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## Board Meeting through Electronic Mode: A Move towards Corporate Excellence

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### **Abstracts:**

*Keeping in tune with the e-governance initiatives world over Companies Act, 2013 introduced a concept of holding board meetings through video conferencing or other audio visual means. This provision enables active participation of the board of directors being globally located during board meetings of the company so as to increase transparency and orderly compliance. This paper tries to examine viability of holding board meetings through electronic mode. This paper is based on reports in the print and electronic media. Board meeting through electronic mode is a gait towards e-governance which will not only support green initiatives but also help the companies to achieve corporate excellence. Present paper includes worldwide legal acknowledgement of board meetings through electronic mode, procedural aspects related to India, technical aspects, its constructive role, issues related to it and offers points to be kept in mind while conducting board meeting through electronic modes.*

**Keywords:** Board Meeting; Companies Act, 2013; Electronic Mode; Excellence

### **1. Background**

Through electronic mode physical distance is no more be an impediment to the real-time communicative activities of the people. With the increased speed of communication and the ability of people to read about, spread and react to global news quickly, forces everyone to become more aware of their global responsibilities so e-governance is a central theme of governance reform efforts worldwide. Satyam episode (2008) in India demonstrated a failure of corporate governance and is an evidence of lack of active participation of their board of directors. Even though there has been a failure of corporate governance this crisis provides a great opportunity to rebuild our governance framework and regulatory controls. To endorse globalised corporate structure, and adhere to good corporate governance practices for achieving corporate excellence Companies Act, 2013 introduced the much awaited concept for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means. Various sections of Information Technology Act, 2000 were the driving force for the insertion of such concepts i.e. Section 2, defines various terms related to IT orientation, Section 4 provides for Legal recognition of electronic records, Section 5 provides for Legal recognition of digital signatures, Section 13 provides for Time and place of dispatch and receipt of electronic record and Section 81 provides for the Act to have overriding effect.

### **2. Board meetings through electronic mode: Global Scenario**

In recent years diverse technologies have emerged through which business can be conducted and people can communicate, without being physically present at the same location. Board meeting through electronic mode is legally acknowledged globally.

In US as per Model Business Corporation Act, 1984, the Board of Directors may permit any or all the directors to participate in a meeting through any means of communication by which all the directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

In Australia as per Corporation Act, 2001, a board meeting may be held by using those forms of technology (for example by telephone) permitted by the constitution of the company and with the consent of all the directors.

In Mauritius as per Companies Act, 2001, a meeting of the Board may be held by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting. In Pakistan vide circular no. 18/2005 dated 17<sup>th</sup> October, 2005 permitted listed companies to hold their Board of Directors meeting through teleconferencing/video conferencing when the directors of a company are not available in Pakistan.

Turkish Commercial Code (TCC) numbered 6102, dated January 13, 2011 (which has been in effect since July 1, 2012) is the option for joint-stock companies in Turkey to hold or attend meetings by electronic means. TCC also provides for the option for limited liability companies to hold meetings by electronic means.

### 3. Modes for conducting board meetings through electronic medium

As per the above provisions in different countries most widely used modes for conducting board meeting through electronic Mode are discussed as follows: Audio conferencing: It is also called as conference calling. Interactively links people in remote locations via telephone lines. Video conferencing: It's a combination of audio and video to provide voice communications and video images. This resembles face-to-face meetings and enables participants to see the facial expressions and physical demeanour of participants at remote sites. Therefore "electronic mode" is defined as "electronic communication facility employed which enables all directors participating in that meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting." These meetings are also called as virtual meetings. Under the Companies Act, 2013 video conferencing or other audio visual means are allowed to the directors for participation in the board meetings. So as per the proposed secretarial standard "electronic mode" is means electronic medium of communication and includes audio visual electronic communication facility.

### 4. Board meetings through electronic mode: Indian scenario

Ministry of Corporate Affairs appointed J.J. Irani Committee on Company Law, which submitted its Report on May 31, 2005, recommends that law should facilitate use of technology to carry out statutory processes efficiently. Meetings of the Board of Directors by electronic means (Teleconferencing and video conferencing included) to be allowed and directors who participate through electronic means should be counted for attendance and form part of Quorum. Minutes should be approved/ accepted by such directors who attended by way of teleconferencing/ videoconferencing (Signature may be accepted by use of digital signature certification. If any director has some reservation about the contents of the Minutes, he may raise the issue in succeeding meeting and the dissent, if any, may be recorded in the minutes of that meeting. Ministry of Corporate Affairs vide General Circular No. 28/2011, No. 17/95/2011-CL.V enabled the participation of the directors in the meetings of the Board/Committees through electronic mode. UNDER COMPANIES ACT, 2013 Section 173 (2) of the act provides that directors may participate in the board meeting, may be either in person or through video conferencing or other audio visual means, as may be prescribed, 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: Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means. Section 174(1) of the act provides that the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum. Section 118(10) of the act provides that every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

