

## **SECTION 173 OF THE COMPANIES ACT, 2013 - DIRECTORS - MEETING OF BOARD - REVISED SS-1 - REVISED SECRETARIAL STANDARD ON MEETINGS OF BOARD OF DIRECTORS**

The Notification ICSI No.1 (SS) of 2015 dated 23rd April, 2015, published in the Gazette of India, Part III, section 4, with regard to (i) SS-1: Secretarial Standard on Meetings of the Board of Directors and (ii) SS-2: Secretarial Standard on General Meetings, stands withdrawn\* w.e.f. 30th September, 2017 without affecting the enforceability of SS-1 and SS-2 during the period before such withdrawal.

[\*Since there is no such statutory requirement for publication of the aforesaid Secretarial Standards in the Gazette of India]

### **CLARIFICATION ONE**

Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) were approved by the Central Government under section 118(10) of the Companies Act, 2013 on 10th April, 2015 and were published in the Gazette of India Extraordinary Part III-section 4 on 23rd April, 2015 *vide* ICSI Notification No. (1) SS of 2015, making them effective from 1st July, 2015.

SS-1 and SS-2 have now been revised by ICSI and the same have been approved by the Ministry of Corporate Affairs (MCA) *vide* its letter No. 1/3/2014-CL.I dated 14th June, 2017.

**The revised SS-1 and SS-2 shall be applicable to all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and accordingly all Board Meetings (including meetings of committees of Board) and General Meetings in respect of which Notices are issued on or after 1st October, 2017 need to comply with the revised SS-1 and SS-2. The existing SS-1 and SS-2 will be applicable to the Board Meetings and General Meetings held on or before 30th September, 2017.**

### **Need for Revision in the Secretarial Standards**

Revisions in Secretarial Standards (SS-1 & SS-2) have been made considering the following:

- Companies (Amendment) Act, 2015 and amendments to the Rules notified by MCA
- Exemption Notification(s) issued by MCA dated 5th June 2015
- Relaxations aimed to further ease of doing business
- Feedback received from members on practical difficulties that emerged during the first time implementation of Secretarial Standards
- To remove the interpretation issues
- Issues/suggestions received from different stakeholders

### **CLARIFICATION TWO**

#### **Q 1. Is the observance of Secretarial Standards issued by ICSI mandatory?**

**Ans.** Section 118(10) of the Companies Act, 2013 mandates the observance of Secretarial Standards on General and Board Meetings specified by The Institute of Company Secretaries of India and approved by the Central Government.

Accordingly, the Secretarial Standards on Meetings of the Board of Directors ("SS-1") and Secretarial Standards on General Meetings ("SS-2"), as approved by the Central Government, have been issued by the ICSI for observance by all companies (except exempted class of companies).

#### **Q 2. What is the effective date of revised SS-1 and SS-2?**

**Ans.** The revised SS-1 & SS-2 shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 in respect of Meetings of Board & its Committees and General Meetings for which Notices are issued on or after the said date, and will supersede the existing SS-1 and SS-2.

#### **Q 3. Will the existing SS-1 and SS-2 be applicable to the Board Meetings and General Meetings**

**held on or before 30th September, 2017?**

**Ans.** Yes, the existing SS-1 and SS-2 will be applicable to the Board Meetings and General Meetings held on or before 30th September, 2017. It is only the ICSI Gazette Notification No. (1) SS of 2015 which shall stand withdrawn w.e.f 30th September 2017, without affecting the enforceability of existing SS-1 and SS-2 on such Meetings.

**Q4. Will the revised SS-1 and SS-2 be applicable to the Board/General Meetings convened on 1st October, 2017 or thereafter, even if Notice of the Meeting is issued before 1st October, 2017 by complying with existing SS?**

**Ans.** The Revised Secretarial Standards (SS-1 and SS-2) shall apply to Board Meetings and General Meetings, in respect of which Notices are issued on or after 1st October, 2017.

