

F. No. 2/1/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi-110001
Dated: 13th April, 2020

To
All Regional Directors,
All Registrar of Companies,
All Stakeholders.

Subject: Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

Sir/Madam,

Reference is drawn to this Ministry's General Circular No. 14/2020 dated 8th April, 2020 on the subject cited above. After the issue of the said circular, the Ministry has received representations from stakeholders for clarification on some of the elements in the framework laid down therein. The stakeholders have highlighted the difficulties in serving and receiving notices/responses by post in the current circumstances. In view of the same and with a view to bringing in greater clarity on the modalities to be followed by companies for conduct of EGMs during the COVID-19 related social distancing norms and lockdown for the period as indicated in the said Circular, or till further orders, whichever is earlier, the following clarifications are hereby 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 –

- I. In view of the present circumstances, in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules, 2014 (the rules), the notices to members may be given only through e-mails registered with the company or with the depository participant/depository.
- II. While publishing the public notice as required under rule 20(4)(v) of the rules, the following matters shall also be stated, namely:-
 - a. a statement that the EGM has been convened through VC or OAVM in compliance with applicable provisions of the Act read with General Circular 14/2020, dated 8th April, 2020 and this Circular;
 - b. the date and time of the EGM through VC or OAVM;

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- c. availability of notice of the meeting on the website of the company and the stock exchange;
 - 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 the e-voting system during the meeting;
 - e. the manner in which the members who have not registered their email addresses with the company can get the same registered with the company;
 - f. any other detail considered necessary by the company.
- III. The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all 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 –

- I. In view of the present circumstances, in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules, 2014 (the rules), the notices to members may be given only through e-mails registered with the company or with the depository/depository participant.
- II. A copy of the notice shall also be prominently displayed on the website, if any, of the company.
- III. In order to ensure that all members are aware that a general meeting is proposed to be conducted in compliance with applicable provisions of the Act read with General Circular No. 14/2020, dated 8th April, 2020, the company shall:
 - (a) contact all those members whose e-mail addresses are not registered with the company over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all its members; or
 - (b) where the contact details of any of members are not available with the company or could not be obtained as per (a) above, it shall cause a public notice by way of advertisement to be published immediately at least once in a vernacular newspaper in the principal 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 language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information:-

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- i. That the company intends to convene a general meeting in compliance with applicable provisions of the Act read with the General Circular No. 14/2020, dated 8th April, 2020 and this Circular, and for the said purpose it proposes to send notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice;
 - ii. the details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered for participation and voting in the general meeting.
- IV. The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all 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 for voting by show of hands:- In sub-paragraph A – IX of para 3 of the General Circular 14/2020, dated 8th April, 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, the said sub-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 voting during the meeting held through VC or OAVM."

(iii) Passing of certain items only through postal ballot without convening a general meeting:- (a) In the General Circular No. 14/2020, dated 8th April, 2020, it was stated that the companies may pass resolutions through postal ballot/e-voting without holding a general meeting unless it is so required as per section 110(1)(b) of the Act. Clarifications have been sought on the issue of dispatch of notices by companies by post and communication by the members of their assent or dissent on relevant resolutions by post under the current circumstances.

(b) The matter has been examined and the attention is invited to rule 22(15) of the rules which provides that the provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, *mutatis mutandis* to this rule in respect of the voting by electronic means. Therefore, for companies covered in para 3-A of the General Circular No. 14/2020, dated 8th April, 2020, while they are transacting any item only by postal ballot, upto 30th June 2020, or till further orders, whichever is earlier, the requirements provided in rule 20 of the rules as well as the framework provided in the General Circular No. 14/2020, dated 8th April, 2020 and this Circular

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would be applicable *mutatis mutandis*. The company would send notice by email to all its shareholders who have registered their email addresses with the company or depository participant/depository. The company would also be duty bound to provide a process of registration of e-mail addresses of members and state so in its public notice. The communication of the assent or dissent of the members would only take place through the remote e-voting system, as no meeting will be required to be called.

(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 8th April, 2020:-

Clarification has been sought as to whether the members are required to take part in the poll on items considered during the meeting by sending e-mails in advance to the company before the meeting is actually held through VC or OAVM facility. The matter has been examined and it is hereby clarified that sub-paragraph B-XII of para 3 of the General Circular No. 14/2020, dated 8th April, 2020 does not provide for polling by members at any time before the general meeting. The poll will take place during the meeting, and the members may convey their assent or dissent only at such stage on items considered in the meeting by sending e-mails to the designated e-mail address of the company, which was circulated by the company in the notice sent to the members.

2. This issues with the approval of the competent authority.

Yours faithfully,


(K.M.S. Narayanan)
Assistant Director

Copy to:-

1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File.
