

## AGM through video-conferencing for private companies

May 16, 2020 | [\[2020\] 116 taxmann.com 594 \(Article\)](#)



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In view of the present extra-ordinary circumstances due to the pandemic caused by COVID-19 prevailing in the country, requiring social distancing, it is difficult for companies to obtain shareholders' approval by conducting general meetings. Taking into consideration this situation, Ministry of Corporate Affairs (MCA) had provided a framework for conducting extra-ordinary general meeting (EGM) of the company through video conferencing (VC) or other audio-visual means (OAVM)<sup>i</sup>. MCA issued another Circular and permitted companies to hold the annual general meeting (AGM) through VC or OAVM during the calendar year 2020<sup>ii</sup>. This article is an analysis of the MCA directions and relevant provisions of the of the Companies Act, 2013 (Act) w.r.t. the general meetings for private companies.

**1. Time-line for conducting AGM (section 96 of the Act):** Every company (other than One Person Company) shall in each year hold in addition to any other meetings, a general meeting as its AGM, and not more than 15 months shall elapse between the date of one AGM of a company and that of the next. In case of the first AGM, it shall be held within a period of 9 months from the date of closing of the first financial year (FY) of the company and in any other case, within a period of 6 months, from the date of closing of the FY. MCA has not changed the timelines for conducting AGM with FY ending March 21, 2020. However, MCA has clarified that if the companies whose FY (other than 1st FY) has ended on December 31, 2019, shall hold their AGM for such FY within a period of 9 months from closure of FY *i.e.* September 30, 2020 and that the same shall not be viewed as a violation<sup>iii</sup>.

**2. Day, time & Venue of AGM (section 96 of the Act):** According to the provisions of the Act, every AGM shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. The AGM shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. Subject to satisfaction of certain conditions, MCA has allowed companies to conduct their AGM through VC or OAVM during the calendar year 2020. MCA has not changed the day and time of AGM. For effective co-ordination and administrative support, the Chairman of the company may conduct the meeting from registered office through VC or OAVM. According to the MCA directions, the convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.

**3. Mode of sending AGM Notice (section 101 of the Act):**

Taking into consideration the difficulties involved in dispatching of physical copies of financial statements (including Board's Report, Auditor's Report, or other documents required to be attached), MCA has permitted sending such documents by e-mail to the members, trustees for the debenture-holders, or any other person entitled to receive such documents. Private companies are not required to give public notice by way of advertisement in any newspaper, however, the company shall take necessary steps to register the e-mail addresses of all persons who have not registered their e-mail addresses with the company. In such cases, the board of directors may initiate communication with the shareholders for registration of email addresses. In case of private companies (with share capital), MCA has prescribed minimum registration of e-mail addresses *i.e.* e-mail addresses of atleast half of its total number of members who represent more than 75% of such part of the paid-up share capital of the company *i.e.* both conditions shall be satisfied.

**4. Contents of AGM Notice (section 101 of the Act):**

Under the extant provisions of the Act, a general meeting of a company may be called by giving not less than clear 21 days' notice either in writing or through electronic mode. An AGM may be called after giving shorter notice if consent, in writing or by electronic mode, is accorded thereto by not less than 95% of the members entitled to vote thereat. Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting. There is no change in the said provisions for the AGM through VC or OAVM. However, as per the MCA directions, the private company shall necessary disclosures w.r.t. framework, helpline numbers, display of notice on website of company (if any), etc.

**5. Recipients of notice of the AGM (section 101 of the Act):**

The notice of AGM of the company shall be given to every member of the company, legal representative of any deceased member or the assignee of an insolvent member, the auditor or auditors of the company; and every director of the company. There is no change in the said provisions for the AGM through VC or OAVM.

**6. Statement to be annexed to notice (section 102 of the Act):**

A statement setting out prescribed material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting. There is no change in the said provisions for the AGM through VC or OAVM. However, in case of private companies, section 102 of the Act shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise<sup>iv</sup>;

**7. Quorum for meetings (section 103 of the Act):**

Unless the articles of the company provide for a larger number, in the case of a private company, 2 members personally present, shall be the quorum for a meeting of the company. There is no change in the said provisions for the AGM through VC or OAVM. However, in case of private companies, section 103 of the Act shall apply unless otherwise specified

in respective sections or the articles of the company provide otherwise<sup>v</sup>. As per the MCA Circular, the member participating through VC or OAVM would be counted for the purpose of reckoning the quorum under the Act. MCA has also stated that at least an independent director and auditor/representative of auditor are mandated to attend the such meeting through VC or OAVM. Institutional investors are encouraged to attend and vote at the meeting.

