

I. CHANGES RELATED TO BOARD MEETINGS :

The Companies Act, 2013 has introduced significant changes with respect to Board meetings and processes.

Meeting of Board**First Meeting of Board of Directors (BOD) [Section 173(1)]**

In contrast with the 1956 Act, where there was no stipulation as regard to the first meeting of the Board of Directors, the 2013 Act, specifies that first meeting of the Board of Directors should be held within 30 days of its incorporation.

Participation of BOD through video conferencing [Section 173(2)]

The 2013 Act allows participation of Directors in Board meetings through video conferencing or other audio – visual means, as may be prescribed.

Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 sets out the procedure to be followed for meetings of Board through video conferencing or other audio – visual means.

According to *Explanation* to Rule 3, “video conferencing or other audio – visual” 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.

Rule 4 sets out matters not to be dealt with at board meeting through video conferencing or other audio visual means.

Whereas, there are no such provisions allowing meeting of Board to be conducted through video conferencing in the 1956 Act.

Notice for Board meetings [Section 173(3)]

As per the 2013 Act, a notice of minimum 7 (seven) days must be given for each board meeting. Notice for board meeting may be given by electronic means. However, board meetings may be called at a shorter notice to transact ‘urgent business’ provided that such meetings are either attended by at least 1 (one) independent director or decisions taken at such meetings on subsequent circulation are ratified by at least 1 (one) independent director.

No length of notice period was mentioned in the 1956 Act. Section 286 of the Companies Act, 1956 dealt with the ‘Notice of Meetings’ and stated that:

- Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

- Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one hundred rupees.

Board meetings of OPC [Section 173(5)]

An OPC (which has more than 1 (one) Director)/ small company/ dormant company must hold board of meetings as follows:

- At least one meeting of Board of Directors to be conducted in each half of a calendar year.
- Gap between two meetings should not be less than 90 days.

An OPC which has only one Director need not comply with the above provisions.

There were no such provisions under the old Companies Act of 1956.

Frequency of BOD meetings [Section 173(1)]

As per the 2013 Act, not more than 120 days shall intervene between two consecutive Board meetings. Whereas, Section 285 of the 1956 Act, provided that a meeting of its Board of Directors shall be held at least once in every 3 (three) months.

Quorum [Section 174(1)]

The 2013 Act allows the participation of the Directors at the Board meeting by video conferencing or by other audio visual means to be counted for the purpose of quorum. The 1956 Act did not recognize participation by video conferencing or other audio visual means for quorum purposes.

Circulation & approval of Draft Resolution

Section 175 of the 2013 Act contains an enabling provision to circulate draft resolution with necessary papers to Directors or members of committee through such electronic means as may be prescribed. Whereas, the Companies Act, 1956 was silent on circulation of draft resolution through electronic means.

Rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that a resolution in draft form may be circulated to the Directors together with the necessary papers for seeking their approval, by electronic means which may include e-mail or fax.

Section 175 of the 2013 Act provides that approval should be by a majority of Directors or members (of the committee), who are entitled to vote on the resolution.

Noting the resolution passed by Circulation [Section 175]

A resolution passed by circulation shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of the meeting. This is a new provision introduced in the 2013 Act, which was absent in the earlier Act of 1956.