

# VIRTUAL AGMs



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# About Us



- Vinod Kothari and Company, company secretaries, is a firm with over 30 years of vintage
  - Based out of Kolkata, New Delhi & Mumbai
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

***Our Organization's Credo:***

***Focus on capabilities; opportunities follow***

## Purpose of general meetings – is it a compliance requirement or business requirement?

- Why do companies call general meetings?
  - Is it a social occasion – where shareholders have to meet, eat, chat, or network?
  - Or is it for getting the sense of the members on certain matters?
- Clearly, corporate meetings do not serve a compliance purpose.
  - They are not a policy directive.
  - They are a business need

# Provisions of law applicable to AGMs under CA, 2013 (1/9)

Section/ Rule No.	Heading	Requirement
20	Service of documents	A member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its AGM.
92(4)	Filing of Annual Return in e-Form MGT-7	Every company shall file with the RoC: i. a copy of the annual return <b>within 60 days</b> from the date on which the AGM is held or ii. where no AGM is held in any year <b>within 60 days</b> from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM
96(1)	AGM	i. Every company except OPC, to hold in each year an AGM ii. Not more than 15 months shall elapsed between two AGMs iii. 1 <sup>st</sup> AGM shall be held within 9 months from the date of closing of first FY iv. Other cases, AGM shall be held within <b>6 months</b> from the end of the FY v. RoC may extend timeline within which AGM should have been held for special reasons by a period not exceeding 3 months. vi. If a company holds its 1 <sup>st</sup> AGM as aforesaid, it shall not be necessary for the company to hold any AGM in the year of its incorporation

# Provisions of law applicable to AGMs under CA, 2013 (2/9)

Section/ Rule No.	Heading	Requirement
96(2)	Time and place for conducting AGM	<p>During business hours, that is, <b>between 9 a.m. and 6 p.m.</b> on any day that is not a National Holiday and 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</p> <p>Unlisted company – AGM may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance</p>
97	Power of Tribunal to call AGM	If any default is made in holding the AGM of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the AoA of the company, on the application of any member of the company, call, or direct the calling of, an AGM of the company and give such ancillary or consequential directions as the Tribunal thinks expedient
101(1)	Shorter notice of AGM	<p>An AGM may be called by giving not less than clear 21 days notice either in writing or through electronic mode in such manner as may be prescribed.</p> <p>Shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto—</p> <p>i. In the case of an annual general meeting, by not less than <b>95% of the members</b> entitled to vote thereat</p> <p>Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub section in respect of the former resolution or resolutions and not in respect of the latter</p>

# Provisions of law applicable to AGMs under CA, 2013 (3/9)

Section/ Rule No.	Heading	Requirement
102(1)	Explanatory statement	<p>To be annexed: the nature of concern or interest, financial or otherwise, if any, in respect of each items of—</p> <ul style="list-style-type: none"><li>(i) every director and the manager, if any;</li><li>(ii) every other key managerial personnel; and</li><li>(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);</li></ul> <p>(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.</p>
102(2)	Ordinary business	<ul style="list-style-type: none"><li>(i) the consideration of financial statements and the reports of the Board of Directors and auditors;</li><li>(ii) the declaration of any dividend;</li><li>(iii) the appointment of directors in place of those retiring;</li><li>(iv) the appointment of, and the fixing of the remuneration of, the auditors</li></ul> <p>In case of special business to be transacted at the AGM relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other KMP of the first mentioned company shall, if the extent of such shareholding is not less than 2% of the paid-up share capital of that company, also be set out in the statement.</p>

# Provisions of law applicable to AGMs under CA, 2013 (4/9)

Section/ Rule No.	Heading	Requirement
111 (1) and (2)	Circulation of members' resolution	<p>A company shall, on requisition in writing of such number of members, as required in section 100-</p> <p>(a) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and</p> <p>(b) circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.</p> <p>After a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an AGM is called on a date within 6 weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.</p>
121	Report on AGM in MGT-15	<p>Every <b>listed public company</b> shall prepare in the prescribed manner a report on each AGM including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.</p> <p>The company shall file with the Registrar a copy of the report <b>within 30 days of the conclusion of the AGM</b></p>
123 read with Rule 5(8) of IEPF Rules	Furnishing details on the website	<p>Company shall <b>within a period of 90 days</b> after the holding of AGM or the date on which it should have been held as per the provisions of section 96 of the Act and every year thereafter till completion of the 7 years period, identify the <b>unclaimed amounts</b>, as on the date of holding of AGM or the date on which it should have been held as per the provisions of section 96 of the Act, separately <b>furnish and upload on its own website</b> and also on <b>website of Authority</b> or any other website as may be specified by the Government, a statement or information through <b>Form No. IEPF 2</b>, separately for each year.</p>



# Provisions of law applicable to AGMs under CA, 2013 (5/9)

Section/ Rule No.	Heading	Requirement
129(2)	Financial statements	The Board of Directors of the company shall lay before such meeting financial statements for the financial year
129(3)	Consolidated Financial Statements	Where a company has one or more subsidiaries or associate companies, it shall, in addition to standalone financial statements, prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the AGM of the company along with the laying of its standalone financial statement.
137(1)	Filing of financial statements in e-Form AOC-2	A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the AGM of the company, shall be filed with the Registrar <b>within 30 days of the date of AGM.</b>
137(2)	Financial statements if AGM not held	Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar <b>within 30 days of the last date</b> before which the AGM should have been held.

# Provisions of law applicable to AGMs under CA, 2013 (6/9)

Section/ Rule No.	Heading	Requirement
139(1)	Appointment of auditors	Every company shall, at the first AGM, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting
139(5)	Appointment of auditors in Government company	The C&AG shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, <b>within a period of 180 days</b> from the commencement of the financial year, who shall hold office till the conclusion of the AGM.
139(6)	Appointment of First auditor in a company	The first auditor of a company, other than a Government company, shall be appointed <b>by the Board of Directors within 30 days</b> from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform <b>the members of the company, who shall within 90 days</b> at an EGM appoint such auditor and such auditor shall hold office till the conclusion of the first AGM.
139(7)	Appointment of first auditor in Government company	The first auditor shall be appointed by the <b>C &amp; AG within 60 days</b> from the date of registration of the company and in case the C & AG does not appoint such auditor within the said period, <b>the Board of Directors</b> of the company shall appoint such auditor <b>within the next 30 days</b> ; and in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the <b>members of the company</b> who shall appoint such auditor <b>within the 60 days at an EGM</b> , who shall hold office till the conclusion of the first AGM.

# Provisions of law applicable to AGMs under CA, 2013 (7/9)

Section/ Rule No.	Heading	Requirement
139(8)	Filling of casual vacancy of auditor	<p>In the case of a company <b>other than</b> a company whose accounts are subject to audit by an auditor appointed by the C&amp;AG, be filled <b>by the Board of Directors within 30 days</b>, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened <b>within 3 months</b> of the recommendation of the Board and he shall hold the office till the conclusion of the next AGM;</p> <p>In the case of a company whose accounts are subject to audit by an auditor appointed by the C&amp;AG, be filled by the C &amp;AG within 30 days.</p>
139(9)	Appointment of retiring auditor	<p>A retiring auditor may be re-appointed at an annual general meeting, if—</p> <ul style="list-style-type: none"><li>(a) he is not disqualified for re-appointment;</li><li>(b) he has not given the company a notice in writing of his unwillingness to be reappointed; and</li><li>(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.</li></ul>
139(10)	No appointment or re-appointment	<p>The existing auditor shall continue to be the auditor of the company</p>

# Provisions of law applicable to AGMs under CA, 2013 (8/9)

Section/ Rule No.	Heading	Requirement
143(6)	Comments of C&AG	<p>The C&amp;AG of India shall <b>within 60 days</b> from the date of receipt of the audit report have a right to,—</p> <ul style="list-style-type: none"><li>(a) conduct a supplementary audit of the financial statement of the company</li><li>(b) comment upon or supplement such audit report:</li></ul> <p>Any comments given by the C&amp;AG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the AGM of the company at the same time and in the same manner as the audit report.</p>
152	Rotational directors	<p>Unless the articles provide for the retirement of all directors at every AGM, not less than <b>2/3<sup>rd</sup> of the total number of directors</b> of a public company shall be rotational directors and <b>1/3<sup>rd</sup> of such of the directors</b> for the time being as are liable to retire by rotation</p>
161(1)	Additional director	<p>The AoA of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a GM, as an additional director at any time who shall <b>hold office up to the date of the next AGM</b> or the last date on which the AGM should have been held, whichever is earlier.</p>

# Provisions of law applicable to AGMs under CA, 2013 (9/9)

Section/ Rule No.	Heading	Requirement
171	Members' right to inspect	The register kept under sub-section (1) of section 170 shall also be kept <b>open for inspection</b> at every AGM of the company and shall be made accessible to any person attending the meeting.
189	Register of contracts or arrangements in which directors are interested	The register to be kept under this section shall also be produced at the commencement of every AGM of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.
197(12) read with Rule 5 of the Companies (ARMP) Rules, 2014	Disclosures in Board's Report	<p>Particulars shall be made available to any shareholder on a specific request made by him in writing <b>before the date of such AGM</b> wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company <b>within 3 days</b> from the date of receipt of such request from shareholders.</p> <p>In case of request received even <b>after the date of completion of AGM</b>, such particulars shall be made available to the shareholders <b>within 7 days</b> from the date of receipt of such request.</p>

