

**SBS AND COMPANY LLP**  
**CHARTERED ACCOUNTANTS**

**CONDUCT OF BOARD MEETING AND GENERAL  
MEETINGS AMIDST COVID-19**

An attempt is being made to list out on the provisions relating to the conduct of the Board and General Meeting, and relaxations by the Ministry of Corporate Affairs relating thereto.

**BOARD MEETINGS:**

All are aware that Section 173 of the Companies Act, 2013, prescribes, the manner in which the meetings of the Board of Directors are to be conducted, including through Video Conferencing or other Audio-Visual means.

The rules list out that the following matters/decisions of the Board, cannot be dealt through Video conference means, and can accordingly be passed by a meeting of the Board of Directors:

- (i) Approval of the Annual Financial Statements;
- (ii) Approval of the Board's Report;
- (iii) Approval of the Prospectus;
- (iv) Audit Committee Meetings for consideration of Financial Statement including Consolidated Financial Statement if any, to be approved by the Board under sub-section (1) of section 134 of the Act; and
- (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

With the **COVID-19 pandemic**, ravaging the world over, the Management/Board of Directors of Indian Corporates are unable to take business decisions, in view of the social distancing, lock-down and other directions/initiatives by the Central/State Governments, to avoid the spread of the pandemic.

The matters, which can be carried by a meeting through Video Conference, can be moved and passed, the issue comes to the matters which cannot be passed through Video Conference, and can be passed only through a physical meeting.

In view of the ongoing exigency, and the difficulties faced by the Corporates, the Ministry of Corporate Affairs, has vide the Companies (Meetings of Board and its Powers) Amendment Rules, 2020, Dt:19.03.2020, has amended the Rule-4 of the Companies (Meeting of the Board and its Powers) Rules, 2014, to provide that w.e.f. 19.03.2020 till 30.06.2020, the meetings on matters referred above, may be held through video conferencing or other audio visual means in accordance with Rule 3.

In view of the above, it is a great relief to the Corporates that there need not be a physical meeting of the Board of Directors, to take any decision even on the matters

which hitherto cannot be passed through Video Conference or other audio visual means.

**A detailed article on the procedure of conducting Board meeting through Video conference or other Audio-Visual means, was published in our Wiki – April-2017 edition<sup>1</sup>.**

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<sup>1</sup> <https://www.sbsandco.com/blog/meeting-through-video-conference>

## **GENERAL MEETINGS:**

As discussed above, the Companies Act, 2013, provides for conducting the meeting of the Board of Directors, except for certain matters through Video conference or other Audio-Visual means, whereas, no express provision is available in the Companies Act, 2013, for conduct of the General Meetings i.e., Shareholders meetings through Video conference or other Audio-Visual means.

In view of the ongoing exigency, and the difficulties faced by the Corporates, on account of the requirement of social distancing, lock-down and other directions/initiatives by the Central/State Governments, to avoid the spread of the pandemic, the Ministry of Corporate Affairs, has vide General Circular No.14/2020, Dt: 08.04.2020, and General Circular No.17/2020, Dt: 13.04.2020, has clarified that the companies are allowed to conduct Extra Ordinary General Meeting (EGMs) through Video Conference or Other Audio video means, to take all decisions of urgent nature requiring the approval of members (other than items of ordinary business or business where any person has a right to be heard), through the mechanism of postal ballot/ e-voting in accordance with the provisions of the Companies Act, 2013 (Act) and rules made thereunder, without holding an extraordinary general meeting (EGM), which requires physical presence of members at a common place, for conducting such EGM on or before **30.06.2020**.

Vide the above referred Circular, Ministry has prescribed the procedure to be adopted for conducting the EGM, for the following:

- A. Companies which are required to provide the facility of e-voting under Act, or any other Company which has opted for such facility.
- B. Companies which are not required to provide the facility of e-voting under the Act

## **ELECTRONIC MEANS:**

The rules framed under Section 108 of the Companies Act, provides that the following Companies shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

- Every company which has listed its equity shares on a recognised stock exchange; and
- Every company having not less than 1,000 members.

