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Secretarial Standards on Meetings of the Board of Directors (SS-I) and General Meetings (SS-2) revised by ICSI

Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) has been notified by ICSI to be withdrawn w.e.f. 30th September, 2017 without affecting the enforceability of SS-1 and SS-2 during the period before such withdrawal.



Now, the Secretarial Standards have been revised by the ICSI and approval of the Central Government, as required, under section 118(10) of the Companies Act, 2013 has been obtained.

The revised SS-I and SS-2 shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. 1st October, 2017 and will supersede the text of earlier SS-I and SS-2.”

Below are the key changes in the revised Secretarial Standards:

A. Secretarial Standards on Meetings of the Board of Directors (SS-I)

1. Applicability

As per Old SS-1: Applicable on all companies

As per Revised SS: The standard shall not be applicable on the followings:

a) One Person Company in which there is only one Director on its Board.

b) Company licensed under Section 8 of the CA, 2013 or Corresponding provisions of any previous enactment thereof.

2. Meaning of Committee

As per Old SS-1: Committee means a committee of Directors constituted by the Board.

As per Revised SS: Committee means a Committee of Directors mandatorily required to be constituted by the Board under the Act.

Therefore SS shall be applicable only on the committee of the Board mandatory to be constituted under the Act i.e.

a. Audit Committee

b. Nomination & Remuneration Committee

c. Stakeholder relationship Committee

d. CSR Committee

3. Day of Meeting

As per Old SS-1: A meeting may be convened at any time and place on any day, excluding National Holiday.

As per Revised SS: A meeting may be convened at any time and place on any day.

4. Day of Adjourned Meeting

As per Old SS-1: A meeting adjourned for want of Quorum shall also not be held on a National Holiday.



As per Revised SS: An adjourned Board meeting can be held on “National Holiday”.

5. Notice of the Meeting

As per Old SS-1: Notice of the meeting, wherein the facility of participation through Electronic mode is provided, shall clearly mention a venue, whether registered office or otherwise, to be the venue of the meeting and it shall be the place where all the recordings of the proceedings at the meeting would be made.



As per Revised SS: 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.

Therefore it is mandatory to mention the venue of the meeting in each and every notice of the meeting whether through electronic facility of participation through electronic mode provided or not.

6. Participation through Electronic Means

As per Old SS-1: Directors shall not participate through Electronic mode in the discussion on certain restricted items, unless expressly permitted by the Chairman. 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, unless expressly permitted by the Chairman.

In case the facility of participation through Electronic Mode is being made available, the notice shall inform the Directors about the availability of such facility, and provide them necessary information to avail such facility

As per Revised SS: Now no power of permission with the Chairman. Therefore Directors shall not participate through Electronic mode in the discussion on certain restricted items.

The Notice shall inform the Directors about the availability of such facility, and provide them necessary information to avail such facility.

Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such assumed that he will attend the Meeting physically.

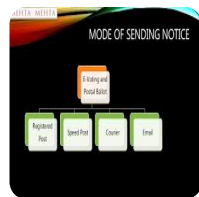


7. Mode of Sending of Notice

As per Old SS-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 courier or by facsimile or by e-mail or by any other electronic means.

Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. In case the company sends the Notice by speed post or by registered post or by courier, an additional two days shall be added for the service of Notice

As per Revised SS: 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.



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.**

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.

Therefore Notice of the Meeting can't send by the "Courier".

Under revised SS many placed word "courier" has removed like;

a. Proof of Sending of Agenda & Notes to Agenda

In case of Holding of Meeting on shorter Notice Company can send the notice of Meeting as per convenient mode.

8. Maintenance of Proof of sending of Notice

As per Old SS-1: Proof of sending Notice and its delivery shall be maintained by the company.

As per Revised SS: 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 3 years from the date of the Meeting.**

9. Taken up any other Agenda not including in Agenda Items

As per Old SS-1: 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, which shall include at least one Independent Director, if any

As per Revised SS: 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.

