

# BOARD OF DIRECTORS: COMPOSITION AND PROCEDURE OF CONDUCTING BOARD MEETINGS & AGM

## Abstract

The Board of Directors is a body of corporate individuals with power to make long-term decisions making in a company who are responsible for economic affecting the well-being of investors' capital, communities' economic health, employees' security and executives' power and perquisites. Board of Directors is the top-level management who is accountable for company's success along with the growth and development of the company. They hold the supreme decision-making authority in a company and is responsible for overall growth of an organization. They are the Key Managerial persons to take hold in any complex decision making in a corporate firm. The key decision making for the growth and development of an organization is done in a board meeting and annual general meeting, and hence the process of holding such meetings is structured. All board meetings and annual general meetings are to be held of a regular basis ensure smooth organizational functioning, for this The Companies Act, 2013 contains quorum for a board meeting and the act makes it mandate for all companies registered to organize the meetings on a routine basis. The annual general meeting is held once a year and the procedure is stated in The Companies Act, 2013.

**Keywords:** Board of Directors, Organisation Management, Board Meetings, Annual General Meetings.

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## I. INTRODUCTION

Management at the top-most levels is accountable for the company's success. Directors are the top-tier members of a company's management team. The term "board of directors" is used to refer to both the body of directors as a whole and the company's highest decision-making body. According to Section 149 of the Companies Act, a company's board of directors must consist of at least

- In a public company, there must be a minimum of three directors,
- For a private company, there must be at least two directors.
- In a "One Person Company," there is just one director.

Fifteen individuals constitute the maximum permissible number of directors for a corporation. The board of directors may have no more than fifteen members, although this number can be increased by a special resolution at a shareholder meeting. If you want to join the board of directors of more than 20 different firms, you can't. Each company's board must include at least one member who has spent at least 182 of the previous year in India. That principle must be adhered to without exception. The board of directors must have at least one female member. A minimum of one-third of a publicly traded company's board of directors must be made up of "independent" members. There must be at least one female director and an optimal mix of executive and non-executive directors on the board. Non-executive board members must make up at least half of the board. The majority of the board should be made up of independent directors, and this number should increase to at least three-quarters if the chairman is not an executive director. Half of the board of directors must be independent in the event that the chairman is an executive director. As an exception, at least half of the board must be made up of independent directors if the non-executive chairman is a promoter or immediate relative of a promoter or a high-level management of the listed firm. Section 149 of The Companies Act, 2013, states qualification and appointment of board of directors.

**1. Women Director:** Companies required to have at least one female director under Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 are as follows. First, any and all Listed Companies; second, any and all other Public Companies with:

- A paid-up share capital of at least Rs. 100; or
- More than 300 crore rupees in sales

**2. Resident Director:** For a company to be in compliance with Section 149(3), at least one of its directors must be physically present in India for a cumulative total of not less than 182 days during the financial year. For a newly incorporated company, this requirement will take effect pro rata at the end of the financial year that it is incorporated.

**3. Independent Directors**

- The law requires every publicly traded firm to have at least one independent director, or one-third of the total number of directors.

- Public companies in the following categories must have at least two independent directors in accordance with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
- With a paid-up share capital of Rs. 10 crore or more, or
- A revenue of Rs. 100 million or more each year
- There are more than Rs. 50 Crore in outstanding loans, debentures, and deposits

## II. BOARD MEETINGS

The Board of Directors is the highest decision-making body in a firm and is responsible for all important policy changes. The board's remit extends to overseeing the corporation as a whole. Holding board meetings regularly is crucial for the organization's smooth operation and administration. Section 173 of the Companies Act, 2013 contains the relevant language for this purpose.

- Public Limited Companies are required by law to have their first board meeting within the first 30 days after their establishment date. In addition, there should be at least four board meetings every year. In addition, no more than 120 days should elapse between gatherings.
- Small businesses with as little as one employee are required by law to have at least two meetings every fiscal year, one in each quarter. Furthermore, there should be at least 90 days between the two gatherings. A minimum of one independent director must be present at each meeting that is called with short notice.

**1. Notice of Board Meeting:** A document that is sent to all business directors is called a "notice of Board Meeting." The agenda, meeting location, and other pertinent details are all included here for the convenience of the attendees. Companies of all sorts must notify their shareholders at least seven days before the scheduled meeting.

**2. Quorum for the Board Meeting:** A quorum for a Board Meeting is the minimum required for the meeting to be considered legitimate by the Board. A quorum at a board meeting is defined as one-third of the total number of directors, as stated in Section 174 of the Companies Act, 2013. The bare minimum for a quorum is two board members. However, Section 174's regulations do not apply to a "One Person Company."

**3. Participation in Board Meeting:** All board members are expected to participate in meetings in person or, if that's not feasible, by video conference. This is done to ensure that all board members have a voice in the final decision.

