

## EXTRAORDINARY GENERAL MEETINGS THROUGH VIDEO CONFERENCING OR OTHER AUDIO-VISUAL MEANS ALLOWED

Amid the outbreak of the coronavirus (Covid-19) which has been declared as a notified disaster by the Government of India and the difficulties faced by the companies to hold physical general meetings, the Ministry of Corporate Affairs (“MCA”) vide Circular No. 14/2020 dated April 08, 2020 (“Circular 14/2020”), has provided procedures for conducting extraordinary general meetings (“EGM”) and passing of ordinary and special resolutions by companies via video conferencing or other audio-visual means under the Companies Act, 2013 (“Act”) and rules made thereunder.

The MCA has, vide Circular No. 17/2020 dated April 13, 2020 (“Circular 17/2020”), further provided clarifications to Circular 14/2020 regarding *inter alia* the manner and mode of issue of notices and has also addressed the concerns raised by the companies facing difficulties in serving and receiving notices / responses by post in the current situation.

The Act read with the relevant rules currently do not have any specific provisions allowing the convening of general meetings through video conferencing or other audio-visual means. Section 108 of the Act provides for listed companies and companies with members not less than 1,000 to allow e-voting in case of general meetings convened by them. Further, section 110 of the Act 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 e-voting*).

Where convening a general meeting is unavoidable, the following companies will be required to follow and adopt the following procedures for conducting any EGM on or before June 30, 2020 or till further orders, whichever is earlier:

**A. For companies which are required to provide the facility of e-voting or any company which has opted for such facility (such as listed public companies and companies with members not less than 1,000)**

- (i) EGMs, where unavoidable, may be held through video conferencing or other audio-visual means and the recorded transcript shall be maintained in the safe custody of the company. In the case of a public company, the same shall be made available on the website of the company, if any.
- (ii) Convenience of each person in different time zones shall be kept in mind before scheduling the meeting.
- (iii) The video conferencing or other audio-visual means facility should allow two -way teleconferencing or WebEx and must allow at least 1,000 members on first come first serve basis and the large shareholders (shareholding 2% and above), promoters, institutional investors, directors, key managerial personnel, auditors and chairmen of respective committees shall be allowed to attend without any restriction on account of the first come first serve principle.
- (iv) The video conferencing or other audio-visual means facility should be kept open 15 minutes prior to the scheduled time 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 of remote e-voting shall be provided in accordance with the Act.

- (vi) Members present through video conferencing or other audio-visual means shall be counted for quorum purposes.
- (vii) Only those members present in the meeting and who have not casted their vote through remote e-voting and are not otherwise barred from doing so shall be allowed to vote through the 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 the chairman for the meeting, the chairman of the meeting shall be appointed: (a) where there are less than 50 members present in the meeting, the members shall elect one of themselves to be the chairman in accordance with section 104 of the Act; and (b) in all other cases, by a poll conducted through e-voting system during the meeting.
- (ix) The chairman present at the meeting shall ensure that the facility of the e-voting system is available for the purpose of voting during the meeting held through video conferencing or other audio-visual means.
- (x) The facility for the appointment of proxy will not be available for such meeting. However, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting through video conferencing or other audio-visual means.
- (xi) At least one independent director (if appointed) and the auditor or his representative shall attend such meeting.
- (xii) Where institutional investors are members, they must be encouraged to attend the meeting.
- (xiii) The notice for the general meeting shall disclose the manner in which the framework provided in this circular shall be available for use by the members along with clear instructions on how to access and participate in the meeting. The company is also required to provide a helpline number for shareholders who require assistance in using the technology before or during the meeting. A copy of the notice of the meeting shall be predominantly displayed on the website of the company and due intimation is to be made to the exchanges in case of a listed company.
- (xiv) In case a notice for meeting has been served before the above Circular 14/2020 date, the framework in the Circular 14/2020 may be adopted subject to the consent of the members and a fresh shorter notice will be issued with due disclosure in consonance with the above Circular 14/2020.
- (xv) All resolutions passed in accordance with the above mechanism shall be filed with the Registrar of Companies within 60 days of the meeting.

#### Manner and mode of issue of notices

- (i) In view of the present circumstances, the notices to members may be given only through emails registered with the company or with the depository participant/depository.
- (ii) While publishing the notice as required under Rule 20(4)(v) of the Companies (Management and Administration) Rules, 2014 (“**Companies Management Rules**”), the following matters shall also be stated: (a) a statement that the EGM has been convened through video conferencing or other audio-visual means in compliance with the Act read with Circular 14/2020 and Circular 17/2020; (b) date and time of the EGM through video conferencing or other audio-visual means; (c) availability of notice of the EGM on the website and stock exchange; (d) the manner in which members (*holding physical shares or whose email address is not registered 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 can register their email address with the company, if not already registered; and (f) any other details considered necessary by the company.

