DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

Meetings of Board through video conferencing or other audio visual means.

12.1. For the purposes of sub-section (2) of section 173, a company shall comply with the following requirements and procedures, in addition to the procedures required for Board meetings in person, for convening and conducting Board meetings through video conferencing or other audio visual means:

(1) Every director of the company shall attend, at least one Board meeting in a financial year of the company, in person.

(2) The Chairperson of the meeting and company secretary, if any, shall take due and reasonable care:

(a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

(b) to ensure the availability of proper video conferencing or other audio visual equipment/facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

(c) to record the proceedings and prepare the minutes of the meeting;

(d) to store for safekeeping and marking the tape recording(s) and/or other electronic recording mechanism as part of the records of the company;

(e) to ensure that no person other than the concerned director or other authorised participants are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and/or see the other participants clearly during the course of the meeting

(3) (a) The notices of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.

(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(c) A director intending to participate through video conferencing mode or other audio visual means shall communicate his intention in writing to the Chairman and/or the company secretary of the company and shall also furnish details of how he wishes to avail the connectivity.

(d) If the director intends to participate through video conferencing mode or other audio visual means, he shall send the confirmation at least three days prior to the scheduled date of the meeting unless waived-off by the Chairperson. The company secretary shall keep the records of the request and details furnished by the director, which shall be noted and recorded in the minutes of the meeting.

(e) In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.

(4) At the start of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following:

(a) his name;

(b) the location from where he is participating;

(c) that he can completely and clearly see, hear and communicate with the other participants;

(d) that he has received the agenda and all the relevant material for the meeting; and

(e) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in (b) above.

(5) (a) After the roll call, the Chairperson or Secretary shall inform the Board about the names of persons other

than the directors who are present for the said meeting at the request or with the permission of the Chairman and confirm that the quorum is present for conducting a valid meeting.

Explanation: It is clarified that a director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any item/s of business under any provisions of the Act or Rules.

(b) The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting. Where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode if they have given their consent to this effect and it is so recorded in the minutes of the meeting. .

(7) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If the director fails to identify himself, the Chairperson or company secretary shall briefly state the identity of the speaker. If the person speaking is not physically present and the secretary is not certain of the identity of the speaker, the Secretary must inquire to elicit a confirmation or correction.

(c) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or company secretary shall request for a repeat or reiteration by the director.

(8) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

(9) From the commencement of the meeting until the conclusion of such meeting, no person other than the Chairperson, directors, Secretary and any other person whose presence is required pursuant to a legal provision shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing or other audio visual means.

(10) (a) At the end of the meeting, the Chairperson of the meeting shall announce the summary of the decisions taken in that meeting in respect of each

item of business transacted at the meeting and the names of the directors who have assented to or dissented from those decisions. The video recording of this part of the meeting shall form part of the secretarial records and be preserved by the company.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(11) (a) The draft minutes of the meeting shall be circulated among all the directors within seven days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days after receipt of the draft minutes failing which his approval shall be presumed.

(c) Thereafter, the minutes shall be entered in the minute book as prescribed under section 118 of the Act.

Explanation- For the purposes of this rule, 'video conferencing or other audio visual means' means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to

communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Matters not to be dealt with in a meeting through video conferencing or other audio visual means

12.2 For the purposes of the proviso to sub-section (2) of section 173, the following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means:

(i) to approve the annual financial statements; and

(ii) to approve the Board's report.

Passing of resolution by circulation.

12.3. For the purposes of sub-section (1) of section 175, a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

Committees of the Board.

12.4. Pursuant to the provisions of sub-section (1) of section 177 and sub-section (1) of section 178, the Board of directors of the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board:

(a) every listed company;

(b) every other public company –

(i) having paid up capital of one hundred crore rupees or more; or

(ii) which have, in aggregate, outstanding loans or borrowings or debentures or deposits exceeding two hundred crore rupees.

Establishment of vigil mechanism.

12.5. (1) For the purposes of sub-section (9) of section 177, every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns:-

(1) Companies which accept deposits from the public; and

(2) Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees;

(2) Companies which are required to constitute an audit committee shall operate the vigil mechanism through the audit committee. If any of the members of the audit committee are conflicted in a given case, they should recluse themselves and the others on the committee would deal with the matter on hand. In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

(3) This mechanism shall provide for adequate safeguards against victimization of employees and directors who avail of the mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

(4) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play

the role of audit committee may take suitable action against the concerned director or employee including reprimand.

Powers of Board.

12.6. For the purposes of clause (k) of sub section (3) of section 179, the following powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

(1) to make political contributions;

(2) to fill a casual vacancy in the Board;

(3) to enter into a joint venture or technical or financial collaboration or any collaboration agreement;

(4) to commence a new business;

(5) to shift the location of a plant or factory or the registered office;

(6) to appoint or remove key managerial personnel (KMP) and senior management personnel one level below the KMP;

(7) to appoint internal auditors;

(8) to adopt common seal;

(9) to take note of the disclosure of director's interest and shareholding;

(10) to sell investments held by the company (other than trade investments), constituting five percent or more of the paid – up share capital and free reserves of the investee company;

(11) to accept public deposits and related matters and;

(12) to approve quarterly, half yearly and annual financial statements.

Disclosures by a director of his interest.

12.7.(1) For the purposes of sub-section (1) of section 184, every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form No. 12.1.

(2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

(3) All notices shall be kept at the registered office. Such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the secretary of the company or any other person authorized by the Board for the purpose.

