

Secretarial Standard - Small & Private Companies



**Major Challenges for
Small Companies under New Law**



Major Challenge for small Companies in general

- ❖ Compliance of most of the provisions of the Companies Act are applicable.
- ❖ All the stringent **penal provisions** are applicable.
- ❖ Provisions relating to **Fraud** are also applicable.
- ❖ The Appointment of **Secretarial Auditors** not applicable.
- ❖ Appointment of **Company Secretary** is also not mandatory.
- ❖ There is no monitoring, no-compliance, if any may come as shock and may lead to major penalties and prosecution for Directors.



Macro Benefits of SS to Small Companies



Macro Benefits to Small Companies

- ❖ Effective decision making
- ❖ Better corporate disclosures
- ❖ Reduction in Non-compliances
- ❖ Reduction in dispute among shareholders/ directors
- ❖ Safeguarding Directors from any regulatory Risk
- ❖ Good Corporate Conducts
- ❖ Introduces / Improves good Corporate Culture
- ❖ Enhancing Shareholders' democracy



**Analysis of Major Provisions of SS
vis-à-vis Challenges for Small Companies**



Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits, & possible Resolution
1.1	Authority to call Board Meeting	<p>Authority to call meeting is with Chairman or Company Secretary, however, Board may authorize any person to requisition the meeting.</p> <p>Curb on the Power of Chairman.</p>	<p>This will reduce the dispute regarding authority to call meeting.</p> <p>Board has power to authorize & even Shareholders may agree to authorize anyone by altering AOA.</p>
1.1.2	Adjournment of duly convened meeting	The Chairman, unless dissented by majority of Director may adjourned the duly convened meeting.	Will promote the good Board Process by putting restrictions on powers of Chairman.

Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits & Resolutions
1.2.1	Numbering of Meeting	<ul style="list-style-type: none"> ▪ Each Meeting to be Numbered. ▪ The Directors may not be able to insert or create any fictitious Board Meeting. 	<p>This provision is very easy to comply, as SS has given absolute flexibility in numbering.</p> <p>This will help in reducing Shareholders and Board Dispute, as all the meeting will be properly recorded and numbered.</p>
1.3.4	Meeting by Video Conferencing Board Meeting	<ul style="list-style-type: none"> ▪ The facility may be costly for small and Private Companies ▪ Advance confirmation by Directors. 	<p>This provision is provided in the Act and made applicable by the Act, Standard only prescribes the modalities for conducting the meeting.</p> <p>Further, this is an optional facility, which Board may provide or may not provide.</p>

Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits & Resolution, if any.
1.3.2	Signing of Notice of Board Meeting	<ul style="list-style-type: none"> ▪ Company Secretary or if no CS, any person authorised by the Board. ▪ Authority to be given by Board. 	<p>Very easy to comply, will have clarity, who will issue the Notice.</p> <p>Power to authorise is with Board, hence no Challenge.</p>
1.3.6	Advance Notice of Board Meeting	<ul style="list-style-type: none"> ▪ Two Additional Days Added in case of Courier, Speed Post, etc. 	<p>This is not a Challenge, but a facility to the Board Members.</p> <p>Further, the Meeting may be called at Shorter Notice as well</p>

Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits & Resolution, if any.
1.3.7 & 1.3.8	Advance Agenda of Board Meeting & Content of Agenda	<ul style="list-style-type: none"> ▪ The provisions in regard to UPSI, Supplementary Note, Urgent Business and Any other item has been clearly laid down. 	<p>This will improve Board Decision Making.</p> <p>Further, the SS is providing all the Powers to Majority of Directors to deal with the Agenda Items placed before the meeting.</p>
2.1	Quarterly Board Meeting	<ul style="list-style-type: none"> ▪ One Board Meeting in every calendar Quarter ▪ One more Additional Requirement apart from gap of 120 days between two meetings. 	<p>The 120 days provision is relating to maximum gap, now SS is evenly distributing the 4 mandatory Board Meetings in 4 quarters.</p>

Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits & Resolution, if any.
2.2	Frequency of Committee Meeting	<ul style="list-style-type: none"> ▪ As often as necessary ▪ No Challenge as such. 	<p>Now Committee, will have specified term of reference regarding their meeting.</p> <p>The frequency can be regulated by Board / AOA.</p>
3.1	Quorum	<ul style="list-style-type: none"> ▪ The quorum is required throughout the meeting. ▪ This provisions may become challenging, where the Directors are unwilling to devote time for the meetings and decision making. 	<p>This will enhance the participation of Board Members in each item of Agenda and hence improve the quality of decisions making of the Board.</p>

Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits & Resolution, if any.
3.4.1	No Quorum in Adjourned Meeting	<ul style="list-style-type: none"> ▪ Board meeting shall stand cancelled. ▪ The Meeting will have to be reconvened. 	<p>The main law is silent on this point, now SS brings clarity to the situation where at adjourned meeting no quorum is present.</p> <p>If the business is urgent, the Board may reconvene the meeting at Shorter Notice.</p>
3.5	Quorum of the Committee Meeting.	<ul style="list-style-type: none"> ▪ All members of the Committee to be present to form the Quorum. ▪ Ensuring presence of all the committee members may be difficult. 	<p>The Committee will become relevant and burden of decision making of the Board may reduce to some extent.</p> <p>The AOA / Board may fix the lesser number for the quorum.</p>

Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits & Resolution, if any.
4.1	Attendance Register	<ul style="list-style-type: none">▪ Mandatory maintenance of Attendance Register.	Possible dispute resolution mechanism in regard to attendance of the meeting.
4.2	Leave of Absence	<ul style="list-style-type: none">▪ Leave of absence to be granted only on request by respective director to Company Secretary or Chairman▪ No Challenge, as its very easy to comply.	Participation of Directors will be monitored.
5.1	Casting Vote	<ul style="list-style-type: none">▪ In case of equality of votes, the Chairman to have casting Vote.	This provision has no challenge, as AOA may not provide casting vote to Chairman.

Analysis of the Provisions for small Companies

Para No.	Subject Matter	Provisions & Challenges	Benefits & Resolution, if any.
6.1.1	Authority to Issue Circular Resolution	<ul style="list-style-type: none"> ▪ The Chairman of the Board or in his absence, the Managing Director or in his absence, the Whole time Director and where there is none, any Director other than an Interested Director. ▪ This may an additional work for Secretarial Team, if any. 	There will atleast one Director, who will explain the reason for urgency.
7.4	Finalization of Minutes.	<ul style="list-style-type: none"> ▪ Circulation of draft minutes within 15 days of meeting, comments by Directors in 7 days. 	In small Companies, this is not an issue at all, as there may be limited no. of Directors, they may sit together and finalise the minutes in one go. Circulation can be by HAND.

SS as dispute mitigating tool for Small Companies



Major provisions which will mitigate the Dispute

- ❖ Power to call meeting is specifically prescribed.
- ❖ Notice & manner of Notice now have clarity.
- ❖ Advance circulation of Notice & Agenda.
- ❖ Meeting on Shorter Notice and Any other Item of Business now properly regulated.
- ❖ Quorum throughout the meeting.
- ❖ Provisions relating to mandatory attendance Register.
- ❖ Circulation of Draft Meeting and inviting comments of Directors Present.





Thank you