



Electronic General Meetings During COVID Lockdown

Ministry of Corporate Affairs (MCA) vide Circular dated 08th April, 2020, provided the framework for conducting Extraordinary General Meetings (EGM) through video conferencing or any other audio-visual modes, considering the prolonged lockdown prevailing in the country. Certain conditions provided in the said Circular was further clarified vide MCA's Circular dated 13th April, 2020. The framework provided in the aforesaid Circulars is important because it applies to holding Annual General Meetings (AGM) through video-conferencing which the MCA permitted vide its Circulars dated 21st April 2020 and 05th May, 2020. While the first two Circulars are on EGMs, the next two Circulars are on AGMs. While the Circulars apply the framework to EGMs conducted on or before 30th June, 2020, they apply the framework for AGM conducted during the whole of calendar year 2020.

For the purpose of holding EGMs and AGMs through video-conferencing, MCA divides companies into two broad categories of companies viz., those that are required to provide e-voting facility compulsorily and those that are not required to provide e-voting facility.

The Companies Act, 2013 (the Act) makes it mandatory to provide e-voting facility if a company has 1000 or more members. The process for e-voting facility is provided in Section 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014. Ipso facto, companies with less than 1000 members are not mandatorily required to provide e voting facility to its members, be it AGM or EGM.

Companies which have calendar year as financial year (say 31st December, 2019) are required to hold their AGM on or before 30th of June, 2020, can hold AGMs on or before 30th September, 2020, as stated in the Circular dated 21st April 2020. The Circular dated 5th May 2020 permits AGMs through VC mode for all companies in the period throughout the calendar year 2020. This Circular does purport to permit companies whose financial year ended on 31st December 2019 to hold their AGMs beyond 30th September 2020, by seeking extension of time under Section 96 of the Act from the Registrar of Companies.



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As could be understood from the Circular on AGM dated 05th May 2020, a company may hold its annual general meetings in the physical mode as usual provided it is able to secure permission from civic authorities. However, in such cases, in addition to physical meeting, video-conferencing facility should also be organized and members present physically at the venue as well as those who are present through video-conferencing mode should also be reckoned for the purpose of quorum and all resolutions must be put to vote through e voting facility only.

We have explained herein the framework for conducting EGM / AGM through video conferencing (VC meeting) for a company which is not mandatorily required to provide e-voting facility.

Pre-meeting Framework

The AGM through video conferencing is permitted only if the company has registered email addresses of not less than 50% of its members and such members must represent not less than 75% of the voting capital. Threshold is also mentioned for Nidhi companies and companies not having share capital. However, there is no clarity as to how companies will be able to hold AGM through video conferencing if they are not able to fulfil the above criteria even as on 31st December, 2020, despite their efforts to reach out to their shareholders to collect their email ids.

Notices for such meetings must be sent only through registered email ID which the members have registered with the company. If the shares of the company have been dematerialised, the email registered with the depository or depository participant should be used. The notice of such meetings must make a disclosure with regard to the entire framework. Technical assistance should also be provided through helpline for enabling members to attend, participate and vote in such meetings. Members present in different time zones shall be kept in mind while fixing the time of the meeting.

A company may not have email address of all the members for electronic communication. At the same time, without issuing proper notice to members, no general meeting will be valid. Accidental omission to give notice to a member does not invalidate the meeting itself per sub-section (4) of Section 101 of the Act. Difficulty in sending notices due to non-availability of email addresses of members does not constitute accidental omission. Thus, to constitute a valid general meeting, whether AGM or EGM, the fundamental requirement is sending in advance notice (of the meeting) to the members.

