

2020



**HS ASSOCIATES**  
COMPANY SECRETARIES

## Knowledge Capsule

***An overview of framework for conducting of Annual General Meeting through video conferencing or audio-visual means.***





## **INTRODUCTION**

In this article, our prime focus is on analysis of relaxations granted by Ministry of Corporate Affairs (*MCA*) and Securities and Exchange Board of India (*SEBI*) for conducting the Annual General Meeting (*AGM*), sending of Annual Reports and other related compliances. The MCA received various representations by the stakeholders seeking relaxations in the provisions of the Companies Act, 2013, (*the Act*) and the rules therein with respect to the convening of AGM, sending of Annual Reports and other related compliances especially for companies required to provide E-voting facility.

Based on the above representations, MCA and SEBI vide circular no. 20/2020 dated 5th May 2020 and circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated 12th May 2020 respectively, relaxed various provisions and also allowed companies to hold AGM through video conferencing (*VC*) or other audio visual means (*OAVM*). These circulars were in addition to circular no. 14/2020 dated 08th April 2020 and circular no. 17/2020 dated 13th April 2020 issued by MCA which deals with the conduct of extraordinary general meeting (*EGM*) through *VC* or *OAVM*.

In addition, the Institute of Company Secretaries of India (*ICSI*) has issued a clarification/guidance on certain provisions of Secretarial Standards-2 (*SS-2*) dated 15th April 2020.

As per provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (*SEBI Regulations*), top 100 companies were mandated to provide one-way webcasting. However, *VC* or *OAVM* is new for all the companies including the top 100 companies. Therefore, prime focus of this article will be on analysis of the compliances with respect to entities convening AGM through *VC* or *OAVM* on or before December 2020.

To understand the framework for the conduct of AGM through *VC* or *OAVM* all the above-mentioned circulars will have to be read in conjunction.



**Understanding the compliance requirements under the Act & the rules, SS-2 and SEBI regulations for Companies providing E-voting facility:**

Compliance	Customary Requirement	Restrictions/Additional requirements	Relaxations
<b>Business Transactions to be taken up</b>	No restrictions as both ordinary and special items can be discussed.	<p>Ordinary business and only unavoidable special business transactions.</p> <p>The circular states that; <i>“In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.”</i></p> <p>However, this must be interpreted keeping in mind the legislative intent, which allows both ordinary and special items.</p> <p>The term ‘unavoidable’ is nowhere defined under the Act.</p> <p>What is unavoidable? A broad understanding can be taken as any transaction or any act which cannot be left as unattended or which cannot be deferred.</p> <p>The Board is entrusted with the powers to determine the same.</p>	
<b>Circulation of notice of</b>	Physical as well as electronic copies to	Notice of AGM shall also state the	To only send electronic copies on registered email



<b>AGM, annual report and related documents</b>	<p>be sent. Statutory information to be mentioned in Notice of AGM:</p> <ul style="list-style-type: none"><li>· Place, date, day and the hour of the meeting</li><li>· Statement of the business to be transacted</li><li>· Explanatory Statement setting out all material facts relating to special business</li><li>· Book closure date and cut-off date for the purpose of voting</li></ul>	<p>following:</p> <ul style="list-style-type: none"><li>· Manner in which the framework provided in this circular shall be made available to the shareholders</li><li>· Clear instructions on how to access and participate in the meeting</li><li>· Helpline number of technology provider, RTA</li></ul> <p><i>As regards to the venue of AGM, the Company may state that the AGM is held through Videoconferencing as actual venue cannot be mentioned.</i></p>	<p>addresses with the company or the depository participant/depository.</p> <p>Similar relaxation has been provided by SEBI until 31st December 2020 {Regulation 38(1)(b)(c) and 58(1)(b)(c)}.</p>
<b>Appointment of Chairman of the Meeting</b>	<p>If the article does not provide the manner of appointment of chairman, then in accordance with Section 104 of the Act.</p>	<p>Unless the articles require any specific person to be appointed as Chairman:</p> <ul style="list-style-type: none"><li>· Where less than 50 members are present - in accordance with Sec 104</li><li>· In other cases: Poll by E-voting. Companies will have to check their AOA in this regard.</li></ul>	<p>NA</p>
<b>Recorded Transcript</b>	<p>No such requirement under the Act</p>	<p>Transcript to be recorded, and to be also uploaded on the website (if any) of the company as soon as practically</p>	<p>NA</p>