**8. Chairman (section 104 of the Act):** According to the extant provisions of the Act, unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands. If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act and the Chairman elected on a show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the meeting. According to the MCA directions, the process for election of Chairman depends upon the members present at the meeting *i.e.* if members present are less than 50, then the Chairman is appointed in accordance with section 104 of the Act. And if the member present are more than 50, then the Chairman shall be appointed by a poll conducted through electronic voting system during the meeting. *i.e.* generally, in the case of listed entities, it will be compulsory to have a system of 'electronic voting during the meeting' for members attending electronically (*i.e.* VC or OAVM).

**9. Proxies (section 105 of the Act):** According to the extant provisions of the Act, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. However, the proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. Considering the fact that the member would be attending the general meeting through VC or OAVM, in the present context, the concept of proxy has become redundant.

**10. Voting by show of hands (section 107 of the Act):** According to the extant provisions of the Act, at any general meeting, a resolution put to the vote at the meeting shall, unless a poll is demanded (u/s 109 of Act) or the voting is carried out electronically, be decided on a show of hands. According to the MCA direction, where less than 50 members are present in a meeting, the Chairman may decide to conduct a vote by show of hands (*i.e.* one member is equal to one vote, irrespective of shareholding), unless a demand for poll (*i.e.* one share is equal to one vote) is made by any member in accordance with section 109 of the Act. MCA has directed two-way teleconferencing or webex for ease of participation of members. For closely-held private companies, it would not be a complex exercise.

**11. Representation of corporations at the meeting of companies (section 113 of the Act):** According to the extant

provisions, a body corporate (whether a company within the meaning of the Act or not) may if it is a member of a company, by resolution of its board of directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company. Such person shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member. According to the MCA directions, such members shall be counted for the purpose of quorum and can vote in the meeting;

**12. Resolutions to be filed with Registrar of Cos. (section 117 of the Act):** According to extant provisions in the Act, a copy of every resolution or any agreement, together with the explanatory statement, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within 30 days of the passing. According to the MCA directions, the resolutions passed under the said framework shall be filed with the Registrar of Companies within 60 days of the meeting. However, as of now, the e-Form MGT - 14 (on the MCA portal has not been amended to this effect.

**13. Minutes of AGM (section 118 of the Act):** According to the extant provisions of the Act, every company shall cause minutes of the proceedings of every general meeting of any class of shareholders, to be prepared and signed in prescribed manner. The minutes shall be kept within 30 days of the conclusion of every such meeting concerned, in book kept for that purpose with their pages consecutively numbered. The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat. The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds. The minutes kept in accordance with the provisions of section 118 of the Act shall be evidence of the proceedings recorded therein. There is no change in the said provisions for the AGM through VC or OAVM.

**14. Payment of Dividend (section 123 of the Act):** According to the extant provisions of the Act, the amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend. Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account. MCA has directed companies to pay dividend through electronic clearing service or any other means. Where the company is unable to pay the dividend to any shareholders by electronic mode, due to non-availability of bank details, the company are directed to dispatch the dividend warrant/cheque to such shareholder by post (*i.e.* upon normalization of postal services).

**15. Inspection of documents and registers:** Under the extant provisions of the Act, the register of directors and KMP and their shareholding shall be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting. MCA has directed that all other compliances associated with the provisions relating to general meeting viz making disclosures, inspection of related documents by members, or authorizations for voting by body corporate etc. as provided in the Act and the articles of association of the company are made through electronic mode.

**16. Extension of AGM (section 96 of the Act):** According to the provisions of the Act, the Registrar may, for any special reason, extend the time within which any AGM, other than the first AGM, shall be held, by a period not exceeding 3 months. MCA has clarified that if a company is unable to conduct its AGM in accordance with the prescribed framework, then such companies shall file an application with the Registrar for extension of AGM at suitable point.

By an amendment to the Act by Companies (Amendment) Act, 2017, the AGM of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance<sup>vi</sup>. That was the first occasion, wherein the AGM could be conducted at a place other than city, town or village in which registered office of the company is situated. However, taking into consideration the present circumstances of COVID - 19 and several guidelines issued by Ministry of Home Affairs, MCA has permitted companies to conduct general meetings (AGM or EGM) through VC or OAVM. Taking into consideration the advantages of technological developments, the MCA should, in the long term, consider general meetings for private companies and unlisted public companies through VC or OAVM. Similar to Rule 3 of Companies (Meetings of Board and its Powers) Rules, 2014 (relating to 'board meeting through VC'), MCA shall consider introducing adequate checks and balances in the shareholders meeting through VC or OAVM. This will definitely benefit close-held companies, subsidiary companies, joint companies, in their decision-making.

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<sup>i.</sup> MCA General Circular No. 14/2020 dated April 8, 2020.

<sup>ii.</sup> MCA General Circular No. 20/2020 dated May 5, 2020.

<sup>iii.</sup> MCA General Circular No. 18/2020 dated April 21, 2020.

<sup>iv.</sup> MCA Notification No. GSR 464(E), dated June 5, 2015.

<sup>v.</sup> MCA Notification No. GSR 464(E), dated June 5, 2015.

<sup>vi.</sup> With effect from June 13, 2018.