

Chapter 16

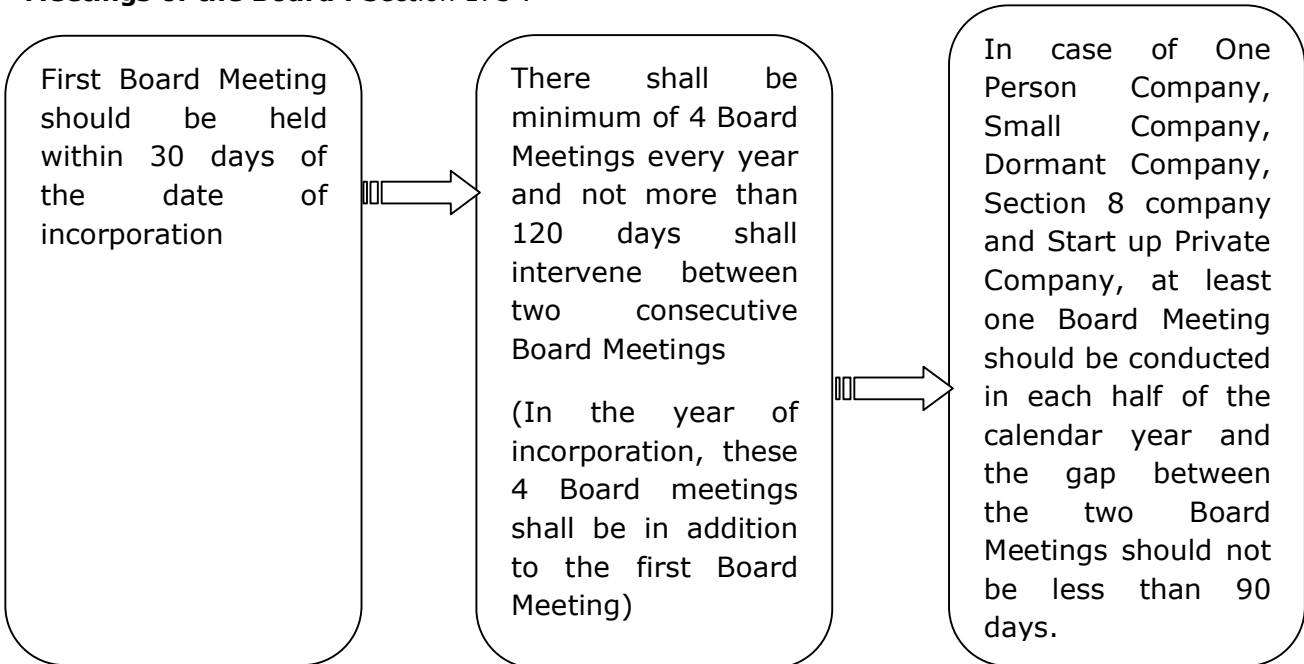
Board and Its Powers

Board Meetings

The Board of Directors of the company is primarily an oversight board. It oversees the management of the company to ensure that the interest of non-controlling shareholders is protected. It also functions as advisory board.

Independent directors bring diverse knowledge and expertise in the Board room and the CEO uses the knowledge pool in addressing issues being faced by the Company. The most important function of a monitoring board is to provide direction to the company.

Meetings of the Board : Section 173 :



As per clause 17 of the SEBI (LODR) Regulations, 2015, every listed company, which is covered by this clause, is required to hold at least 4 Board Meetings in a year with a maximum time gap of 120 days between any two meetings.



As per SS-1 and Guidance Note on SS-1, the following points must be noted :

- The Board shall meet at least once in every calendar year quarter with a maximum 120 days between two consecutive meeting, such that at least 4 Board meetings are held in each calendar year.
- The Board shall hold its first Board Meeting within 30 days of incorporation and it shall be sufficient if one Board Meeting each is held in the remaining quarters.

- Meeting adjourned for want of quorum should also be conducted within the period stipulated in SS-1.

When a Director proceeds to issue a notice to call a Meeting for the same issues on the same date when already a meeting has been called, there is no reason why the said Director should not attend the original meeting and proceed to convene a parallel meeting at a Different Place. Such a step by the said Director cannot be justified and the Board Meeting convened by the said Director is illegal and hence declared to be null and void. (**Sanjiv Kothari V. V.K. Chordia**)

Notice of Board Meeting : Section 173 (3) : Not less than 7 days notice in writing shall be given to every director at the registered address as available with the Company. The notice can be given by hand delivery or by post or by electronic means. In case of first Board meeting, the notice must also mention that it is the first Board Meeting.

