

# E-meetings for Indian companies

**India has permitted directors and shareholders of Indian companies to participate in board and shareholders' meetings, through videoconferencing. This will not only help in improving governance of widely held Indian public companies but will also be of particular benefit to non-resident directors of Indian companies**

The Ministry of Corporate Affairs, Government of India ("MCA") has recently issued circulars clarifying that shareholders may participate in general meetings of shareholders and directors may participate in a meeting of the board of directors or its committees, through videoconferencing. The new rules do not make it mandatory for Indian companies to provide such a facility but provide guidance on what the companies ought to do if they do choose to provide such videoconferencing facilities.

Notice for the meetings of directors and shareholders may be dispatched electronically. Such notices should specify the availability of videoconferencing facility along with information to enable access to such facility.

## Shareholders' meetings

- While the shareholders may participate in a general meeting through videoconferencing, the requirement under the Indian Companies Act for the physical presence of the shareholders for constituting a quorum continues to apply. Thus, the chairman and the quorum for shareholder meetings (five members for public companies and two members for private companies) have to be physically present at the location of the meeting.
- It has been recommended that such videoconference facilities be located in a minimum of five States/Union Territories well spread all over India. The MCA has recommended that such locations be based on the maximum number of members from each State/Union Territory, or locations with at least 1,000 members, whichever is higher.
- A potential limitation could be the impact of circular no. 21/2011 dated 2 May 2011, issued by the MCA which provides that National Securities Depository Limited (NSDL) and Central Depository Services (India) Ltd (CDSL) are currently the only approved providers of a secured platform for capturing accurate electronic voting processes. This could place territorial limitations on the holding of shareholder meetings through electronic mode.

## Board meetings

- The participation of a director through videoconference would constitute the presence of such director towards quorum for a Board meeting and any statutory register required to be signed by a director shall be deemed to be signed by a director participating through videoconference by giving its consent.
- At the end of the meeting the chairman of the meeting shall summarise the decisions taken in the Board meeting in respect of each agenda item along with the names of the directors that have consented or dissented to those decisions. The company is required to preserve the video recording of this part of the meeting for a period of one year from the date of this meeting.
- There are other requirements for such a Board meeting, including the requirements to conduct roll calls at various points of time during the meeting, taking note of the vote of each director and manner of recording the minutes of such meetings.

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- A director is, however, required to physically attend at least one meeting of the board /committee during a financial year of the company.
- The directors must confirm the mode of their participation (whether electronic or physical), failing such confirmation it is to be assumed that the director present in India shall attend the meeting physically.
- The draft minutes of the board meeting shall be circulated in soft copy within seven days of the meeting for comments and confirmations of the directors who attended the board meeting.

These changes are expected to provide significant relief to foreign directors of Indian companies, who until now had to either travel to India or appoint an alternate director for a meeting of the board.

The above norms shall be equally applicable to a meeting of the committee of directors.

### **General responsibilities**

There are the following additional responsibilities on the chairman and the secretary of the Indian company:

- Ensuring that no one other than the concerned shareholder/proxy or director/authorised participant (as the case may be) are attending the meeting; and
- If a statement of a participant in the meeting is interrupted or garbled (due to videoconferencing), the chairman or the secretary is required to request for its repetition and the chairman or the secretary may himself repeat such a statement for its confirmation or correction.

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