

EGM AND AGM THROUGH VIDEO CONFERENCING

◆ Legal Series Vol. XIII ◆ Issue 4 ◆ July 2020

For private circulation only

Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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Credibility Alliance

Improving Governance Building Trust

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EGM and AGM through Video Conferencing

Introduction

- 1.01** Sound governance largely depends on the effective interaction between the decision making persons of the organisations. It is very important that regular meetings are conducted for various policy matters and legislative and executive decision making. The general members and the Board/trustees exercise the power entrusted to them as per the governing documents such as Trust Deed, Memorandum of Association and Articles of Association. The provisions of the statute of registration also regulate the procedure for conducting Board and General Meetings.
- 1.02** A meeting of the general members normally should be held at least once in a year to discuss and approve important matters like approval of audited accounts, appointment of statutory auditors, review of activities during the year, election of the Board members. This meeting is called Annual General Meeting (AGM). It is normally conducted within six months from the end of the financial year and all the activities and accounts for the previous financial year are placed. Apart from the AGM, General Meetings can also be called during the year if the circumstances so demand. All General Meetings other than the AGM are normally called as Extraordinary General Meeting (EGM) or Special General Meeting (SGM).
- 1.03** The NGO's are constituted either as a Trust or Society or as a Section 8

company. Though the Societies and Section 8 Companies are required to hold AGM & EGM of the members but in case of Trust there is normally no concept of general Body or members and in the case of trust only meeting of the trustees are held.

- 1.04** The Members of an NPO can be located in different geographical location and it is always difficult for member staying in far away places to attend meetings and this has become very difficult due to regular lockdowns in various part of the county due to COVID19. Hence the option of holding EGM and AGM through video conferencing or electronic mode becomes a necessity.
- 1.05** There is no rule or guidance under the Societies or Trust Act regarding holding meetings through video conferencing. However, the circulars issued Ministry of Corporate Affairs, Govt. of India and The Companies (Meetings of Board and its Powers) Rules, 2014 issued by the Ministry of Corporate Affairs, Govt. of India can be a great reference document for conducting board meetings through electronic medium in the NPO sector. All section 8 Companies can directly avail the benefits of the various circulars and Trust and Societies can avail the benefit of the provisions subject to any specific restriction in their Bye Laws or the local statute.

Details of Circulars issued by MCA as applicable to Companies including Section 8 companies for holding EGM & AGM :

- 2.01** *Circular 14 dated 8th April 2020 on Ordinary and Special Resolutions* : The Ministry of Corporate Affairs, Govt. of India issued Circular No. 14/2020 dated 8th April 2020 provided in *Annexure 1*. In this circular it is mentioned that there is no specific provision in the Companies Act 2013 to hold general

meetings through VC or OAVM. Further, though section 108 allows for e-voting (including remote e-voting) for general meeting, but section 110 allows company to pass resolutions through postal ballot (including electronic ballot).

- 2.02** In relaxation of the above legal procedures, this circular provided the guideline for holding EGM on or before 30.06.2020.
- 2.03** *Circular 17 dated 13th April 2020 on Ordinary and Special Resolutions* : The Ministry of Corporate Affairs, Govt. of India issued Circular No. 17/2020 dated 13th April 2020 provided in *Annexure 2*, further clarifying that a notice for such meeting could be served through e-mails registered with the company. Further, a notice may be posted in the website of the company regarding the meeting, particularly for the benefit of members whose e-mail id are not available. Further, the company may use other mode of communication and if contact details are not available, then a public notice may be published by way of advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and also in English language in english newspaper. Both the newspapers should preferably have electronic editions.
- 2.04** *Circular 18 dated 21st April 2020 on Extension of Time for AGM* : The Ministry of Corporate Affairs, Govt. of India has issued Circular No. 18/2020 dated 21st April 2020 provided in *Annexure 3*. In this circular the time for holding Annual General Meeting (AGM) has been extended from 6 months to 9 months for those companies whose financial year ended on 31st December 2019. In other words, such companies can hold their AGM by the 30th September 2020.
- 2.05** *Circular 20 dated 5th May 2020 on AGM through VC or OAVM* : The Ministry

of Corporate Affairs, Govt. of India issued Circular No. 20/2020 dated 5th May 2020 provided in *Annexure 4*. In this circular the companies have been allowed to hold AGM through VC or OAVM during the calendar year 2020.

