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Covid-19: Updated Video Conferencing Norms for Board Meetings

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The Covid-19 pandemic has pushed the boundaries of adaptability in every sphere imaginable and has invariably led to the increased use of electronic means. As the need to be wary of the virus' effects became more pressing, each structure, to some degree, was required to reconstruct aspects that depended on human interaction and physical human involvement. The Government of India has advised companies to implement 'Work from Home' policies for their staff and encourage social distancing, in order to curb the spread of the coronavirus infection. The quarantine and social distancing measures have forced many small, medium and large sized businesses to suspend their operations, causing a substantial commercial impact. To balance the situation and as a measure to ease compliance requirements, the Ministry of Corporate Affairs has allowed companies to conduct board meetings through video conferencing and other audio visual means, for all matters including those that were otherwise required to be conducted physically.

Even before the pandemic, the Companies Act, 2013 (Act) contained provisions to facilitate the convenient conduct of board meetings which read that meetings can take place virtually by way of video conferencing or other audio visual means where the participants are seamlessly able to communicate with each other without the need for an intermediary.

Section 173 of the Act, read with Rules 3 and 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 lay down the contours for the holding of Board meetings via video conferencing. This mode gained notable popularity through the Covid-19 pandemic, and the Ministry of Corporate Affairs took steps to bring the provisions up to speed with the changing requirements.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 details the procedure for board meetings to be conducted via video conference and requires that every company ensure that the connection is not prone to failures. Sub-rule (2) therein provides a list of aspects that the Chairperson of the meeting ought to take due care of when meetings are conducted in such a manner.

Rules 3(3) requires a notice of the meeting to be sent to all the directors in compliance with Section 173(3) of the Act. The notice is required to specify the option to participate via video conferencing and all details in connection thereto. If directors intend to participate through video conferencing or other audio visual means, they are required to communicate their intention to the Chairperson or the Company Secretary well in advance so that the required arrangements specified in the other sub-rules can be made.

Although Section 173 does make provisions for the virtual conduct of Board meetings, Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 lays down certain matters which shall not be dealt with in meetings that are held via video conferencing or other audio visual means. These matters are:

1. Approval of the annual financial statement;
2. Approval of the Board's report;
3. Approval of the prospectus;
4. Audit Committee meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under Section 134(1) of the Act; and
5. Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Furthermore, Section 173 also empowers the Central Government to issue notifications from time to time specifying matters that may not be dealt with through video conferencing.

However, in light of the Covid-19 pandemic, the Ministry of Corporate Affairs, by way of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 dated March 19, 2020, inserted the sub-rule (2) to Rule 4 stating that the matters listed above could also be held via video conferencing and other audio visual means until June 30, 2020, which was later extended to September 30, 2020¹. On December 30, 2020, another amendment notification was issued by the Government of India through the Ministry of Corporate Affairs which extended this date to June 30, 2021².

The Government's guidelines relating to the relaxations are accompanied by all the requirements laid out under the rules for companies to follow while holding board meetings via video conferencing, such as the recording of these proceedings and ensuring the availability of proper equipment, among others. These are among the numerous measures the government and regulatory bodies have taken to provide relief to the businesses and market participants in the wake of the pandemic.



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¹ Notification No. G.S.R. 395(E), Ministry of Corporate Affairs.

² Notification No. G.S.R. 806(E), Ministry of Corporate Affairs.