# Provisions of law applicable to AGMs under LODR, 2015 (1/3)

Regulation No.	Heading	Requirement
18(1)(d)	Audit Committee	The chairperson of the AC shall be an ID and he shall be present at AGM to answer shareholder queries
19(3)	Nomination and Remuneration Committee	The Chairperson of the NRC may be present at the AGM, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.
20(3)	Stakeholders Relationship Committee	The Chairperson of the SRC shall be present at the AGM to answer queries of the security holders.
29(1)(d)	Prior Intimation	Intimation to be given <b>atleast 2 working days in advance excluding the date of the intimation and date of the meeting</b> in case of any AGM or EGM or PB that is proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance
30 read with Schedule III	Material Event	Proceedings of Annual and AGM of the listed entity to be intimated <b>within 24 hours</b> of the meeting
34	Annual Report	The listed entity shall submit to the stock exchange and publish on its website- (a) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;
36(2)	Documents & Information to shareholders	The listed entity shall send annual report to the holders of securities, not less than <b>21 days before the AGM</b>

# Provisions of law applicable to AGMs under LODR, 2015 (2/3)

Regulation No.	Heading	Requirement
36(5)	Information as a part of notice	<p>The notice being sent to shareholders for an AGM, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice:</p> <ul style="list-style-type: none"> <li>(a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;</li> <li>(b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.</li> </ul>
44(5) and (6)	AGM of top 100 listed entities	<p>As on March 31st of every financial year, shall hold their AGM <b>within a period of 5 months</b> from the date of closing of the financial year.</p> <p>One-way live webcast of the proceedings of the AGM</p>
44(3)	Voting results	<p>The listed entity shall submit to the stock exchange, <b>within 48 hours of conclusion of its General Meeting</b>, details regarding the voting results in the format specified by the Board.</p>
46(2)(s)	Updation of website	<p>Separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, <b>uploaded at least 21 days prior to the date of the AGM</b> which has been called to inter alia consider accounts of that financial year.</p>

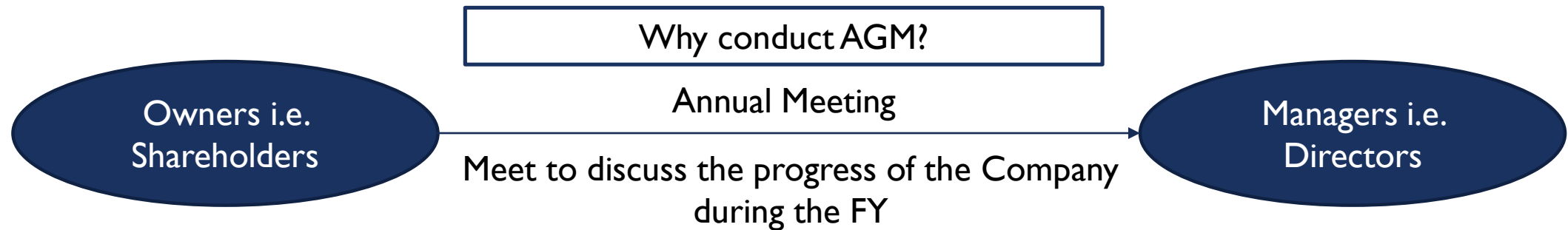
## Provisions of law applicable to AGMs under LODR, 2015 (3/3)

Regulation No.	Heading	Requirement
34(3) read with Schedule II	Corporate Governance Report	<ul style="list-style-type: none"><li>i. Attendance of each director at the meeting of the board of directors and the last AGM;</li><li>ii. Location and time, where last three AGMs held;</li><li>iii. Whether any special resolutions passed in the previous three AGMs;</li><li>iv. AGM- date, time and venue;</li></ul>



# Concept of Annual General Meetings

- Is a yearly gathering between the shareholders of a company and its board of directors.



Is it mandatory?

YES

## Under the CA, 1956

Section 166 compulsorily required every company to hold AGM every year within 15 months from prev.AGM

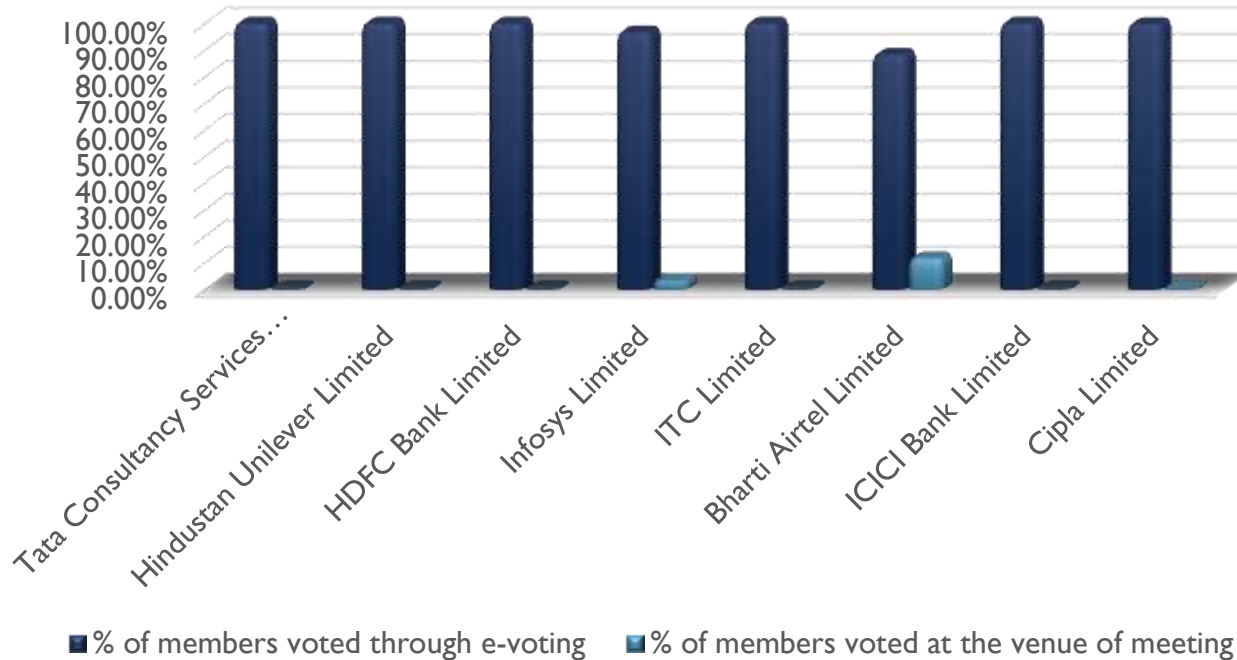
## Under CA, 2013

Section 96 compulsorily require every company other than an OPC to hold AGM each year:

- Within 15 months from the prev.AGM
- Within 6 months from the end of FY

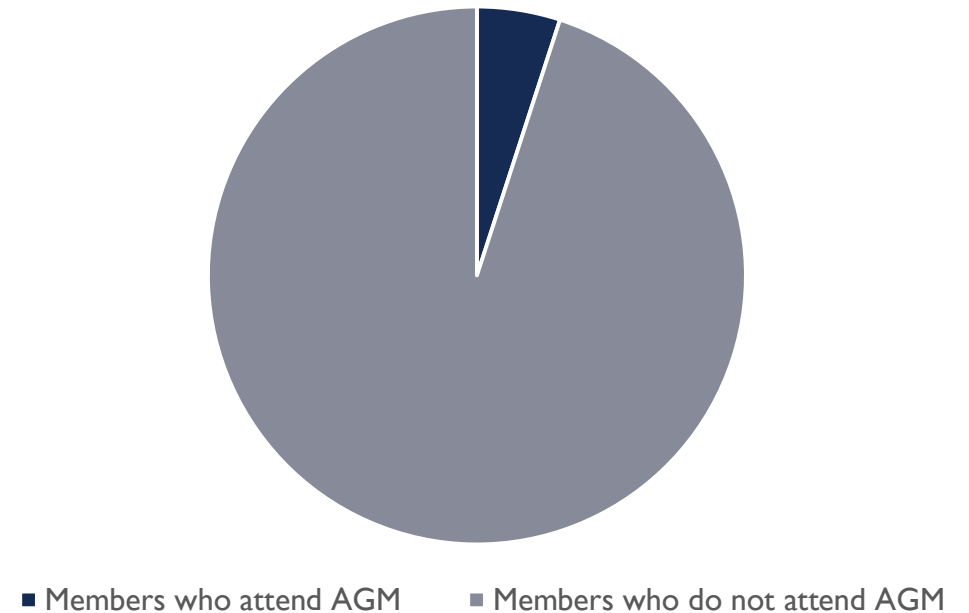
# Attendance and Voting pattern in physical AGMs

## Ratio of Members voting through e-voting as to voting at the Meeting



On an average, minimum 95% of members of every Company has voted through e-voting.

