

FAQs on Virtual Meetings



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

tel 011-4534 1000 fax +91-11-2462 6727

email info@icsi.edu website www.icsi.edu

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ICSI House, 22, Institutional Area, Lodi Road, New Delhi - 110 003

Phones : 41504444, 45341000; Fax : 24626727

Website : www.icsi.edu; E-mail : info@icsi.edu

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PREFACE

“Mystification is simple; clarity is the hardest thing of all.”

Julian Barnes

Indeed the words of Julian Barnes fit aptly not just to this attempt of the Institute of Company Secretaries of India (ICSI) but is a sought after trait in any profession and professional. Given the fact that Company Secretaries play an important role not just in Board Rooms but beyond Board Rooms as well, it is imperative and extremely significant that they have not just understanding of the law for themselves but a higher clarity of the finer nuances of the same to be able to share the knowledge ahead.

Understanding the fact that learning is a continuous process, especially for a professional hailing from a brigade such as ours, the ICSI continuously attempts to create and provide avenues of knowledge upgradation and updation to our members so as to accord them better clarity and understanding.

Given the situation of ‘new normal’ ushered in by the pandemic, the functioning of the India Inc., the adherence with the laws applicable while still holding its significance has shifted to the virtual modes. The Board meetings and other meetings have taken to the Audio and Video means. These relaxations accorded by the Regulatory Authorities have brought with them the need to acquaint not just with the technology but with the laws so as to ensure their compliance in the true letter and spirit.

It is with the intent of providing broad based knowledge and ease in dispensing off with the responsibilities as well as for providing a detailed insight into the aspects of conducting meetings through Virtual means that the ICSI has brought out this publication under the aegis of FAQs ON VIRTUAL MEETINGS, basing upon live webinar and queries received from the stakeholders.

I would like to place on record my sincere appreciation towards CS Sudhakar Saraswatula, Vice-President,(Corporate Secretarial), Reliance Industries Limited CS Manish Gupta, Central Council Member and CS Deepak Khaitan, Central Council Member for their contribution in the review process of the

publication. I commend the dedicated efforts put in by CS Disha Kant, Assistant Director in preparing this handbook under the guidance of CS Samir Raheja, Director, Directorate of Professional Development and under the stewardship of CS Asish Mohan, Secretary, ICSI.

I am confident that the publication will prove to be immensely beneficial in the process of conducting meetings virtually. I would appreciate the users/ readers for offering their constructive suggestions/comments for the improvement of this publication.

Place: New Delhi

CS Ashish Garg

Date : September 9, 2020

President

The Institute of Company Secretaries of India

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FAQS ON VIRTUAL MEETINGS

MEETINGS THROUGH VIDEO CONFERENCING AND OTHER AUDIO VISUAL MEANS (VC / OAVM)

With the advent of Companies Act, 2013 (“the Act”), holding of Board meetings through video conferencing or other audio visual was permitted under the law. For the first time the Act facilitated the concept of e-voting. The Act in itself makes no provision facilitating shareholders meetings through video conferencing and other audio visual means. Here we discuss the provisions of law and easing measures adopted by the Ministry of Corporate Affairs in this context.

Meaning of Video Conferencing or Other Audio Visual Means

“**Video conferencing or other audio visual means**” has been defined to mean that audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate in the meeting effectively and efficiently.

Section 173 of the Act, read with section Rules 3 & 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 lay down the legal provisions with respect to holding Board meetings through video conferencing

Section 173 sub-section (2) provides that participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with the date and time:

It further provides that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means. This section further provides that where there is quorum in a meeting through physical presence of the directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified by the Government.

MODALITIES OF HOLDING OF BOARD MEETINGS THROUGH VIDEO CONFERENCING

Rule 3 of the Companies (Meetings of Board and its powers) Rules, 2014 deals with the procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

The Rule at first imposes an obligation on every Company to make necessary arrangements to avoid failure of video or audio visual connection.

Role of the Chairperson of the meeting and Company Secretary

Sub-rule (2) provides that the Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care -

- (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
- (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- (c) to record proceedings and prepare the minutes of the meeting;
- (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
- (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting;

Provided that the persons, who are differently abled, may make a request to the Board to allow a person to accompany him.

Notice of the meeting

Sub-rule (3) provides that the notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.

The notice of the meeting shall inform the directors regarding the option

available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

A director intending to participate through video conferencing or other audio visual means, shall communicate his intention to the Chairperson or the company secretary of the company. in such case he shall give prior intimation to that effect sufficiently in advance so that the company is able to make suitable arrangements in this behalf.

Further it is provided that any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall stand valid for one year. This declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.

In case there is no intimation given by the director, it shall be assumed that the director shall attend the meeting in person.

Roll Call and Quorum

Sub-rule 4 provides that the Chairperson of the meeting shall take roll call at the commencement of the meeting, when every director is participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

- (a) name;
- (b) the location from where he is participating;
- (c) that he has received the agenda and all the relevant material for the meeting; and
- (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

Sub-rule 5 provides that after the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the Directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

It has been clarified in the sub-rule that a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the Rules. The Chairperson shall ensure that the required quorum is present throughout the meeting.

Venue

Sub-rule 6 clarifies that the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

Participation of Directors

Sub-rule 8 provides that every participant shall identify himself for the record before speaking on any item of business on the agenda. If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

Sub-rule 9 provides that where a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

Sub-rule 10 strictly provides that no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

Minutes of the Meeting

At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority

and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes.

The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

According to sub-rule 12, the draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed. After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Matters not to be dealt with in a meeting through Video Conferencing or Other Audio Visual Means

Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014 lays down certain matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means. The same are as under:

- (i) the approval of the annual financial statement;
- (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.

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

Considering the gravity of the current pandemic condition, Ministry of Corporate Affairs vide Companies (Meetings of Board and its Powers) Amendment Rules, 2020 dated 19th March 2020 inserted sub-rule 2 under Rule 4, stating that for

the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th September, 2020, the meetings on matters referred to in sub-rule (1) of Rule 4, may be held through video conferencing or other audio visual means in accordance with rule 3.

The Amendment rule are placed at Annexure VII & VIII.

HOLDING SHAREHOLDERS MEETING THROUGH VIDEO CONFERENCING (VC) OR OTHER AUDIO VISUAL MEANS (OAVM)

Considering the unprecedented pandemic situation, Ministry of Corporate Affairs proactively undertook various initiatives facilitating the companies in the difficult times of the pandemic. One such important facilitation was holding of Shareholders meetings through VC / OAVM. In this context Ministry has come out with various circulars as under:

- General Circular 14/2020 dated 8th April, 2020
- General Circular 17/2020 dated 13th April, 2020
- General Circular 18/2020 dated 21st April, 2020
- General Circular 20/2020 dated 5th May, 2020
- General Circular 22/2020 dated 15th June, 2020
- General Circular 28/2020 dated 17th August, 2020

The Act, does not provide for holding of shareholders meetings through VC / OAVM. The Act only makes provision for electronic voting under section 108 and postal ballot under 110. In this regard these circulars provide for modalities for holding shareholder meetings through VC / OAVM.

Circular 14/2020 provides that all decisions of urgent nature requiring the approval of members other than matters relating to the ordinary business or where they have right to be heard, should be undertaken through the facility of postal ballot.

Further the circular provides that in case of unavoidable circumstances Extraordinary General Meeting (EGM) may be held as per the procedure provided in the circular. It provides for all the modalities which are required to be followed by the company holding EGM through VC or OAVM. The Circular is placed at Annexure I.

Circular 17/2020 as a measure towards providing greater clarity in holding EGM

through VC or OAVM provides the manner and mode of issuing notice to the members for general meetings and various other requirements for passing of resolution. The circular is placed at Annexure II.

Ministry of Corporate Affairs vide Circular 18/2020 clarified that if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall be construed accordingly. The circular is placed at Annexure III.

Ministry of Corporate Affairs vide General Circular 20/2020 dated 5th May, 2020 clarified that the companies be allowed to conduct their AGM through video conferencing (VC) or other audio visual means (OAVM), during the calendar year 2020, subject to the fulfilment of the certain requirements. Various provisions relating to issuance of notice in case of EGM shall mutatis mutandis apply in case of AGM. The circular is placed at Annexure IV.

Vide circular 22/2020 Ministry allowed companies to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the circular 14/2020 and 17/2020 upto 30th September, 2020. The circular is placed at Annexure V.

