Procedures of General Meetings during COVID-19*

The art of life is constant re-adjustment to our surroundings - Kakuzo Okakaura

The outbreak of COVID-19 has disrupted the lives, livelihoods, communities and businesses worldwide. In order to curd its effect the countries all over the world has been forced to adopt the social distancing norms and a nationwide lockdown.

Due to these unprecedented measures, businesses are experiencing major impacts no matter how established they are. It has become a challenge for most businesses to keep their financial wheels turning during the lockdown period as well as managing the company smoothly.

The General Meetings are the integral part of Corporate Governance ensuring transparency, accountability and disclosure. It is not simply a platform for the directors to present speeches to shareholders, but for shareholders to ask questions and debate. It is a principal forum in which directors' account to shareholders for their obligations and duties towards the company.

As the new financial year has already begun, most of the big companies in India have concerns over their upcoming Annual General Meetings (AGMs) which is required to be conducted within the prescribed time period as per the Companies Act, 2013. Annual General meeting gives opportunity to the shareholders to come together, know about the performance of the Company, share their views, questions the management, raise their concerns but holding physical meeting with such large gathering of shareholders will further risk the spread of the disease.

The Extra Ordinary General Meeting is used as another way to meet and deal with urgent matters that arise in between the annual shareholders' meetings. Many companies are unable to hold such meetings due to lock-down and social distancing norms, hence, facing delay on transaction of urgent and unavoidable matters which is leading to extreme negative impact on their business and ultimately causing financial losses.

But as the saying is *"Learn to adjust yourself to the conditions you have to endure, but make a point of trying to alter or correct conditions so that they are most favourable to you-William Fedrick Book"* encourages us not to sit and wait for our demise but to alter the unfavourable situations in our favour. In light of the same the Ministry of Corporate Affairs intending to reduce the compliance burden on the corporate sector with partial opening up the industry, has announced series of relaxations regarding holding of General Meetings.

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Views expressed in the Article are the sole expression of the Author(s) and may not express the views of the Institute. Article is based on the MCA and SEBI circulars and facts available in the print as well as electronic media.

Circulars/ Clarification issued by MCA on General Meeting

S. No.	*Date*	*Particulars*
1.	General Circular No. 20/2020 Dated 5.5.2020	Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)
2.	General Circular No. 18/2020 Dated 21.4.2020	Holding of AGMs by companies whose financial year ended on 31st December, 2019
3.	General Circular No. 17/2020 Dated 13.4.2020	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
4.	General Circular No. 14/2020 Dated 8.4.2020	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.

Issued by ICSI

1.	Guidance dated 15.04.2020	Clarification/Guidance on applicability of Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2)

Mandatory Requirements for conducting of the Annual General Meeting under the Companies act, 2013

In terms of Section 96 of the Companies Act, 2013 and rules made thereunder, every company other than a one person company is required to hold an Annual General Meeting (AGM) in each year within 6 months (9 months in case of first AGM) from the date of closing of the financial year and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

The MCA vide General circular dated 05th May, 2020 relaxed the norms as many companies requested for leniency on the AGM rules owing to the social distancing norms and the nationwide lockdown. Now companies are allowed to conduct their Annual General Meeting through video conferencing (VC) or other audio-visual means (OAVM) during the calendar year, 2020 by following the prescribed framework without requiring the shareholders to physically assemble at a common venue, thus safeguarding the social distancing motto.

Earlier MCA vide General Circular dated 8th April, 2020 and 13th April, 2020 has allowed the Companies to pass ordinary and special resolution of urgent nature requiring approval of members (except ordinary business or business where any person has right to be heard) through mechanism of postal ballot/e-voting in accordance with the provisions of the Companies Act, 2013 and rules made thereunder without holding a general meeting which requires physical presence of members at common venue.

However, in case holding of an Extra-ordinary General Meetings is considered unavoidable for passing the resolutions of urgent nature, MCA has allowed conducting of such meetings through video conferencing ('VC') and other audio visual means ('OAVM') on or before June 30, 2020 by following the prescribed framework in circular no. 14/2020 and 17/2020 in addition to provisions of the Companies Act, 2013 and rules made thereunder.

Meanwhile by virtue of General Circular No: 18/2020 dated 21st April, 2020 the Ministry of Corporate Affairs (MCA) has given relaxation to those Companies whose financial year (other than first financial year) has ended on 31st December, 2019, now they can 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), and the same shall not be viewed as a violation.

