

**Annual General Meeting (AGM) and Extra-Ordinary General Meeting (EGM) through Video Conferencing (VC) or Other Audio Visual Means (OAVM) due to COVID-19**

While the economy is struggling to stay afloat due to COVID-19 pandemic, the corporate sector, regulators and all other stakeholders are responding to the outbreak amidst lot of uncertainty, putting their best foot forward possible. Due to the continuous lock-down, there have been multiple relaxations from the regulators, keeping in mind the spirit behind the law - it's not tick box, but more substantive.

In continuation of its various relaxations, Ministry of Corporate Affairs (MCA) has come out with a clarification vide a **General Circular No. 14/2020** dated 08<sup>th</sup> April, 2020 (**EGM Circular-I**) on passing of ordinary and special resolutions by companies upto 30<sup>th</sup> June, 2020 under the Companies Act, 2013 (**"the Act"**) and rules made thereunder. MCA has issued one more **General Circular No. 17/2020 (EGM Circular-II)** dated April 13, 2020 clarifying on various difficulties faced by the Company in serving Notice for conducting EGM and provided with clarity on modalities/mechanism / framework for conducting EGM or transacting items through Postal Ballot without conducting EGM.

MCA vide **General Circular No. 18/2020**, dated 21.04.2020, the companies whose financial year ended on 31<sup>st</sup> December, 2019, have been allowed to hold their AGM by 30<sup>th</sup> September, 2020.

In view of the continuing restrictions on the movement of persons at several places in the country, MCA vide **General Circular No. 20/2020 (AGM Circular)**, dated 05.05.2020 has decided that the companies whose financial year ended on 31<sup>st</sup> December, 2019 or 31<sup>st</sup> March, 2020, as the case may be, be allowed to conduct their AGM through video conferencing (VC) or other audio visual means (OAVM), during the calendar year 2020, i.e. up to 30.09.2020 or 31.12.2020, respectively, subject to the fulfilment of all the requirements mentioned in the circular read with EGM Circular-I and EGM Circular-II.

**Scope and applicability:**

**The EGM Circular-I and EGM Circular-II applies to:**

- a) Companies which are required to provide the facility of e-voting under the Act and companies which have opted for such facility and
- b) Companies which are not required to provide the facility of e-voting under the Act.

**The AGM Circular applies to:**

- a) Companies which are required to provide the facility of e-voting under the Act and companies which have opted for such facility and
- b) Companies which are not required to provide the facility of e-voting under the Act provided that such companies can conduct their AGM through VC or OAVM only if the company has in its record, the email-ids of at least half of its total number of members, who –
  - In case of a Nidhi, hold shares of more than one thousand rupees in face value or more than one per cent. of the total paid-up share capital, whichever is less;
  - In case of other companies having share capital, who represent not less than seventy-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting;
  - In case of companies not having share capital, who have the right to exercise not less than seventy-five per cent. of the total voting power exercisable at the meeting.

**Table showing the key highlights of the EGM Circular-I & II and AGM Circular**

S. No.	Basis for AGM/ EGM	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	For companies which are not required to provide the facility of e-voting under the Act
1	<b>Notice of the Meeting</b>	The notice of the Meeting may be given only through Email IDs registered with the company/depository participant/depository	
2	<b>Additional information to be provided in Notice</b>	Following points are required to be captured in AGM/EGM Notice: <ul style="list-style-type: none"> <li>- Disclosures with regard to the manner in which framework provided in MCA Circular shall be available for use by the members;</li> <li>- Clear instructions on how to access and participate in the meeting;</li> <li>- Provide a helpline number through the registrar &amp; transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting.</li> </ul>	
3	<b>Placing of Notice on Website of the Company and Stock Exchange</b>	<ul style="list-style-type: none"> <li>• Copy of the meeting notice shall also be prominently displayed on the website of the company</li> <li>• Due intimation may be made to the exchanges in case of a listed company.</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of the notice shall also be prominently displayed on the website of the company, if any.</li> </ul>
4	<b>Public Advertisement of the Notice</b>	The Company to give a Public Notice by way of advertisement as per Rule 20(4)(v) of the Companies (Management and Administration) Rules, 2014 and the same to be published at least once in vernacular newspaper in the principal vernacular language of the district in which the registered	Not Required

