

PARTICIPATION AND VOTING IN GENERAL MEETINGS BY ELECTRONIC MODE

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The Ministry of Corporate Affairs (the “MCA”) has, as a part of its ‘*Green Initiative in Corporate Governance*’, introduced paperless compliances for companies. These provisions have been made pursuant to Sections 2, 4, 5, 13 and 81 of the Information Technology Act, 2000, dealing with legal recognition of electronic records (Section 4), legal recognition of electronic signatures (Section 5) and the manner of reckoning the time and place of dispatch and receipt of electronic records (Section 13).

Sections 165-197 of the Companies Act, 1956 (the “**Companies Act**”) deal with meetings of the shareholders of the Company. Section 166 of the Companies Act provides that a company is required to have its annual general meeting of shareholders (“**AGM**”) either at the registered office of the company or at a place within the city, town or the village in which the registered office of the company is situated. There is no express requirement in the Companies Act stipulating a general meeting of shareholders other than an AGM (i.e. an extraordinary general meeting or “**EGM**”) must be held. As a result, an EGM can be held in a state other than the state in which the registered office is situated and this position has been accepted by the courts in India (see *Ram Prasad Somani v. Bank of Rajasthan Ltd.*, 2002 (1) WLN 153).

The Companies Act does not expressly recognize general meetings held by means of tele-conference and video-conference. Historically, at the time when the Companies Act came into force, personal presence of at least two (2) members was the only way envisaged to conduct and participate in a ‘meeting’. Therefore, a member could participate and vote in the general meetings of a Company only by attending the meeting personally. Section 174 of the Companies Act explicitly so provides.

The MCA has, in this regard, vide its circulars dated May 20, 2011 and bearing nos. 27 & 28 /2011, clarified and recognized –

- (a) the dispatch and receipt of notices for shareholder and board meetings through electronic mode,
- (b) the participation by directors in board meetings through electronic mode, and
- (c) the participation by shareholders in general meetings through electronic mode,

subject to the company fulfilling certain requirements and procedures as follows:

The MCA has clarified that ‘*electronic mode*’ means video conference facility i.e. audio-visual electronic communication facility which enables all persons participating in the meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

The chairman of the general meeting and the secretary of the Company are obligated to maintain the integrity of the meeting via videoconferencing and to ensure proper videoconference equipment or facilities, preparing proper minutes of the meeting, ensuring the identity and authority of the participants, and ensuring that the participants’ views are taken on board, with repetitions and

reiterations, as may be necessary, notwithstanding any interruption or garbling during such videoconferencing.

The MCA has prescribed certain requirements and procedures to be followed by a company to enable participation by shareholders in general meetings. These are summarized as follows:

(a) Place of meeting:

- The place of the meeting (in case of an AGM) continues to be the registered office or a place within the city, town or the village in which the registered office of the company is situated. As stated above, holding of an EGM in a place or state other than the state in which the registered office is situate has been accepted by the courts in India.
- However, with a view to provide for larger participation and to curb the costs borne by the shareholders in attending general meetings, *listed public companies* may provide videoconferencing connectivity during such meetings in at least five (5) places in India, preferably covering top five (5) states or union territories having the maximum number of members residing therein or at least one thousand (1000) members, whichever is more.

(b) Notice:

The notice of the meeting must inform the shareholders of the availability of conferencing facilities for participation and provide necessary information to enable the shareholders to access such facilities.

(c) Quorum:

- The circular clarifies that shareholders may now participate in a general meeting through electronic mode.
- Unlike in the case of board meetings, Section 174 of the Companies Act requires the *personal presence* of at least five (5) members in case of a public company and at least two (2) members in case of a private company, to constitute the quorum for the general meeting.
- Therefore, the circular clarifies that in a general meeting where the shareholders are allowed to participate through electronic mode, the chairman of the meeting as well as the quorum required for the meeting have to be *physically present* at the place of the meeting. This is in line with the Companies Act requirement for such *personal presence* for quorum.

(d) Voting and recording of decision:

- The circular provides for electronic voting by shareholders in general meetings.

- In order to provide for a secure electronic platform for *capturing* accurate electronic voting processes, the MCA, in its circular dated May 2, 2011 and bearing no. 21/2011, has approved National Securities Depository Limited (“NSDL”) and Central Depository Services (India) Limited (“CDSL”) as the agencies for providing and supervising electronic platform for electronic voting, subject to NSDL and CDSL receiving a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications and IT, Government of India.

- It may be noted here that Section 192A of the Companies Act recognizes passing of resolutions in a *listed public company* by postal ballot. An explanation to Section 192A clarifies that postal ballot includes voting by electronic mode. The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 (“**Postal Ballot Rules**”) prescribes list of matters than can be voted upon by postal ballot and the procedures to conduct business via postal ballot. However, these Postal Ballot Rules do not shed any light on the procedures to be followed for electronic voting by postal ballot, other than recognizing such electronic voting. .

The MCA has further clarified, vide its circular dated June 6, 2011 and bearing no. 35/2011, that video conferencing facilities for shareholders’ meetings, are *mandatory* for listed companies (excluding the shareholders’ meetings to be held during the financial year 2011-2012). The MCA has placed no restrictions on the nature of the videoconferencing equipments or facilities that can be used during the meetings for participation purposes.

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