Loan and investment by a company

12.8. For the purposes of sub-section (6) of section 186, no company registered under section 12 of the Securities and Exchange Board of India Act, 1992 and also covered under such class or classes of companies which may be notified by the Central Government in consultation with the Securities and Exchange Board, shall take any inter-corporate loan or deposits, in excess of the limits prescribed under the regulations applicable to such company, pursuant to which it has obtained certificate

of registration from the Securities and Exchange Board of India.

12.9. (1) For the purposes of sub-section (9) of section 186, every company giving loan or giving guarantee or providing security or making an acquisition shall, from the date of its registration, maintain a register in Form No. 12.2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.

(2) Entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.

(3) The register shall be kept at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the secretary of the company or any other person authorised by the Board for the purpose.

(4) Entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

12.10. For the purposes of sub-section (10) of section 186, extracts from the register maintained under sub-section (9) of section 186 may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

12.11 (1) For the purpose of sub-section (12) of section 186, where the aggregate of the loans and investment so far made,

the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits prescribed under section 186, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a special resolution passed in a general meeting.

(2) A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give guarantee may specify the total amount up to which the Board of Directors is authorised to give guarantee;

Provided, that the company shall disclose to the members in the financial statement the full particulars of the guarantee given and the purpose for which the guarantee is proposed to be utilised by the recipient of the guarantee.

Investments of company to be held in its own name.

12.12 (1) For the purposes of sub-section (3) of section 187, every company shall, from the date of its registration, maintain a register in Form No. 12.3 and enter therein, chronologically, the particulars of investments in shares or other securities beneficially held by the company but which are not held in its own name. The company shall also record the reasons for not holding the investments in its own name and the relationship or contract under which the investment is held in the name of any other person.

Further, the company shall also record whether such investments are held in a third party's name for the time being or otherwise.

(2) The register shall be maintained at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or if there is no company secretary, any director or any other officer authorised by the Board for the purpose.

(3) Entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

Related Party Transactions.

12.13 For the purposes of sub-section (1) of section 188, a company shall enter into any contract or arrangement with a related party subject to the following conditions-

(1) The notice of the Board meeting at which the resolution is proposed to be moved shall disclose-

(a) name of the related party and nature of relationship;

(b) nature, duration of the contract and particulars of the contract or arrangement;

(c) material terms of the contract or arrangement including the value, if any;

(d) any advance paid or received for the contract or arrangement, if any; and

(e) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the

subject matter of the resolution relating to such contract or arrangement.

12.14 (1) For the purposes of first proviso to sub-section (1) of section 188,

(i) a company having a paid-up share capital of rupees one crore or more shall not enter into a contract or arrangement with any related party; or

(ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into

(a) individually or taken together with previous transactions during a financial year, exceeds five percent of the annual turnover or twenty percent of the net worth of the company as per the last audited financial statements of the company, whichever is higher, for contracts or arrangements as mentioned in clauses (a) to (e) of sub-section (1) of section 188; or

(b) relates to appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding one lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or

(c) is for a remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding ten lakh rupees as mentioned in clause (g) of sub-section (1) of section 188;

except with the prior approval of the company by a special resolution.

(2) For the purposes of second proviso to sub-section (1) of section 188, in case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars:

(a) name of the related party ;

(b) name of the director or key managerial personnel who is related, if any;

(c) nature of relationship;

(d) nature, material terms, monetary value and particulars of the contract or arrangement;

(e) any other information relevant or important for the members to take a decision on the proposed resolution.

Register of contracts or arrangements in which directors are interested.

12.15. (1) For the purposes of sub-section (1) of section 189, every company shall maintain one or more registers in Form No. 12.4, and shall enter therein the particulars of-

(a) company or companies or bodies corporate, firms or other association of individuals, in which any director

has any concern or interest, as mentioned under sub-section (1) of section 184;

Provided that the particulars of the company or companies or bodies corporate in which a director himself or in association with any other director holds two percent or less of the paid-up share capital would not be required to be entered in the register.

(b) contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and

(c) contracts or arrangements with a related party with respect to transactions to which section 188 applies;

(2) Entries in the register shall be made in chronological order and shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

(3) Such register shall be kept at the registered office of the company. The register shall be preserved permanently and shall be kept in the custody of the secretary of the company or any other person authorized by the Board for the purpose.

(4) For the purposes of sub-section (3) of section 189, the company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be prescribed in the articles of the company but not exceeding ten rupees per page.

Payment to director for loss of office, etc. in connection with transfer of undertaking, property or shares

12.16. (1) For the purposes of sub-section (1) of section 191, no director of a company shall receive any payment by way of compensation in connection with any event mentioned in sub-section (1) unless the following particulars are disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount:-

(a) name of the concerned director
(b) amount proposed to be paid;
(c) event due to which compensation is payable;
(d) date of Board meeting recommending such payment;
(e) basis for the amount determined;
(f) reason/justification for the payment;
(g) manner of payment - whether payable in cash or otherwise and how;
(h) if payment is made other than in cash, valuation of such consideration by a registered valuer;
(i) sources of payment; and
(j) any other relevant particulars as the Board may think fit.

(2) For the purposes of sub-section (2) of section 191, any payment made by a company by way of compensation for the loss of office or as a consideration for retirement from office or in connection with such loss or retirement, to a managing director or whole time director or manager of the company shall not exceed the limit as set out under section 202.

(3) No payment shall be made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as consideration for retirement from office (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if:

(a) the company is in default in repayment of public deposits or payment of interest thereon;

(b) the company is in default in redemption of debentures or payment of interest thereon;

(c) the company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;

(d) the company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central Government or any State Government, statutory authority or local authority (other than in cases where the company has disputed the liability to pay such dues); and

(e) there are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues).