



27th May, 2011

# MEETINGS OF THE BOARD / COMMITTEE THROUGH VIDEO CONFERENCING

**W**ith intent to support the largely globalised corporate structure and enable them meet the statutory compliances and simultaneously adhere to good corporate governance practices, the Ministry has introduced the much awaited concept of enabling participation of Directors in the meetings of the Board/Committee of Directors through Video Conferencing. This stride towards e-governance is not only a move which will largely support green initiatives but also a big boon of big corporate houses and Multi National companies which severely required this provision to enable active participation of their Board members being globally located in various Meetings.

The Ministry vide General Circular No. 28/2011 dt. 20/05/2011, besides enabling participation of the Directors in the meetings of the Board/Committees through electronic mode, has clarified much of the technical issues which might have otherwise been encountered as hurdles to the effective implementation of the process.

The write-up below aims at analyzing some of the answered and unanswered issues which would arise with reference to the initiation of meetings of the Board/Committee through electronic mode.

**Driving force for the Ministry to introduce the concept of enabling participation of Director in the meetings of Board/Committees through electronic mode**

Section 2,4,5,13,81 of the Information Technology Act, 2000 read

with the relevant provisions of the Companies Act, 1956.

While section 2 defines various legal 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.

Thus most of the issues which might have created implications in the practical implementation of conducting meetings through video conferencing are catered to with the help of Information Technology Act, 2000.

**Issues catered to in the said Circular**

**I. Authenticity of Board Meeting held by Video Conferencing**

Board meeting wherein facility to the Directors to attend meeting through video conferencing are as good as the meeting wherein physical presence of Directors were required. Video Conferencing is just an additional facility given to the Directors to attend the Meeting.

**ii. Permissible Electronic Modes for holding Board meeting**

Video Conference facility only i.e. audio-visual electronic communication facility is allowed for conducting meetings. Tele conferencing or Audio Conferencing or participation through Telephone/Mobile is not included herein.

### iii. **Notice of the Meetings**

Time and place of dispatch of notice is not mentioned. However the notice of the meeting must inform directors regarding availability of participation through video conference, and also seek confirmation from the director as to whether he will attend the meeting physically or through electronic mode and in the absence of any confirmation from the Director, it will be presumed that he will physically attend the Board meeting.

### iv. **Quorum of Meetings**

Participation through video conferencing would also be counted for the purpose of quorum.

### v. **Place of Meeting & Necessity of Physical presence**

It provides that the place where the Chairman or Secretary is sitting during the Board meeting shall be taken as place of meeting, and all recordings will be made at this place. Hence the Chairman would obviously be physically present in the meeting.

Besides, every director is personally required to attend at least one meeting of Board/Committee in a financial year.

### vi. **Placing and Signing of registers and other records requiring physical presence**

The statutory registers which are required to be placed in

the Board meeting shall be placed before the Chairman for compliance of the Act.

With reference to the signing requirements of statutory registers for instance u/s 301, it shall be deemed to have been signed by directors participating through electronic mode if they have given their consent to this effect in that meeting.

### vii. **Recording of meetings through Video conferencing**

As a step towards good governance, the complete meeting should be recorded for a specified time frame. However the circular provides for Video recording of conclusion of the meeting wherein the Chairman announces the summary of the decisions of the meeting and the names of directors consenting or dissenting to those decisions for a period of one year from the conclusion of the meeting.

These are required to be preserved by the company for one year from the conclusion of that meeting.

### viii. **Minutes of the Meeting**

Draft minutes of the meeting shall be circulated in soft copy not later than 7 days of the meeting to the directors who attended the meeting to dispel all doubts about matters taken up during the meeting. Thereafter, the minutes shall be entered in the minute books as prescribed under section 193 of the Act. The minutes shall also disclose the

particulars of the Directors who attended the meeting through electronic mode.

In the minutes, chairman shall also confirm the mode of attendance of every director of the company during last three meetings whether personally or through electronic mode.

ix. **Restriction in the number of meetings wherein video conferencing facility to be given**

No

x. **Technical support whether allowed for Directors who are not Tech-savvy**

The same is specifically disallowed. Either the director should be present through electronic mode without any intermediary or be physically present.

xi. **Responsibilities with reference to the procedural implications which are assigned upon the Chairman of the Meeting or Secretary of the Company**

- a. To safeguard the integrity of the meeting via videoconferencing.
- b. To ensure proper videoconference equipment/facilities.
- c. To prepare the minutes of the meeting.
- d. To ensure that no one other than the concerned Director or authorized participant are attending the meeting through electronic mode.

- e. To request for repetition or reiteration of the statement of any participant, if the same is interrupted or garbled and to repeat the same themselves for confirmation or correction, if need arises
- f. To make a roll-call at the start, re-commencement and conclusion of the scheduled meeting through electronic mode to ensure presence of quorum throughout the meeting. Every director and authorized participant shall state full name, location, declaration that no other person is attending meeting through video conferencing and declaration regarding completeness and clarity of audio or vision. Thereafter, the Chairman/ Secretary shall confirm the participation of the directors in the meeting who are not physically present. After the roll call, the Chairman or Secretary may certify the existence of a quorum.
- g. To call the roll in case of any objection to any motion, and note the vote of each director who should identify himself.
- h. The Chairman is also required to announce the summary of the decisions and names of the directors who have consented or dissented to those decisions, at the end of the meeting.

