

Board Meetings

By:
CA Kamal Garg

Voting at a Board Meeting

- At a BM, every director has one vote;
- A director need not be shareholder;
- However, a director can hold qualification shares u/s 270;
- Number of shares held by director is immaterial when voting at BM;
- Director cannot appoint proxy (personal presence at BM required);
- Resolution be passed by Majority except unanimous resolution required:
 1. u/s 316 regarding Number of MDship;
 2. u/s 386 regarding Number of Manager-ships;
 3. u/s 372A regarding Inter Corporate Loans etc.

Authority to Call a BM

- Any director can requisition a BM;
- On requisition of a BM by a director, the Mgr/ Secretary/ any Director can summon BM;
- Notice of BM shall be sent under the authority of the company;
- A secretary has no authority to call BM on his own;
- If notice given by secretary without any authority, it will be improper notice;
- Improper notice may be ratified by BOD

Frequency of Board Meeting [Section 285]

- At least 4 BMs must be held from Jan – Dec;
- At least 1 BM must be held in every Qtr of Jan – Dec;
- No maximum cap on number of BOD meetings;
- CG empowered to grant exemption from Section 285;
- No contravention u/s 285 if BM duly called but not held for quorum [Section 288]

Notice of BM [Section 286]

- Notice to be in writing;
- Notice by Post/ Telegram/ Fax/ E-mail valid;
- **Form of Notice not prescribed by the Act;**
- **Length of Notice not prescribed by the Act:**
 1. Notice should be sent reasonably in advance;
 2. 7 Days notice usually considered sufficient;
 3. Much depends on F&C of each case
- Agenda/ Contents of notice not prescribed by the Act (except e.g. notice u/s 316 & 386)

Notice of BM [Section 286]

- **Notice to given to:**
 1. Director who is for the time being in India;
 2. Director who is for the time being outside India = At his usual Indian Address;
 3. An Alternate Director = Notice to be served to original *plus* alternate director;
 4. An Interested Director;
 5. A director who has waived his right to receive notice **[Re, Portuguese Consolidated Copper Mines Ltd. it was held that right to receive notice can't be waived]**
- Where a director mostly resides abroad, notice must be sent at his foreign address as a part of probity and fairness on the part of the Co. **[Dr. Kamal Kumar Dutta vs. Ruby General Hospital Limited]**

Notice of BM [Section 286]

- If AOA provides any manner for sending notice, follow that manner;
- In ***A.L.AR Arunachalam Chettair Firm vs. Kaleeswarar Mills Limited***, it was held that **Notice of BM not required** if:
 1. BOD passes resolution at BM fixing day, time & place for all future BMs; and
 2. A copy of such resolution sent to every director; **or**
 3. AOA fixes day, time & place for all future BMs
- Notice invalid if intention is mala fide (e.g. to secure absence of some directors notice was accompanied with Agenda);

Notice of BM [Section 286]

- **Omission to give Notice – Consequences [Parmeshwari Prasad Gupta vs. UOI]:**
 1. BM shall be void even if single director is not given notice;
 2. If BM at (1) is void, resolutions passed thereat also void;
 3. Accidental/ Deliberate omission immaterial;
 4. BM not void if:
 - Absentee director do not complain of want of notice;
 - The director to whom notice is not given, attends BM

Quorum for a BM [Section 287]

- **Private Company:** Higher of
 1. 1/3rd of total strength; or
 2. 2 directors
- **Public Company:** Higher of
 1. 1/3rd of total strength; or
 2. 2 directors
- If above test fails and number of interested directors $\geq 2/3^{\text{rd}}$ of total strength, Quorum = remaining disinterested director not less than 2
- **Total Strength** = Total Number less Vacant Places;
- **Interested Director to be as per Section 300**

Example on Quorum u/s 287

- **Quorum shall consist of Disinterested Directors only;**
- 11 Directors, 1 Dies and 2 Resign; Total Strength = $11 - 3 = 8$; Quorum = $8 \times \frac{1}{3} = 2.33$ or 3 (Fractions to be r.f. to next whole number, Not so u/s 255),
- Total Strength = 6 and Interested Directors = 4, therefore Quorum = 2;
- Total Strength = 6 and Interested Directors = 5, therefore Quorum = Not Available

Quorum for a BM [Section 287]

