

PARTICIPATION BY DIRECTORS IN MEETING OF BOARD/COMMITTEE OF DIRECTORS THROUGH ELECTRONIC MODE

The Ministry of Corporate Affairs has been receiving representation from various Industry bodies to recognize participation by directors in meetings of Board/Committee of Directors under the Companies Act, 1956 through electronic mode. The MCA vide General Circular No. 28/2011 dated 20.05.2011 has clarified that directors of a company may participate in a meeting of Board/Committee of directors under the provisions of Companies Act, 1956 through electronic vote.

The said Circular has allowed paperless compliances by the Companies after considering section 2, 4, 5, 13 and 81 of the Information Technology Act, 2000 for legal validity of compliance under the Companies Act, 1956 through electronic mode.

Section 13 of the Information Technology Act, 2000, inter-alia provides time and place of dispatch of the notice in electronic mode, which may be applicable for the purpose of notice period provided in the Companies Act, 1956 through electronic mode. Therefore, the notice of the Board or Committee meetings may also be sent by way of email/electronically to the directors/members of the Committees.

Procedure for Holding Meeting Through Electronic Mode

For this purpose, the company shall also comply with the following requirements and procedures, in addition to the normal procedures required under the Companies Act, 1956 for holding meeting of Board/Committee of directors:

- (a) Electronic mode means video conference facility i.e. audio-visual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each other without an Intermediary, and to participate effectively in the meeting.
- (b) Every director of the company must attend the meeting of Board/Committee of directors personally of at least one meeting of financial year of the company.
- (c) The Chairman and Secretary of the company shall assume the following responsibilities:
 - (i) to safeguard the integrity of the meeting via video conferencing
 - (ii) to ensure proper video conference equipment/facilities.

- (iii) to prepare the minutes of the meeting.
 - (iv) to ensure that no one other than the concern director or other authorized participants are attending the meeting through electronic mode.
 - (v) If a statement of a participant in the meeting via videoconferencing is interrupted or garbled, the Chairman or Secretary shall request for a repeat or reiteration, and if need be the Chairman or Secretary shall repeat what he heard the participant was saying for confirmation or correction.
- (d) The Notice of the meeting must inform directors regarding availability of participation through video conferencing, and provide necessary information to enable directors to access the availability facility of videoconferencing.
- (e) The notice of the meeting shall also seek confirmation from the director as to whether he will attend the meeting physically or through electronic mode and shall also contain the contact number/e-mail addresses of the Secretary/designated officer to whom the director shall confirm in this regard.
- (f) In the absence of any clarification from the director, it will be presumed that he will be physically attending the Board Meeting.
- (g) At the start of the scheduled meeting through electronic mode, a roll call shall be made by the Chairman/Secretary. Every director and authorised participant shall state, for the record, the following:-
 - (i) Full Name
 - (ii) Location
 - (iii) That he can completely and clearly see and communicate with each of other participants.
 - (iv) and will ensure that no one other than the concern director or authorised participant is attending the meeting through electronic mode.
- (h) Thereafter, the Chairman/Secretary shall confirm the participation of the directors in the meeting who are not physically present. After the roll call, the Chairman or Secretary may rectify the existence of a quorum.
- (i) A director that participating in a meeting through use of video conference shall be counted for the purpose of quorum. A roll call should also be made at the conclusion of

the meeting or at re-commencement of the meeting after every break to ensure presence of quorum through the meeting.

- (j) The place where the Chairman/Secretary is sitting during the Board Meeting shall be taken as place of meeting in terms of section 288 of the Act and all recordings will be made at this place. The other statutory register, which are required to be placed in the Board meeting as per the provisions of the Act, shall be placed before the Chairman for compliance of the Act. The statutory register required to be signed by the other directors shall be deemed to have been signed by directors participating through electronic mode if they have given their consent to this effect in that meeting.
- (k) If a motion is objected to and there is a need to vote, the Chairman/Secretary should call the roll and note the vote of each director who should identify himself.
- (l) In the end of the meeting, Chairman of the meeting shall announce the summary of the decisions taken in that meeting in respect of each agenda item and names of the directors who have consented or dissented to those decisions. Video recording of that part of the meeting shall be preserved by the company for one year from the conclusion of that meeting.
- (m) In the minutes, Chairman shall also confirm the mode of attendance of every director of the company during last 3 meetings whether personally or through electronic mode.
- (n) Draft minutes of the meeting shall be circulated in soft copy not later than 7 days of the meeting for comments/confirmation to the directors who attended the meeting to dispel all doubts on matters taken up during the meeting. Thereafter, the minutes shall be entered in the minutes books as prescribed under section 193 of the Act. The minutes shall also disclose the particulars of the Directors who attended the meeting through electronic mode.

(NOTE: The above article is given for the limited purpose of bringing awareness about the subject matter for readers.)

Regards

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