

MCA Updates

For the month of May, 2020

A. CLARIFICATION ON HOLDING OF AGM THROUGH VIDEO-CONFERENCING OR OTHER AUDIO VISUAL MEANS

- i. Ministry of Corporate Affairs (MCA) had issued a **General Circular No. 14/2020 (Circular-1)** on April 08 2020 for **passing of resolutions of members for Special Business** (Not Ordinary Businesses) during this period of nationwide lock down to June 30 ,2020.
- ii. Later on April 13, 2020 MCA had issued one more **General Circular No. 17/ 2020 (Circular-2)** clarifying on various difficulties faced by the Company in serving Notice for conducting EGM as per Circular-1 and provided with clarity on modalities/mechanism for conducting EGM or transacting items through Postal Ballot without conducting EGM. With the Circular-2, MCA has also extended the time for holding EGM till June 30, 2020 or till further Order whichever is earlier.
- iii. Now, after receiving various representations and in view of the continuing restrictions on the movement of persons at several places in the country, MCA has on **May 05, 2020** vide General Circular No.20/ 2020 provided relaxation to Companies to conduct the Annual General Meeting (AGM) of their members through Video Conferencing (VC) or Other Audio Visual Means (OAVM), during the calendar year 2020 which the Companies are required to conduct as per Section 96 of the Companies Act, 2012 (the Act) , subject to the fulfilment of various requirements discussed below:

I. Conducting AGM for Companies which are required to provide the facility of e-voting under the Act, or any other Company which has opted for such facility:

1. The **framework provided in para 3 -A of EGM Circular – I** that is Circular No.14/2020 dated April 08, 2020 and **the manner and mode of issuing notices** provided in sub-para (i)-A of EGM Circular – II that is Circular No. 17/ 2020 dated April 13, 2020 shall be applicable *mutatis mutandis* for conducting the AGM.

Framework provided in para 3 -A of EGM Circular – I that is Circular No.14/2020 dated April 08, 2020 is explained as below for easy reference for the reader for conducting AGM

- (a) In case it is unavoidable then EGM was allowed to be conducted by VC or OAVM. However to read this in this Circular 20 with reference to conducting AGM it should be read that in the AGM only **four Ordinary Business** as per Section 102 (2) (a), to be transacted and items of special business as per Section 102 (2) (b), which are considered to be unavoidable by the Board, may be transacted. Further the entire proceedings of the meeting to be recorded and such **recorded transcript** shall be maintained in the safe custody by the Company. The public Company to upload the recorded transcript on the website of the Company, if any.

- (b) While deciding the time for AGM through VC or OAVM, the management shall keep in mind the convenience of different persons positioned in **different time zones in the globe**. For that reason, the management must know and check the list of its shareholders with their addresses and ensure availability of its Directors, Independent Directors, Nominee Directors and Auditors.
- (c) The Company to ensure and provide proper teleconferencing facility as follow :
- Arrangement for **two-way communication** through teleconferencing or webex for the ease of participation by the members and the participants are allowed to **pose the question** concurrently or given time to submit their questions in advance on the email of the Company; and
 - Capability of system of **hosting upto 1000 members** to participate on first come first serve basis principle and the large Shareholders holding 2% or more shareholding, Promoters, Institutional Investors, Directors, Key Managerial Personnel, Chairperson of Audit Committee, Nomination and Remuneration Committee and Stakeholders and Relationship Committee and the Auditors must be allowed to attend the meeting without restriction of first- come- first- served basis principle.
- (d) The facility of 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 of the AGM.
- (e) Before the actual date of AGM, the **facility of remote e-voting** shall be provided in accordance with as per Rule 20 of the Companies (Management and Administration) Rules, 2014.
- (f) The Members who attend through VC or OAVM are counted for the purpose of reckoning **quorum under Section 103 of the Act**.
- (g) Member who is present in the meeting through VC or OAVM and who has not cast his vote on resolution through remote e-voting and is otherwise not barred from the voting shall be allowed **to vote through e-voting system provided during the meeting and not by show of hands**.
- (h) Unless the Articles of Association of the Company require any specific person to be appointed as a **Chairman for the meeting**, the Chairman for the meeting shall be appointed as follow :
- If there are **less than 50 members** present, the Chairman shall be appointed in accordance with Section 104 of the Act, that is by show of hands ; and
 - if there are **equal to or more than 50 members** present, then the Chairman shall be appointed by a poll conducted through e-voting system during the meeting.
- (i) The Chairman present at the meeting shall ensure that the **facility of e-voting system** is available for the purpose of voting during the meeting held through VC or OAVM.
- (j) **Proxies** as per section 105 of the Act, cannot be appointed for participation in the AGM conducted as per this Circular. However, the **Authorised Representative** in pursuance of Section 112 and Section 113 of the Act are deemed to be member of the Company and are entitled to exercise same rights and powers as the member could exercise and hence appointment of Authorised Representative for participating in the AGM held through VC or OAVM is allowed.
- (k) At least **one Independent Director** (where the Company is required to appoint) and the **Statutory Auditor / Secretarial Auditor** or their authorized representative who are also qualified to be the Statutory Auditor / Secretarial Auditor, as the case may, shall attend such meeting through VC or OAVM.

