

# Secretarial Standards- Enhanced Role of CS

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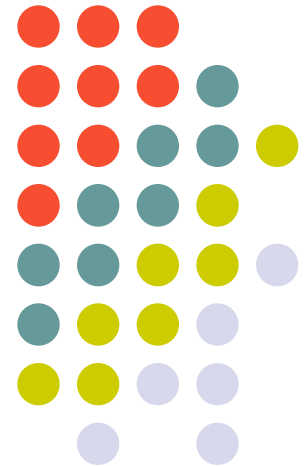
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# Secretarial Standards



- “Secretarial Standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted u/s 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

# Statutory Recognition u/s 118(10)- History Created



- **Every company** shall observe Secretarial Standards with respect to General and Board Meetings specified by ICSI and approved as such by the Central government.
- **Exceptions:-**
  - SS-1: OPC in which there is only one director on its Board.
  - SS-2 : OPC & companies exempted by Central Government through notification.

# Approval by Central Government



- **10<sup>th</sup> April, 2015:** The Central Government approved the SS-1 on Board Meetings and SS-2 on General Meetings issued by ICSI.
- **23rd April, 2015:** The ICSI vide its notification published in Gazette of India notified the Secretarial Standards.
- **1st July, 2015:** The effective date from which every company shall observe SS-1 & SS-2.

# Functions of Company Secretary u/s 205



- Functions of CS shall include:-
  - to report to the Board about compliance with the provisions of the Act, the Rules and other laws applicable to the company;
  - To ensure that the company complies with the applicable secretarial standards;
  - To discharge such other duties as may be prescribed.

# Secretarial Audit Report u/s 204, Rule 9 & Form MR-3



- The Secretarial Auditor is required to state in his report that:-
  - he has examined compliance with the applicable clauses of the Secretarial Standards issued by ICSI; and
  - the company has complied with the provisions of the Act..., Standards etc.... subject to the following observations.....

# Huge work space

## [Figures as on Feb, 2015]



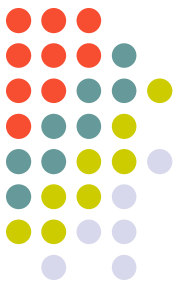
- Total companies: Approx. 14.70 lacs
- Active companies: Approx. 10.20 lacs
- Listed companies: Approx. 6000
- One Person Companies: 1953
- Number of new companies incorporated per month: 6138 in Feb, 2015



# Enhanced Position of CS

- Secretarial Standards have provided larger space and greatly enhanced the position and role of CS in management set-up, particularly in matters related to Board of Directors, its Committees and the Shareholders.
- Some of the clauses introduced in SS-1 and SS-2 support this view.





# Enhanced Position of CS

- CS to attend & be present at Board Meetings.
- CS to act as secretary to Board Committees.
- Directors and CS shall sign the attendance register and Board Minutes shall record their names as attendees while others present in the meeting shall be marked as invitees.
- Minutes of General Meeting shall also record the names of Directors and the CS present at the meeting.

# Enhanced Position of CS



- Where director(s) are participating in a Board meeting through Video Conferencing, the **Chairman and CS shall safeguard the integrity of the meeting** by ensuring sufficient security and identification procedures.
- Wherever any approval of the Board is taken on the basis of certain **documents** laid before the Board, their **scrutiny, identification and authenticity has to be ensured by the CS** or the Chairman.



# Enhanced Position of CS

- SS-1 provides that any director may summon a Board meeting and once summoned, it is the **CS who shall convene the meeting in consultation with the Chairman/MD/WTD.**
- The **Notice** of the Board Meeting shall **contain the contact number or e-mail address of the Chairman or CS.** This will facilitate other directors to communicate effectively on matters connected with the Board meeting.

# Enhanced Position of CS



- Though Schedule IV of the Act provides that IDs shall hold at least one meeting in a year without the attendance of any member of the management but **SS-1 makes it mandatory for the CS to facilitate convening and holding of such meeting, if so desired by the IDs.**
- While conducting Board meetings, the Chairman shall check, **with the assistance of CS, that the meeting is duly convened** and constituted in accordance with the Act

# Enhanced Position of CS

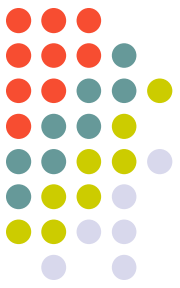


- Standards have recognized the role of CS at the general meetings and it has been prescribed that the **CS shall be seated with the Chairman and shall assist the chairman in conducting the meeting.**
- Standards now provide that request for **leave for not attending the meeting shall be granted to a director only if the leave for the same has been communicated to Chairman or CS.**

# Enhanced Position of CS



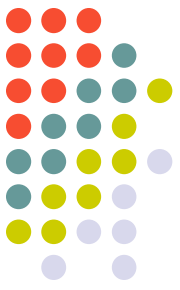
- SS-1 provides that a **copy of the signed minutes of Board meeting, duly certified by the CS, shall be circulated to all Directors** within 15 days after the minutes are signed.
- Companies would now be required to maintain all the records and registers (more particularly attendance register, minutes book, register of directors, directors' interest, directors' shareholding etc.) prior to the signing of the minutes of each meeting.



# Enhanced Position of CS

- A PCS may be appointed as a scrutinizer:-
  - in the process of remote e-voting;
  - for the purpose of voting at the meeting of such companies;
  - in case of resolutions to be passed through Postal Ballot.
- CS can certify copies of minutes or extracts thereof as requisitioned by any member.

