

Clarification on passing of OR and SR by the Companies Act and Rules made thereunder on account of threat posed by Covid 19

Relevant Circular: 14/2020 dated 08.04.2020

Provision of the Circular:

In view of the extraordinary circumstances due to pandemic caused by COVID-19 prevailing in the Country, requiring social distancing, Companies are requested to take all decisions of urgent nature or unavoidable Special businesses requiring approval of members, other than items of Ordinary business or a business where any person has a right to be heard, through the mechanism of the postal ballot/e-voting in accordance with the provisions of the Act and Rules made thereunder without holding a General meeting, which requires physical presence of members at a common venue.

Procedure to be adopted by the Companies in case of holding an extraordinary General Meeting is considered unavoidable, the following procedure needs to be adopted for conducting such a meeting on or before 30.06.2020, in addition to the requirement provided in the Act or the Rules made thereunder.

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. EGMs, wherever unavoidable, may be held through VC or OAVM and the recorded transcript of the same shall be maintained in the safe custody by the Company.

In case of Public Company, the recorded transcript of the meeting, shall be also made available on the website (if any) of the Company

2. Time difference shall be kept in the mind before scheduled the meeting.

3. Proper system for ease of participation:

Meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of members and the participants are

allowed to pose questions concurrently or given time to submit questions in advance on the email address of the Company.

Such facility must have a capacity to allow at least 1000 members to participate on a First-come-first-served basis.

- a. The large shareholders i.e shareholders holding 2% or more shareholding,
- b. Promoters,
- c. Institutional Investors,
- d. Directors,
- e. Key Managerial personnel,
- f. the Chairperson of Audit Committee, Nomination and remuneration Committee and stakeholder Relationship Committee,
- g. Auditors etc

May be allowed to attend the meeting without restriction on account of first come first served principle.

4. Time limit for joining the meeting

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.

5. Facility for remote e-voting shall be provided in accordance with the act and rules.
6. Only those members present in the meeting through VC or OAVM facility and have not cast their Vote on resolution through remote e-voting and are otherwise not barred from doing so, shall be allowed to vote through e-voting system or by show of hands in the meeting.

7. Manner for the appointment of chairman for the meeting

Unless otherwise provided in the Article, the chairman of meeting shall be appointed in the following manner-

- a. Where there are less than 50 members present at the meeting, the chairman shall be appointed in accordance with section 104.
- b. In all other cases, the chairman shall be appointed by a poll conducted through the e-voting system during the meeting.

8. Manner of conducting the meeting

- a. Where there are less than 50 members present at the meeting the voting may be conducting-
 - either through the e-voting system
 - or by a show of hands

unless a demand for poll is made available in accordance with section 109 of the Act, in which case the voting shall be conducted through the e-voting system;

- b. in all other cases, the voting shall be conducted through e-voting system.

9. Proxy

Under this system of voting where physical attendance of members in any case has been dispensed with, there is no requirement for the appointment of proxy.

Accordingly the facility for the appointment of proxy by members will not be available for such meeting.

However in pursuance of Section 112 and Section 113 of the Act, representative of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.

10. Specified person to attend the meeting:

- a. At least Independent director (if a Company required to appoint one Independent Director),
- b. And the auditor or his authorized representative , who is qualified to be the auditor shall attend such meeting through VC or OAVM.

11. Institutional Investors if the members of company they may encouraged to attend the meeting .

12. Proper disclosure in the Notice of General Meeting

Proper disclosure shall be made in the notice of the General Meeting with regard to the manner in which framework provided in this circular shall be avialbe for use by the Members and also contains clear instructions on how to access and participate in the meeting

The company shall also provide a helpline no. through the registrar and transfer agent, technology provider

A Copy of the meeting notice shall also be prominalty displayed on the website of the Company , if any.

13. What if, the notice of General Meeting has served prior to the date of this Circular?

The same framework proposed in this Circular may be adopted for this meeting, in case the consent from members has been obtained in acordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with this Circular is issued consequently.

14. Resolutions passed in accordance with this mechanism shall be filed with the ROC with 60 days of the meeting, cleary indicating therein that the mechanism provided herein alongwith other provisions of the Act and Rules were duly complied.

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

Point No- 1 & 2 same as mentioned in the Part A

3. Proper system for ease of participation:

Meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the email address of the Company.

Such facility must have a capacity to allow at least 500 members to participate on a First-come-first-served basis.

- h. The large shareholders i.e shareholders holding 2% or more shareholding,
- i. Promoters,
- j. Institutional Investors,
- k. Directors,
- l. Key Managerial personnel,
- m. the Chairperson of Audit Committee, Nomination and remuneration Committee and stakeholder Relationship Committee,
- n. Auditors etc

May be allowed to attend the meeting without restriction on account of first come first served principle.

Point No- 4 same as mentioned in Point No- 4 of the Part A

5. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.

Point No- 6 same as mentioned in Point No- 8 of the Part A

Point No- 7 same as mentioned in Point No- 10 of the Part A

Point No- 8 same as mentioned in Point No- 9 of the Part A

Point No- 9 same as mentioned in Point No- 11 of the Part A

10. The Company shall provide a designated e-mail address to all the members at the time of sending the notice of meeting so that the member can convey their vote when a poll is required to be taken during the meeting on such designated email address,

11. Proper confidentiality of the password and safety measure with regards to the Authenticity of email address and other details of the members shall also be taken by the Company.

12. During the meeting held through VC or OAVM facility, where a poll on any item is required, the member shall cast their Vote on the resolution only by sending emails through their email addresses which are registered with the Company

13. Voting

Where less than 50 members are present in a meeting, the chairman may decide to conduct a vote by Show of hands, unless a demand for poll is made by any member in accordance with section 109 of the Act.

14. In case the counting of votes requires time, the said meeting may be adjourned and called later to declare the result.

Point No- 15 same as mentioned in Point No- 12 of the Part A

Point No- 16 same as mentioned in Point No- 13 of the Part A

Point No- 17 same as mentioned in Point No- 14 of the Part A