

**MCA relaxation to hold Annual General Meeting via VC/OAVM amid COVID-19, and arbitrary relief to only a class of companies**

---

In view of the continuing restrictions on the movement of persons at several places in the country, Ministry of Corporate Affairs (MCA) now vide its circular dated 5<sup>th</sup> May, 2020<sup>1</sup> ("Circular-3") has allowed companies to conduct their annual general meetings (AGM's) through video conferencing (VC) or other audio visual means (OAVM), during the calendar year 2020, subject to the fulfilment of the certain requirements.

Earlier, MCA has provided provision for holding extra ordinary general meetings (EGMs) through VC or OAVM facility upto 30<sup>th</sup> June, 2020 vide circular dated 8<sup>th</sup> April, 2020<sup>2</sup> ("Circular-1") and 13<sup>th</sup> April, 2020<sup>3</sup> ("Circular-2").

**I. PROVISION FOR APPLICATION FOR EXTENSION OF AGM**

Earlier MCA vide its circular dated 21<sup>st</sup> April, 2020<sup>4</sup> has provided relaxation to companies whose financial year has ended on December 31, 2019, to hold their AGM for such financial year within a period of nine months (in place of six months) from the closure of the financial year (i.e. by September 30, 2020) and the same shall not be viewed as a violation.

In furtherance to this, many representations were received by MCA seeking extension / relaxation for other companies to hold their AGM with extended period. In light of this, MCA has vide its Circular-3, provided that the companies which are not covered by the circular issued dated 21<sup>st</sup> April, 2020 and are unable to conduct their AGM in accordance with the framework as provided in the said Circular-3, are advised to prefer application for extension of AGM at a suitable point of time before the concerned Registrar of Companies under section 96 of the CA, 2013.

**II. CLASSIFICATION OF COMPANIES HOLDING ANNUAL GENERAL MEETINGS THROUGH VC/ OAVM**

As per section 108 of the Companies Act, 2013 (CA, 2013), the below mentioned companies are mandatorily required to provide e-voting (including remote e-voting) facilities for the general meetings convened by them:

<b>Section of the CA, 2013</b>	<b>Requirement</b>
108	<ul style="list-style-type: none"><li>✓ every listed company; or</li><li>✓ every company having not less than 1000 members</li></ul> to provide to its members facility to exercise their right to vote on resolutions

<sup>1</sup>MCA general circular no. 20/2020, dated 5<sup>th</sup> May, 2020

<sup>2</sup>MCA general circular no. 14/2020, dated 8<sup>th</sup> April, 2020

<sup>3</sup>MCA general circular no. 17/2020, dated 13<sup>th</sup> April, 2020

<sup>4</sup>MCA general circular no. 18/2020, dated 21<sup>st</sup> April, 2020

	proposed for voting through electronic means (including remote e-voting)
Others	Companies not falling under section 108 of the CA, 2013 and which are not required to provide e-voting facility to its members.

### **III. CONDITIONS FOR HOLDING ANNUAL GENERAL MEETINGS THROUGH VC/ OAVM**

Below mentioned is the table classifying the conditions to be fulfilled for holding AGM through VC/OAVM by companies covered under section 108 of CA, 2013 and others during the calendar year 2020: **(These are the consolidation of conditions prescribed in Circular 1, Circular 2 and Circular 3).**

Particulars	Companies falling under section 108 of the CA, 2013	Companies not falling under section 108 of the CA, 2013	
Eligibility to hold AGM through VC/OAVM	No such eligibility criteria prescribed.	AGM may be conducted through VC/OAVM only by a company which has in its records, the email addresses of at least half of its total members, who-	
		In case of Nidhi company	<ul style="list-style-type: none"><li>• Hold shares of more than 1000/- Rs in face value; or</li><li>• Hold more than 1% of the total paid up share capital.</li></ul> <b><u>whichever is less</u></b>
		In case of other companies having share capital	Represents not less than 75% of the paid up share capital of the company having right to vote at a meeting.
		In case of other companies not having share capital	Represents not less than 75% of the total voting power at a meeting.
Publication of in newspaper	A public advertisement be published in the manner as provided in the Circular 3 specifying the following information:	Where the contact details of any of the members are not registered with the company/ could not be obtained,	