Procedure for holding AGM through VC and OAVM

3.01 Ministry of Corporate Affairs has given relaxations to Companies to conduct the meeting through Video Conferencing or other audio-visual means vide General Circular No. 20/2020 dated May 05, 2020.

Due to Outbreak of COVID-19, and continued restriction on free movements, it is difficult for Companies to call and conduct the meeting at the registered office or any place as permitted under the Companies Act, 2013. MCA has given relaxation to Companies that follows Calendar year as financial year to conduct the AGM till September 30, 2020.

Based on the circular and the best governing practices prevalent in the sector, we have tried to note down some of the ways in which we can implement the procedures to be followed in an AGM.

3.02 *Notice for AGM:* Notice to members can be sent through email, where the same is available. A copy of the notice shall also be prominently displayed on the website, if any, of the organization.

In case the e-mail addresses are not registered with the organization, the organization shall contact all those members over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all its members; or

Where the contact details of any of members are not available with the company or could not be obtained, it shall cause a public notice by way of advertisement to be published immediately at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district and specifying in the advertisement the following information:

- That the company intends to convene an AGM in compliance with applicable provisions and for the said purpose it proposes to send notice to all its members by e-mail after at least 3 days from the date of publication of the public notice;
- The details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered for participation and voting in the AGM.

Further the Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable to participate and vote on the items being considered in the meeting.

3.03 *Notice issued prior to the lockdown restrictions:* The organizations which have already sent their notices for calling AGM, should be required to send out fresh notices containing the fact that meeting will conducted through VC/OAVM.

In our view, the length of AGM notices can remain 21 days unless the bye-laws prescribe a shorter notice.

- 3.04** *Minimum standards of VC/OVAM facility:* Ensure that the Meeting through VC/OAVM facility allows two way teleconferencing for the ease of participation of the members. The VC/OVAM facility should have a capacity to allow at least the members equal to total number of members at any given period of time.
- 3.05** *Time frame for VC/OVAM facility:* The VC/OVAM facility shall be kept open at least 15 minutes before the scheduled time of the EGM and shall not be closed till the expiry of 15 minutes after the conclusion of the EGM.
- 3.06** *Quorum:* Attendance of members through VC/OAVM shall be counted for quorum
- 3.07** *Voting by the member present:* The company shall provide a designated e-mail address to all members at the time of sending the notice of Meeting so that the members can convey their vote, when a poll is required to be taken during the Meeting on any resolution, at such designated email address.
- During the Meeting held through VC/OVAM facility, where a poll on any item is required, the members shall cast their vote on the resolutions only by sending their email addresses which are registered with the company. The said emails shall only be sent to the designated email address circulated by the company in advance.
- 3.08** *Election of chairman:* Unless the articles require any specific person to be appointed as a Chairman for the meeting, the Chairman for the Meeting

shall be appointed by a poll conducted through the registered e-mail during the Meeting.

- 3.09** *Filing of resolutions:* All resolutions, passed in accordance with this mechanism shall be filed with the relevant statutory authority within the prescribed time limits mentioned in the respective acts, clearly indicating therein that the mechanism provided herein were duly complied with during such Meeting
- 3.10** *Maintenance of recorded transcript:* The recorded transcript shall be maintained by the company and be shared with all the members in case any member requires them for documentation purposes.

