

## Convening of AGM during COVID-19 crisis

*-Will VC mode motivate the companies to call the AGM early?*

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### Background

In view of the COVID-19 outbreak, the Ministry of Corporate Affairs ('MCA') had come up with the circular dated April 08, 2020<sup>1</sup> providing certain relaxations from the provisions of Companies Act, 2013 ('Act') and rules made thereunder including conducting the extra-ordinary general meeting ('EGM' or 'Meeting') for passing the resolutions of urgent nature through video conferencing ('VC') and other audio visual means ('OAVM') till June 30, 2020. Further, in order to provide more clarity on the modalities to be followed by the companies for conducting EGM viz. manner of issuance of notice, voting by show of hands and postal ballot etc., another circular dated April 13, 2020<sup>2</sup> (Collectively referred to as 'EGM Circulars') was brought in force. In continuation to the aforesaid circulars and in view of the social distancing norms and other restrictions thereof, MCA provided an extension of 3 months for holding annual general meeting ('AGM') for the companies having the calendar year as the financial year vide its circular dated April 21, 2020<sup>3</sup>.

Now, considering the representations of various stakeholders, MCA has issued a circular dated May 05, 2020<sup>4</sup> ('AGM Circular') in line with the relaxations provided under the EGM Circulars to hold AGMs through VC/ OAVM.

While the AGM Circular will draw its reference from the EGM Circulars in terms of the modalities, however, there are various issues worth discussing to understand the scope, impact and applicability for companies to call AGM during the COVID-19 crisis. This write-up focuses on some of the issues and also provides the comparison between both the EGM Circulars and AGM Circular.

### Scope and applicability

The AGM Circular applies to all the AGMs to be called by companies within the calendar year 2020. Generally speaking all the companies will call their AGM for the financial year 2019-2020 in the calendar year 2020 only. Therefore, one may conclude that this AGM Circular can be availed by all the companies without any exception. Having said that, it is also pertinent to mention that a specific

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<sup>1</sup> [http://mca.gov.in/Ministry/pdf/Circular14\\_08042020.pdf](http://mca.gov.in/Ministry/pdf/Circular14_08042020.pdf)

<sup>2</sup> [http://www.mca.gov.in/Ministry/pdf/Circular17\\_13042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf)

<sup>3</sup> [http://www.mca.gov.in/Ministry/pdf/Circular18\\_21042020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular18_21042020.pdf)

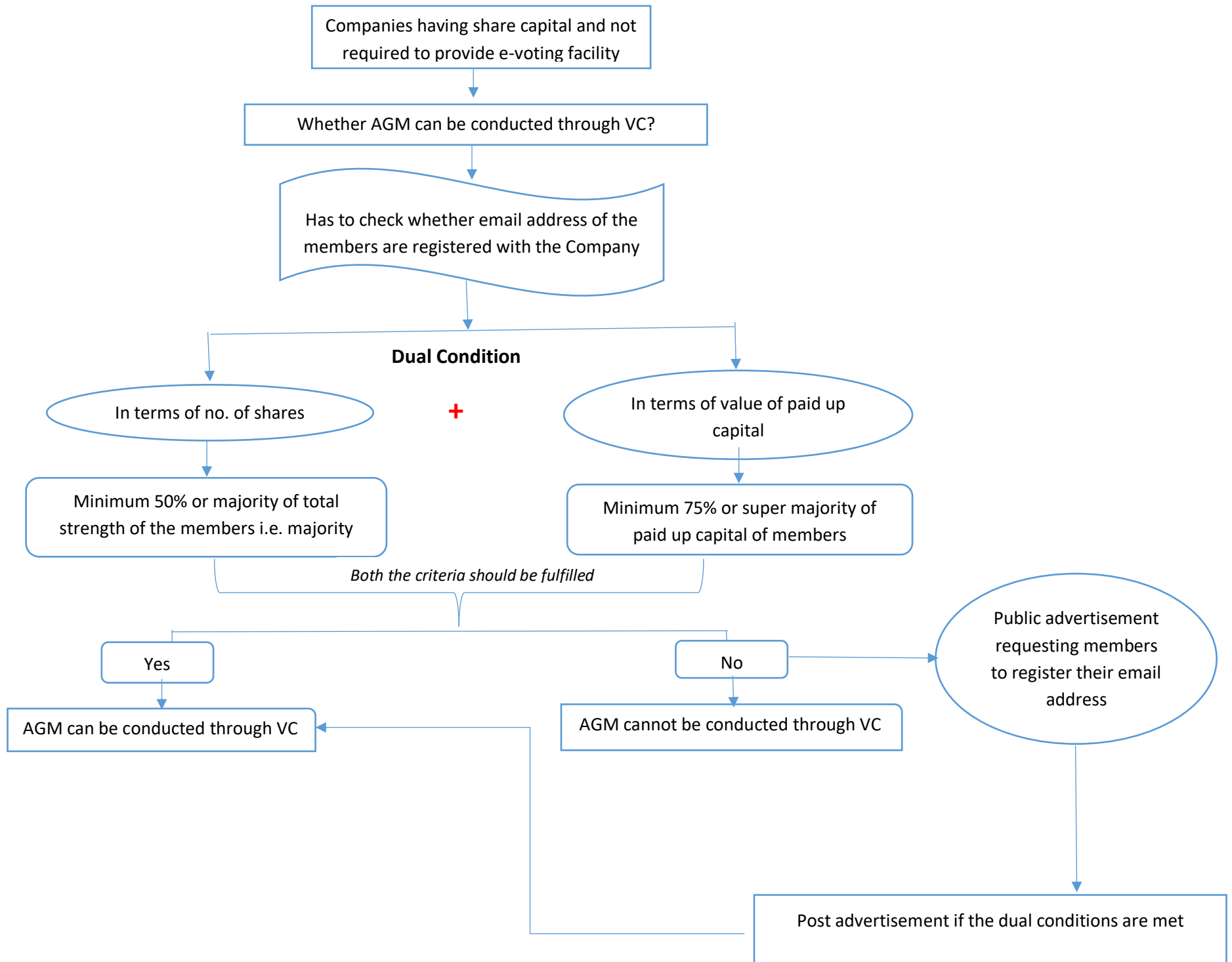
<sup>4</sup> [http://www.mca.gov.in/Ministry/pdf/Circular20\\_05052020.pdf](http://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf)