Considering several representations received by the Ministry it was decided to extend the time for AGM. vide circular 28/2020 the Ministry clarified that the companies which are unable to hold their AGMs for the financial year ended on 31.03.2020, despite availing the relaxations provided in the Circular 20/2020, ought to file their applications in form No. GNL-1 for seeking extension of time in holding of AGM for the financial year ended on 31.03.2020 with the concerned Registrar of Companies on or before 29.09.2020. The circular is placed at Annexure VI.

Extension of time for holding AGM

On the basis of the representations and considering the unprecedented special reasons, Registrar of Companies (RoCs) opined that the time within which the AGM for the financial year ended on 31.03.2020 is required to be held as per provisions of sub-section (1) of section 96 ought to be extended in terms of the third proviso to section 96(1). The third proviso to Sub-section (1) of section 96 of the Act empowers the Registrar of Companies (RoC) may, for

any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Accordingly, RoCs have extended the time to hold the AGM, other than the first AGM, for the financial year ended on 31.03.2020, for companies within the jurisdiction of their office, which are unable to hold their AGM for such period within the due date of holding the AGM, for a period of three months from the due date by which the AGM ought to have been held in accordance with the provisions of Subsection (1) to Section 96 of the Act, without requiring the companies to file applications for seeking such extension by filing the prescribed Form No. GNL-1.

The extension herewith is also applicable to all the pending applications filed in Form No. GNL-1 for the extension of AGM for the financial year ended on 31.03.2020, which is yet to be approved. The approval for extension of AGM upto 3 months from the due date of AGM shall be deemed to have been granted by the RoC without any further action on the part of the company.

It is worthwhile to mention that Sub-section (1) of Section 96 of the Act provides, inter-alia, that every company, other than a One Person Company, shall in each year hold in addition to any other meetings, a general meeting as its AGM and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one AGM of a company and that of the next. Further first proviso to Sub-section (1) of section 96 of the Act provides that in case of the first AGM, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year.

For various extension orders issued by RoCs are available at <http://www.mca.gov.in/MinistryV2/extensionofagm.html>

Clarification's issued by the ICSI on SS-1 & SS-2 on basis of the circulars issued by the MCA

While giving Clarification/Guidance on applicability of Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2), ICSI has emphasised the "SCOPE" of SS-1 and SS-2 which read as under:

"This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the

Act shall prevail.”Hence, any relaxation granted by the Central Government from the compliance of provisions of Board and General Meetings under the Act will automatically and consequentially apply to Secretarial Standards as the case may be and the relaxed provisions of the Act will prevail to the extent applicable in terms of enforceability.

Pursuant to the relaxations granted by the MCA, few provisions of SS-1 and SS-2 also stand relaxed. Accordingly, the provisions of SS-1 and SS-2 should be construed in the light of the relaxations already granted by the MCA.

The clarifications are placed at Annexure IX.

FAQs ON MEETINGS THROUGH VIDEO CONFERENCING OR OTHER AUDIO VISUAL MEANS

- 1. Act does not contain any provisions for holding General meetings (EGMs or AGMs) through video conferencing. Can MCA by way of a circular permit the companies hold the General meeting through video conferencing?**
 - A. MCA has power to make Rules under section 469 of the Act. Considering the difficult circumstances MCA has proactively taken decision to enable corporates to proceed with the business. Even if such meetings are challenged the judiciary may take sympathetic view considering the difficult circumstances.
- 2. Can the companies hold the General meetings in a hybrid mode i.e. physical as well as video conferencing?**
 - A. Yes, it is not mandatory for companies to hold general meetings through VC only. Meetings may be held in physical mode or in hybrid mode also i.e. both physical and VC.
- 3. Why the prescribed procedure is different for companies providing e-voting facility and the companies not providing e-voting facility?**
 - A. Considering the size of the companies and number of shareholders, the procedure has been prescribed.
- 4. Is it mandatory to hold the General meetings through VC also during the business hours of the company only?**
 - A. Yes, there is no relaxation to this effect
- 5. How to accommodate the shareholders who wants to ask questions in view of the large attendance of shareholders throughout the length and breadth of the country?**

A. In the notice to the AGM it may be mentioned that shareholders whoever wants to speak to get their names registered and it's also to be mentioned that at the discretion of the Chairman the speakers will be allowed to speak depending upon the availability of time

6. Why the proxy provisions are dispensed with in case of General meetings held through video conferencing?

A. In case of VC meetings there is no question of proxy attendance. A shareholder can himself attend the meeting from wherever he is located. Same applies to the case with e-voting. In case of e-voting also there is no proxy to vote on behalf of the shareholder.

7. At least one independent director and auditor or his representative shall attend the General meeting held through video conferencing. What will happen if they could not attend the meeting?

A. Such meeting can't be conducted through VC / OAVM

8. Institutional investors shall be encouraged to attend and vote at the General meetings held through video conferencing. What does this mean?

A. They are to be informed about the meetings well in time and also appraise the procedure of attending the meeting

9. All resolutions passed at the General meetings are to be filed with the ROC within sixty days. Does this mean that resolutions passed for Ordinary business also have to be filed with ROC?

A. Yes, the filings are to be made in e-Form MGT – 14 for all resolutions.

10. Is the route map required to be given as prescribed under SS-2?

A. Since the general meeting is being held virtually, no one need to travel to the venue and route map is not required. Hence no need to provide the route map and the same is to be mentioned in the notice to general meetings.

11. Is it required to give venue of the meeting in the Notice? If so what would be the venue of the meeting, for meetings held through video conferencing?

A. Yes, place of the meeting shall be provided in the Notice. In case of virtual meetings deemed venue is to be given

- 12. How poll is to be conducted where a company is not required and has not opted for e-voting but has more than fifty members and is not possible to go for vote on show of hands?**
- A. Company to provide a designated e-mail id and shareholders to send their mandate to the designated e-mail id through their registered e-mail ids.
- 13. Are there any restrictions in transacting any businesses at EGMs and AGMs held through video conferencing?**
- A. Yes, in case of EGMs Ordinary business shall not be transacted. In case of both EGMs and AGMs businesses where opportunity of hearing is to be given such businesses shall not be transacted.
- 14. For conduct of AGMs through VC/OAVM, can the Companies mention in their AGM notices that the Company holds the right to restrict the number of speaker shareholders depending on the availability of time. Are the companies allowed to restrict speakers?**
- A. Yes, companies can restrict the speakers depending upon the availability of time. The notice calling for meeting should require the speaker shareholders to register themselves in advance and depending upon the time availability, it shall be at the discretion of the Chairman to allow the speakers. In addition, companies may allow recordings to be sent in advance with the permission of the Chairman and shareholders, in order to avoid scenarios where a speaker shareholder may get disconnected or have an audio/visual connection issue, thus saving time and effectively maintaining the decorum of the meeting.
- 15. The number of speakers registering to speak at the meeting has gone up considerably. Companies are forced to choose those speakers who are favourably disposed to the company. Is this a correct practice? How can this be managed?**
- A. If the number of speaker's shareholders registering is considerably more, the Chairman should put a cut-off as it may not be feasible to allow all the registered speakers due to time constraints. For e.g., giving 3 mins each to 50 registered speakers in a meeting held through VC or OAVM will prolong the meeting with 150 minutes. Therefore, it is at the discretion of Chairman to decide the order (first come first serve, etc.) and the cut-off depending on the situation and time availability.

16. Is it mandatory to share the question / query well in advance with the Company by the Shareholder at the time of registering himself as speaker. Can a shareholder refuse to share the question, even if asked to share, by the Company.

- A. shareholder may share his query well in advance with the Company so that even if he could not get connected, his query may be read out and answered. However, the shareholder may prefer to raise his query at the meeting only and in such case he need not share his query in advance with the Company.

17. Is the presence of Auditors (Statutory & Secretarial) mandatory in AGM held via VC & OAVM?

- A. Yes, the presence of Auditors or his representative who is qualified to be appointed as an Auditor, is mandatory in AGM held via VC or OAVM.

18. If a 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, can a Company dispatch the dividend warrants / cheque to such shareholder by post, after normalization of the postal services. How the relevant provisions of the Dividend would be treated as complied?

