



India: Circulars issued by the Ministry of Corporate Affairs amidst COVID-19 (as of April 16, 2020)

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1. Holding Extra-ordinary General Meeting by Electronic Means

The Companies Act, 2013 (“CA 2013”) does not permit conducting members’ meetings through video conference (“VC”) or other audio-visual means (“OAVM”).

Due to COVID-19, the Ministry of Corporate Affairs (“MCA”) issued General Circular No. 14/2020 dated April 8, 2020 allowing companies otherwise unable to hold extra-ordinary general meetings (“EGM”) to do so by electronic means, such as VC, OAVM, and e-voting mechanisms (collectively “Facilities”), and establishes the conditions for the same (“GC No. 14”). This relaxation of CA 2013 is only available for EGMs held **on or before 30 June 2020**, and the requirements for a company to avail itself thereof differ based on whether the company is obligated to provide Facilities for e-voting under the CA 2013, as follows:

(a) Companies that are required or have opted to provide Facilities for e-voting

- A transcript shall be maintained in safe custody.
- The VC or OAVM should allow two-way communication and the participants must be allowed to pose questions concurrently or given time to submit questions in advance through the company e-mail address.
- The VC or OAVM shall allow for at least 1,000 participants on a first-come-first served basis. Shareholders holding 2% or more, directors, key managerial personnel, chairmen of committees, and auditors are allowed to attend the meeting without restriction despite the first-come-first-served principle.
- The Facilities shall be available 15 minutes before and 15 minutes after the time of meeting commencement.
- Facilities for remote e-voting shall be provided before the meeting, as per the provisions of CA 2013.

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- Members who are present at the meeting and who have not cast their votes through remote e-voting (and are not otherwise barred from doing so) are allowed to vote through the e-voting system or through show of hands in the meetings.
- Disclosure of the manner in which the Facilities shall be made available for use must be made through a notice, and a helpline number must be provided.
- The resolutions passed in such meetings shall be filed with the Registrar of Companies within 60 days, clearly indicating therein that the Facilities indicated and other matters of such meetings complied with the provisions of CA 2013.
- If notice was issued prior to the date of GC No. 14, a new notice of shorter duration may be issued subject to consent from members.

In addition, under General Circular No. 17/2020 dated April 13, 2020 clarifying the procedures issued by the MCA (“GC No. 17”):

- The EGM notice may be only provided to members through emails registered with the company or the depository participant/depository.
- The public notice, as required in the case of e-voting, shall additionally contain the following:
 - (i) a statement that the EGM shall be convened through VC or OAVM in compliance with the provisions of CA 2013, GC No. 14, and GC No. 17;
 - (ii) date and time of the EGM;
 - (iii) availability of notice on the website of the company and stock exchange;
 - (iv) the manner in which members holding shares in physical form or members whose email addresses are not registered with the company can cast their vote through remote or other e-voting systems during the EGM;
 - (v) the manner in which members can register their email address with the company; and
 - (vi) any other details considered necessary by the company.

(b) Companies not required to provide Facilities for e-voting

- The VC or OAVM shall allow for at least 500 participants on a first-come-first-served basis.
- Members shall only be capable of casting their resolution vote by sending emails from their company registered email address to the designated email address of the company, as provided in the notice.

Further, under GC No. 17:

- The company shall contact all members (whose email addresses are not registered with the company) over the telephone, or any other mode for gathering information, and register their e-mail addresses before sending the EGM notice.
- If the contact details of the members are not available with the company, it shall publish a public notice in one vernacular newspaper and one English language newspaper, both having wide circulation in the district where the registered office of the company is situated and preferably having electronic editions, specifying the following information:
 - (i) the company intends to hold the EGM through VC or OAVM in compliance with the applicable provisions of CA 2013, GC No. 14, and GC No. 17, and for the said purpose it proposes to provide notice to all its members through email at least three days from the date of publication of public notice; and
 - (ii) the details of the company email address along with a telephone number that the members may contact for registering their email address for participation and voting in the EGM.

2. Contributions to be covered under CSR

The MCA issued General Circular No. 15 dated April 10, 2020 providing responses to some questions relating to Corporate Social Responsibility (“CSR”), the key points of which are as follows:

Covered under valid CSR: (i) contributions to the PM CARES Fund; (ii) contributions to the State Disaster Management Authority; (iii) spending on COVID-19 related activities and (iv) payment of ex-gratia to temporary / casual / daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID-19.

Not covered under valid CSR: (i) payment of salaries / wages to employees / workers / contract workers / daily wage workers; and (ii) contribution to the Chief Minister’s Relief Fund’ or the ‘State Relief Fund for COVID-19’.

3. Companies Fresh Start Scheme, 2020 and LLP Settlement Scheme, 2020

The MCA issued two circulars dated March 30, 2020, one being the Companies Fresh Start Scheme, 2020 (General Circular No. 12/2020) and the second being the revised LLP Settlement Scheme, 2020 (General Circular No. 13/2020) to support companies in complying with their filing requirements in light of Covid-19.

Under the Companies Fresh Start Scheme, 2020, the MCA is condoning delay in the filing of documents in the MCA-21 registry. This scheme also grants immunity from prosecution (but not against substantive violations of the law) and from proceedings for imposing penalty on account of delay associated with certain filings. This scheme is effective from April 1, 2020 to September 30, 2020.

The revised LLP Settlement Scheme, 2020 provides a one-time waiver of filing fees due to delay in filings by LLPs with the Registrar of Companies from April 1, 2020 to September 30, 2020.



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