

Leveraging digital strength – EGM allowed through VC's

April 11, 2020

In brief

Ministry of Corporate Affairs (MCA) is fully aware of the difficulties faced by companies on account of the ongoing nation-wide lockdown and social distancing due to COVID 19. The Ministry has also taken note of various representations received from industry associations and corporates on the need to facilitate companies in taking certain emergent/ urgent measures in the face of extreme disruptions and dislocation caused by the pandemic. The circular was issued on April 8, 2020.

Link – http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

In detail

The Circular is broadly divided into two parts:

- The first part addresses those companies which are required to provide the facility of e-voting under the Companies Act, 2013 (the "Act") or any other company which has opted for such a facility, and the second part addresses companies which are not required to provide the facility of e-voting under the Companies Act, 2013. The first category of companies, which are required to provide the facility of e-voting, can be found in section 108 of the Act and refers to all listed companies, or companies which have more than one thousand shareholders.
- The second category of companies would accordingly be unlisted companies and those with less than one thousand shareholders.

A. For Companies, which are required to provide facility of e-voting

1. **Scheduling the meeting-** Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.

2. **Mode of conducting EGM-**

Through VC or OAVM and the recorded transcript shall be maintained in safe custody by the company. In case of a public company, the recorded transcript of the meeting, be made available on the website (if any) of the Company.

3. **Notice of the meeting:**

The notice for the general meeting contain clear instructions on how to access and participate in the meeting. The company shall provide a helpline number through the Registrar & 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.

4. **Submission of questions:**

Participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company

5. **Ease of participation-**

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.

6. **FIFO basis:**

Such facility must have a capacity to allow at least 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.

7. **Time factor:**

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.

8. **Appointment of chairman:**

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. 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 through the e-voting system during the meeting

9. Quorum: Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.

10. Proxy: is allowed to be appointed to attend and vote at a general meeting on behalf of a member who is not able to attend personally.

11. Conduct of a meeting: 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;

- 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,

- In all other cases, the voting shall be conducted through e-voting

12. Casting of vote: 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.

13. Presence of other individuals: At least one independent director (where the company is required to appoint one), and the auditor or his authorized representative, who is qualified to be the auditor shall attend such meeting through VC or OAVM

14. Institutional investors: Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM

15. Notice served prior to this circular: 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.

16. Filing of resolutions: All resolutions passed in accordance with this mechanism shall be filed

with the ROC within 60 days of the meeting, clearly indicating therein that the mechanism provided herein in 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

The requirements for the second category of companies as mentioned above, are largely similar to the requirements of companies with the e-voting procedure. The only notable difference is the procedure for voting. As e-voting is not provided by such companies, the circular calls for the provision of a designated email address to all members at the time of sending of the notice of the meeting, upon which all members can convey their vote when a poll is required to be taken during the meeting.

Further the Circular states that in case the counting of votes requires time, the said meeting may be adjourned and called later to declare the result.

Conclusion

The Circular serves as an important clarification as the Act does not contain a specific provision that allows for the EGM to be governed through VC or OAVM. It is also in line with the MCA's objective of facilitating corporate compliances during the lockdown period and maintaining social distancing measures. This Circular is sight of relief for all those companies whose urgent business was pending due to conduct of EGM. However, the companies are allowed to conduct EGM through VC only up to June 30, 2020 and the said Circular covers only EGM (not AGM).



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