**Q 5. Whether the Revised SS-1 and SS-2 be notified in the Gazette of India to ensure its enforceability?**

**Ans.** The SS-1 and SS-2 have been revised by the ICSI and the same have been approved by the MCA *vide* its letter No. 1/3/2014-CL.I dated 14th June, 2017. As the existing approval of Central Government under section 118(10) of the Companies Act, 2013 would suffice for the enforceability of revised SS-1 & SS-2, these are not required to be notified in the Gazette of India.

**Q 6. What would be the position if a particular Standard becomes inconsistent due to subsequent changes in the law?**

**Ans.** If, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

**SECTION 173 OF THE COMPANIES ACT, 2013 - DIRECTORS - MEETING OF BOARD -  
REVISED SS-1 - REVISED SECRETARIAL STANDARD ON MEETINGS OF BOARD OF  
DIRECTORS (EFFECTIVE FROM 1-10-2017)**

The following is the text of the Secretarial Standard-1 (SS-1) on "Meetings of the Board of Directors", issued by the Council of the Institute of Company Secretaries of India and approved by the Central Government.

Adherence by a company to this Secretarial Standard is mandatory, as per the provisions of the Companies Act, 2013.

*(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal. Both the Standard portions and the background material have equal authority).*

**INTRODUCTION**

This Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.

**SCOPE**

This Standard is applicable to the Meetings of Board of Directors of all companies incorporated under the Act except One Person Company (OPC) in which there is only one Director on its Board and a company licensed under section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof.

However, section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings.

The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee(s) of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations.

This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in

the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

## **DEFINITIONS**

The following terms are used in this Standard with the meaning specified:

*"Act"* means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

*"Articles"* means the Articles of Association of a company, as originally framed or as altered from time to time or applied in pursuance of any previous company law or the Companies Act, 2013.

*"Calendar Year"* means calendar year as per Gregorian calendar *i.e.* a period of one year which begins on 1st January and ends on 31st December.

*"Chairman"* means the Chairman of the Board or its Committee, as the case may be, or the Chairman appointed or elected for a Meeting.

*"Committee"* means a Committee of Directors mandatorily required to be constituted by the Board under the Act.

*"Electronic Mode"* in relation to Meetings means Meetings through video conferencing or other audio-visual means. "Video conferencing or other audio-visual means", means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

*"Invitee"* means a person, other than a Director and Company Secretary, who attends a particular Meeting by invitation.

*"Maintenance"* means keeping of registers and records either in physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

*"Meeting"* means a duly convened, held and conducted Meeting of the Board or any Committee thereof.

*"Minutes"* means a formal written record, in physical or electronic form, of the proceedings of a Meeting.

*"Minutes Book"* means a Book maintained in physical or in electronic form for the purpose of recording of Minutes.

*"National Holiday"* means Republic Day *i.e.* 26th January, Independence Day *i.e.* 15th August, Gandhi Jayanti *i.e.* 2nd October and such other day as may be declared as National Holiday by the Central Government.

*"Original Director"* means a Director in whose place the Board has appointed any other individual as an Alternate Director.

*"Quorum"* means the minimum number of Directors whose presence is necessary for holding of a Meeting.

*"Secretarial Auditor"* means a Company Secretary in Practice or a firm of Company Secretary(ies) in Practice appointed in pursuance of the Act to conduct the secretarial audit of the company.

*"Secured Computer System"* means computer hardware, software, and procedure that —

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

*"Timestamp"* means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added,

removed, sent or received.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act.

## **SECRETARIAL STANDARD**

### **1. Convening a Meeting**

#### **1.1 Authority**

**1.1.1 Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.**

**1.1.2 The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.**

#### **1.2 Day, Time, Place, Mode and Serial Number of Meeting.**

**1.2.1 Every Meeting shall have a serial number.**

**1.2.2 A Meeting may be convened at any time and place, on any day.**

Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.

**1.2.3 Any Director may participate through Electronic Mode in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business.**

Directors shall not participate through Electronic Mode in the discussion on certain restricted items. Such restricted items of business include approval of the annual financial statement, Board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover. Similarly, participation in the discussion through Electronic Mode shall not be allowed in Meetings of the Audit Committee for consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board.

#### **1.3 Notice**

**1.3.1 Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.**

The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director.

Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Notice.

Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

**1.3.2 Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose.**

**1.3.3 The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.**

**1.3.4 The Notice shall inform the Directors about the option available to them to participate**

**through Electronic Mode and provide them all the necessary information.**

If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year.

The Notice shall also contain the contact number or e-mail address(es) of the Chairman or the Company Secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

**1.3.5 The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.**

**1.3.6 Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.**

In case the company sends the Notice by speed post or by registered post, an additional two days shall be added for the service of Notice.

Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

**1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.**

Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by e-mail or by any other electronic means. These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.

In case the company sends the Agenda and Notes on Agenda by speed post or by registered post, an additional two days shall be added for the service of Agenda and Notes on Agenda.

Where a Director specifies a particular means of delivery of Agenda and Notes on Agenda, these papers shall be sent to him by such means. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Agenda and Notes on Agenda.

Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director. However, the mode of sending Notice, Agenda and Notes on Agenda to the original director shall be decided by the company.

Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.

For this purpose,

"Unpublished Price Sensitive Information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: —

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement\*.

General consent for giving Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information at a shorter Notice may be taken in the first Meeting of the Board held in each financial year and also whenever there is any change in Directors.

Where general consent as above has not been taken, the requisite consent shall be taken before the concerned items are taken up for consideration at the Meeting. The fact of consent having been taken shall be recorded in the Minutes.

Supplementary Notes on any of the Agenda Items may be circulated at or prior to the Meeting but shall be taken up with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

**1.3.8 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.**

Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting. However, any other decision taken at the Meeting may also be recorded in the Minutes in the form of Resolution.

The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. An illustrative list of such items is given at *Annexure 'A'*.

There are certain items which shall be placed before the Board at its first Meeting. An illustrative list thereof is given at *Annexure 'B'*.

**1.3.9 Each item of business to be taken up at the Meeting shall be serially numbered.**

Numbering shall be in a manner which would enable ease of reference or cross-reference.

**1.3.10 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.**

The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

**1.3.11 To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting.**

If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.

In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.

## **2. Frequency of Meetings**

## **2.1 Meetings of the Board**

**The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings.**

The company shall hold first Meeting of its Board within thirty days of the date of incorporation. It shall be sufficient if subsequent Meetings are held with a maximum interval of one hundred and twenty days between any two consecutive Meetings.

Further, it shall be sufficient if a One Person Company, Small Company or Dormant Company holds one Meeting of the Board in each half of a Calendar Year and the gap between the two Meetings of the Board is not less than ninety days.

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

## **2.2 Meetings of Committees**

**Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.**

## **2.3 Meeting of Independent Directors**

**Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.**

The Meeting shall be held to review the performance of Non-independent Directors and the Board as a whole; to review the performance of the Chairman and to assess the quality, quantity and timeliness of flow of information between the company management and the Board and its members that is necessary for the Board to effectively and reasonably perform their duties.

The Company Secretary, wherever appointed, shall facilitate convening and holding of such Meeting, if so desired by the Independent Directors.

## **3. Quorum**

### **3.1 Quorum shall be present throughout the Meeting.**

**Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.**

**3.2 A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.**

For this purpose, a Director shall be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company:

- (a) with any body corporate, if such Director, along with other Directors holds more than two per cent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or
- (b) with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.

If the item of business is a related party transaction, then he shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

**3.3 Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.**

## **3.4 Meetings of the Board**

**3.4.1 The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher.**

Any fraction contained in the above one-third shall be rounded off to the next one.

Where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement.

Total strength for this purpose, shall not include Directors whose places are vacant.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the Quorum during such item.

If a Meeting of the Board could not be held for want of Quorum, then, unless otherwise provided in the Articles, the Meeting shall automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a National Holiday, to the next succeeding day which is not a National Holiday, at the same time and place.

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.

**3.4.2 Where the number of Directors is reduced below the minimum fixed by the Articles, no business shall be transacted unless the number is first made up by the remaining Director(s) or through a General Meeting.**

If the number of Directors is reduced below the Quorum fixed by the Act for a Meeting of the Board, the continuing Directors may act for the purpose of increasing the number of Directors to that fixed for the Quorum or of summoning a general meeting of the company, and for no other purpose.

