



MCA ALLOWS COMPANIES TO HOLD EXTRAORDINARY GENERAL MEETINGS (EGMS) THROUGH VC OR OAVM.

Introduction

In furtherance of the Government's objective of facilitating corporate compliances during the current lockdown period and other restrictions on account of COVID-19, the Ministry of Corporate Affairs ("MCA") has issued a circular bearing No. 14/2020 dated 8th April 2020 ("Circular") allowing companies to hold Extraordinary General Meetings ("EGMs") through video conferencing ("VC") or through other audio visual means ("OAVM") complemented with e-voting facility/simplified voting through registered emails, without requiring the shareholders to physically assemble at a common venue. The Companies Act, 2013 ("Act") allows ordinary and special resolutions to be passed through postal ballot (which includes electronic ballot and electronic voting under section 108 of the Act)/e-voting route for several companies. However, in present lockdown/social distancing conditions imposed due to COVID-19, the postal ballot facility cannot be utilized by the companies. The Act does not contain any specific provision for allowing the conduct of members' meetings through VC or through OAVM.

Accordingly, the Circular issued by the MCA allows listed companies or companies with 1,000 (Thousand) or more shareholders (which are required to provide e-voting facility under the Act) to conduct EGM through VC/ OAVM and e-Voting in accordance with the procedure laid down thereunder. For other companies, a more simplified mechanism for voting through registered emails has been put in place for easy compliance. The MCA has further issued a circular bearing No. 17/2020 dated 13th April 2020, clarifying certain aspects of the said Circular pertaining to notices, etc.

Facets of the Circular:

In the event, the holding of an EGM by any company is considered unavoidable, the following procedure needs to be adopted for conducting such a meeting on or before 30th June, 2020, in addition to any other requirement provided in the Act or the rules made thereunder:

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

1. Notice of the EGM:

- a) Notice of the meeting to the members may be given through e-mails registered with the Company and/or with the depository/depository participant, in accordance with Rule 18 of the Companies (Management and Administration) Rules, 2014.
- b) Notice of the meeting shall specify clear disclosure with respect to the manner in which meeting shall be conducted, how to access and participate in the meeting, for use by the members.
- c) The Notice of the meeting shall also include the following matters, namely:
 - i. A statement that the EGM has been convened through VC or OAVM in compliance with the applicable provisions of the Act read with the provisions of the Circular and the circular bearing No. 17/2020 dated 13th April 2020;
 - ii. The date and time of the EGM through VC or OAVM;
 - iii. Availability of notice of the meeting on the website of the company and stock exchange;
 - iv. 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;
 - v. The manner in which the members who have not registered their e-mail addresses with the company can get the same registered with the company; and
 - vi. Any other detail considered necessary by the company.
- d) The company shall also provide the helpline numbers through the registrar and transfer agent or technology provider or such other person as required, for those members who need assistance with using the technology before or during the meeting.
- e) A copy of notice of meeting shall be published on the website of the company and due intimation may be made to the stock exchanges in

case of listed company.

- f) In the event, the notice for an EGM has been served before the date of this Circular i.e. 8th April 2020, the company may adopt the framework mentioned herein above by complying the following;
 - i. Consent of member shall be obtained in accordance with the Section 101(1) of the Act; and
 - ii. A fresh notice of shorter duration with due disclosures in consonance with the said Circular is issued consequently.

2. Manner of conducting the EGM:

- a) The EGM shall be conducted through VC or OAVM and shall be scheduled taking into consideration the convenience of different persons positioned in different zones. Further, the entire proceedings of the meeting shall be recorded, and such recorded transcript shall be maintained in the safe custody by the company and the public company shall upload the recorded transcript on the website (if any) of the company.
- b) Such meeting through VC or OAVM shall allow 2 (Two) way teleconferencing or WebEx for the ease of participation of the members. The participants shall also be allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility shall have a capacity to allow at least 1,000 (Thousand) members to participate on a first-come-first served basis. The restriction of first-come-first served basis shall not be applicable to the following:
 - i. Shareholders holding 2% (Two percent) or more shareholding;
 - ii. Promoters;
 - iii. Institutional Investors;
 - iv. Directors;
 - v. Key Managerial Personnel;
 - vi. Chairpersons of the Audit Committee, Nomination and Remuneration Committee, Stakeholder Relationship Committee; and

vii. Auditors etc.

- c) The facility for joining the meeting shall be kept open at least for 15 (Fifteen) minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 (Fifteen) minutes after such scheduled time. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under Section 103 of the Act.
- d) At least 1 (One) independent director (where the company is required to appoint) and the auditor or his authorized representative who is qualified to be the auditor shall attend such meeting through VC or OAVM. The company shall also encourage the institutional investors who are members of the company, to attend and vote in the meeting through VC or OAVM.

3. Manner of Appointing the Chairman:

- a) Chairman for the EGM shall be appointed in the following manner (unless the articles of the company require any specific person to be appointed as a Chairman for the meeting):
 - i. Less than 50 (Fifty) members present: The Chairman shall be appointed in accordance with Section 104 of the Act.
 - ii. In all other cases: The Chairman shall be appointed by a poll conducted through the e-voting system during the meeting.