Therefore, prior to thinking about calling and holding a general meeting through VC, the company must contact all the members whose email addresses are not registered, so that the company is able to obtain and register their email addresses, to enable it to send notice for the general meeting. However, it may not be possible for the company to get in touch with all the members, if the company doesn't have their telephone numbers or the company is unable to reach out to them in any other manner, whatsoever. In such an instance, the company has to publish advertisement of the notice through newspapers (including electronic editions) in English and in vernacular language in the district in which the registered office of the company is situate, at least 3 days before the date of despatch of the notices, so that members are able to reach out to the company and furnish their email addresses or understand about the process for ensuing AGM or EGM. The notice must be prominently displayed in the website, if any, of the company



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The venue of the meeting shall be place mentioned in the notice. The notice for EGM or AGM shall provide the process to enable inspection by members of documents, registers relevant for the meeting and as required by the Act through electronic means.

The video-conferencing should be enabled for two-way teleconferencing to enable members to pose questions concurrently. Queries can also be sent by designated email.

As per sub-section (2) of Section 102 of the Act, certain items of business to be transacted at every AGM are named as ordinary business items. Adoption of accounts, declaration of dividend, appointment of directors in the place of those retiring by rotation and appointment of auditors are the usual items of business invariably transacted at AGMs, whether the company is big or small. Of course, depending upon statutory requirements and articles of association and financial position, there may not be any requirement with respect to declaration of dividend, appointment of directors in the place of those retiring by rotation (if provisions relating to retirement of directors by rotation does not apply) and appointment of auditors. The Circular states specifically that at such AGMs only those items of special businesses which are unavoidable, in the opinion of the Board should be conducted.

The most important item of business at an AGM is adoption of accounts. Sending physically the notice and financial statements during lock down is also ruled out. Therefore, the financial statements should also be sent by email.

The companies must ensure all other compliances in terms of the provisions of the Companies Act read with articles of association. Companies which are unable to hold AGM through video-conferencing can to apply to the Registrar of Companies for extension of time per Section 96 of the Act.

During Meeting Framework

Every meeting requires a person to chair the meeting. If the articles of association names any specific person to be the chairperson, such person should chair the meeting. In case there is no such provision in the articles, chairperson may be appointed either by show of hands or by poll if the number of members is less than 50. If the number of members is 50 or more, then election of chairman must be by poll. It would be advisable to demand a poll and elect a chairperson, if the articles do not name any specific person as the chairperson. Poll can be conducted through email and votes can be notified by email. If the number of members is less than 50, then voting can be by show of hands, unless poll is demanded. For this purpose, the company must provide a designated email address, so that members are able to communicate their votes through such designated email address, in the case of voting on poll. Members shall cast their votes only through their designated email address.

Once a chairperson is elected, the meeting can proceed to conduct business as per the notice. It is necessary for the chairperson of the meeting to ensure and record that the EGM or AGM has been properly convened as per the stated framework for conducting AGM or EGM through video-conferencing and that the meeting has been properly conducted.

For the purpose of quorum, members attending through VC meeting should be counted. Where companies have obtained permission from civic authorities to conduct physical meeting, then



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quorum will be of those who attend the meeting and also those who attend through VC. Proxies are not be permitted for VC meetings. Companies, corporations, institutions, societies and trusts and other bodies corporate may appoint their representatives to attend and vote in such VC meetings.

Members must be allowed to log in and join the meeting through VC at least 15 minutes before time appointed for the meeting and registration for participation should not be closed until expiry of 15 minutes after start of the scheduled time. Participation in the VC meeting shall be on first come first served basis except for members with 2% or more shareholdings, promoters, institutional investors, KMPs, chairpersons of audit committee, stakeholders committee, nomination and remuneration committee, independent directors, where applicable and auditors (or through his qualified authorised representative). Institutional investors must be encouraged to attend such meetings.

Post Meeting Framework

All resolutions passed in EGM or AGM should be filed with the Registrar of Companies within 60 days of the meeting. While filing resolutions, a statement showing that the general meeting is called and held as per the stated framework has been duly complied with, should also be stated.

The company is required to preserve the recorded transcripts of the VC meeting in safe custody. Public companies should also post the transcripts on their website, where available.