## Attendance of Members at AGM



For most listed companies not even 5% of Members attend AGM

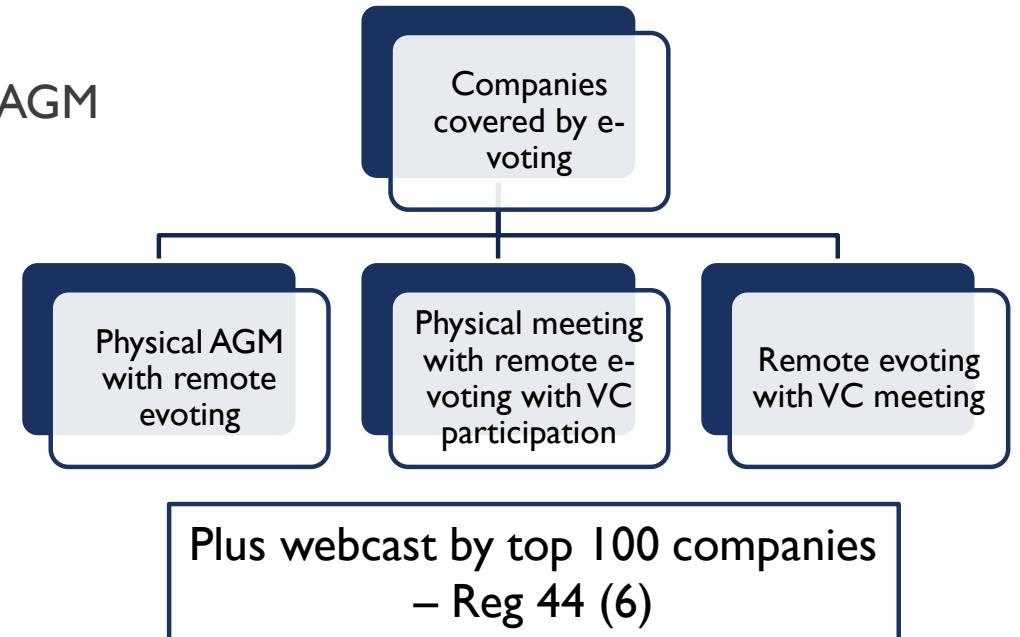
# Necessity of virtual AGM?

- AGM is an annual event and has to be conducted by every company, every year.
  - The social distancing guidelines issued by government authorities does not permit meeting large audience of people for business matters
  - Routine business items, as well as other business matters require approval of shareholders
  - Companies following calendar year as their financial year have been provided with additional time till 30<sup>th</sup> September, 2020 to conduct their AGMs (may apply for extension post that, to the concerned RoC)
    - Hence, facility of virtual AGMs has been provided.
  - No extension provided to companies following financial year
    - However, facility of virtual AGMs has been provided.
    - Considering the percentage of members opting for e-voting and attendance at physical AGM- MCA decided to go virtual



# Physical AGM- completely ruled out?

- No. Companies required to provide e-voting facility may conduct AGM in the city of registered office with limited number of members
  - How? After receiving permission from relevant authorities
- Such meeting is also required to provide the facility of VC/OAVM
- In case of private companies and closely held companies
  - Physical AGMs can be conducted
  - After complying with advisories issued from various governmental authorities



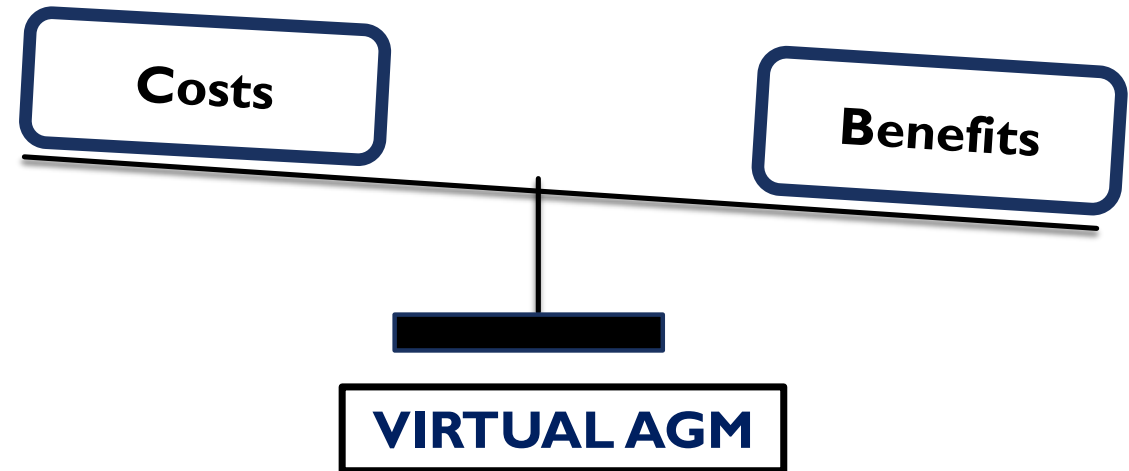
There is no bar in conducting physical AGMs. Companies may in accordance with guidelines issued by appropriate government decide whether to conduct physical or virtual AGM.

Further, if situation normalise before 31<sup>st</sup> December, 2020, companies may conduct physical AGMs as earlier.

# Why companies should conduct virtual AGM?

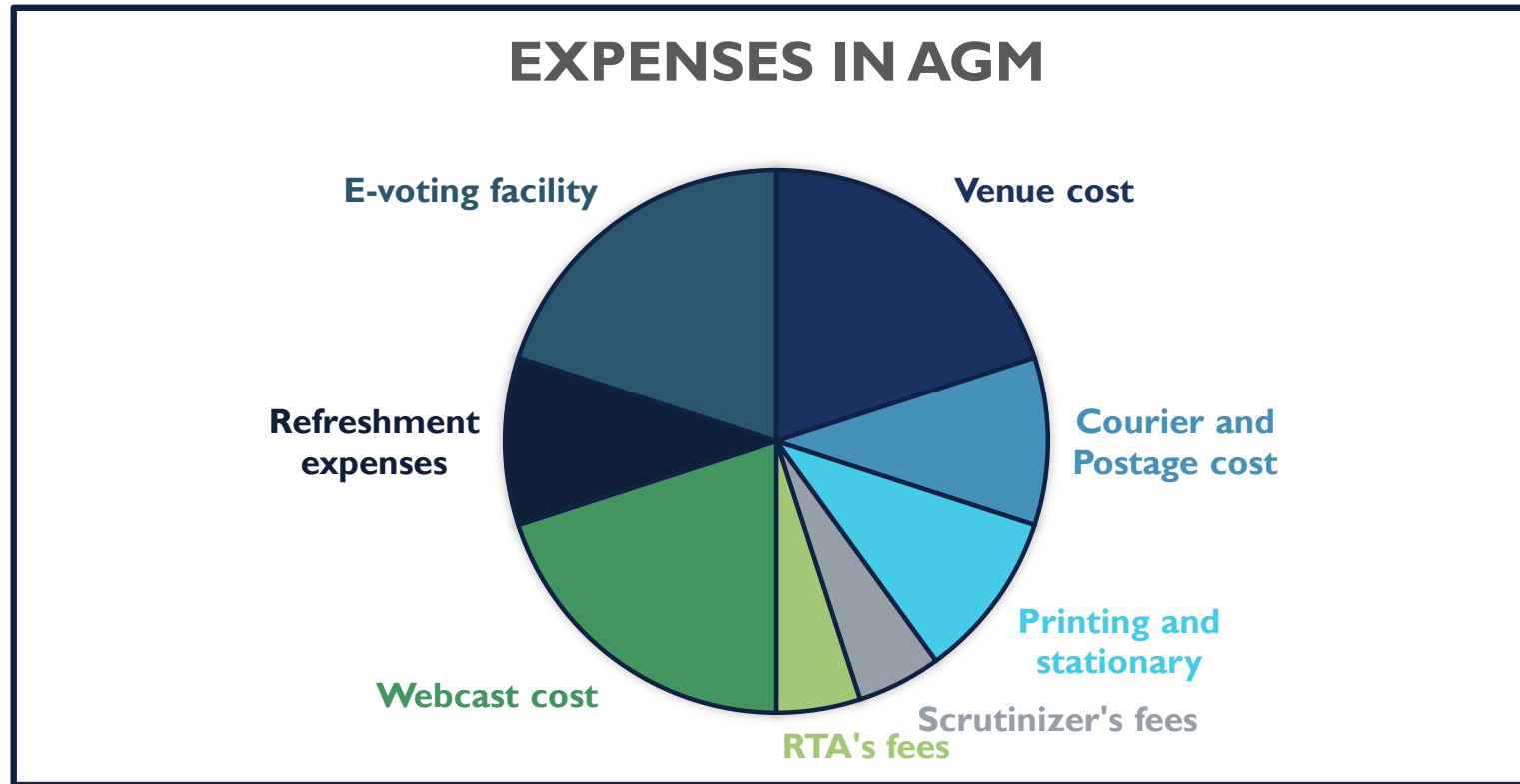
**Board of Directors have to analyse this question on the basis of:**

- Is it mandatory for companies to offer VC facility?
  - No. However, considering that restrictions on physical meetings will continue, companies will by-and-large be dissuaded from calling physical meetings
  - In any case, VC meetings may turn out to be substantially cheaper, more convenience
- Smaller companies
  - Much more convenient way
- Companies with overseas shareholders
  - No need to travel on the part of corporate representatives



# COSTS

Generally in case of physical AGM, 90% of the below-mentioned expenses are incurred by majority of companies. A rough estimate of such expenditure generally goes to lakhs of rupees.