### **3.5 Meetings of Committees**

**Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.**

Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed.

## **4. Attendance at Meetings**

### **4.1 Attendance register**

**4.1.1 Every company shall maintain attendance register for the Meetings of the Board and Meetings of the Committee.**

The pages of the attendance register shall be serially numbered.

If an attendance register is maintained in loose-leaf form, it shall be bound periodically, atleast once in every three years.

**4.1.2 The attendance register shall contain the following particulars: serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names and signatures of the Directors, the Company Secretary and also of persons attending the Meeting by invitation and their mode of presence, if participating through Electronic Mode.**

**4.1.3 The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes.**

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors. For this purpose, at the commencement of the Meeting, the Chairman shall take a roll call. The Chairman or Company Secretary shall request the Director participating through Electronic Mode to state his full name and location from where he is participating and shall record the same in the



Minutes. The proceedings of such Meetings shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

**4.1.4 The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.**

The attendance register may be taken to any place where a Meeting of the Board or Committee is held.

**4.1.5 The attendance register is open for inspection by the Directors. Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship.**

The Company Secretary in Practice appointed by the company or the Secretarial Auditor or the Statutory Auditor of the company can also inspect the attendance register as he may consider necessary for the performance of his duties.

A Member of the company is not entitled to inspect the attendance register.

**4.1.6 The attendance register shall be preserved for a period of at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board.**

**4.1.7 The attendance register shall be in the custody of the Company Secretary.**

Where there is no Company Secretary, the attendance register shall be in the custody of any other person authorised by the Board for this purpose.

**4.2 Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting.**

The office of a Director shall become vacant in case the Director absents himself from all the Meetings of the Board held during a period of twelve months with or without seeking leave of absence of the Board.

## **5. Chairman**

### **5.1 Meetings of the Board**

**5.1.1 The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.**

**5.1.2 The Chairman of the Board shall conduct the Meetings of the Board. If no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the Articles.**

It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.

If the Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted. However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.

If the item of business is a related party transaction, the Chairman shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall take due and reasonable care to safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures to record proceedings and safe keeping of the

recordings. No person other than the Director concerned shall be allowed access to the proceedings of the Meeting where Director(s) participate through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting.

The Chairman shall ensure that the required Quorum is present throughout the Meeting and at the end of discussion on each agenda item the Chairman shall announce the summary of the decision taken thereon.

Unless otherwise provided in the Articles, in case of an equality of votes, the Chairman shall have a second or casting vote.

## **5.2 Meetings of Committees**

**A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.**

## **6. Passing of Resolution by Circulation**

The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

### **6.1. Authority**

**6.1.1 The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.**

An illustrative list of items which shall be placed before the Board at its Meeting and shall not be passed by circulation is given at *Annexure 'A'*.

**6.1.2 Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.**

Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

### **6.2. Procedure**

**6.2.1 A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Directors including Interested Directors on the same day.**

**6.2.2 The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means.**

The draft of the Resolution and the necessary papers shall be sent to the postal address or e-mail address registered by the Director with the company or in the absence of such details or any change thereto, any of the addresses appearing in the Director Identification Number (DIN) registration of the Director.

Proof of sending and delivery of the draft of the Resolution and the necessary papers shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

**6.2.3 Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to**

**understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.**

Each Resolution shall be separately explained.

The decision of the Directors shall be sought for each Resolution separately.

Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.

An additional two days shall be added for the service of the draft Resolution, in case the same has been sent by the company by speed post or by registered post or by courier.

### **6.3. Approval**

**6.3.1 The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.**

Every such Resolution shall carry a serial number.

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote.

An Interested Director shall not be entitled to vote. For this purpose, a Director shall be treated as interested in a contract or arrangement entered or proposed to be entered into by the company:

- (a) with any body corporate, if such Director, along with other Directors holds more than two per cent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or
- (b) with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.