Suggested Way Forward for Societies and Trust

- 4.01** The aforesaid circulars issued by Ministry of Corporate Affairs, Government of India are specifically applicable to companies registered under the Companies Act 2013. These circulars do not specifically apply to NPOs registered as Societies and Trust.
- 4.02** The NPOs registered as Trust are subject to the specific clauses in the Trust Deed. If any restrictive clauses regarding the Board and General Meeting are not there in the Trust Deed, then such institution may conduct the meetings through VC and OAVM.
- 4.03** The NPOs registered as Society are subject to the specific clauses in the Articles of Association and also the respective Societies Registration Act of the state

in which the registered office is situated. If any restrictive clauses regarding the Board and General Meeting are not there, then such institution may conduct the meetings through VC and OAVM.

- 4.04** Further, NPOs may pass those resolutions which are required for statutory purposes such as approval of annual accounts etc. subject to ratification of such resolutions in the EGM or AGM to be held in a legally valid manner in future.

Other Key Issues - Proxy

- 5.01** Proxy refers to a person or a representative empowered to attend a meeting on behalf of a member. Any member of an organisation who is entitled to attend and vote at meetings is also entitled to appoint a proxy who can also attend & vote. A proxy has to carry an authorisation form; the member entitled to attend the meeting should authorise his/her representative in writing in a proxy form.
- 5.02** A proxy form should be deposited in advance at the registered office of the organisation atleast two days before the meeting the date of the meeting.
- 5.03** A proxy is not permissible for Board meetings and should be used in General Meetings only. Proxy should preferably be avoided in a voluntary organisation.
- 5.04** Moreover one need to refer the constitution document and the relevant societies act before going for the use of Proxy in case of an organization registered as a society or as trust.

Other Key Issues - Resolution By Circulation

- 6.01** The Board or the Trustees may pass resolutions by circulation when it is not possible to call a physical board meeting.
- 6.02** However the practice of passing Resolution through circulation is not applicable for resolution required to be passed by general members.

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*Annexure 1***MCA Circular 14 dated 8th April 2020**

General Circular No. 14/2020

F. No. 21/2020-CL-V
 Government of India
 Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
 Dr. R. P Road, New Delhi - 110001
 Dated : 8th April 2020

To
 All Regional Director,
 All Registrar of Companies,
 All Stakeholders

Subject: Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

Sir/Madam,

Several representations have been received in the Ministry for providing relaxations in the provisions of Companies Act, 2013 (the Act) or rules made thereunder to allow companies to pass ordinary and special resolutions of urgent nature, in view of the difficulties faced by the stakeholders on account of the threat examined considering the overall situation at present.

2. The Act does not contain any specific provision for allowing conduct of members' meetings through video conferencing (VC) or other audio visual means (OAVM). It has been noted that section 108 of the Act and rules made thereunder provide for relevant companies to allow e-voting (including remote e-voting) in case of general meetings convened by them. Section 110 of the Act, on the other hand, allows the companies to pass resolutions (except items of ordinary business and items where any person has a right to be heard) through postal ballot(which includes electronic ballot and electronic voting under section 108). In view of the current extraordinary circumstances due to the pandemic caused by COVID-19 prevailing in the country, requiring social distancing, companies are requested to take all decisions or urgent nature requiring the approval of members, other than items of ordinary business or business where any person has a right to be heard, through the mechanism of postal ballot/e-voting in accordance with the provisions of the Act and Rules made thereunder, without holding a general meeting, which required physical presence of members at a common venue.

3. However, in case holding of an extra ordinary general meeting (EGM) by any company is considered unavoidable, the following procedure needs to be adopted

for conducting such meeting on or before 30.06.2020, in addition to any other requirement provided in the Act or the rules made thereunder:

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility-

- I. EGMs, wherever unavoidable, may be held through VC or OAVM and the recorded transcript of the same shall be maintained in safe custody by the company. In case of a public company, the recorded transcript of the meeting, shall as soon as possible, be also made available on the website (if any) of the company.
- II. Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.
- III. All care must be taken to ensure that such meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of the members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility must have a capacity to allow atleast 1000 members to participate on a first-come-first-served basis. The large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, auditors etc. may be allowed to attend the meeting without restriction on account of first-come-first-served principle.
- IV. The facility for joining the meeting shall be kept open at least 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.
- V. Before the actual date of the meeting, the facility or remote e-voting shall be provided in accordance with the Act and the Rules.
- VI. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.
- VII. Only those members, who are present in the meeting through VC or OAVM facility and have not cast their vote on resolutions through remote e-voting and are otherwise not barred from doing so, shall be allowed to vote through e-voting system or by a show of hands in the meeting.
- VIII. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner.
- IX. The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purpose of conducting a poll during the meeting held through VC or OAVM. Depending on the number of members present in such meeting, the voting shall be conducted in the following manner:

- a. where, there are less than 50 members present at the meeting, the voting may be conducted either through the e-voting system or by a show of hands, unless a demand for poll is made in accordance with section 109 of the Act, in which case, the voting shall be conducted through the e-voting system.
 - b. In all other cases, the voting shall be conducted through e-voting system.
 - X. A proxy is allowed to be appointed under section 105 of the Act to attend and vote at a general meeting on behalf of a member who is not able to attend personally. Since general meetings under this framework will be held through VC or OAVM, where physical attendance of members in any case has been dispensed with, there is no requirement of appointment of proxies. Accordingly, the facility of appointment of proxies by members will not be available for such meetings. However, in pursuance of section 112 and section 113 of the Act, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.
 - XI. At least one independent director (where the company is required to appoint one), and the auditor or his authorised representative, who is qualified to be the auditor shall attend such meeting through VC and OAVM.
 - XII. Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.
 - XIII. The notice for the general meeting shall make disclosures with regard to the manner in which framework provided in this Circular shall be available for use by the members and also contain clear instructions on how to access and participate in the meeting. The company shall also provide a helpline number through the registrar and transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting. A copy of the meeting notice shall also be prominently displayed on the website of the company and due intimation may be made to the exchanges in case of a listed company.
 - XIV. In case a notice for meeting has been served prior to the date of this Circular, the framework proposed in this Circular may be adopted for the meeting, in case the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with this Circular is issued consequently.
 - XV. All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting, clearly indicating therein that the mechanism provided herein along with other provisions of the Act and rules were duly complied with during such meeting.
- B. *For companies which are not required to provide the facility of e-voting under the Act -***
- I. EGM, wherever unavoidable, may be held through VC or OAVM and the recorded transcript of the same shall be maintained in safe custody by the

company. In case of a public company, the recorded transcript of the meeting, shall as soon as possible, be also made available on the website (if any) of the company.

- II. Convenience of different persons positioned times zones shall be kept in mind before scheduling the meeting.
- III. All care must be taken to ensure that such meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of the members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility must have a capacity to allow atleast 500 members or members equal to the total number of members of the company (whichever is lower) to participate on a first-come-first-served basis. The large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, auditors etc. may be allowed to attend the meeting without restriction on account of first-come-first-served principle.
- IV. The facility for joining the meeting shall be kept open at least 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.
- V. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.
- VI. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner.
 - a. where there are less than 50 members present at the meeting, the Chairman shall be appointed in accordance with section 104.
 - b. in all other cases, the Chairman shall be appointed by a poll conducted in a manner provided in succeeding sub-paragraphs.
- VII. At least one independent director (where the company is required to appoint one), and the auditor or his authorised representative, who is qualified to be the auditor shall attend such meeting through VC and OAVM.
- VIII. A proxy is allowed to be appointed under section 105 of the Act to attend and vote at a general meeting on behalf of a member who is not able to attend personally. Since general meetings under this framework will be held through VC or OAVM, where physical attendance of members in any case has been dispensed with, there is not requirement of appointment of proxies. Accordingly, the facility of appointment of proxies by members will not be available for such meetings. However, in pursuance of section 112 and section 113 of the Act, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.

