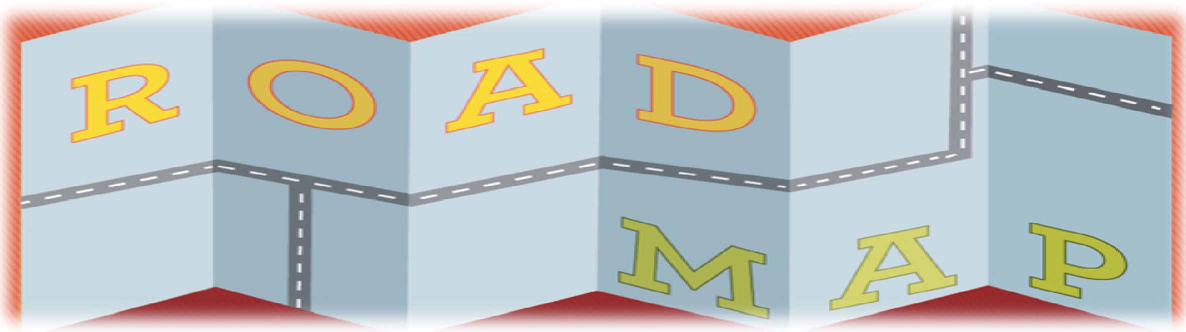

TO

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ROAD MAP TO AGM 2014

TIME TO PLAN AHEAD!

One may be wondering what is special about this year's AGM that requires so much advance planning and preparation. The answer is – "*Companies Act, 2013!*".

Companies Act, 2013 which got notified w.e.f. 01st April, 2014 requires companies to take action immediately to align themselves with the new requirements and provisions stipulated by the Act to be in compliant with the law in force. Some of these action points need to be taken up in the Board Meeting and some in the ensuing Annual General Meeting. These means that the compliance officers must plan well in advance by keeping a checklist ready with them regarding what needs approval of Board and what needs approval of members immediately. Besides these, the Act has stipulated many changes in requirements relating to the AGM itself, for example, e-voting in relation to AGM has been made mandatory for all listed companies and other companies falling within the threshold limits specified in the Act. These changed requirements further necessitate a well planned out schedule to successfully hold the AGM for the year 2014 in line with the requirements of the Act.

In this article, we give a road map showing the tentative schedule of items and activities which requires immediate focus of the management to plan its ensuing AGM.

PLANNING THE PATHWAY TO AGM 2014

To plan out the list of items which need to be placed before the Board for their consideration and approval (Refer List A1 below)

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To plan out another list of items which the Board needs to review and recommend to the members for their approval in the ensuing AGM (Refer List A2 below)

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To assess if a postal ballot is mandatory and to plan the schedule of postal ballot, if applicable (Refer List B)

↓

To assess the applicability of e-voting for the AGM and to plan for it, if applicable. (Refer list C)

↓

To prepare an activity schedule with time lines for the AGM keeping in mind requirements of e-voting, news paper advertisement, closure of register of members, scrutiniser report, notice period for AGM etc. (Refer list D)

↓

To plan out the list of items which need to be placed before the Members for their approval in the AGM (Refer List E)

↓

To plan about the change in requirements of AGM like quorum, poll, time and day to conduct AGM etc. (Refer List F)

MOVING ON THE PATH

Step 1 - To plan out the list of items which need to be placed before the Board for their consideration and approval

Companies Act, 2013 has put forth many new requirements which requires the immediate attention of the Board. We give below a provisional list of items which need to be placed before the Board for their consideration/approval in the ensuing board meeting to meet the requirements of the new Act. The applicability of these requirements need to be checked based on the threhold limits specified in the Act an the Rules.