before issue of notice and other papers of meeting	<ul style="list-style-type: none"> <li>✓ Statement that the AGM will be convened through VC or OAVM in compliance with the applicable provisions of Act read with Circular 3;</li> <li>✓ The date and time of the AGM through VC or OAVM;</li> <li>✓ Availability of notice of meeting on the website of company and stock exchange;</li> <li>✓ Manner in which members holding shares in physical form or who have not registered their e-mail address with the company can cast their vote through remote e-voting or through the e-voting system during the meeting;</li> <li>✓ Manner in which the members who have not registered their email address with the company can get the same registered with the company;</li> <li>✓ Manner in which the members can give their mandate for receiving dividends directly in their bank accounts;</li> <li>✓ Any other information deemed to be necessary.</li> </ul>	<p>a public notice by way of any advertisement to be published immediately in the manner as provided in the Circular 2. In the public notice to be advertised, following disclosures shall be given:</p> <ul style="list-style-type: none"> <li>✓ Statement that the company intends to convene the meeting in compliance with the applicable provisions of Act read with the Circular 1, 2 and 3 and the company proposes to send notices to all its members by email after, at least, 3 days from the date of publication of the public notice;</li> <li>✓ The details of email address along with the telephone number on which members may contact for getting their e-mail address registered for participation and voting in the meeting.</li> </ul>
Notice of meeting	<p>In addition to the disclosures in notice calling general meeting as per existing provisions under CA, 2013, notice of the meeting shall disclose following:</p> <ul style="list-style-type: none"> <li>✓ Manner in which this mechanism of VC/OAVM shall be available for use by members;</li> <li>✓ Clear instructions on how to access and participate in the meeting;</li> <li>✓ Helpline number to be provided for shareholders needing assistance with using the technology before or during the meeting;</li> </ul>	-Same-

	<ul style="list-style-type: none"> <li>✓ A designated email address be provided to all members at the time of sending notice, for the members to post any query in advance of meeting;</li> <li>✓ Copy of notice to be displayed on website of the company (if any).</li> </ul>	
Manner and mode of issuing notice of meeting and annual report	<ul style="list-style-type: none"> <li>✓ Notice to members may be given only through e-mails registered with the company or with the depository participant/ depository;</li> <li>✓ Annual report (set of financial statements, Board's report, auditor's reports, etc.) shall be sent only by email to the members, trustees for debenture holders and to all other persons so entitled.</li> </ul>	-Same-
Ensure large attendance	<p>Company shall ensure –</p> <ul style="list-style-type: none"> <li>✓ Convenience of different persons positioned in different time zones to be kept in mind before scheduling meeting;</li> <li>✓ Encourage institutional investor member(s), if any, for their attendance and voting through VC/OAVM meeting.</li> </ul>	-Same-
Publication of notice in newspaper post issuance of notice	<p>While publishing the public notice as required under rule 20(4)(v) of the companies (management and administration) rules, 2014, following disclosures shall also be given:</p> <ul style="list-style-type: none"> <li>✓ Statement that the company has convened the meeting through VC or OAVM in compliance with the applicable provisions of Act read with the Circular 1, 2 and 3;</li> <li>✓ The date and time of meeting through VC or OAVM;</li> <li>✓ Availability of notice of meeting on the website of company and stock exchange;</li> </ul>	No requirement here.

	<ul style="list-style-type: none"> <li>✓ Manner in which members holding shares in physical form or who have not registered their e-mail address with the company can cast their vote through remote e-voting or through the e-voting system during the meeting;</li> <li>✓ Manner in which the members who have not registered their email address with the company can get the same registered with the company;</li> <li>✓ Any other information deemed to be necessary.</li> </ul>	
Calling to members whose e-mail address is not registered	N.A.	<p>Company shall –</p> <ul style="list-style-type: none"> <li>✓ Contact all those members whose e-mail address are not registered with the company over telephone or any other mode of communication of their e-mail address before sending the notice.</li> </ul>
Mandatory attendance of independent director and statutory auditor	At least one independent director (where the company is required to appoint one) and the auditor or his authorised representative, who is qualified to be the auditor, shall attend such meeting through VC/OAVM.	-Same-
Proxy not valid for VC/OAVM meetings.	<p>Since physical attendance of members in VC/OAVM meetings has been dispensed with, the facility of appointment of proxy is not available.</p> <p>However, representatives of the members as per section 112, 113 of the CA, 2013 shall be valid.</p>	-Same-
Capacity to participate	The facility to host at least 1000 members of the company to participate on a first come first serve basis.	The facility to host at least 500 members or members equal to total number of members of the company (whichever is lower) to participate on

