II: Procedure for other companies

All steps followed by companies in Part I are required to be followed by other companies with a few exceptions and additions provided as below:

- a. Instead of arranging for a capacity of at least 1000 members, the VC or OAVM facility in this case, shall have the capacity to allow participation of such number of members as the number of members in the company or at least 500 members, whichever is lower.
- b. There is no need to provide for e-voting facility prior to the meeting. Instead, for the purpose of conducting poll or requiring vote on resolutions, the company shall be required to create a designated e-mail address. The said e-mail address shall be communicated to the members along with the notice. The company shall arrange for the security of the password and other privacy issues related to the said designated e-mail address.
- c. During a meeting, where the poll is required, the members shall cast their vote by sending e-mail to the designated e-mail address only. The members shall, while casting their vote, send the e-mail to the designated e-mail address from their e-mail address registered with the company. The e-mail carrying the vote shall not be sent to any other e-mail address except the designated e-mail address. In case of less than 50 members, chairman may conduct voting by show of hands. However, in case of demand for poll is made u/s 109 of the Act, the poll shall be undertaken through e-mail as stated above.

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- d. The vote for appointment of chairman for the meeting shall also take place in the manner specified above.
 - e. In case counting of votes requires time, the said meeting may be adjourned and called later to declare the result.

It can be seen from the above that all provisions relating to e-voting does not apply to companies which are not required to provide for facility of e-voting. Instead the process of voting/notices sent etc are substituted with conveyance via email.

Rule 20 of the Rules also specify that companies may opt for providing the same e-voting system during the meeting and that the said facility may be in operation till all the resolutions are considered and voted upon by the members attending the meeting and who have not exercised their right to vote through remote e- voting. It can be seen that similar provisions have been laid down in the Circular, except that this time it would not be a physical meeting, the e-voting/e-mail system would be open during a meeting through VC/OAVM.

The Circular also clarifies that all the other compliances associated with conducting an EGM, viz., making of disclosures, inspection of documents by members, authorisation for voting by bodies corporate etc are made through electronic means.

This appears to be a welcome step from the MCA as it clears uncertainties associated with conduct of general meetings through remote processes and sets up a process for conduct of such meetings so that requirements of social distancing are met.

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