In view of the extraordinary circumstances prevailing in the country due to the pandemic, the relaxations given by Ministry of Corporate Affairs would be beneficial, especially, for the individual members and/or the authorised representatives of the corporate members, who were otherwise required, under the Companies Act, 2013 to travel inter-state or cross border for attending the Annual General Meeting/ Extra-ordinary General Meetings.

The framework leverages the strengths of digital India by using a combination of Video-Conferencing and e-voting through agencies such as NSDL or through registered emails to enable companies conduct their EGMs/AGMs. Hence, allowing the companies to hold General Meetings through VC/ OAVM without compromising on the other requirements of law.

Procedure for holding Annual General Meeting /Extra Ordinary General Meeting

(1) **Eligibility of Companies for Holding of AGM/EGM through VC/OAVM**

A. For Companies who are required to provide e-voting facility or have opted to provide e-voting facility (holding AGM/EGM)

As per Section 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014

- ✓ Every company which has listed its equity shares on a recognised stock exchange and
- ✓ Every company having not less than one thousand members

shall mandatorily provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

Companies may opt voluntarily to adopt e-voting facility but they are required to follow the procedures prescribed in Rule 20 of the Companies (Management and Administration) Rules, 2014

B. For Companies who are not mandatorily required to provide e-voting facility

(i) In case of Annual General Meeting

The companies which are not mandatorily required to provide e-voting facility may convene the AGM through VC or OAVM on satisfying the below listed conditions as may be applicable depending on category of the Company:

(1) 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 –

(2) (i) ***In case of Nidhi Company***, hold shares of more than 1,000 rupees in face value or more than 1% of the total paid-up share capital, whichever is less;

(ii) ***For companies with share capital***, represent not less than 75% of such part of the paid-up share capital of the company as gives a right to vote at the meeting;

(iii) ***For companies without share capital,*** who have the right to exercise not less than 75% of the total voting power exercisable at the meeting.

If both the criteria as above i.e. In case of Company with share capital, company shall have email address of half of its members or such higher number to represent 75% of paid up share capital, if a Company can not fulfilled the above condition, then Companies need to give Public Advertisement in newspapers requesting members to register their e-mail address. Post advertisement, if the dual conditions are met then AGM can be conducted through VC or OAVM.

(ii) In case of Extra-ordinary General Meeting

Extra Ordinary General Meetings, wherever considered unavoidable, may be held through Video Conferencing (VC) or Other Audio Visual Means (OAVM).

All companies may convene their AGM/EGM through VC or OAVM by complying with the provisions of the Companies Act, 2013 and rules made thereunder along with the terms of MCA Circulars14/2020 and 17/2020 related to General meetings.

(2) Contents of Advertisement in Newspaper (Before Dispatch of Notice)

(A) For Companies who are required to provide e-voting facility or have opted to provide e-voting facility

In course of conducting Annual General Meetings, companies who are required to provide e-voting facility or have opted to provide e-voting facility shall publish a public notice by way of advertisement in the News-papers before sending the notice and copies of the financial statements and other attached documents to the members and other entitled persons.

Advertisement shall 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 Companies Act, 2013 read with General Circular No:20/2020 dated 5th May, 2020;
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

If company is conducting Extra-Ordinary Meeting through Video-Conferencing, Companies need to make all the feasible efforts by whatever ways and means possible to make the shareholders aware of the proposed EGM and get their e-mail Id's register with the company who have not registered their email addresses till date before the dispatch of notice, so that all shareholders would get a fair chance to participate and vote at the meeting.

(B) For Companies not required to provide e-voting facility

The company shall take all necessary steps to register the email addresses of the members who have not registered their email addresses with the company. Before sending the Notice of AGM/EGM, the companies shall ensure that all members are aware that a general meeting is proposed to be conducted and 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:
c. That the company intends to convene general meetings (AGM/EGM) in compliance with applicable provisions of the Companies Act, 2013 read with MCA Circulars in relation to Conducting of AGM/EGM via VC or OAVM.
d. 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;
e. 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.

(3) Mode of sending Notice for AGM/EGM

According to the provisions of Rule 18 of the Companies (Management and Administration) Rules, 2014, the notices of General Meetings proposed to be conducted may be given to members only through e-mails registered with the company or with the depository participant/depository.

A copy of notice of meetings shall be prominently displayed on the website of the company, if any, and due intimation shall be made to the stock exchanges in case of listed companies.

