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After the publication of this article, MCA has issued a [clarification dated 13 April 2020](#). This version updates for these clarifications.

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MCA allows holding of EGMs through video conferencing and pauses

Having given relaxations on EGMs, MCA has taken a pause: it has not been extended to AGMs. MCA may be waiting to obtain feedback after a round of EGMs. Or it could be expecting that when the AGM season¹ - June to September, commences, the pandemic will be behind us. Irrespective of its the assessment, MCA needs to go the full distance. There are companies with a December year-end, and for them this is the time to hold their AGM.

The Companies Act, 2013, requires physical quorum to constitute a valid meeting. However, in light of the prevailing COVID-19 situation and the mandatory social distancing norms, the MCA, in its [clarification](#) dated 8 April 2020, relaxed this requirement for extraordinary general meetings (EGMs). MCA has requested companies to undertake transacting urgent business by the way of postal ballots (and e-voting). However, where holding an EGM is unavoidable, MCA has allowed such meetings to be conducted through video conferencing or other audio-visual means till 30 September 2020.

The requirements for listed companies holding an EGM through electronic means are given below:

Notice

- Convenience of members in different time zones should be kept in mind while scheduling the meeting.
- The notice of the meeting should, along with providing clear instructions to access and participate in the meeting, also disclose the company's compliance with the MCA circular. Where notice has already been issued, a fresh notice containing these details should be circulated after obtaining shorter notice consent from the members.

Facilities to be made available

- Two-way videoconferencing or webex facility with a capacity of allowing participation of at least 1000 members should be provided by the company. Members other than directors, KMP, Chairpersons of board committees, promoters, large shareholders (>2%), institutional investors should be allowed to participate on a first come-first serve basis.
- Facility to join the meeting should be kept open at least 15 minutes before the scheduled start time and 15 minutes after the scheduled time.

¹ IiAS research shows that typically over 95% of the NIFTY 500 companies hold their AGM between June and September, hence the term, AGM Season is usually applied to the June to September period.

- Facility for remote e-voting should be provided before the meeting, in addition to the e-voting system being made available during the meeting.

Attendance and proxies

- The provision for appointment of proxies has been dispensed with, while representatives of bodies corporate can be appointed to participate in such meetings.
- Attendance of members through electronic means will be counted for quorum.

Polling and e-voting

- Only those members who have not cast their vote through remote e-voting shall be allowed to vote at the meeting.
- Unless the Articles of the company provide otherwise, where less than 50 members are present – the members will elect the Chairperson for the meeting and in other cases, the Chairperson shall be elected through a poll conducted through the e-voting system.
- Voting at the meeting shall be conducted through an e-voting system. However, where less than 50 members are present, voting may be conducted by show of hands or through the e-voting system unless a poll is demanded.

Post meeting

- A recorded transcript of the meeting should, as soon as possible, be made available on the website of the company.
- Resolutions passed through this framework will be required to be filed with the Registrar of Companies within 60 days, so that such resolutions may be viewed publicly.

Other

- Participation of at least one independent director and the auditor or his representative shall be required.
- Institutional investors should be encouraged to attend and vote at the meeting.
- A helpline number through the RTA or technology provider should be provided to shareholders for any assistance required before and during the meeting.

Not all issues have been addressed. For example, it is not clear how the notice will be sent to shareholders that do not have an email address. Up until now, the notices to these shareholders was sent via snail-mail – but in the current scenario of a lockdown, this is not possible. The regulators need to suggest an alternative. Similar operational issues could arise elsewhere in the process of holding an EGM. *[Since the publication of this article, MCA has issued a clarification on this, and a few other matters. Refer to Exhibit 1 for these.]*

Having given relaxations on EGMs, MCA has taken a pause: it has not been extended to AGMs. Further this relaxation does not apply to items of 'ordinary business', viz. adoption of accounts, (re-) appointment of auditors, declaration of dividend and (re-) appointment of directors retiring by rotation.

MCA may be waiting to obtain feedback after a round of EGMs. Or it could be hoping that when the AGM season - June to September, is finally upon us, the pandemic will be behind us. But there are companies with a December year-end, and for them this is the time to hold an AGM. Whatever the thinking, MCA needs to go the full distance.

Exhibit 1: MCA Update

After the publication of this article, the MCA has issued a [clarification dated 13 April 2020](#).

In case of listed companies, notices may now be sent to shareholders only through email at their email addresses registered with the company or depositories. Members who are yet to register their email addresses would need to keep an eye out for updates on general meetings on stock exchange and company websites. This procedure is being allowed on account of disruption caused in postal services, making it difficult to serve or receive notices by post – as we had highlighted. The same procedure will also apply to postal ballot notices.

Along with other disclosures, the notice should clearly mention:

- Compliance with the MCA circular dated 8 April 2020
- Date and time of the EGM being held through electronic means
- Availability of the notice on company and stock exchange websites
- Manner in which members (who have not registered their email IDs) can register their email addresses with the company
- Manner in which members holding physical shares or have not registered their email IDs can vote through remote e-voting or through the e-voting system made available during the meeting

Additionally, the Chairperson of the meeting should ensure and record the fact that the company has taken all possible efforts to enable members to participate and vote at the meeting.

Further, MCA had initially allowed voting through show of hands for companies having less than 50 members participating. This no longer applies, and e-voting options need to be provided in these instances as well.

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This article is a general commentary explaining the recent regulations.



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