4. Manner of Voting:

- a) Before the actual date of the meeting, the companies shall provide the facility of remote e-voting in accordance with the Act.
- b) Members who are present in the meeting through VC or OAVM shall be allowed to vote through e-voting system or by a show of hands in the meeting except the following:
 - i. Member who has casted vote on resolution through remote e-voting; and
 - ii. Members who has been barred from the voting.
- c) It shall be duty of the Chairman present at the meeting to ensure that (i) the facility of e-voting system is available for the purpose of voting during the meeting held through VC or OAVM; and (ii) the company has taken all efforts feasible under the circumstances to

enable members to participate and vote on the items being considered in the meeting.

- d) The voting shall be conducted in the following manner;
 - i. Less than 50 (Fifty) members present: The voting may be conducted 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 by a poll conducted through the e-voting system;
 - ii. In all other cases: The voting shall be conducted through the e-voting system.
- e) The facility of appointment of proxies by members will not be available as the meetings under this framework will be held through VC or OAVM, where physical attendance of members has been dispensed. However, it shall be noted that the appointment of representatives in pursuance of Section 112 and Section 113 of the Act is allowed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.

5. Compliance:

- a) All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies (ROC) within 60 (Sixty) days of the meeting.
- b) The resolutions shall clearly mention the provisions of the Circular along with other provisions of the Act (such as making relevant disclosures, inspection of related documents, etc.) were duly complied with during such meeting.

Please note that in respect of the companies required to provide the facility of e-voting under the Act, the framework provided under this Circular and the circular bearing No. 17/2020 dated 13th April 2020 shall apply mutatis mutandis while transacting any items through postal ballot.

II. For companies that are not required to provide the facility of e-voting under the Act:

The procedure laid down in respect of the companies not required to provide the facility of e-voting under the Act is similar to procedure laid down in respect of the companies required to provide the facility of e-voting under the Act, except for the following provisions:

1. Minimum number for member participation:

The VC or OAVM facility shall have a capacity to allow at least 500 (Five Hundred) 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 instead of at least 1,000 (Thousand) members as applicable to companies which are required to provide the facility of e-voting under the Act.

2. Manner of Communication:

In addition, to the provisions laid down in respect of the companies required to provide the facility of e-voting under the Act, the company shall do the following:

- 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 its members; or
- b) Where the contact details of any members are not available with the company or could not be obtained, the company 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 at least once in a English language in an English newspaper, preferably both newspapers having electronic editions. Such advertisement shall specify the following information:
 - i. Intention of the company to convene a general meeting in compliance with the applicable provisions of the Act read with the provisions of the Circular and the circular bearing No. 17/2020 dated 13th April 2020 and for the said purpose, proposes to send notices to all its members by e-mail, at least 3 (Three) days from the date of publication of the advertisement; and
 - ii. Details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered with the company for participation in such meeting.

3. Manner of Voting:

- a) 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, at such designated email address.

- b) 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 in respect of authenticity of email address(es) and other details of the members shall also be taken by the company.
- c) During the meeting through VC or OAVM facility, where a poll on any item is required, in such case the members shall cast their vote on the resolutions on by sending emails (during such meeting) through their email address(es) which are registered with the company.
- d) Email for casting votes shall only be sent to the designated email address circulated by the company in advance.
- e) The Chairman may decide to conduct a vote by show of hands if the members present in the meeting are less than 50 (Fifty).
- f) If the demand for poll is made by any member in accordance with Section 109 of the Act, then the procedure mentioned above shall be followed.
- g) The meeting may be adjourned for the purpose of counting votes and be called later to declare the result.

Conclusion

In the current nationwide lockdown scenario and threat posed by COVID-19, the compliance relaxations provided through this Circular will definitely ease the difficulties faced by the companies for passing of ordinary and special resolution of urgent nature and further, help them to be compliant with the Act and the rules made thereunder.

DISCLAIMER

This alert has been written for general information of our clients and should not be treated as a substitute for legal advice. We recommend that you seek proper legal advice prior to taking any action pursuant to this alert. We disclaim all liability for any errors or omissions. For further clarifications you may write to Mallika Noorani (mallika.noorani@parinamlaw.com), Rasna Patel (rasna.patel@parinamlaw.com), Vibha Oswal (vibha.oswal@parinamlaw.com) and Pran Malik (pran.malik@parinamlaw.com).

MUMBAI

4TH Floor Express Towers, Ramnath Goenka Marg, Nariman Point, Mumbai - 400 021

Tel - 022 42410000

NEW DELHI

4 Todarmal Lane, Bengali Market, New Delhi 110001

Tel - 9810400283

PUNE

2nd Floor, Kundan Chambers, Thube Park, Next to Sancheti Hospital, Shivajinagar, Pune- 411 005.

Tel - 020 2553 0711

WWW.PARINAMLAW.COM

If you wish to stop receiving emails from this mailroom, please click on [unsubscribe](#) to send the request.