The following are the compliances by the companies conducting EGMs, by both the Companies referred at **A** and **B** above, in addition to any other requirements provided under the Act or the rules framed thereunder.

Sl. No.	Requirement	Compliance by Companies	
		Which are required to provide the facility of e-voting or any other company which has opted for such facility	Which are not required to provide the facility of e-voting
1	<b>Conduct of EGM, and maintenance of transcript</b>	<p>Can be conducted wherever unavoidable, though Video Conference or other Audio-Visual Means.</p> <p>Transcript to be maintained by the Company, and in case of a public Company, the recorded transcript, shall as soon as possible, be also made available on the website of the Company.</p>	<p>Can be conducted wherever unavoidable, though Video Conference or other Audio-Visual Means.</p> <p>Transcript to be maintained by the Company, and in case of a public Company, the recorded transcript, shall as soon as possible, be also made available on the website of the Company.</p>
2.	<b>Scheduling of time of the General Meeting</b>	Convenience of different persons positioned in difference time zones shall be kept in the mind before scheduling the meeting.	Convenience of different persons positioned in difference time zones shall be kept in the mind before scheduling the meeting.
3.	<b>Requirements/facilities</b>	<ul style="list-style-type: none"> <li>➔ Meeting to allow 2-way teleconferencing or WebEx for the ease of participation of the members;</li> <li>➔ The participants are allowed to pose questions concurrently or given time submit questions in advance on the e-mail address of the company.</li> </ul>	<ul style="list-style-type: none"> <li>➔ Meeting to allow 2-way teleconferencing or WebEx for ease of participation of the members;</li> <li>➔ The participants are allowed to pose questions concurrently or given time submit questions in advance on the e-mail address of the company.</li> </ul>

		<ul style="list-style-type: none"> <li>➔ Shall allow at least 1,000 members to participate on first-come-first served basis.</li> <li>➔ Large shareholders (i.e., shareholders holding 2 % or more), promoters, institutional investors, directors, KMPs, the chairpersons of Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, Auditors etc., may be allowed to attend the meeting, without restriction on account of first-come-first served basis.</li> </ul>	<ul style="list-style-type: none"> <li>➔ Shall allow at least 500 members to participate on first-come-first served basis.</li> <li>➔ Large shareholders (i.e., shareholders holding 2 % or more), promoters, institutional investors, directors, KMPs, the chairpersons of Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, Auditors etc., may be allowed to attend the meeting, without restriction on account of first-come-first served basis.</li> </ul>
4.	<b>Maximum time limit to join the meeting</b>	The facility shall be kept open at least 15 minutes before the time scheduled to start of the meeting and shall remain open till expiry of 15 minutes after the scheduled time.	The facility shall be kept open at least 15 minutes before the time scheduled to start of the meeting and shall remain open till expiry of 15 minutes after the scheduled time.
5.	<b>Remote e-voting</b>	Before the actual date of meeting, the facility of remote e-voting shall be provided in accordance with the Act and the rules.	NOT APPLICABLE
6.	<b>Recording of Attendance</b>	Attendance of members through Video conference shall be counted for the purpose of reckoning the quorum.	Attendance of members through Video conference shall be counted for the purpose of reckoning the quorum.
7.	<b>Voting</b>	The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purpose of voting during the meeting held through Video conference.	<ul style="list-style-type: none"> <li>➔ Where there are less than 50 members present at the meeting, then the voting may be conducted: <ul style="list-style-type: none"> <li>(a) By Show of hands,</li> </ul> unless demand for a poll is made by any member in accordance with Section 109 of the Act.</li> </ul>

