



BOARD MEETINGS IN PRACTISE

APRIL 30, 2021

MINAL BHOSALE

Topics

- Importance
- Legal Provisions relating to Board Meetings
- Special Provisions for Virtual Meetings
- Pre-Meeting preparations
- At the Meeting
- Post-Meeting actions
- Tools for efficient meeting management
- Q&A

Importance of due conduct of Board Meetings

- Professional management & separation of powers
- Meetings are mechanism to exercise Board powers
- Importance of due procedure for conduct of meetings
 - *Shaw v Tati Concessions Ltd*
- Meeting efficiency is one of the measures of Board evaluation
 - *SEBI Board evaluation Guidance Note dated January 5, 2017*
- Impact on governance and investor perception
 - *SEBI settlement - Interglobe Aviation*



Legal Provisions – Companies Act & Sec. Std 1

Provision	Requirement
Frequency	<ul style="list-style-type: none"> • 4 mtgs p.a. with ≤ 120 day gap • OPC, Small and dormant cos can have 1 mtg in each half of the calendar year, provided gap is 90 days or more
Convening the meeting	Any director can call for meetings
Notice	<ul style="list-style-type: none"> • Day, Date, Time, Place, Mode (physical/virtual) and Sr. No. to be mentioned. Electronic mode to be offered, except for restricted matters
Notice, Agenda, Notes	<ul style="list-style-type: none"> • By hand/speed post/regd. post/fax/email/electronic means • Sent by CS/authorized person • At least 7 days in advance or longer period as per AOA, except UPSI topics if permitted by majority of Board members, incl. one Independent Director, if any • Proof to be maintained for 3 years minimum

Provision	Requirement
Shorter Notice	<ul style="list-style-type: none"> • Provided one Independent Director (I.D.) attends/ratifies the decisions • If no .I.D., then approval/ratification by majority of the Board
Quorum	<ul style="list-style-type: none"> • $1/3$ of total strength or 2, whichever is higher • Interested directors to be excluded • If interested directors $\geq 2/3^{\text{rd}}$, rest can act, provided they are at least 2 such directors • Virtual participation is included • Quorum to be present throughout the meeting
Content of Agenda notes	<ul style="list-style-type: none"> • Relevant material facts for understanding, scope and implications ; Draft resolution • Director's interest, if any
Supplementary Notes/ Any other business items	<ul style="list-style-type: none"> • If permitted by majority of Board members, incl. one Independent Director, if any • AOB items to be approved by majority of the Board, at or post Meeting

Legal Provisions – Companies Act & Sec. Std 1

Provision	Requirement
Chairman	<ul style="list-style-type: none"> Board Chair shall preside; else Board members may elect one amongst them as Chair. Chairman shall exercise a casting vote in case of equality of votes
Voting	<ul style="list-style-type: none"> Voting at the meeting will be by a majority vote under the resolution requires any special % as per Articles or law eg. Unanimous vote
Adjournments	<ul style="list-style-type: none"> The Chairman, unless dissented to or objected by the majority of Directors present at a Meeting Notice to be given for adjourned meetings Notice for want of quorum adjourned to same date, time and venue in the next week. If that is a National Holiday, then to the next day following the same
Interested Directors	<ul style="list-style-type: none"> Shall not participate in a matter where he/she is interested In a private company, Directors can participate after due disclosure

Provision	Requirement
Committee meetings	Provisions are applicable for Committee meetings, except frequency & quorum, which may be determined by the Board or other applicable laws. If not so determined, then the quorum shall be all members.
Minutes	<ul style="list-style-type: none"> Should be fair and correct summary written in 3rd person, past tense; (Resolutions, decisions, background, deliberations, rationale) Chairman's discretion Details -attendance, timing , voting Circulation - 15 days; Feedback -7 days ; Entry in minutes book - 30 days Signed by Chairman of the meeting or next mtg CTC of signed minutes within 15 days Dispatch proof to be maintained for 3 yrs May be maintained in physical or electronic form Pages should be serially numbered and bound from time to time Preserved at Registered Office permanently
Attendance	<ul style="list-style-type: none"> Attendance register; preserve for 8 FY

Legal Provisions – Companies Act & Sec. Std 1

Section 179, Companies (Meeting of Board and its Powers) Rules 2014 r/w other sections of Cos Act, indicates that the following approvals can be exclusively taken up at Board meetings only and cannot be passed by circular resolutions:

