



ERGO

Analysing developments impacting business

COVID 19 - MCA NOTIFIES RELAXATION ON CONDUCTING BOARD MEETINGS!

24 March 2020

Our earlier Ergo [COVID 19 - Conducting Board Meetings Virtually](#), provided an overview on how Indian companies can conduct board meetings through Audio Visual Means (AV Means) during this time, to ensure statutory compliance. The Companies Act, 2013 (CA 2013) facilitates conduct of board meetings through AV Means. This has eased the challenge of having all directors present at the scheduled venue. However, a few items of business were, yet required to be transacted only at a physical meeting. Considering the significance of the matters required to be transacted at general meetings, these were not permitted to be conducted virtually. In view of unprecedented announcement by WHO of COVID - 19 as a pandemic, the Ministry of Corporate Affairs (MCA) has now issued a notification dated 19 March 2020, (Notification) amending Companies (Meetings of Board and its Powers) Rules, 2014 (Rules). Pursuant to the Notification, all Indian companies are permitted to conduct board meetings through AV Means for transacting all business.

Key highlights of Notification

From date of the Notification till 30 June 2020, the compliance parameters around physical meeting for items identified under Rule 3 (1) of the Rules, which are as follows:

- (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.

At this point, it seems that the only effective way to contain the pandemic is to exercise social distancing. Given that the CA 2013 provides for shareholders' approval while dealing with certain matters and the shareholders' meeting cannot be held through AV Means, physical attendance of the shareholders is required. In order to curb public gathering, the Indian companies mainly unlisted public companies and private

companies may consider providing the facility of 'Remote e-Voting' to its shareholders to cast vote on a resolution proposed at a general meeting.

Relevant Laws on E-voting

In case of top 500 listed companies, the Securities & Exchange Board of India (SEBI), in June 2012, introduced mandatory electronic voting (e-voting) facility which helped wider and remote participation by shareholders in the decision-making process. With effect from 1 January 2015, CA 2013 made e-voting mandatory for all listed companies and any unlisted company having not more than 1000.

Presently, CA 2013 also provides for 'Remote e-Voting' under which a shareholder who cannot be physically present to vote on a resolution, can cast his / her vote remotely.

E-voting (including remote e-voting) is mandatory to every company which is (i) listed on the stock exchanges; and (ii) unlisted public company having more than 1000 (one thousand) members. Further, any company can also voluntarily provide e-voting facility in which case they must also follow the procedure relating to e-voting. While providing e-voting facility and remote e-voting to its shareholders, as the following factors need to be complied with:

- (i) Notice shall clearly mention that the business may be transacted through electronic voting system, and that the facility for e-voting and remote e-voting has been provided to its shareholders. Process of voting through electronic means should also be included in notice along with the time schedule specifying the time period during which the votes may be cast by remote e-voting.
- (ii) The company shall publish an advertisement the notice of the meeting, in at least 1 (one) vernacular newspaper in the principal vernacular language of the district, in which the registered office of the company is situated and in at least 1 (one) English newspaper. The advertisement shall include date of commencement of remote e-voting and date of end of remote e-voting. The facility of remote e-voting shall remain open for not less than 3 (three) days and shall close at 5.00 p.m. on the preceding date of the general meeting.
- (iii) The board of directors of the company shall appoint one or more scrutinizer(s), who must be, (i) either a practising company secretary or chartered accountant or cost accountant or an advocate, but not in employment of the company, and (ii) a person of repute who, in the opinion of the board can scrutinize the e-voting process in a fair and transparent manner.
- (iv) The scrutiner shall submit its report within 3 (three) days from the date of meeting to the chairman or any person authorised by the chairman, with the details of votes cast for and against the resolution.

Way Forward

Considering the outbreak of the pandemic and travel restrictions in India, the right step has been taken by MCA in relaxing the restrictions on conducting board meetings through AV Means. In order to ensure smooth functioning of the companies in India in the current scenario, there was a genuine need for an amendment. In the USA, UK and Canada, the concept "hybrid meetings" is quite popular where the physical location of the meeting is fixed, but shareholders and proxyholders have an opportunity to choose whether to participate in person or remotely through electronic means. While the present measures appear to be a response to the current unprecedented situation, the MCA may consider implementing a similar concept in India on a long-term basis.

Meanwhile, the companies can conduct shareholders' meeting by providing remote e-voting facility to the shareholders by keeping in mind the procedure as stipulated under CA 2013.

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