		<p>office of the company is situated and having wide circulation in that district and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and shall specify in the advertisement the following information:</p> <ul style="list-style-type: none"><li>• a statement that the AGM/EGM is proposed to be conducted through VC or OAVM in compliance with applicable provisions of the Act / Rules and these Circulars ;</li><li>• the date and time of the AGM/EGM to be conducted through VC or OAVM;</li><li>• availability of Notice of AGM/EGM on the website of the company and the stock exchange for listed company;</li><li>• 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 the e-voting system during the meeting;</li><li>• the manner in which the members who have not registered their email addresses with the company can get the same registered with the company;</li><li>• any other details considered</li></ul>	
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		necessary by the Company	
5	<b>Initial Public Advertisement for registering of E-mail Address</b>	<p><b>As a good corporate governance</b>, the companies must give an opportunity to those shareholders, whose email IDs are not registered with the Company/RTA by way of an advertisement to be published, immediately 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 having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions and specifying in the advertisement, the following information:</p> <ul style="list-style-type: none"> <li>• that the Company intends to convene AGM/EGM through VC or OAVM &amp; E-voting in compliance with applicable provisions of the Act / Rules and this Circulars and for that purpose the Company proposes to send Notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice;</li> <li>• the details of the e-mail address along with the telephone numbers on which the members may contact for getting their e-mail addresses registered for participation and voting in</li> </ul>	<p>where the contact details of any of the members are not available with the Company or could not be obtained vide telephone or any other mode of communication, it shall cause a Public Notice by way of an advertisement to be published, immediately 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 having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions and specifying in the advertisement, the following information:</p> <ul style="list-style-type: none"> <li>• that the Company intends to convene AGM/EGM through VC or OAVM in compliance with applicable provisions of the Act / Rules and this Circulars and for that purpose the Company proposes to send Notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice;</li> <li>• the details of the e-mail address along with the telephone numbers on</li> </ul>

		the AGM/EGM.	which the members may contact for getting their e-mail addresses registered for participation and voting in the AGM/EGM.
6	<b>Applicability of MCA Circular on already served notices</b>	In case a notice for EGM has been served prior to 08.04.2020, the framework proposed in EGM Circular may be adopted for the meeting by satisfying following conditions 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 with detailed disclosure.	
7	<b>Recorded transcript is required for AGM as well as EGM</b>	<ul style="list-style-type: none"> <li>Recorded transcript of the same shall be maintained in safe custody by the company.</li> <li>In case of a public company, the recorded transcript of the meeting, shall as soon as possible, be also made available on the website (if any) of the company.</li> </ul>	
8	<b>Time Zone</b>	<p>Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.</p> <p>(However, the Companies must call the general meeting between 09.00 a.m to 06.00 p.m.)</p>	
9	<b>Tele conferencing or Webex facility and minimum participation facility</b>	<p>Ensure that VC or OAVM facility allows two way tele-conferencing or webex for the ease of participation of the members.</p> <ul style="list-style-type: none"> <li>The VC or OVAM facility must have a capacity to allow at least <b>1000 members</b> to participate on first come first serve basis.</li> <li>The large Shareholders holding 2% or more shareholding, Promoters, Institutional Investors, Directors, Key Managerial Personnel, Chairperson of AC, NRC and SRC and the</li> </ul>	<p>Ensure that VC or OAVM facility allows two way tele-conferencing or webex for the ease of participation of the members.</p> <ul style="list-style-type: none"> <li>The VC or OVAM facility must have a capacity to allow at least <b>500 members or members equal to the total number of members</b> of the Company, whichever is lower.</li> <li>The large Shareholders holding 2% or more shareholding, Promoters, Institutional Investors,</li> </ul>

		Auditors must be allowed to attend the meeting without restriction of first- come-first- served basis principle.	Directors, Key Managerial Personnel, Chairperson of AC, NRC and SRC and the Auditors must be allowed to attend the meeting without restriction of first- come-first- served basis principle.
10	<b>Posing questions by participants</b>	Participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the Company.	
11	<b>Timing for facility for joining the meeting</b>	<ul style="list-style-type: none"> <li>• The facility for joining the meeting shall be kept open at least 15 minutes before the time scheduled to start the meeting.</li> <li>• Also, the facility shall not be closed till the expiry of 15 minutes after start of the meeting.</li> </ul>	
12	<b>Quorum</b>	Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act. The Companies which has received permission from the authority for holding of meeting with Physical presence of some members, those members shall also be counted for the purpose of quorum.	
13	<b>Remote E-voting</b>	Remote e-voting facility shall be provided in accordance with the act and the rules before the actual date of the meeting.	Not required
14	<b>Election of Chairman</b>	<ul style="list-style-type: none"> <li>- Firstly, election of chairman shall be as per Articles of Company; OR</li> <li>- If less than 50 members are present, then chairman shall be appointed as per Section 104 of Act; OR</li> <li>- In all other cases, the Chairman shall be appointed by poll conducted through the e-voting system</li> </ul>	<ul style="list-style-type: none"> <li>- Firstly, election of chairman shall be as per Articles of Company; OR</li> <li>- If less than 50 members are present, then chairman shall be appointed as per Section 104 of Act; OR</li> <li>- In all other cases, the Chairman shall be appointed by poll conducted by providing</li> </ul>

