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Minutes of Proceedings of Board Meetings

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Sections 193 to 197 of The Companies Act, 1956 deal with minutes of both general meetings and board meetings. While there is provision for board meetings in the Act, the Companies Bill, 2009 does not provide for the same. It is left to the rule making authority as the wordings used are "as may be prescribed". Even in the case of existing provisions, there are certain practical problems and judicial pronouncements.

Sections 193 to 197 of the Companies Act, 1956 deal with minutes both for general meetings and board meetings. In Companies Bill, 2009 clause 107 and 108 provide for the same. While Section 193 of the present Act provides for minutes of board meetings, there is no such provision in the Bill. The wordings are as follows:- " Every company shall cause to be prepared, signed and kept minutes of the proceedings ....of every meeting of its Board of Directors or every committee of the Board, within such time and in such manner as may be prescribed." It is not known why the provisions of the Act have been ignored. Even though in the present Act some aspects of board meeting minutes are given, there are certain grey areas and judicial pronouncements in this respect which are considered below.

MINUTES BOOK

In practice, minutes are kept in two forms (i) handwritten minutes in a bound book an (ii) loose leaf typewritten minutes The Calcutta High Court did in fact refuse to accept a minute book in loose leaf form. In *A.K. Mukherjee* v. *Clarion Advertising Services Ltd*. (1982) 52 Comp. Case 315, S.K. Roychowdhury, J. observed : ".....appears to me not a minute book within the meaning of section 193, as it is in a loose leaf binder and typewritten. The minutes book must be bound book and must be hand written and cannot be a loose leaf binder and typewritten. This is for obvious reasons for preventing interpolation, manipulation, fabrication and substitution." In *Edward Keventer Successors Pvt. Ltd.* v. *K. Sud* (1968) 38 Comp. Case 507, the Delhi High Court accepted the minute book in loose leaf form in evidence .The resolution was typed on a loose sheet and had been pasted to a leaf of the minute book.

The Department of Company Affairs* has issued a number of circulars and clarifications from which it appears that the Department would have no objection if minutes are kept in loose-leaf typewritten form, provided certain precautions are taken. Binding up the loose leaves in books at reasonable intervals, say six months and communicated to the board at a meeting. The loose leaf minutes pages are in a lockable condition. The minutes book is kept in a locker and made accessible only to the company secretary. In the case of a new company inform the ROC about how the minutes will be kept after passing a board resolution to that effect.

Section 120 of the English Companies Act, 1929, is similar to Section 193. In the case of *Heats of Oak Assurance Co*. v. *James Flower& Sons* (1936) 6 Comp. Cas. 76 the Chancery court of England held that loose leaf minutes are not admissible as evidence because a loose leaf book is not a "book" within the meaning of Section 120. But Section 436 of the English Companies Act, 1948 expressly provides that minutes can be in loose leaf typewritten form provided adequate precautions are taken against falsification.

SIGNING OF MINUTES

1. As per Section 193, entries must be made within 30 days of the conclusion of the meeting and should be signed by the chairman at the next succeeding board meeting. Will it be in order if the minutes of the board meeting held on Jan 01 is recorded before Jan 31 and signed at the June 30 meeting i.e. after 180 days as a board meeting has to be held once in every three months as per Section 285? Will it be in order acting on minutes only recorded and not signed before the next board

* *Now Ministry of Corporate Affairs*

meeting? Will it be in order if acted upon before June 30 when the minutes are initialed, signed and dated by the chairman?

2. As per Section 145 of the English Companies Act, the record kept of the minutes of the board meetings by itself, whether signed or not, is *prima facie* evidence of the minutes in a court of law. Therefore in India, can we say that the minutes written by the "secretary" but not signed is satisfactory evidence as he can testify before a court? Does the Act contemplate the secretary to write the minutes by his own hand? Can a secretary give a certified copy of the minutes which is not signed by the chairman with the remark - "the minutes has not been signed by the chairman in confirmation".

3. Some resolutions of the Board are to be filed within 30 days of the meeting such as appointment of additional director (section 260) or filling up of a casual vacancy (Section 262). Is it necessary for the secretary to wait till the minutes are signed and then file the returns well after 30 days?

