



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

In continuation to its circular dated April 8, 2020, the Ministry of Corporate Affairs, India ("MCA") has issued a follow-on circular, on April 13, 2020, providing further clarity on the modalities to be followed by companies in India for conducting extraordinary general meetings of their shareholders ("EGM").

The circular, inter alia, provides for the following:

1. Manner and mode of issue of notice for convening EGM by companies which are required to provide the facility of e-voting facility under the Companies Act, 2013 ("Act"), or by any other company which has opted for such facility:

- (a) The notice of the EGM may be given to the members only through the e-mails registered with the company or with the depository participant/ depository.
- (b) The notice of EGM to be published as advertisement in the newspapers would need to state the following:
 - (i) a statement that the company has complied with the applicable provisions of the Act and the circulars issued by the MCA for convening the EGM through video conference or other audio visual means,
 - (ii) the date and time of EGM,
 - (iii) availability of notice on the website of the company and the stock exchanges,
 - (iv) 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,
 - (v) the manner in which the members can get their email addresses registered with the company.

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2. Manner and mode of issue of notice for convening EGM by companies which are not required to provide the e-voting facility under the Act:

- (a) The notice for convening EGM may be given to the members only through the e-mails registered with the company or with the depository participant/ depository,
- (b) The notice would need to be prominently displayed on the website of the company, if any,
- (c) In order to ensure that all the members are aware that a general meeting is proposed to be convened, the company shall:
 - (i) contact all the 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 prior to sending notice of the EGM.
 - (ii) if the contact detail of any of the members are not available with the company, the company or could not be obtained, it shall have a public notice published in an English newspaper and in a vernacular language newspaper (with preference to newspapers having electronic edition) having wide circulation in the district in which the registered office of the company is situated. The notice would need to specify 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 at the meeting.

3. Clarification that in case of companies which are not required to provide the e-voting facility, the poll will take place during the meeting and the members may convey their assent or dissent only at such stage by sending e-mails to the designated email address of the company which was mentioned by the company in the notice of the EGM.

4. Clarification that the provisions with respect to voting at the EGM, as provided under the Act or under the circulars issued by the MCA, would apply mutatis mutandis to passing of resolutions through postal ballot. Accordingly, the approval on resolutions to be passed through postal ballot would need to be obtained from members through e-voting systems or emails, as the case may be.

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