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.

In case any matter which is not included in the Agenda item is taken up then it does not mandatory need of approval of Independent Director". However, Extra Agenda item can be taken up with the approval of Majority Director whether including Independent Director or not.

10. Frequency of Meeting:

As per Old SS-1: The Board shall meet atleast once in every calendar quarter, with a maximum interval of one hundred and twenty days between



any two consecutive Meetings of the Board, such that at least four meeting are held in each calendar year.

As per Revised SS: 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.

There is no need to hold Board Meeting in each Calendar Quarter. It is in alignment with the Act. Effect of this provision shall be same on each point of the SS stating about holding of Board Meeting in each quarter.

11. Quorum

As per Old SS-1: Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether physically or through Electronic Mode, during discussions and voting on such item.



As per Revised SS: Director shall not be reckoned for Quorum in respect of an item 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. Leave of absence shall be granted to a Director only when a request for such leave has been received by the Company Secretary or by the Chairman.

12. Interested Director for the purpose of Quorum:

As per Old SS-1: 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 the Director himself or his relative; or

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

Therefore, if Company entered into contract or arrangement with Director or his relative shall not treat as interested Directors.

In case of related party transaction he shall not participate.

13. Attendance Register

As per Old SS-1: If an attendance register is maintained in loose-leaf form, it shall be bound periodically depending on the size and volume.

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded by the Chairman or the Company Secretary in the Attendance Register and the Minutes of the Meeting.

**Attendance
Records**

Authentication of Register:

Entries in the attendance register shall be authenticated by the Company Secretary or where there is no Company Secretary by the Chairman by appending his signature to each page.

Custody of Register:

Where there is no Company Secretary, the attendance register shall be in the custody of any director authorized by the Board of this purpose.

As per Revised SS:

If an attendance register is maintained in loose-leaf form, it shall be bound periodically, **at least in every three year.**

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded **in attendance registered 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 authorized by Chairman and the fact of such participation is also recorded in the Minutes.**

Custody of Register:

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

14. Inspection of Attendance Register:

As per Old SS-1: The attendance register is open for inspection by the Directors.

As per Revised SS: The attendance register is open for inspection by the Directors. **Even after a person cease to be a Director, he shall be entitled to inspect the attendance register of the Meeting held during the period of his Directorship.**

15. Leave of Absence:

As per Old SS-1: Leave of absence shall be granted to a Director only when a request for such leave has been received by the Company Secretary or by the Chairman.

As per Revised SS: Leave of absence shall be granted to a Director only when a request for such leave has been received by the Company Secretary **or by the Chairman or to any other person authorized by the Board to issue Notice of the Meeting.**

16. Passing of Resolution by Circulation

As per Old SS-1: Proof of sending and delivery of the draft of the Resolution and the necessary papers shall be maintained by the company.

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 the Director himself or his relative; or



As per Revised SS: 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.**

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.

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:

- Papers shall be sent through Courier in this case.
- Proof of Sending of Notice shall be maintained by the Company for such period as decided by the Board, which shall not be less than 3 year from the date of Meeting.
- 2 addition days shall be added for the services of the draft resolution, in case the same has been sent by the Company by Speed Post or by register post or by courier.

17. A record of all appointments made at the Meeting

As per Old SS-1: 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.

As per Revised SS: 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. All appointments made one level below Key Managerial Personnel shall be noted by the Board.

18. Recording of Minutes

As per Old SS-1: Any unsigned document, including report or notes placed before the Board and referred to in the Minutes shall be identified by initialing of such document, report or notes by the Company Secretary or the Chairman.



Wherever any approval of the Board is taken on the basis of certain papers laid before the Board, proper identification shall be made by initialing of such papers by the Company Secretary or the Chairman and a reference thereto shall be made in the Minutes

As per Revised SS: **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 initialing of such documents by the Company Secretary or the Chairman.**

Only unsigned documents placed before the Board, in respect of items requiring decision of the Board, need to be so initialed. Thus, certain papers placed for noting and/or papers which have been

already signed by the Chairman, Director or any other official of the company need not be initialed again.