### 5. Proposed aspects in secretarial standards with respect to board meetings through electronic mode specified by the Institute of Company Secretaries of India

The Companies Act, 2013, after receiving the assent of Honourable President of India on August 29, 2013 has been notified in the Gazette of India on August 30, 2013. With the enactment of the Companies Act, 2013 existing Secretarial Standards on Meetings of the Board of Directors (SS-1) need to be revised as per the applicable Law by the Institute of Company Secretaries of India. Proposed revised aspects in secretarial standards with respect to board meetings through electronic mode are discussed as follows:

#### 5.1. Responsibilities of the Chairperson

- In case of Directors participating through electronic mode, the Chairperson should confirm the attendance of such Directors.
- For this purpose, at the commencement of the Meeting, the Chairperson should take a roll call.
- The Chairperson should make the Director participating through Electronic Mode to state his/her full name, location and that he/she can completely and clearly see and communicate with each of other participants and should record the same.
- A roll call should also be taken at the conclusion of the Meeting or at recommencement of the Meeting after every break to ensure Quorum throughout the Meeting.
- The Chairperson should safeguard the integrity of the Meeting and ensure availability of proper electronic equipments/facility.
- The Chairperson should ensure that no person other than the concerned director or other authorized person attends the meeting through electronic mode.

#### 5.2. Responsibilities of the Company Secretary or designated officer

- The Notice should inform the Directors if facility of participation through Electronic Mode is made available and provide necessary information to enable Directors to access such facility.
- To ensure that the notice of the board meeting should seek confirmation from the Director as to whether he/she will attend the Meeting through Electronic Mode.
- To ensure that the notice of the board meeting should also contain the contact number/e-mail address(es) of the Secretary/designated officer to whom the director should provide confirmation in this regard.

### 5.3. Responsibilities of director participating in a meeting through electronic mode

- To provide confirmation to the Secretary/designated officer about participating in a Meeting through Electronic Mode.
- Every director intended to participate in board meetings through electronic Mode should attend personally, at least one meeting in a financial year.

### 5.4. Items which cannot to be dealt with in a meeting through electronic mode

- To approve the annual financial statements; and
- To approve the Board's report.

## 6. Technology and components required for video conferencing or other audio visual means

The core technology used in a videoconferencing system is digital compression of audio and video streams in real time. The hardware or software that performs compression is called a codec (coder/decoder). Compression rates of up to 1:500 can be achieved. The resulting digital stream of 1s and 0s is subdivided into labeled packets, which are then transmitted through a digital network of some kind (usually ISDN or IP). The use of audio modems in the transmission line allow for the use of POTS, or the Plain Old Telephone System, in some low-speed applications, such as video telephony, because they convert the digital pulses to/from analog waves in the audio spectrum range.

The other components required for a videoconferencing system include:

- Video input : video camera or webcam
- Video output: computer monitor, television or projector
- Audio input: microphones, CD/DVD player, cassette player, or any other source of PreAmp audio outlet.
- Audio output: usually loudspeakers associated with the display device or telephone
- Data transfer: analog or digital telephone network, LAN or Internet
- Computer: a data processing unit that ties together the other components, does the compressing and decompressing, and initiates and maintains the data linkage via the network.

There are basically two kinds of videoconferencing systems:

- **Dedicated systems** have all required components packaged into a single piece of equipment, usually a console with a high quality remote controlled video camera. These cameras can be controlled at a distance to pan left and right, tilt up and down, and zoom. They became known as PTZ cameras. The console contains all electrical interfaces, the control computer, and the software or hardware-based codec. Omnidirectional microphones are connected to the console, as well as a TV monitor with loudspeakers and/or a video projector.
- **Desktop systems** are add-ons (hardware boards, usually) to normal PCs, transforming them into videoconferencing devices. A range of different cameras and microphones can be used with the board, which contains the necessary codec and transmission interfaces. Most of the desktops systems work with the **H.323 standard**. Videoconferences carried out via dispersed PCs are also known as e-meetings.

### H.323 standard

H.323 is an International Telecommunications Union (ITU) standard that describes the protocols, services and equipment necessary for multimedia communications including audio, video and data on networks without guaranteed Quality of Service (QoS). These networks technologies may include Ethernet, Fast Ethernet, and Token Ring and protocols like Internet Protocol (IP) or Integrated Packet Exchange (IPX). Due to the need to communicate between smaller networks connected to the Internet, H.323 will be more popular on IP networks. H.323 specifies several new standards to allow for communications between terminals on IP networks. These standards dictate how different mandatory and optional components of the H.323 standard interoperate with each other. The major network components of H.323 include the mandatory terminal, and the optional gatekeeper, gateway and multipoint control unit (MCU).