8.	<b>Chairman for the Meeting</b>	<p>Unless the Articles requires any specific person to be appointed as Chairman, the chairman for the meeting to be appointed as below:</p> <ul style="list-style-type: none"> <li>➔ Where there are less than 50 members present at the meeting, the chairman shall be appointed in accordance with Section 104 i.e., chairman to be elected among the members present, and if poll is demanded, then the to be elected as per the poll.</li> <li>➔ In all other cases, the Chairman shall be appointed by a poll conducted through the e-voting system during the meeting.</li> </ul>	<p>Unless the Articles requires any specific person to be appointed as Chairman, the chairman for the meeting to be appointed as below:</p> <ul style="list-style-type: none"> <li>➔ Where there are less than 50 members present at the meeting, the chairman shall be appointed in accordance with Section 104 i.e., chairman to be elected among the members present, and if poll is demanded, then the to be elected as per the poll.</li> <li>➔ In all other cases, the Chairman shall be appointed by a poll.</li> </ul>
9.	<b>Poll</b>	Poll only through e-voting system.	<p><u><i>There shall not be any facility for polling by the members at any time before the General meeting, and shall take place only at the time of meeting.</i></u></p> <ul style="list-style-type: none"> <li>➔ Poll to take place by way of email. The company shall provide a designated email address to all members at the time of sending the notice of said meeting, so that the member can convey their vote, in case of poll.</li> <li>➔ The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly maintained by the company at all times.</li> <li>➔ The Company to take appropriate safety with regard to authenticity of email address(es) and other details of the members;</li> <li>➔ The member to cast their cote on the resolutions only by sending mails through their e-mail address which are registered with the</li> </ul>

			<p>Company.</p> <ul style="list-style-type: none"> <li>➔ The said emails shall only be sent to the designated email address circulated by the Company.</li> <li>➔ In case of counting of votes requires time, the said meeting may be adjourned.</li> </ul>
10.	<b>Proxy(ies)</b>	<p>Not Available. Since the physical attendance of members in any case has been dispensed with, there is no requirement of appointment of proxies.</p> <p>Pursuant to Section 112 and Section 113 of the Act, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through Video conference.</p>	<p>Not Available. Since the physical attendance of members in any case has been dispensed with, there is no requirement of appointment of proxies.</p> <p>Pursuant to Section 112 and Section 113 of the Act, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through Video conference.</p>
11.	<b>Presence of Independent Director and the Auditor</b>	<p>Where the Company is required to appoint Independent Directors, at least one Independent Director shall attend the said meeting.</p> <p>Further the Auditor or his Authorised representative, who is qualified to be the auditor shall also attend the said meeting.</p>	<p>Where the Company is required to appoint Independent Directors, at least one Independent Director shall attend the said meeting. If not required to be appointed, then Independent Director is not required.</p> <p>Further the Auditor or his Authorised representative, who is qualified to be the auditor shall also attend the said meeting.</p>
12.	<b>Presence of Institutional Investor Members</b>	<p>Institutional Investor Members, if any, must be encouraged to attend and vote at the said meeting.</p>	<p>Institutional Investor Members, if any, must be encouraged to attend and vote at the said meeting.</p>
13.	<b>Mode of Service of Notice</b>	<ul style="list-style-type: none"> <li>➔ Notices to members to be given only through e-</li> </ul>	<ul style="list-style-type: none"> <li>➔ Notices to members to be given only to the e-</li> </ul>

		<p>mails registered with the company or with the depository participant/depository.</p> <p>➔ In the Public Notice as required under Rule 20 (4) (v) of the rules, the following matters shall also be stated:</p> <p>(a) Statement that the EGM is convened in compliance with the provisions of the Act, and the General Circular No.14.</p> <p>(b) The date and time of the EGM</p> <p>(c) Availability of the notice of meeting on the website of the company and the stock exchange</p> <p>(d) The manner in which the members holding shares in physical form or who have not registered the mail id with the Company, can cast their vote through remote e-voting of e-voting system during the meeting.</p> <p>(e) The manner in which the members can get their email id registered with the company</p> <p>(f) Any other related information.</p>	<p>mails registered with the company or with the depository participant/depository.</p> <p>➔ A copy of the notice shall be displaced on the website, if any, of the company.</p> <p>➔ Where the Company does not have e-mail id of the Shareholder, then the company shall contact him over phone or any other mode of communication for registration of their e-mail, before sending the notice.</p> <p>➔ Where contact details are not available, then the company shall cause a public notice, to be published immediately, in at least one vernacular newspaper in the principal vernacular language, at least one English newspaper, in the English language, having wide circulation, in the district, where the Registered office of situated, preferably with electronic editions, with the following information:</p>
		<p>➔ In respect of companies, transacting any item only through postal ballot, upto 30.06.2020, or till such others by the ministry, which ever is earlier, the requirements of Rule 20 of the Companies (Management and Administration) Rules, 2014 i.e., Public Notice as well as the</p>	<p>(a) Regarding the convening of the Meeting in compliance with the General Circular No.14, and in connection therewith, proposes to send notice to all its members by e-mail at least 3 days from the date of publication of the public notice.</p>



