

Mayank Arora & Co.

Company Secretaries

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Holding of Annual General Meeting through Video Conferencing (VC) & Other Audio Video Means (OAVM)

Due to the widespread of COVID-19 & lockdown being declared in the entire country, it is difficult for the Companies to hold any kind of meeting. MCA has given various relaxations to Companies for passing of resolutions of members in the extra ordinary general meetings for Special Business (Not Ordinary Businesses) through General Circular No. 14/2020 & Circular No. 17/2020.

Further, through General Circular No. 18/2020, MCA allowed the Companies whose financial year (other than first financial year) ended on 31st December, 2019 to hold their AGM for such financial year within a period of **NINE** months instead of six months from the closure of the financial year (i.e to hold AGM by 30th September, 2020).

Ministry of Corporate Affairs released a new Circular after receiving various representations and in view of the continuing restrictions on the movement of persons at several places in the country on 5th May, 2020 vide General Circular No. 20/2020 to provide relaxations 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 fulfillment of various requirements discussed below:-

A. 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 i.e. General 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 i.e. General Circular No. 17/ 2020 dated April 13, 2020 shall be applicable mutatis mutandis for conducting the AGM.

2. In such meetings, other than ordinary business, only those items of special business, 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 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 at least once in English language in English newspaper, both having wide circulation in the district & having electronic editions. The Public notice shall contain the below mentioned points-

- Statement that the AGM will be convened through VC or OVAM in compliance with applicable provisions of the Act read with this Circular;
- The date and time of the AGM through VC or OVAM;
- Availability of the notice of the meeting on the website of the Company and the stock exchange, in case of 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 e-voting system during the meeting;
- The manner in which the persons 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 Electronic clearing service (ECS) or any other means;
- Any other detail considered necessary by the Company

The Advertisement shall be published before and after sending the Notice of AGM

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.

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.

B. 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 75% 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.
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.
4. If AGM called 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.
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.

MCA, further clarified that the Companies referred above, shall ensure that all the other compliances associated with the provisions relating to general meeting viz making of disclosures, inspection of related documents/ registers by 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.

7. The Company shall make **Public Notice** and the same shall be published before sending the Notice of AGM. The Public notice needs to be published in the principal vernacular language of the district and having a wide circulation in that district, along with at least one English newspaper having a wide circulation. Both the newspapers shall have electronic editions. The contents of the Advertisement should be-

- ✓ Statement that the AGM will be convened through VC or OAVM in compliance with the Act and MCA circulars;
- ✓ For the said purpose, the Company proposes to send notice to all its members by email after, at least 3 days from the date of publication of the public notice;
- ✓ The details of the E-mail address along with telephone number on which the members may contact for getting their email addresses registered for participation and voting in the general meeting.

8. 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

FACILITIES AVAILABLE IN VC OR OAVM

1. Considering the convenience of different persons positioned in different time zones in the globe, the **time** of the VC or OAVM is being decided by the Board, to ensure maximum participation. Also the facility of joining the meeting is to be kept open at least 15 minutes before the time scheduled of the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time of the AGM;
2. The entire proceedings of the meeting are to be **recorded** and such recorded transcript shall be maintained in the safe custody by the company. The public company is also required to upload the transcript on its website if any.
3. Participants can pose **questions** concurrently or can submit their questions in advance on the email of the company;
4. **Two-way communication** through teleconferencing or webex for the ease of participation by the members;
5. Meeting where e-voting facility is available would allow **at least 1000 members** to participate on first come first basis;
6. Companies where e-voting facility is not available would allow **at least 500 members** or members equally to the total number of the company (whichever is lower) to participate on first come first basis.

DISCLOSURES TO BE MADE

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;
- ✓ The facility to **appoint proxy** to attend and cast vote for the members is **not available for this AGM**;
- ✓ Appointment of **Authorised Representative** for participating in the AGM held through VC or OAVM is allowed
- ✓ The Members who attend through VC or OAVM are counted for the purpose of reckoning **quorum** under Section 103 of the Act;
- ✓ 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 members who have not registered their email addresses with the company can get the same registered with the company for receiving the physical copies of the Annual Report and notice of AGM.
- ✓ Members may join the **meeting 15 minutes before and after** the scheduled time of the commencement of the meeting;
- ✓ The **facility of participation** at the AGM through VC or OAVM will be made available for 1000/500 members on **first come first basis**;
- ✓ In case company has a website, link where the Notice of AGM along with Annual Report, has been uploaded;
- ✓ Manner in which documents & statutory registers will be available for inspection.
- ✓ 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 & if member has not provided requisite ECS mandate, the Company will send dividend warrants/cheques through post once postal services are resumed;
- ✓ 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 can attend the meeting without restriction of first come first basis.
- ✓ 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

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

APPOINTMENT AND ROLE OF CHAIRMAN OF AGM

1. 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.
2. 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.
 3. 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.

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COMPANY SECRETARIES

Date: 18th May, 2020