- to **make calls** on shareholders in respect of money unpaid on their shares;
- to authorise **buy-back** of securities
- to **issue securities**, including debentures, whether in or outside India
- to **borrow** monies
- to **invest** the funds of the company
- to **grant loans** or give guarantee or provide security in respect of loans
- to **approve financial statement** and the **Board's report**
- to **diversify** the business of the company
- to **approve amalgamation, merger or reconstruction**
- to **take over** a company or acquire a controlling or substantial stake in another company
- to make **political contributions**
- to appoint or remove **key managerial personnel (KMP)**
- to appoint **internal auditors** and **secretarial auditor**
- Approving **remuneration** of Managing Director, Whole-time Director and Manager
- Appointment of Director(s) in casual vacancy
- Related party transactions

Legal Provisions – LODR for Listed Companies

General obligations

- Reg 4(1)(h) - The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.
- Reg 4(2)(e) (iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.
- Reg 4(2)(f)(iii)(13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.
- Reg 4(2)(f)(iii)(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors

Specific requirements

- Enhanced Quorum – Top 3000 companies by market capitalization shall have 1/3rd or 3 Directors, whichever is higher, including at least one independent director, as quorum.
- Specific requirements for committees – Audit Committee quorum shall comprise of 2 Independent Directors and Committee shall have 4 mtgs; Nomination & Remuneration Committee shall have at least 1 Independent Director for quorum and shall have at least 1 meeting; Stakeholder Relationship Committee shall meet at least once a year
- Subsidiary governance – Review of minutes, material statements, financial statements, investment
- Review :
 - Quarterly results
 - Compliance reports
 - CEO/CFO certificate
 - Succession planning

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Legal Provisions – LODR for Listed Companies

The following information shall be informed to the Board of a Listed Company :

- Approving **Annual operating plans and budgets**.
- **Capital budgets** and any updates.
- Information on **remuneration** of Key Managerial Personnel.
- **Show cause**, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious **accidents, dangerous occurrences**, any material effluent or pollution problems.
- Any material **default in financial obligations** to and by the company, or substantial non-payment for goods sold by the company.
- Any issue, which involves possible **public or product liability claims** of substantial nature, including any judgement or order
- Details of any **joint venture or collaboration agreement**.
- Transactions that involve substantial payment towards **goodwill, brand equity, or intellectual property**.
- Significant **labour problems** and their proposed solutions.
- Quarterly details of **foreign exchange exposures**
- **Non-compliance** of any regulatory, statutory or listing requirements and shareholder services

Virtual Meetings

- Virtual Meetings means meetings through video conferencing or other audio-visual means. These should be capable of (i) recognition of participants (ii) Recording (iii) storing the proceedings (iv) timestamping .
- Virtual meetings can be undertaken for any Board topic. So far as there is physical quorum, Directors can attend virtually for the following topics as well :

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| <ul style="list-style-type: none"> • approval of annual financial statement (Incl. Audit Comm) | <ul style="list-style-type: none"> • matters relating to amalgamation, merger, demerger, acquisition & takeover | <ul style="list-style-type: none"> • Board's report • prospectus |
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Upto 30th June 2021, full virtual presence permitted due to COVID pandemic

- Any meeting with virtual participation from *any* Board member needs to adhere to the process stated in Section 173(2) r/w Rule 3 of Companies (Meeting of Board and its Powers) Rules 2014.

Preparatory

- ✓ Ensure arrangements to avoid failure of video or audio visual connection
- ✓ Ensure security and identification procedures
- ✓ Restrict access to directors and authorized persons (1 support for disabled person)
- ✓ Provide option for virtual participation in Notice
- ✓ Scheduled venue shall be deemed venue
- ✓ Authenticating attendance on the register

At the Meeting

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| <ul style="list-style-type: none"> ✓ Roll call shall be taken by the Chairperson covering, name, location of participation, receipt of agenda and material and confirmation that no one other than the concerned director is attending ✓ Record proceedings ✓ Ensure clear communication between participants ✓ Register shall deemed to have been signed if so consented by directors attending virtually and recorded in minutes | <ul style="list-style-type: none"> ✓ 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. ✓ At the end of discussion on each agenda item, Chairperson shall summarise the decision along with names of dissenting directors ✓ Minutes shall disclose the particulars of the directors who attended the meeting virtually ✓ Mark recording(s) and store upto at least the audit completion of that particular year. |
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Before the meeting

- Take Chairman inputs while framing the Agenda
- Plan and call in information from business/corporate counterparts for preparing the Agenda
- Give sufficient time for internal reviews with MD/ Chairman; preferably calendarize this
- Ensure logistical arrangements, invites and other arrangement for virtual meetings
- Keep evidence record of the Agenda dispatch
- Inform Stock Exchanges and publish advertisement in national and regional language newspaper of Board meeting considering quarterly results, dividends (LODR requirement)
- Make entry in UPSI register

