

MCA ISSUES RELIEF MEASURES TO CONDUCT EGM: NIFTY SOLUTION TO THE CONUNDRUM?**1. INTRODUCTION**

In the wake of the COVID-19 pandemic and the consequent restrictions imposed on the movement of people, goods and services, companies are facing new hurdles in carrying on their business while ensuring compliance with the Companies Act, 2013 (the “Act”) and the rules prescribed thereunder. In light of this, the Ministry of Corporate Affairs (the “MCA”) has taken measures to ease the burden of companies in terms of corporate governance and secretarial processes required to be followed by them, particularly with respect to relaxing of certain procedural requirements required to be followed by companies for holding meetings of their members as well as that of their boards.

One of the key issues being faced by companies is the requirement for shareholders to hold physical meetings to take up even urgent matters which is affecting operations of companies. This alert discusses one such measure taken by the MCA by way of a notification dated April 8, 2020 (the “Notification”) relaxing this requirement with respect to extra-ordinary general meetings (“EGMs”) conducted by companies for matters that are considered ‘unavoidable’.

2. NOTIFICATION AS A REMEDIAL MEASURE

Section 108 of the Act, read with Rule 20 of the Companies (Management and Administration) Rules, 2014 enables provision of e-voting at shareholder meetings for (i) companies which have listed their equity shares on a stock exchange and (ii) companies which have 1000 or more members.

Section 173(2) of the Act specifically permits participation of directors in a meeting of the board through video conferencing or other audio visual means (“VC-OAVM”) which are capable of recording and recognizing the participation of directors at such meetings.

However, similar provisions relating to e-voting and VC- OAVM were not extended to general meetings.

In light of the aforesaid, the Notification is a welcome step as it (a) enables companies (including those that are not prescribed under Section 108 to provide for e-voting facility) to conduct EGMs by way of VC-OAVM for matters that are considered unavoidable, and (b) extends the video conferencing facility (which was only applicable to board meetings until now) to general meetings as well for matters that are considered unavoidable; subject to the rules set out therein, till June 30, 2020.

The Notification provides for two-fold set of rules for conducting EGMs through electronic means: the first set of rules apply to companies which are required to provide for VC-OAVM facility to its members (*being companies prescribed under Section 108, as mentioned above*) and the second set of rules are applicable to such companies which are not required to provide for VC-OAVM to its members for conducting general meetings, as discussed above. This alert discusses these rules in detail below.

3. PROCESSES LAID OUT IN THE NOTIFICATION

3.1 Notice to the EGM to be held through VC-OAVM

The notice for the EGM is required to contain disclosures with respect to the manner in which attendance through electronic means is available to the members and the company is required to provide clear instructions on the manner of access to and the participation in the meeting. Companies are also required to provide a helpline number through the R&T, technology provider or otherwise, in case of any assistance that the shareholders may require before or during the meeting. A copy of the notice is required to be displayed on the company's website and due intimation of the EGM is required to be provided to the stock exchange(s) in case of a listed company. If a notice for an EGM has been issued prior to the Notification, the processes laid down in this Notification may be adopted provided consents for shorter notice have been obtained along with other relevant compliances under the Act.

3.2 Set-up of the EGM by way of VC-OAVM

While scheduling the EGM, the company must ensure that all conflicting time zones out of which all shareholders are based, are taken into consideration. The electronic facility must allow for participation by all members attending the meeting. Further, for companies which are prescribed to provide e-voting facilities, the electronic facility must allow e-voting for at least 1000 members. For companies which are not required to provide for e-voting under the Act, the electronic facility must allow e-voting for at least 500 members or members equal to the total number of members of the company (whichever is lower) on a first-come-first-serve basis. Notwithstanding the above, all large shareholders holding 2% or more of the share capital of the company must be allowed to attend the meeting. All members present through VC-OAVM must be accounted for the purpose of achieving quorum in accordance with the Act. Further, for the purpose of transparency, a transcript of the meeting so held by way of this Notification, is required to be kept in the custody of the company or shall be released on the website (in case of a public company).

3.3 Voting at such meetings

Further, the voting at an EGM held pursuant to the Notification may be held by way of show of hands during the meeting unless a demand for poll has been made in accordance with Section 109 of the Act (in case there are less than 50 members attending the meeting) or by way of e-voting (in other cases).

3.4 Proxy not permitted

The Notification explicitly disallows attendance of meetings by members by way of proxies. The rationale provided is that proxies are permitted when physical attendance of meetings is not possible. The Notification goes a step ahead and encourages institutional investors to attend the meetings through VC-OAVM.

3.5 Miscellaneous provisions

The Notification also provides for certain other processes to be complied with while conducting EGMs by way of VC-OAVM. At least one independent director (wherever applicable) and the auditor or his representative are required to attend such meetings held pursuant to the Notification. Companies which are not required to provide for e-voting facilities under Section 108 of the Act, are also required to ensure that confidentiality of the password and other privacy issues associated with the designated email address are strictly maintained at all times. Further, the Notification also provides flexibility in declaring the results of the votes cast. It states that if the counting of votes requires longer than the duration accounted for the

scheduled meeting, such a meeting may be adjourned and called back again later to declare the votes. Most importantly, all resolutions passed at an EGM held pursuant to the Notification shall be filed within 60 days (*as opposed to 30 day period as prescribed for certain forms like Form MGT-14 or otherwise*) of such meeting, with the registrar of companies.

4. **INDUSLAW VIEW**

The Notification surely provides much-needed clarity and relief to all stakeholders industry-wide. It enables companies to conduct business as usual to an extent whilst ensuring that there is adherence to principles of corporate governance even during such challenging times. However, given that the Notification limits the applicability of these relaxations only to matters which are considered 'unavoidable', it remains to be seen if any further clarification will be provided by the MCA as to what matters would be considered 'unavoidable'. In the absence of any guidance in this regard from the MCA, companies need to ascertain whether the matter in question can be considered 'unavoidable' on a case to case basis.

While this is a welcome move and enables companies to hold general meetings by way of VC-OAVM, it also increases the compliance requirements for companies, which may not be easy to implement for certain smaller companies having limited infrastructure.

Though this Notification is meant to guide companies to conduct EGMs only till June 30, 2020, the times ahead will decide if this Notification will serve as a temporary measure or beyond.

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Date: April 10, 2020

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