



*How quorum is to be decided when some of the directors attend a board meeting through video-conferencing?*

Pursuant to the provisions of sub-section (2) of section 173 of the Companies Act, 2013 ('Act'), the participation of directors in a meeting of the board may either be in-person or through video conferencing or other audio-visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Pursuant to the provisions of sub-section (1) of section 174 of the Act, the quorum for a meeting of the board of directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum. In the given case, the director is participating in the meeting of directors through video-conferencing. If the participation of such director is capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings (along with date and time), then such director shall be counted for the purpose of quorum. The company/Chairman or Company Secretary/directors are also required to comply with the provisions of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

*Can the presence of the directors who attend the meeting through tele-conferencing be counted in quorum?*

Pursuant to the provisions of sub-section (2) of section 173 of the Companies Act,

*(Contributed by CS Gaurav Pingle)*

2013 ('Act'), the participation of directors in a meeting of the board may either be in person or through video conferencing or other audio-visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings (along with date and time). Pursuant to the provisions of sub-section (1) of section 174 of Act, the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum. In the given case, the director is participating in the meeting of directors through tele-conferencing. Pursuant to the provisions of the Act (read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014), the director cannot be counted for the purpose of quorum. However, he may participate in the discussion. But such participation of such director does not amount to 'attendance' of director in the meeting of board of directors. However, as a good corporate secretarial practice, the minutes of the said meeting shall state that the director attended the meeting through tele-conferencing.

*If a director attends a meeting of the board through tele-conferencing, can such director vote on resolutions? Also, can such director claim sitting fees under the Act?*

Pursuant to the provisions of sub-section (1) of section 174 of Act, the participation of the directors by video-conferencing or by other audio visual means shall also be counted for the purposes of quorum. In the given case, the director is participating in the meeting of directors through tele-conferencing. Pursuant

to the provisions of the Act (read with Rule 3 of Companies (Meetings of Board and its Powers) Rules, 2014), the participation of director in the meetings of board through tele-conferencing cannot be counted for the purpose of quorum. Considering this, such director cannot vote on the resolution at the meetings of the board.

Section 197 of the Act relates to 'Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits'. Sub-section (5) of section 197 of the Act states that a director may receive remuneration by way of fee for 'attending meetings' of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board of directors. The amount of such fees shall not exceed the

amount as may be prescribed and different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed (*i.e.* Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014). Director's attendance of meeting of the board shall be attendance in-person or participation through electronic means (as prescribed). Taking into consideration sections 173, 174 and 197 of the Act, a director shall not be entitled to sitting fees for the participating in the meeting of the board through tele-conferencing. However, as a good corporate secretarial practice, the minutes of the said meeting shall state that the director attended the meeting through tele-conferencing.