



Compliances with Companies Act, 2013 by Private Limited Companies – Part III

This write up provides an overview of some of the important changes with respect to meetings of board and its powers as applicable to private companies or other unlisted public companies.

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The Companies Act, 2013, has made sweeping changes which will affect the day-to-day functioning of private companies and other unlisted public companies. Some of the most important changes are described below.

Reporting requirements for Board Meetings

Under the erstwhile Company Law, board minutes were considered to be confidential and no filing requirements of the same were mandated. However, presently even the following types of board resolutions are required to be filed with Registrar of Companies (ROC) in the manner prescribed in the Chapter 7 Rules:

- 1) Resolutions of the board or agreement executed by a company relating to the appointment, reappointment or renewal of the appointment, variation in terms of appointment of a managing director.
- 2) Resolutions passed by the Board in relation to borrowing where the money to be borrowed together with money already borrowed by the Company exceeds the aggregate paid up capital and free reserves in the manner provided in Section 180 (1)(c).
- 3) Resolutions mandatorily required to be passed at a meeting of the Board as enumerated [here](#).

The imposition of the requirement of establishing a whistle blowing mechanism on all companies that can cause a stress on the overall economy / financial system while laudable the manner of implementation prescribed for private or unlisted public companies leaves a lot to be desired.

Participation in board meetings through electronic mode:

Earlier, the Ministry of Corporate Affairs recognized video conferencing as a mode of attending meetings in 2011, subject of course to certain conditions by issuing a [circular](#) to this effect. However, the earstwhile Companies Act did not envisage or contain references to audio-visual mode of attending meetings, which brought the entire circular into question. Presently, the Companies Act has formalised the same and has provided detailed rules in this behalf.



All matters *except* the following matters shall be dealt with in any meeting held through video conferencing or other audio-visual means:

- i. Approval of the annual financial statements;
- ii. Approval of the Board's report;
- iii. Approval of the prospectus;¹
- iv. Audit Committee Meetings for consideration of accounts; and
- v. Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

The chairperson of the meeting and the company secretary should ensure arrangements such that there is no failure of video or audio visual connection for effective participation of the directors and other authorised participants at the board meeting as well as for ensuring accurate recording of the proceedings.

The safekeeping of electronic recordings of the meeting is an additional responsibility, and companies should ensure that no person other than the concerned director are attending such meeting or have access to the proceedings of the meeting conducted in this manner.

The notice of a board meeting shall specifically state that an option is available to the directors to participate through video conferencing mode or other audio visual means and the director, who is interested to participate through electronic mode shall intimate, at the beginning of the calendar year and such declaration shall be valid for one calendar year. The provisions also state that if a director is interested in attending any meeting through video – conferencing, he shall communicate his intention to do so in advance. [*View: It is our view that the rules overlap and don't provide clarity on whether a declaration at the beginning of the calendar year is sufficient or the intent to attend electronically needs to be provided for each meeting. It would be good practice for directors to intimate as soon as they receive the notice, on whether or not they wish to participate through video conferencing.*]

The directors attending electronically are required to provide a confirmation that no person other than them is attending the meeting and no other person shall have or has access to the recordings of the meeting.

The board meeting which is conducted through audio visual means, shall be held in India and the venue in India shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

Signing of Statutory Registers: The statutory registers shall be placed in the board meeting at the scheduled venue of the meeting where the directors are required to sign, and the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

The [Chapter 12 Rules](#), further provide certain detailed procedures – do's and don'ts for conducting the meeting through audio visual means.

Passing of Resolution by Circulation

¹ Items (iii) and (iv) are not applicable to a private company.



The Companies Act permits circulation of resolution in draft form to all directors for seeking their approval through electronic means including E-mail or fax. Resolutions by circulation therefore, may now be passed electronically.

Given the laid back attitude of most private companies towards security of data and protection of information in general, it would be difficult for companies to ensure that directors or only other persons authorised, send their approval to the draft circulated. While the provision does ease out procedure, it imposes higher responsibility on the companies to ensure confidentiality and avoid leakage or unauthorised use or access to sensitive or confidential information.

Certain resolutions to be passed only at meetings

Section 179 (3) imposes restrictions on passing of resolutions other than at a meeting of the Board. The rules also provide certain further matters that can only be passed at a meeting of the Board. These board resolutions are also required to be filed with the Registrar of Companies (ROC).

Below is a consolidated list of matters that cannot be passed by circulation:

- a) Making calls on shareholders in respect of money unpaid on their shares;
- b) Authorizing buy-back of securities under section 68;
- c) Issuing securities, including debentures, whether in or outside India;
- d) Borrowing monies;
- e) Investing the funds of the company;
- f) Granting loans or giving guarantee or providing security in respect of loans;
- g) Approving financial statements and the Board's report;
- h) Diversification the business of the company;
- i) Approving an amalgamation, merger or reconstruction;
- j) Taking over of a company or acquiring a controlling or substantial stake in another
- k) company;
- l) Making political contributions;
- m) Appoint or removal key managerial personnel (KMP);
- n) Noting of appointment(s) or removal(s) of one level below the Key Management Personnel;
- o) Appointment of internal auditors and secretarial auditor;
- p) Noting of the disclosure of director's interest and shareholding;
- q) Buying or selling investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
- r) Inviting or accepting or renewing public deposits and related matters;
- s) Reviewing or changing the terms and conditions of public deposit; and
- t) Approving quarterly, half yearly and annual financial statements or financial results as the case may be.