



**Overhaul of Secretarial Standards**  
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**Brahmayya & co.**

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## Introduction

Secretarial Standards, namely SS-1 & SS-2, formulated by The Institute of Company Secretaries of India and approved under Section 118(10) of The Companies Act, 2013 ("the Act") were first notified in April 2015 and made applicable w.e.f 1st July 2015. Owing to multiple amendments and structural changes in the Act, it was need of hour to revise and align these Standards. Subsequently, SS-1 & SS-2 have been revised and approval has also been obtained from the Central Government. These revised Standards shall be applicable in respect of meetings held on or after 1st October 2017. This article attempts to bring out broadly, the significant changes made in the Standards.

## Secretarial Standard 1 – Meetings of the Board of Directors

- Section 8 companies have been exempt from the applicability of these Standards in line with the MCA exemption notification dated 5th June 2015.
- Restriction on holding meeting on National Holiday is removed.
- Amendment has been made in the Standards to align the wordings to those present in the Act, pertaining to provision of facility to attend meeting through video conferencing and also giving intimation to Directors regarding this option.
- Earlier, Directors were not allowed to participate through electronic mode in the discussion on certain restricted items such as approval of financial statements, Board's Report etc. However, Standard permitted exceptions with the permission of Chairman. Now, this discretionary power of Chairman has been taken away.
- Notice, agenda, notes on agenda cannot be sent by mode of courier now. This amendment is in line with provisions of the Act.
- Proof of sending notice, agenda, notes on agenda and its delivery shall be maintained for a minimum period of 3 years from the date of the meeting.
- Now, companies can choose an expedient mode of sending agenda/notes to Directors in case of meeting held on shorter notice.
- 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 only. The requirement of consent of Independent Director has been done away with.
- Requirement of holding board meeting in every quarter of a calendar year has been done away with. This is in line with the provisions of the Act which mandates holding of 4 meetings in a calendar year.
- In case of a private company, a Director shall be entitled to participate in meeting in respect of item in which he is interested, after disclosure of his interest. Further, separate para has been added to clarify that, if the item of business is a related party transaction, then the Director shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

- Paraphrasing has been done to bring clarity as to the presence of quorum in case of committee meetings. Now, Standard specifies that, quorum shall be as prescribed by the Board and in the absence of such prescription, then presence of all members of the Committee shall be the quorum.
- Attendance register, relating to meeting of Board and its Committees shall be preserved for a period of at least 8 financial years from the date of last entry made therein.
- In case of a private company, if the Chairman is interested in any item of business, he may continue to chair the meeting after disclosure of his interest.
- Amendments have been made to align the Standard with the provisions of the Act as under Section 184(2) which speaks about interested director. The Standard earlier included “contract by company with director or his relatives” within scope of “interested director”, although same was not provided for in this Section.
- Amendments have been made to provide that, in case of passing of resolution by circulation, it shall be deemed to be passed on the earlier of,
  - last date specified for signifying assent or dissent, or
  - date on which assent has been received from required majority, provided that on that date, Directors who have not responded plus Directors who have expressed their desire that the resolution should be taken up in Meeting of Board, shall not be 1/3rd or more of total number of directors.
- In line with change in Rule 8 of Companies (Meeting of Board and its Powers) Rules, 2014, appointment made one level below KMP are no longer required to be noted by the Board.
- Now the Standard emphasises on stating the fact of supersession of earlier resolution or decision of the Board in the Minutes.
- Companies are given discretion to decide on period of maintenance of proof of sending of draft minutes and its delivery, which shall not be less than 3 years from the date of the Meeting.
- Alteration of minutes are possible only with approval of the Board and fact of such alteration shall be noted in the Minutes of the subsequent meeting.
- Now the Standard mandates that the Report of Board of Directors shall include a statement on compliance of applicable Secretarial Standards. This is done to align with Section 134(5)(f) of the Act.
- Amendment has been made in Annexure A to the Standard which provides items which shall not be decided by resolution by circulation. Clarity has been given that non-material items need not be placed before the Meeting of the Board.

## Secretarial Standard 2 – General Meetings

- Section 8 companies have been exempt from the applicability of these Standards in line with the MCA exemption notification dated 5th June 2015.
- In case of ordinary business, resolutions are not required to be stated in the Notice (even if auditors/directors to be appointed are other than the retiring auditors or directors).
- Standard has been aligned with amendments in the Act. Private companies need not give 21 days' clear notice if their Articles provide otherwise.
- Companies must publish the notice of General Meeting till the conclusion of meeting in its website. After the conclusion, it is not mandatory to telecast notice on website of the Company.
- Form of proxy used should necessarily be the one prescribed under the Act, rather than the option of resorting to the Articles of Association earlier.
- 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.
- The scrutiniser shall submit his report within 3 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.
- The scrutiniser shall submit his report within 7 days from the last date of the poll to the Chairman who shall countersign the same and declare the result of the poll within 2 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.
- Adjourned Meetings can be held on National Holidays. This is in alignment with the provisions of the Act.
- Minutes Books shall be kept at the Registered Office of the company. This is in alignment with the provisions of the Act.

## Conclusion

These amendments are aimed at improving and enhancing secretarial reporting practices and enabling uniform practices across corporates. This also strengthens the corporate governance framework by increasing transparency. Some of these amendments are also a fallout of various representations received from stakeholders and corporates to facilitate ease of doing business. As time progresses, we learn from best practices!

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