



## news flash

### April 2020



### **Video Conference and Audio-Visual Extra-ordinary General Meetings**

In view of the pandemic COVID-19, the Ministry of Corporate Affairs (“MCA”), has been issuing a series of notifications and circulars for providing various reliefs to companies and limited liability partnerships. The MCA has issued circular no. 14/2020 (“Circular”) as a clarification to facilitate companies to pass the required ordinary and/or special resolutions through video conferencing or any other audio visual means (“OAVM”) under the Companies Act, 2013 (“Act”) and rules made thereunder, so as to avoid convening of physical general meetings for business of urgent nature.

There is no provision under the Act or rules thereunder which allows companies for convening of meeting of members via video conference or any OAVM. The Act does permit companies to pass resolutions by e-voting (via remote e-voting) and via postal ballot (except items wherein the member has a right to be heard). The MCA has requested companies to take urgent decisions requiring members’ approval (other than items of ordinary business or business where a member has a right to be heard), via postal ballot/e-voting in accordance with the Act or rules thereunder, without holding of a general meeting, which requires physical presence of members at a common venue. However, if holding of an extra-ordinary general meeting is unavoidable, procedure herein has to be adopted for conducting a general meeting until 30th June, 2020 in addition to the requirement provided under the Act or the rules made thereunder.

The relevant provisions of the Circular are set out below in two parts below:

#### **Part A - Companies required to provide e-voting facility under the Act or a company which has opted for such facility**

- a. The recorded transcript of the video conference or any OAVM shall be maintained in safe custody by the company. In case of a public company, the recorded transcript is to be uploaded on the website, if any, of the company.
- b. Convenience of different persons located in different time zones shall be considered before scheduling the meeting.

c. The video conference or OAVM meeting must permit two way teleconferencing or webex for the ease of participation of members and allow members to pose questions concurrently. The video conference or any OAVM facility should be capable of providing at least 1000 users to participate on a first come first serve basis. However, the condition of first come first serve basis shall not apply to large shareholders, institutional investors, auditor, key managerial personnel, chairperson of various committees etc.

d. The facility for joining the video conference or any OAVM meeting shall be kept open for 15 minutes before the scheduled start time of the meeting and 15 minutes thereafter.

e. The facility of remote e-voting shall be provided prior to the date of the video conference or any OAVM meeting, in accordance with the Act and rules made thereunder.

f. For the purpose of quorum, attendance of members attending the meeting should be counted in accordance with the Act.

g. All those members who have not cast their vote via remote e-voting or who are not barred from voting, shall be allowed to cast their vote through e-voting system allowed by the company or by show of hands in the meeting.

h. Unless the articles of association of the company require a specific person to be the chairperson, the chairperson of the meeting shall be appointed as set out below:

(i) If less than 50 members are present at the meeting, the chairperson will be appointed as per the Act; or

(ii) In all other cases, the chairperson is to be appointed by a poll conducted through e-voting system available in the meeting.

i. The chairperson is required to ensure that the e-voting facility is available for conducting a poll during the meeting held through video conference or any OAVM. If there are less than 50 members present at the meeting, voting shall be conducted either via e-voting or show of hands, unless there is a demand for a poll; in which case voting should be conducted via e-voting. In all other cases, voting should be conducted by e-voting.

j. Since the meeting is held through video conference or any OAVM, proxies will not be allowed to attend the meeting. However, the authorised corporate representatives will be allowed to attend the meeting and to participate in the voting.

k. At least one independent director (where the company is required to appoint an independent director) and auditor of the company are mandatorily required to attend the meeting via video conference or any OAVM.

l. All the institutional investor members of the company to be encouraged to attend and vote at the meeting.

m. The notice of the meeting should have necessary disclosures with respect to instructions on how to access participate, helpline of registrar and transfer agent, technology support provider and any other needs for ease of participate of a shareholder. The copy of notice should be prominently displayed on the website of the company.

n. In case the notice is issued prior to the date of the Circular and consent is received under Section 101(1) of the Act (consent for holding meeting at shorter notice), it is advisable to issue a fresh notice of shorter duration with due disclosures in consonance with the Circular.

o. All resolutions passed via video conference or any OAVM are required to be filed with the Registrar of Companies (“**ROC**”) within 60 days of the meeting with a confirmation that the mechanism required under the Circular is adhered to.