condition has been laid down for companies which are not mandated to provide e-voting facility, to call their AGMs under this AGM Circular.

Para B (I) of the AGM circular provides that such companies can conduct their AGM through VC or OAVM only if the company has in its record, the email-ids of at least half of its total number of members, who -

- in case of a Nidhi, hold shares of more than one thousand rupees in face value or more than one per cent. of the total paid-up share capital, whichever is less;
- in case of other companies having share capital, ***who represent not less than seventy-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting;***
- in case of companies not having share capital, ***who have the right to exercise not less than seventy-five per cent. of the total voting power exercisable at the meeting***

While the AGM Circular provides three classes of companies, most of the companies fall under the second class where two types of majority has been mentioned. The following flow chart represents the manner in which such classes of companies, as a pre-requisite will need to have the email-ids registered with themselves



Further, while this AGM Circular is applicable on companies, other entities like public sector banks will not be covered under this circular. Seemingly, SEBI will have to provide some sort of similar relaxation to such entities.

Furthermore, while the AGM circular comes with the time frame to avail the AGM Circular within the calendar year 2020, however, considering the fact that there would be movement restrictions even after the lockdown is lifted, therefore, this added feature, seems to be of a permanent nature for the times to come under Indian legislation. Also, many countries like US and UK already allow this facility and other countries like Hong Kong, Austria, Belgium, Germany and Italy, etc. have started giving this facility post the outbreak of COVID-19.

### Motivation to conduct AGM through VC/ OAVM

After the enforcement of the AGM Circular, the companies will be motivated to convene the AGM through VC/OAVM mode. The reasons for such a motivations are many, some of them are as follows:

- i. Less time consuming process;
- ii. Operating convenience;
- iii. Cost effectiveness;
- iv. Environment friendly;
- v. Sooner getting the advantage of last audited accounts;

While there are many reasons to conduct the AGM through VC/OAVM mode, the only difficulty seems to be is the completion and audit of the annual accounts. Once the audit is done, the companies may proceed for convening the AGM through this mode.

### Will Companies want to convene their AGM early?

This question in our view, should be in affirmative for various reasons as given below:

- Saving in cost
- Various provisions under the CA, 2013 and various other laws (especially which are applicable to NBFCs) provide exemptions or benefits to the companies based on the net worth or assets size as per the last audited financial statements. Some them include:

- NBFCs having asset size is of ₹ 500 cr or more as per last audited balance sheet are considered as systemically important NBFCs;
- Applicability of CSR provisions under section 135 of the CA, 2013;
- Appointment of independent and woman director under section 149 of the CA, 2013;
- Constitution of audit committee under section 177 of the CA, 2013;
- Applicability of secretarial audit under section 204.
- Early AGM would mean early declaration of dividend and therefore a step towards shareholder service.
- The restrictions on gathering may still continue after lifting of the lock-down.