- (iii) The chairman of the meeting shall satisfy himself and record that all efforts feasible under the circumstances have been made by the company to enable the members to participate and vote in the meeting.

Passing of certain items only through postal ballot without convening a general meeting

The Circular 14/2020 has provided that the companies could 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 (*for any item of ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting*). Clarification was sought by companies on the issue of dispatch of notices by post and communication by members of their assent and dissent on such resolutions by post under the current circumstances.

The MCA vide Circular 17/2020 has drawn attention to Rule 22(15) of the Companies Management Rules (*Procedure to be followed for conducting business through postal ballot*), which provides that the provisions of rule 20 of the Companies Management Rules regarding voting through electronic means shall apply, as far as applicable, *mutatis mutandis* to rule 22 in respect of voting by postal ballot through electronic means. Therefore, companies referred to in point A above, while transacting any item only by postal ballot, up to June 30, 2020 or till further orders, whichever is earlier, shall comply with the requirements of rule 20 (*voting through electronic means*) as well as the framework provided in Circular 14/2020 and Circular 17/2020.

**B. For companies which are not required to provide the facility of e-voting under the Act (such as private limited companies and companies with members less than 1,000)**

The mechanism provided above in points A(i) to A(xv) save and except points (v), (vii), (viii) and (ix) would also be applicable to companies which are not required to provide the facility of e-voting. With regards to point (iii) above, the video conferencing or other audio-visual facility should allow two -way teleconferencing or WebEx to at least 500 members instead of 1,000 members on first come first serve basis.

In addition to the aforesaid, the said companies will also be required to follow and adopt the following:

- (i) The companies 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 during the meeting through their email addresses which are registered with the company.
- (ii) The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly maintained. Due safeguards with regards to the authenticity of email addresses and other details of the members shall also be taken by the company.
- (iii) During the meeting where a poll on any item is required, the members shall cast their vote only by sending emails during the meeting 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 the notice sent to the members.
- (iv) Where less than 50 members are present, the Chairman may decide to conduct a vote by show of hands unless a demand for a poll is made. In case counting of votes requires time, the said meeting may be adjourned and called later to declare the result.
- (v) Unless the articles of the company require any specific person to be appointed as the chairman for the meeting, the chairman of the meeting shall be appointed: (a) where there are less than 50 members present in the meeting, the members shall elect one of themselves

to be the chairman in accordance with section 104 of the Act; and (b) in all other cases, by a poll conducted in the manner provided above.

Manner and mode of issue of notices

- (i) Notices to be given only through emails registered with the company or with the depository participant/depository.
- (ii) A copy of the notice shall be prominently displayed on the website, if any, of the company.
- (iii) In order to ensure that all members are aware that a general meeting is being convened in compliance with the Act read with Circular 14/2020, the company shall (a) contact all members whose email addresses are not registered with the company for registration of their email addresses before sending the notice for meeting to all its members; and (b) where contact details are not available for any of the members, the company shall cause a public notice by way of an advertisement 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 at least once in the English language in an English newspaper having a wide circulation in that district. Such advertisement shall specify that (A) the company intends to convene a general meeting in compliance with the Act read with Circular 14/2020 and Circular 17/2020 and for the said purpose the company intends to send the notices to all the members by email after at least 3 days from the date of publication of the public notice; and (B) the details of the email address and telephone number on which the members may contact for getting their email address registered for participation and voting in the general meeting.
- (iv) The chairman of the meeting shall satisfy himself and record that all efforts feasible under the circumstances have been made by the company to enable the members to participate and vote in the meeting.

Further, the companies referred to in A and B above, shall ensure that all other compliances associated with the provisions relating to the general meeting such as the making of disclosures, inspection by members, authorisation for voting by body corporates etc., as provided in the Act and articles of association of the company are made through electronic mode.

The relevant circulars can be referred here [Circular 14/2020](#) and [Circular 17/2020](#).

*Link Legal Insight: The Act read with the relevant rules did not have any specific provisions allowing the convening of general meetings through video conferencing or other audio-visual means. This relaxation, till June 30, 2020 or till further orders, is a forward step taken by the MCA at a time of such distress. Circular 17/2020 has provided the much -needed clarity and has addressed the concerns raised by the companies on the Circular 14/2020.*

*Earlier, on March 18, 2020, the MCA had relaxed the requirement of holding physical board meetings of directors on matters provided under section 173 (2) of the Act read with rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 including approval of the annual financial statements, board's report, approval of prospectus, the audit committee meetings for consideration of accounts, approval of matters relating to amalgamation, merger, demerger, acquisition and takeover, which otherwise were not permitted to be transacted through video conferencing.*