

Ministry of Corporate Affairs Simplifies Board Approval and Reporting Mechanism

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Introduction:

Shareholders are said to be owners of the company, whereas the members of the Board of Directors are said to be the 'managers' and 'trustees' of the company. The Board of Directors of the company is in charge of the day-to-day management of the company and requires the shareholders' sanction in certain cases. Examples include adopting the annual accounts, declaring final dividend, appointing statutory auditors, increasing authorised share capital/ borrowing limits/investment limits etc.

The Companies Act, 2013 provides an exhaustive list of events and procedures for obtaining Board approval. Broadly, Board approval can be sought by holding a board meeting, convening a Board Meeting through videoconferencing, or passing a circular resolution or a resolution passed by the board of directors in accordance with articles of association.

Board Approval at Board Meetings :

Various provisions of the Companies

Act, 2013 require the approval of the board of directors; this is achieved when the Board passes a resolution at its meeting. What follows is the list of events that require such a sanction from the board; this list is provided in Section 179(3) of the Companies Act, 2013 and Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014.

- 1) Making calls on shareholders in respect of money unpaid on their shares;
- 2) Authorising buyback of securities;
- 3) Issuing securities, including debentures, whether in or outside India;
- 4) Borrowing monies;
- 5) Investing company funds;
- 6) Granting loans, giving guarantees or providing security with regard to loans;
- 7) Approving financial statements and the Board's report;
- 8) Diversifying the business of the company;
- 9) Approving an amalgamation, merger or reconstruction;
- 10) Taking over a company; acquiring,

controlling or having a substantial stake in another company;

- 11) Making political contributions;
- 12) Appointing or removing key managerial personnel;
- 13) Taking note of (an) appointment(s) or removal(s) one level below the Key Management Personnel;
- 14) Appointing internal auditors and secretarial auditors;
- 15) Taking note of the disclosure of director's interest and shareholding;
- 16) Buying or selling investments held by the company (other than trade investments) that constitute 5% or more of the paid up share capital and free reserves of the investee company;
- 17) Inviting, accepting or renewing public deposits and related matters;
- 18) Reviewing or changing the terms and conditions of public deposit;
- 19) Approving quarterly, half-yearly and annual financial statements or financial results, as the case may be.



Delegation of authority :

In accordance with the proviso to Section 179(3) of the Companies Act, 2013, certain powers of the board of directors can be delegated to :

- 1) The committee of directors,
- 2) The Managing Director,
- 3) The Manager,
- 4) or any other principal officer of a company, or
- 5) In the case of a branch office of the company, the principal officer of the branch office.

The delegation of these powers to the above mentioned people shall take place only when a resolution is passed at a Board meeting.

The Board of Directors can only delegate the following powers to the above people/committee :

- 1) Borrowing monies;
- 2) Investing company funds;
- 3) Granting loans, giving guarantees or providing security with regard to loans.

Filing Form No. MGT 14 with the Registrar of Companies :

In accordance with the provisions of Section 117 of the Companies Act, 2013, the board of directors of the company which approves any of the

above mentioned transactions or events (19 events, as listed above) is required to file Form No. MGT – 14 with the Registrar of Companies. This provision of reporting to Registrar of Companies is a burden to companies for following reasons :

- (i) Disclosure of confidential information to the Registrar of Companies;
- (ii) The availability of such confidential information for public inspection;
- (iii) The cost incurred by companies in reporting;
- (iv) Some professionals deemed it 'over-compliance'.

MCA's recent move to make the Board approval process easier :

MCA recently issued a Notification dated March 18, 2015 and amended the Companies (Meetings of Board and its Powers) Rules, 2014 by deleting certain agenda items/transactions that could be transacted and approved by the Board of Directors in the board meeting. The following list contains the businesses responsible for :

- (1) Appointing or removing key managerial personnel;
- (2) Taking note of the disclosure of director's interest and shareholding;
- (3) Buying or selling investments held by the company (other than trade

investments) that constitute 5% or more of the paid up share capital and free reserves of the investee company;

- (4) Inviting, accepting or renewing public deposits and related matters;
- (5) Reviewing or changing the terms and conditions of public deposit;
- (6) Approving quarterly, half-yearly and annual financial statements or financial results, as the case may be.

Therefore, the board of directors of the companies can now approve the above mentioned business agenda, either by passing a circular resolution or in a board meeting conducted via videoconferencing. Also, due to the deletion of the prescribed business items from the list, the companies are not required to notify the Registrar of Companies by filing Form No. MGT – 14.

The MCA notification has not only eased the process of obtaining Board approval, but also eliminated the need to file Form No. MGT – 14, which in a way has simplified the methods of doing business.

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