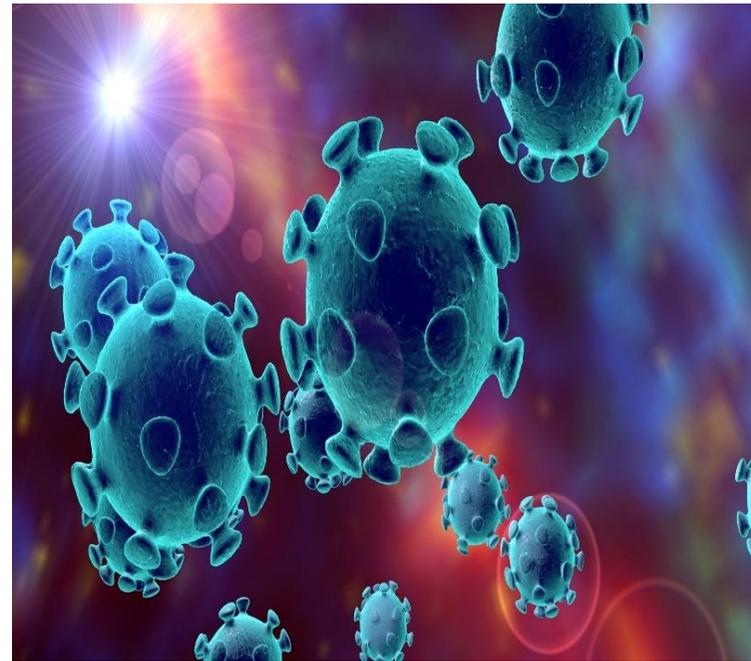


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**CONVENING OF EGM THROUGH VIDEO
CONFERENCING IN LIGHT of COVID - 19**



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The global pandemic spread of the Covid-19 virus has not only cost many lives and crippled healthcare systems, but has also paralyzed most economies of the world as one of the most prudent defence against the spread of the virus was touted to be a nationwide lockdown which consequently put a pause on most economic activities. The Government of India announced such a nationwide lockdown initially to be effective from March 25, 2020 till April 14, 2020 and subsequently extended the same till May 03, 2020.

The Government is taking continuous measures not only to curb the spread of the virus but also to assist all the stakeholders in tackling the various legal and compliance issues which may arise due to the nationwide lockdown. Amongst other things, the Ministry of Corporate Affairs ("**MCA**") has offered some relaxations under the Companies Act (the "**Act**") for the conduct of Extra-Ordinary General Meetings ("**EGMs**") by companies through issue of circulars dated April 08, 2020 and April 13, 2020 (together the "**MCA Circulars**"). The circular dated April 13, 2020 merely provides clarifications on certain items stated in circular dated April 08, 2020. Furthermore, in line with the above stated MCA Circulars, the Institute of Company Secretaries of India ("**ICSI**") has issued certain relaxations through clarifications/guidelines, dated April 15, 2020, to Secretarial Standards SS-1 and SS-2 which deal with the conduct of Board Meetings and General Meetings respectively.



It is pertinent to note that though Section 118(10) of the Act states that every company shall observe secretarial standards specified by ICSI with respect to General and Board Meetings. In case of any discrepancy between the provisions of the Act and the standards, the provisions of the Act shall prevail. The same fact can be verified in the scope of both the above-mentioned secretarial standards which states the following:

"This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail."

This is an important point to note because MCA may consider offering more relaxations going ahead and more inconsistencies may arise, in which case provisions of the Act, along with the new relaxations issued, shall prevail.

The procedure stated in MCA circulars have been bifurcated into two categories:

1. **Category I:** For companies which are required to provide the facility of e-voting under the Act (listed companies and companies having not less than 1000 members), or any other company which has opted for such facility; and
2. **Category II:** For companies which are not required to provide the facility of e-voting under the Act.