### Video Conferencing Modes

Video conferencing systems use several common operating modes for meetings:

- Voice-Activated Switch (VAS)
- In VAS mode, the MCU switches who is seen by others in the conference based on the incoming voice energy level from the various participants. When a new person speaks, the MCU forwards the video stream of the loudest speaker to each endpoint.
- Continuous Presence Conferences (CP)
- CP conferences are also referred to as composition mode conferences. CP conferences have the benefit of displaying two or more participants simultaneously, not just the image of the loudest speaker. In this mode, the video MP tiles together streams from multiple participants into a single composite video image. The video MP can either scale down the input streams before compositing or maintain the sizes of input streams, generating a larger-size video composite for the output. In CP mode, most MCUs send the same composite video image to all participants.

## 7. How board meeting through electronic modes can lead to Corporate Excellence?

In the past decade we have witnessed the wholesale transformation from hardcopy to digital for nearly every type of media. Entire industries, from film, music and publishing have been completely upended by digital technology. Yet in the corporate world many cling to manual processes and paper-based content distribution. As mentioned above meeting through electronic modes in India

was recommended by J.J. Irani Committee on Company Law in 2005 whereas this concept was legally recognised by law in US in the year 1984. Therefore it's too late to legally recognise such a progressive concept in 2013 but ultimately company's in India embraces it with open arms. Constructive role of electronic modes in board meetings is discussed as follows:

- As the impact of globalisation continues to expand the horizons for companies looking to grow, the importance of effective governance and oversight is ever increasing and the composition of the board is also changing. Companies with an international focus on operations want to ensure they have directors with an international perspective and global expertise contributing as members of the Board which becomes possible through virtual meetings.
- Helps in active participation of directors located globally at the time of various meetings of the company.
- Enhance attendance of directors at board meetings which increases their responsibility and accountability towards the stakeholders.
- Helps in reducing cost of the meetings by eliminating lavish travelling cost.
- Facilitates more frequent meetings, if necessary in case of critical issues as physical presence is not necessary.
- Helps to increase productivity as it saves time of board of directors.
- Continuous transmission of ideas and feedback not only leads to good corporate governance but also leads to corporate excellence as it offers multiple paths for creating and maintaining competitive advantage.
- Electronic modes are an obvious "green" technology, allowing companies to mitigate energy use by reducing the need to travel.

#### **8. Issues related to board meeting through electronic mode**

Conducting board meeting through electronic medium is the proficient way but there are number of challenges which prove to be impediments are discussed as follows:

- Technical Disruptions
- Getting disconnected in the course of the meeting.
- IT experts have shown that poorly configured or inadequately supervised videoconferencing system can permit an easy 'virtual' entry by computer hackers and criminals into company premises and corporate boardrooms, via their own videoconferencing systems.
- Personal Interaction is less which may lead to distraction of board member and reduced level of participation. Therefore, human face-to-face interaction is, and will continue to be, the most effective form of communication. Face to face meetings deliver the rich, potent experiences that virtual meetings can't. They deliver motivation along with messaging, and inspiration with information.
- May debilitate free discussions among the board members due to recording of meeting.
- Supplementary provision of only Video conferencing or other audio visual means is inserted under the Companies Act, 2013 for the active participation of the directors in the meetings where as teleconferencing or audio Conferencing or participation through Telephone/Mobile is not included herein as recommended by J.J. Irani Committee on Company Law.
- Physical presence of chairman is implied as per the above mentioned responsibilities of the chairman.
- There is no restrictions on the number of meetings wherein video conferencing facility to be given.
- Provisions regarding appointment of alternate director become redundant when there is an option for the board meetings through electronic mode.

Points to be kept in mind while conducting board meeting through electronic mode

- If the Directors are located in different countries, the time of the meeting should be specified in the notice in terms of IST and Greenwich Mean Time (GMT).
- Ensuring the secrecy of the room where a meeting through electronic mode is going on.
- Ensuring uninterrupted power supply.
- Ensuring that no outsider is present at the location of such meeting so as to take undue advantage of any price-sensitive/unpublished information.

#### **9. Conclusion**

A global financial crisis creates a domino effect, which means one problem is often linked to another. Many companies begin to realize that their survival depends on cutting costs, lavish boarding and lodging of top management is commonly one of a company's greatest expenses. Company is desperately waiting for the initiatives or pioneer changes which help them in cost cutting. Therefore, Companies Act 2013 permits the use of electronic mode in company board meetings as a viable solution since the required technology is easily accessible and the advantages outweigh the expenses involved in such system which not only leads to active participation of directors but also a green initiative which helps in achieving corporate excellence as it increases the responsibility of board of directors and the company secretary. At this point we hope that this pragmatic provision will bring drastic changes in the functioning of corporate India. Legal recognition to board meetings through electronic mode is an inevitable move. But still few issues are to be clarified by the authorities to implement this provision. In spite of some reservations and potential negative implications of implementing this including vulnerability to cyber attacks and disturbances to the status quo in these areas, this electronic initiative can radically change the face of governance in corporate India.

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