### **4. Requirements for Conducting a Valid Board Meeting**

- **Right Convening Authority:** The board meeting has to be overseen by the right people. The board meeting is usually sanctioned by the company secretary (CS). In the absence of the company secretary, the designated authorized representative shall preside over the meeting.

- **Adequate Quorum:** For a Board meeting to be legal, the requisite quorum, or the minimum number of Directors necessary to hold the meeting, must be present
- **Proper Notice:** One of the most important things to remember when organizing a board meeting is giving appropriate notice. A prior notice of at least 7 days must be given to all board members convening a board meeting.
- **Proper Presiding Officer:** Always have a board chairman present while holding this meeting.
- **Proper Agenda:** The agenda for each board meeting must be strictly adhered to. The agenda is the subject matter that will be discussed at the board meeting

### III. ANNUAL GENERAL MEETING UNDER THE COMPANIES ACT, 2013

An Annual General Meeting (AGM) is held to have an interaction between the management and the shareholders of the company. An annual general meeting must be held to examine the previous year's financial performance, elect an auditor, and conduct other business required by the Companies Act. When holding an annual general meeting, a corporation must adhere to the rules outlined in the Companies Act of 2013.

1. **Company is required to hold an AGM:** An annual meeting of shareholders is required at the conclusion of each fiscal year for all businesses save those consisting of a single individual. The annual meeting of shareholders must occur no more than six months after the conclusion of the fiscal year. The first AGM need not be held any later than nine months after the conclusion of the company's first fiscal year. When the first Annual General Meeting has already been convened, no more AGMs are required to be held within the initial fiscal year of incorporation. No more than 15 months shall pass between AGMs.
2. **Procedure to hold an AGM:** A definite 21 days' notice must be given to shareholders by the firm before the annual meeting may be called. The location, date, and time of the meeting should all be included in the notification. Under section 171 of Companies Act, 2013 it is stated that register shall be kept open at every AGM so it is accessible to any person attending the meeting. Business to be transacted at the AGM should be specified in the notice. Invitations to the annual meeting should be sent to:
  - Any and all shareholders, including the personal representatives of deceased shareholders and the assignees of bankrupt shareholders.
  - The company's required auditors.
  - Any and all corporate directors.

There are a few acceptable methods of delivering the notification in writing, including electronic mail, express mail, and registered mail. The member's address on file with the corporation is the proper location to send the notification. If the member's email address is on file with the firm, that is where the message has to be delivered. The email itself or an attached file might serve as the notification. Publication of the AGM notice on

the corporate website, or such other website as the government may specify, is required. If at least 95% of the members eligible to vote at a meeting agree to the shorter notice, an EGM may be convened with less than 21 days' notice. Written or electronic confirmation of agreement is acceptable.

**3. Agenda of an AGM:** At a typical AGM, the following topics and/or transactions are addressed and/or conducted:

- Take into account and approve the audited financial accounts.
- Review of the audit and Director's report.
- The announcing of a dividend to stockholders.
- The selection of new directors to take the place of outgoing ones.
- Appointing auditors and determining auditor compensation
- The Company may also engage in any lawful business, both ordinary and extraordinary, in addition to the above.

If the number of shareholders voting in favor of a resolution is more than the number voting against it, the resolution will be adopted and the company will proceed with its regular activity. However, depending on the relevant legislative conditions, the resolution may be enacted either as an ordinary resolution or a special resolution in the event of unusual commercial transactions. 75% plus one vote in favor is needed for a special resolution. The only acceptable time for holding an annual meeting is between the hours of 9 am and 6 pm. Any day that is not a federal holiday or a state or local holiday may be used to hold the meeting. The location of the meeting should only be within the municipal boundaries of the municipality in which the registered office is located. The annual meeting of a government-owned firm may be held anywhere the administration in power sees fit. If the firm's members agree in writing or electronically, the AGM may be held anywhere in India, even if the company is not publicly traded. The Board of Directors of a Section 8 corporation follows the guidelines established at a general meeting to choose the AGM's date, time, and location.

**4. Quorum for an AGM:** Section 103 of Companies Act, 2013 defines Quorum for meeting. If it's a private firm, then all that's needed for an annual general meeting is for two shareholders to show up. When it comes to publicly traded companies, the quorum is:

- If there are less than a thousand members, just five need to be present for the meeting to be considered quorate.
- If there are more than 1,000 but less than 5,000 members, 15 members must be present for the meeting to proceed.
- If there are more than 5,000 people in company membership, you need at least 30 people to show up to a meeting.
- If half of the attendees haven't arrived 30 minutes after the meeting starts, it will be postponed until the following week at the same time and location.

**5. Member's Rights in an AGM:** Everyone who is a member of the firm (shareholders included) is welcome to attend the annual meeting and cast a vote. Participants may vote in person, via mail, or online. If a member is unable to attend an annual meeting in

person, they may nominate a proxy to represent their interests. An official proxy form must be filled out and signed by the member in order to appoint a proxy.