LIST A1

- **To take note of notices of disclosure of concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals by directors.** *(To be taken note in first board meeting of the financial year)*
- **To review and restructure composition of Board of Directors in accordance with requirements of Companies Act, 2013 including appointment of independent, resident and woman director, as applicable.**
- **To review and restructure composition of Audit Committee, Remuneration Committee and Stake Holder's Committee in accordance with requirements of Companies Act, 2013. (Formation of Corporate Social Responsibility Committee**
- **Appointment of Key Managerial Personnel in accordance with requirements of Companies Act, 2013**
- **Appointment of secretarial auditor to conduct a secretarial audit and providing secretarial audit report**
- **Appointment of Internal Auditor and Cost Auditor**
- **Discussion on requirements relating to mandatory e-voting at the ensuing AGM and appointment of scrutinizer for the purpose of e-voting**
- **Consideration and approval of annual accounts for the financial year ended 31.03.2014 and the report of auditors, directors thereon and corporate governance report.**
- **Fixing the time, place and date for convening Annual General Meeting for the FY ended 31.03.2014**
- **Consideration and approval of draft notice of AGM**
- **To establish vigil mechanism in accordance with requirements of Companies Act, 2013**

Step 2 - To plan out another list of items which the Board needs to recommend to the members for their approval in the ensuing AGM

LIST A2

- **To consider and recommend for approval by special resolution of shareholders all related party transactions under Section 188 of the Companies Act, 2013.**
- **To consider and recommend amendment of Memorandum and Articles of Association to bring the regulations/clauses in line with the requirements of Companies Act, 2013.**
- **To consider and recommend appointment of independent directors.**
- **Renewal of limits for borrowing/mortgaging etc. in accordance with provisions of Section 180 and 186 of Companies Act, 2013.** ***(As per MCA circular 4/2014 issued on 25.03.2014, resolution passed under Section 293 before 12.09.2013 will be valid only till one year from notification of Section 180, i.e. till 11.09.2014.)***
- **Renewal of limits for loan/investment/guarantee/security etc. in accordance with provisions of Section 186 of Companies Act, 2013.**
- **To consider and recommend appointment of statutory auditors for five years term subject to remaining tenure and ratification every year by members by means of ordinary resolution.**

Step 3 - To assess if a postal ballot is mandatory and to plan the schedule of postal ballot, if applicable.

The applicability of mandatory postal ballot depends on two factors:

- **Number of members in the company**
- **Nature of business to be transacted**

LIST B

- **Applicability based on number of members:**
  One Person Company and other companies having upto 200 members are not mandated to transact any business through postal ballot. Other Companies must refer to the list below to check mandatory applicability based on nature of business to be transacted.

- **Applicability based on nature of business to be transacted:**
  Following items of business need to be transacted only through postal ballot

  (a) alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;

(b) alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;

(c) change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;

(d) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;

(f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(g) buy-back of shares by a company under sub-section (1) of section 68;

(h) election of a director under section 151 of the Act;

(i) sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;

(j) giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186

Step 4 - To assess the applicability of e-voting for the AGM and to plan for it, if applicable

A chart showing mandatory applicability of e-voting for AGM and Postal Ballot for various classes of companies is given below

<table>
<tr><th colspan="8">LIST C - MANDATORY APPLICABILITY OF E-VOTING</th></tr>
<tr><th colspan="2">LISTED COMPANY</th><th colspan="4">UNLISTED PUBLIC COMPANY</th><th colspan="2">PRIVATE COMPANY</th></tr>
<tr><td>General Meeting</td><td>Postal Ballot</td><td colspan="2">Having more than 1000 shareholders</td><td colspan="2">Having less then 1000 shareholders</td><td>General Meeting</td><td>Postal Ballot</td></tr>
<tr><td>YES</td><td>YES</td><td>General Meeting</td><td>Postal Ballot</td><td>General Meeting</td><td>Postal Ballot</td><td>NO</td><td>NA</td></tr>
<tr><td></td><td></td><td>YES</td><td>NO</td><td>NO</td><td>NO</td><td></td><td></td></tr>
</table>

Other important points relating to e-voting

- Scrutiniser to be appointed for the purpose of e-voting
- Newspaper publication to be made in English and Regional language newspaper
- E-voting details to be mentioned in the notice of General Meeting/Postal Ballot
- Facility of e-voting to be provided in addition to other modes of voting
- E-voting to close atleast 3 days before date of general meeting.