(4) Contents of the Notice

Notice of the general meetings shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meetings. Also, the MCA Circular provides that the Notice shall specify with regard to the manner in which framework provided through MCA circulars shall be available for use by the members and shall also contain clear instruction on how to access and participate in the meeting. The company should also provide a helpline numbers through the Registrar & Transfer Agent, Technology Provider or otherwise, for those members who need assistance with using the technology before or during the meeting.

As per the guidance given by SS-2, the requirement of route map need not be stated in the notice of the meeting, if the meeting is convened in accordance with the MCA circulars. Whilst Notice of the AGM/EGM shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting , the notice of the EGM/AGM shall make a mention that proceedings of the Meeting, if conducted through VC or OAVM, shall be deemed to be made at such place.

(5) Notice issued prior to the MCA Circulars

i. In case of EGM, notice for meeting which has been served before issuing of the MCA circular dated 8th April, 2020, may adopt the framework proposed in MCA Circular for conducting the meeting, in case the consent of members has been obtained in accordance with the Section 101(1) of the Companies Act, 2013 and a fresh notice of shorter duration with due disclosures in consonance with MCA circular dated 8th April, 2020 is issued consequently.

ii. In case a notice for AGM has been served prior to 05.05.2020, the framework proposed in MCA Circular dated 05th May,2020 may be adopted for the meeting by satisfying following conditions:
   - By obtaining consent from members in accordance with section 101(1) of the Companies Act, 2013; and
   - Fresh notice of shorter duration containing the fact that meeting will be conducted through VC/OAVM in terms of the MCA Circular, dated 5th May, 2020 issued consequently.

(6) Dispatch of financial statements (including Board's Report, Auditor's Report, or other documents required to be attached)

In case of Annual General Meeting, taking into consideration the difficulties involved in dispatching of physical copies of financial statements (including Board's Report, Auditor's Report, or other documents required to be attached therewith), MCA has permitted every Company to send such documents only by e-mail to the members, trustees for the debenture-holders of any debentures issued by the Company, or any other person entitled to receive such documents.

Similarly, SEBI has dispensed with the requirements of sending physical copies of annual report to shareholders under Regulations 36(1)(b) and (c) and Regulation 58(1)(b) and (c) of the SEBI (LODR) Regulations, 2015 for listed entities who will conduct their AGMs during the calendar year 2020 (i.e. till December 31, 2020).

(7) Content of the Public notice under rule 20 (4) (v) of the Companies (Management and Administration) Rules, 2014 (After dispatch of Notice)

(A) For Companies who are required to provide e-voting facility or have opted to provide e-voting facility

The Companies who are required to provide e-voting facility under the Companies Act, 2013 or who have opted to provide e-voting facility shall cause a public notice by way of an advertisement to be published in newspapers immediately on completion of dispatch of notice, while publishing the public notice in the New papers as required under rule 20(4)(v) of the Companies (Management and Administration) Rules,2014, in addition to the matters specified in Rule 20(4)(v) the following matters shall also be stated, Namely:

a. a statement that the EGM/AGM will be convened through VC or OAVM in compliance with applicable provisions of the Companies Act, 2013 read with MCA Circulars in relation to Conducting of AGM/EGM via VC or OAVM;
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.

(B) For Companies not required to provide e-voting facility

The Companies who are not required to provide e-voting facility under the Companies Act, 2013 are not required to give public notice by way of advertisement in the News-papers after completion of dispatch of notice to the members as per rule 20(4)(v) of the Companies (Management and Administration) Rules,2014

(8) Consideration of Business

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.

(9) Types of Businesses

a. In Annual General Meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

b. Further when there is requirement to call Extra-Ordinary General meeting then in such meetings, only the unavoidable businesses shall be transacted (except items of ordinary business and items where any person has a right to be heard).

(10) Maintenance of recorded transcript

The recorded transcript of the meetings 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.

(11) Convenience of members

Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting. For instance, In case of joint venture companies, convenience of members staying in different time zones has to be kept in mind before scheduling the meetings.

(12) Facilities to be provided in relation to Video-Conferencing /OVAM

All care must be taken to ensure that the Meetings through VC/OAVM facility allow two way teleconferencing or webex facilities for the ease of participation of the members. The participants shall also be allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company.

(A) For Companies who are required to provide e-voting facility or have opted to provide e-voting facility

The VC/OVAM facility must have a capacity to allow at least 1000 members to participate on first come first serve basis.