Any corporate shareholder appointing a proxy must have the proxy form signed and sealed by an authorized signatory of the corporation. The meeting's chairman might be chosen from among the members. If the company's articles of organization, however, designate a chairman, that individual will preside over the annual meeting.

**6. Minutes of an AGM:** The preparation of AGM minutes is a mandatory requirement for all businesses. The official record of the Annual General Meeting. The minutes detail what happened at the annual meeting and what was decided upon by the members present. At the annual meeting, the Company Secretary will take notes. In the absence of a Company Secretary, the meetings will be recorded by the Chairman or another member of the Board with the appropriate authority. Within thirty days following the AGM, the minutes shall be approved, signed, and recorded in the minute book. The Registered Office or another location agreed by the Board shall be the location where the Minutes book will be stored. The Minutes book from the Annual General Meeting is available for inspection by any member or shareholder of the business for the established charge upon request to the company. Within seven days of the request, the firm will provide the member with a copy of the AGM minutes. A penalty of Rs.25,000 will be assessed against the firm, and each officer of the company who is in default will be assessed a penalty of Rs.5,000 if the minutes are not provided within seven days of the request.

**7. Extension of Time for Holding an AGM:** An additional three months may be granted by the Registrar of Companies in order to host an annual meeting. The corporation has to fill out form GNL-1 to request an extension, explaining why it needs more time and how long it needs it for. An explanation for the extension's approval will be filed with the RoC (registrar of companies). No more time is available, however, to convene the first annual general meeting.

- Reasons for Seeking an Extension of AGM
- Consolidation via purchasing other companies
- The postponement of the financial close
- Delays in audit reports caused by the absence of auditors for genuine reasons such as death, resignation, inability to sign, etc.
- The erasure of data from a computer as a result of a virus or another technical problem.
- Natural disasters, the loss of business data, and the absence of board members all contribute to economic records that are not yet ready for use.
- Variation across a fiscal year.
- In the absence of a sufficient number of shareholders, a quorum cannot be established.
- Directors are unable to serve for good reasons. For instance, the number of directors may drop below the required minimum if a director is suddenly removed from their position.
- The IT division, the severe and fraud investigation cell, or other government agents seize the books of account.

**8. Reporting of AGM:** All publicly traded companies are required, within 30 days after the end of their annual general meeting, to produce a report on the meeting using form MGT-15.

- Instructions for Requesting a Postponement of the Annual Meeting
- Members of the Board of The board of directors will convene at the request of the firm, with advance notice given to each director at least seven days before the scheduled meeting date.
- Have the Board of Directors convene at the time and place specified in the notification.
- The board must pass a resolution to extend the time restriction for conducting the annual general meeting, explaining the cause for the delay.
- Please submit form GNL-1 to the local registrar of businesses.
- Form GNL-1 must be submitted with the precise reason for the AGM's failure to be held by the required date and other relevant status information.
- GNL-1 must be submitted with an attached certified copy of the board resolution.
- The registrar of companies' office will process the paperwork.
- If the registrar is certain that an extension should be granted, they will check the application and the specific reasons for doing so.
- Obtain from the company registry the certificate of extended permission in convening an AGM of the firm.

“Purpose of the eForm company can file certain documents with the Registrar of Companies by filing eForm GNL-2 and in case there is no eForm prescribed for filing any document with Registrar, then company or liquidator can file such documents through eForm.”

**9. Consequences and Penalty for Default in Holding an AGM:** If a corporation fails to have an annual general meeting (AGM) by the deadline (or any extension thereof), the Tribunal may call the meeting itself or upon application by any director or member. A fine of up to Rs 1 lakh may be levied against the firm and any executive of the business who is responsible for the failure in conducting a meeting in line with the Tribunal's directives. In the event of a prolonged default, a penalty in the amount of Rs 5,000 per day would be applied.

#### IV. CONCLUSION

In essence, a board of directors is a group of shareholders' representatives who have been chosen to serve on the board. Although it is not required by law, many private corporations and nonprofits also have boards of directors. The board of directors is accountable for safeguarding shareholder interests, creating management policies, supervising the business or organization, and deciding on major problems that arise.

The board of directors of a corporation will get together at certain intervals throughout the year to address matters of companywide importance. The company's business plan is set by the board of directors, who are chosen by the shareholders or the membership. Meetings of this kind are crucial because they allow the company's decision-makers to

articulate and debate the organization's future course. Holding board meetings regularly is essential to the growth and profitability of any company. A company's board plays a crucial role in hypercompetitive sectors by establishing the company's agenda, including objectives, goals, and reviews of strategic investments, all while working closely with top management teams to strike a balance between short-term requirements and long-term wagers. One way that companies keep their shareholders engaged is by holding an annual general meeting (AGM). An annual report detailing the company's performance and strategy is presented to shareholders by the board of directors at the annual general meeting. Active shareholders have a say in matters such as board member elections, CEO remuneration, dividend distributions, and the appointment of auditor

## **REFERENCE**

[1] <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf> or THE COMPANIES ACT, 2013 (Bare Act)