**6.3.2 The Resolution, if passed, shall be deemed to have been passed on the earlier of:**

- (a) **the last date specified for signifying assent or dissent by the Directors, or**
- (b) **the date on which assent has been received from the required majority, provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of Directors; and**

**shall be effective from that date, if no other effective date is specified in such Resolution.**

Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail or any other electronic means.

Directors shall append the date on which they have signed the Resolution. In case a Director does not append a date, the date of receipt by the company of the signed Resolution shall be taken as the date of signing.

In cases where the interest of a Director is yet to be communicated to the company, the concerned Director shall disclose his interest before the last date specified for the response and abstain from voting.

In case not less than one-third of the Directors wish the matter to be discussed and decided at a Meeting, each of the concerned Directors shall communicate the same before the last date specified for the response.

In case the Director does not respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the Director has abstained from voting.

If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the Resolution shall be considered as not passed.

#### **6.4 Recording**

**Resolutions passed by circulation shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.**

#### **6.5. Validity**

**Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.**

This shall not dispense with the requirement for the Board to meet at the specified frequency.

#### **7. Minutes**

Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

##### **7.1. Maintenance of Minutes**

**7.1.1 Minutes shall be recorded in books maintained for that purpose.**

**7.1.2 A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.**

**7.1.3 A company may maintain its Minutes in physical or in electronic form.**

Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

**7.1.4 The pages of the Minutes Books shall be consecutively numbered.**

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

**7.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.**

**7.1.6 Minutes Books, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.**

There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

**7.1.7 Minutes Books shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.**

##### **7.2. Contents of Minutes**

###### **7.2.1 General Contents**

**7.2.1.1 Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement of the Meeting.**

In respect of a Meeting adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.

**7.2.1.2 Minutes shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees, if any, including**

### **Invitees for specific items.**

The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.

The capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company shall also be recorded.

#### **7.2.1.3 Minutes shall contain a record of all appointments made at the Meeting.**

Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, First Auditors, Key Managerial Personnel, Secretarial Auditors, Internal Auditors and Cost Auditors, shall be deemed to have been duly approved by the Board.

### **7.2.2 Specific Contents**

#### **7.2.2.1 Minutes shall *inter alia* contain:**

- (a) The name(s) of Directors present and their mode of attendance, if through Electronic Mode.**
- (b) In case of a Director participating through Electronic Mode, his particulars, the location from where he participated and wherever required, his consent to sign the statutory registers placed at the Meeting.**
- (c) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.**
- (d) Record of election, if any, of the Chairman of the Meeting.**
- (e) Record of presence of Quorum.**
- (f) The names of Directors who sought and were granted leave of absence.**
- (g) Noting of the Minutes of the preceding Meeting.**
- (h) Noting the Minutes of the Meetings of the Committees.**
- (i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.**
- (j) The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of a related party transaction such director was not present in the meeting during discussions and voting on such item.**
- (k) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.**
- (l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.**
- (m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.**
- (n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice.**
- (o) Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.**
- (p) The time of commencement and conclusion of the Meeting.**

**7.2.2.2 Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.**

**The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.**

**Where a Resolution was passed pursuant to the Chairman of the Meeting exercising his second or casting vote, the Minutes shall record such fact.**

### **7.3 Recording of Minutes**

#### **7.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.**

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

#### **7.3.2 Minutes shall be written in clear, concise and plain language.**

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

Minutes need not be an exact transcript of the proceedings at the Meeting.

In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.

#### **7.3.3 Wherever the decision of the Board is based on any unsigned documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are referred to in the Minutes, shall be identified by initialling of such documents by the Company Secretary or the Chairman.**

#### **7.3.4 Where any earlier Resolution(s) or decision is superseded or modified, Minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.**

#### **7.3.5 Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.**

Minutes of the Meetings of any Committee shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

### **7.4. Finalisation of Minutes**

**Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee, as on the date of the Meeting, for their comments.**

Where a Director specifies a particular means of delivery of draft Minutes, these shall be sent to him by such means.

Proof of sending draft Minutes and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

If any Director communicates his comments after the expiry of the said period of seven days, the Chairman, if so authorised by the Board, shall have the discretion to consider such comments.

In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have

been approved by such Director.

A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.