		a first come first serve basis.								
Facility for large stakeholders	The companies may opt to give privilege to large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key management personnel and chairperson to committees of Board constituted under CA, 2013, auditors, etc. to attend meeting without restriction of first come first served basis.	-Same-								
Conduct of meeting	The companies shall ensure – ✓ Facilities for joining meeting shall be kept open at least 15 minutes before and after the time scheduled for meeting. ✓ Facilities allowing two way teleconferencing or webex for ease of participation and submission of questions concurrently; ✓ Recording of transcript of meeting.	-Same-								
Quorum	Attendance of members through VC/OAVM shall be counted for the purpose of reckoning quorum.	-Same-								
Election of Chairman	<div>The chairman shall be such person as provided in the articles of the company.  If not provided in articles, Chairman shall be – <table><tr><td>If members present are less than 50</td><td>Appointment of chairman shall be as per section 104 of CA, 2013</td></tr><tr><td>In all other cases</td><td>Appointment by poll conducted through e-voting during the meeting</td></tr></table></div>	If members present are less than 50	Appointment of chairman shall be as per section 104 of CA, 2013	In all other cases	Appointment by poll conducted through e-voting during the meeting	<div>The chairman shall be such person as provided in the articles of the company.  If not provided in articles, Chairman shall be – <table><tr><td>If members present are less than 50</td><td>Appointment of chairman shall be as per section 104 of CA, 2013</td></tr><tr><td>In all other cases</td><td>Appointment by poll conducted through in the manner prescribed below.</td></tr></table></div>	If members present are less than 50	Appointment of chairman shall be as per section 104 of CA, 2013	In all other cases	Appointment by poll conducted through in the manner prescribed below.
If members present are less than 50	Appointment of chairman shall be as per section 104 of CA, 2013									
In all other cases	Appointment by poll conducted through e-voting during the meeting									
If members present are less than 50	Appointment of chairman shall be as per section 104 of CA, 2013									
In all other cases	Appointment by poll conducted through in the manner prescribed below.									

Duty of chairman	Chairman of the meeting to satisfy himself and record the same before considering the business in meeting about all the necessary efforts and requirements have been made by the company to enable members to participate and vote in the meeting.		Chairman of the meeting to satisfy himself and record the same before considering the business in meeting about all the necessary efforts and requirements have been made by the company to enable members to participate and vote in the meeting.							
Voting	The chairman shall ensure the voting as per below criteria - <table border="1"><tr><td>In all cases</td><td>Voting shall be conducted by e-voting system.</td></tr></table>		In all cases	Voting shall be conducted by e-voting system.	The chairman shall ensure the voting as per below criteria - <table border="1"><tr><td>If members present are less than 50</td><td>Voting shall be either by show of hands, unless poll is demanded.</td></tr><tr><td>In all other cases</td><td>Voting shall be conducted by poll.</td></tr></table>		If members present are less than 50	Voting shall be either by show of hands, unless poll is demanded.	In all other cases	Voting shall be conducted by poll.
In all cases	Voting shall be conducted by e-voting system.									
If members present are less than 50	Voting shall be either by show of hands, unless poll is demanded.									
In all other cases	Voting shall be conducted by poll.									
Remote e-voting	Facility of remote e-voting shall be provided to members for voting as per the provisions of CA, 2013.		Not applicable here.							
Voting by poll	Voting for all matters shall be by poll conducted through e-voting system during the meeting.		On the poll being requested on any matter in the meeting, , it shall be as per the provisions of section 109 of the CA, 2013 and voting shall be conducted by sending emails by the members through their registered email address at the email address provided by the company for the purpose.							
Maintenance of record of transcript of meeting	To be in maintained in safe custody by the company. In case of public company, the recorded transcript be also posted on the website (if any).		-Same-							
Ensure other ancillary compliances	The compliances of all other provisions applicable to hold general meeting(s) i.e. making of disclosures, inspection of related documents by members, registers, etc. and the articles of association of the company to be complied through electronic mode.		-Same-							
Filing of	All resolutions passed under this		-Same-							

resolutions	mechanism shall be filed with Registrar of Companies within 60 days of the meeting clearly indicating the adoption of mechanism and compliance of its provisions.	
-------------	---	--