- (l) The Company **to encourage** the Institutional Investors who are members of the Company, to attend and vote in the AGM through VC or OAVM.
- (m) The Notice for AGM shall make the following disclosure
- Detailed manner and framework of conducting the AGM as per this Circular
 - How to access the meeting
 - How to participate in the meeting
 - Helpline number through Registrar & Share Transfer Agents or technology provider or otherwise for the members who need assistance with using the technology before or during the meeting
 - Notice of the meeting to be prominently displayed on the website of the Company and for listed Company intimation to be given to the stock exchanges.
- (n) If the Notice for AGM has been served prior to 05th May, 2020, being the date of Circular, than the Company with the **consent of not less than 95% of members** in number who are entitled to vote, **issue a fresh Notice with shorter duration** with detailed disclosure as mentioned in the above point (m).
- (o) All Resolutions passed in AGM conducted through this mechanism of VC or OAVM shall be filed with the Registrar of Companies within 60 days of meeting, clearly indicating therein that the mechanism provided in these Circulars along with other provisions of the Act and Rules were duly complied with during such meeting.

The manner and mode of issuing notices provided in sub-para (i)-A of EGM Circular – II that is Circular No. 17/ 2020 dated April 13, 2020 is explained as below for easy reference for the reader for conducting AGM

- (a) The company to comply with Rule 18 of the Companies (Management and Administration) Rules, 2014 and the **Notice of AGM** may be given to the members only through the email registered with the Company or Depository Participants or Depository.
- (b) The Company to give a **Public Notice** by way of advertisement as per Rule 20 (4) (v) of the Companies (Management and Administration) Rules, 2014 and the same to be published at least once in vernacular newspaper in the principal vernacular language of the district in which the registered office of the Company is situated and having wide circulation in that district and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having **electronic editions**, and specifying in the advertisement the following information
- a statement that the **AGM is proposed to be conducted through VC or OAVM** in compliance with applicable provisions of the Act / Rules and these Circulars ;
 - the **date and time** of the AGM to be conducted through VC or OAVM;
 - availability of Notice of AGM on the **website** of the Company and the stock exchange for listed Company;
 - 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;
 - the manner in which the members **who have not registered** their email addresses with the Company can get the same registered with the Company;
 - the manner in which the members **can give their mandate for receiving dividends** directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means;

- any other detail considered necessary by the Company
- (c) The **Chairman of the meeting** shall satisfy himself and cause to record the same before considering the business at the meeting that all efforts feasible under the circumstances have indeed been made by the Company to enable the members to participate and vote on the items being considered in the meeting.
2. In the AGM through VC or OAVM, **Ordinary Business Items** and only those **special business items** which are **considered** to be **unavoidable** by the Board, may be transacted.
 3. **Financial Statements** (including Board's Report, Auditor's Report or other documents required to be attached therewith), shall be sent **only by email** to the members, trustees for the debenture-holder of any debentures issued by the Company and to all other persons entitled to receive the same.
 4. **Public Notice** for AGM should be published with details as mentioned **in point (b) above**.
 5. In case, the Company is unable **to pay the dividend** to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the Company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.
 6. **Quorum** : In case, the Company has received the permission from the relevant authorities to conduct its AGM at its Registered Office, or at any other place as provided under section 96 of the Act, after following any advisories issued from such authorities, the Company may in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OAVM, so as to allow other members of the Company to participate in such meeting. All members who are physically present in the meeting as well as the members who attend the meeting through the facility of VC or OAVM shall be reckoned for the purpose of quorum under section 103 of the Act. All resolutions shall continue to be passed through the facility of e voting system.