#### AGM Circular to cover both 'Ordinary Business' and 'Special Business'

Para A(II) and B(IV) of the AGM Circular provides the type of business which will be transacted in the AGM through VC/OAVM. The text of the same is provided below:

*“In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.”*

While on the first reading of the para it seems that the AGM Circular will allow to convene the AGM by VC/OAVM only for the unavoidable special business. However, that should not be the intent of the lawmakers as an AGM without the ordinary business will have to be adjourned till such time the 'Ordinary Business' items are decided and concluded. Therefore, aforesaid para should be construed and interpreted in a manner to include the unavoidable special business along with the ordinary business items. Accordingly, in the light of aforesaid circular, the company may proceed with to pass the ordinary as well as unavoidable special business in their AGM.

Further, for items requiring right of representation, the same will not be conducted through VC/OAVM as mentioned under EGM Circular.

#### Meaning of the term 'Unavoidable'

Both the AGM as well as the EGM Circulars use the term 'unavoidable' business matters. The term 'unavoidable' means something which cannot be deferred and should not be deferred. If a company is calling and conducting its AGM, there is no reason for the company

to unnecessarily defer any item of business and call a separate meeting to deal with them. Therefore, no company would ideally call a separate meeting to decide on matters just because they were not requiring immediate action during the said year. Accordingly, based on the reason of exigency or business urgency, etc., the Board of the company has to decide on the matters which are unavoidable.

### Comparison of the Circulars

A meeting of the shareholders' which is required to be convened by the companies on an annual basis, on account of a statutory requirement is called as AGM. Whereas an EGM is required to be convened by a company when the approval of the shareholders' is required on urgent matters. The AGM Circular provides that the framework and manner of issuing notices provided in the EGM Circulars shall be applicable *mutatis mutandis* for conducting the AGM. While both the meetings are of the shareholders only, however called and conducted with different mindset altogether. Accordingly, it is imperative to see the implications of the provisions of EGM Circulars on the AGM. A brief comparison of both circulars is provided below:

Sr. No.	Heading	Provisions under the EGM Circulars	Provisions under AGM Circular
1.	Type of business	Only the unavoidable business shall be transacted at the EGM (excluding ordinary business items and matters requiring right of representation).	Only the unavoidable business in addition ordinary business shall be transacted at the AGM as discussed above.
2.	Notice of the Meeting	The notice of the Meeting may be given only through email registered with the company/depository participant/depository.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
<b>For companies which are required to provide the e-voting facility</b>			
1.	Content of the public notice under rule 20 of the Companies (Management and Administration) Rules, 2014	<p>The following contents shall form part of the public notice for e-voting:</p> <ul style="list-style-type: none"> <li>i. a statement that the EGM shall be convened through VC or OAVM;</li> <li>ii. date and time of the EGM;</li> <li>iii. availability of notice on the website of the company and stock exchange, if required;</li> <li>iv. the manner in which the following can cast their votes:</li> </ul>	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.

Sr. No.	Heading	Provisions under the EGM Circulars	Provisions under AGM Circular
		<ul style="list-style-type: none"> <li>a. physical shareholders; and</li> <li>b. who have not registered their email addresses with the company;</li> <li>v. the manner in which the persons can get their email addresses registered;</li> <li>vi. any other detail considered necessary by the company</li> </ul>	
2.	Maintenance of recorded transcript	The recorded transcript shall be maintained by the company. In case of public company, the recorded transcript shall also be made available on the website of the company.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
3.	Minimum standards of VC/OVAM facility	Ensure that the Meeting through VC/OAVM facility allows two way teleconferencing for the ease of participation of the members. The VC/OVAM facility must have a capacity to allow at least 1000 members to participate on first come first serve basis.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
4.	Time frame for VC/OVAM facility	The VC/OVAM facility shall be kept open at least 15 minutes before the scheduled time of the EGM and shall not be closed till the expiry of 15 minutes after the conclusion of the scheduled time for EGM.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
5.	Attendance through VC/OVAM	Attendance of members through VC/OAVM shall be counted for quorum under section 103 of the Act.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
6.	Voting by the members present in the Meeting	The members who are present in the EGM through VC/OAVM facility and have not casted their vote through remote e-voting shall be allowed to vote through e-voting system.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.