- IX. Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.
 - X. The company shall provide a designated email address to all members at the time of sending the notice of meeting so that the members can convey their vote, when a poll is required to be taken during the meeting on any resolution, all such designated email address.
 - XI. The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly maintained by the company at all times. Due safeguards with regard to authenticity of email address(es) and other details of the members shall also be taken by the company.
 - XII. During the meeting held through VC or OAVM facility, where a poll on any item is required, the members shall cast their vote on the resolutions only by sending emails through their email addresses which are registered with the company. The said emails shall only be sent to the designated email address circulated by the Company in advance.
 - XIII. Where less than 50 members are present in a meeting, the Chairman may decide to conduct a vote by show of hands, unless a demand for poll is made by any member in accordance with section 109 of the Act. Once such demand is made, the procedure provided in the preceding sub-paragraphs shall be followed.
 - XIV. In case the counting of votes required time, the said meeting may be adjourned and called later to declare the result.
 - XV. The notice for the general meeting shall make disclosures with regard to the manner in which framework provided in this Circular shall be available for use by the members and also contain clear instructions on how to access and participate in the meeting. The Company should also provide a helpline number through the registrar & transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using technology before in meeting. A copy of the notice shall also be prominently displayed on the website of the company.
 - XVI. In case a notice for meeting has been served prior to the date of this Circular, the framework proposed in this Circular may be adopted for the meeting in case the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with this Circular is issued consequently.
 - XVII. All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting clearly indicating therein that the mechanism provided herein alongwith other provisions of the Act, and rules were duly complied with.
4. The companies referred to in paragraphs 3 (A) and 3 (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures inspection of related documents by members or

authorisations for voting by bodies corporate etc. as provided in the Act and the articles of association of the company are made through electronic mode.

5. This issues with the approval of the competent authority.

Yours faithfully,

(K.M.S. Narayanan)
Assistance Director

Copy to: -

1. E-Governance Section and Web contents Officer to place this circular on the Ministry's website.
2. Guard File.

MCA Circular 17 dated 13th April 2020**General Circular No. 17/2020**

**E. No. 2/1/2020-CL-V
Government of India
Ministry of Corporate Affairs**

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi - 110001
Dated : 13th April, 2020

To
All Regional Directors,
All Reistrar of Companies
All Stakeholders

Subject : Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

Sir/Madam,

Reference is drawn to this Ministry's General Circular No. 14/2020 dated 8th April, 2020 on the subjected cited above. After the issue of the said circular the Ministry has received representations from stakeholders for clarification on some of the elements in the framework laid down therein. The stakeholders have highlighted the difficulties in serving and receiving notices/responses by post in the current circumstances. In view of the same and with a view to bringing in greater clarity on the modalities to be followed by companies for conduct of EGSs during the COVID-19 related social distancing norms and lockdown for the period as indicated in the said Circular, or till further orders, whichever is earlier, the following clarifications are hereby given :-

(i) Manner and mode of issue of notices to the members before convening the general meeting :

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility -

- I. In view of the present Circumstances in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules, 2014 (the rules), the notices to members may be given only through e-mail registered with the company or with the depository participant/depository.

- II. While publishing the public notice as required under rule 20(4)(v) of the rules, the following matters shall also be stated, namely :-
 - a. a statement that the EGM has been convened through VC or OAVM in compliance with applicable provisions of the Act read with General Circular 14/2020, dated 8th April, 2020 and this Circular.
 - b. the date and time of the EGM through VC or OAVM;
 - c. availability of notice of the meeting on the website of the company and the stock exchange.
 - d. the manner in which the members who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting.
 - e. the manner in which the members who have not registered their email addresses with the company can get the same registered with the company.
 - f. any other details considered necessary by the company.
- III. The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable members to participate and vote on the items being considered in the meeting.

