



## **COVID Alert: MCA's clarification on passing of shareholders resolutions**

The Ministry of Corporate Affairs ("MCA") has, on 8 April 2020, issued a circular providing clarification on the manner of passing of ordinary and special resolution by the shareholders under the provisions of the Companies Act, 2013 ("Act") amid the prevailing COVID-19 situation. The circular provides for the following:

1. The MCA has issued an advisory to all the companies to take decisions of urgent nature, requiring the approval of members/ shareholders of the company, without holding a general meeting requiring physical presence of members at a common place. However, this excludes an item of ordinary business as prescribed under the Act or such business where any person has a right to be heard through the mechanism of postal ballot/ e-voting as prescribed under the Act.
2. **The procedure to be adopted for convening extraordinary general meeting (EGM) in unavoidable circumstances:** The MCA has prescribed separate set of procedure which needs to be followed by companies which are:
  - (a) required to provide the facility of e-voting under the Act, or any other company which has opted for such facility; and
  - (b) not required to provide the facility of e-voting under the Act, for convening EGMs on or before June 30, 2020.

The procedure set out in the circular, amongst other things, provides the following regarding convening of EGMs during the period ending on June 30, 2020:

- (a) The company would be required to maintain a recorded transcript of the EGM held through video conference or any other audio visual means. In case of a public company, the recorded transcript of the EGM would need to be made available on the website (if any) of the company.
- (b) The video conference or any other audio visual means through which the EGM is to be held must have a capacity to allow at least 1000 members (for companies which are required to provide or have opted to provide this facility) or 500 members (for companies which are not required to provide this facility) to participate on a first-come-first-served basis. The large shareholders (holding more than 2% shares), promoters, directors and key managerial personnel would need to be allowed to attend the meeting, without restriction on account of first-come-first-served principle.

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(c) The facility for joining the meeting must be kept open at least 15 minutes before the scheduled start time and shall not be closed till the expiry of 15 minutes after the scheduled start time.

(d) Proxy shall not be allowed to attend the EGM, though authorized representatives of shareholders which are body corporate would be allowed to attend the EGM.

(e) At least one independent director (if any) and the auditor of the company (or the authorized representative of the auditor) shall be required to attend the EGM.

(f) The notice of the EGM should disclose the manner in which EGM is to be convened along with the instructions for the members to access and participate in the meeting.

(g) In case any company has served any notice of EGM prior to April 8, 2020, it can adopt the framework of this circular for convening the EGM provided the consent of the members of the company is obtained as per the provisions of section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures is issued consequently.

(h) The members of companies which need to or have opted to provide e e-voting facility would be required to vote on a resolution proposed in an EGM through e-voting.

However, companies which are not required to provide e-voting facility would need to provide a designated email address to all the members at the time of sending the notice of the meeting so that the members can convey their vote, when a poll is required to be taken during the meeting, at such designated email address.

(i) The resolutions passed at the EGM would be required to be filed with the Registrar of Companies within 60 days of the EGM.

The MCA has specifically clarified that in addition to the procedure set out in the circular, companies would also be required to follow all other compliances regarding convening of EGMs as prescribed under the Act such as making of necessary disclosures, inspection of related documents by members etc.

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