**Part B – Companies not required to provide e-voting under the Act**

a. The recorded transcript of the video conference or any OAVM shall be maintained in safe custody by the company. In case of a public company, the recorded transcript is to be uploaded on the website, if any, of the company.

b. Convenience of different persons located in different time zones shall be considered before scheduling the meeting.

c. The video conference or OAVM meeting must permit two way teleconferencing or webex for the ease of participation of members and allow members to pose questions concurrently. The video conference or any OAVM facility should be capable of providing at least 500 users to participate on a first come first serve basis. However, the condition of first come first serve basis shall not apply to large shareholders, institutional investors, auditor, key managerial personnel, chairperson of various committees etc.

d. The facility for joining the video conference or any OAVM meeting shall be kept open for 15 minutes before the scheduled start time of the meeting and 15 minutes thereafter.

e. The facility of remote e-voting shall be provided prior to the date of the video conference or any OAVM meeting, in accordance with the Act and rules made thereunder.

f. For the purpose of quorum, attendance of members attending the meeting should be counted in accordance with the Act.

g. All those members who have not cast their vote through remote e-voting, to be allowed to cast their vote through e-voting system allowed by the company or by show of hands in the meeting.

h. Unless the articles of association of the company require a specific person to be the chairperson, the chairperson of the meeting shall be appointed as set out below:

(i) If less than 50 members are present at the meeting, the chairperson is to be appointed as per the Act; or

(ii) In all other cases, the chairperson is to be appointed by a poll.

i. At least one independent director (where the company is required to appoint an independent director) and auditor of the company are mandatorily required to attend the meeting via video conference or any OAVM.

j. Since the meeting is held through video conference or any OAVM, proxies will not be allowed to attend the meeting. However, the authorised corporate representatives will be allowed to attend the meeting and to participate in the voting.

k. All the institutional investor members of the company to be encouraged to attend and vote at the meeting.

l. The company shall provide a designated email address to all members at time of sending the notice so as to facilitate members to convey their vote for poll or resolution. The company shall maintain confidentiality of password and privacy with respect to designated email address shall be maintained.

m. The voting for a poll or resolution is required to be done by members through their registered email on the designated email address. If less than 50 members are present in the meeting, the Chairperson may decide to conduct a vote by show of hands. However, if a poll is demanded by any member, voting through registered emails to designated email, as stated above, shall be followed.

n. In case counting of votes requires time, the meeting can be adjourned and called at a later date to declare the result.

o. The notice of the meeting should have necessary disclosures with respect to instructions on how to access participate, helpline of registrar and transfer agent, technology support provider and any other needs for ease of participate of a shareholder. The copy of notice should be prominently displayed on the website of the company.

p. In case the notice is issued prior to the date of the Circular and consent is received under Section 101(1) of the Act (consent for holding meeting at shorter notice), it is advisable to issue a fresh notice of shorter duration with due disclosures in consonance with the Circular.

q. All resolutions passed via video conference or any OAVM are required to be filed with the ROC within 60 days of the meeting with a confirmation that the mechanism required under the Circular is adhered to.

The companies referred to in Paragraph (A) and (B) above shall ensure that all other compliances associated with the provisions of the general meeting (viz. making of disclosures, inspection of documents), are done through electronic mode.

### **Disclaimer**

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For further clarification and details on the above, you may write to Mr. Vaishakh Kapadia (Partner) at [vkapadia@almtlegal.com](mailto:vkapadia@almtlegal.com), Mr. Ankit Parekh (Associate) at [aparekh@almtlegal.com](mailto:aparekh@almtlegal.com) and Mr. Vinit Shah (Associate) at [vshah@almtlegal.com](mailto:vshah@almtlegal.com).