II. Conducting AGM For Companies which are not required to provide the facility of e-voting under the Act

1. AGM may be conducted through the facility of VC or OAVM only by a Company which has in its records, the email addresses of at least **half of its total number of members**, who
 - a. in case of **a Nidhi**, hold shares of more than Rs. 1000/- in face value or more than 1% of the total paid-up share capital, whichever is less;
 - b. in case of other Companies **having share capital**, who represent not less than seventy-five per cent. of such part of the paid-up share capital of the Company as gives a right to vote at the meeting;
 - c. in case of Companies **not having share capital**, who have the right to exercise not less than 75% of the total voting power exercisable at the meeting.

Note –The company to check both the things and not one , (a) 50% of number of members and (b) having threshold of holding of shares or voting power.

2. The Company shall take all necessary steps to register the email addresses of all persons who have not registered their email addresses with the Company.
3. **The framework provided in para 3-B of EGM Circular – 1** that is Circular No. 14/2020 dated April 08,2020 and **the manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular - II** that is Circular No. 17/2020 dated April 13,2020 shall be applicable *mutatis mutandis* for conducting the AGM.

Framework provided in para 3 -B of EGM Circular – I that is Circular No.14/2020 dated April 08, 2020 is explained as below for easy reference for the reader for conducting AGM

- (a) In case, it is unavoidable then EGM was allowed to be conducted by VC or OAVM. However to read it with Circular 20 with reference to conducting AGM it should be read that in the AGM only **four Ordinary Business** as per Section 102 (2) (a), to be transacted and items of special business as per Section 102 (2) (b), which are considered to be unavoidable by the Board, may be transacted. Further the entire proceedings of the meeting to be recorded and such **recorded transcript** shall be maintained in the safe custody by the Company. The public Company to upload the recorded transcript on the website of the Company, if any.
- (b) While deciding the time for AGM through VC or OAVM, the management shall keep in mind the convenience of different persons positioned in **different time zones in the globe**. For that reason, the management must know and check the list of its shareholders with their addresses and ensure availability of its Directors, Independent Directors, Nominee Directors and Auditors.
- (c) The Company to ensure and provide proper teleconferencing facility as follow :
 - Arrangement for **two-way communication** through teleconferencing or webex for the ease of participation by the members and the participants are allowed to **pose the question** concurrently or given time to submit their questions in advance on the email of the Company; and
 - Capability of system of **hosting upto 500 members** or members equal to the total number of members of the Company, whichever is lower, to participate on first come first serve basis principle and the large Shareholders holding 2% or more shareholding, Promoters, Institutional Investors, Directors, Key Managerial Personnel, Chairperson of Audit Committee, Nomination and Remuneration Committee and Stakeholders and Relationship Committee and the Auditors must be allowed to attend the meeting without restriction of first- come- first- served basis principle.
- (d) The facility of 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 of the AGM.
- (e) The Members who attend through VC or OAVM are **counted** for the purpose of reckoning quorum under Section 103 of the Act.
- (f) Unless the Articles of Association of the Company require any specific person to be appointed as a **Chairman for the meeting**, the Chairman for the meeting shall be appointed as follow :
 - If there are **less than 50 members** present, the Chairman shall be appointed in accordance with Section 104 of the Act, that is by show of hands ; and

- if there are **equal to or more than 50 members** present, then the Chairman shall be appointed by a poll conducted through e-voting system during the meeting.
- (g) At least **one Independent Director** (where the Company is required to appoint) and the **Statutory Auditor / Secretarial Auditor** or their authorized representative who are also qualified to be the Statutory Auditor / Secretarial Auditor, as the case may, shall attend such meeting through VC or OAVM.
- (h) **Proxies** as per section 105 of the Act, cannot be appointed for participation in the AGM conducted as per this Circular. However, the **Authorised Representative** in pursuance of Section 112 and Section 113 of the Act are deemed to be member of the Company and are entitled to exercise same rights and powers as the member could exercise and hence appointment of Authorised Representative for participating in the AGM held through VC or OAVM is allowed.
- (i) The Company to **encourage the Institutional Investors** who are members of the Company, to attend and vote in the AGM through VC or OAVM.
- (j) The Notice for AGM to include a **designated email address of the Company** so that the members can cast their vote through such designated email address, whenever a poll is demanded during the AGM on any resolution.
- (k) The **confidentiality of the password** and other privacy issues associated with the designated email address shall be strictly followed by the Company and also due safeguards shall be taken by the Company with respect to **authenticity of email address(es)** and all the other details of its members.
- (l) During the AGM 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 only **at such stage on items considered in the meeting** by sending email to the **designated email address** circulated by the Company **through their email address(es) which are registered** with the Company. Such voting is not allowed to be sent by email in advance to the Company before the meeting is actually held through VC or OAVM facility.
- (m) The Chairman may decide to conduct a vote **by show of hands** if the members present in the meeting are less than fifty (50). If the demand **for poll** is made by any member in accordance with Section 109 of the Act then the procedure mentioned above in point (l) shall be followed.
- (n) The meeting **may be adjourned for** the purpose of **counting votes** and **be called later** to declare the result.
- (o) The **Notice for AGM** shall make the following disclosure:
 - Detailed manner and framework of conducting the AGM as per this Circular
 - How to access the meeting
 - How to participate in the meeting
 - Helpline number through Registrar & Share Transfer Agents or technology provider or otherwise for the members who need assistance with using the technology before or during the meeting
 - Notice of the meeting to be prominently displayed on the website of the Company.
- (p) If the Notice for AGM has been served prior to 05th May, 2020, being the date of Circular, than the Company with the **consent of not less than 95% of members** in number who are entitled to vote, **issue a fresh Notice with shorter duration** with detailed disclosure as mentioned in the above point (o).
- (q) **All Resolutions passed in AGM** conducted through this mechanism of VC or OAVM shall be **filed** with the Registrar of Companies **within 60 days** of meeting, clearly