- In case the notice is send by Speed Post, Registered Post or by courier, an additional two days shall be added for the service of notice.
- The agenda and notes on agenda shall be given to the Directors at least 7 days before the date of the meeting unless the Articles prescribe a longer period.

In case if the Board meetings is called at shorter notice, at least one independent director shall be present at the meeting. If he is not present, then decision of the meeting shall be circulated to all the directors and it shall be final only after ratification of decision by at least one independent director.

As per SS-1, Notice shall be issued and signed by the Company Secretary or where there is no Company Secretary, by any Director or any person authorised by the Board.

Directors may participate in the meeting in person or through video conferencing or other audio visual means.

It should be noted that if two meetings are held on the same day, it would be valid second meeting notice if it states that the meeting will be held after conclusion of the first meeting.

In case of listed company, notice of the Board meeting should also be given to the Stock Exchanges where the securities of the company are listed.

A mere coincidental physical presence of all Directors at one place cannot constitute a Meeting. Where such situations take place, there is no Board Meeting. (**Barron V. Potter**)

In case of the following, the notice of the Board meeting must be specific notice :

1. Appointment of Managing Director who is already a Managing Director or Manager of another company
2. Appointment of Manager who is already a Manager or Managing Director of another company

Agenda

The agenda is compiled by CS in consultation with the Chairman or Managing Director. It must be noted that the Chairman is not obliged to adhere strictly to the exact order of business set out in the agenda although it is customary for him to secure the assent of the meeting to any variation.

The agenda of the Board meeting is finalised based on the Company Law requirements and on the matters submitted by the Management.

Note : Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of majority of Directors present in the meeting, which shall include at least one Independent Director, if any.

In case of absence of Independent Director, the minutes shall be final only after ratification by the Independent Director.

However ,items requiring specific notice cannot be taken up as item not included in Agenda.

A listed company shall also comply with the requirements of LODR Regulations while preparing agenda.

The minimum information to be made available to the Board is as under:

- i) Annual Operating plans and budgets and any updates
- ii) Quarterly results for the company and its operating divisions
- iii) Any material information which must be brought to the attention of the Board.
- iv) Any non-compliances and other penalties

It must be noted that the Board of directors can transact business even without a formal agenda. (Sunil Dev V. Delhi & District Association).

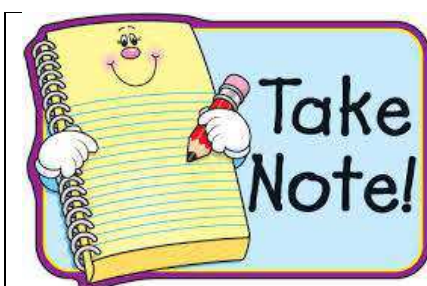
Quorum for Board Meetings : Section 174 : Quorum for Board Meetings shall be 1/3rd of the total strength or two directors, whichever is higher.

For the purpose of determining the quorum, the participation by a director through video conferencing or other audio visual means shall also be counted.

If due to resignation or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then the continuing directors may act for the purpose of increasing the number of directors to that required for the quorum or for summoning a general meeting of the company. It shall not act for any other purpose.

Similarly, if at any time the number of interested directors exceeds or is equal to 2/3rd of the total strength of the Board of Directors, the number of directors who are not interested and present at the meeting, being not less than 2 shall be the quorum during such time.

In case of Section 8 company, the quorum for meeting of the Board shall be Eight members or 25% of the total strength whichever is less (Subject to minimum 2).



As per the guidance note on SS-1, a meeting which has been validly summoned or convened and where the requisite quorum is present may still be adjourned by the Chairman for any reason, unless the majority of the Directors present at the meeting dissent or object to such adjournment.

Passing of resolution by circulation : Section 175 read with Rule 5 of the Companies (Meeting of Board and its Powers) Rules, 2014 : A company may pass the resolutions by circulation. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India or through electronic means which may include email or fax.

The said resolution must be passed by majority of the directors or members entitled to vote.

Procedure to pass resolution by circulation :

- 1) If all or majority of the directors entitled to vote on the resolution approve the resolution, the resolution shall be deemed to have been duly passed by the Board.
- 2) The noting of resolution having been passed by circulation shall be done in the minutes of the immediate next Board Meeting.
- 3) Enclose a copy of the circular resolution passed to the agenda of the ensuing immediately next Board meeting.

