



MCA RECOGNIZES E-PRESENCE IN MEETINGS!

May 2011

On May 20, 2011, MCA issued two circular (*Circulars No. 27 & 28 of 2011*) setting out the rules for the participation of the directors and shareholders in the meetings of the company electronically. MCA assessed the legal implications of allowing this practice in view of the provisions of the Information Technology Act, 2000 (“**IT Act**”) that deals with the legal recognition of the electronic records, dispatch and receipt of electronic information. The procedures provided in the notifications will have to be followed in addition to the existing practice of conducting the meetings with the physical presence of the directors/members as required under the Companies Act, 1956 (“**Act**”) Generally, board and shareholders’ meetings can be held provided the prescribed quorum is present which requires physical presence at the venue of the meeting, either directly or through alternates/proxies/authorized representatives. However, in the notifications, “**electronic mode**” alludes to a videoconference facility which will facilitate concurrent communication by all participants. Presence by videoconference will be akin to physical presence and will be counted towards the quorum. There following list of measures must be followed for implementing such electronic meetings.

1. The notice of the meeting must inform the directors/shareholders regarding availability of participation through videoconference and provide necessary information of the designated officer/secretary to whom the director/shareholder shall confirm in this regard and also get access to avail this facility.
2. Every director must attend personally at least one meeting in a financial year of the company. Directors attending through videoconferencing will also be counted for the purpose of quorum. This will provide an enormous relief for the non-Indian directors who find it cumbersome to travel to India given the frequency of the meetings that are to be held.
3. The chairman/secretary of the meeting shall
 - a) Ensure proper equipment for videoconference is in place.
 - b) Prepare the minutes of the meeting.
 - c) Ensure that only the concerned director or authorized representative, as the case may be (i.e. in case the meeting is of shareholders), attends the meeting through electronic mode.
 - d) Take the necessary roll call at the start and at the end of the meeting which will be necessary for any motion to be passed.
 - e) At the close of the meeting, the chairman shall announce the summary of the decisions taken during the meeting with respect to the agenda items and names of the directors who were in favor or who opposed it. The video recording of this specific part of the meeting has to be preserved for a year.

4. The place where the chairman/secretary will sit during the board meeting shall be taken as the place of the meeting. In case of Annual General Meeting, the chairman/secretary as well as the necessary quorum prescribed under section 174 of the Act, has to be physically present at the venue of the meeting, and which has to be held either at the registered office or at a place in the city, town, village where the registered office is situated.

5. Draft minutes of the meeting will have to be circulated in soft copy within 7 days of the meeting for comments/confirmation to the directors who attended the meeting. The minutes shall also disclose the particulars of the directors who attended the meeting through electronic mode. Thereafter, the minutes shall be entered in the minute books, as prescribed under section 193 of the Act.

6. Further, the listed companies will be required to provide videoconferencing connectivity in at least top 5 places in India based on the maximum number of members or at least 100 members (*whichever is more*) residing as per the address registered with the depositories.

Pursuant to the amendment in the IT Act in 2008, electronic records and electronic signatures were accorded legal recognition. Moreover, the procedural details regarding the time and dispatch of electronic records was laid down to avoid any ambiguity on the determination of time of dispatch and receipt of electronic records. In light of this, the demand to provide legal recognition to participation by videoconferencing had arisen earlier which has finally become a pleasant reality for corporations. This is indeed a welcome step for the companies not only from convenience point of view but will also prove to be a cost saving measure.

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