- A. Yes, as provided under Circular 20/2020 dated May 5, 2020 wherever a shareholder has not registered his ECS mandate / bank particulars, a company can dispatch the dividend warrants once the normalcy is restored

19. If we obtain permission from the authorities, can we hold physical meeting and also give facility for e-voting?

- A. Ministry of Corporate Affairs has provided a facility to conduct meetings through VC or OAVM keeping in view the social distancing requirements caused due to the Covid - 19 Pandemic. A Company can hold a physical meeting instead, taking all necessary precautions to maintain social distancing if there is no stringent lockdown at the place which is decided to be the venue of the meeting and after taking the required permissions from various authorities which will depend on number of factors such as the number of members assembling, etc.

Also, keeping in view the prevailing conditions and for the benefit of other shareholders who cannot attend the meeting physically due to various restrictions (travel or otherwise), it is advisable that the Company should

extend an option of attending the said meeting through VC or OAVM also in case of conducting physical meeting.

In case of a small company where the number of members is less (10 – 15), staying in the same vicinity, and can meet physically without violating the lock down restrictions, then the Company may opt to hold a physical meeting. However, it is advisable to hold meetings through VC or OAVM until normal conditions return.

20. How can the companies keep registers open for inspection at the AGM held via VC or OAVM, if the Company does not maintain the registers in electronic form and nor the company has scanned the same?

- A. In case the registers are not maintained in an electronic form, the physical registers/documents should be scanned for uploading in a virtual data room established for the purpose. Login ID and password can be provided for inspection and it is to be ensured that only view rights are given for inspection and the registers/documents cannot be deleted, copied or downloaded or the register/documents may be made available for inspection on a virtual platform (e.g., Zoom, Microsoft teams, etc.), and displayed in a presentation form. The registers/documents which shall be made available for inspection in connection with the AGM, shall be made available from the time notice is given till the conclusion of the meeting.

21. What are the consequences if during the AGM held through VC or OAVM, the Chairman gets disconnected due to poor net connectivity etc. and unable to join again? How can the Company proceed with the AGM for remaining items?

- A. In case, the Chairman of the meeting gets disconnected due to poor connectivity, etc. for 5-10 minutes, it does not necessarily lead to adjournment of the meeting. However, if the Chairman is unable to join again and depending on the size, structure, dynamics of the company, there are two options available: either adjourn the meeting or if the meeting so decides elect another Chairman to proceed with the AGM, the company is required to follow the Articles/Section 104 of the Companies Act, 2013 and proceed accordingly.

22. Do Shareholders and Directors have any rights to ask recording of AGM conducted through VC or OAVM?

- A. Recording of the General Meetings held through VC or OAVM is not mandatory as per law and only the recorded transcript has to be maintained. Therefore, a shareholder/director cannot ask for the recording of meeting conducted through VC or OAVM. Even if the company records the meeting its only for their internal purpose.

23. Do Shareholders and Directors have any rights to ask for the copy of recorded transcript of AGM conducted through VC or OAVM?

- A. Public companies have to mandatorily upload the recorded transcript on the web site of the company, if any. In case where a company has no website and has not uploaded the transcript, may provide a copy of the same to the shareholder who ever has asked for the same. In case of a private company there is no such requirement of uploading the recorded transcript on the website of the company. However, even in such cases as a good Governance measure copy of the recorded transcript may be made available, since there is no confidentiality as such is involved.

24. How to ascertain the quorum during the proceedings of AGM? In case a person leaves the AGM through VC in between, whether he would be counted for the purpose of quorum or should he be present throughout the meeting?

- A. As per para 3.1 of Secretarial Standard – 2 on General Meetings, the quorum shall be present throughout the meeting. It shall be the responsibility of the Chairman and the Company Secretary to keep a check on the attendance throughout the meeting for the purpose of quorum and if the attendance depletes below the required quorum, the meeting should be adjourned.

25. Whether in General meeting through VC or OAVM, Proposed and Secondment is mandatory?

- A. As per para 7.1 of SS- 2

Every Resolution, **except** a Resolution which has been put to vote through Remote e-Voting or on which a poll has been demanded, shall be proposed by a Member and seconded by another Member.

In case of remote e-voting the voting commences before a general meeting. Therefore, in such cases, the formality of “proposed by” and “seconded by” need not be adhered to. Further, in cases where a resolution on which a poll is demanded, proposing and seconding of

such a resolution is not possible and hence not made applicable in such cases.

Though SS- 2 clearly mentions the above on proposing and seconding, some companies may practice this as customary and good practice.

26. Is it mandatory to engage the services of CDSL or NSDL for the purpose of VC or we can have arrangements with the private service provider viz., Zoom, Google Meet, Webex, etc., especially when e-voting facility is provided by CDSL/NSDL only?

- A. It is not mandatory to engage the services of CDSL or NSDL for the purpose of holding a meeting through VC or OAVM, even though they might be the service providers for the purpose of e-voting. The company may use other service providers which depends upon the size of the company, number of shareholders and commercials.

The service providers for e-voting shall be registered / certified and no such requirement is there for service providers who provide the platforms for holding virtual shareholders meetings.

27. Is the Company bound to share the physical copy of the annual report/notice to shareholders requesting for the same?

- A. As per the relaxations given by MCA, companies are obligated to send the financial statement only through e-mails and this relaxation is available only for the AGMs held during the year 2020. Hence it's not mandatory to provide a physical copy to the shareholder. However, if the company prints the annual reports on the restoration of the normalcy, as a good Governance measure a physical copy may be sent to such shareholder.

28. Is the Company bound to share the physical copy of the annual report/notice to shareholders when Physical AGM is called ?

- A. Even if a company convene a physical AGM it is not required to send a physical copy of the annual report / notice, since there is no possibility of dispatch of physical annual report / notice due to lockdown conditions. Hence sending the annual report by way of an e-mail, wherever the e-mail of the shareholder is registered with the company, is a sufficient compliance.

29. If a shareholder already voted through e-voting mechanism, is he entitled to attend AGM through VC & OAVM ?

- A. Yes, such shareholder can attend the AGM and will be counted for the

purpose of quorum and can also participate at the meeting, except that he can't vote, since he has already voted.

30. Guidelines of a State regarding number of person should attend a programme will affect the holding of AGM/EOGM. Generally they differ state wise than what will be outcome for holding AGM/EOGM.

- A. Yes, local Government may impose restrictions on number of persons who can physically attend a programme. In case the companies are not able to conduct meetings physically because of such restrictions, they have to conduct the meetings through VC / OAVM.

31. A company which is not required to provide e-voting mandatorily but have more than 200 members. The company does not have sufficient email ids as required by MCA Circular 20/2020 to convene AGM through VC/OAVM such company is not in a position to hold physical meeting. What is the option available?

- A. The options left with the company is to mobilise the e-mail ids or opt for e-voting.

32. Are the directors physically present at the Board Meeting venue also need to answer the roll call as per Rule 3(4) of the Companies (Meetings of the Board and its powers) Rules, 2014 in case of a meeting held through VC or OAVM?

- A. All the directors attending the meeting whether from the venue or elsewhere, need to answer the roll call as per the requirement of Rule 3(4) of The Companies (Meetings of the Board and its powers) Rules, 2014 in order to identify themselves. In addition, the directors attending through VC are also required to confirm that nobody else has access to the proceedings, confirm their location, receipt of documents in time, confirm no technical issues with audio/video connection, etc. After the roll call, the Chairman to also inform the presence of the invitees and their names.

33. How to conduct Board Meeting in case of a Company whose directors are from rural areas where there is lack of connectivity/network?

- A. The directors attending the meeting through video conferencing or other audio-visual means shall only be counted for the purposes of quorum. Companies may allow directors to participate through teleconferencing. However, such directors cannot be counted for the purpose of the quorum

and shall not be able to vote in the meeting. It is advisable to record this in the minutes of the meeting with respect to directors attending through audio means only/ teleconferencing that they were not counted for the purpose of the quorum. Lack of connectivity / network is not an excuse for not conducting a Board Meeting. MCA has relaxed the time period between two board meetings by 60 days i.e. the time period between two board meetings may be 180 days as against 120 days and this relaxation is available up to September 30, 2020.

34. Do Shareholders and Directors have any rights to ask recording of Board meetings conducted through VC or OAVM?

- A. In case of a Board meeting, if a Director is attending the meeting through VC or OAVM, it has to be mandatorily recorded and the recording is to be preserved up to the next audit of the Company. In case a Director requests for a copy of the recording, the company is not under an obligation of providing the copy of such recording to the Director in order to maintain the sanctity of the meeting. However, depending upon the situation for e.g., to verify the discussions / decisions taken in the Minutes of the meeting, etc. to give his comments on the draft minutes of the Board meeting, the Director may be allowed to view the recording of the meeting.

