



COVID Alert: MCA's clarification on convening of annual general meeting

The Ministry of Corporate Affairs, India (MCA) had, on April 21, 2020, issued a circular allowing companies (whose financial year ended on December 31, 2019) to hold their annual general meeting (AGM) by September 30, 2020, thereby providing an additional time period of 3 months for convening their AGM.

In view of the continuing restrictions on account of the extended nationwide lockdown, the MCA issued a fresh circular (on May 5, 2020) thereby allowing all Indian companies (including those covered under circular dated April 21, 2020) to conduct their AGMs through video conferencing (VC) or other audio visual means (OAVM) during the calendar year 2020, which was not previously allowed. The circular, inter alia, provides the following conditions which would need to be followed by companies for convening their AGMs through VC or OAVM:

1) Conditions to be complied by companies which are required to provide the facility of e-voting under the provisions of the Companies Act, 2013 (Act), or any other company which has opted for such facility:

(i) The companies convening their AGMs through VC or OAVM would have to comply with the conditions prescribed by the MCA in its circulars dated April 8, 2020 and April 13, 2020, which deals with the conduct of extraordinary general meeting (EGM) through VC or OAVM.

(ii) In the AGMs conducted through VC or OAVM, apart from the matters relating to "ordinary business", only such "special business" items can be transacted which are considered unavoidable by the Board.

(iii) Copies of the financial statements, auditor's report or other documents to be attached therewith, can be sent only by email (instead of sending physical copies) to the members, debenture trustees and to all other persons entitled to receive such documents.

(iv) Prior to circulating the notice of the AGM and financial statements, etc., the companies would be required to have a public notice published in a vernacular newspaper and an English newspaper, inter alia, specifying the following information:

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- (a) statement that the AGM will be convened through VC or OAVM,
 - (b) the date and time of AGM to be convened through VC or OAVM,
 - (c) availability of notice of AGM on the website of the company and the stock exchange, if listed,
 - (d) the manner in which the members who are holding shares in physical form or whose email addresses are not registered with the company can vote at the AGM,
 - (e) the manner in which the persons whose email addresses are not registered with the company can get the same registered with the company, and
 - (f) the manner in which the members can give their mandate for receiving dividends.
- (v) The companies which have received permission from authorities to conduct their AGM at the registered office address or at any other place as permitted under the Act, may also provide the facility of VC or OAVM so as to allow members to participate in the meeting.

2) Conditions to be complied by companies which are not required to provide the facility of e-voting under the provisions of the Act:

- (i) The AGM may be conducted through VC or OAVM only by such companies which have in its records the email addresses of at least half of its total number of members, who:
 - (a) in case of Nidhi company, hold shares of more than INR 1000 in face value or more than 1% of the total paid-up share capital, whichever is less,
 - (b) in case of other companies having share capital, who 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,
 - (c) in case of companies not having share capital, who have the right to exercise not less than 75% of the total voting power exercisable at the meeting.

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(ii) Companies convening their AGM through VC or OAVM 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 companies convening their AGMs through VC or OAVM would additionally also have to comply with the conditions as specified in item number 1(i), 1(ii) and 1(iii) above.

(iv) 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.

In addition to the conditions specified by the MCA in its circular dated May 5, 2020, the companies will have to comply with all other conditions as specified under the Act in relation to convening of general/ shareholders' meetings.

Further, MCA has also advised companies which are unable to conduct their AGM as per the framework prescribed in the circular dated May 5, 2020 to seek extension of time from the concerned Registrar of Companies for convening their AGM.

[Download Circular/05-05-2020](#)

[Download Circular/08-04-2020](#)

[Download Circular/13-04-2020](#)

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