

## Clarification on passing of Ordinary & Special Resolution by MCA amid COVID-19 outbreak

As we all are aware that the COVID-19 virus has hit populations around the world and has resulted in many restrictions, including free movement of people, thereby hampering businesses and day to day functioning of companies. It has been declared a 'pandemic' by the World Health Organization (WHO).

The pandemic has presented fresh challenges for the country's economy, causing severe disruptive impact on both demand and supply side elements which has the potential to derail the growth story. The Government of India has made several efforts to provide relief to law abiding companies and other organizations in the wake of COVID 19, various regulators such as the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI), etc. have introduced several schemes and relaxations.

As a part of such efforts, the Ministry of Corporate Affairs (MCA) has issued the **Circular No.14/ 2020 dated 8<sup>th</sup> April, 2020** which provides the clarifications with relation to passing of Ordinary Resolution and Special Resolution by companies under the Companies Act, 2013 and rules made thereunder. Through such circular, the MCA has encouraged the companies to take all decisions of urgent nature which requires 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 or e-voting in accordance with the provisions of the Companies Act, 2013 without holding a general meeting, which requires physical presence of members at a common venue

The circular also provides the procedure which shall be adopted by the companies in case holding of an extra ordinary general meeting (EGM) which is unavoidable. **It shall be noted that such procedure needs to be adopted by the company for conducting an extra ordinary general meeting (EGM) on or before 30<sup>th</sup> June, 2020.**

<b>Synopsis of Circular</b>	
<b>Companies which are required to provide the facility of e-voting under the Companies Act, 2013 or any other company which has opted for such facility</b>	
Sr. No.	Particulars
1.	Unavoidable EGM may be held through <b>Video Conferencing (VC) or Other Audio Visual Means (OAVM)</b> . The meeting shall be scheduled by taking into consideration the convenience of different persons positioned in different zones. 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.
2.	Such meeting through VC or OAVM shall allow 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 <b>at least 1000 members to participate on a first-come-first served basis.</b>
3.	<b>Restriction on account of first-come-first served basis may not apply to;</b> <ul style="list-style-type: none"> <li>• Shareholders holding 2% or more shareholding;</li> <li>• Promoters;</li> <li>• Institutional Investors;</li> <li>• Directors;</li> <li>• Key Managerial Personnel;</li> <li>• The chairpersons of the Audit Committee, Nomination and Remuneration Committee, Stakeholder Relationship Committee;</li> <li>• Auditors etc.,</li> </ul>
4.	The facility for joining the meeting shall be kept open <b>at least 15 minutes before the time scheduled to start the meeting</b> and shall not be closed <b>till the expiry of 15 minutes after such scheduled time.</b> Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under Section 103 of the Companies Act, 2013. Before the actual date of the meeting, Companies shall provide the facility of remote e-voting in accordance with the Companies Act, 2013.
5.	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; <ul style="list-style-type: none"> <li>• Member who has casted vote on resolution through remote e-voting;</li> <li>• Members who has been barred from the voting.</li> </ul>
6.	Chairman for the meeting 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.]; <ul style="list-style-type: none"> <li>• <b>Less than 50 members present:</b> The Chairman shall be appointed in accordance with Section 104 of the Companies Act, 2013;</li> <li>• <b>In all other cases:</b> The Chairman shall be appointed by a poll conducted through the e-voting system during the meeting.</li> </ul> It is a duty of the Chairman present at the meeting to 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. The voting shall be conducted in the following manner;

	<ul style="list-style-type: none"> <li>• <b>Less than 50 members present:</b> 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 Companies Act, 2013 in which case, the voting shall be conducted through the e-voting system;</li> <li>• <b>In all other cases:</b> The voting shall be conducted through the e-voting system.</li> </ul>
7.	<p>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.</p> <p>However, it shall be noted that the appointment of representatives in pursuance of Section 112 and Section 113 of the Companies Act, 2013 is allowed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.</p>
8.	<p>At least 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.</p> <p>The company shall encourage the institutional investors who are members of the company, to attend and vote in the meeting through VC or OAVM.</p>
9.	<p>Notice of the meeting shall comprise 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.</p> <p>The company shall also provide the helpline numbers through the Registrar &amp; Transfer Agent, Technology Provider or such other person as required for those members who need assistance with using the technology before or during the meeting.</p> <p>A copy of notice of meeting shall be published on the website of the company and all the required intimation may be made to the stock exchanges in case of listed company.</p>
10.	<p>Notice for meeting which has been served <b>before the date of circular i.e. 8<sup>th</sup> April, 2020</b>, may adopt the framework mentioned herein above by complying the following;</p> <ul style="list-style-type: none"> <li>• Consent of member shall be obtained in accordance with the Section 101(1) of the Companies Act, 2013;</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>• A fresh notice of shorter duration with due disclosures in consonance with the said circular is issued consequently.</li> </ul>
11.	<p>All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies (ROC) <b>within 60 days of the meeting</b>.</p> <p>The same shall clearly mention the provisions of the circular along with other provisions of the Companies Act, 2013 were duly complied with during such meeting.</p>

