

Article

Can companies offer VC facility at General Meeting?



Shampita Das
shampita@vinodkothari.com

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With the AGM session in full swing, companies are trying to deal with the new set of rules and regulations surrounding the calling and convening of general meetings. A lot of changes have been incorporated in this regard and a lack of clarity on a lot of these provisions has posed practical difficulties for the scheme of things. To further add to this, the revised Clause 49 of the Listing Agreement, applicable to listed companies spins its own little story in this regard.

A lot of controversies had surrounded the e-voting platform for quite sometime. Though the dust has settled on few issues, it still continues to stir debates as to whether a standalone e-voting would suffice or a providing a polling platform has become mandatory at general meetings.

Another interesting issue which requires discussion, and which we will analyze in this article, is the providing of video conferencing facility ('VC facility') at general meetings.

IT Solutions @ Companies Act, 2013

We all know that the new Companies Act, 2013 (the 'Act') has given a lot of weightage to the use of technology in the general conduct of business. The tech-friendly provisions have contributed to the ease of doing business in India. It has given legal validity to companies for sending and receiving notices, orders and other documents in e-form, maintaining registers and records electronically and e-voting, VC facility at Board Meetings.

Section 173 read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 has laid down elaborate procedures for conducting meeting through video conferencing at Board Meetings. This has solved a lot of practical issues faced by directors, specifically foreign directors, to attend and actively take part in the decision-making process of the company, even though they are unable to physically attend these meetings.

This has enabled directors, who due to various reasons are unable to participate in Board meetings, to contribute to discussions and vote on important corporate matters requiring their involvement. This has been a very logical step towards implementing in the truest sense, the concept of a meeting being a '*meeting of minds*' rather than a physical meeting of people.

However, a surprising element here is that this provision is applicable to only Board Meetings and in the absence of any clear understanding in this regard, the same cannot be presumed to apply to other forms of corporate meetings as well.



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In view of the above discussions, one question that arises is whether VC facility can be offered in general and committee meetings?

Our View – Intent cannot be restricted

Though there is no express provision in the Act which allows VC participation at general meetings, there is nothing in the Act prohibition the same either. Imbibing electronic interface provisions in the Act, although only at the Board level, was to enable such remote participation by directors at meetings and to make the most use of such facility to better management and collective decision-making. The intent of law was surely not to limit such a facility to the Board meetings only.

The true purpose of calling a general meeting is to ascertaining the wishes or the sense of the members. If this can be achieved through electronic interface of the members, it should not be an offence to say that if companies desire, they most certainly can offer it members the facility to attend a general meeting through VC. After all, wasn't this the precise reason as why e-voting was introduced in the Act in the first place – to achieve the objective of meeting of minds and not just physical count of heads?

Though there are no set standards to providing of such a facility at general meetings, the same may not be very difficult to lay down. The author believes that the provisions as applicable to conducting meeting through VC facility at Board Meetings may, insofar as may be possible, apply to general meetings as well.

Broadly, the main requirements may consist of:

- (i) providing such an option in the notice of the AGM meeting,
- (ii) proper recording of the proceedings of the meeting,
- (iii) ensuring proper VC equipments/facility and
- (iv) that no one other than the concerned member/director is attending the meeting through VC.

Provision under the Companies Act, 1956

Although the Companies Act, 1956 ('Act, 1956') did not spell out any provision facilitating VC participation in meetings, there was express bar to it either. So few companies in general practice offered VC facility to their directors to participate in Board Meetings through VC. The only hitch here was whether or not to count their participation for the purposes of quorum.



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In this regard, as part of its Green Initiative, the Ministry of Corporate Affairs, in the year 2011, cleared the air by coming up with various circulars¹ facilitating the electronic participation of directors and shareholders in meetings under the Act, 1956. These circulars gave a legal color to directors participating in Board and committee meetings through VC facility and also made it viable for shareholders to participate in general meetings electronically. These circulars laid down a detailed procedure to be followed in this regard.

Can directors, including Chairman attend general meetings through VC?

Taking cue from our above discussions and as can be seen from the intent of the MCA in this regard, the author believes that as long as the proceedings of the meeting is being conducted in a lawful manner without any lapse of the duties on the part of the directors and as so long as they are able to do justice their part in the general meeting, there should not be an issue.

The same can also be said to apply to the Chairman of the meeting as well. However, in this regard, the Chairman is cast with a responsibility to oversee the conduct of the proceedings of the AGM in a proper manner. So long as the Chairman is able to do justice to the same, the author is of the opinion that there is no prejudice to the conduct of the proceedings at the meeting.

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¹ <http://www.mca.gov.in/MinistryV2/companiesact.html>
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