
Relaxation in Holding of BM and GM through Video Conferencing or Other Audio Visual Means due to CoVID-19

1. **For Relaxation in Board Meeting** through VC- MCA has issued Companies (Meetings of Board and its Power) Amendment Rules, 2020 dated: 19.03.2020.
 2. **For Relaxation of General Meeting:** by Circular no. 14/2020 dated 8.04.2020
 3. **Other Relaxation of Board Meeting:** MCA Circular no. 11/2020 dated: 24th March, 2020
 4. Purpose of relaxation to provide the opportunity to Corporates to Hold BM and GM for the urgent matter or passing of urgent resolution in this Lock Down situation.
 5. Currency period of these relaxations are till 30th June, 2020.
-

Board Meeting Provisions:

Language of Circular:

The mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September.

Accordingly, as a one time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13.

Example:

1. **If Last Board Meeting held on 28th Feb, 2020 then what shall be due date of next meeting?**

Due date for next board meeting is 26th August, 2020 i.e. 180 days from last meeting.

2. If Last Board Meeting held on 2nd January, 2020 then what shall be due date of next meeting?

Due date for next board meeting is 30th June, 2020 i.e. 180 days from last meeting.

3. If Last Board Meeting held on 25th December, 2019 then what shall be due date of next meeting?

Due date for next board meeting is 22nd June, 2020 i.e. 180 days from last meeting.

Let's First Discuss on Board Meeting Through Video Conferencing:

As per Rule -3 of Companies (Meetings of Board and its Power) Rules, 2014, A company shall comply with **the procedure given** in this rule, for convening and conducting the Board meetings through video conferencing or other audio-visual means.

As per Rule 4, The following matters shall not be dealt with in any meeting held through video conferencing or other audio-visual means-

- I. the approval of the **annual financial statements**;
- II. the approval of the **Board's report**;
- III. the approval of the **prospectus**;
- IV. the **Audit Committee Meetings for consideration** of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act]; and
- V. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Provided that where there is quorum presence in a meeting **through physical presence** of directors, any other director may participate conferencing through video or other audio visual means.

Circular 19th March, 2020

For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June, 2020, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3."

1. Whether it is mandatory for Company to hold Board meeting every quarter?
 2. Whether it is mandatory to record the Proceeding of Meeting?
 3. Whether Board Meeting can be held through Teleconferencing?
 4. Whether Director Participated through VC shall be count for purpose of Quorum?
 5. What shall be the place of meeting in case of holding of meeting through Video Conferencing?
 6. Who shall be responsible for all the arrangement of the VC?
 7. Where the statutory registers of the Company shall be kept during Board Meeting?
-

General Meeting Provisions:

Language of Circular:

Legally companies Act 2013 doesn't specify any provisions for allowing the conduct of members' meetings through video conferencing (VC) or other audio-visual means

Now, MCA has issued a General Circular No 14/2020 dated April 08, 2020 vide which Clarification on Passing Ordinary and Special Resolutions by Companies - on account of threat posed by Covid-19 has been issued.

A. Companies Act Allowed:

- **Voting by Show of Hand**
 - **E-voting**
 - **Postal Ballot**
-

Most Important:

1. Allowed only in case when passing of resolution in EGM is **unavoidable/urgent Matters.**
2. This circular shall not allow in case of Normal Matters.

-
1. **What are the current provisions for conducting shareholders meetings through video conferencing (VC) or other audio-visual means (OAVM)?**
 2. **Where ever passing of Resolution by postal ballot is feasible, Whether Company can take benefit of this circular?**

-
- Postal ballot required by all Listed Companies and every company having not less than one thousand members.
-

-
- If passing of resolution through postal ballot is feasible then company can't take benefit of this scheme.
-

-
- Postal Ballot means voting by post or through electronic means
-

B. Applicability:

This circular is applicable on all type of Companies. (like Small, Private, Public, Listed, Nidhi etc).

C. Currency Period:

EGM must be held on or before 30th June, 2020 under this Scheme. If EGM held after 30th June then this circular is not applicable

D. Type of Meeting:

3. Whether Companies can hold AGM through VC as per requirement of above mentioned circular?

This circular of MCA doesn't facilitate holding of AGM through VC. However, Companies can't hold AGM under this Scheme.

4. Whether company can pass resolution for ordinary business through this Circular?

As per this circular, Company can't pass resolution for ordinary business. Ordinary business can't be discussed through this circular.

E. Time period of Filing of MGT-14 has been extended.

If any resolution is passed for which company is required to file MGT-14. Then **MGT-14 can be file with in 60 (Sixty) days** of passing of resolution along with a declaration that provisions of Circular and rules has been complied with.

*Conditions/ provisions for holding of EGM
through VC*

A. Notice of Meeting:

- The notice for the general meeting shall make disclosures with regard to the **manner in which framework provided in this Circular** shall be available for use by the members and **also contain clear instructions on how to access and participate in the meeting.**
 - The company shall also provide a **helpline number through the registrar & transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting.**
 - A copy of the meeting notice shall also be prominently **displayed on the website** of the company and due intimation may be made to the exchanges in case of a listed company
-

B. How to send intimation of this general meeting to the members who have not provided their E-mail ID'S to the Company?

A Copy of the meeting notice shall be displayed on the website of the company. In this Notice company shall make disclosure regarding the framework of this circular and also contain clear instruction how to access and participate in the meeting.