19. Finalization of Minutes

As per Old SS-1: If the draft Minutes are sent by speed post or by registered post or by courier, an additional two days may be added for delivery of the draft Minutes.

Proof of sending draft Minutes and its delivery shall be maintained by the company.

As per Revised SS: This point is removed

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 year from the date of the Meeting.**

20. Disclosure

As per Old SS-1: The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director



As per Revised SS: **The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards.**

Board of Directors has to mention a statement in its Directors' Report that "Company is in compliances with applicable Secretarial Standards".

B. General Meetings (SS-2)

1. Applicability

As per Old SS-2: Applicable on all companies

As per Revised SS: The standard shall not applicable on the followings:

- a) One Person Company
- b) Company licensed under section 8 of the CA, 2013

2. Websites on Notice:

As per Old SS-2: In case of companies having a website, the Notice shall be hosted on the website

As per Revised SS: In case of companies having a website, the Notice shall simultaneously be hosted on the website till the conclusion of the Meeting.



3. Disclosures required in Notice

As per Old SS-2: In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.

As per Revised SS: In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice.

4. Form of Proxy

As per Old SS-2: An instrument appointing a Proxy shall be either in the Form specified in the Articles or in the Form set out in the Act.

As per Revised SS: An instrument appointing a Proxy shall be in the Form prescribed under the Act.

5. Deposit of Proxies and Authorizations

As per Old SS-2: No provision

As per Revised SS: In case of remote e-voting:

(i) the letter of appointment of representative(s) of the President of India or the Governor of a State; or

(ii) the authorization in respect of representative(s) of the Corporations shall be received by the scrutinizer/ company on or before close of e-voting.

6. Voting:

As per Old SS-2: Every Resolution shall be proposed by a Member and seconded by another Member.

As per Revised SS: Every Resolution, except a Resolution which has been put to vote through Remote e-Voting or on which a poll has been demanded, shall be proposed by a Member and seconded by another Member.

In the case of a listed company or a company with 1000 or more shareholders, it is mandatory to provide remote e-voting facility and in such cases, voting commences much before a physically convened general meeting is held. Therefore in such cases, the formality of “proposed by” and “seconded by” need not be followed.



Further, in cases where a resolution on which a poll is demanded, proposing and seconding of such a resolution is not possible and hence should not be made applicable in such cases.

7. Voting Rights:

As per Old SS-2: A Member who is a related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.

As per Revised SS: A Member who is a related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.



In case of a private company, a member who is a related party is entitled to vote on such Resolution.

A member who is a related party is entitled to vote on a Resolution pertaining to approval of any contract or arrangement to be entered into by:

- (a) A Government company with any other Government company; or
- (b) An unlisted Government company with the prior approval of competent authority, other than those contract or arrangements referred in clause (a).

8. Board Approval:

As per Old SS-2: Authorize the Chairman or in his absence, any other Director to receive the scrutiniser’s register, report on e-voting and other related papers with requisite details.

As per Revised SS: This point is removed.

9. Declaration of Results in case of e-voting:

As per Old SS-2: Based on the scrutiniser's report received on Remote e-voting and voting at the Meeting, the Chairman or any other Director so authorized shall countersign the scrutiniser's report and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.

As per Revised SS: The scrutiniser(s) shall submit his report within three days from the date of the Meeting to the Chairman or a person authorized by him, who shall countersign the same and declare the result of the voting forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.



| Voting Result: | |
|----------------|-----|
| IN FAVOUR | 122 |
| AGAINST | 1 |
| ABSTENTION | 1 |

10. Declaration of results in case of conduct of poll:

As per Old SS-2: Based on the scrutiniser's report, the Chairman shall declare the result of the poll within two days of the submission of report by the scrutiniser, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not

As per Revised SS: The scrutiniser(s) shall submit his report within seven days from the last date of the poll to the Chairman who shall countersign the same and declare the result of the poll within

Postponed
New Date Coming Soon

two days of the submission of report by the scrutiniser, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not

Therefore now scrutiniser's is time bound to submit report and to maintain the integrity of decision making directors are excluded to handle scrutiniser's report, they can handle it only at a discretion of Chairman, if he authorize them to do so.

11. Adjournment of meetings:

As per Old SS-2: If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a National Holiday, or at such other time and place as may be determined by the Board

As per Revised SS: If a Meeting, other than an Annual General Meeting and a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day or at such other time and place as may be determined by the Board.

Therefore now, adjourned meetings can be held at National holidays.

12. Notice for the postal Ballot:

As per Old SS-2: In case of companies having a website, Notice of the postal ballot shall also be placed on the website

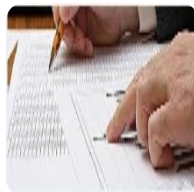


As per Revised SS: In case of companies having a website, Notice of the postal ballot shall simultaneously be placed on the website and shall remain on the website till date of General meeting.

13. Declaration of results:

As per Old SS-2: Based on the scrutiniser's report, the Chairman or any other Director authorized by him shall declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.

The result of the voting with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not, along with the scrutiniser's report shall be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and also be placed on the website of the company, in case of companies having a website.



As per Revised SS: The scrutiniser shall submit his report within seven days from the last date of receipt of postal ballot forms to the Chairman or a person authorized by him, who shall countersign the same and declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.

The result of the voting with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not, along with the scrutiniser's report shall be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and also be placed on the website of the company, in case of companies having a website.

14. Maintenance of Minutes:

As per Old SS-2: 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.

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

As per Revised SS: A company may maintain its Minutes in physical or in electronic form. No need of time Stamp on Electronic Minutes

Minutes Books shall be kept at the Registered Office of the company.

15. General content:

As per Old SS-2: Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting

As per Revised SS: Now no need to mention the time of conclusion of General Meeting.

Commencement of arrest in connection with investigation by Serious Fraud Investigation office

MCA notifies Commencement of Arrest in connection with Investigation by Serious Fraud Investigation Office Rules, 2017 which shall come into force on the date of their publication in the Official Gazette:

2. (1) Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person.

Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.

(2) The Director SFIO shall be the competent authority for all decisions pertaining to arrest.

3. Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government.

Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company,



to the Secretary of the administrative ministry concerned, by the arresting officer.

4. The Director, Additional Director or Assistant Director, while exercising powers under sub-section (B) of section 2L2 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.

5. The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.

6. An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.

7. The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.

B. The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years
a) from the date of judgment or final order of the Trial court, in cases where the said judgment has not been impugned in the appellate



court; or

b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.

9. The provisions of the code of criminal Procedure, 1973(2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.



Appearance of authorized representative before Tribunal

MCA notifies the following rules further to amend the National Company Law Appellate Tribunal Rules, 2016. Rule 63 related to Appearance of authorized representative has been amended as follows:

(1) Subject to provisions of section 432 of the Act, a party to any proceedings or appeal before the Appellate Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Appellate Tribunal.

(2) The Central Government, the Regional Director or the Registrar Companies or Official Liquidator may authorize an officer or an Advocate represent in the proceedings before the Appellate Tribunal.

(3) The officer authorized by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor."

Establishment of Special Court in Patna

The Chief Justice of the High Court of Judicature at Patna, designates the following Court as Special Court for the purpose of providing speedy trial of offences punishable with imprisonment of two years or more:

| Court | Jurisdiction as Special Court |
|---|-------------------------------|
| Court of Additional District and Sessions Judge , Patna | State of Bihar |

Exemption to reconstituted or amalgamated banks

MCA notifies exemption in all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), from the application of provisions of Sections 5 and 6 of the Competition Act, 2002 for a period of ten years from the date of publication of this notification in the Official Gazette.



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