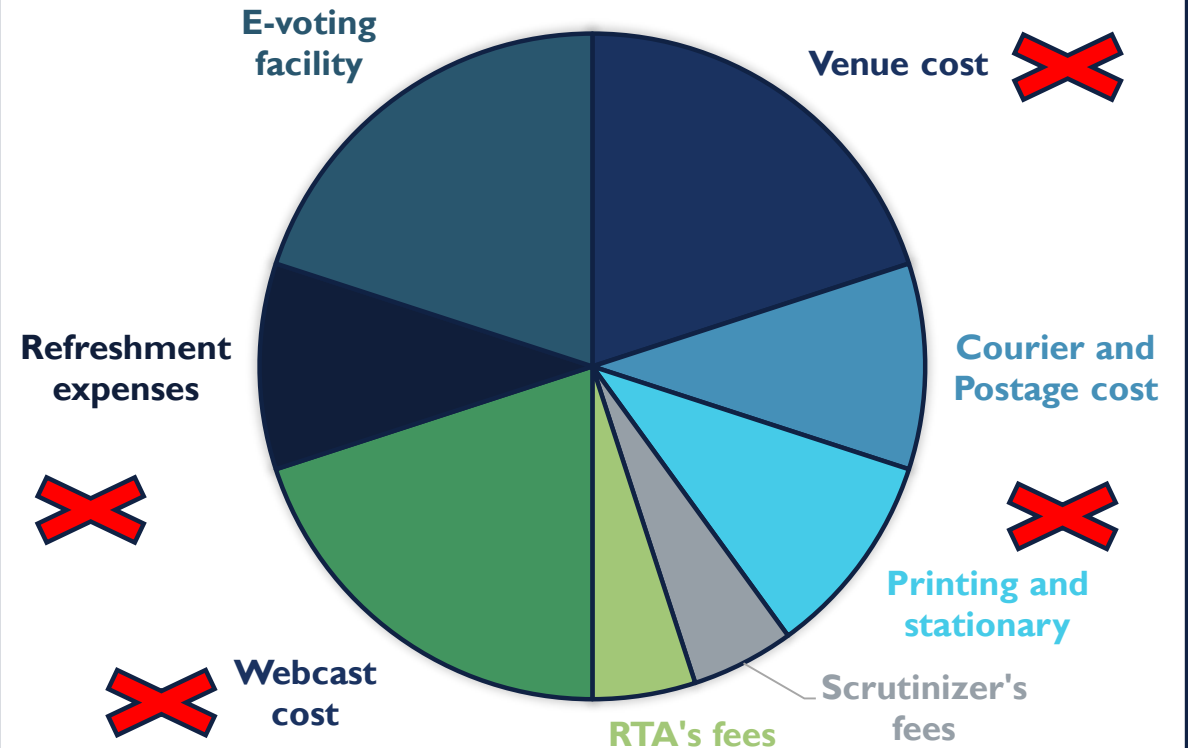
**Virtual AGM:** Is a **cost effective mode** as most of the aforesaid expenses such as venue cost, courier and postage cost, printing and stationary expenses, refreshment expenses etc. shall be saved in case of virtual AGM.

# BENEFITS

## Why virtual AGM is a benefit for the companies?

- 1. **Cost effective-** Expenses incurred in physical AGMs shall be reduced to a great level.
- 1. **Urgent business matters-** Transactions which require approval of shareholders can be obtained at the meeting without deferring the same to an EGM. Hence, business hassle reduced.
- 1. **Increases the flexibility-** as to when the meeting can be held- no venue bookings required.
- 1. **Provides opportunity to shareholders who cannot visit physical AGM-** shareholders from different state/country can also participate.

## EXPENSES IN VIRTUAL AGM

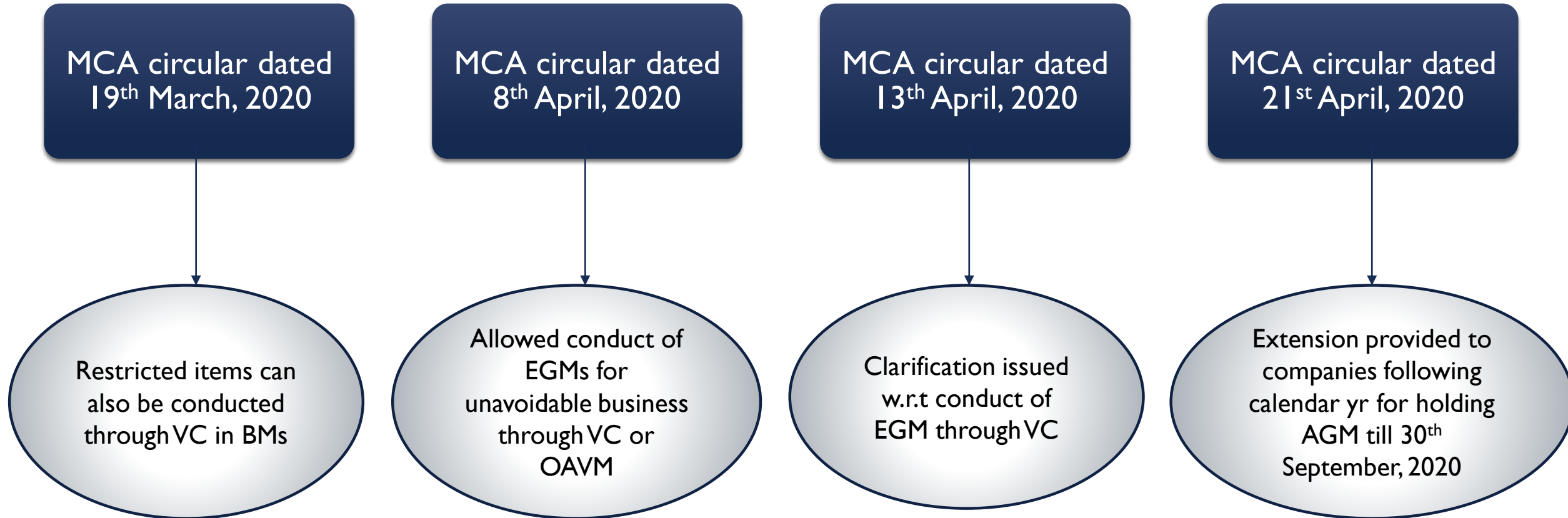


## Global scenario- AGMs in other countries during crisis

Country	Requirement	Relaxation
Austria	AGM to be held within 8 months of each year	Timeline extended from 8 months to 12 months. Further, virtual AGM permitted
China	In case of Pvt co. or company limited by guarantee- within 9 months after end of its accounting year In case of other companies- within 6 months after end of its accounting year	No extension is provided. However, listed entities are encouraged to vote online
France	To be held every year	Virtual AGM permitted
Germany	AGM to be held within 8 months of each year	Timeline extended from 8 months to 12 months. Further, virtual AGM permitted
Italy	Atleast 2 persons must be physically present	Virtual AGM permitted
UK	Public co- within a period of 6 months of accounting year reference Private co- not required to hold an AGM	Virtual AGM permitted
US	Required to hold annual meetings under state laws	Can switch from in-person meeting to virtual meeting



# Corporate Meetings during COVID-19 disruption- situation so far

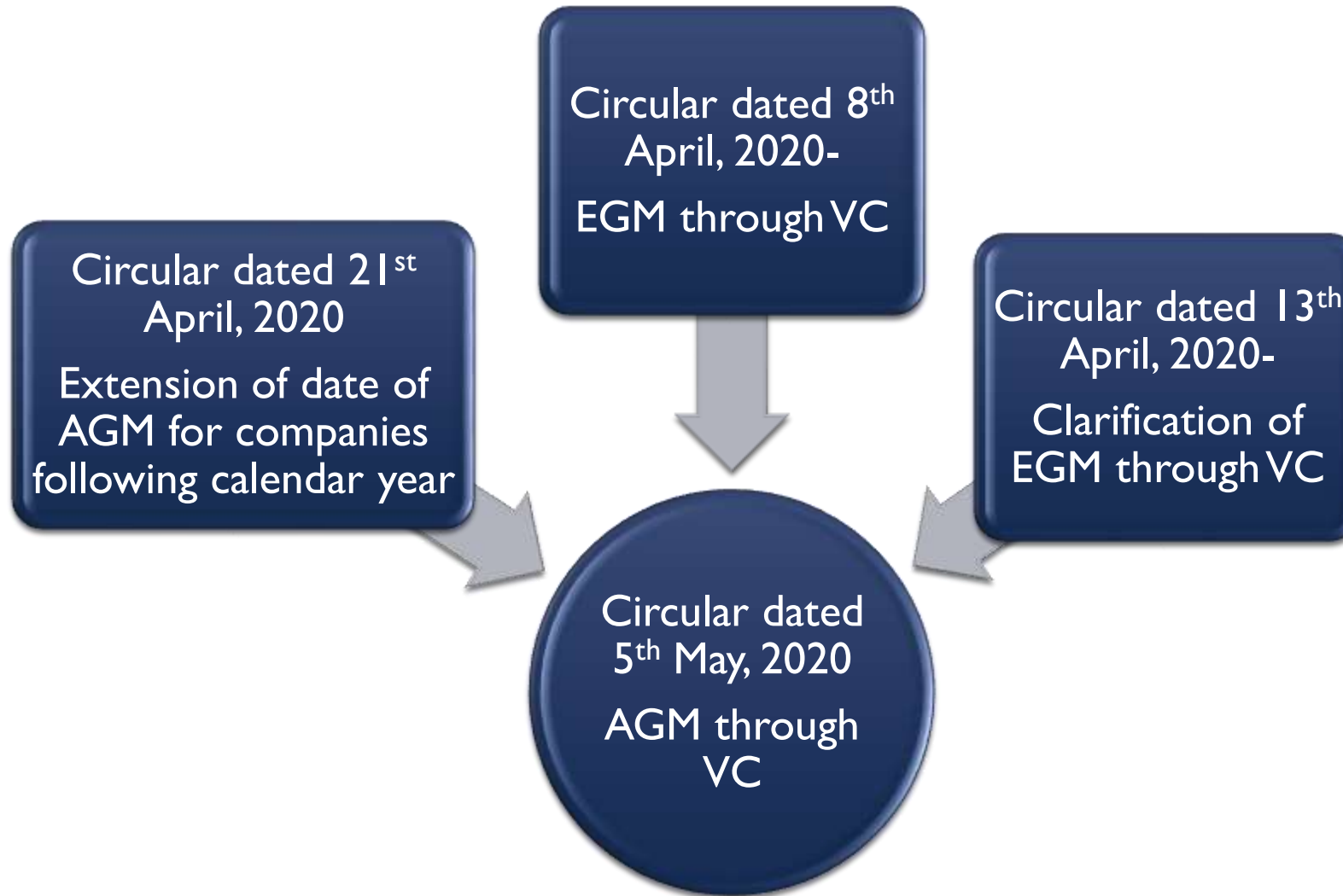




# MCA CIRCULAR

ALLOWING AGM THROUGH VC

-5<sup>TH</sup> MAY, 2020



*All the circulars have to be read together for conducting AGM through VC*

# Business(es) that can be transacted through virtual AGM

Circular permits conducting of following through virtual AGM

Ordinary business

- Approval of FS
- Declaration of dividend
- Appointment of directors in place of retiring directors
- Appointment and fixing of rem of auditors

