



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

03.04.2020

Dear Professional Colleagues,

Subject: Clarification/ Guidance on applicability of Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2)

As you are aware, Section 118(10) of the Companies Act, 2013 provides for mandatory observance of SS-1 and SS-2 by all companies.

Due to the COVID-19 outbreak and lockdown situation prevailing in the Country, various provisions of the Companies Act, 2013 and rules made thereunder have already been relaxed by the Ministry of Corporate Affairs (MCA) for ease of compliance by the stakeholders.

Few queries have also been received from members on the compliance of SS-1 and SS-2 in the current situation and clarifications sought on various issues.

In this context, we would like you to appreciate the "SCOPE" of SS-1 and SS-2 which reads as under:

"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."

The term "Act" as defined under the SS-1 and SS-2, means the Companies Act, 2013 or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

Hence, any relaxation granted by the Central Government from the compliance of provisions of Board and General Meetings under the Act will automatically and consequentially apply to Secretarial Standards as the case may be and the relaxed provisions of the Act will prevail to the extent applicable in terms of enforceability.

Pursuant to the recent relaxations granted by the MCA, few provisions of the SS-1 also stand relaxed as specified in the Annexure. Accordingly, the provisions of SS-1 should be construed in the light of the relaxations already granted by the MCA. Further, guidance on certain provisions of SS-1 have also been provided in the context of COVID 19 situation and placed at the Annexure. The guidance provided is voluntary in nature and is in line with the relaxations given by the MCA and will be applicable only for the period of relaxation so extended by the MCA.

All are requested to take note of the above to facilitate compliance and continue to promote good corporate governance.

Regards,

(CS Ashish Garg)
President

Secretarial Standard on Meetings of the Board of Directors (SS-1)

- 1. 1.2.3 (2nd Para)- Directors shall not participate through Electronic Mode in discussions 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.**

MCA Relaxation: Since the MCA has already allowed the participation through VC in respect of the restricted items as stated above, the consequent relaxation applies to Para 1.2.3 of SS 1 and this para should be construed accordingly.

- 2. 1.3.1 (3rd Para) - 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.**

Guidance by the ICSI:

The requirement of providing Notice to a Director as per his preferred mode of delivery is provided in the SS-1. This provision should be interpreted accordingly to ensure compliance, wherever, physical delivery of documents is not possible due to COVID 19 lockdown, the company may choose an expedient mode of delivery in sending Notices, including through e-mail to the concerned directors.

In SS-1, wherever references have been made to physical mode of delivery of documents, such as notice, agenda and minutes, etc, in the context of the meeting of the board of directors or committee thereof or resolution proposed to be passed by circulation, it shall be adequate and sufficient compliance, if such documents are served through e-mail instead of physical mode of delivery. However, the company should ensure adequate safeguards, including delivery and retaining proof receipt of such e-mail communication.

- 3. 2.1- 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.**

MCA Relaxation:

The MCA has already relaxed the gap between two meetings, and the consequent relaxation applies to para 2.1 of SS-1 and this para should be interpreted accordingly.

- 4. 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.**

MCA Relaxation:

The MCA has already relaxed the provision with regard to the time gap between two board meetings, consequentially the relaxation applies to in respect of committee meetings.

- 5. 2.3 - Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.**

MCA Relaxation: The MCA has already relaxed the provision in respect of meetings of Independent Directors, and the consequent relaxation applies to para 2.3 of SS-1 and this para should be interpreted accordingly.

6. **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 initialing of such documents by the Company Secretary or the Chairman.**

Guidance by the ICSI:

Due to the COVID 19, all the meetings are now invariably having to be conducted through Video Conferencing and the agenda papers are being circulated by e-mails. There may arise situations wherein certain documents have been referred to during the course of the meeting of the board being held through video conferencing and are being referred to in the minutes. Any such documents which were not circulated with the agenda but placed at the meeting and referred to in the minutes, should be identified by the company secretary by initialling such documents after the normalcy is restored.

7. **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.**

Guidance by the ICSI:

Due to COVID 19 situation, all the meetings are now being conducted through Video Conferencing and minutes thereof are being circulated over emails. The company may not therefore be able to record/print the final minutes in the minutes books maintained for this purpose and get the minutes signed physically by the Chairman. In such cases the company may have to record and acknowledge/sign the minutes digitally by the chairman. The copy of the minutes signed digitally can be circulated to all the directors or alternatively directors may waive the right to receive copy of such minutes, considering the prevailing circumstances. In case, minutes cannot be signed digitally, the same can be physically signed and copies of the signed minutes may be circulated to all the directors once normalcy is restored.