

FAQs on Board and General Meetings during COVID-19

There are number of corporate compliance issues faced by directors and shareholders of companies in India in the wake of the COVID-19 lockdown. It is crucial for directors and officers to carefully navigate matters relating to compliance under the (Indian) Companies Act, 2013 especially for any urgent business requiring director/shareholder approval.

We have created a rolling list of FAQs below related to compliance requirements for board and shareholder meetings. We will update these as the situation develops. Please do contact us at practicemanager@btg-legal.com if you have any specific questions that we can help you with.

Board Meetings	<p>Can your company pass resolutions without convening a physical board meeting?</p> <p>Yes, your company can pass resolutions by circulation (except in case of certain restricted matters like, issuance of shares, borrowing, or granting loans/guarantees, etc. which can only be passed at a board meeting). For passing resolutions by circulation, a cover letter and the draft resolution along with supporting documents (if any) can be circulated via email, by any 1 director, to all directors. The directors can send in their assent/dissent of the proposed resolution via email.</p> <p>How can your company approve matters that can only be passed at a board meeting?</p> <p>Your company can hold a board meeting through audio-visual (“AV”) means and the directors can attend the meeting from their respective locations. Any teleconferencing and web conferencing software available in the market (such as Skype, Webex) can be used to convene and record the board meeting.</p> <p>What are the compliances connected with an AV board meeting?</p> <p>Safety and privacy of the AV board meeting is of utmost importance. The directors will need to: (a) ensure that no person other than the director(s) are attending the board meeting, (b) record their roll call during the meeting, (c) record the proceedings, and (d) ensure safekeeping of the records of AV board meetings.</p> <p>Are there any matters that cannot be approved at an AV board meeting? If yes, how can your company approve such matters?</p>
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	<p>Under the Act, matters such as, approval of financial statements and directors' report, takeovers, mergers, etc. can be approved at a <u>physical</u> board meeting only. However, the Ministry of Corporate Affairs ("MCA") has exempted the requirement of having a physical board meeting for such matters till June 30, 2020.</p> <p>If your company does not have any urgent matters to discuss, does your company need to hold a board meeting to comply with minimum number of board meetings prescribed under the Act?</p> <p>The MCA has notified the extension of the prescribed time gap between 2 consecutive board meetings from 120 days to 180 days for any meeting held up to September 30, 2020. Therefore, if your company does not have to pass any urgent resolutions, your next meeting can be held anytime within 180 days of previous board meeting.</p>
Shareholder Meetings	<p>How can shareholders of your company approve matters requiring shareholders' approval?</p> <p>The MCA has allowed companies to convene their extra-ordinary general meetings through AV means till June 30, 2020 in order to approve unavoidable matters requiring shareholders' approval. Your shareholders can attend the meeting from anywhere in the world through any teleconferencing and web conferencing software.</p> <p>What are the compliances connected with an AV general meeting?</p> <p>Since this special measure is intended for unavoidable matters only, the MCA has prescribed a number of additional compliances which are required to be followed including: (a) ensuring two-way AV facility for participation by shareholders; (b) recording and safekeeping of transcripts of AV shareholder meetings; and (c) filing of resolutions passed at the AV general meeting with the MCA within 60 days of the meeting.</p> <p>How can shareholders of your company vote on matters discussed at an AV general meeting?</p> <p>Voting at the AV general meeting can be done by show of hands, unless your articles suggest otherwise or a poll has been demanded. If voting is to be done by poll, the company is required to provide a '<i>designated email address</i>' to all shareholders at the time of sending the notice of meeting, on which the members can convey their vote on the resolutions at the time of the meeting.</p> <p>Can a proxy be appointed by shareholder of your company to attend an AV general meeting?</p> <p>No, however, corporate shareholders can appoint authorised representatives to participate and vote in the AV general meeting.</p>

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	<p>Can the annual general meeting of your company be convened via AV means?</p> <p>No, an annual general meeting (“AGM”) cannot be convened through AV means. Unless your company is newly incorporated, an AGM is required to be convened within 6 months from the end of the previous financial year. Typically, the AGM is to be held by September 30 of each year if your company’s financial year ends on March 31). The MCA has allowed companies with financial year ending on December 31, 2019 to hold their AGMs by September 30, 2020 (an extension of 3 months).</p>
Signing of documents	<p>Can meeting related documents be e-signed?</p> <p>There is no relaxation issued by MCA on accepting e-signed documents. The challenge with DocuSign and other similar electronic forms of signature is that these are not considered digital signatures or electronic signatures within the definitions of those terms under Indian law. This means that there is no automatic presumption of the authenticity/linking of the identity of the signatory to such signatures. Therefore, documents e-signed in this manner carry a risk of claim that the signatures were not affixed by such signatory.</p> <p>Given the above, we would recommend the following:</p> <ul style="list-style-type: none">A. For internal documents that are not required to be submitted to any third party (i.e. notice and agenda, acknowledgement of receipt of notice, cover letter, circular resolutions and attendance slip), e-signatures may be used for the moment. Once the COVID-19 crisis is over, these may be replaced by documents signed in wet ink.B. For documents that are to be submitted to third parties (i.e. extract, attendance and minutes), wet ink signature should be used (unless the third party agrees to accept e-signed documents).

This is not intended to be legal advice. Your obligations as a company/director/shareholder may vary on a case to case basis, depending on any special circumstances. Consult your lawyers before taking any actions.

[BTG maintains a rolling database of materials on the ongoing COVID-19 crisis. Please click here to access.](#)

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