Special business

Only those business items which are considered unavoidable by the **Board**

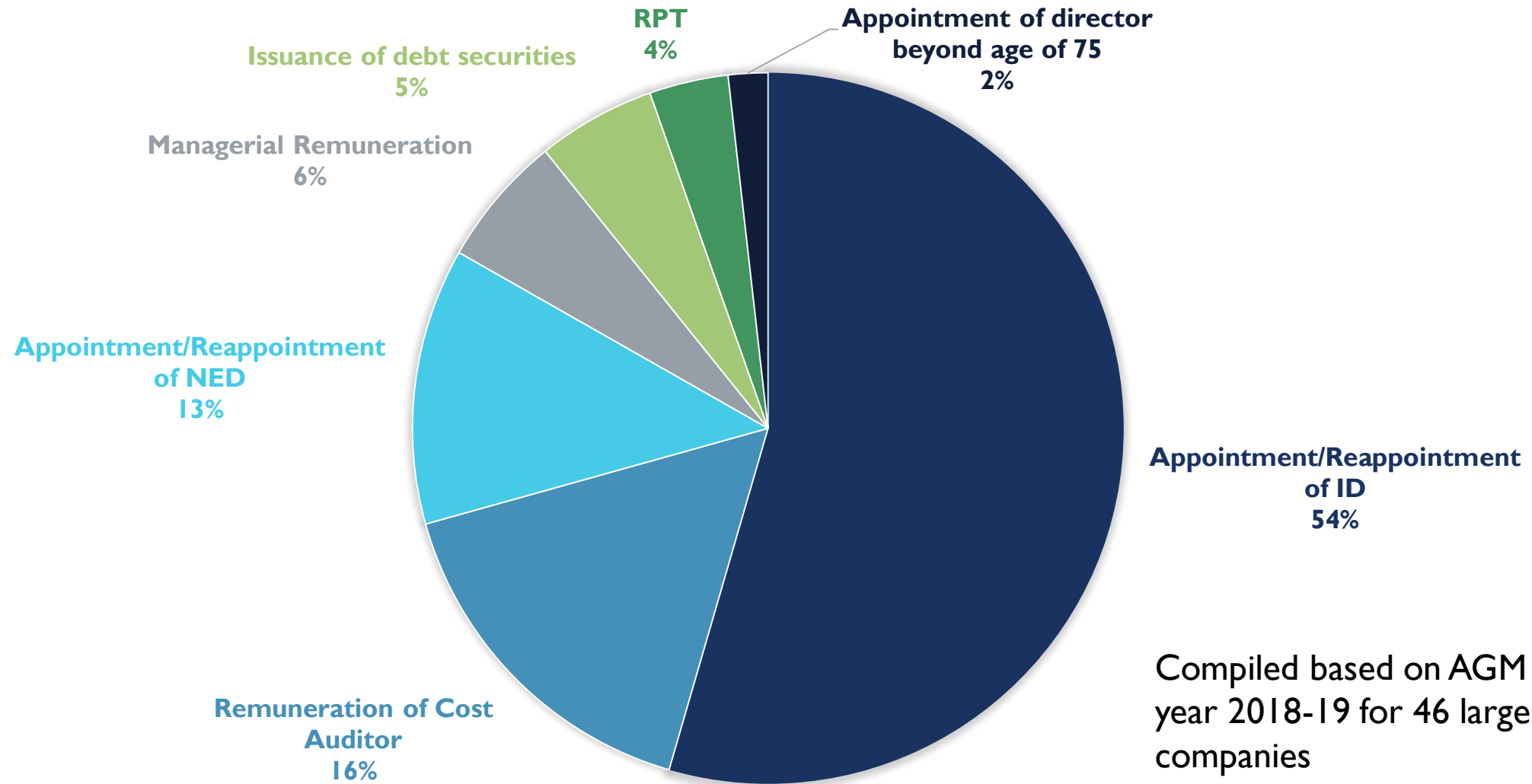
What does unavoidable business mean?

The term 'unavoidable' means something which cannot be deferred and should not be deferred.

# Unavoidable items of special business

- Guide to determining unavoidable
  - There is an item of business
    - The item need not be taken at all
    - The item need not be taken in the AGM
      - Does that mean the item can be taken to a postal ballot?
      - Does that mean the item may be taken to an EGM?
      - Does it mean the item may be taken to the next AGM?
  - What are the pros and cons of putting the item in the AGM?
    - Benefits?
    - Burdens?
- “Unavoidable” is something which is not preferably avoided
  - Impossibility of avoiding
  - Advisability of avoiding
- Commercial expediency and interests of the larger interests of stakeholders have to be considered
- Is the item indicating anything which is against minority interest?
- Is there a possibility that physical interaction in a meeting may significantly affect shareholders' views?
- The Board has to take a reasoned view on the items of business

## Special Business(es) transacted by companies



Compiled based on AGM notices for year 2018-19 for 46 large listed companies

# Scope of the circular

Virtual AGM under 5<sup>th</sup> May circular

Shall be permitted

**For all AGMs conducted during the calendar year 2020**

Whether this circular applies to companies following calendar year or financial year?

Calendar Year ✓

The Circular extends to all AGMs conducted during the calendar year 2020 i.e. till 31<sup>st</sup> December, 2020.

Financial Year ✓

## Companies following Financial Year

If AGM conducted till 30<sup>th</sup> September, 2020

Can be conducted through VC

If applied for extension, post 30<sup>th</sup> September, 2020

Can be conducted through VC up till 31<sup>st</sup> December, 2020

## Companies following Calendar Year as Financial Year

If AGM conducted till 30<sup>th</sup> June, 2020

Can be conducted through VC

If AGM conducted till extended time of 30<sup>th</sup> September, 2020

Can be conducted through VC

If applied for extension, post 30<sup>th</sup> September, 2020

Can be conducted through VC up till 31<sup>st</sup> December, 2020

# Applicability

MCA circular dated 5<sup>th</sup>  
May, 2020

*Has divided the applicability of the Circular into three classes of companies:*

1. Companies required to  
provide e-voting facility

2. Companies which have  
opted for providing e-  
voting facility

3. Companies which are  
not required to provide e-  
voting facility



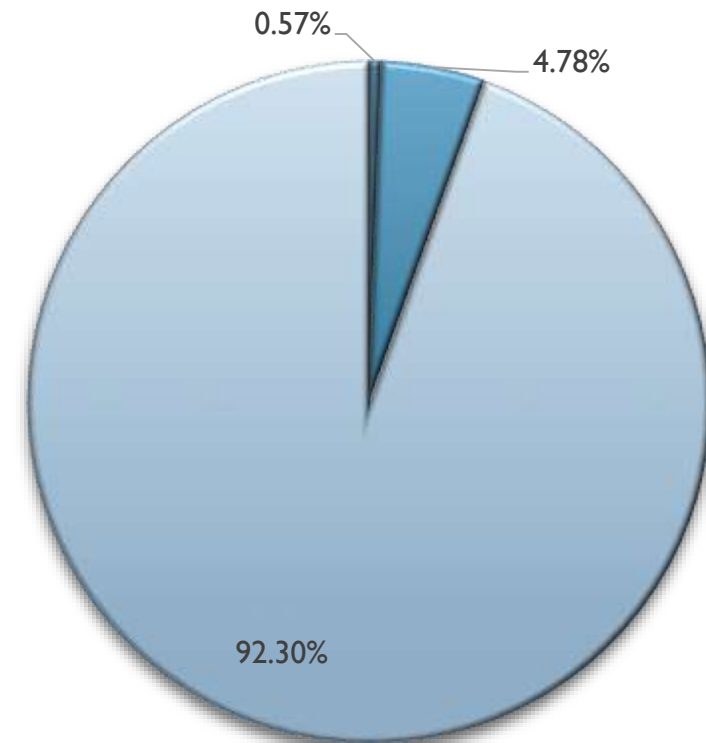
# I. Companies required to provide e-voting facility

- Rule 20 of Companies (Management and Administration) Rules, 2014 requires following companies to provide e-voting facility:
  - **Equity Listed Company**
  - **Companies having not less 1000 members**

- Total no. of companies registered in India\* 1187317
- Only 6806 companies are listed
- Whereas 1095925 are private companies
- Unlisted public companies therefore round about roughly, 56776

**So only a handful of companies are there which require to provide e-voting facility**

*\*MCA's monthly information bulletin on corporate sector, February, 2020*



■ Listed Companies   ■ Unlisted Public Companies   ■ Private Companies

## 2. Companies which have opted for providing e-voting facility

### What does the expression mean?

The expression '**or any other company which has opted for such facility**' should generally refer to a company which is not required to provide e-voting facility, however, has optionally provided the same to its shareholders.