FREQUENTLY ASKED QUESTIONS

Applicability: For Companies which are not required to provide compulsorily e-voting facility

1. Is there any time limit for conducting EGM or AGM through video-conferencing?

For conducting EGM, the prescribed framework will apply for all EGMs convened and held before 30th June 2020.

For conducting AGM, the prescribed framework will apply for the entire calendar year 2020.

2. Is there any threshold criteria for holding AGM through video-conferencing?

Yes. The company must have email of not less than 50% of the members registered with the company who should have not less than 75% of the total voting power at general meetings. This threshold limit is not specified for conducting EGM through video-conferencing.

3. What if a company is not able to hold AGM through video-conferencing?

Such a company can apply to Registrar of Companies for seeking extension of time and holding the AGM within such extended time.



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4. Should the notices of EGM or AGM be uploaded in the website?

Yes, if the company has a website.

5. Whether any public advertisement must be given prior to issuing notice of such AGM?

Public advertisement should be issued in English as well as vernacular newspapers with specified contents, only if a company does not have emails of all its members.

6. What is the mode of sending financial statements (comprised in Annual Report) for AGM?

Annual report comprising audited financial statements must also be sent through email.

7. For EGM / AGM held through video-conferencing what will be considered as venue?

Venue will be the one stated in the notice of the meeting.

8. What will be the position with regard to appointment of proxies for EGM or AGM?

For meetings held through video-conferencing the question of appointment of proxies does not arise.

9. Whether members attending EGM or AGM through video-conferencing will be counted for quorum purposes?

Very much. If meetings are held both by physical means and through video-conferencing, the presence of members in both modes should be counted for quorum.

10. What about voting by show of hands at such EGM or AGM?

Voting by show of hands shall be taken at the discretion of chairman if the number of members present is less than 50.

11. What about demanding a poll on any item of business coming up before the EGM or AGM?

Yes. Poll can be demanded subject to provision of the Act and Articles of Association.

12. What is the manner of voting when a Poll is demanded?

The company shall provide a designated email id to all the members at the time of sending the notice of the meeting so that the members can convey their voting by email sent to designated email id when a poll is taken during the meeting on any resolution. Members may convey their assent or dissent only at the time of meeting or at such stage on items considered in the meeting by sending emails to the designated email address provided by the company, as per the notice of meeting.



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13. What about declaration of results?

In case counting of votes requires time, the meeting could be adjourned and called again for declaration of results.

14. Whether recording of meeting through video-conferencing is mandatory?

Yes. The recorded transcript shall be maintained in safe custody of the company. In case of public company, it shall be made available in the website of the company, where there is one.

15. What is the facility in case of declaration of dividend in the AGM?

The company shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearance Services [ECS] or any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the dividend/cheque to such shareholders by post.

16. Is there any exemption for compliance of certain requirements at the AGM?

The circular clarifies that companies must ensure all other compliances in terms of the provisions of the Companies Act, 2013 read with Articles of Association. Companies which are not able to hold AGM through VC mode can seek extension of time per Section 96 of the Act from the Registrar of Companies.

For any specific queries or handholding on the process of holding EGM / AGM through video-conferencing, please get in touch with us.

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CENTRAL OFFICE	BRANCH OFFICE	BRANCH OFFICE
Indus Chamber No.101, Govt Arts College Road, Coimbatore – 641018. Tel No: - (0422)2302868, 4952868 Email: info@ksrandco.in Linked in: gene@ksrandco.in	Flat No.1, 26/27, Venkatesham Flat, Gopal Street, T-Nagar, Chennai – 600 017. Tel No: - (044)24337620, Email: chennai@ksrandco.in	S-311, 3 rd Floor, South Block, Manipal Centre, No.47, Dickenson Road. Bangalore – 560042, Tel No: - (080)25323232 Email: bangalore@ksrandco.in