Step 5 - To prepare an activity schedule with time lines for the AGM keeping in mind requirements of e-voting, news paper advertisement, closure of register of members, scrutiniser report, notice period for AGM, etc.

The planning process for AGM needs to take proper account of the various time lines prescribed under the Act in order to plan out the compliances at each stage of the road map to the AGM. Given blow are some important time lines in relation to the Annual General Meeting as prescribed under the Act.

LIST D	
ACTIVITY	**TIME LINE**
Board Meeting	Atleast 7 days notice in writing to be given for holding any Board Meeting
General Meeting	Atleast 21 days notice in writing to be given for holding any General Meeting
E-voting for General Meeting	To be kept open for minimum 1 day and maximum 3 days. To be closed 3 days before general meeting
Newspaper publication for e-voting for General Meeting	Not less than 5 days before opening of e-voting
Newspaper publication for closure of register of members	Atleast 7 days before start of closure date or such lesser time as prescribed by SEBI for listed companies

Step 6 - To plan out the list of items which need to be placed before the Members for their approval in the AGM

This year, apart from the ordinary business that is transacted at every AGM, Companies will also need to look into the requirement of transacting certain special businesses which requires approval of members under the Companies Act, 2013. For eg. Section 180 which is now applicable to private companies also, requires approval of members by means of special resolutions for transacting any business as set out in the said Section. Even for public companies, the approval which was taken under Section 293 of the Companies Act, 1956 is valid only for one year from date of notification of Section 180 which had got notified on 12th September, 2013 itself. Given below a list of tentaive items which require approval of members in the ensuing AGM.

List E – Tentaive list of items to be approved by members in AGM

Ordinary Business

- Approval of Balance Sheet, Statement of Profit & Loss, Director's Report and Auditor's report for the previous financial year ended
- Declaration of Dividend
- Reappointment of retiring director
- Appointment of Auditor for a term of five years, subject to remaining eligible tenure and ratification annually by members.

Special Business

- Amendment of Memorandum of Association
- Amendment of Articles of Association
- Appointment of Independent directors
- Approval for related party transactions
- Renewal of borrowing limits
- Renewal of limits for loans / investment / guarantee / security

Step 7 - To plan about the change in requirements of AGM like quorum, poll, time and day to conduct AGM etc.

Companies also need to take into consideration other requirements relating to the holding of AGM which have under gone change under the Companies Act, 2013. We list below significant changes relating to AGM under Companies Act, 2013

List F – Changes relating to AGM

Notice of AGM

- All Companies need to give 21 clear days notice
- In case e-voting is applicable, notice to carry details of e-voting

Quorum for public companies

- Upto 1000 - 5 members personally present
- Upto 5000 – 15 members personally present
- Exceeds 5000 – 30 members personally present

Time and Day to hold AGM

- AGM to be held during the business hours – between 9.00 AM to 6.00 PM
- Not to be held on National holiday

Proxy

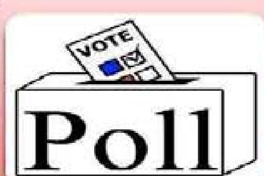
Same person cannot act as proxy for more than 50 members

Form of proxy has been provided in the Rules.

E-voting

Evoting is mandatory for all listed companies and other companies having 1000 or more share holders.

For AGM, voting to be kept open for 1-3 days and to close atleast 3 days before day of AGM.



Voting by poll

In case of companies for which e-voting is mandatory, poll may be the only other method left out to cast vote by remaining shareholders. Companies need to be ready for it!

WRAP UP

With the notification of majority of Sections of Companies Act, 2013 (effective from 01.04.2014), holding of Annual General Meeting for the year 2014 has become a challenging exercise for Companies and their compliance officers. Planning is not only required regarding the agenda to be placed in the notice for the approval of members but even the modus operandi of conducting the AGM and the voting procedure in connection therewith also requires a thorough understanding of the applicability of the provisions and planning to implement them. Listed companies need to be doubly cautious so as to be compliant not only with the Companies Act, 2013 but also the Listing Agreement which has been recently amended and some amended portions of which are to become applicable w.e.f. 01.10.2014.

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