**Companies which are not required to provide the facility of e-voting under the Companies Act, 2013**

Sr. No.	Particulars
1.	<p>Unavoidable EGM may be held through <b>Video Conferencing (VC) or Other Audio Visual Means (OAVM)</b>.</p> <p>The meeting shall be scheduled by taking into consideration the convenience of different persons positioned in different zones.</p> <p>The entire proceedings of the meeting shall be recorded and such recorded transcript shall be maintained in the safe custody by the company and public company shall upload the recorded transcript on the website [if any] of the company.</p>
2.	<p>Such meeting through VC or OAVM shall allow 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.</p> <p>Such facility shall have a capacity to allow <b>at least 500 members OR members equal to the total number of members of the company {whichever is lower}</b> to participate on a first-come-first served basis.</p>
3.	<p><b>Restriction on account of first-come-first served basis may not apply to;</b></p> <ul style="list-style-type: none"> <li>• Shareholders holding 2% or more shareholding;</li> <li>• Promoters;</li> <li>• Institutional Investors;</li> <li>• Directors;</li> <li>• Key Managerial Personnel;</li> <li>• The chairpersons of the Audit Committee, Nomination and Remuneration Committee, Stakeholder Relationship Committee;</li> <li>• Auditors, etc.</li> </ul>
4.	<p>The facility for joining the meeting shall be kept <b>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.</b></p> <p>Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under Section 103 of the Companies Act, 2013.</p>
5.	<p>Chairman for the meeting 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.];</p> <ul style="list-style-type: none"> <li>• <b>Less than 50 members present:</b> The Chairman shall be appointed in accordance with Section 104 of the Companies Act, 2013;</li> <li>• <b>In all other cases:</b> The Chairman shall be appointed by a poll conducted in a manner provided in succeeding points.</li> </ul>

6.	<p>At least 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.</p> <p>The company shall encourage the institutional investors who are members of the company, to attend and vote in the meeting through VC or OAVM.</p>
7.	<p>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.</p> <p>However, it shall be noted that the appointment of representatives in pursuance of Section 112 and Section 113 of the Companies Act, 2013 is allowed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.</p>
8.	<p>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.</p> <p>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.</p> <p>Due safeguards with respect to authenticity of email address(es) and other details of the members shall also be taken by the company.</p>
9.	<p>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 through their email address(es) which are registered with the company.</p> <p>Email for casting votes shall only be sent to the designated email address circulated by the company in advance.</p>
10.	<p>The Chairman may decide to conduct a vote by show of hands if the members present in the meeting are <b>less than 50</b>.</p> <p>If the demand for poll is made by any member in accordance with Section 109 of the Companies Act, 2013 then the procedure mentioned above shall be followed.</p>
11.	<p>The meeting may be adjourned for the purpose of counting votes and be called later to declare the result.</p>
12.	<p>Notice of the meeting shall comprise 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.</p> <p>The company shall also provide the helpline numbers through the Registrar &amp; Transfer Agent, Technology Provider or such other person as required for those members who need assistance with using the technology before or during the meeting.</p> <p>A copy of notice of meeting shall be published on the website of the company.</p>

13.	<p>Notice for meeting which has been served <b>before the date of circular i.e. 8<sup>th</sup> April, 2020</b>, may adopt the framework mentioned herein above by complying the following;</p> <ul style="list-style-type: none"> <li>• Consent of member shall be obtained in accordance with the Section 101(1) of the Companies Act, 2013;</li> </ul> <p>AND</p> <ul style="list-style-type: none"> <li>• A fresh notice of shorter duration with due disclosures in consonance with the said circular is issued consequently.</li> </ul>
14.	<p>All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies (ROC) <b>within 60 days of the meeting</b>. The same shall clearly mention the provisions of the circular along with other provisions of the Companies Act, 2013 were duly complied with during such meeting.</p>

Further, it is important to note that the companies shall ensure that all other compliances associated with the provisions relating to general meetings viz. making disclosures, inspection of related documents by members or authorization for voting by bodies corporate etc. as provided in the Companies Act, 2013 and the Articles of Associations of the company are made through electronic mode.