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**C&M Alert: MCA permits conducting of EGM through electronic means on account of COVID-19**

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The Ministry of Corporate Affairs (**MCA**) has been actively involved in providing relaxations to the companies in India, to ease compliance burden during the ongoing COVID-19 pandemic and at the same time to ensure that corporate governance requirements are met.

Recently, MCA issued General Circular no. 14/2020 dated 08 April 2020 (**Circular-1**) and General Circular no. 17/2020 dated 13 April 2020 (**Circular-2**) (collectively referred as **Circulars**) requesting companies to take all decisions of urgent nature requiring approval of members, other than items of ordinary business or business where any person has a right to be heard, through mechanism of postal ballot/ e-voting in accordance with the provisions of the Companies Act, 2013 (**Act**) and rules made thereunder without holding a general meeting which requires physical presence of members at a common venue.

Further, the Circulars have provided interim relaxation to companies for conducting extraordinary general meeting (**EGM**) on or before 30 June 2020 under unavoidable circumstances through video conferencing or other audio-visual means (**Electronic Means**) and have set out procedure to be followed while conducting such EGM through Electronic Means.

Circular-1 sets out the procedure to be followed for conducting EGM and Circular-2 provides clarity on the manner and mode of issue of notices to the members before convening EGM. Further, Circular-2 also clarifies certain aspects of Circular-1. We have set out below key requirements provided in the Circulars.<sup>1</sup>

Circular-1 is broadly divided into two parts. Part A sets out procedure to be followed by companies which are required to provide the facility of e-voting under the Act or any other company which has opted for such facility (**E-Voting Companies**).<sup>2</sup> Part B sets out procedure for companies which are not required to provide facility for e-voting and have not opted for such facility (**Other Companies**).

While several requirements set out for E-Voting Companies and Other Companies are similar, the key distinction is relating to the process of voting. Voting by the members of E-Voting Companies is to be carried out in accordance with the requirements of Section 108 of the Act read with Rule 20 of the Companies (Management and Administration) Rules, 2014 (**Rules**), whereas voting by members of Other Companies must be done through e-mail process.

The table below encapsulates key differences in the method of voting for E-Voting Companies and Other Companies:

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<sup>1</sup> A complete copy of General Circular No. 14/ 2020 dated 08 April 2020 (**Circular-1**) issued by MCA is available [here](#) and copy of General Circular No. 17/ 2020 dated 13 April 2020 (**Circular-2**) issued by MCA is available [here](#).

<sup>2</sup> As per Rule 20(2) of the Companies (Management and Administration) Rules, 2014, every company which has listed its equity shares on a recognised stock exchange and every company having not less than 1000 members shall provide its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

E-Voting Companies	Other Companies
Before the actual date of meeting, the facility of remote e-voting shall be provided in accordance with the Act and Rules. <sup>3</sup>	The company shall provide a designated e-mail address to all members at the time of sending the notice of meeting so that members can convey their vote on such designated e-mail address when poll is required to be taken during the meeting on any resolution.
Only those members who are present in the meeting through Electronic Means 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.	During the meeting held through Electronic Means, where a poll on any item is required, the members shall cast their vote on the resolutions only by sending e-mails through their registered e-mail addresses. The e-mails shall only be sent to the designated e-mail address circulated by the company in advance (as mentioned above).
The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purposes of voting during the meeting held through Electronic Means.	Where less than 50 members are present in the 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. If a demand is made, then the procedure set out above shall be followed.
	In case counting of votes requires time, the said meeting may be adjourned and called later to declare the results.

The other key requirements to be followed by E-Voting Companies as well as Other Companies while conducting EGM through Electronic Means are as follows:

- (a) meetings should be recorded. Public companies shall post the recorded transcript on its website as soon as possible;
- (b) attendance of members through Electronic Means shall be counted for the purposes of reckoning quorum under Section 103 of the Act;
- (c) facility of appointment of proxies will not be available for such meetings;
- (d) at least one independent director (where the company is required to appoint one), and the auditor or his authorized representative shall attend such meeting through Electronic Means;

<sup>3</sup> In order to comply with the requirements of Rule 20 of the Rules, notice of the meeting (stating, among others, that the company is providing facility for voting by electronic means and the business may be transacted through such voting) shall be provided at least 21 days before the date of meeting. The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

- (e) unless articles of the company provide for any specific person to be appointed as Chairman for the meeting, the Chairman shall be appointed by show of hands in accordance with Section 104 of the Act where less than 50 members are present in the meeting. In other cases, the Chairman shall be appointed by a poll conducted through e-voting/ e-mail voting (as applicable) during the meeting;
- (f) all resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting clearly stating that the mechanism provided in Circulars and other provisions of the Act and rules made thereunder are duly complied while conducting EGM;
- (g) notice of EGM to members may be given only through e-mails registered with the company or with the depository. A copy of the meeting notice shall be prominently displayed on the website of the company; and
- (h) the company should provide a helpline number through the registrar or technology provider, in the notice of such meeting, for those shareholders who need assistance with using technology before or during the meeting.

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Should you have any queries or comments on this alert or how COVID 19 may affect your business or transactions, please visit our [LinkedIn page](#) or drop a line to our COVID – 19 task force at [covid19@chandhiok.com](mailto:covid19@chandhiok.com). You may also reach out to:



**Kaushalya Venkataraman**

Partner

[kaushalya.venkataraman@chandhiok.com](mailto:kaushalya.venkataraman@chandhiok.com)



**Lovejeet Singh**

Managing Associate

[lovejeet.singh@chandhiok.com](mailto:lovejeet.singh@chandhiok.com)



**Jagrat Rawal**

Associate

[jagrat.rawal@chandhiok.com](mailto:jagrat.rawal@chandhiok.com)

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