

LAW & POLICY UPDATE

CORPORATE & COMMERCIAL



Holding of general meetings by audio visual means

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Key circulars issued by MCA

- **April 8, 2020** – clarifies the procedure for passing ordinary and special resolutions amidst Covid-19 outbreak (**EGM Circular**) and provides certain relaxations from provisions of the Companies Act, 2013 (**Act**) by allowing EGMs to be conducted through video conferencing (**VC**) or other audio-visual means (**OAVM**)
- **April 13, 2020** – provides clarifications pertaining to manner of issuance of notice for EGMs, voting by show of hands and postal ballot, etc.
- **April 21, 2020** – allows companies whose financial year has ended on December 31, 2019, to hold their AGM within 9 months (by September 30, 2020), instead of the prescribed 6-month period under the Act
- **May 5, 2020** – allows annual general meetings to also be conducted by VC and OAVM (**AGM Circular**)

Matters that may be transacted

EGM Circular requires companies to hold EGMs only where the same is considered to be unavoidable. Apart from matters of ordinary business, only those items of special business which are considered to be unavoidable by Board may be transacted in an EGM.

Manner of conducting AGM and EGM

The AGM and EGM circulars (**Circulars**) provide a mechanism of conducting these meetings, including matters such as notice of meeting, required quorum, casting of vote, appointment of chairman, etc. Further, the Circulars also provide for separate mechanisms for companies which are required to provide e-voting facilities and companies which are not required to provide e-voting facilities. Companies which are not required to provide for e-voting facility can conduct an AGM by way of VC/OAVM only where they have email ids of at least half of its total members who (i) in case of a Nidhi company, hold shares of more than INR 1,000 in face value or more than 1% of total paid-up share capital, whichever is less; (ii) in case of other companies having share capital, who represent not less than 75% of such part of paid-up share capital of company as gives a right to vote at meeting (iii) in case of companies not having share capital, who have right to exercise not less than 75% of total voting power exercisable at meeting.

Applicable protocols that are to be followed for conducting general meetings

Matter	Protocol to be followed in the EGM/AGM
Notice of the meeting	<ul style="list-style-type: none"> ▪ The notice of the meeting shall be given by email registered with the company/depository participant /depository. Financial statements and other annexures may be circulated by email.
Public notice	<ul style="list-style-type: none"> ▪ For companies required to provide e-voting facility, the public notice shall contain details such as a statement that the EGM/AGM is to be conducted through VC/OAVM, date and time of meeting, manner in which vote is to be cast, availability of notice on website and with stock exchange, manner in which members can register their email ids, etc. ▪ For companies not required to provide e-voting facility, where contact details of any of members are not available with company, it shall issue a public notice in newspaper of vernacular language where registered office is situated & one in newspaper of English language having wide circulation

Matter	Protocol to be followed in the EGM/AGM
	<p>in the district and such public notice shall contain statement that EGM/AGM is to be convened through VC/OAVM and shall also provide for manner in which members can register their email ids.</p> <ul style="list-style-type: none"> Public notice is to be issued before issuance of individual notice in case of AGM.
Maintenance of recorded transcript	<ul style="list-style-type: none"> Recorded transcript shall be maintained by company and made available on website of company in case of a public company.
Minimum standards of VC/OVAM facility	<ul style="list-style-type: none"> The company shall ensure that the meeting convened through VC/OAVM facility allows two-way teleconferencing for the ease of participation of the members. The VC/OAVM facility must have a capacity to allow at least 1000 members in case of companies required to provide e-voting facility, and at least 500 members or members equal to total number of members, whichever is lower, in case of companies not required to provide e-voting facility, to participate on 'first come first served' basis. 'First come first served' rule will not applicable to promoters, institutional investors, key managerial personnel and shareholders with 2% or more shareholding, auditors, chairman of committees
Time frame for VC/OVAM facility	<ul style="list-style-type: none"> The VC/OVAM facility shall be kept open at least 15 minutes before the scheduled time of the meeting and shall not be closed till the expiry of 15 minutes after the conclusion of the meeting.
Attendance through VC/OVAM	<ul style="list-style-type: none"> Attendance of members through VC/OAVM shall be counted for quorum under section 103 of the Act.
Voting by the members present in the meeting	<ul style="list-style-type: none"> In case of companies required to provide e-voting facility, the members present in the meeting, who have not cast their vote through remote e-voting, shall be allowed to vote through e-voting system. In case of companies not required to provide e-voting facility, the company shall provide a designated e-mail address (password protected) to all members at the time of sending the notice of meeting, where the members shall convey their vote by sending emails through their registered email id, when a poll is required to be taken during the meeting on any resolution. Voting may be by show of hands in case of companies with less than 50 members unless poll is demanded.
Election of Chairman	<ul style="list-style-type: none"> Unless articles require any specific person to be appointed as a Chairman for meeting, Chairman for meeting shall be appointed in accordance with section 104 where there are less than 50 members present at meeting; in all other cases, Chairman shall be appointed by a poll conducted through e-voting system during meeting.
Voting by the authorized representatives	<ul style="list-style-type: none"> Representatives of members may be appointed for purpose of voting through remote e-voting or for participation and voting in meeting. Proxies are not allowed.
Attendance of independent director and auditor	<ul style="list-style-type: none"> At least one independent director (if it is required to appointed), and the auditor or his authorized representative, shall attend such meeting.
Filing of resolutions	<ul style="list-style-type: none"> All resolutions, passed in accordance with this mechanism shall be filed with ROC within 60 days of meeting, clearly indicating that mechanism provided herein along with other provisions of Act and rules were duly complied with during such meeting.
Other requirements	<ul style="list-style-type: none"> Notice to contain details of framework specified herein and shall contain a helpline which may be accessed for any assistance in attending meeting. In case, of inability to pay the dividend to any shareholder by the electronic mode, due to unavailability 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. Where permission for holding physical AGM has been obtained, facility for VC/OAVM should be made available and all resolutions will be passed by e-voting.

Conducting AGMs and EGMs by VC or OAVM would be a cost-effective method for companies to transact business, in addition to ensuring that meetings are conducted in a timely and efficient manner. However, VC and OAVM may present difficulty in participation given attendant technical challenges, privacy concerns, uninvited participants, security of any confidential information shared during the meeting, etc. In light of this, it is important to review privacy policy and encryption policy of platforms on which meeting is to be conducted, in order to ensure that personal data of participants is protected.