Whether it is possible to have such class of companies as per the provisions of CA, 2013?

E-voting provisions under CA, 2013

Rule 20 of MBP Rules, 2014

No scope for voluntary opting for e-voting facility

Section 108

*"The **Central Government** may prescribe the class or classes of **companies** and manner in which a member may exercise his right to vote by the electronic means."*

Does not provide right to the Company to voluntarily opt for e-voting facility

Section 110

Permits conduct of business items required to be compulsorily conducted through postal ballot through e-voting as per section 108

- There does not seem to be explicitly a class of companies that have opted for e-voting
- Even where the Company did a VC-EGM, it cannot be contended that it has opted for e-voting

### 3. Companies which are not required to provide e-voting facility

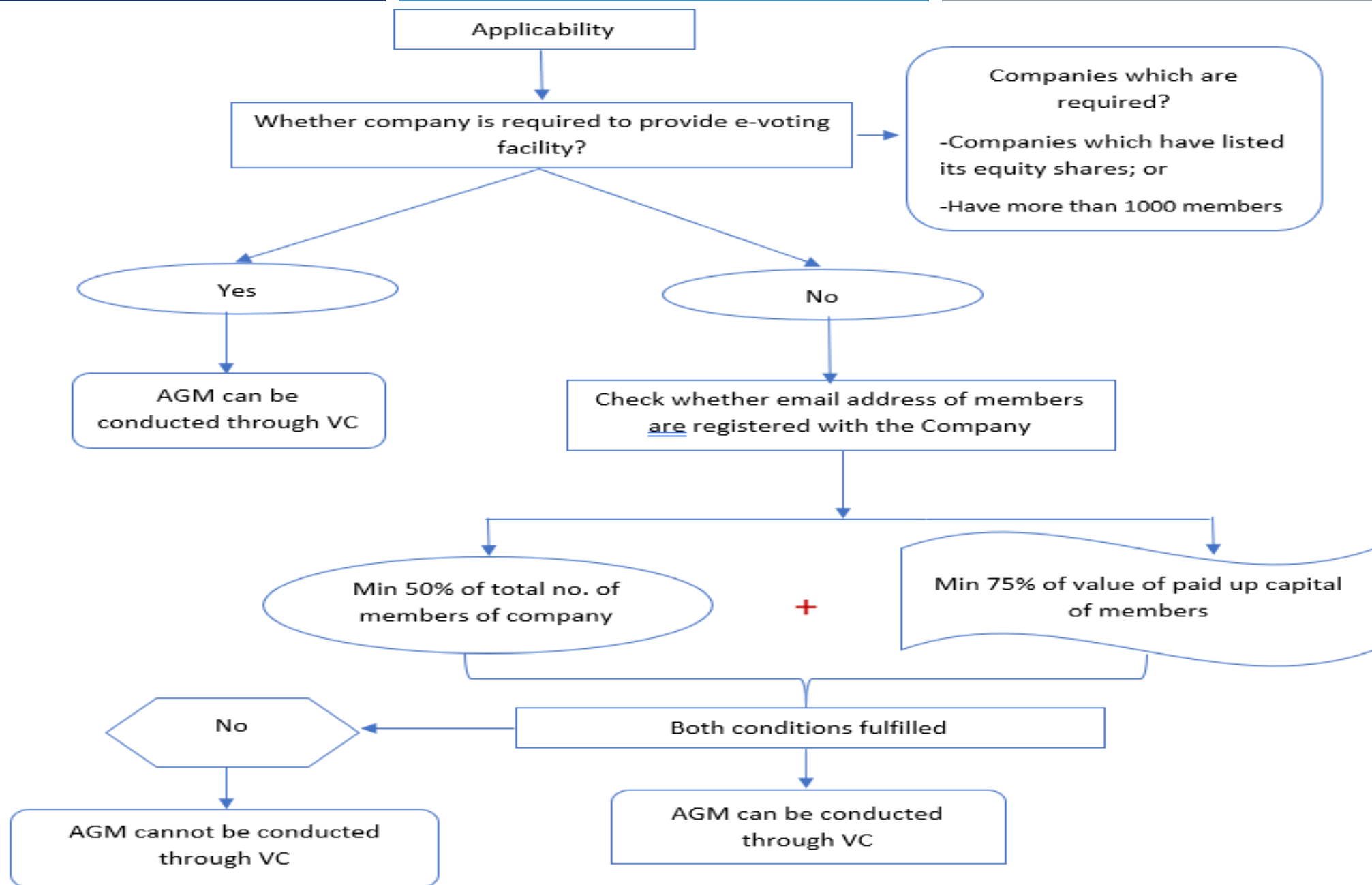
- Companies which are not required to provide e-voting facility have to fulfil two conditions w.r.t. registration of email address of its members so as to avail the benefit of conducting AGM through VC.

**Dual Condition for ensuring applicability on companies not required to provide e-voting facility**



## Computation of Requisite Number

- Whether preference shares to be counted for requisite number?
  - No, unless they have acquired voting rights
  - However, preference shareholders entitled to the notice of the meeting and entitled to attend; even though they may not have voting rights
- Whether shares in IEPF to be counted?
  - Their voting rights are frozen
  - Hence no
- Whether shares held in the name of President of India to be counted?
  - Surely yes
- Whether shares held in the name of foreign shareholders are to be counted?
  - Yes
- Whether joint-holders to be considered as a single person for the purpose of numerical majority?
  - Yes



Sl. No.	Type of Company	Qualifies under which class (1 or 3)	Whether AGM through VC can be conducted?
1.	Equity listed companies	1	Qualifies under Rule 20 of MBP Rules, 2014. Hence, AGM can be conducted through VC
2.	Debt listed companies	1 or 3	a) If more than 1000 shareholders- Can conduct AGM through VC b) If e-voting not applicable and requisite number of email address available- Can conduct AGM through VC
3.	Unlisted public companies	3	If requisite number of email address available- Can conduct AGM through VC
4.	Private companies	-	If closely held company- Can conduct physical meeting
5.	Banking companies	1 or 3	If registered as a company under CA, 2013- Can conduct AGM through VC if falls within class 1 or class 3 companies If not registered as a company under CA, 2013- Cannot conduct AGM through VC by virtue of this circular
6.	Guarantee companies	-	If email address of minimum 50% of the total members of the company representing not less than 75% of the total voting power in the Meeting is registered with the Company- Can conduct AGM through VC

# Participation of directors and auditors

The Board of Directors through VC have to approve the following for conducting virtual AGM:

The circular requires presence of following persons virtually:

- One Independent Director of the Company
- Auditor or authorised representative

If they fail to attend the virtual AGM?

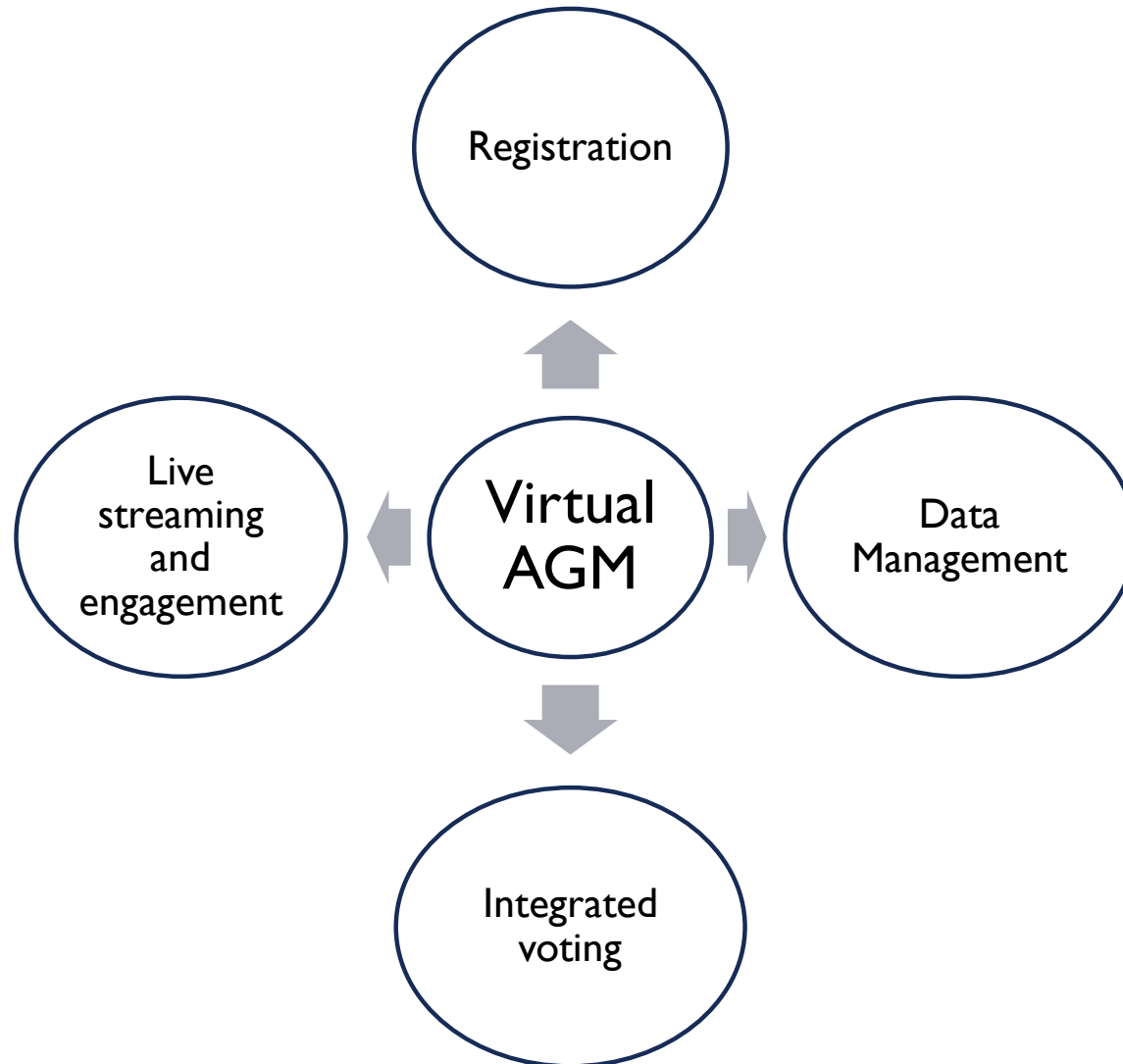
It shall not invalidate the proceedings  
of AGM