C. What will be the validity of this general meeting in the absence of no notice send to certain members due to not having their email id's?

As per section 101 (4) of the companies Act 2013 if any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.

D. Quorum:

E. Whether shareholders attending through VC or OAVM will count for quorum?

Shareholder attending EGM through VC or OAVM shall be count for quorum.

F. Proxy:

- The facility of appointment of proxies by members will not be available for such meetings.
- Reason Proxy appointed when person not able to attend personally.

Authorized Representative: However, in pursuance of Section 112 and Section 113 of the Act, **representatives of the members may be appointed for the purpose of voting through remote e-voting** or for participation and voting in the meeting held through VC or OAVM.

G. Recording of Meeting:

EGMs, wherever unavoidable, may be held through VC or OAVM and the recorded transcript of the same shall be maintained in safe custody by the company.

Publication on Website: 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

Duration: The duration for maintaining the safe custody has not been specified by MCA

H. Participation of Members:

I. What are the requirements regarding conducting general meeting through videoconferencing (VC) or other audio-visual means (OAVM)?

- VC or OAVM must provide two-way teleconferencing/ webex facility.
- Facility to raise questions concurrently or given time to submit questions in advance on the e-mail address of the company

J. What is minimum capacity to allow participants prescribed under the circular?

Presence of atleast 1000 Members: Such a facility must have a capacity to allow at least 1000 members to participate on a first-come-first-served basis.

(However FIFO (first come first served) may not apply in certain case stated below)

- The large shareholders (i.e. shareholders holding 2% or more shareholding),
- promoters,
- institutional investors,
- directors key managerial personnel
- the chairpersons of the Audit Committee Nomination and Remuneration Committee and
- Stakeholders Relationship Committee,
- auditors etc.

may be allowed to attend the meeting without restriction on account of first-come-first-served principle.

K. Other Points:

Time for joining of 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. (i.e Pre and Post Meeting 15 Minutes Requirements)

Attendance of Members: Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.

Presence of Independent Director:

- At least one independent director (where the company is required to appoint one), and
 - the auditor or his authorized representative,
- who is qualified to be the auditor shall attend such meeting through VC or OAVM.
-

Time Zone: Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.

L. Voting Facility: How voting will be done?

BEFORE MEETING:

Remote e-voting:

- In case of Companies listed on stock exchange or
- having at-least 1000 members,

remote e-voting facility shall be provided which shall remain open for not less than three days and shall close at 5.00 p.m. on the date of preceeding the date of the General Meeting.

E- voting through email: In case of Companies not listed on stock exchange or having less than 1000 members, the **e-voting** shall be taken through registered email from members on designated mail id of the company, which shall be secured.

Note: **The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purpose of conducting a poll during the meeting**

DURING MEETING:

- a) **where there are less than 50 members present at the meeting, the voting may be conducted either**

-
- through the e-voting system or
 - by a show of hands,
 - unless a demand for poll is made in accordance with section 109 of the Act, in which case, the voting shall be conducted through the e-voting system;
-

b) in all other cases, the voting shall be conducted through e-voting system

5. What is meaning of e-voting for companies other than Listed Companies?

e-voting means, voting through e-mail by the members on registered e-mail id of the Company

M. Chairman:

- ✓ The Meeting shall be chaired by person as specified in AOA
 - ✓ If AOA doesn't provide for the same and
 - members present at meeting are 50 or more, the Chairman shall be elected by taking poll or
 - if members present are less than 50, the chairman shall be elected by show of hands;
-

6. Private Limited Company having 2-50 members required to provide e-voting facility?

If there is less than 50 members present in the meeting, EGM can provide either facility of show of hand or e-voting. It is not mandatory to provide e-voting facility in this case.

7. In case of private limited company having website, is it mandatory to publish recording of Meeting?

In case of Public Company having website, it is mandatory to publish recording of meeting. Therefore, it is not mandatory for private company to publish recording.

8. How attendance of genuine members can be ensured?

Companies should try to avail VC or OAVM facilities which provide unique password to each member for joining the meeting. In case of closely held companies, common password can be adopted, since all the members are known.

1. Whether it is mandatory for Listed Companies or Public Companies having atleast 1000 members to provide e-voting facility?

2. Whether this circular will apply after 30th June 2020?

3. Is there any requirement to appoint proxies under this circular?

4. Whether in case of poll through email, procedure prescribed in Section 109 read with Rules to be followed?

5. How poll will be undertaken at the meeting?

Poll will take place by way of email. The company shall provide a designated email address to all members at the time of sending the notice of meeting.

During the meeting, where a poll on any item is required, the members shall cast their vote on the resolutions only by sending emails through their email addresses which are registered with the company.

<http://www.csdiveshgoyal.info/2017/02/board-meeting-through-video.html>