		during meeting.	designated email for enabling the members to convey their votes.
15	<b>Manner of Voting</b>	<p>The Chairman present at the meeting shall ensure that the facility of e-voting system is available is available for the purpose of voting during the meeting held through VC or OAVM.</p> <p>Only those members, who are present in the meeting through VC or OAVM facility 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.</p>	<p><u>IF MEMBERS PRESENT ARE LESS THAN 50, THEN VOTING MAY BE CONDUCTED THROUGH:</u></p> <ul style="list-style-type: none"> <li>- Show of hand at meeting;</li> <li>- In case poll is demanded than members shall cast their vote on the resolutions only by sending emails through their email addresses registered with the Company.</li> </ul> <p><u>IF MEMBERS PRESENT ARE 50 OR MORE, THEN</u></p> <ul style="list-style-type: none"> <li>- Conduct the voting from members to convey their votes during meeting at such designated email address.</li> </ul> <p><i>(The Company must appoint scrutinizer, in case the poll is demanded as per Section 109 of the Companies Act, 2013.)</i></p>
16	<b>Declaration of result</b>	<p>Since e-voting is involved, the result is to be declared as follow:</p> <ul style="list-style-type: none"> <li>- In case of unlisted company, within 3 days of conclusion of meeting;</li> <li>- In case of listed company, within 48 hours of conclusion of meeting</li> </ul>	<p>In case the counting of votes requires time, the said meeting may be adjourned and called later to declare the result.</p>
17	<b>Proxy</b>	Members not allowed to appoint proxy.	



18	<b>Representative of non-individual members</b>	Members may appoint their representatives as per Section 112 & 113 of Act for purpose of voting through remote e-voting or voting through VC or OAVM meeting.
19	<b>Presence of Independent director</b>	At least one independent director (where the company is required to appoint one) shall attend such meeting through VC or OAVM.
20	<b>Presence of Auditor</b>	Auditor or his authorized representative, who is qualified to be the auditor shall attend such meeting through VC or OAVM.
21	<b>Institutional investors members</b>	Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.
22	<b>Duty of Chairman</b>	The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable members to participate and vote on the items being considered in the meeting
<b>Additional Requirements in case of AGM</b>		
23	<b>Dispatch of copies of financial statements (including board's report, Auditors report or such required documents) in case of AGM</b>	The required documents shall be sent only by e-mail to the members, trustees of the debenture holders of any debenture issued by the company or such other persons so entitled
24	<b>Payment of dividend to shareholders who have given bank account details to the company</b>	Company shall make adequate provisions for transfer of the dividend amount through the Electronic Clearing Service (ECS) or any other means.
25	<b>Payment of dividend to shareholders whose bank</b>	The Company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

	<b>account details are not available with the Company</b>		
26	<b>Physical holding of AGM</b>	After receiving required permission from authorities for holding of meeting with Physical presence of some members, company <b>must</b> also provide the facility of VC or OAVM, so as to allow other members of the company to participate in such meeting.	After receiving required permission from authorities for holding of meeting with Physical presence of some members, company <b>may</b> also provide the facility of VC or OAVM, so as to allow other members of the company to participate in such meeting.
		For example, private offices in Delhi can be opened with 33% staff. Therefore, if a Company has 2 shareholders and all the shareholders are able to attend the meeting physically, in that case, AGM/EGM can be held physically without giving option of VC or OAVM facility.	
27	<b>Quorum in case of Physical holding of AGM</b>	Members participating through physical presence and through AV or OAVM shall be reckoned for the purpose of the quorum.	Members participating through physical presence and through AV or OAVM, if any shall be reckoned for the purpose of the quorum.

**Followings important points be noted with respect to the Notice of AGM/EGM:**

- 1) *The route map and proxy form shall not form part of notice of general meeting (except in case Physical meeting for AGM is allowed by required authorities, as mentioned earlier).*
- 2) *All the resolutions (ordinary or special) passed in accordance with this mechanism is to be filed with ROC within 60 days of the general meeting. The resolution must contain the fact that mechanism provided herein along with other provisions of the Act and rules are complied with. Please note that the filing of all the resolutions with the ROC is in addition to the filing of other statutory required filings including separate filing of special resolutions in Form MGT-14.*

- 3) *The companies shall ensure that all other compliances associated with the general meeting including but not limited to making of disclosures, inspection of related documents/ register of members, or authorizations for voting by body corporates etc. as provided in Act or AOA of the companies shall be complied with.*
- 4) *The companies which are required to provide e voting facility or such companies which have opted for such facility shall prescribe the manner in which the members holding physical shares or members 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.*

**NOTE:- MCA has clarified that the companies which are not covered by the general circular no. 18/2020 dated 21<sup>st</sup> April 2020 and are unable to conduct their AGM in accordance with this framework provided in this circular are advised to prefer applications for extension of AGM at a suitable point of time before the concerned Registrar of Companies under Section 96 of The Companies Act, 2013.**

**The above circulars can be viewed here:-**

- [http://www.mca.gov.in/Ministry/pdf/Circular14\\_08042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf)
- [http://www.mca.gov.in/Ministry/pdf/Circular17\\_13042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf)
- [http://www.mca.gov.in/Ministry/pdf/Circular18\\_21042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular18_21042020.pdf)
- [http://www.mca.gov.in/Ministry/pdf/Circular20\\_05052020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf)

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**Suggestions may be send to [rupesh@cacsindia.com](mailto:rupesh@cacsindia.com)**

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