However, in case of AGM, presence of Auditor is compulsory as financial statements are placed for approval of Members. Hence, companies should ensure presence of auditors in virtual AGM

Is it compulsory for Chairperson of Audit Committee, NRC and SRC to compulsorily attend virtual AGM?

- As per SEBI (LODR) Regulations, 2015, Chairperson of all the above mentioned companies should attend virtual AGM.
- In our view, this is best endeavour. Failure to participate shall not invalidate the proceedings of AGM

# COMPONENTS OF VIRTUAL AGM



Specialised virtual AGM platforms may have to develop

- With facility for voting on resolutions at the meeting

Several new practices may have to emerge:

- For example, pre-meeting questions from shareholders
- Shareholders' discussion forums



# Some concepts of physical meetings do not apply to virtual meetings

- Proxies
- Corporate representatives
  - Sec 113 was crafted for attending physical meetings. Virtual meetings are virtual – all that is required is credentials
  - MCA circulars seem to refer to corporate representatives still, but given the system of log-in by corporate shareholders, there is no question of any authorisation
  - Insisting on corporate resolutions is unfructuous
- Same in case of representatives of an office
- Equally irrelevant will be the concept of a webcast of the meeting required under reg 44 of LODR Regulations



## PROCEDURE BEFORE THE VIRTUAL MEETING

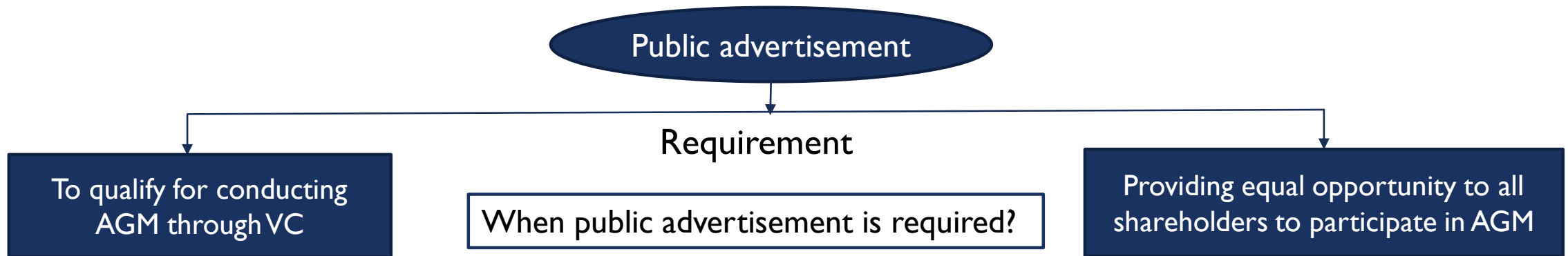


# Board approval for conducting virtual AGM

The Board of Directors have to approve the following for conducting virtual AGM:

- ✓ AGM shall be conducted through VC and identification of items of business
- ✓ Approval of platform and other modalities for conducting virtual AGM
- ✓ Discussion of items of ordinary business to be transacted in the AGM and those special business that are considered unavoidable
- ✓ Draft notice of virtual AGM and that all notices shall be sent by way of an email
- ✓ Draft public advertisement for registration of email address of members
- ✓ Appointment of agency for e-voting
- ✓ Appointment of scrutinizer for scrutinizing voting through electronic means
- ✓ Appointment of vendor for ease of payment of dividend through ECS
- ✓ Documents for inspection shall be uploaded on the VC platform for inspection by members during the conduct of meeting

# Pre- meeting public advertisement- requirement and intent



Public advertisement is required in all cases of virtual AGM except where companies have email address of all its members.

Particulars	Whether public advertisement shall be required?
Email address of all the shareholders are registered with the Company	Not required. The intent of public advertisement is to have email address of all shareholders so as to facilitate voting.
Email address of requisite number of shareholders are registered with the Company	Required. The Company has to provide opportunity of voting to every shareholder. Hence, advertisement shall be required.
Email address of requisite number of shareholders are not registered with the Company	Required. As without requisite number, the Company shall not be able to conduct AGM through VC.

Companies not required to provide e-voting facility

Email id registration with the Company

+

Min 50% of total no. of members of company

Min 75% of value of paid up capital of members

Both the conditions not fulfilled ✗

Public advertisement for email id registration by Members

Vernacular newspaper

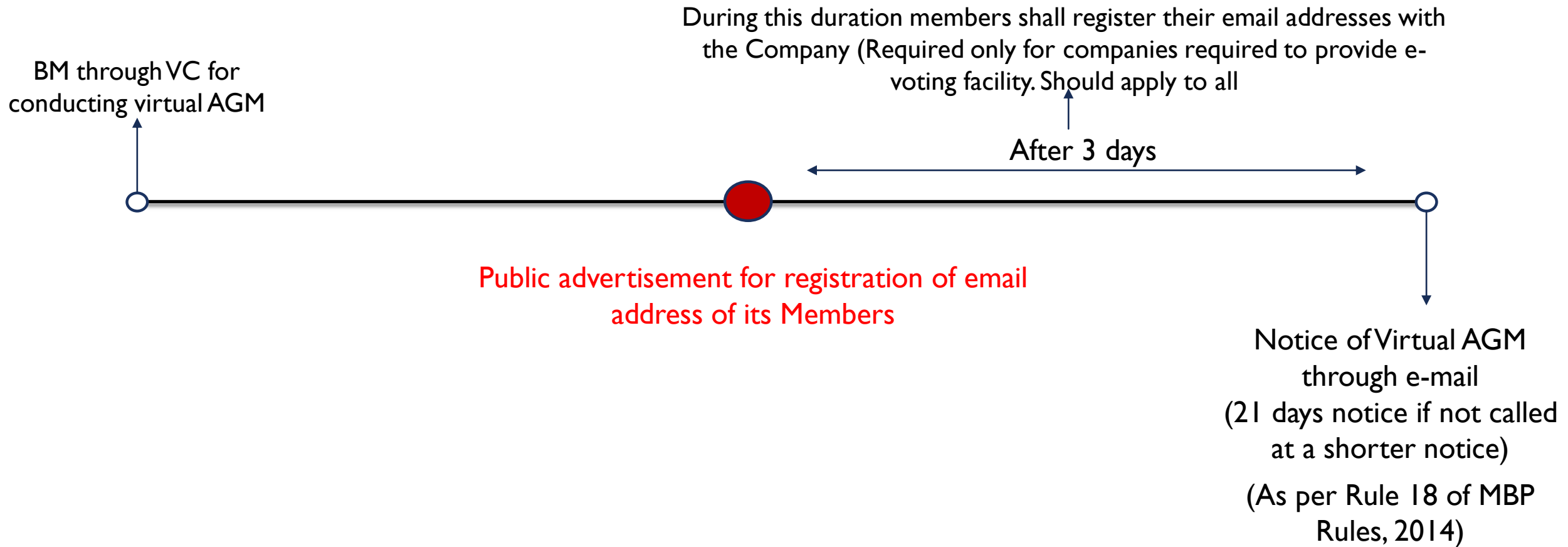
With electronic editions

English newspaper

Majority of shareholders representing 75% of value of PUSC register their email address with the Company

AGM can be conducted through VC

# Pre-meeting Public Notice vs Notice calling the meeting



## Post-notice advertisement by companies required to provide e-voting facility

- The requirement of publishing advertisement in newspaper is twice in case of companies required to provide e-voting facility
  - Before the dispatch of notice- as per MCA circular dated 5<sup>th</sup> May, 2020
  - After the dispatch of notice- as per Rule 20 of MBP Rules, 2014

MCA circular dated 5<sup>th</sup> May, 2020

Advertisement for registration  
of email address of members

PRIOR

Dispatch of notice  
through email

POST

Rule 20 of MBP Rules, 2014

Advertisement stating that:

- a) Timing of remote e-voting
- b) Process of voting
- c) Eligible members
- d) Website address where notice shall be published
- e) Details of person whom to contact for grievances



# Notice

- Should include following information:



AGM will be conducted through VC or OAVM in compliance with circular dated 8th April, 2020, 13<sup>th</sup> April, 2020 and 5th May, 2020

Date, time and modalities of conducting meeting through VC (this shall include login credentials etc.)

