SECRETARIAL STANDARD
ON
PASSING OF RESOLUTIONS BY CIRCULATION

The following is the text of the Secretarial Standard-7 (SS-7) issued by the Council of the Institute of Company Secretaries of India, on “Passing of Resolutions by Circulation”.

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

INTRODUCTION

A Company, being a legal entity, cannot act by itself but can do so only through its Board of Directors.

The Board is entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do subject to the restrictions and limitations imposed by the Act, memorandum and articles and the company in general meeting.

Decisions relating to the policy and operations of the company are arrived at meetings of the Board held periodically.

Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on collective wisdom of the Board.

However, it may not always be practicable to convene a meeting of the Board to discuss matters on which decisions are needed urgently. In such circumstances, passing of resolution by circulation can be resorted to.

SCOPE
This Standard seeks to lay down a set of principles for passing of resolutions by circulation.

DEFINITIONS

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

“Act” means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof.

"Articles” means the articles of association of a company.

"Board” means the Board of directors of a company and includes a Committee constituted by the Board.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

SECRETARIAL STANDARDS

The Act requires certain business to be approved at meetings of the Board only. However other business that does not require detailed discussion or urgent decisions can be approved by means of resolutions by circulation, if there is a provision in the Articles to pass a resolution by circulation.

1. **AUTHORITY**

1.1 Chairman of the Board or the managing director should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.

If the resolution is proposed by any other director, the approval of any of the aforesaid officers, if there is one, should be obtained before the draft resolution is circulated to all the directors.

1.2 Where there is no Chairman or managing director, any other director should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.

2. **PROCEDURE**

2.1 A resolution proposed to be passed by circulation should be sent in draft form, together with the necessary papers, individually to all the directors or, in the case of a Committee to all the members of the Committee, at the same time.

The resolution together with all papers should be sent to all directors including interested directors and directors who are usually residing abroad.

2.2 Each business proposed to be passed by way of resolution by circulation should be explained by a note setting out the details of the proposal and the draft of the resolution proposed.

The note should also indicate how to signify assent or dissent to the resolution proposed and the date by which the director of the Board or of the Committee should signify his assent or dissent to the resolution.

2.3 The draft of the resolution to be passed and the necessary papers should be circulated by hand, or by post, or by facsimile, or by email or by any other electronic mode.

It is preferable that one resolution is sent under one covering letter. If more than one resolution is sent under a covering letter, the approval of the directors should be individually obtained for each resolution.

Where the draft of the resolution and necessary papers are sent by email or any other electronic mode, a hard copy of the same should be sent by post.

3. **APPROVAL**

3.1 The resolution is passed, when it is approved by a majority of directors entitled to vote on the resolution other than interested directors.

If any special majority or the affirmative vote of any particular director or directors is specified in the Articles, the resolution should be passed only with the assent of such special majority or such affirmative vote.

3.2 The resolution is deemed to have been passed on the date on which it is approved by the majority of the Directors.

Directors signify their assent or dissent by signing the resolution to be passed by circulation.

Directors should 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 should 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 should disclose his interest and abstain from voting.

If the approval of the majority of directors is not received by the last date specified for receipt of such approval, the resolution shall be considered not passed.

4. RECORDING

4.1 Resolutions passed by circulation should be noted at the next meeting of the Board or Committee, as the case may be, and the decision recorded in the minutes of such meeting.

The minutes should record the text of the resolution passed, and dissent, if any.

Minutes should also record the fact that an interested director did not vote on the resolution.

5. VALIDITY

5.1 Passing of resolution by circulation should be dered valid as if it had been passed at a duly convened meeting of the Board or of the Committee.

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

EFFECTIVE DATE

This Standard is effective from 6th November 2008.

APPENDIX

Illustrative matters to be passed at a duly convened Board Meeting and which cannot be passed by circulation

- To make calls on shares in respect of unpaid share capital of the company
- To issue debentures.
- To borrow money otherwise than on debentures.
- To invest the funds of the company
- To give loans.
- To buy-back its own securities
- To make political contributions
- To fill casual vacancy in the Board.
- To sanction contracts in which a director is interested
- To make investment in shares of other companies.
- To make declaration of solvency with respect to voluntary winding up.
- To enter into joint venture and collaboration agreement.

- To commence a new business activity
- To approve mergers and acquisitions
- To shift the location of plant or factory or a registered office.
- To appoint or remove senior management personnel one level below the Board
- To appoint internal auditors and cost auditors.
- Adoption of Common Seal
- Forfeiture of shares.
- Granting loans to directors.
- Noting of directors' interest.
- Noting of directors' shareholdings.
- Appointment or resignation of Managing Director or whole-time director or Manager.
- Appointment of a Managing Director /Manager as a Managing Director/Manager in more than one company
- Appointment and removal of the Chief Financial Officer and the Company Secretary.
- Appointment of sole-selling agents.
- To approve quarterly, half-yearly and annual accounts and cost accounts.
- Annual operating plans and budgets.
- Any material default in financial obligations.
- Noting of statutory compliance reports, show cause notices, prosecutions and penalty notices of material nature.
- Sale of investments, subsidiaries or assets which is not in the normal course of business.
- Any issue which involves possible public or product liability claims.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movements.
- To accept fixed deposits and related matters.