

# BOARD MEETINGS THROUGH VIDEO CONFERENCING

◆ Legal Series Vol. XIII ◆ Issue 3 ◆ June 2020

*For private circulation only*

## Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



Authors\* :

**Dr. Manoj Fogla**

**Dr. Sanjay Patra**, ED, FMSF

**Suresh Kejriwal**

**Sandeep Sharma**, Director Program, FMSF

# BOARD MEETINGS THROUGH VIDEO CONFERENCING

◆ Legal Series Vol. XIII ◆ Issue 3 ◆ June 2020

For private circulation only

## CONTENTS

1.	Introduction	01
2.	Video Conferencing and Other Audio Visual Means	01
3.	Provisions Regarding Meeting through VC and OAVM	02
4.	Issues for NPOs in using other electronic mediums for Meetings	08
5.	Can Directors & Trustees participate through intermediaries	08
6.	Role & Responsibility of the Chairman or Secretary	09
7.	Adjournment of Meetings through Video Conferencing	10
8.	<i>Annexure - 1</i> The Companies (Meeting of Board and its Powers) Rules, 2014	11

# Board Meetings through Video Conferencing

## Introduction

- 1.01** The Board Members of an NPO can be located in different geographical locations and it is always difficult for a member staying in far away places to attend Board meetings regularly. The administrative and travel cost is also an important issue in case of NPOs. Therefore, it becomes important to understand the legally acceptable ways of conducting general and Board meetings with the help of technology and video conferencing.
- 1.02** There is no rule or guidance under the Societies or Trust Act regarding holding meetings through video conferencing. However, the Ministry of Corporate Affairs, Govt. of India has issued directions and guidelines regarding holding of meetings through electronic means and video conferencing. **Section 173 of the Companies Act 2013 and The Companies (Meetings of Board and its Powers) Rules, 2014** issued by the Ministry of Corporate Affairs, Govt. of India can be a great reference document for conducting meetings through electronic medium in the NPO sector. The Board Meetings are permissible through video conferencing under the aforesaid rules which are applicable to all section 8 companies. Trust and Societies can take umbrage of these provisions subject to any specific restriction in their Bye Laws or the local statute.

## Video Conferencing and Other Audio Visual Means

- 2.01** In this issue we are discussing meetings held through Video Conferencing (VC) and Other Audio Visual Means (OAVM) It may be noted that, meeting

through video conferencing demands adequate infrastructure and technology. Such meetings do not come in the category of meetings through circulation, since the resolutions are not required to be circulated again for confirmation of the participating members. However, in other forms of meetings such as Tele conference, Video Conferencing etc. it would be necessary to circulate the resolutions for confirmation.

## Provisions Regarding Meeting through VC and OAVM

**3.01** The provision regarding meeting through VC and OAVM under Sub Rule 3 of *The Companies (Meetings of Board and its Powers) Rules, 2014* are as under:

**Meetings of Board through video conferencing or other audio visual means.**-A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

- (1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
- (2) The Chairperson of the meeting and the company secretary, 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 video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

- (c) to record proceedings and prepare the minutes of the meeting;
- (d) to 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.
- (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting:

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

(3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.

(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.

(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently

in advance so that company is able to make suitable arrangements in this behalf.

(e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.

(f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.

(4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

(a) name;

(b) the location from where he is participating;

(c) that he has 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 mentioned in clause (b);

(5) (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

*Explanation-* A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

(b) The Chairperson shall ensure that the required quorum is present throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be 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.

(7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, 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.

(8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

(9) 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.

(10) 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 person 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 video conferencing without the permission of the Board.

(11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

*Explanation*-For the purposes of this rule, "video conferencing or other audio visual means" 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.

### **Matters not to be dealt with in a board meeting through VC and OAVM**

The provision regarding meeting through VC and OAVM under Sub Rule 4 of *The Companies (Meetings of Board and its Powers) Rules, 2014* are as under:

The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

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

### **Passing of resolution by circulation**

The provision regarding meeting through VC and OAVM under Sub Rule 5 of *The Companies (Meetings of Board and its Powers) Rules, 2014* are as under:

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.

In the light of the above any urgent resolution can also be passed through circulation.

## Issues for NPOs in using other electronic mediums for Meetings

- 5.01** It has to be understood that the minutes of a meeting are the most important evidence for legal purposes. Therefore, an organisation should be careful about ensuring the evidence value of all the meetings.
- 5.02** The legal frequency of NPOs is also important, the NPO registered as a section 8 Company is required to have minimum two board meetings in a year. The remaining forms of organisation i.e. Society and Trust are subject to various state laws and their own bye laws may require to have one or two compulsory board meetings. Therefore, an NPO should confine to the legitimate and approved methods of board meeting for at least 2 meetings in a year.
- 5.03** For quick decision making, NPOs may also have electronic meetings through Zoom, Skype, Tele-conference or other video conference platform. In case of meeting through audio or tele conference, the minutes should be signed by circulation or in future meetings for legitimacy. Further, only specific resolutions should be passed in such meetings. For video meetings the guidelines provided by the *Companies (Meetings of Board and its Powers) Rules, 2014* should be followed.