Sr. No.	Heading	Provisions under the EGM Circulars	Provisions under AGM Circular
7.	Election of chairman	Unless the articles require any specific person to be appointed as a Chairman for the Meeting, the Chairman for the Meeting shall be appointed in the following manner: <ul style="list-style-type: none"> <li>i. where there are less than 50 members present at the Meeting, the Chairman shall be appointed in accordance with section 104;</li> <li>ii. in all other cases, the Chairman shall be appointed by a poll conducted through the e-voting system during the Meeting.</li> </ul>	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
8.	E-voting facility during the Meeting	The Chairman shall ensure that the facility of e-voting system is available for voting during the Meeting held through VC/OAVM.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
9.	Voting by the authorized representatives	The representatives 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/OAVM.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
10	Role of Scrutinizer	The company should be required appoint a scrutinizer in accordance with the applicable provisions of the CA, 2013 read with allied rules for enabling transparent voting free from any conflict of interest.	Same as for EGM.
11	Attendance of independent director and the auditor	At least one independent director (if is required to appointed), and the auditor or his authorized representative, shall attend such Meeting through VC/ OAVM.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
12	Notice issued prior to the EGM Circulars	In case a notice for Meeting has been served prior to the date of the EGM Circulars, the framework proposed in this Circular may be adopted for the Meeting, in case the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with	For companies which have already sent their notices for calling AGM, should be required to send out fresh notices containing the fact that meeting will conducted through VC/OAVM in terms of the AGM Circular.

Sr. No.	Heading	Provisions under the EGM Circulars	Provisions under AGM Circular
		due disclosures in consonance with this Circular is issued consequently.	In our view, the length of AGM notices can remain 21 days unless the same is called at a shorter notice.
13	Filing of resolutions	All resolutions, passed in accordance with this mechanism shall be filed with the ROC within 60 days of the Meeting, clearly indicating therein that the mechanism provided herein along with other provisions of the Act and rules were duly complied with during such Meeting.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
<b>For companies which are not required to provide the e-voting facility</b>			
1.	Intimation to the members w.r.t the Meeting	The company shall contact all the members whose e-mail addresses are not registered with the company over telephone/any other mode, before sending notice to all the members;	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
2.	Content of the public notice	<p>Where the contact details of any of the members are not available with the company, it shall issue of public notice in vernacular language and vernacular newspaper in which the registered office is situated, &amp; in English language and English newspaper having wide circulation in that district and electronic editions.</p> <p>The following content shall form part of the public notice:</p> <ol style="list-style-type: none"> <li>a statement that the EGM shall be convened through VC or OAVM; and the company proposes to send the notice by email at least 3 days from the date of publication of the public notice;</li> <li>the details of the email address along with the phone number on which the members may contact for</li> </ol>	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.

Sr. No.	Heading	Provisions under the EGM Circulars	Provisions under AGM Circular
		getting their e-mail addresses registered for participation and voting in the Meeting	
3.	Maintenance of recorded transcript	The recorded transcript shall be maintained by the company. In case of public company, the recorded transcript shall also be made available on the website of the company.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
4.	Minimum standards of VC/OVAM facility	Ensure that the Meeting through VC/OAVM facility allows two way teleconferencing for the ease of participation of the members. The VC/OVAM facility must have a capacity to allow at least 500 members or members equal to total number of members, whichever is lower to participate on first come first serve basis.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
5.	Timeframe for VC/OVAM facility	The VC/OVAM facility shall be kept open at least 15 minutes before the scheduled time of the EGM and shall not be closed till the expiry of 15 minutes after the conclusion of the EGM.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
6.	Attendance through VC/OVAM	Attendance of members through VC/OAVM shall be counted for quorum under section 103 of the Act.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
7.	Designated e-mail address for voting.	The company shall provide a designated e-mail address to all members at the time of sending the notice of Meeting so that the members can convey their vote, when a poll is required to be taken during the Meeting on any resolution, at such designated email address.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
8.	Voting through registered e-mail only	During the Meeting held through VC/OVAM facility, where a poll on any item is required, the members shall cast their vote on the resolutions only by sending their email addresses which are registered with the company. The said emails	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.