indicating therein that the mechanism provided in this Circular along with other provisions of the Act and Rules were duly complied with during such meeting.

The manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular – II that is Circular No. 17/ 2020 dated April 13, 2020 is explained as below for easy reference for the reader for conducting AGM

- (a) The **Notice of AGM** may be given to the members only through the email registered with the Company or Depository Participants or Depository.
 - (b) Notice of meeting to be displayed on the **website of the Company**, if any.
 - (c) In order ensure that all members are aware that AGM is proposed to be conducted in compliance with the Circular 20, it shall do the following:
 - i. Contact all its members whose email address are not registered with the Company, **over telephone or any other mode** of communication for registration of their email address before sending the Notice for AGM to all its members ; or
 - ii. where the contact details of any of the members are not available with the Company or could not be obtained even after making efforts as above , it shall cause a **Public Notice** by way of an 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 having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, **preferably both newspapers having electronic editions** and specifying in the advertisement, the following information:
 - that the Company **intends to convene AGM** through VC or OAVM in compliance with applicable provisions of the Act / Rules and this Circulars and for that purpose the Company proposes to send Notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice;
 - the details of **the e-mail address along with the telephone numbers** on which the members may contact for getting their e-mail addresses registered for participation and voting in the AGM.
 - (d) The **Chairman of the meeting** shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the Company to enable the members to participate and vote on the items being considered in the meeting.
4. In the AGM through VC or OAVM, other than ordinary business, only those items of special business, which are considered to be **unavoidable by the Board**, may be transacted.

Note : How to decide Unavoidable, with the situation or better governance . It is very subjective.
 5. Owing to the difficulties involved in dispatching of physical copies of the **financial statements** (including Board's report, Auditor's report or other documents required to be attached therewith), such statements shall be sent **only by email** to the members,

trustees for the debenture-holder of any debentures issued by the Company, and to all other persons so entitled.

6. The Companies shall make adequate provisions for allowing the members to give their **mandate for receiving dividends directly in their bank accounts** through the **Electronic Clearing Service (ECS)** or any other means. For shareholders, whose bank accounts are not available, Company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

III. General compliances of disclosure and inspection of documents by the members

The companies referred to in paragraphs (A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents/certain Registers by the members, or authorizations for voting by bodies corporate, etc as provided in the Act and the Articles of Association of the company are made through electronic mode.

IV. Application to Registrar for extension of time to hold AGM till December 31, 2020

The companies which are not covered by the General Circular No. 18/2020, dated April 21, 2020 (that is those companies whose financial year is not ending on December 31, 2019) and are unable to conduct their AGM in accordance with the frame work provided in this Circular are advised to prefer applications for extension of AGM at suitable point of time before the concerned Registrar of Companies under section 96 the Act.

Note : This year considering the Pandemic, MCA should have graciously allowed exemption to corporate from making any application to the Registrar of Companies for extension of time in holding AGM till December 31, 2020. The relaxation should be proactive and not Push from the industry and corporate but a Pull from Government to demonstrate inclusive partnership between the business community and the government.

