

# Meetings of the Board of Directors through Video Conferencing (VC)

OR

## Other Audio Visual Means (OAVM) under the Companies Act, 2013



The Companies Act, 2013 (CA 2013) allows the meetings of the Board of Directors to be convened and conducted through video conferencing or other audio visual means.

Along with CA 2013, following need to be checked and followed, while convening and conducting the Board Meetings through video conferencing or other audio visual means:

- The Companies (Meetings of Board and its powers) Rules, 2014
- Secretarial Standard 1 on Meetings of the Board of Directors (SS1)
- Articles of Association of the company.



## MEANING OF VIDEO CONFERENCING OR OTHER AUDIO VISUAL MEANS

“Video conferencing or other audio visual (VC or OAVM)” means audio-visual electronic communication facility employed 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.

Further, VC or OAVM must be **capable of recording and recognizing the participation** of the directors and of **recording and storing** the proceedings of such meetings **along with date and time**.

*Pre-requisites of the Board meeting held through VC/OAVM  
(Meeting)*

**DAY, DATE AND TIME OF THE MEETING**

- The meeting can be convened on any day, date and time.
- However, guidance note on SS1, recommends as follows:

*Being a matter of good practice and as far as possible, the companies should avoid holding of Board Meeting on a National Holiday, as the presence of the employees of the company would be needed for smooth conduct of any such Meeting.*

## VENUE OF THE MEETING

The scheduled venue of the meeting, as set forth in the notice convening the meeting, shall be deemed to be the place of the meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

## NOTICE OF THE MEETING

- in writing
- The notice of the meeting shall –
  - ✓ inform the directors regarding the option available to them to participate through VC or OAVM,
  - ✓ provide all the necessary information to enable the directors to participate through VC or OAVM.
- The fact that the meeting is being held at a shorter notice shall be stated in the Notice, if applicable.

## MODE OF SENDING NOTICE

- **Notice of the meeting shall be sent by hand delivery or by post or by electronic means.**
- SS1 specifically provides that the notice to be sent by speed post or by registered post. Guidance note on SS1 clarifies that the notice cannot be sent by ordinary post as it doesn't create proof of dispatch or delivery.

*.....continued*

*In view of the clarification/ guidance on applicability of SS-1 dated 3<sup>rd</sup> April, 2020, issued by ICSI, at the backdrop of COVID-19 lockdown, if the physical delivery of documents such as Notice, Agenda, Notes to Agenda, Circular Resolutions, signed copy of minutes etc. is not possible, it shall be adequate and sufficient compliance, if such documents are served through e-mail instead of physical mode of delivery. However, the company should ensure adequate safeguards, including delivery and retaining proof of receipt of such e-mail communication.*





## LENGTH OF NOTICE, AGENDA AND NOTES TO AGENDA

- Notice, Agenda and Notes to Agenda to be sent to every director, not less than seven days before the meeting.

## **SHORTER NOTICE**

- To transact urgent business, the notice, agenda and notes to agenda, may be given at a shorter period of time.
- Condition that at least one independent director, if any, shall be present.
- In case of no independent director, decisions taken shall be final only on ratification thereof by at least one independent director, if any.

# QUORUM

- One third of its total strength or two directors, whichever is higher.
- The participation of the directors by VC or OAVM shall also be counted for the purposes of quorum.
- Quorum shall be present throughout the meeting.

## ATTENDANCE REGISTER

The Attendance Register shall be deemed to have been signed by the Directors participating through VC or OAVM, if –

- The attendance is recorded in the Attendance Register,
- Authenticated by the Company Secretary/Chairperson/ any other Director, if so authorized by the Chairperson, and
- The fact of such participation is also recorded in the minutes.



## PERMISSION TO MATTERS WHICH COULD NOT BE DEALT WITHIN THE BOARD MEETING, HELD THROUGH VC/OAVM-

In pursuance of the Companies (Meetings of Board and its Powers) **Amendment Rules, 2020**, till 30th June, 2020, following matters, are allowed to be held through VC or OAVM.

- The approval of the annual financial statements, Board's Report, Approval of Prospectus, Audit Committee Meetings for Financial statements u/s 134 (1) and the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Thus, in view of the above amendment, a company can deal with any matter in the meeting of the Board of Directors, held through VC or OAVM, till 30<sup>th</sup> June, 2020.



For ease of reference, the procedures to be followed on the part of the company and the directors, in case of the meetings of the Board of Directors through VC or OAVM, are bifurcated as follows :

- A. Pre-Board Meeting
- B. During the Board Meeting
- C. Post Board Meeting

# A. PRE- BOARD MEETING

- On the part of the company
- Necessary arrangements to avoid failure of video or audio visual connection.
- The Chairperson and the CS, if any, shall take due and reasonable care;
  - a) To safeguard the integrity of the meeting by ensuring sufficient security and identification procedures.
  - b) To ensure availability of proper equipment or facilities for transmission of the communications for effective participation at the meeting.