List of items of business which shall not be passed by circulation and shall be placed before the Board at its meeting :

- Noting minutes of the meeting of the board/committees
- Approving financial statements and the Board's report
- Appointment of Secretarial auditor and Internal Auditor
- Investing the funds of the company
- Making political contribution
- Making calls on shares
- Appointment/removal/remuneration relating to MD/WTD/Manager
- According sanction for related party transactions
- Purchase/Sale of subsidiaries or assets
- Authorise buy back
- Approving amalgamation, merger or reconstruction
- Diversify the business
- Matters relating to legal notices/demand notices/joint ventures/accidents
- Matters which involve substantial payments towards goodwill or IP
- Significant labour problems/compliances.

Participation of Directors in Meetings of Board/Committee of Directors through electronic mode : (Video Conferencing) :



Section 173(2) states that the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, which are capable of recording

and recognising the participation of the Directors and of recording and storing the proceedings of such meetings along with date and time.

Video conferencing or other audio visual communication means the facility 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.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides for the additional requirements and procedures regarding convening and conducting Board meetings through Video Conferencing or other audio visual means.

The following points are important in this regard :

- Every company shall make necessary arrangements to avoid failure of video or audio visual connection.
- The Chairperson of the meeting and the Company Secretary, if any, shall take due and reasonable care to safeguard the integrity of the meeting, record the proceedings and prepare the minutes, to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means
- 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 such mode.
- A director intending to participate through video conferencing shall give prior intimation to that effect sufficiently in advance so that the company is able to make suitable arrangement in this behalf.
- A director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year. In the absence of any such intimation, it shall be assumed that the director will attend the meeting in person.

Note : As per Amendment in July 2017, it is now clarified that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.

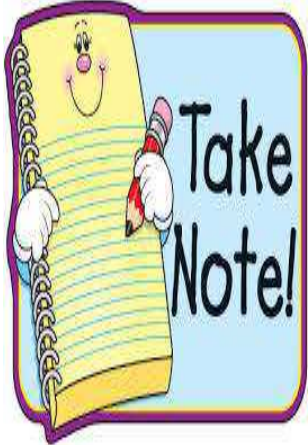
- At the commencement of the meeting, a roll call shall be taken by the Chairperson where every director participating through video conferencing shall state the name, location and shall confirm that he can clearly see and communicate with other participants. The roll call shall also be made at the conclusion of the meeting and at the re-commencement of the meeting after every break to confirm the presence of a quorum throughout the meeting.
- After the roll call, the Chairperson or the Secretary shall inform the Board about the names of persons other than Directors who are present for the said meeting at the request or with the permission of the Chairman.
- The registers, if any, kept at the scheduled venue of the meeting and required to be signed by the directors (participating through video conferencing), shall be deemed to have been signed by the such directors, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
- Every participant shall identify himself for record before speaking on any item of business on the agenda. If a statement of a director is interrupted, the Chairperson or the Company Secretary shall request for a repeat or reiteration by the director.

- At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on each item along with the names of the directors, if any, dissented from the decision taken by majority.
- The draft minutes of the meeting shall be circulated among all the directors within 15 days from the date of the meeting either in writing or in electronic mode as may be decided. The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- The directors shall confirm or give comment on the accuracy of the draft minutes within 7 days or some reasonable time as decided by the Board, failing which, his approval shall be presumed.
- Thereafter, the minutes shall be entered in the minute book and signed by the Chairperson.

Rule 4 : Matters not to be dealt with in a meeting through Video Conferencing or other audio visual means:

This rule prescribes restriction on following matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means :

- the approval of the annual financial statements
- the approval of the Board's report
- the approval of the prospectus
- the Audit Committee meetings for consideration of accounts and
- the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

	<p>As per Guidance note on SS-1 :</p> <ul style="list-style-type: none"> • A Director may attend all the Board Meetings through electronic mode subject to the restriction on participation in restricted items • Participation of Director via Telephone cannot be considered as Participation through electronic mode. • All the Directors may participate in a meeting through electronic mode. However, in such a case, at least one person (CS/Chairman/Authorised person) should be physically present at the venue to enable recording and ensure integrity. • A company may hold all its meeting through electronic mode provided the company ensures presence of physical quorum during consideration of any restricted item. • Any director electronically attending the meeting even in respect of restricted items (with the permission of Chairman), shall neither be entitled to vote nor be counted in quorum in respect of such restricted item.
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Meeting of Committee of Directors : If authorised by Articles, the directors have power to delegate their authority to a committee and a company may adopt the following regulations of Table F :

Regulation 71 : The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit. A committee so formed shall conform to any regulations and powers imposed on it by the Board.