		possible.	
<b>Voting during the AGM and results</b>	Unless a poll is demanded or voting is done through any electronic mode, the voting shall be decided by show of hands.	The Chairman shall ensure that facility of E-voting is available throughout the meeting.	The results need not be put up at the Notice Board of the Company. Display on website (if any) of the Company shall be sufficient compliance. (ICSI guidance note)
<b>Proxy</b>	Proxy can be appointed by complying with the provisions of the Act.	Proxies cannot be appointed for meeting conducted through VC or OVAM. However, representatives can be appointed pursuant to section 112 and 113 of the Act and can vote and participate in the meeting.	SEBI has provided a relaxation on sending proxy forms to security holders until 31st December 2020.
<b>Inspection of registers and other documents</b>	Following documents should be kept open for inspection at every AGM and made accessible to any person attending the AGM:  Register of contracts/ Directors/KMP and their shareholding; Secretarial & statutory audit report along with signed accounts; Proxy forms, other documents mentioned in Notice of AGM or required under SS- 1/SS-2	The inspection shall be provided by electronic mode and guidelines for such inspection shall be given in the Notice.  A major drawback of providing documents for inspection online is that they may be copied/ reproduced and leaked in the public domain.	<b>NA</b>
<b>Payment of Dividend by warrants</b>	Dispatch dividend warrants within 30 days of declaration	No change	Where the details of bank account are not available for payment of dividend through



	of dividend.		electronic mode, dividend warrants shall be dispatched after normalization of postal services. SEBI, too, has provided a similar relaxation under regulation 12 until postal services are normalized.
<b>Attendance of Independent Directors and Auditors</b>	Auditor or his authorized representative should be present at the meeting.	At least 1 Independent Director (where required to appoint) and the auditor or his authorized representative should be present.	NA
<b>Scrutinizer</b>	To be appointed as per the provisions of the act.	No Change	NA
<b>Minutes</b>	Minutes shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the AGM.	No change	Minutes shall be recorded and acknowledged / signed digitally by the Chairman and the same can be recorded and signed physically once the situation normalizes. (ICSI guidance note)
<b>Filing of resolutions with ROC</b>	Only those resolutions which are mentioned in Section 117 of the Act to be filed with ROC.	All resolutions passed (whether ordinary or special) in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting, clearly indicating therein that the	NA



		mechanism provided was in compliance with the MCA circulars along with other provisions of the Act	
<b>One-way live webcast of AGM</b>	The top 100 listed entities (based on market capitalization) shall also provide one way live webcast of the proceedings of the AGM, as per regulation 44(6) of SEBI (LODR) Regulations, 2015.	The one-way live webcast shall be in addition to the two-way VC facility for conducting AGM.	NA



## **Some key points also to be considered while holding E-AGM**

- ✓ Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.
- ✓ All care must be taken to ensure that such VC or OAVM facility allows two-way teleconferencing or WebEx for the ease of participation of the members and
- ✓ The participants can pose questions concurrently or given time submit questions in advance on the email address of the company.
- ✓ 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.
- ✓ Remote E-voting to be before the meeting as per the provisions of the Act.
- ✓ Members attending the meeting will also be provided with E-voting facility during the meeting.
- ✓ VC or OAVM facility must have a capacity to allow **at least 1000 members** to participate on a first-come- first-served basis. Following shall be allowed to attend the meeting **without applying** first-come- first-served rule:
  - ***Shareholders holding 2% or more shareholding, promoters, institutional investors, Directors, Key Managerial Personnel, Chairpersons of Audit Committee/Nomination and Remuneration Committee/Stakeholders Relationship Committee, auditor etc.***
  - *Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM*



## **PRACTICAL ASPECTS OF E-AGM**

Many vendors such as NSDL, KFin Technologies Pvt Ltd etc. have taken an initiative to develop a single-window platform to enable smooth conduct of E-AGMs by providing technological support to cover following important practical aspects:

### **Attendance**

- Members can participate in the two-way video conferencing through mobile / laptop / desktop, by using their login credentials provided by the Company. Their attendance shall be recorded through a secured mechanism.
- For members who have their email ids registered with the Company, login credentials shall be emailed to them. In case the email ids are not registered, the members will have to apply to the RTA / Company / Agency appointed by the Company to update their email id and receive the credentials. Process for the same shall be communicated through the notice of AGM.
- 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.