A director has no right to audio record the proceedings of the Board meeting, even though there is a request from any director to audio record the board meeting proceedings, the Chairman should not allow such request to maintain the confidentiality.

A shareholder has no right to ask for the recording of the Board Meeting. As a matter of fact he has no right to even inspect the minutes of the Board Meeting.

35. If during meeting held through VC/ OAVM, all directors were able to see each other (as required in rules) but in the recording of meeting, video of only 2 directors is seen and video of 3rd director is not seen due to technical glitch, will this be considered as proper compliance of rules, as during meeting all directors were able to see each other?

- A. At the time of roll call while identifying themselves, every director has to switch on his video. Similarly, while approving any decision or while making any affirmation also it is advisable the director to switch on his

video. During the discussions even if a director is not visible his voice must be there and hence there is no issue

36. If one of the Directors is an Indian Director and rest all are Foreigner Directors, in case of 100% Indian Subsidiary of a Foreign Entity, all Directors are located in 4 different countries, How can they manage Board Meeting and what place will be considered as the place of Board meeting? (I mean, which country will be considered as country where Board meeting is held)

- A. In case where all the directors are in different countries attending a Board Meeting through VC or OAVM, the place of Board meeting shall be as per Rule 3 (6) of the Companies (Meeting of Board and its Powers) Rules, 2014 which provides that:

With respect to every meeting conducted through video conferencing or other audio-visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place. Therefore, the place of the Board meeting shall be what is mentioned in the notice calling the Board Meeting.

In case of a board meeting held through VC the venue of the meeting will be a deemed venue

37. Do we need to file any specific form with ROC or give any written application informing the ROC or Stock exchange that the Meeting is being conducted through VC or OAVM?

- A. It is not required to file any specific form with the ROC or stock exchanges. However, the Notice for the meeting should clearly mention that the meeting will be held through VC or OAVM along with the reference to the Circulars issued allowing for the same. In any case listed companies have to share the copy of the Notice with the Stock Exchanges as a part of the compliance of LODR.

38. In case of Board Meeting held through video conferencing for approval of financial statements, can the Directors sign the financial statements on same Board Meeting date or Physical copies should be there for signing the same?

- A. Where the Directors are not in a position to physically sign the financial statements or Minutes or any other documents, or scan and send,

while approving the financial statements through VC or OAVM, the directors may give an affirmation that they are approving the statements/reports and considering the lockdown situation, they cannot sign the statements physically as of now and these shall be deemed to be signed as on date of the Board Meeting and they shall physically sign the financial statements, Minutes or any other documents as soon as the normalcy is restored as on the date of the meeting, such affirmations shall also be included in the minutes of the meeting. It is also advisable that wherever feasible the Directors may also affix their digital signatures during the meeting only and same fact should also be captured in the minutes.

39. Whether the Interested Director/Related Party Director is required to log out from the meeting conducted through VC or OAVM during discussions on subject matter of resolution relating to such contract/arrangement?

- A. In case of physical meeting, the Director needs to vacate the room during discussions on the subject matter of a resolution in which he is a related party. Taking a strict interpretation of the same, one can say that in case of a meeting being held through VC or OAVM, the Interested Director should virtually log out during the said discussion and re-log in afterwards.

40. What is the relevance of VC / OAVM for unlisted companies with limited number of members?

- A. When physical meeting is not possible, even if only two members are there still the company has option of holding the meeting through VC only.

41. In case of a closely held, unlisted company having only 10 members, how the resolution would be passed, by voice, by show of hands or the e-voting facility is mandatory for such companies as well.

- A. The chairman to say that he is putting the resolution to vote and request the shareholders to raise their hands while approving the resolution. Thereafter the Chairman to say that those shareholders who dissent to identify themselves by taking their name and raise their hands. Thereafter the Chairman to announce the result that the resolution is passed unanimously or by majority.

42. Elaborate on practical challenges faced in VC/OAVM meetings vis-a-vis required in law and how to ensure smooth meeting.

- A. Availability of robust network, capability of the platform on which the virtual meeting is conducted, ability of the company officials and the directors to navigate through virtual platforms are some of the challenges in holding virtual board meetings. With proper planning and training the same can be taken care off. Quorum of the meeting shall be maintained throughout the meeting, Circulation of Notice and agenda should be well in time so that sufficient time is available for directors to go through the documents on virtual mode. Also to ensure safeguard and integrity of the meeting.

43. Is Rollcall mandatory in Board Meeting?

- A. Yes, rollcall is mandatory as per Rule 3.

44. One of the VC meeting could not be recorded due to technical difficulties, but has captured screen shots showing a proof of meeting held and agendas discussed, will it suffice, whether we are 100% compliant, if not what need to be done. The agenda included approval of working capital facility (borrowings from bank).

- A. Board Meetings held through VC are to be mandatorily recorded and such recordings are to be maintained till the completion of audit of the particular year. Due to some technical glitches if the recording could not take place, the Chairman and Directors may be informed and record the same in the minutes of the next board meeting. This shows the genuineness of the difficulty and the same satisfies the Secretarial Auditor as well as the Regulators.

45. What is the time limit of extension given for conducting Board Meetings & AGM through VC & OAVM?

- A. The time gap between two board meetings is extended by 60 days i.e from 120 days to 180 days, for meetings to be held up to September 30, 2020. For AGMs ROC has the power to grant an extension of three months which is to be applied for in the prescribed e-Form i.e. GNL-1 by September 29, 2020.

Considering the unprecedented special reasons, Registrar of Companies (RoCs) under the third proviso to Sub-section (1) of section 96 of the Act have extended the time to hold the AGM, other than the first AGM, for the financial year ended on 31.03.2020, for companies within the jurisdiction of their office, which are unable to hold their AGM for such period within

the due date of holding the AGM, for a period of three months from the due date by which the AGM ought to have been held in accordance with the provisions of Subsection (1) to Section 96 of the Act, without requiring the companies to file applications for seeking such extension by filing the prescribed Form No. GNL-1.

46. One director could login but before the meeting starts got disconnected and could not rejoin. Whether he can be deemed to be attended the board meeting?

- A. No, he can't be deemed to be attended the board meeting in case a director got disconnected during the meeting and could not rejoin, the same to be recorded in the minutes of the meeting. It is to be ensured that sufficient quorum is there to continue the meeting.

47. One director dropped out and could not rejoin the meeting, due to this the quorum is not present for the remaining meeting. What are the consequences?

- A. Since the quorum is not available, the meeting should be adjourned as per the provisions of section 174 of the Act.

ANNEXURE I**General Circular No. 14/2020**

F. No. 2/112020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi-110001
Dated: 8 April, 2020

To
All Regional Directors,
All Registrar of Companies,
All Stakeholders.

Subject: Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

Sir/Madam,

Several representations have been received in the Ministry for providing relaxations in the provisions of Companies Act, 2013 (the Act) or rules made thereunder to allow companies to pass ordinary and special resolutions of urgent nature, in view of the difficulties faced by the stakeholders on account of the threat posed by Covid-19. The issues raised in the said representations have been examined considering the overall situation at present.

2. The Act does not contain any specific provision for allowing conduct of members' meetings through video conferencing (VC) or other audio visual means (OAVM). It has been noted that section 108 of the Act and rules made thereunder provide for relevant companies to allow e-voting (including remote e-voting) in case of general meetings convened by them. Section 110 of the Act, on the other hand, allows the companies to pass resolutions (except items of ordinary business and items where any person has a right to be heard) through postal ballot (which includes electronic ballot and electronic voting under section 108). In view of the current extraordinary circumstances due to the pandemic caused by COVID-19 prevailing in the country, requiring social distancing, companies are requested to take all decisions of urgent nature requiring the approval of members, other than items of ordinary business or business where any person has a right to be heard, through the mechanism

of postal ballot e-voting in accordance with the provisions of the Act and rules made thereunder, without holding a general meeting, which requires physical presence of members at a common venue.

3. However, in case holding of an extraordinary general meeting (EGM) by any company is considered unavoidable, the following procedure needs to be adopted for conducting such a meeting on or before 30.06,2020, in addition to any other requirement provided in the Act or the rules made thereunder:

A. 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 –

- I. 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. 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.
- II. Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.
- III. All care must be taken to ensure that such meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of the members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility must have a capacity to allow at least 1000 members to participate on a first-come-first-served basis. 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.
- IV. 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.
- V. Before the actual date of the meeting, the facility of remote e-voting shall be provided in accordance with the Act and the rules.
- VI. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.