## On the part of the Director, wishing to participate through VC/OAVM

- Shall communicate his intention to that effect, sufficiently in advance, to the Chairperson or the CS so that company is able to make suitable arrangements in this behalf. **In the absence of such communication**, it shall be assumed that the director shall attend the meeting in person.
- May intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. Further, 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.
- If differently abled , allowed to make a request to the Board to allow a person to accompany him, **however, required to ensure the company that such person shall maintain confidentiality of the matters discussed at the meeting.**





## B. DURING BOARD MEETING

- On the part of the company

1. The Chairperson and CS, if any, shall take due and reasonable care to;
  - a) **Record** proceedings diligently and
  - b) Ensure **no other person** are attending or have access to the proceedings.
  - c) Ensure participants attending the meeting are able to **hear and see** the other participants clearly during the course of the meeting.
2. The meeting shall commence with speaking out the details of the **venue, date and time** for recording purposes.



3. At the commencement of meeting, Chairperson to take **roll call**.

4. After the roll call, the Chairperson or the Company Secretary shall –
  - a) inform the Board about the **names of other persons** who are present
  - b) confirm that the required quorum is complete.
5. The Chairperson shall ensure that the required **quorum** is present **throughout** the meeting.
6. The required **Statutory Registers** shall be placed at the scheduled venue and where such registers are required to be signed, the same shall be **deemed** to have been **signed** by the directors participating, if they have given their **consent** to this effect and it is so **recorded in the minutes** of the meeting.

7. The Chairperson or Company Secretary should request for a repeat or reiteration by the director, if a statement of that director at the meeting is interrupted or garbled.
8. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
9. From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, directors, Company Secretary and any other authorized person/s, whose presence is required by the Board, shall be allowed access to the place where any director is attending the meeting, either physically or through VC, without the permission of the Board.



10. At the end of discussion on each agenda item, the Chairperson shall announce the summary of decision taken on such item along with names of the dissenting director/s, if any.
11. Clause No. 7.3.3 of SS1 prescribes that if the decision of the Board is based on any unsigned documents tabled or presented at the Meeting, which were not part of the Notes on Agenda, shall be identified by initialing of such documents by the Company Secretary or Chairperson.

***However, in view of the clarification/ guidance on applicability of SS-1 dated 3<sup>rd</sup> April, 2020, issued by ICS), any such documents which were not circulated with the agenda but placed at the meeting and referred to in the minutes, should be identified by the company secretary by initialing such documents after the normalcy is restored.***

- **On the part of the director, participating through VC/OAVM**

1. When the roll is taken by the Chairperson, every director shall state, for record, the following viz. :

a) Name;

b) The location from where he is participating;

c) Received the agenda and all the relevant material for the meeting; and

d) That no one other than the concerned director is attending or having access to the proceedings of the meeting at the location from which he is participating.



- **On the part of the director, participating through VC/OAVM**

2. Every participant shall identify himself for the record before speaking on any item of business on the agenda.
3. On the request of the Chairperson or Company Secretary, the director shall repeat or reiterate, if his statement is interrupted or garbled.
4. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll where each director shall identify himself while casting his vote.

## C. POST BOARD MEETING

- On the part of the company

1. The Chairperson of the meeting and the Company Secretary, if any, shall take due and reasonable care, to –
  - a) store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
  - b) prepare the minutes of the meeting in which there shall be disclosed the names of the Directors present physically or through Electronic Mode, including other Invitees.

- c) Within 15 days circulate draft minutes among all the directors, either in writing or in electronic mode, as may be decided by the Board, inviting confirmation/comments on the draft minutes.
- d) Preserve the draft minutes, so recorded, till the confirmation of the draft minutes by all the directors.
- e) Record the minutes in the minutes books in pursuance of Section 118 of the CA 2013 within thirty days from the date of the conclusion of the meeting.



- f) Within fifteen days of signing of the Minutes, a copy of signed Minutes, certified by the CS or where there is no CS by any Director authorised by the Board, shall be circulated to all the Directors, except to those Directors who have waived their right to receive the same either in writing or such waiver is recorded in the Minutes.

***However, in view of the clarification/ guidance on applicability of SS-1 dated 3<sup>rd</sup> April, 2020, issued by ICSI, due to COVID 19 situation, all the meetings are now being conducted through Video Conferencing and minutes thereof are being circulated over emails. The company may not, therefore, be able to record/print the final minutes in the minutes books maintained for this purpose and get the minutes signed physically by the***



**Options in such cases as on date;**

- The Company may have to record and acknowledge/sign the minutes digitally by the Chairman. The copy of the minutes signed digitally can be circulated to all the directors

**OR**

- Alternatively Directors may waive the rights to receive copy of such minutes, considering the prevailing circumstances.

In case, minutes cannot be signed digitally, the same can be physically signed and copies of the signed minutes may be circulated to all the directors once normalcy is restored.

- **On the part of the director, participated through VC/OAVM**

1. After the receipt of the draft minutes, **within seven days** or some reasonable time as decided by the Board, the director shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes.

If the confirmation or comments, in writing, as above, are not received from the director, his approval to the draft minutes shall be presumed by the company.

# THANK YOU



Have Any Query ?





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