(B) For Companies who are not required to provide e-voting facility

The VC/OVAM 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 first come first served basis.

(13) Time frame for VC/OVAM facility

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.

(14) Non-applicability of restriction on account of first come first served principle

The first come first served principle for attending the meetings will not apply to the large shareholders (i.e., shareholders holding 2% or more shareholding), Promoters, Institutional investors, Directors, Key managerial personnel, The chairpersons of the Audit Committee, the Nomination and Remuneration Committee and the Stakeholders Relationship Committee, Auditors etc.

(15) Attendance through VC/OVAM

Attendance of members through VC/OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Companies Act, 2013.

(16) Voting by the members

(A) For Companies who are required to provide e-voting facility or have opted to provide e-voting facility

Before the actual date of the meeting, the facility of remote e-voting shall be provided in accordance with the Companies Act, 2013 and the rules made thereunder.

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.

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.

(B) For Companies who are not required to provide e-voting facility

The company shall provide a designated email address to all members at 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.

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 respect to authenticity of email address(es) and other details of the members shall also be taken by the company.

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 address which are registered with the Company. The said e-mails shall only be sent to the designated email address circulated by the company in advance.

However the MCA has clarified that the poll will take place during the meeting and the members may convey their assent or dissent only at such stage on items considered in the meeting by sending e-mails to the designated email address of the company, which was circulated by the company in advance.

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 Companies Act, 2013, once such demand is made, the poll shall be conducted in the manner provided above.

(17) Appointment of Chairman

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) For Companies who are required to provide e-voting facility or have opted to provide e-voting facility

a. Less than 50 members present: The Chairman shall be appointed in accordance with Section 104 of the Companies Act, 2013;
b. In all other cases: The Chairman shall be appointed by a poll conducted through the e-voting system during the meeting.

(B) In case of Companies not required to provide e-voting facility

a. Less than 50 members present: The Chairman shall be appointed in accordance with Section 104 of the Companies Act, 2013;
b. In all other cases, the Chairman shall be appointed by a poll conducted through the registered e-mails during the meeting.

(18) Requirement of Proxy

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.

SEBI has also dispensed with the requirement under Regulation 44 (4) of the SEBI (LODR) Regulations, 2015, in case of meetings held through electronic mode only. This relaxation is available for listed entities who conduct their AGMs through electronic mode during the calendar year 2020 (i.e. till December 31, 2020). This regulation mandates the listed entity to send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against a resolution.

(19) Voting by Authorised representatives of the members

Where institutional investors are members of a company, they must be encouraged to attend and vote in the General meetings through VC or OAVM.

Pursuant to section 112 and 113 of the Companies Act, 2013, 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.

(20) Attendance of independent director and the auditor

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.

(21) Passing of certain items only through postal ballot without convening a general meeting

Companies may pass resolutions (except items of ordinary business and items where any person has right to be heard) through postal-ballot (which includes electronic ballot and e-voting) without holding a general meeting.

Therefore, the companies which are mandatorily required to provide the facility of e-voting, under the Companies Act, 2013 or any other company which has opted for such facility, 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 Companies (Management and Administration) Rules, 2014 regarding voting through electronic means as well as the framework provided in the MCA General Circular 14/2020 dated 08.04.2020 and General Circular 17/2020 dated 13.04.2020 would be applicable *mutatis mutandis* to it.

Key points to be considered while passing resolution through Postal Ballot

a. The Company would send notice by e-mail to all its shareholders who have registered their e-mail addresses with the company or depository participant/depository;
b. The Company would also be duty bound to provide a process of registration of email addresses of members and state so in its public notice;
c. The communication of 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.

(22) Declaration of Result

(A) For Companies who are required to provide e-voting facility or have opted to provide e-voting facility

The Board of Directors shall appoint a Scrutinizer to scrutinize the voting during the AGM/EGM and remote e-voting process in a fair and transparent manner and declare the result according to Rule 20 of the Companies (Management and Administration) Rules, 2014.

(B) For Companies who are not required to provide e-voting facility

In case the counting of votes requires time, the said meeting may be adjourned and called later to declare the result.

(23) Filing of resolutions

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 Companies Act, 2013 and rules made thereunder were duly complied with during such Meeting.

(24) Additional requirements to be complied with the Companies regarding Annual General Meeting

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.

