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Corporate Compliance Updates

17th April 2020

Clarification on convening Extra-Ordinary General Meeting through Video Conference Facility

The Government of India has further extended the country-wide lockdown up to 3rd May 2020 to combat the spread of COVID 19. Strict restrictions have been imposed on mobility and gathering of people is sternly prohibited to suppress the contagion. Considering such a scenario, companies struggled with urgent business decisions that required shareholder approvals under the Companies Act 2013 (**Act**) because convening a physical meeting of shareholders was rendered impossible. Consequently, various stakeholders had submitted representations to the Government to resolve the issue. As a result, the Ministry of Corporate Affairs (**MCA**) has issued a [General Circular No. 14/2020 dated 08th April 2020](#) (**General Circular**) to relax the requirement of physical meeting of the Members (Extra-Ordinary General Meeting) under the Act. Subsequently, the MCA issued another [General Circular No. 17/2020 dated 13th April 2020](#) (**Clarification Circular**) to address practical difficulties in the implementation of the earlier General Circular. It shall be noted that the relaxation to convene the EGM through Video Conference Facility or Other Audio-Visual Means is only for a limited period i.e. upto 30th June 2020 and subject to certain procedures prescribed therein.

The gist of the General Circular and the Clarification Circular issued by MCA is outlined below for your reference:

Necessity for Issuance of Relaxation

- There are no specific provisions under the Act to convene General Meeting through Video Conference (**VC**) or Other Audio-Visual Means (**OAVM**).
- There is no avenue for shareholders to vote through postal ballot except electronic-voting under section 108 of the Act.
- As shareholders are owners of the Company, opportunity shall be provided for participating and voting in General Meetings.

Applicability

- The relaxation is applicable only to pass resolutions of urgent nature which requires the approval of members. Such approval can be obtained through postal ballot/ e-voting in accordance with the act, without holding a general meeting*.
- If an extraordinary general meeting is unavoidable, meeting may be convened on or before 30th June 2020 by adopting the procedure given in the General and Clarification Circulars.
- Separate procedures are required to be followed under the circular by Companies-
 - a) those which are providing the facility for e-voting under the Act or such other Companies opt for e-voting facility and
 - b) those which are not provide the facility of e-voting under the Act.
- Resolutions concerning items of ordinary business and such other business items, where any person has a right to be heard, shall not be allowed to pass under this General Circular.

**Note: The Clarification Circular clarifies that the list of items of businesses that require members' approval by way of postal ballot/e-voting process would be eligible to opt for remote e-voting process where postal ballot process cannot be adopted due to COVID -19 lockdown.*

Procedures

A. Procedures required to be followed by all Companies irrespective of whether they are providing the facility of e-voting or not under the Act:

- a) *Requirement of Recording of Meeting:* Every Company must arrange for recording of proceedings of meeting and preserve the recorded transcript as per the requirement of this General Circular. In addition, the Public Company shall upload the same on Company's website.
- b) *Time Zones:* Different time zones of shareholders locations shall be considered to fix the time of Meeting.
- c) *Facility to Join Meeting:* The facility for joining the meeting shall be kept open at least 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.
- d) *Quorum:* The attendance of members through VC or OAVM shall be counted for the purpose of Quorum under section 103 of the Act.
- e) *Attendance:* One Independent director and Auditors/ representative of Auditors shall attend VC or OAVM and where Institutional Investors are members, they must be encouraged to attend the meeting.

- f) *Proxy*: Facility of appointment of Proxy is not allowed for attending VC or OAVM under Section 105. However, appointment of representatives under sections 112 & 113 is allowed.
- g) *Notice*: The notice for convening meeting through VC or OAVM shall inter-alia include the following details:
- i. Instructions for accessing and participating in the meeting.
 - ii. Helpline number to be provided to address possible technical issues.
 - iii. Notice shall be displayed in website of the Company and intimated to Stock Exchange, in case of listed Company.

Notes:

1. Where notice for meeting has been served prior to the date of General Circular, the Company can opt for the process described in the General Circular by issuance of fresh notice of shorter duration after seeking consent under Section 101 of the Act.

