



## news flash

April 2020



### NEWSFLASH

#### Video Conference and Audio-Visual Extra-ordinary General Meetings – II

In view of the pandemic COVID-19, the Ministry of Corporate Affairs (“MCA”), had issued circular no. 14/2020 (“Circular”) to facilitate companies to pass the ordinary and/or special resolutions through video conferencing (“VC”) or any other audio visual means (“OAVM”), to avoid convening of physical general meetings for urgent matters. The stakeholders made representations to the MCA expressing practical difficulties while implementing the Circular. Therefore, MCA has issued circular no. 17/2020 (“Additional Circular”) providing clarifications for such procedural difficulties.

The gist of the Additional Circular is set out below:

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

1. Notice to the members may **only** be given via e-mails registered with the company/ depository participant/ depository.
2. While publishing the public notice under the Companies Act, 2013 informing the shareholders about the extra-ordinary general meeting (“EGM”), the companies shall disclose the following:
  - (i) The meeting will be held through VC in compliance with applicable provision of the Act, Circular and Additional Circular;
  - (ii) The date and time of the EGM through VC or OAVM;
  - (iii) Availability of notice on the website of the company and stock exchange;
  - (iv) Manner in which the shareholders (a) holding shares in physical form, or (b) who have not registered their e-mail, can vote through remote e-voting or through e-voting;
  - (v) Manner in which the shareholder (who have not registered their e-mail) can register with the company so as to receive notice on e-mail;
  - (vi) Any other detail that may be considered necessary by the company.

3. Before the start of the meeting the Chairman of the meeting is required to ensure that all efforts feasible under the circumstances are made by the company to enable all the shareholders to participate and vote.
4. The Circular provided for voting via show of hand, polls and e-voting. Now, the Additional Circular provides that the Chairman is only required to ensure that e-voting is available for voting during the meeting via VC or OAVM. This leeway is given to facilitate voting and overcome the requirement of show of hands and voting via poll. It is clarified that the rules pertaining to voting via electronic means, the Circular and the Additional Circular shall apply to items for voting via postal ballot, until 30<sup>th</sup> June 2020 or further notice, whichever is earlier.

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

1. Notice to the members may **only** be given via e-mails registered with the company/ depository participant/ depository.
2. The notice shall be displayed on the website of the company, if any;
3. In case of shareholders whose e-mail is not registered with the company; the company shall contact such shareholders over telephone or any other means for registration of e-mail, before sending notice of meeting;
4. If the contact number of the shareholders is not available, a public notice should be published in the newspaper, preferably having electronic editions stating:
  - (i) the company intends to convene a general meeting through VC or any OAVM in compliance with the Act, Circular and Additional Circular;
  - (ii) the telephone number and e-mail on which the shareholder can contact for getting his/her e-mail registered with the company;
5. The Chairman of the meeting is required to ensure that before start of the meeting all efforts feasible under the circumstances were made by the company to enable shareholders to participate and vote.
6. The Additional Circular clarifies that since the Circular did not provide for voting by polling before the meeting, the poll will be taken during the meeting and the members may convey their assent or dissent only at such stage on items considered in the meeting by sending e-mails to the designated e-mail of the company which was circulated by the company in the notice sent to members.

The MCA is vigilant about addressing the concerns and practical difficulties that are faced by the companies. However, the alternatives may not be simple to implement by the stakeholders. Further, reaching out to certain shareholders may not be easy and practical (i.e. calling the shareholder). The companies which were mandatorily not required to implement e-voting would have to incur the cost for implementation for the e-voting systems. The intent is to protect the interest of the shareholders and hence the novel ways will have to adopted and implemented quickly in order to ensure the due compliance.

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