A. The key procedures to be followed by both the categories as per the MCA Circulars are as follows:

1. Notice of the meeting may be given only through e-mails registered with the company or with the depository participant/depository.
 2. Recorded transcript of the meeting shall be kept in safe custody and in case of a public company shall be uploaded on its website, if any.
 3. Convenience of different persons positioned in different time zones shall be kept in mind.
 4. Ensure VC or OAVM facility allows two-way conferencing or webex so participants can pose questions concurrently. Participants should also be given time to submit any questions in advance on the e-mail address of the company.
 5. VC or OAVM facility should have the capacity to allow at least 1000 members (in case of Category II – 500 members or the actual number of members, whichever is lower) to participate on a first-come-first-served basis. 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.
 6. 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.
 7. Unless otherwise provided for in the articles of the company, the Chairman shall be appointed in the following manner:
 - a. Less than 50 members present – appointment to be made in accordance with Section 104 of the Act.
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- b. More than 50 members present – appointment to be made through e-voting system during the meeting (For Category II – Appointed by poll through e-mail).
 8. The facility of appointment of proxies by members will not be available for such meetings.
 9. 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.
 10. Notice for the meeting shall make contain the following:
 - a. Framework provided under the MCA Circulars available to the members;
 - b. Clear instructions on how to access and participate in the meeting;
 - c. Helpline numbers to provide assistance to shareholders for getting clarifications on the use of the technology
 - d. The notice shall also be displayed on the website, if any, of the company and in case of listed companies, intimation should be made to the exchanges.
 11. For notices for meetings issued prior to the circular dated April 08, 2020, framework issued in the MCA circulars may be adopted if the consent of the members has been obtained and a fresh notice of shorter duration with due disclosures as per the MCA circulars has been issued consequently.
 12. All resolutions passed in such meeting held shall be filed with RoC within 60 days. Such resolution should clearly indicate the mechanism followed as per the MCA Circulars and provisions of the Act and rules.

B. Key Procedures to be followed only by Category I:

1. While publishing public notice as required under Rule 20(4)(v) of the Companies (Management and Administration) Rules, 2014, the following matters should also be stated:
 - a. statement that the EGM is being convened through VC or OAVM in accordance of the Act and the MCA Circulars;
 - b. date and time of the EGM;
 - c. availability of the notice on the website of the company and the stock exchange;
 - d. the manner in which the members who are holding shares in physical form or who have not registered their e-mail addresses with the company can cast their vote through remote a-voting or through the e-voting system during the meeting;
 - e. 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
 2. Remote e-voting as per the provisions of the Act and rules.
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3. During the meeting, only those members present who have not casted their vote through remote e-voting on the resolutions to be passed and are otherwise not barred from doing so, can vote through the e-voting facility provided.
 4. The Chairman should ensure availability of e-voting facility for the purpose of conducting a poll during such meeting.

C. Key Procedures to be followed only by Category II

1. The company shall provide a designated e-mail 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. Company shall ensure complete security of the said e-mail address and the e-mail addresses and the other details of the members.
 2. Where less than 50 members are present in a meeting, the Chairman may decide to conduct a vote by show of hands, unless a demand for poll is made by any member in accordance with section 109 of the Act.
 3. In case the counting of votes requires time, the said meeting may be adjourned and called later to declare the result.
 4. To ensure all members are aware of the meeting, the company shall:
 - a. before sending the notice, contact all members by any mode to register their e-mail addresses with the company if the same has not been done previously;
 - b. where contact details of any members are not available with the company or could not be obtained as per (a) above, the company shall cause a public notice to be published in at least one Vernacular newspaper and one English newspaper of the district in which the registered office of the company is situated. The advertisement should include the followed information:
 - (i) the intention of the company to convene a meeting as per the MCA circulars and that it proposes to send notices to all its members by e-mail at least 3 days from the publication of the said public notice.
 - (ii) communication details of the company where the members can get their e-mail addresses registered
 5. Companies should ensure that all other compliances associated with the provisions relating to general meetings as set below shall be made available through electronic means:
 - a) making of disclosures,
 - b) inspection of related documents by members,
 - c) authorizations for voting by body corporates etc.
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Conclusion

It is evident that the above mentioned MCA Circulars do not apply to meetings which require an opportunity to be heard to be given to directors and auditors and which cannot be transacted through postal ballot viz. consideration of financial statements, the appointment of directors in place of those retiring, appointment and fixing of the remuneration of auditors etc. It means that no company can conduct an AGM pursuant to these MCA Circulars.

Further, in order to avoid any action from any member for not abiding to the provisions of the Act, it is advisable for all companies to strictly adhere to the procedure stated in the MCA Circulars and ICSI clarifications.



Since the impact of the virus on the economy and working of the country is an unprecedented event, it shall bring about unforeseen contingencies. It will be prudent for all companies to adapt to the new changes which are introduced and which shall be introduced by the MCA in relation to the activities of the companies. Companies should make themselves technologically well-equipped so that the urgent and unavoidable meetings and resolutions of the company can be dealt with in a smooth and secured way.

For a detailed reading of the above-mentioned MCA circulars and ICSI relaxations, readers can visit the following links:

- MCA circular 1 - http://mca.gov.in/Ministry/pdf/Circular14_08042020.pdf
- MCA circular 2 - http://mca.gov.in/Ministry/pdf/Circular17_13042020.pdf
- ICSI circular - https://www.icsi.edu/media/webmodules/Guidance_on_SS-2_15042020.pdf

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