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Exemption from holding Board Meetings

In the newly notified Companies (Meetings of Board and its Powers) Amendment Rules, 2015, the Ministry of Corporate Affairs has provided for an exemption from holding Board meetings when the Board discusses certain matters. This means that the Board of a company may pass these exempted matters using a circular resolution and a physical Board meeting need not be held to resolve upon it. The newly exempted matters are:

- i. to take note of appointments or removal of one level below the Key Management Personnel;
- ii. to take note of the disclosure of director's interest and shareholding;
- iii. 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;
- iv. to invite or accept or renew public deposits and related matters;
- v. to review or change the terms and conditions of public deposit; and
- vi. to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

Accordingly, under Section 179 of the Companies Act and Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014, the matters that still require a physical meeting of the Board are:

- i. to make calls on shareholders in respect of money unpaid on their shares;
- ii. to authorise buy-back of securities under section 68;
- iii. to issue securities, including debentures, whether in or outside India;
- iv. to borrow monies;
- v. to invest the funds of the company;
- vi. to grant loans or give guarantee or provide security in respect of loans;
- vii. to approve financial statement and the Board's report;
- viii. to diversify the business of the company;
- ix. to approve amalgamation, merger or reconstruction;
- x. to take over a company or acquire a controlling or substantial stake in another company;
- xi. to make political contributions;
- xii. to appoint or remove key managerial personnel (KMP); and
- xiii. to appoint internal auditors and secretarial auditor.

IndusLaw Quick View:

Ideally physical Board meetings should be done away with entirely since small companies have a great burden of ensuring that a Board meeting is physically conducted even if such companies have 2-3 directors. Further, there is a move towards e-voting at the shareholders' level as well for larger companies. It must also be noted that the requirements for holding physical Board meetings has been increased under the Companies Act, 2013 in comparison to the requirements under the Companies Act, 1956 with added matters that require physical Board meetings such as issuance of any security, appointment of key managerial personnel, appointment of statutory and internal auditors, and approval for a related party transaction. Hence, despite the exemptions listed above, the provisions in the Companies Act, 2013 relating to conduct of meetings are still more restrictive than the Companies Act, 1956.

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