Voting process shall be conducted through electronic means i.e. remote e-voting and voting

Fact that notice is also available on the website of the Company

Manner in which documents and registers can be viewed by the members along with the link or address where such documents can be accessed

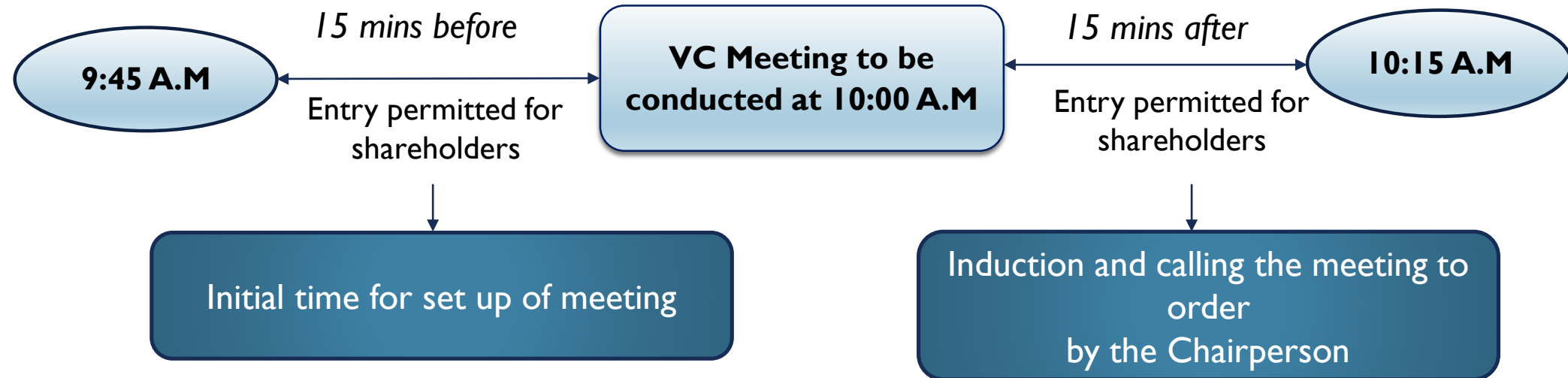
Manner in which shareholders who have not yet registered their email address can register the same.

Manner in which shareholders can provide their mandate for receiving dividends through ECS



## PROCEDURE AT THE VIRTUAL MEETING

### a) **Entry to the Meeting**



How will shareholders login?

The Notice of Meeting shall provide modalities w.r.t. login process. Usually, the email address of the shareholder shall be used for login in into the meeting platform of the Company.

# Time for entry into VC platform and quorum requirements

- Rules for ascertaining quorum provide for quorum to be available at the start of the meeting and throughout the meeting
  - The rules also say – if quorum is not present within 30 minutes of the scheduled time
  - VC rules provide for entry within 15 min of the designated time
  - Does that mean entry cannot be allowed after 15 minutes?
    - No, but if quorum is already present, then entry may be stopped after 15 minutes
- What if the number of active members reduces after the meeting starts?
  - Technically, quorum should be present throughout the meeting
  - The VC facility would keep a record of number of members actively logged in

## **b) Discussion at the Meeting**

### **i) Appointment of Chairperson**

Chairperson of Company shall chair the meeting.

In case of absence of chairperson:

<50 members- Members shall appoint chairperson by conduct of poll

>50 members- Members shall appoint chairperson by conduct of poll by way of e-voting

### **ii) Quorum**

Shall be recorded as per the information of total participants present in the Meeting through VC

### **iii) Inspection of documents**

Financial Statements, Director's Report and other registers required to be kept open for discussion shall be uploaded on the VC platform of the Company.

### **iv) Approval of transactions**

Ordinary business and special business shall be open for discussion and approval of the Members. Must ensure:

- Audio facility
- Video facility
- Two way communication
- Capable of being recorded

### c) Voting process

Considering practical impossibility, the option of voting through show of hands dispensed with. The permitted modes of voting are as follows:

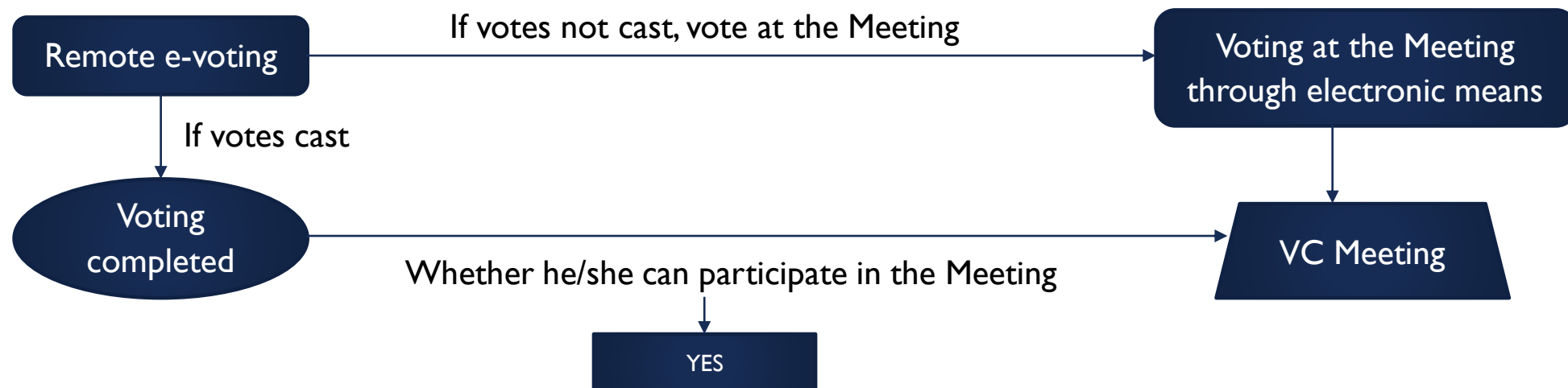
E-voting

- In accordance with section 108 of CA, 2013

Poll

- To be conducted by VC/OAVM
- Voting process to be conducted through emailing assent/dissent through registered email address of shareholders to designated email id (preferable of the scrutinizer)

Whether members can participate in virtual AGM after they cast their vote through e-voting?





## PROCEDURE AFTER THE VIRTUAL MEETING



Proceedings of AGM has to be submitted to the stock exchange within 24 hours

In case of public company recorded transcript has to be uploaded on the website of the Company. In our view, minutes or proceedings of meeting shall also suffice

Scrutinizer shall submit its report to the Company after collating information of voting through evoting and those who vote through email

Submission of scrutinizer's report by the Company to the stock exchange within 48 hours of the Meeting

Preparation of Minutes of AGM by the Company

Entry and signing of minutes in the minutes book within 30 days of conclusion of the Meeting



## How will scrutinizer scrutinize the voting process?

### In case of remote voting

As per section 108 of the CA, 2013

### In case of voting through email

- Verify the email addresses of the members with folio numbers
- Members may be required to share scan of share certificate to ensure authenticity of votes
- Should have a system based mechanism of recording emails received during voting period

## How will companies record such meetings in the minutes? How will companies ensure entry and signing of minutes book?

Minutes shall be prepared in the same manner as is prepared for physical AGMs. For entry of minutes in minutes book within 30 days of completion of AGM shall be deferred till normalisation of crisis. Further signing shall also defer automatically.

## Whether uploading of entire transcript on the website is mandatory as per law?

In our view, uploading of either of the recorded transcript or proceedings of AGM shall suffice the purpose of the circular.

# Restricted transactions in Virtual AGM

- MCA circular dated 8<sup>th</sup> April, 2020 clarified that all urgent business transactions can be approved through virtual EGM or AGM except for items of business which provides any person right to be heard.
- Some examples of such transactions are:
  - A) Removal of Auditors
  - B) Removal of Directors
  - C) Any other transaction

What if companies receive notice for removal of auditor/director after sending AGM notice?

- If a notice complying with requirements of sec. 111 is received from shareholders for circulation of members' resolution, and the requisitionist fulfils the threshold requirement of sec. 100, then the meeting will have to convert from VC meeting to physical meeting

## Additional relaxations provided by SEBI (LODR) Regulations, 2015

Regulation	Requirement	Relaxation
36(1)(b) and (c) & 58(1)(b) and (c)	Sending of hard copies of annual report and other documents to shareholders whose email ids are not registered or who requests the same	Relaxation till 31 <sup>st</sup> December, 2020
44(4)	Sending of proxy forms with notice	
12	Issuance of dividend warrants to shareholders by speed post	Relaxation till postal services normalises
47	All newspaper advertisements	Extended till 30 <sup>th</sup> June, 2020
33(3)(b)	Submission of quarterly and year to date consolidated financial results	Listed entities which are banking co. or insurance companies or have such subsidiaries can submit FR for quarter on voluntary basis. Reasoning to be provided in case only standalone financials are provided.

[https://www.sebi.gov.in/legal/circulars/may-2020/additional-relaxation-in-relation-to-compliance-with-certain-provisions-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-covid-19-pandemic\\_46661.html](https://www.sebi.gov.in/legal/circulars/may-2020/additional-relaxation-in-relation-to-compliance-with-certain-provisions-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-covid-19-pandemic_46661.html)

## Other resources on Virtual AGMs

- To access other relevant resources on virtual AGMs, click here: <http://vinodkothari.com/2020/05/resources-on-virtual-agm/>
- Please subscribe to our Youtube channel below to accessing various web-lectures, webinars and other useful resources useful for the Corporate and Financial sector:
  - [https://www.youtube.com/channel/UCgzB-ZvilMcuA\\_Iuv6jATbg](https://www.youtube.com/channel/UCgzB-ZvilMcuA_Iuv6jATbg)

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