Sr. No.	Heading	Provisions under the EGM Circulars	Provisions under AGM Circular
		shall only be sent to the designated email address circulated by the company in advance.	
9.	Election of chairman	Unless the articles require any specific person to be appointed as a Chairman for the meeting, the Chairman for the Meeting shall be appointed in the following manner: iii. where there are less than 50 members present at the Meeting, the Chairman shall be appointed in accordance with section 104; iv. in all other cases, the Chairman shall be appointed by a poll conducted through the registered e-mail during the Meeting.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
10	Voting by the authorized representatives	The representatives of the members may be appointed for the purpose of voting through registered e-mail or for participation and voting in the Meeting held through VC/OAVM.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
11	Attendance of independent director and the auditor	At least one independent director (if is required to appointed), and the auditor or his authorized representative, shall attend such Meeting through VC/ OAVM.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
12	Role of Scrutinizer	The company may appoint a scrutinizer even though on a voluntary basis for enabling transparent voting free from any conflict of interest.	Same as for EGM.
13	Declaration of voting results	In case the counting of votes requires time, the said meeting may be adjourned and called later to declare the result.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.
14	Notice issued prior to the EGM Circulars	In case a notice for Meeting has been served prior to the date of the EGM Circulars, the framework proposed in this Circular may be adopted for the Meeting, in case the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with	For companies which have already sent their notices for calling AGM, should be required to send out fresh notices containing the fact that meeting will conducted through VC/OAVM in terms of the AGM Circular.

Sr. No.	Heading	Provisions under the EGM Circulars	Provisions under AGM Circular
		due disclosures in consonance with this Circular is issued consequently.	In our view, the length of AGM notices can remain 21 days unless the same is called at a shorter notice.
15	Filing of resolutions	All resolutions, passed in accordance with this mechanism shall be filed with the ROC within 60 days of the Meeting, clearly indicating therein that the mechanism provided herein along with other provisions of the Act and rules were duly complied with during such Meeting.	The provisions of EGM Circular will be <i>mutatis mutandis</i> apply for convening the AGM.

**Additional requirements to be complied with by the companies which are required to provide the e-voting facility:**

- Publication of a notice by way of newspaper advertisement before sending the notices and copies of the financial statements, etc., and specifying in the advertisement the following information.
  - a. a statement that the AGM shall be convened through VC or OAVM;
  - b. date and time of the AGM;
  - c. availability of notice on the website of the company and stock exchange, if required;
  - d. the manner in which the shareholders holding shares in physical mode, 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 persons can get their email addresses registered;
  - f. the manner in which the members can give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means;
  - g. any other detail considered necessary by the company
- Circulation of the board's report, financial statements and other documents through e-mail instead of physical copies;
- Where the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post;
- Where the company has been permitted to conduct its AGM at its registered office, or at any other place as provided under section 96 of the Act, the company may in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OAVM, to allow other members of the company to participate in such meeting.

- The companies shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents/registers by members, or authorizations for voting by bodies corporate, etc as provided in the Act and the articles of association of the company are made through electronic mode.

#### Additional requirements to be complied with by the companies which are not required to provide the e-voting facility:

- AGM may be conducted through the VC/OAVM facility only if the company which has the email addresses of at least half of its total number of members, in its records, and
  - a. in case of a Nidhi, hold shares of more than 1000 rupees in face value or more than 1% of the total paid-up share capital, whichever is less;
  - b. in case of other companies having share capital, hold at least 75% the paid-up share capital;
  - c. in case of companies not having share capital, who have the right to exercise not less than 75% of the total voting power exercisable at the meeting.
- The company shall take all necessary steps to register the email addresses of all persons who have not registered their email addresses with the company.
- The board's report, financial statements and other documents will be circulated through e-mail instead of physical copies;
- The companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means.
- The company shall upon normalization of the postal services, dispatch the dividend warrant/cheque by post to the shareholders, whose bank accounts are not available.
- The companies shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents/registers by members, or authorizations for voting by bodies corporate, etc as provided in the Act and the articles of association of the company are made through electronic mode.

#### Application for extension of AGM for certain companies

The companies which do not have calendar year as their financial year and are unable to conduct their AGM in accordance with the framework provided in AGM Circular may apply for the application for extension of AGM before the concerned Registrar of Companies under section 96 the Act.

## Conclusion

Many companies which have already approved their AGM notices will have to make suitable changes therein in line with the said circular. Further, post the issue of this AGM Circular, most of the companies will be making their debut in conducting the AGM through VC/ OAVM and it will be interesting to see smooth convening amidst the crisis.

Link to similar articles:

1. [Resources on virtual AGM](#)
2. [FAQ on conducting AGM through video conferencing](#)
3. [General Meeting by Video Conferencing – recognising the inevitable](#)
4. [FAQ on general meeting through VC](#)
5. [Can companies offer VC facility](#)
6. [Webinar on Corporate Meetings during COVID-19 disruptions](#)

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