Regulation 12 of the SEBI (LODR) Regulations, 2015 prescribes issuance of 'payable at par' warrants or cheques in case it is not possible to use electronic modes of payment. Further, in case the amount payable as dividend exceeds Rs.1500/-, the 'payable-at-par' warrants or cheques shall be sent by speed post. The requirements of this regulation will apply upon normalization of postal services. However, in cases where email addresses of shareholders are available, listed entities shall endeavour to obtain their bank account details and use the electronic modes of payment specified in Schedule I of the SEBI (LODR) Regulations, 2015.

All the companies 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 Companies Act, 2013 and the articles of association of the company are made through electronic mode.

Holding AGM Other Than Through VC or OAVM

For Companies who are required to provide e-voting facility or have opted to provide e-voting facility

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 Companies Act, 2013 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 Companies Act, 2013. All resolutions shall continue to be passed through the facility of e-voting system.

Application for extension of AGM for certain companies

The companies which are not covered by the General Circular No.18/2020, dated 21.04.2020 i.e. Companies which are not required to close their financial year on December 31, 2019 and are unable to conduct their AGM in accordance with the framework provided in MCA Circular20/2020 dated 05.05.2020 pertaining to AGM through VC or OAVM may apply for the extension of AGM at suitable point of time before the concerned Registrar of Companies under section 96 of the Companies Act, 2013.

Guidance given by the Institute of Company Secretaries of India in light of MCA Circulars

Section 118(10) of the Companies Act, 2013 provides for mandatory observance of SS-1 and SS-2 by all companies. On account of various relaxations given by the Ministry of Corporate Affairs (MCA) for ease of compliance by the stakeholders, ICSI has issued guidance regarding Secretarial Standards on 15th April, 2020.

Hence, any relaxations 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 Companies Act, 2013 will prevail to the extent applicable in terms of enforceability.

Various Challenges to be faced by the Companies in implementation of meetings through VC or OAVM facility

Conducting of meetings through VC or OAVM facility is a new concept. Theoretically it sounds easy but with no prior experience, managing a VC meeting with too many members, may create problems.

1) For smooth conduction of general meetings through VC or OAVM facility, it requires fast internet network connection, good power back-up, tech savvy people. But in India every shareholder is not tech-savvy, members are coming from all parts of the country, in all over India the condition of network connectivity is not same, in some places the condition of electricity supply is also not good. Hence, posing lots of challenges for the Companies.
2) One of the biggest challenges for big companies having thousands of members is to get the e-mail addresses of the members (holding shares in physical form) registered for sending financial statements and other documents. This will also enable the shareholders to cast their vote through remote e-voting or through e-voting during the meeting. However, certain shareholders are either not traceable or their contact details are not updated.
3) According to the provisions of the Companies Act, 2013, the annual general meeting of the company shall be called during business hours i.e. between 9 a.m. to 6 p.m., the convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting. Companies having large number of members shall face difficulties in balancing the two provisions for conducting the meetings, ensuring convenience of shareholders in different time zones is difficult.

4) Another issue in virtual AGMs would come when the management tables contentious issues. Due to the virtual nature of the AGM process, the debate would be limited as against AGMs in regular course. The other big challenge is how the companies will facilitate a two-way interaction between management and shareholders.
5) Despite the clear benefits of the virtual meetings, it also poses some real risks for corporate governance. While virtual meeting technology allows members to put forward questions to the board, there is no guarantee that these questions will be answered. Managements can cherry pick the shareholders' questions they are prepared to answer and difficult questions may conveniently skipped under pre-text of technical glitches.
6) Other drawbacks to virtual meetings include issues relating to cyber security. For instance, there are risks that high-profile AGMs could be the target of cyber-attacks, which could manipulate the transmission of the meeting's content, or interfere in the voting process. More generally, IT issues could also be problematic for shareholders.

The tough time of pandemic has given an opportunity to the legislation to ditch the decade old norms and move towards digitalisation. Now during this abnormal time, this digital era is new normal, as there are so many benefits such as environment friendly, less time-consuming, cost-effective, transparency, convenient to participate, timely disclosures but these benefits could only be availed when we have proper infrastructure, power-back up, sufficient knowledge to use the technology etc., then only we can again stand and deal with this turbulent times. Its early days with virtual general meetings and it is hard to say how effective they will be in furthering the cause of good corporate governance. Unless virtual general meeting proved wider participation of members, there is a question in every one's mind on the success of the virtual general meetings and Governance measures.

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