

## ERGO

*Analysing developments impacting business*

### COVID 19 - CONDUCTING BOARD MEETINGS VIRTUALLY

16 March 2020

In view of the travel restrictions notified by the Government of India due to COVID - 19 outbreaks, many shareholders and directors of Indian companies are increasingly concerned about statutory compliances of their Indian subsidiaries or joint ventures.

While Indian companies are in the process of completing their annual filings and statutory meetings, perhaps it is the right time to test the effectiveness of option to undertake board meetings through video conference or other audio-visual means (AV Means).

#### Relevant Laws

The Companies Act 2013 (Companies Act) and Companies (Meetings of Board and its Powers) Rules, 2014 lays down the procedure for convening and conducting board meeting through AV Means. While convening a meeting through AV Means, one needs to be mindful of certain key factors such as:

- (i) The notice should provide for option of participation through AV Means;
- (ii) The director should communicate his / her intention to participate via AV Means and confirm receipt of agenda;
- (iii) The chairperson to take roll call of every director participating through AV Means;
- (iv) The quorum compliance to be ascertained by the chairperson;
- (v) Every participant to identify himself / herself for record before speaking on any item;
- (vi) The statutory registers to be placed at the scheduled venue of the board meeting and with consent, be deemed to be signed by the directors participating through AV Means;
- (vii) Chairperson to announce summary of the decisions taken during the board meeting; and
- (viii) Lastly, the draft minutes of the meeting shall be circulated to all the directors within 15 (fifteen) days of the board meeting either in writing or electronic mode.

Further the Companies Act provides for certain compliance parameters around physical presence for the following matters through AV Means:

- (i) the approval of the annual financial statements;
- (ii) the approval of the board's report;
- (iii) the approval of the prospectus;
- (iv) the audit committee meetings for consideration of financial statement (including consolidated financial statement if any), to be approved by the board; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

### Way Forward

Considering that very few items now require physical presence for board meetings, companies should consider implementing AV Means as a practice rather than an exception. Certain important considerations like data security, confidentiality and ease of accessibility will have to be considered.

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