The link for the above notification is as below:

http://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf

B. CLARIFICATION FOR DISPATCH OF NOTICE OF RIGHT ISSUES OPENING UPTO JULY 31, 2020

- i. As per section 62 (1) (a) (i) of the Companies Act, 2013 a Company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares shall be offered to persons who, at the date of the offer, are the holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid up share capital on those shares by sending a letter of offer made by notice specifying the number of shares offered and limiting a time not being less than 15 days and not exceeding 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined.
- ii. As per Section 62 (2) of the Companies Act, 2013, the notice referred in above point (i) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least 3 days before the opening of the issue.

- iii. Due to COVID-19 pandemic, the Companies are facing difficulties in sending notices through postal or courier services under section 62 (2) of the Companies Act, 2013.
- iv. In view of the above, MCA had received representations from various stakeholders regarding difficulties faced by them while sending notices through postal or courier services due to and in continuation to SEBI circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020 (details for the same are covered under the section of SEBI Updates for the Month of May, 2020), also MCA vide its General Circular no. 21/2020 dated [May 11, 2020](#) has clarified that, in case of listed companies, for rights issues opening upto 31st July, 2020 inability to dispatch the notice to its shareholders through registered post or speed post or courier would not be viewed as violation of section 62(2) of the Companies Act, 2013.

The Link for aforesaid circular is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular21_11052020.pdf

C. FURTHER EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS

In view of the situation arising due to COVID-19 pandemic and extended lockdown period, MCA decided to extend the Period/Days for Names Reserved and Re-Submission of Forms on its website. Details are as below:

- i. In case of names reserved for 20 days for new company incorporation. SPICe+ Part B was supposed to be filed within 20 days of name reservation. Now names expiring any day between May 15, 2020 to May 31, 2020 would be extended by 20 days beyond May 31, 2020.
- ii. The names reserved for 60 days for change of name of company, e-Form INC-24 had to be filed within 60 days of name reservation. Now, the period has been extended for names expiring any day between March 15, 2020 to May 31, 2020 by 60 days beyond May 31, 2020.
- iii. MCA has extended the RSUB validity for companies. The SRNs where last date of Resubmission (RSUB) falls between March 15, 2020 to May 31, 2020, an additional 15 days beyond May 31, 2020 is allowed. However, for SRNs already marked under NBTR (Not to be taken on Record), extension would be provided on case to case basis.

Note: Forms will not get marked to NBTR due to non-resubmission during this extended period as detailed above.

It also includes IEPF Non-STP eforms(IEPF-3, IEPF-5 and IEPF-7).

- iv. The names reserved for 90 days for new LLP incorporation or change of name, FiLLiP/Form 5 needs to be filed within 90 days of name reservation. Now, the names expiring any day between March 15, 2020 to May 31, 2020 would be extended by 20 days beyond May 31, 2020.
- v. MCA has extended the RSUB validity for LLPs. The SRNs where last date of resubmission (RSUB) falls between March 15, 2020 to May 31, 2020, an additional 15 days beyond May 31, 2020 is allowed. However, for SRNs already marked under NBTR (Not to be taken on Record), extension would be provided on case to case basis.

Note: Forms will not get marked to NBTR due to non-resubmission during this extended period as detailed above.

- vi. MCA has extended the date for marking IEPF-5 SRNs to 'Pending for Rejection u/r 7 (3)' and 'Pending for Rejection u/r 7 (7)'. Now, the SRNs where last date of filing eVerification Report (for both Normal as well as Re-submission filing) falls between March 15, 2020 to May 31, 2020, would be allowed to file the form till September 30, 2020. However, for SRNs already marked under 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)', extension would be provided on case to case basis.
Note: Status of IEPF-5 SRN will not change to 'Pending for Rejection u/r 7(3)' and 'Pending for rejection u/r 7(7)' till September 30, 2020.

The link for the aforesaid Notification is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

D. AMENDMENT OF ITEM NO.(VIII) IN THE SCHEDULE VII OF THE COMPANIES ACT,2013

- i. On **May 26, 2020** MCA notified and amended Schedule VII to the Companies Act, 2013 and included 'PM CARES Fund' as an eligible CSR expenditure under item (viii) effective from March 28, 2020, the day when MCA had issued Office Memo specifying that any contribution to PM CARES Fund shall qualify as CSR Expenditure.
- ii. In the past a on October 24, 2014 Central Government had similarly notified that contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga shall qualify for CSR expenditure under item (i) and (iv) of Schedule VII to the Companies Act, 2013.

The link for the aforesaid Notification is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Notice_27052020.pdf
