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COVID – 19 | The Virtual Reality of Shareholder Meetings

With social distancing and lockdowns becoming the norm, shareholder meetings will have to take on a virtual form. Although companies, investors, and regulators may not all be prepared, this will be the new normal. While the system of having shareholder meetings finds this new equilibrium, AGMs will be delayed as will the expectation of a dividend payout.

The outbreak of COVID-19, which was declared a pandemic on March 11 by the World Health Organization (WHO), has sent shock waves across global markets and has forced unprecedented measures on the movement of people within and across the country. The Government of India's directives of a 21-day lockdown and social distancing to avoid large public gatherings are likely to have an impact on the format of shareholder meetings (AGMs, EGMs, and NCLT convened meetings).

Retail shareholders are likely to be the most affected. Institutional investors have numerous platforms to engage with company managements, but for small and retail investors, shareholder meetings are the only opportunity for shareholder engagement.

The inability to hold shareholder meetings will likely have the following impact:

1. **Delays in transacting urgent business**
   Delays in holding shareholder meetings can have a material impact on business, where there is an urgent need for shareholder approval. Although the Board of Directors can take all the crucial decisions relating to the working of a company, a set of critical decisions require shareholders' approval (and in some instances, lenders' approval) These include appointment/re-appointment of directors, undertaking related party and inter-corporate transactions exceeding regulatory thresholds, issue of securities, schemes of arrangement, etc. Not obtaining shareholder approval in time might lead to non-compliance with the provisions of law or perhaps, even failed transactions (schemes of arrangement, issue of securities).

The only remaining option for shareholder approval is via the postal ballot. This does not require a gathering of shareholders, only that shareholders cast their e-vote. Even within the current constraints, this is an easy execution – yet only a defined set of items that can be approved via postal ballot. For example, the adoption of accounts and dividend declaration resolutions need, per force, to be approved in only the AGM and cannot be approved by shareholders via a postal ballot.

2. **Adjourning or postponing the AGM, or delay holding the AGM altogether**

AGMs are required to be held within six months of the close of the financial year[1], and the time between two consecutive AGMs cannot exceed fifteen months. Financial year for most companies in India closes on 31 March2[2], unless the companies have got a separate dispensation from the Ministry of Corporate Affairs to have another year end (MNCs typically close their financial year on 31 December to align with global practices).

Some companies that have already sent out notices for shareholder meetings (AGMs for companies with a 31 December year-end, or EGMs) where the meetings were earlier scheduled to be held during the lockdown phase, are being postponed. Although most Indian companies do not include such a provision in their Articles of Association (AoA), during such unforeseen times, it is generally possible for a board to decide to postpone a meeting. If postponement is not possible, a company's AoA will likely allow adjournment of a meeting – which will have the same practical effect. AoAs usually allow meetings to be adjourned either by the Chairperson with the consent of a quorate meeting or by the Chairperson unilaterally if no quorum is present3[3].

Companies can also choose to delay holding their AGMs altogether – but they must put in place a concrete plan on how they propose to manage during the delays. The COVID-19 pandemic may significantly reduce accessibility, communication and physical meetings to conduct statutory audits. It may cause delays to audit-related activities, including the impossibility to

[1] Under the SEBI LODR Regulations, top 100 listed entities (based on market capitalization) must hold their AGM within 5 months from the end of the financial year. SEBI relaxed compliance with this requirement due to the COVID-19 pandemic.
[2] IiAS research shows that in FY19, 479 of the NIFTY 500 companies reported a March year-end. See 2019: The Last Minute
[3] According to the Companies Act, 2013, where the required quorum is not present within half-an-hour of the appointed time for holding an AGM, the meeting is adjourned to the same day in the next week. If at the adjourned meeting also, a quorum is not present within half-an-hour from the appointed time, the members present shall form the quorum.

conduct on-site audits and inspections, and exercising the relevant access rights.

The solution lies in conducting virtual or hybrid AGMs
IiAS has long advocated that companies must allow shareholders to participate via a two-way teleconferencing or webex. This would enable a discerning set of investors to participate and address several concerns companies have raised about the quality of discourse at AGMs. Currently, the top 100 companies (by market capitalization) are required to have a webcast of their AGMs, but this is a one-way transmission of what is already occurring – it does not allow for participation by those logging in from remote locations.

Although the Ministry of Corporate Affairs (MCA) has allowed board meetings and board committee meetings to be held via video conferencing, it has not extended this to shareholder meetings4[4]. Therefore, currently virtual-only meetings may not constitute valid meetings in India. The Companies Act, 2013, requires physical quorum to constitute a valid meeting. UK-incorporated listed companies are permitted to hold hybrid or virtual annual general meetings. The U.S. Securities and Exchange Commission has also released a guidance, which permits US-based companies to opt for virtual or hybrid meetings (subject to State laws).

Allowing companies to hold virtual meetings, especially for listed companies where the shareholder base is large, is now a necessary requirement of social distancing. The regulators – both SEBI and MCA – need to allow companies to do so. Companies offering an entirely virtual meeting will need to put in place shareholder voting and identification procedures. Companies too need to address the infrastructure and technology requirement of setting up such a large-scale virtual meeting, and training shareholders on how to log into the meeting. To ensure greater shareholder participation, companies can establish an online shareholder Q&A for the AGM where shareholders can post questions related to the business of the AGM. In addition to the mandatory remote e-voting provided by listed companies, companies may provide web-based polling system to ensure shareholders participating through electronic means an opportunity to cast their votes.

[4] *At the time of writing this, there has been no official announcement.*

The other option would be for companies to conduct a hybrid AGM (a combination of a physical and electronic meeting).This would mean ensuring the presence of a physical quorum as well as allowing shareholders to participate in the AGM through digital means. For a steady-state or business-as-usual basis, this is an ideal way to increase shareholder participation. However, in the current times of lockdowns and social distancing, IiAS recommends regulators allow companies to hold meeting virtually only.

Conclusion

Regulators, with their reforms, have been embracing technology. E-voting, digital payments, and XBRL filings are several steps ahead of the earlier paper-driven economy. Allowing companies to hold shareholder meetings virtually need to be the next step. This, along with relaxations in compliance deadlines, would have ensured that businesses would continue on their course, despite the challenges of lock-downs – thus reducing the economic impact of delays.

Companies too need to step up on building their technology infrastructure. COVID-19 has compelled businesses to change the way they operate and challenged several companies that need to operate with employees working from home. For services (not manufacturing) industry, the move towards virtual offices and virtual meetings is easier, if they have the infrastructure for it. This will be the new area of focus for boards, along with the focus on business continuity planning and disaster recovery.

A modified version of this report written by Mavia Creado and Hetal Dalal was published on www.moneycontrol.com, which can be accessed here: https://bit.ly/2JJNrX5

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The attached article is a general commentary explaining the possible impact of the COVID-19 pandemic on the working of companies in the Indian market.

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