4. The best solution is that the Companies Act is amended to provide for specific provision that the minutes of the board meeting is signed before the expiry of 30 days of the meeting as is the case with general meetings by the chairman of the same meeting or some other director authorized to do so in his absence. Any change in the minutes can be made at the subsequent meeting while confirming the minutes. The recorded but unsigned minutes should be given evidentiary value. The action taken by the company secretary on unsigned minutes (even before the expiry of 30 days) should be in order. This may arise when a bank or financial institution wants a certified copy of the resolution passed at a meeting urgently. Until the Act is suitably amended, the practical procedure will be to prepare the minutes in draft form and get it signed by the chairman as early as possible after the board meeting and then use the same as authenticated. The chairman may approve the draft minutes with the remark "minutes approved for incorporation in minutes book". What will be the case when a board meeting has to be held earlier than thirty days of the previous meeting? The best course would be to record the minutes in the book (earlier than thirty days) and get it signed by the chairman of the particular meeting which will be held earlier than thirty days of the previous meeting.

MINUTES IN FLOPPIES AND CDs

Amendment to the Act should provide for keeping the minutes in digital form i.e., in the form of floppies or CDs with sufficient safeguards against manipulation and the secretary should be made wholly responsible in this respect. There should be an annual audit of digital documents by a company secretary in practice and a report given to the board.

DIRECTORS' RIGHT TO MINUTES

As the law stands today, a director has no right to inspect minutes book nor can he ask the company to furnish him with copies thereof as matter of right. He, however, gets a copy included in the agenda of a meeting. Here again the Companies Act should be amended to give him a right or entitlement to inspect or get copies of minutes especially past minutes when the director is a new incumbent. There are some companies where the draft minutes of the current meeting are also circulated along with the agenda!

VIDEO CONFERENCING

The Companies Act should be amended to provide for holding board meetings through video conferencing with safeguards to prevent leak of sensitive information. The minutes of such meetings should be recorded which should a faithful representation of the proceedings. The video clippings should form part of the minutes and should be in the custody of the secretary.

PLACE OF KEEPING THE MINUTES BOOK

As per Section 196 of the present Act, books containing the minutes of the proceedings of any general meeting shall be kept at the registered office of the company. This is also provided for by Clause 108 of the Bill. Since no mention is made of the minutes book of board meetings, it can be assumed to be normally kept at the registered office of the company like other statutory registers. But it will be necessary to remove it to another place like when a board meting is held in a place other than the registered office and the minutes of the previous meeting are to be signed by the chairman of the succeeding meeting. This may be the case even if the Board meeting is held in the same place as the registered office but at a different location, i.e. in a hotel.

BETTER CORPORATE GOVERNANCE

For better corporate governance and to prevent extrapolation, numbers should be given serially to

(a) Board meetings and Committee meetings

(b) Resolutions

SUMMARY

The following aspects should be incorporated in the statute

(i) The minutes of a board meeting or a committee thereof shall be signed before the expiry of 30 days of the meeting (as is the case with general meetings) by the chairman of the same meeting or some other director authorized to do so in his absence. The recorded but unsigned minutes before they are signed by the chairman or director should be given evidentiary value. The action taken by the secretary on unsigned minutes (even before the expiry of 30 days) should be in order.

(ii) A director has a right to inspect or get copies of minutes.

(iii) Provision should be made for keeping minutes either in loose leaf book or in digital form. There should be an annual audit of digital documents by a company secretary in practice and a report given to the board.

(iv) Minutes book of the proceedings of a board meeting or a committee thereof should be kept at the registered office of the company provided that it is permissible to remove the minutes book to a place other than the registered office of the company when the need arises or to produce it before a court for evidence.

(v) For better corporate governance and to prevent manipulation and extrapolation, serial numbers shall be given to all resolutions and to board meetings and committees thereof.

CONFIRMATION OF MINUTES

It is a general practice for many companies to circulate the minutes of the previous board meeting to be confirmed at the next board meeting. But it is not mandatory to have the confirmation of the minutes as has been decided in *Karnataka Bank Ltd*. v. *A.B. Datar* (1994) 79 Comp Case 417 at p.346 (Kar); *Chetkar Jha* v. *Viswanath Prasad Verma* AIR 1970 SC 1832 and *Kerala State Electricity Board* v. *Hindusthan Construction Co. Ltd.* [2009]91 SCL 183 (SC) The Apex Court in *Chetkar Jha* case held that, "when minutes of a meeting are placed before the next meeting the only thing that can be done is to see whether the decision taken at the earlier meeting has been properly recorded or not .The accuracy of the minutes and not the validity of the decision is, therefore, before the meeting. Once a decision is duly taken it can only be changed by a substantive resolution properly adopted for such a change." In the *Kerala State Electricity Board* case, the Supreme Court held that "the non-confirmation of minutes does not have any effect on the decision taken at the earlier meeting". In other words, any lawful decision taken by a duly convened and constituted meeting of the Board or Committee would not become ineffective merely for want of confirmation at the subsequent meeting. ❑