## **7.5 Entry in the Minutes Book**

### **7.5.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.**

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

### **7.5.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.**

Where there is no Company Secretary, it shall be entered by any other person duly authorised by the Board or by the Chairman.

### **7.5.3 Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting.**

## **7.6. Signing and Dating of Minutes**

### **7.6.1 Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting.**

Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before the next Meeting is held or by the Chairman of the next Meeting at the next Meeting.

### **7.6.2 The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.**

Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

### **7.6.3 Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard.**

### **7.6.4 Within fifteen days of signing of the Minutes, a copy of the said signed Minutes, certified by the Company Secretary or where there is no Company Secretary by any Director authorised by the Board, shall be circulated to all the Directors, as on the date of the Meeting and appointed thereafter, except to those Directors who have waived their right to receive the same either in writing or such waiver is recorded in the Minutes.**

Proof of sending signed Minutes and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

## **7.7. Inspection and Extracts of Minutes**

### **7.7.1 The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.**

A Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to inspect the Minutes of the Meetings held during the period of his Directorship, even after he ceases to be a Director.

The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.

Inspection of Minutes Book may be provided in physical or in electronic form.

While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

A Member of the company is not entitled to inspect the Minutes of Meetings of the Board.

**7.7.2 Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.**

A Director is entitled to receive, a copy of the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

Extracts of the duly signed Minutes may be provided in physical or electronic form.

## **8. Preservation of Minutes and other Records**

**8.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.**

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

**8.2 Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.**

Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company, shall be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board and permission of the Central Government, where applicable.

**8.3 Minutes Books shall be in the custody of the Company Secretary.**

Where there is no Company Secretary, Minutes Books shall be in the custody of any Director duly authorised for the purpose by the Board.

## **9. Disclosure**

**The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards.**

### **EFFECTIVE DATE**

This Standard shall come into effect from 1st October, 2017.

*ANNEXURE 'A'*

*(Para 1.3.8)*

**Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting**

#### *General Business Items*

Noting Minutes of Meetings of Audit Committee and other Committees.

Approving financial statements and the Board's Report.

Considering the Compliance Certificate to ensure compliance with the provisions of



all the laws applicable to the company.  
Specifying list of laws applicable specifically to the company.  
Appointment of Secretarial Auditors and Internal Auditors.

#### *Specific Items*

Borrowing money otherwise than by issue of debentures.  
Investing the funds of the company.  
Granting loans or giving guarantee or providing security in respect of loans.  
Making political contributions.  
Making calls on shareholders in respect of money unpaid on their shares.  
Approving Remuneration of Managing Director, Whole-time Director and Manager.  
Appointment or Removal of Key Managerial Personnel.  
Appointment of a person as a Managing Director/Manager in more than one company.  
In case of a public company, the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company.  
According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.  
Sale of subsidiaries.  
Purchase and Sale of material tangible/intangible assets not in the ordinary course of business.  
Approve Payment to Director for loss of office.  
Items arising out of separate Meeting of the Independent Directors if so decided by the Independent Directors.

#### *Corporate Actions*

Authorise Buy-Back of securities.  
Issue of securities, including debentures, whether in or outside India.  
Approving amalgamation, merger or reconstruction.  
Diversify the business.  
Takeover another company or acquiring controlling or substantial stake in another company.

#### *Additional list of items in case of listed companies*

Approving Annual operating plans and budgets.  
Capital budgets and any updates.  
Information on remuneration of Key Managerial Personnel.  
Show cause, demand, prosecution notices and penalty notices which are materially important.  
Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.  
Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.  
Any issue, which involves possible public or product liability claims of substantial nature, including any judgment or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.  
Details of any joint venture or collaboration agreement.  
Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.  
Significant labour problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations front like signing of wage

agreement, implementation of Voluntary Retirement Scheme etc.  
Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.  
Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.

**ANNEXURE 'B'**

*(Para 1.3.8)*

**Illustrative list of items of business for the Agenda for the First Meeting of the Board of the company**

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarised copy of lease/rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company, if any.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.

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\*Definition under SEBI (Prohibition of Insider Trading) Regulations, 2015.