**Areas from Circular where clarification is still required are specified hereunder with our views on the same**

**I. Time and place of dispatch of the notices**

Though the Companies Act, 1956 does not specify any specific time and place of dispatch of the notice of the Board meeting, it just provides for such notices to be in writing and to be given to every Director then in India. The circular has however provided an

option here to adopt the provisions of section 13 of the Information Technology Act, 2000 regarding time and place of dispatch of notice in electronic mode. As per the said provisions, the dispatch of notice would occur when such electronic record (notice of the meeting), enters a computer resource outside the control of the originator and the place would be the place of business of the addressee.

Time of dispatch of notice hence, remains upon the company to decide.

## ii. **Place of Meeting**

It provides that the place where the Chairman or Secretary is sitting during the Board meeting shall be taken as place of meeting. The relevance should have been from the Chairman and not from the Secretary. But it seems that just to simplify the process more, the provision has been so drafted, in a sense that even if the Chairman is not physically present, the Secretary can arrange the meeting through video conferencing from any place and that place would be considered as the place of the meeting.

## iii. **Relevance of Physical presence**

The circular does not provide for all Directors to be physically present in any specified meeting. In a sense, each Director may be physically present in different meetings, so the intent behind creation of provision regarding ensuring physical presence of each Director in at least one meeting of the Board/Committee might be lost.

## iv. **Personal presence of Director is required for one meeting of Board and all committees individually or in any of them**

Intention seems to be one meeting of the Board and one of each Committee as well.

## v. **Chairman of the Meeting**

Since the responsibility of conducting meeting through Video Conferencing is held on the Chairman along with the Secretary hence to meet with the said provision there might emerge situation wherein the Board appoints a Director other than the Chairman of the Board to be the Chairman for any specific Board Meeting while for the actual Chairman it is possible to participate through video conferencing only. Would the same be possible or not is not clear.

## vi. **Repercussions of not complying with the provisions of circular**

A company might conduct Board/Committee meetings through Video conferencing however, may not abide with all the requirements of law therein. No provision is defined with respect to such repercussion. It might lead to general default and fall under the provision of Section 629A or based upon the nature of default conducted might fall under the specific provisions of Companies Act, 1956.

## OTHER GREY AREAS

Some issues, which still remain unanswered and might raise impediments while practical conduct of the meetings through electronic mode, are deliberated in the section below with our views on the same which are open for discussion.

**i. Whether specific provisions required in the articles of the company for holding meeting through video conferencing?**

The intent of the Circular is to simplify procedures and streamline processes. To create an additional burden of alteration of Articles is not the intent. If some provision is specifically provided in law, empowerment from Articles is not required for such purpose. But in case the Article prohibits holding of Board meeting through electronic means, than it needs to be amended.

**ii. Issues regarding technical hurdles being faced during the meeting such as disconnection of any Director during the meeting or inability to get in contact with any Director during the commencement, re-commencement or conclusion of the meeting at the time of freezing summary? Such issues might happen unintentionally or might be done intentionally also which may lead to increase in the cases of disputes and oppression/mismanagement.**

Technically speaking as one person is disconnected from the meeting loop, his counting from the quorum of that particular matter should be specifically be excluded and in

case one person is not being able to get connected with the meeting at its commencement, re-commencement or so the meeting should start at its schedule time. Though technically the issues might take place in this manner however, disputes and cases of oppression/mismanagement may increase in this case by one person blaming the other of intentional exclusion from the meeting.

**iii. How would the confidential information which is part of the agenda item get circulated?**

There was no provision even in the existing law regarding circulation of such items. Such items may be either circulated by mail or fax, during or before the meeting.

**iv. Would the provisions regarding appointment of alternate director become redundant upon such provisions?**

It seems like as most of the Directors would be able to attend meetings through Video Conferencing even if they are not located at the place where the Board meeting is scheduled to be held.

**v. What about provisions of signing of attendance register?**

The recording of the roll call at the time of commencement/re-commencement and conclusion of the meetings should be taken and preserved by the company

details of the person participating through physical presence or electronic mode hence once the minutes are prepared, circulated, confirmed by Directors who attended the meetings and signed by Chairman the same would serve as the attendance confirmation also.

**vi. Would the provisions of adjournment of meeting for the want of quorum still hold well?**

Since the same is provided in law and nothing contrary has been specified in such reference so the provisions would still hold good. The Companies and Directors as a matter of good governance should however avoid such adjournment, seeking the level of comfort granted by conducting such meetings through video conferencing.

**vii. How would the companies ensure timings of the meetings to suit person located at different time zones?**

Though the companies should ensure keeping such time of the meeting which suits all the Directors however, the one which is in consensus of majority and preferred by Chairman should be fixed as the time of the meeting.

**viii. Should items be specified wherein all the directors be physically present in meeting?**

Currently there is no specific provision as to any item for which the physical presence of Director is required. However the company might provide for certain items to be

taken up in the physical presence of the Directors only such as approval of annual accounts, further issue of share capital, signing of prospectus, borrowings, investment etc.

**ix. Will the plethora of recording hamper the free discussion amongst the Director?**

Technically it might hamper free discussion but not relating to the interest of the company.

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We May be Contacted at:

Corporate Professionals  
D-28, South Extn., Part I,  
New Delhi – 110 049

T: +91 11 40622200

F: +91 11 40622201

E: [info@indiacp.com](mailto:info@indiacp.com)

Visit us at: [www.corporateprofessionals.com](http://www.corporateprofessionals.com)

**For further details, please contact:**

**Deepali A Mendiratta  
Manager**

**M: +91 9999500038**

**T: +91 11 40622211**

**E: [deepali@indiacp.com](mailto:deepali@indiacp.com)**