		<p>framework in General Circular No.14 and 17, shall apply mutatis and mutandis.</p> <ul style="list-style-type: none"> <li>➔ Notices to members to be given to the e-mails registered with the company or with the depository participant/depository.</li> <li>➔ The Company to also provide the process of registration of e-mail address of members and state so in its public notice.</li> <li>➔ The communication of the assent or dissent of the members would only take place through the remote e-voting system.</li> </ul>	<p>(b) The details of the e-mail and Contact number of the company, to which the members may contact for getting their email address registered in connection with the voting in the meeting.</p>
14.	<b>Notice of General Meeting and information to be contained therein.</b>	<p>The notice for the General Meeting, shall make disclosure with regard to the manner in which framework provided by the ministry, and also shall contain clear instructions on how to access and participate in the meeting. The Company shall provide:</p> <ul style="list-style-type: none"> <li>➔ A helpline number through the Registrar and Transfer Agent (RTA), Technology Provider or otherwise for the assistance of the shareholders.</li> <li>➔ Prominently display the notice on the website of the Company; and</li> <li>➔ Intimate the same to the Stock exchanges in case of listed company.</li> </ul>	<p>The notice for the General Meeting, shall make disclosure with regard to the manner in which framework provided by the ministry, and also shall contain clear instructions on how to access and participate in the meeting. The Company shall provide:</p> <ul style="list-style-type: none"> <li>➔ A helpline number through the Registrar and Transfer Agent (RTA), Technology Provider or otherwise for the assistance of the shareholders.</li> <li>➔ Prominently display the notice on the website of the Company; and</li> </ul>
15.	<b>Compliance to be done, where EGM Notice was already issued prior to the</b>	<p>In such cases, the framework proposed in the Circular, may be adopted for the meeting, in case the consent</p>	<p>In such cases, the framework proposed in the Circular, may be adopted for the meeting, in case the consent</p>

	<b>date of the General Circular</b>	from the members has been obtained in accordance with Section 101 (1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with the circular to be issued consequently.	from the members has been obtained in accordance with Section 101 (1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with the circular to be issued consequently.
16.	<b>Filing of Forms and other compliances</b>	All resolutions passed at the meeting shall be filed with Registrar of Companies, within 60 days of the meeting, clearly indicating therein that the mechanism provided and provisions of the circular were duly complied.	All resolutions passed at the meeting shall be filed with Registrar of Companies, within 60 days of the meeting, clearly indicating therein that the mechanism provided and provisions of the circular were duly complied.
17.	<b>Matters that cannot be passed through Video Conference or other Audio Visual means</b>	The following items cannot be transacted through a General Meeting by Video Conference.  (a) Ordinary Business i.e., items normally transacted at an Annual General Meeting; and  (b) Business where any person has a right to be heard.	The following items cannot be transacted through a General Meeting by Video Conference.  (a) Ordinary Business i.e., items normally transacted at an Annual General Meeting; and  (b) Business where any person has a right to be heard.
18.	<b>Applicability</b>	For conducting such EGM on or before <b><u>30.06.2020.</u></b>	For conducting such EGM on or before <b><u>30.06.2020.</u></b>