

Clarification on passing of OR and SR by Companies under the Companies Act, 2013 and Rules made thereunder subject to the Current Situation due to Covid 19.

Relevant Circular: MCA Circular 17/2020 dated 13.04.2020

Purpose of the Circular:

1. To give more clarification on the elements of the framework laid down in the earlier MCA Circular 14/2020 date 08.04.2020.
2. To remove the difficulties which the stakeholders have highlighted in serving and receiving notices/responses by post in the Current Circumstances of COVID-19.

The following Clarifications are here by given:

I. **Manner and mode of issue of Notices to the members before convening the General meeting:**

A . For Companies which are required to provide the facility of e-voting under the Act or any other Company which has opted for such facility

1. **Notices only through the mode of E-mail**

Subject to the current situation due to COVID-19 ,so as per the provision of Rule 18 of the Companies (Management and Administration) Rules, 2014, the Notice to the members to be given only through the E-mail address registered with the Company or with the DPs.

2. **Matters shall be stated in the Notice-**

- a. A Statement that EGM has been convened through VC or OAVM in compliance with the applicable provisions of the Act read with the MCA Circular 14/2020 dated 08.04.2020.
- b. Date and Time of the EGM through VC or OAVM.
- c. Availability of Notice of the meeting on the website (if any) of the Company and the stock exchange if the Company is listed.
- d. 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 or through e-voting system during the meeting.”

- e. Manner in which the members can registered their email addresses with the company who hnder the ave not any registered email addresses with the Company.
- f. Any other details considered relevant by the Company.

3. Duty of Chairman of the meeting

The chairman of the meeting shall satisfy himself and record the same before considering the business in the meeting that all the efforts feasible under the circumstances have indeed been made by the Company to enable members to participate and vote on the items being considered in the meeting.

B. For Companies which are not required to provide the facility of e-voting under the Act-

1. Notices only through the mode of E-mail

Subject to the current situation due to COVID-19 ,so as per the provision of Rule 18 of the Companies (Management and Administration) Rules, 2014, the Notice to the members to be given only through the E-mail address registered with the Company or with the DPs.

2. A Copy of the Notice Prominently displayed on the website of the Company.

3. Proper Compliance

in order to ensure that all the members are aware that a General meeting is proposed to be conducted in compliance with applicable provisions of the Act read with Circular 14/2020 dated 08.04.2020.

The Company shall-

- a. Contact all those members whose e-mail addresses are not registered with Company for registration of their e-mail addresses before sending the notice to all the members.

b. Public Notice by way of Advertisement

If in case the contact no. of the members are not available with the Company or could not obtained then a Public notice by way of advertisement to be published immediately-

- At least once in a vernacular newspaper in the principle vernacular language of the district in which the registered office of the Company is situated and having a wide circulation in that district, and
- At least once in English newspaper having a wide circulation in that district.
- **Following information shall be specifying in advertisement-**

- That the company intends to convene a General meeting in compliance with applicable provisions of the Companies Act 2013 read with the Circular and the said purposed to notice to all its members by e-mail after, at least 3 days from the date of publication of Public Notice.
- The details of e-mail address along with a telephone no. on which the member may contact for getting their e-mail addresses registered for participation and voting in the General meeting.

4. Duty of the Chairman of the meeting

The chairman of the meeting shall satisfy himself and record the same before considering the business in the meeting that all the efforts feasible under the circumstances have indeed been made by the Company to enable members to participate and vote on the items being considered in the meeting.

II. Requirement of voting by show of hands

- Clarification in the sub-paragraph A-IX of para 3 of the Circular 14/2020 dated 08.04.2020
- Relevant companies were allowed to pass resolutions in certain cases through show of hands, considering the dissimilarities involved in e-voting and voting by show of hands so for more clarification purpose the said paragraph is substituted as under-
IX. The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purpose of the voting during the meeting held through VC or OAVM.

III. Passing of certain items only through postal ballot without convening a general meeting

1. As per Circular 14/2020 dated 08.04.2020, Companies may pass resolution through postal ballot without holding a General Meeting unless its so required under section 110(1)(b) of the Act.
2. Clarifications has been sought on the issue of dispatch of notices by the Companies by the post and Communication by the members of their Assent or Dissent on the relevant resolutions by post under the current Circumstances due to COVID-19.
3. After proper examination the attention is invited to rule 22(15) of the Companies (Management and Administration) Rules 2014 which provides that the provisions of Rule 20 regarding Voting by electronic

means shall apply, as far as applicable, mutatis mutandis in respect of voting by electronic means.

4. Therefore for Companies covered in para- 3-A of Circular 14/2020 dated 08.04.2020 while they are transacting any business only by postal Ballot , upto 30th June 2020 or till further order whichever is earlier.
5. The requirements provided in rule 20 as well as framework provided in Circular 14/2020 dated 08.04.2020 and this circular would be applicable mutatis mutandis

IV. Sending of e-mails by members, where a poll on any item is required for Companies Covered in para 3-B of the General Circular No. 14/2020, dated 08.04.2020

1. It is clarified that sub-paragraph B-XII of para 3 of the Circular 14/2020 dated 08.04.2020 does not provide for polling by members at any time before the meeting.
2. The poll will take place during the meeting, and the members may convey their assent or dissent only at such stage on item considered in meeting by sending e-mails to the designated e-mail address of the Company.