B. *For companies which are not required to provide the facility of e-voting under the Act -*

- I. In view of the present circumstances, in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules, 2014 (the rules) the notices to members may be given only through e-mails registered with the company or with the depository/depository participant.
- II. A copy of the notice shall also be prominently displayed on the website, if any, on the company.
- III. In order to ensure that all members are aware that a general meeting is proposed to be conducted in compliance with applicable provisions of the Act read with General Circular No. 14/2020, dated 8th April, 2020, the company shall :
 - (a) contact all those members whose e-mail addresses are not registered with the company over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all it's members; or

- (b) where the contact details of any of members are not available with the company or could not be obtained as per (a) above, it shall cause a public notice by way of advertisement to be published immediately at least once in vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information.
- i. That the company intends to convene a general meeting in compliance with applicable provisions of the Act read with the General Circular No. 14/2020, dated 8th April 2020 and this Circular, and for the said purpose it proposes to send notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice.
 - ii. the details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered for participation and voting in the general meeting.

IV. The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable members to participate and vote on the items being considered in the meeting.

(ii) Requirement for voting by show of hands :- In sub-paragraph A - IX of para 3 of the General Circular 14/2020, dated 8th April, 2020 relevant companies were allowed to pass resolutions in certain cases through show of hands. Considering the dissimilarities involved in e-voting and voting by show of hands, the said sub-paragraph is substituted as under :

“IX. The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purpose of voting during the meeting held through VC or OAVM.”

(iii) Passing of certain items only through postal ballot without convening a general meeting :- (a) In the General Circular No. 14/2020, dated 8th April, 2020. It was stated that the companies may pass resolutions through postal ballot/e-voting without holding a general meeting unless it is so required as per section 110(1)(b) of the Act. Clarification have been sought on the issue of dispatch of notices by companies by post and communication by the members of their assent or dissent on relevant resolutions by post under the current circumstances.

(b) The matter has been examined and the attention is invited to rule 22(15) of the rules which provides that the provisions of rule 20 regarding voiting by electronic means shall apply, as far as applicable, *mutatis mutandis* to this rule in respect of the voting by electronic means. Therefore, for companies covered in para 3-A of the General Circular No. 14/2020, dated 8th April, 2020, while they are transacting any item only by postal ballot, upto 30th June 2020, or till further orders, whichever is earlier, the requirements provided in rule 20 of the rules as well as framework provided in the General Circular No. 14/2020, dated 8th April, 2020 and this circular would be applicable *mutatis mutandis*. The company would send notice by email to all its shareholders who have registered their email addresses with the company or depository participant/depository. The company would also be duty bound to provide a process of registration of e-mail addresses of members and state so in its public notice. The communication of the assent or dissent of the members would only take place through the remote e-voting system, as no meeting will be required to be called.

(iv) Sending of e-mails by members, where a poll on any item is required for companies covered in para 3-B of the General Circular No. 14/2020, dated 8th April, 2020:-

Clarification has been sought as to whether the members are required to take part in the poll on items considered during the meeting by sending e-mails in advance to the company before the meeting is actually held through VC or OAVM facility. The matter has been examined and it is hereby clarified that sub-paragraph B-XII of para 3 of the General Circular No. 14/2020, dated 8th April, 2020 does not provide for polling by members at any time before the general meeting. The poll will take place during the meeting, and the members may convey their assent or dissent only at such stage on items considered in the meeting by sending e-mails to the designated e-mail address of the company, which was circulated by the company in the notice sent to the members.

2. This issues with the approval of the competent authority.

Yours faithfully

(K.M.S. Narayanan)
Assistant Director

Copy to: -

1. E-Governance Section and Web contents Officer to place this circular on the Ministry's website.
2. Guard File.

*Annexure 3***MCA Circular 18 dated 21st April 2020****General Circular No. 18/2020**

**F. No. 2/4/2020-CL-V
Government of India
Ministry of Corporate Affairs**

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi - 110001
Dated : 13th April, 2020

To
All Regional Directors,
All Reistrar of Companies
All Stakeholders

Subject : Holding of annual general meetings by companies whose financial year has ended on 31st December, 2019.

Sir/Madam,

Several representation have been received from stakeholders with regard to difficulty in holding annual general meetings (AGMs) for companies whose financial year ended on 31st December, 2019 due to COVID-19 related social distancing norms and consequential restrictions linked thereto. These representations have been examined and it is noted that the Companies Act, 2013 (Act) allows a company to hold its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not later than a period of 15 months from the date of last AGM.