**Only unavoidable matters may be transacted as special business in AGM**

In such meetings, other than the ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

**Payment of dividend to shareholders with no bank account details**

Companies shall make adequate provisions where members can give their mandate for receiving dividends directly in their bank accounts.

Where due to unavailability of the details of the bank account, company is unable to pay the dividend to any shareholder by electronic mode, in such case, company shall upon normalisation of the postal services, dispatch the dividend warrant / cheque to such shareholder by post.

**IV. COMPANIES PERMITTED TO HOLD AGM IN PHYSICAL**

Where the company has received permission from the relevant authorities to conduct its AGM at its registered office, or at any place as provided under section 96 of the CA, 2013, **the company may** in addition to holding such meeting with physical presence of some members, also provide the facility of VC/ OAVM, so as to allow other members of the company to participate in the meeting.

All such members attending meeting physically and through VC/ OAVM shall be counted for the purpose of quorum.

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

**AUTHOR COMMENTS:**

Allowing the convening of the AGM through e-voting during these difficult times is a welcome step taken by the MCA, and in defining the guidelines for convening such meetings, the interest of the stakeholders is well taken care of. Thus, it is now the duty of the companies to follow the guidelines in true spirit to make their AGMs happen through the online system. Definitely, the success of

convening of the meetings of the shareholders through the online mechanism may create the passage of making it entering into the regular provisions. This not only would be saving the cost and time of the shareholders in finding the time for coming and attending the meetings, but also would put the shareholders at ease in attending the meetings.



**Arbitrary Relief**

*However, providing for the advise/ provision for the filing of the application for extension of the AGM by the companies having the financial year other than 31<sup>st</sup> December 2019, seems to be arbitrary in providing benefit to only a class of the companies following such financial year, to the exclusion of all other companies, which forms a very large number, i.e. the companies following the compulsory financial year ending March 31, 2020 as provided under the CA, 2013. Also, there are companies following the financial year as September 30, 2020 under the permission of the NCLT, which were required to convene the AGM by March 31, 2020, and failed to convene the AGM due to the lockdown amid COVID-19, have not been provided any respite.*

*Additionally, the grounds for filing of the application for extension of AGM have not been provided by the MCA. The MCA should have considered that amid the lockdown situation, the companies are finding it difficult to even operate, and that putting a pressure on the companies to prepare their financial statements in time (where additional machinery of auditors are also involved) and convening the AGM does not seem to be justified. Also, the non-preparation of the financial statements is not a ground for the companies to seek extension, basis the judgements of the courts in India. The disposing of the applications for extension would also be taking large amount of the administrative time of the ROC, which the MCA has failed to consider. The MCA must have at least waived off the application fees for seeking such extension thereby saving the*

*shareholder money in these difficult times of COVID-19. The representation shall accordingly be made to the MCA by the stakeholders.*

**Author:** I Kirti Dureja, Associate Partner  
([kirti.dureja@corpacumen.com](mailto:kirti.dureja@corpacumen.com)) | **ACUMEN JURIS** |

**Practice Areas:** I Corporate & Commercial I

**(Refer other Articles on COVID-19 vis-à-vis Impact at [www.acumenjuris.com](http://www.acumenjuris.com))**

**Disclaimer-** This Article is for information purposes only, and the views stated herein are personal to the author, and shall not be rendered as any legal advice or opinion to any person, and accordingly, no legal opinion shall be rendered by implication. The Article does not intend to induce any person to omit, commit or act in any particular manner, and that you should seek legal advice before you act on any information or view expressed herein. We expressly disclaim any financial or other responsibility arising due to any action taken by any person on the basis of this Article.