## Can Directors & Trustees participate through intermediaries

- 6.01** It is not permissible to participate through electronic mode with the help of an intermediary. The persons who are not tech-savvy cannot be allowed any support person for participation in such meeting. Such persons have to be physically present.

## Role & Responsibility of the Chairperson or Secretary

7.01 The Chairperson or Secretary of the Meeting should ensure the following :

- To take attendance at the beginning of the meeting and ensure the quorum throughout the meeting. The name of the persons absent should also be declared and confirmed. If the meeting gets disconnected then the quorum and attendance should be taken again at the time of re-commencement.
- Every member, Trustee, Director should provide the full name, location and a declaration that no other person is participating in the meeting.
- Every member, Trustee, Director should confirm that the audio and video quality is good and they are comfortable with it.
- In case of dissent over any motion, the Chairperson or Secretary should make another roll call and record the dissent and assent.
- Should safeguard and ensure the integrity and decorum of the meeting.
- Should ensure that the video conference facility and equipments are available to all the participating persons.
- To ask for repetition or reiteration of any statement if it is not clear or any participant request for such repetition or reiteration.
- To prepare the minutes of the meeting.
- To provide a summary of the meeting at the end of the meeting. The chairperson of the meeting shall announce summary of decisions taken at the meeting in respect of each agenda item and names of the directors who have consented/dissented to those decisions.

## Adjournment of Meetings through Video Conferencing

- 8.01 Normally Board meetings are adjourned to future date if the quorum is not present and the number of persons present in such future meeting automatically form the quorum.

---

**Standards & Norms** aims to provide relevant informations and guidance on NGO governance, Financial Management and Legal Regulations. The informations provided are correct and relevant to the best of the knowledge of the author and contributor. It is suggested that the reader should cross check all the facts, law and contents before using them. The author or the publisher will not be responsible for any loss or damage to any one, in any manner.



**fmsf**

Published by **Dr. Sanjay Patra** on behalf of  
**FINANCIAL MANAGEMENT SERVICE FOUNDATION**  
'ACCOUNTABILITY HOUSE', A-5, Sector 26, Noida-201 301  
Tel. : 91-120-4773200, website : [www.fmsfindia.org](http://www.fmsfindia.org)  
e-mail : [fmsf@fmsfindia.org](mailto:fmsf@fmsfindia.org)

## The Companies (Meetings of Board and its Powers) Rules, 2014

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 31st March, 2014

**G.S.R. 240 (E).** – In exercise of powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other Rules prescribed under the Companies Act, 1956 on matters covered under these rules, except as respects things done or omitted to be done before such suppression, the Central Government hereby makes the following rules, namely: –

1. (1) Short title and commencement.- (1) These rules may be called the Companies (Meetings of Board and its Powers) Rules, 2014.  
(2) They shall come into force on the 1st day of April, 2014.
2. Definitions.- (1) In these rules, unless the context otherwise requires, –
  - (a) "Act" means the Companies Act, 2013;
  - (b) "Annexure" means the Annexure appended to these rules;
  - (c) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
  - (d) "Form" or "e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;
  - (e) "section" means the section of the Act.
 (2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said Rules.
3. **Meetings of Board through video conferencing or other audio visual means.-** A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.
  - (1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
  - (2) The Chairperson of the meeting and the company secretary, 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 video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- (c) to record proceedings and prepare the minutes of the meeting;
- (d) to 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.
- (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting;

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

(3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.

(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.

(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

(e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.

(f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.

(4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

- (a) name;
- (b) the location from where he is participating;
- (c) that he has 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 mentioned in clause (b);

(5) (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

*Explanation-* A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

(b) The Chairperson shall ensure that the required quorum is present throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be 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.

(7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, 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.

(8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

(9) 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.

(10) 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 person 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 video conferencing without the permission of the Board.

(11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video

conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

*Explanation-*For the purposes of this rule, “video conferencing or other audio visual means” 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.

**4. Matters not to be dealt with in a meeting through video conferencing or other audio visual means.-**(1) The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

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

**5. Passing of resolution by circulation.-** 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.

**6. Committees of the Board.-**The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board-

- (i) all public companies with a paid up capital of ten crore rupees or more;
- (ii) all public companies having turnover of one hundred crore rupees or more;
- (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

*Explanation.-* The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

**7. Establishment of vigil mechanism.-**(1) Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-

- (a) the Companies which accept deposits from the public;
- (b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

(2) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the



others on the committee would deal with the matter on hand.

(3) In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

(4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.

(5) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

**8. Powers of Board.**-In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board.-

- (1) to make political contributions;
- (2) to appoint or remove key managerial personnel (KMP);
- (3) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- (4) to appoint internal auditors and secretarial auditor;
- (5) to take note of the disclosure of director's interest and shareholding;
- (6) to buy, sell 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;
- (7) to invite or accept or renew public deposits and related matters;
- (8) to review or change the terms and conditions of public deposit;
- (9) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

**9. Disclosures by a director of his interest.**-(1) Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1.

(2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

(3) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