2. On account of the difficulties highlighted above, it is hereby clarified that if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall be construed accordingly.

3. This issues with the approval of the competent authority.

Yours faithfully
(K.M.S. Narayanan)
Assistant Director

Copy to: -

1. E-Governance Section and Web contents Officer to place this circular on the Ministry's website. 2. Guard File.

MCA Circular 20 dated 5th May 2020**General Circular No. 20/2020**

**F. No. 2/4/2020-CL-V
Government of India
Ministry of Corporate Affairs**

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi - 110001
Dated : 13th April, 2020

To
All Regional Directors,
All Reistrar of Companies
All Stakeholders

Subject : Clarification on holding of annual meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)

Sir/Madam,

Several representation have been received in the Ministry for providing relaxations in the provisions of Companies Act, 2013 (the Act) or rules made thereunder to allow companies to hold annual general meeting (AGM) in a manner similar to the one provided in General Circular No. 14/2020, dated 08.04.2020 (EGM Circular-I) and General Circular No. 17/2020 dated 13.04.2020 (EGM Circular-II), which deal with conduct of extraordinary general meeting (EGM).

2. In the meanwhile, by virtue of the General Circular No. 18/2020, dated 21.04.2020, the companies whose financial year ended on 31st December, 2019, have been allowed to hold their AGM by 30th September, 2020.
3. The matter has been further examined and it is stated that in view of the continuing restrictions on the movement of persons at several places in the country, it has been decided that the companies be allowed to conduct their AGM through video conferencing (VC) or other audio visual means (OAVM), during the calender year 2020, subject to the fulfillment of the following requirements :
 - A. *For companies which are required to provide the facility of e-voting under the ACT, or any other company which has opted for such facility-*
 - I. The framework provided in para 3 - A of EGM Circular-I and the manner and mode of issuing notices provided in sub-para (i)-A of EMG Circular - II shall be applicable *mutatis mutandis* for conducting the AGM

- II. In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.
- III. In view of the prevailing situation, owing to the difficulties involved in dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), such statements shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.
- IV. Before sending the notices and copies of the financial statements, etc. a public notice by way of advertisement be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information :-
 - a. statement that the AGM will be convened through VC or OAVM in compliance with applicable provisions of the Act read with this Circular.
 - b. the date and time of the AGM through VC or OAVM.
 - c. availability of notice of the meeting on the website of the company and the stock exchange, in case of a listed company.
 - d. the manner in which the members who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting.
 - e. the manner in which the persons who have not registered their email addresses with the company can get the same registered with company.
 - f. the manner in which the members can give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means.
 - g. any other detail considered necessary by the company.
- V. In case, the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.
- VI. In case, the company has received the permission from the relevant authorities to conduct its AGM at its registered office, or at any other place as provided under section 96 of the Act, after following any

advisories issued from such authorities, the company may in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OVAM, so as to allow other members of the company to participate in such meeting. All members who are physically present in the meeting as well as the members who attend the meeting through the facility of VC or OAVM shall be reckoned for the purpose of quorum under section 103 of the Act. All resolutions shall continue to be passed through the facility of e-voting system.

B. For companies which are not required to provide the facility of e-voting under the Act -

- I. AGM may be conducted through the facility of VC or OAVM only by a company which has in its records, the email addresses of at least half of its total number of members, who-
 - a. In case of a *Nidhi*, hold shares of more than one thousand rupees in face value or more than one per cent of the total paid up share capital, whichever is less;
 - b. in case of other companies having share capital, who represent not less than seventy-five per cent. of such part of the paid-up share capital of the company as given a right to vote at the meeting.
 - c. in case of companies not having share capital, who have the right to exercise not less than seventy-five per cent. of the total voting power exercisable at the meeting.
- II. The company shall take all necessary steps to register the email addresses of all persons who have not registered their email addresses with the company.
- III. The framework provided in Para 3-B of EGM Circular-I and the manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular-II shall be applicable *mutatis mutandis* for conducting the AGM.
- IV. In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.
- V. Owing to the difficulties involved in dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), such statements shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.
- VI. The Companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or

any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the divided warrant/cheque to such shareholder by post.