# Enhanced Position of CS



- PCS or Secretarial Auditor may inspect the attendance register or Minutes Book of the Board or General meetings if required for the performance of his duties.
- Standards prescribe that any **qualification, observation, comment or remark in SAR shall be read at AGM and attention of members present shall be drawn to the explanations or comments given in the Board Report on such qualification/observation/comment/remark.**





# Enhanced Position of CS

- Standards mandate that Notice of the Board Meeting shall be issued by the CS.
- Attendance register shall be deemed to have been signed by directors participating in a Board meeting through video conferencing, if their attendance is recorded by Chairman/CS
- Entries in the attendance register shall be authenticated by the CS by appending his signature to each page.



# Enhanced Position of CS

- Following documents shall be kept in the custody of CS:-
  - Attendance register of Board and Committee meetings
  - Minute Books of the Board meetings
  - Minute Books of the General Meetings
  - Scrutinizer's Report, Register etc.



# Enhanced Role of CS

- Strengthen Board Processes
- Improve Governance Standards
- Improve Compliance & Reduce Litigation
- Improve Investors Confidence- Improve Flow of Capital
- More Investment- Modernisation, Expansions and New Projects
- More Jobs

# Strengthen Board Processes



- Agenda & Notes on Agenda are required to be sent at least 7 days prior to the Board Meetings.
- 7 days' Notice of a Meeting is required to be given even if meetings are held on pre-determined dates or intervals.
- Provision to send notes on Unpublished Price Sensitive Information at a shorter period of time with the consent of a majority of the Directors (including at least 1 ID).

# Strengthen Board Processes



- To facilitate timely decision making in case of urgent matters, **time-frame has been given to the directors for responding to draft resolutions proposed to be passed by circulation.**
- To create a proper record in respect of a meeting convened but adjourned for want of quorum, a statement to that effect is required to be recorded in the minutes by the Chairman or any Director present at the meeting.

# Strengthen Board Processes



- Provisions for preservation of office copies of Notices, Agenda, Notes on Agenda and other related papers in good order in physical or in electronic form along with specific period have been introduced.
- To avoid manipulations and cut down the practice of paper meetings, serial numbering of meetings, items of business, resolutions, page numbers etc. is introduced. This would also enable referencing and cross-referencing.

# Improve Governance Standards



- Interested Chairman is required to entrust Chair to a Non-interested Director during discussion on items in which he is interested. He shall not be present at the meeting during discussion, thus encouraging unbiased and fair decision making at the meeting.
- The notice of the General Meeting is required to contain complete particulars of the venue of the meeting including route map and prominent land mark to facilitate easy location of the venue.

# Improve Governance Standards



- Comprehensive disclosures are required to be made in the explanatory statement of special **business** thereby encouraging informed decision making and enhancing transparency.
- The Chairman shall explain the objectives and implications of the resolutions before they are put to vote at the meeting.

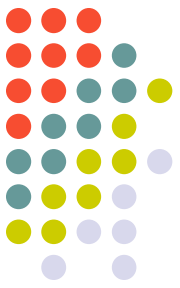


# Improve Governance Standards



- Secretarial Auditor is required to be present in the General Meetings which would enable the members to seek answers from secretarial auditor, if required on the compliance and governance aspects of the company.
- The practice of distribution of gifts to shareholders at the Meeting is prohibited

# Improve Compliance & Reduce Litigation



- Large % of corporate litigation is by SMEs.
- The disputes revolve around petty issues arising out of ambiguity in systems and processes resulting in lengthy and luxurious litigations eating precious time of Courts.
- SS-1 & SS-2 provide a clear legal framework to minimize such litigation.
- CS has important role to achieve this objective by offering its professional expertise

# Improve Compliance & Reduce Litigation



In order to avoid practices of deliberately keeping out minority shareholders in the discussions on important decisions of the company, provisions such as the presence of Quorum not only at the time of commencement of the Meeting but also while transacting business and prohibition on postponement or cancellation of a duly convened General Meeting have been introduced.

# Improve Compliance & Reduce Litigation



- To ensure delivery of proper notice and address disputes arising due to non-receipt of Notices/Agenda, **proof of delivery of Notices & Agenda and its delivery is required to be maintained by the company.**

# Improve Compliance & Reduce Litigation



- To avoid tweaking of decisions taken at the meeting through manipulation of resolutions, **certain restrictions on rescinding of resolutions passed at a meeting and prohibition of modification to any proposed text of the resolution other than grammatical, clerical, factual and typographical errors, if any, have been introduced.**

# Improve Investors Confidence- Flow of Capital



- Large international fund managers are very touchy and sensitive on issues related to sound legal frame work and governance practices prevalent in a jurisdiction/company.
- SS-1 and SS-2, if properly implemented by CS, will help improve their confidence in Indian companies and bring substantial capital for investments in green field projects, expansions, modernisations etc. and create more jobs and bring prosperity.



# Penalty for Default

- If any default is made in complying with the provisions of Section 118 in respect of any meeting, the penalty shall be:-
  - Rs. 25,000/-for the company; and
  - Rs. 5000/- for every officer of the company who is in default.



# Way Forward

- It makes a **good business sense** for:-
  - **Companies to follow** the Secretarial Standards, in particular, **SS-1 & SS-2** in true letter and spirit for its further growth and development; and
  - **CS [in practice and employment]** to ensure that the Standards are observed by the **companies** in true letter and spirit.



# THANK YOU

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