- VII. 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.
- VIII. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner:
 - a. where there are less than 50 members present at the meeting, the Chairman shall be appointed in accordance with section 104.
 - b. in all other cases, the Chairman shall be appointed by a poll conducted through the e-voting system during the meeting
- IX. 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 held through VC or OAVM. Depending on the number of members present in such meeting, the voting shall be conducted in the following manner.
 - 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.
- X. A proxy is allowed to be appointed under section 105 of the Act to attend and vote at a general meeting on behalf of a member who is not able to attend personally. Since general meetings under this framework will be held through VC or OAVM, where physical attendance of members in any case has been dispensed with, there is no requirement of appointment of proxies. Accordingly, the facility of appointment of proxies by members will not be available for such meetings. 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.
- XI. 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

- XII. Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.
- XIII. 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 k 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.
- XIV. In case a notice for meeting has been served prior to the date of this circular, the framework proposed in this Circular may be adopted for the meeting, in case the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures In consonance with this Circular is issued consequently.
- XV. All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting, clearly indicating therein that the mechanism provided herein along with other provisions of the Act and rules were duly complied with during such meeting.

B. For companies which are not required to provide the facility of e-voting under the Act –

- I. EGM, 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. 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.
- II. Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.
- III. All care must be taken to ensure that such meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of the members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility must have a capacity

to allow at least 500 members or members equal to the total number of members of the company (whichever is lower) to participate on a first-come-first-served basis. 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.

- IV. 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.
- V. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.
- VI. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner:
 - a. where there are less than 50 members present at the meeting, the Chairman shall be appointed in accordance with section 104;
 - b. in all other cases, the Chairman shall be appointed by a poll conducted in a manner provided in succeeding sub-paragraphs.
- VII. Atleast 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
- VIII. A proxy is allowed to be appointed under section 105 of the Act to attend and vote at a general meeting on behalf of a member who is not able to attend personally. Since general meetings under this framework will be held through VC or OAVM, where physical attendance of members in any case has been dispensed with, there is no requirement of appointment of proxies. Accordingly, the facility of appointment of proxies by members will not be available for such meetings. 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.
- IX. Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.

- X. The company shall provide a designated email address to all members all the time of sending the notice of meeting so that the members can convey their vote, when a poll is required to be taken during the meeting on any resolution, at such designated email address.
- XI. The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly maintained by the company at all times. Due safeguards with regard to authenticity of email address(es) and other details of the members shall also be taken by the company.
- XII. During the meeting held through VC or OAVM facility, 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. The said emails shall only be sent to the designated email address circulated by the company in advance.
- XIII. Where less than 50 members are present in a meeting, the Chairman may decide to conduct a vote by show of hands, unless a demand for poll is made by any member in accordance with section 109 of the Act. Once such demand is made, the procedure provided in the preceding sub-paragraphs shall be followed.
- XIV. In case the counting of votes requires time, the said meeting may be adjourned and called later to declare the result.
- XV. 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 should 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 notice shall also be prominently displayed on the website of the company.
- XVI. In case a notice for meeting has been served prior to the date of this Circular, the framework proposed in this Circular may be adopted for the meeting in case the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with this Circular is issued consequently.
- XVII. All resolutions passed in accordance with this mechanism shall be filed

with the Registrar of Companies within 60 days of the meeting clearly indicating therein that the mechanism provided herein alongwith other provisions of the Act and rules were duly complied with.-

4. The companies referred to in paragraphs 3 (A) and 3 (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents 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.

5. This issues with the approval of the competent authority.

Yours faithfully

(K M S Narayanan)

Assistant Director

Copy to

1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File

ANNEXURE II**General Circular No. 17/2020**

F. No 2/1/2020-CL-V
Government of India
Ministry of Corporate Affairs

5 Floor, 'A' Wing,
Shastri Bhawan, Dr. R. P. Road,
New Delhi-110001
Dated: 13th April, 2020

To

All Regional Directors,

All Registrar of Companies,

All Stakeholders.

Subject: Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

Sir/Madam,

Reference is drawn to this Ministry's General Circular No. 14/2020 dated 8th April, 2020 on the subject cited above. After the issue of the said circular, the Ministry has received representations from stakeholders for clarification on some of the elements in the framework laid down therein. The stakeholders have highlighted the difficulties in serving and receiving notices/responses by post in the current circumstances. In view of the same and with a view to bringing in greater clarity on the modalities to be followed by companies for conduct of EGMs during the COVID-19 related social distancing norms and lockdown for the period as indicated in the said Circular, or till further orders, whichever is earlier, the following clarifications are hereby given:-

(i) Manner and mode of issue of notices to the members before convening the general meeting:

A. 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 :

- I. In view of the present circumstances, in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules.

2014 (the rules), the notices to members may be given only through e-mails registered with the company or with the depository participant/depository.

- II. While publishing the public notice as required under rule 20(4)(v) of the rules, the following matters shall also be stated, namely:-
 - a. statement that the EGM has been convened through VC or OAVM in compliance with applicable provisions of the Act read with General Circular 14/2020, dated 8th April, 2020 and this Circular;
 - b. the date and time of the EGM through VC or OAVM;
 - c. availability of notice of the meeting on the website of the company and the stock exchange:
 - d. 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;
 - e. the manner in which the members who have not registered their email addresses with the company can get the same registered with the company;
 - f. any other detail considered necessary by the company.
- III. 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. For companies which are not required to provide the facility of e-voting under the Act –

- I. In view of the present circumstances, in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules, 2014 (the rules), the notices to members may be given only through e-mails registered with the company or with the depository/depository participant,
- II. A copy of the notice shall also be prominently displayed on the website, if any, of the company.
- III. In order to ensure that all members are aware that a general meeting is

proposed to be conducted in compliance with applicable provisions of the Act read with General Circular No. 14/2020, dated 8th April, 2020, the company shall:

- (a) contact all those members whose e-mail addresses are not registered with the company over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all its members or
 - (b) where the contact details of any of members are not available with the company or could not be obtained as per (a) above, it shall cause a public notice by way of 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
 - i. That the company intends to convene a general meeting in compliance with applicable provision is of the Act read with the General Circular No. 14/2020 dated 8th April, 2020 and this Circular, and for the said purpose it 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,
 - ii. the details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered for participation and voting in the general meeting
- IV. 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.

(ii) Requirement for voting by show hands - In sub-paragraph A – IX of para 3 of the General Circular 14/2020 dated 8th April, 2020 relevant companies were allowed to pass resolutions in certain cases through show of hands. Considering the dissimilarities involved in e-voting and voting by show of hands,

the said sub-paragraph is substituted as under:-

“IX. 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 .”

(iii) Passing of certain items only through postal ballot without covering a general meeting–

- (a) In the General Circular No. 14/2020, dated 8th April, 2020, it was stated “that the companies may pass resolutions through postal ballot / e-voting without holding a general meeting unless it is so required as per section 110(1)(b) of the Act. Clarifications have been sought on the issue of dispatch of notices by companies by post and communication by the members of their assent or dissent on relevant resolutions by post under the current circumstances
- (b) The matter has been examined and the attention is invited to rule 22(15) of the rules which provides that the provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable. mutatis mutandis to this rule in respect of the voting by electronic means Therefore, for companies covered in para 3-A of the General Circular No. 14/2020, dated 8th April, 2020, while they are transacting any item only by postal ballot, upto 30th June 2020 or till further orders, whichever is earlier , the requirements provided in rule 20 of the rules as well as the framework provided in the General Circular No. 14/2020. dated 8th April, 2020 and this Circular would be applicable mutatis mutandis. The company would send notice by email to all its shareholders who have registered their email addresses with the company or depository participant/ depository. The company would also be duty bound to provide a process of registration of e-mail addresses of members and state so in its public notice. The communication of the assent or dissent of the members would only take place through the remote e-voting system as no meeting will be required to be called.

(iv) Sending of e-mails by members, where a poll on any item is required for companies covered in Para 3-B of the General Circular No. 14/2020 dated 8th April 2020 –

Clarification has been sought as to whether the members are required to take part in the poll on items considered during the meeting by sending e-mails in advance to the company before the meeting is actually held through VC or

OAVM facility. The matter has been examined and it is hereby clarified that sub-paragraph B-XII of para 3 of the General Circular No. 14/2020, dated 8th April, 2020 does not provide for polling by members at any time before the general meeting. The poll will take place during the meeting, and the members may convey their assent or dissent on at such stage on items considered in the meeting by sending e-mails to the designated e-mail address of the company, which was circulated by the company in the notice sent to the members.