4. The companies referred to in paragraphs 3 (A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents/registers by members, or authorisations for voting by bodies corporate, etc as provided in the Act and the articles of association of the company are made through electronic mode.
5. The companies which are not covered by the General Circular No. 18/2020. dated 21.04.2020 and are unable to conduct their AGM in accordance with the framework provided in this Circular are advised to prefer applications for extension of AGM at a suitable point of time before the concerned Registrar of Companies under Section 96 of the Act.
6. This issues with the approval of the competent authority.

Yours faithfully
(Sridhar Pamarthi)
Joint Director

Copy to: -

1. E-Governance Section and Web contents Officer to place this circular on the Ministry's website.
2. Guard File.

The Companies (Meetings of Board and its Powers) Rules, 2014

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, the 31st March, 2014

G.S.R. 240 (E). – In exercise of powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other Rules prescribed under the Companies Act, 1956 on matters covered under these rules, except as respects things done or omitted to be done before such suppression, the Central Government hereby makes the following rules, namely: –

1. (1) Short title and commencement.- (1) These rules may be called the Companies (Meetings of Board and its Powers) Rules, 2014.
(2) They shall come into force on the 1st day of April, 2014.
2. Definitions.- (1) In these rules, unless the context otherwise requires, –
 - (a) "Act" means the Companies Act, 2013;
 - (b) "Annexure" means the Annexure appended to these rules;
 - (c) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
 - (d) "Form" or "e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;
 - (e) "section" means the section of the Act.
 (2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said Rules.
3. **Meetings of Board through video conferencing or other audio visual means.-** A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.
 - (1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
 - (2) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care-

- (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
- (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- (c) to record proceedings and prepare the minutes of the meeting;
- (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
- (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting;

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

- (3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
 - (b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
 - (c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
 - (d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
 - (e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.
 - (f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.
- (4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

- (a) name;
 - (b) the location from where he is participating;
 - (c) that he has received the agenda and all the relevant material for the meeting; and
 - (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);
- (5) (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

Explanation-A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

- (b) The Chairperson shall ensure that the required quorum is present throughout the meeting.
- (6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
- (7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
- (8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
- (b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.
- (9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
- (10) From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board

shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

- (11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.
- (b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- (12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
- (b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
- (c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation-For the purposes of this rule, "video conferencing or other audio visual means" means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

4. **Matters not to be dealt with in a meeting through video conferencing or other audio visual means.**-(1) The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-
 - (i) the approval of the annual financial statements;
 - (ii) the approval of the Board's report;
 - (iii) the approval of the prospectus;
 - (iv) the Audit Committee Meetings for consideration of accounts; and
 - (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.
5. **Passing of resolution by circulation.**- A resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.
6. **Committees of the Board.**-The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board-

- (i) all public companies with a paid up capital of ten crore rupees or more;
- (ii) all public companies having turnover of one hundred crore rupees or more;
- (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Explanation.- The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

7. Establishment of vigil mechanism.-(1) Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-

- (a) the Companies which accept deposits from the public;
 - (b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.
- (2) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.
- (3) In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
- (4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- (5) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

8. Powers of Board.-In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board.-

- (1) to make political contributions;
- (2) to appoint or remove key managerial personnel (KMP);
- (3) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;

- (4) to appoint internal auditors and secretarial auditor;
 - (5) to take note of the disclosure of director's interest and shareholding;
 - (6) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
 - (7) to invite or accept or renew public deposits and related matters;
 - (8) to review or change the terms and conditions of public deposit;
 - (9) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.
9. **Disclosures by a director of his interest.**-(1) Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1.
- (2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.
 - (3) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