- Original Director and Alternate Director shall not be counted as two directors;
- Alternate Director if present at BM shall be counted in Quorum;
- AOA can increase but cannot reduce Quorum [**Re, Sir Hormusji Wadia and Co. Ltd.**];
- Quorum is required throughout BM, presence of quorum only at BM commencement not enough;
- BM without quorum is void [**Firestone Tyres & Rubber Company vs. Synthetic & Chemicals Ltd.**]

Automatic Adjournment in case of Want of Quorum [Section 288]

- AOA may provide for holding adjourned AGM;
- If AOA silent then adjournment for same day, time & place in next week;
- If day in next week is public holiday, then to succeeding day which is not a public holiday;
- Quorum required in adjourned BM also

Time, Place and Day of BM

- BM can held at **any place** (not necessarily registered office);
- BM can held at **any day** even if it is a public holiday;
- BOD may **voluntarily adjourn** a duly convened BM **for a public holiday**;
- BM can be held at **anytime**, even after business hours;
- **AOA may provide other ways** for time/ place and day

Rules for Adjourned BM

- No fresh notice for adjourned BM required;
- Fresh notice required if AOA provides **or** BM adjourned *sine die*;
- Resolutions passed at adjourned BM deemed to be passed on the day on which adjourned meeting is held [Section 191];
- Sitting fees can be paid even if BM not held for quorum;
- No sitting fees for adjourned meeting

Passing Resolution by Circulation [Section 289]

- **Conditions:**
 1. No. of Directors in India $\geq$ Quorum for BM;
 2. Draft resolution to be circulated to **all** directors;
 3. Resolution to be approved by **all** the disinterested directors then in India; **or**
A **majority** of all the disinterested directors whether in India or outside India;
- **All resolutions can be passed through circulation** except which are required to be passed at BM only (e.g. u/s 292, 293A, 297, 316, 372A)

Minutes of BM [Section 193 to 195]

- To be **prepared in 30 days** of BM;
- **No time limit prescribed for their signing**, so must be signed in reasonable time;
- Each page to be initialled **or** signed **and** last page to be dated **and** signed;
- Minutes to be correct & fair summary;
- Chairman has discretionary powers;
- Minutes not be pasted or attached to minute book [Section 193];
- Minutes **can be kept in loose form** but pages to be serially numbered/ safeguarded against falsification/ bounded in books at reasonable intervals, say 6 months [DCA clarification];
- Director has the right to inspect minutes of BM [**Mc Cusker vs. Mc Rae**];
- Members cannot inspect BM minutes but AOA may empower otherwise

- Supreme Court of India has decided in the Matter of **Kerala State Electricity Board V/s Hindustan Construction Co. Limited [2009] 91 SCL 183 (SC)** inter alia decide that:
- Confirmation of minutes of Board meeting or any committee meeting does not require confirmation in subsequent meeting;
- Non confirmation of minutes does not have any effect on the decision taken at the earlier meeting;
- 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;
- Once a decision is duly taken it can only be changed by a substantive resolution properly adopted for such change"

Participation by directors in board meetings through E Mode (MCA Circular 20.5.2011)

- Directors **may** participate in meetings of Board/ Committee of directors under the Companies Act, 1956 through electronic mode;
- Electronic Mode **means** video conferencing 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

Participation by directors in board meetings through E Mode (MCA Circular 20.5.2011)

- **Conditions:**
- 1. Every director in a financial year, **must personally attend atleast one meeting;**
- 2. If **e-participation is interrupted**, then Chairman/ Secretary, shall request for a **repeat/ reiteration;**
- 3. Notice of meeting to provide necessary details for such meeting including the access mode;
- 4. Notice to **seek confirmation about mode of participation** by the Concerned Director;
- 5. If **he does not confirm** then it will be **presumed that he will physically attend the meeting;**
- 6. The place where Chairman or Secretary is sitting during meeting, shall be taken as place of meeting u/s 288

Participation by directors in board meetings through E Mode (MCA Circular 20.5.2011)

- **Conditions:**
- 7. **Video Recording** about summary of decisions at meeting **to be preserved for 1 year** from conclusion of that meeting;
- 8. **Soft Copy of Draft Minutes to be circulated** for comments/ clarifications, etc., within 7 days of such meeting;
- 9. Thereafter, the **minutes shall be entered in Minutes Book** u/s 193 of the Act