2. This issues with the approval of the competent authority.

Yours faithfully,

(K M S Narayanan)

Assistant Director

Copy to

1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File

ANNEXURE III**General Circular No. 18/2020**

F. No.2/4/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing,
Shastri Bhawan,
Dr. R. P. Road, New Delhi-110001
Dated: 21st April, 2020

To

All Regional Directors,

All Registrars of Companies,

All Stakeholders.

Subject: Holding of annual general meetings by companies whose financial year has ended on 31st December, 2019.

Sir/Madam,

Several representations have been received from stakeholders with regard to difficulty in holding annual general meetings (AGMs) for companies whose financial year ended on 31st December, 2019 due to COVID-19 related social distancing norms and consequential restrictions linked thereto. These representations have been examined and it is noted that the Companies Act, 2013 (Act) allows a company to hold its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not later than a period of 15 months from the date of last AGM .

2. On account of the difficulties highlighted above, it is hereby clarified that if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall be construed accordingly.

3. This issues with the approval of the competent authority.

Yours faithfully,

(K.M.S Narayanan)

Assistant Director

Copy to:

1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website.
2. Guard File.

ANNEXURE IV**General Circular No. 20 /2020**

F. No. 2/4/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing,
Shastri Bhawan, Dr. R. P. Road,
New Delhi-110001
Dated: 5th May, 2020

To
All Regional Directors,
All Registrar of Companies
All Stakeholders

Subject: Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)

Sir/Madam,

Several representations have been received in the Ministry for providing relaxations in the provisions of Companies Act, 2013 (the Act) or rules made thereunder to allow companies to hold annual general meeting (AGM) in a manner similar to the one provided in General Circular No. 14/2020, dated 08.04.2020 (EGM Circular - I) and General Circular No. 17/2020 dated 13.04.2020 (EGM Circular - II), which deal with conduct of extraordinary general meeting (EGM).

2. In the meanwhile, by virtue of the General Circular No. 18/2020, dated 21.04.2020, the companies whose financial year ended on 31st December, 2019, have been allowed to hold their AGM by 30th September, 2020.

3. The matter has been further examined and it is stated that in view of the continuing restrictions on the movement of persons at several places in the country, it has been decided that the companies be allowed to conduct their AGM through video conferencing(VC) or other audio visual means (OAVM), during the calendar year 2020, subject to the fulfillment of the following requirements:

A. 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 -

- I. The framework provided in para 3 -A of EGM Circular – I and the manner

- and mode of issuing notices provided in sub-para (i)-A of EGM Circular II shall be applicable mutatis mutandis for conducting the AGM.
- II. 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.
 - III. In view of the prevailing situation, 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.
 - IV. Before sending the notices and copies of the financial statements, etc., a public notice by way of advertisement 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 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:-
 - a. statement that the AGM will be convened through VC or OAVM in compliance with applicable provisions of the Act read with this Circular;
 - b. the date and time of the AGM through VC or OAVM;
 - c. availability of notice of the meeting on the website of the company and the stock exchange, in case of a listed company;
 - d. 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;
 - e. the manner in which the persons who have not registered their email addresses with the company can get the same registered with the company;
 - f. the 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;
 - g. any other detail considered necessary by the company

- V. 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.
- VI. 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.

B. For companies which are not required to provide the facility of e-voting under the Act -

- I. 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 one thousand rupees in face value or more than one per cent. of the total paid-up share capital, whichever is less;
 - b. 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;
 - c. 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.
- II. 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.
- III. The framework provided in para 3-B of EGM Circular – I and the manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular – II shall be applicable mutatis mutandis for conducting the AGM.

- IV. 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.
 - V. 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.
 - VI. 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.
4. The companies referred to in paragraphs 3 (A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings 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.
5. The companies which are not covered by the General Circular No. 18/2020, dated 21.04.2020 and are unable to conduct their AGM in accordance with the 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 Act.
6. This issues with the approval of the competent authority.

Yours faithfully

(Sridhar Pamarthi)
Joint Director

Copy:-

- 1. e-Governance Section and Web contents officer to place this circular on the Ministry's website.
- 2. Guard File

ANNEXURE V**General Circular No 22/2020**

F. No. 02/01/2020 CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A'Wing,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-1.
Dated: 15.06.2020

To,
All Regional Directors,
All Registrar of Companies,
All Stakeholders.

Subject: Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder on account of Covid-19 - Extension of time- reg.

Sir/Madam,

This Ministry has issued General circular No. 14/2020 on 8th April, 2020 and General Circular No. 17/2020 on 13th April, 2020 for providing clarifications on passing of ordinary and special resolutions -by companies by holding Extraordinary General Meetings) through video conferencing (VC) or other audio visual means (OAVM) or passing of certain items only through postal ballot without convening general meeting. The framework provided in the said circulars allows companies to hold relevant EGMs or transact relevant business through postal ballot, as per procedure specified therein, upto 30th June, 2020 or till further orders whichever is earlier. Requests have been received from the stakeholders for extending the period upto which the framework provided in the aforesaid circulars may be utilized by the companies.

2.The matter has been examined and it has been decided to allow companies to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars upto 30th September,2020. All other requirements provided in the said Circulars remain unchanged.

3. This issues with the approval of the competent authority.

Yours faithfully,

(K.M.S Narayanan)

Assistant Director

Copy forwarded for information to:-E-Governance section.

ANNEXURE VI**General Circular No. 28/2020**

F. No. 2/4/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing,
Shastri Bhawan,
Dr. R. P. Road, New Delhi
Dated: 17th August, 2020

To,

All Regional Directors,

All Registrar of Companies,

All Stakeholders.

Subject: Clarification on Extension of Annual General Meeting (AGM) for the financial year ended as at 31.03.2020- Companies Act, 2013-reg.

Sir/Madam,

Several representations have been received in the Ministry for providing relaxations in the provisions of Companies Act, 2013 (the Act) or rules made thereunder to allow companies to hold their annual general meeting (AGM) for the financial year ended on 31st March, 2020 beyond the statutory period provided in section 96 of the Act.

2. The matter has been examined in this Ministry and it is stated that this Ministry had inter-alia, clarified vide General Circular No. 20/2020, dated 05.05.2020 [G.C. 20/2020] regarding holding of AGM through video conferencing (VC) or other audio visual means (OAVM) for the calendar year 2020. In addition, the companies which are unable to hold their AGMs were 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 Act.

3. In view of the above, it is once again reiterated that the companies which are unable to hold their AGM for the financial year ended on 31.03.2020, despite availing the relaxations provided in the G.C. 20/2020 ought to file their applications in Form No. GNL-1 for seeking extension of time in holding of AGM for the financial year ended on 31.03.2020 with the concerned Registrar of Companies on or before 29.09.2020.

4.The Registrars of Companies are hereby advised to consider all such applications (filed in Form No. GNL-1) liberally in view of the hardships faced by the stakeholders and to grant extension for the period as applied for (upto three months) in such applications.

5. This issues with the approval of the competent authority.

Yours faithfully,

(K M S Narayanan)

Assistant Director (policy)

Copy forwarded for information to:-

1. e-governance section and web contents officer to place the circular on MCA website and
2. Guard file.

ANNEXURE VIIGOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Notification

New Delhi, the 19th March,2020

G.S.R. 186(E).- In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

“(2) 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.”

[F. No. 1/32/2013-CL-V-Part]

(K.V.R. Murty)

Joint Secretary to the Government of India

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification number G.S.R. 240(E), dated the 31st March, 2014 and subsequently amended as follows:-

1. G.S.R. 398 (E), dated the 12th June, 2014;
2. G.S.R. 590 (E), dated the 14th August, 2014;
3. G.S.R. 206 (E), dated the 18th March, 2015;
4. G.S.R. 971(E), dated the 14th December,2015;
5. G.S.R. 309 (E), dated the 30th March, 2017;
6. G.S.R. 880 (E), dated the 13th July, 2017;
7. G.S.R. 429 (E), dated the 7th May,2018;
8. G.S.R. 777 (E) dated the 11th October, 2019; and
9. G.S.R. 857 (E) dated the 18th November, 2019

ANNEXURE VIII

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the 23rd June, 2020

GSR 395(E). – In exercise of the powers conferred by sections 173, 177, 178 and section 186 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:–

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 4 in sub-rule (2), for the figures, letters and word “30th June, 2020”, the figures, letters and word “30th September, 2020” shall be substituted.

[F. No. 1/32/2013-CL-V-Part]

K. V. R. MURTY
Jt. Secy.

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i), vide notification number G.S.R. 240(E), dated the 31st March, 2014 and subsequently amended as follows:-

1. G.S.R. 398 (E), dated the 12th June, 2014;
2. G.S.R. 590 (E), dated the 14th August, 2014;
3. G.S.R. 206 (E), dated the 18th March, 2015;
4. G.S.R. 971(E), dated the 14th December, 2015;
5. G.S.R. 309 (E), dated the 30th March, 2017;
6. G.S.R. 880 (E), dated the 13th July, 2017;
7. G.S.R. 429 (E), dated the 7th May, 2018;
8. G.S.R. 777 (E) dated the 11th October, 2019;
9. G.S.R. 857 (E) dated the 18th November, 2019; and
10. G.S.R. 186 (E) dated the 19th March, 2020.

ANNEXURE IX



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

03.04.2020

Dear Professional Colleagues,

Subject: Clarification/ Guidance on applicability of Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2)

As you are aware, Section 118(10) of the Companies Act, 2013 provides for mandatory observance of SS- 1 and SS-2 by all companies.

Due to the COVID-19 outbreak and lockdown situation prevailing in the Country, various provisions of the Companies Act, 2013 and rules made thereunder have already been relaxed by the Ministry of Corporate Affairs (MCA) for ease of compliance by the stakeholders.

Few queries have also been received from members on the compliance of SS-1 and SS-2 in the current situation and clarifications sought on various issues.

In this context, we would like you to appreciate the “SCOPE” of SS-1 and SS-2 which reads as under:

“This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.”

The term “Act” as defined under the SS-1 and SS-2, means the Companies Act, 2013 or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

Hence, any relaxation granted by the Central Government from the compliance of provisions of Board and General Meetings under the Act will automatically and consequentially apply to Secretarial Standards as the case may be and the relaxed provisions of the Act will prevail to the extent applicable in terms of enforceability.

Pursuant to the recent relaxations granted by the MCA, few provisions of the SS-1 also stand relaxed as specified in the Annexure. Accordingly, the provisions of SS-1 should be construed in the light of the relaxations already granted by the MCA. Further, guidance on certain provisions of SS-1 have also been provided in the context of COVID 19 situation and placed at the Annexure. The guidance provided is voluntary in nature and is in line with the relaxations given by the MCA and will be applicable only for the period of relaxation so extended by the MCA.

All are requested to take note of the above to facilitate compliance and continue to promote good corporate governance.

Regards,



(CS Ashish Garg)

President

ANNEXURE

Secretarial Standard on Meetings of the Board of Directors (SS-1)

- 1. 1.2.3 (2nd Para)- Directors shall not participate through Electronic Mode in discussions on certain restricted items. Such restricted items of business include approval of the annual financial statement, Board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover. Similarly, participation in the discussion through Electronic Mode shall not be allowed in meetings of the Audit Committee for consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board.**

MCA Relaxation: Since the MCA has already allowed the participation through VC in respect of the restricted items as stated above, the consequent relaxation applies to Para 1.2.3 of SS 1 and this para should be construed accordingly.

- 2. 1.3.1 (3rd Para) - Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter Notice, the**

company may choose an expedient mode of sending Notice.

Guidance by the ICSI:

The requirement of providing Notice to a Director as per his preferred mode of delivery is provided in the SS-1. This provision should be interpreted accordingly to ensure compliance, wherever, physical delivery of documents is not possible due to COVID 19 lockdown, the company may choose an expedient mode of delivery in sending Notices, including through e-mail to the concerned directors.

In SS-1, wherever references have been made to physical mode of delivery of documents, such as notice, agenda and minutes, etc, in the context of the meeting of the board of directors or committee thereof or resolution proposed to be passed by circulation, it shall be adequate and sufficient compliance, if such documents are served through e-mail instead of physical mode of delivery. However, the company should ensure adequate safeguards, including delivery and retaining proof receipt of such e-mail communication.

- 3. 2.1 The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings.**

MCA Relaxation: The MCA has already relaxed the gap between two meetings, and the consequent relaxation applies to para 2.1 of SS-1 and this para should be interpreted accordingly.

- 4. 2.2 Meetings of Committees - Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.**

MCA Relaxation: The MCA has already relaxed the provision with regard to the time gap between two board meetings, consequentially the relaxation applies to in respect of committee meetings.

- 5. 2.3 Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.**

MCA Relaxation: The MCA has already relaxed the provision in respect of meetings of Independent Directors, and the consequent relaxation applies to para 2.3of SS-1 and this para should be interpreted accordingly.

- 6. 7.3.3 Wherever the decision of the Board is based on any unsigned**

documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are referred to in the Minutes, shall be identified by initialing of such documents by the Company Secretary or the Chairman.

Guidance by the ICSI:

Due to the COVID 19, all the meetings are now invariably having to be conducted through Video Conferencing and the agenda papers are being circulated by e-mails. There may arise situations wherein certain documents have been referred to during the course of the meeting of the board being held through video conferencing and are being referred to in the minutes. Any such documents which were not circulated with the agenda but placed at the meeting and referred to in the minutes, should be identified by the company secretary by initialing such documents after the normalcy is restored.

- 7. 7.6.4 Within fifteen days of signing of the Minutes, a copy of the said signed Minutes, certified by the Company Secretary or where there is no Company Secretary by any Director authorised by the Board, shall be circulated to all the Directors, as on the date of the Meeting and appointed thereafter, except to those Directors who have waived their right to receive the same either in writing or such waiver is recorded in the Minutes.**

Guidance by the ICSI:

Due to COVID 19 situation, all the meetings are now being conducted through Video Conferencing and minutes thereof are being circulated over emails. The company may not therefore be able to record/print the final minutes in the minutes books maintained for this purpose and get the minutes signed physically by the Chairman. In such cases the company may have to record and acknowledge/sign the minutes digitally by the chairman. The copy of the minutes signed digitally can be circulated to all the directors or alternatively directors may waive the right to receive copy of such minutes, considering the prevailing circumstances. In case, minutes cannot be signed digitally, the same can be physically signed and copies of the signed minutes may be circulated to all the directors once normalcy is restored.



**THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

15.04.2020

Dear Professional Colleagues,

Subject: Clarification/Guidance on applicability of Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2)

As you are aware Section 118(10) of the Companies Act, 2013 provides for mandatory observance of SS-1 and SS-2 by all companies.

Due to COVID-19 outbreak and lockdown situation prevailing in the Country, various provisions of the Companies Act, 2013 and rules made there under have already been relaxed by the Ministry of Corporate Affairs (MCA) for ease of compliance by the stakeholders.

Few queries have also been received from members on the compliance of SS-1 and SS-2 in the current situation and clarification sought on various issues.

In this context, we would like to emphasise the “SCOPE” of the SS-1 and SS-2 which read as under:

“This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.”

The term “Act” as defined under the SS-1 and SS-2, means the Companies Act, 2013 or any previous enactment thereof, or any statutory modification thereto or re- enactment thereof and includes any Rules and Regulations framed there under.

Hence, any relaxation granted by the Central Government from the compliance of provisions of Board and General Meetings under the Act will automatically and consequentially apply to Secretarial Standards as the case may be and the relaxed provisions of the Act will prevail to the extent applicable in terms of enforceability.

Pursuant to the recent relaxations granted by the MCA, few provisions of the SS-2 also stand relaxed as specified in the Annexure. Accordingly the

provisions of SS-2 should be construed in the light of the relaxations already granted by the MCA.

Further, guidance on certain provisions of SS-2 have also been provided in the context of COVID-19 situation and placed at the Annexure. The guidance provided is voluntary in nature and is in line with the relaxations given by the MCA and will be applicable only for the period of relaxation so extended by the MCA.

All are requested to take note of the above to facilitate compliance and continue to promote good corporate governance.

Regards,



(CS Ashish Garg)

President

ANNEXURE

Guidance on Certain provisions of SS-2

The MCA Circulars dated 8th April 2020 and 13th April 2020 provides clarification on passing of ordinary and special resolutions by companies under the Companies Act 2013 and rules made there under at extra ordinary general meetings (“EGM”) through Video Conferencing (VC) or other audio-visual means (OAVM) on account of the threat posed by Covid-19.

Certain relaxations as provided in the said circulars, is also provided below with respect to Secretarial Standard on General Meetings (SS-2).

To facilitate the compliance of law in true letter and spirit, guidance on certain provisions of SS-2 is provided as under:

1. Para 1.2.1

Notice in writing of every Meeting shall be given to every Member of the company....

Para 1.2.2

Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or

by any other electronic means....

Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

- (a) if the company provides the facility of e-voting ;
- (b) if the item of business is being transacted through postal ballot.

If a Member requests for delivery of Notice through a particular mode, other than the one followed by the company, he shall pay such fees as may be determined by the company in its Annual General Meeting and the Notice shall be sent to him in such mode.

Notice shall be sent to Members by registered post or speed post or e-mail if the Meeting is called by the requisitionists themselves where the Board had not proceeded to call the Meeting.

Guidance by the ICSI:

The MCA circular dated 08.04.2020 has allowed the EGM to be held through Video Conferencing (VC) or other audio visual means (OAVM). Further MCA circular dated 13.04.2020 provides that the notices to members for the aforesaid general meetings may be given only through e-mails registered with the company or with the depository participant/depository.

In SS-2, wherever reference is made for sending of Notices through physical mode of delivery in case of general meetings, e- voting and postal ballots, it should be sufficient compliance if such notices are sent only through e-mail to the members whose emails are registered with the company or with the depository participant/depository ***subject to compliance of other requirements stated in the abovementioned MCA circulars.***

This guidance equally applies to Paragraph 8.5.1 and Paragraph 16.4.1 of SS-2, which deals with sending of Notices in case of e-voting and postal ballot respectively.

2. Para1.2.4

Notice shall specify the day, date, time and full address of the venue of the Meeting. Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark, if any, for easy location.....

Guidance by the ICSI:

Since the MCA circular dated 08.04.2020 has already allowed the EGM to be held through VC, the requirement of SS-2 to mention route map need not be stated in the notice of the meeting, if the meeting is convened in accordance with the aforesaid circular of MCA.

Whilst Notice of the EGM shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting, the notice of the EGM shall make a mention that proceedings of the Meeting, if conducted through VC or OAVM, shall be deemed to be made at such place.

3. Para1.2.5 (4th Para)

Where reference is made to any document, contract, agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection and such documents shall be so made available for inspection in physical or in electronic form during specified business hours at the Registered Office of the company and copies thereof shall also be made available for inspection in physical or electronic form at the Head Office as well as Corporate Office of the company, if any, if such office is situated elsewhere, and also at the Meeting.

Guidance by the ICSI:

In SS-2, wherever reference is made for inspection of documents in the context of the general meeting, it would be sufficient compliance, if such documents are available for inspection through e-mode and guidelines for such inspection are given in the notice.

4. Para1.2.10

Notice shall be accompanied, by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.

Guidance by the ICSI:

MCA has already clarified that general meetings may be held through video conferencing or other audio-visual means and in such meetings proxy shall not be applicable.

Hence, the requirement of attendance slip and Proxy form will not apply

to meetings convened in accordance with the aforesaid circular of MCA dated 08.04.2020.

Process for Attendance recording

Companies should ensure that a secure mechanism is provided to the shareholders to attend and participate through VC or OAVM.

5. Para 3.1 - Quorum (3rd Para)

Unless the Articles provide for a larger number, the Quorum for a General Meeting shall be:

- (a) in case of a public company, –
 - (i) five Members personally present if the number of Members as on the date of Meeting is not more than one thousand;
 - (ii) fifteen Members personally present if the number of Members as on the date of Meeting is more than one thousand but up to five thousand;
 - (iii) thirty Members personally present if the number of Members as on the date of the Meeting exceeds five thousand;
- (b) in the case of a private company, two Members personally present.

Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement.

Members need to be personally present at a Meeting to constitute the Quorum. Proxies shall be excluded for determining the Quorum.

Guidance by the ICSI:

Since MCA has clarified that attendance of members through video conferencing or other audio-visual means will be counted as quorum for the purpose of Section 103 of the Act, the requirement of physical presence of quorum shall not apply.

It would be sufficient compliance of quorum if the meeting is convened in accordance with the aforesaid circular of MCA dated 08.04.2020, provided the company has followed the secured mechanism of attendance.

6. Para5.1 - Appointment of Chairman

The Chairman of the Board shall take the Chair and conduct the

Meeting. If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the Chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.

Guidance by the ICSI:

It would be sufficient compliance if the appointment of Chairman is done as per the aforesaid circular of MCA dated 08.04.2020.

7. Para 6 - Proxies

Guidance by the ICSI:

Since MCA has already clarified that in case of EGM to be convened by video conferencing or other audio-visual means, proxies shall not be applicable, hence provisions in paragraph 6 relating to proxies shall not be applicable.

8. Para 6.6.3 (2nd Para)

In case of postal ballot such letter of appointment/ authorisation shall be submitted to the scrutiniser along with physical ballot form.

Guidance by the ICSI:

Since the postal ballot notices / forms will be sent through e-mail only in accordance with MCA circular dated 13.04.2020, the aforesaid requirement of SS-2 will be complied with if such appointment/ authorisation letter and ballot form is submitted through e- mail.

9. Para7.3 - Show of Hands

Every company shall, at the Meeting, put every Resolution, except a Resolution which has been put to Remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.

Guidance by the ICSI:

For EGM to be conducted through video conferencing or other audio-

visual means, the process of voting by show of hands shall be as per the process mentioned under MCA Circular dated 08.04.2020 and MCA Circular dated 13.04.2020.

10. Para7.4 - Poll

The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.

Poll in such cases shall be through a Ballot process.

While a Proxy cannot speak at the Meeting, he has the right to demand or join in the demand for a poll.

The poll may be taken by the Chairman, on his own motion also.

Guidance by the ICSI:

For the EGM to be conducted through video conferencing or other audio-visual means, the poll shall be conducted as per the process mentioned under MCA Circular dated 08.04.2020.

11. Para7.5 - Voting Rights (3rd Para):

A Member present in person or by Proxy shall, on a poll or ballot, have votes in proportion to his share in the paid up equity share capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.

Guidance by the ICSI:

In view of the circular of MCA for the EGM to be conducted through video conferencing or other audio-visual means, the words “present in person or by proxy” shall be construed as “present in person or through video conferencing or other audio-visual means”.

12. Para 8.6.2

The result of the voting, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere. Further, the results of voting along

with the scrutiniser's report shall also be placed on the website of the company, in case of companies having a website and of the Agency, immediately after the results are declared.

Guidance by the ICSI:

Due to COVID 19 and lockdown situation in the country, all the offices of companies are closed and it may not be possible to display the result of voting on the notice board of the company at its registered office, head office and corporate office. Hence it will be sufficient compliance if the said result is declared and posted on the website of the company, if any.

This guidance equally applies to Paragraph 9.5.2. and Paragraph 16.6.2 of SS- 2, which deals with declaration of the result of poll and postal ballot respectively.

13. Para 9 - Conduct of Poll

Guidance by the ICSI:

For the EGM to be conducted through video conferencing or other audio-visual means, the poll shall be conducted as per the process mentioned under MCA Circular dated 08.04.2020.

14. Para 16.4.3

Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed.

Notice shall also specify the mode of declaration of the results of the voting by postal ballot.

Guidance by the ICSI:

If the postal ballot is conducted in accordance with MCA circular dated 08.04.2020, the requirement of SS-2 to mention "venue" where the result of the voting by postal ballot will be announced, need not be stated in the notice and it will be sufficient compliance if a link of the website where such result will be declared is given.

15. Para 16.5.1

The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.

Guidance by the ICSI:

Since the postal ballot notices / forms will be sent through e-mail only in accordance with MCA circular dated 13.04.2020, the requirement to send “postage prepaid reply envelope” as mentioned in SS-2 will not apply.

16. Para 17.4 - Entry in the Minutes Book

17.4.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

Para 17.5.1

Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.

Guidance by the ICSI:

Due to covid-19 situation all the EGMs are now allowed to be conducted through video conferencing or other audio visual means and minutes thereof are being circulated over emails.

Therefore, company may not be able to record/print the final minutes in the Minutes book maintain for this purpose at the registered office of the company and get the same signed physically by the chairman.

In such cases the company should record and acknowledge/sign the minutes digitally by the chairman and the same can be recorded and signed physically once the normalcy resumes.

Motto

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Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

Headquarters

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

tel 011- 4534 1000 fax +91-11-2462 6727

email info@icsi.edu website www.icsi.edu