At the meeting

- During the meeting, use a timesheet for tracking the meeting time; guide presenters for managing time with the permission of the Chair
- Prepare talking points for focused briefings
- Ensure recording permission of the Board before taking up items with shorter notice / Any other business topics
- Plan a few minutes break during the meeting for signing post – meeting disclosures (eg results)

After the meeting

- Ensure and check that all table papers/presentations are duly initialed
- It's a good practice to prepare a Board file / folder of all Notices, Agenda, Notes, originals (eg results, compliance reports) and other related papers for the Board meeting (to be preserved for 8 years)
- Ensure that Stock exchanges have been informed and website is promptly updated post meeting
- Ensure updation of statutory registers
- Ensure sitting fee payments
- Ensure post meeting ROC filing is tracked and takes place in a timely manner

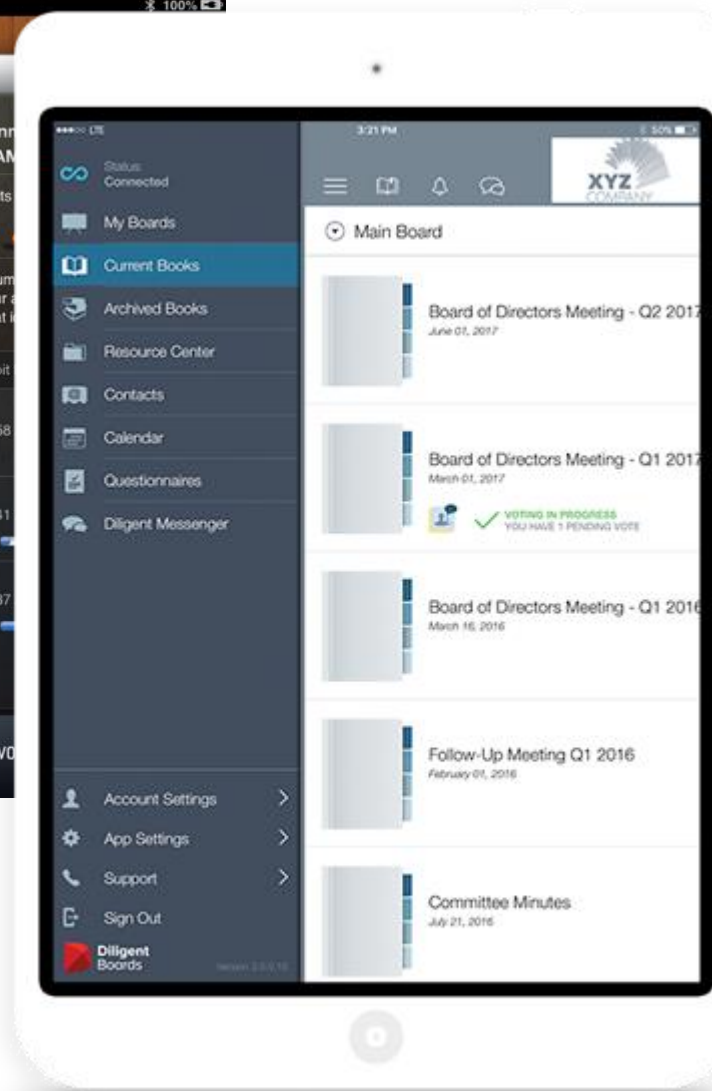
Tools for Efficient Management of meetings

- Fix a rolling annual calendar of meetings, preferably 2-3 years
- Plan for 2 – day Board sessions
- At the beginning of the year, fix a **thematic** calendar of topics to be covered at each meeting (apart from quarterly review of performance and results) of the Board and Committee
- Keep a ready reckoner of regular coverage topics at Board/Committee meetings to ensure complete coverage:

✓ Quarterly results & performance	✓ Statutory and internal audit reports	✓ Matters to be brought by to Board	✓ Actionables from prev. meetings
✓ Special thematic reviews	✓ Compliance Reports – Internal controls, legal compliance	✓ Complaints reports – shareholders, whistle blower	✓ Subsidiary related – minutes, material transactions
✓ Scrutiny topics - Related party transactions, inter-company loans, utilization of loans	✓ Share related reports – transfers, pattern, reconciliation of capital, corporate governance	✓ Approval topics – loans, borrowing, investment	✓ Review of delegations & utilizations
✓ Litigations/Notices	✓ Noting disclosure of interest	✓ Appointments/changes	

Tools for Efficient Management of meetings

- Make the Board engagement enriching and meaningful to stakeholders
- Using electronic tools for meeting management
 - Whatsapp leak case
 - Validate for information security controls



Thank you!