### **Quorum**

- Auto calculated and compiled by the system and displayed to the concerned Officials of the Company at their end.

### **Speakers and Q&A session**

- Companies may provide an off-line window for speaker registration before the VC session at AGM. Alternatively, they may activate a window during the VC session for a specific period of time.
- The Chairman shall answer the questions which have been submitted to the Company prior to AGM. He may even call out for live Q&A session. The Moderator of the VC facility shall enable audio / video arrangements for the same.
- Companies may also have a live chat window for posing of questions by members.

## FAQs

**1. If the Company is conducting AGM through VC is it still necessary to webcast the AGM as per SEBI LODR?**

Yes, webcasts are one-way proceedings of the meeting whereas AGM through VC or OVAM would be a two-way meeting on first come first serve basis. Listed companies should provide webcast of AGM in addition to AGM by VC or OVAM so that all shareholders are able to watch the proceedings.

**2. If the Lockdown opens, can companies still hold virtual meetings instead of physical meetings for the companies whose financial year ends on 31st March 2020?**

The MCA circular dated 5th May 2020 clearly mentions that annual general meetings in the calendar year 2020 can be held through virtual means. So, any AGM in the calendar year 2020 can be held through VC OR OVAM, which is applicable for both the companies with FY ending on 31st December 2019 or 31st March 2020.

**3. Are the companies required to issue public notice by way of advertisement in newspapers post-dispatch of notices as per Rule 20 of the Companies (Management and Administration) Rules, 2014, in addition to the prior public notice as mentioned in the MCA circular?**

Yes, the companies providing E-voting facility will have to issue two types of advertisements. One which would be prior as per the MCA circular and the other would be post-dispatch as per Rule 20 of the Companies (Management and Administration) Rules, 2014.

**4. For the 21 clear days notices to be sent by post, does the company has to still provide additional two days for service of notice?**

No, the companies are not required to add two days for service of notice since now, the same will be sent electronically and not by post. So, the notice would not be sent 25 days prior to the general meeting but 23 days prior (21 days clear notice + 2 days – date of service of notice and date of meeting).

**5. What if the company is not able to hold the meeting through VC because of limited resources?**

The companies which are not able to hold the meeting through VC can defer the meeting by obtaining an extension from ROC.

**6. Can Companies hold physical meeting only?**

The circular clearly states that if the company which has got required permissions from the relevant authorities it can conduct, after following such advisories from the government.

The company may, in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OAVM.

**7. Can the companies restrict the questions of the shareholders during the meeting by asking the shareholders to submit their queries in advance?**

It is preferable that the companies ask the shareholders to submit their queries as much as possible before the AGM so that the chairman can answer to all the queries and for smooth conduct of AGM. However, the companies cannot restrict a shareholder from asking any questions concurrently during the meeting as the VC should be two way allowing all the members to participate.

**8. Quorum requirements**

The law requires that the quorum should be present throughout the meeting. There is a possibility that the shareholders might lose connectivity and may end up leaving the meeting. What if the number of members goes below the minimum requirement? The circular issued by the MCA is silent on this.

**DISCLAIMER:**

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<b><u>Address</u></b>	<b><u>Contact</u></b>	<b><u>Mail</u></b>
<b>206, 2nd Floor, Tantia Jogani Industrial Estate, J.R. Boricha Marg, Opp. Lodha Lower Parel East, Mumbai – 400011</b>	<b>022- 23088998 / 23008998 / 40026600 / 40061100</b>	<a href="mailto:admin@hsassociates.net"><u>admin@hsassociates.net</u></a>
		<b><u>Website</u></b>
		<a href="http://www.hsassociates.net"><u>www.hsassociates.net</u></a>