2. The MCA further clarified through the Clarification Circular that the notices shall be issued through electronic mode to members in their registered emails available with the Company or depository participants/depository. Public notice shall state the following contents:

- EGM convened through VC or OAVM in compliance with the applicable provisions of Act, Articles of Association and General Circular.
- The notice shall state the date, time of EGM. A copy of the notice shall be uploaded to the Company's web site and intimated to the Stock exchange.
- Manner of participating in remote e-voting or e-voting process during the meeting for members who are holding shares in physical form and not registered their email addresses with the Company.

- h) *Filing of Resolutions*: Every Company to file resolutions (both Ordinary and Special) passed by way of VC or OAVM facility within 60 days from the date of Meeting with the Registrar of Companies (RoC) and also to confirm on compliance of requirements under this circular.
- i) *Election of Chairman*: Subject to provisions of Articles of Association, the Chairman of the Meeting shall be appointed in the following manner:

Where less than 50 members are present at the meeting	Where more than 50 members present at the meeting
Chairman shall be appointed in accordance with Section 104	Chairman shall be appointed by Poll conducted through e-voting system during the Meeting (wherever e-voting facility provided)

The Chairman of the meeting shall make all efforts to enable members to participate and vote on the items being considered in the meeting.

B. Procedures that specifically apply to those Companies which are required to provide the facility of e-voting under the Act or such other Companies that opt for e-voting facility:

- a) *Requirement of VC or OAVM:* Two-way teleconferencing or Webex facility shall be provided for **1000** members to participate on first come first served basis. Promotors, Directors, Key managerial Personnel and Chairman of Committees shall be allowed to participate without any restriction on account of First come first served principle.
- b) *E-voting:* Before the actual date of meeting, the facility for remote e voting shall be provided. Only those members present at the meeting who had not cast their vote on resolutions through remote e-voting are allowed to vote through e-voting facility or show of hands in the meeting unless they are otherwise barred from doing so. 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;

C. Procedures that specifically apply to those Companies which are not required to provide the facility of e-voting under the Act:

- a) *Requirement of VC or OAVM:* Two-way teleconferencing or webex facility shall be provided for **500** members to participate on first come first served basis. Promotors, Directors, Key managerial Personnel and Chairman of Committees shall be allowed to participate without any restriction on account of First come first served principle.
- b) *Confidentiality and authentication process:* The Company shall strictly maintain confidentiality of password and other privacy issues associated with the designation email address. The Company to provide designated email address to all members in Notice for conveying their vote. Authentication process of registered email address of members and other details of members shall be safeguarded by the Company.
- c) *Demand for Poll:* Where less than 50 members are present in a meeting, Chairman of the meeting may decide the voting process by show of hands unless poll demanded by any member. The meeting can be adjourned in case time required to count Poll result.
- d) *Notice:* As stated above, notices have to be sent only to member's registered emails, however, where email address is not available, the Clarification Circular provides that the Company is required to make all efforts to reach members over telephone or other means of communication for registration of their emails before sending notice. However, if it does not work and the contact details are not available with the Company, a public notice shall be issued in vernacular and English newspaper (including electronic editions) having wide circulation in district in which Registered Office of the Company is situated. The Public notice shall contain the following details:
 - a. That a general meeting is being convened and notice needs to be issued for the said purpose through email within three days of publication of public notice.

- b. Contact details such as email address and telephone number on which members may contact for getting their email addresses registered for participation and voting in the general meeting.

- e) *Voting Process*: The company shall provide a designated email address at the time of sending the notice of meeting so members can cast their votes by sending their response to the designated email address. However, the MCA clarified through its Clarification Circular that email need not be sent in advance and poll can take place during the meeting and members may convey their assent and dissent only at such stage on items considered in the meeting by sending emails to the designated email address.

Important Note

Respected Prime Minister of India, Narendra Modi announced further extension of lockdown for 19 days from 12 a.m. 15th April 2020 on account of coronavirus pandemic.

Since social distancing is the only solution to fight against corona virus, stay home, stay safe.

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