

Secretarial Standard on General Meetings (SS-2)

CS G P Madaan

Member, SSB ICSI and

Partner, Madaan Law Offices, Advocates & Solicitors

CS Lalit Jain

Member, SSB ICSI



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament



Applicability

- **General Meetings** of all companies incorporated under the Act.
- Meetings of debenture holders and creditors.
- Meetings of the Members or class of Members or debenture holders or creditors of a company under the directions of the Court or CLB or NCLT.

Except:

- One Person Companies
- Class or classes of companies as may be exempted by Central Government.

Applicability

- Central Govt. vide Notification dated 5th June, 2015, has directed that in case of private companies certain provisions (section 101-107 and 109) of the Act shall apply unless otherwise specified in the respective sections or the articles of the company provide otherwise with such exceptions, modifications and adaptations to Private Companies.
- Accordingly some of the standards relating to quorum, voting rights, notice, appointment of proxies, provisions relating to chairman shall be applicable to private companies accordingly.



Impact of exemption notification of Government Companies

Section 96(2) mandates that Annual General Meeting shall be held either at the Registered Office of the Company or some other place within the city, town or village in which the registered office of the company is situated.

Government company may convene its Annual General Meeting at such other place as the Central Government may approve in this behalf.



Applicability to Banking Companies?

Is SS-2 applicable to banking entities which are listed on Stock exchanges?

- SS-2 is applicable to all companies incorporated under Companies Act 2013 or any previous enactments thereof.
- If banks are incorporated as such, SS-2 is also applicable to them.



Secretarial Standard on General Meetings

- Convening a Meeting
- Frequency of Meetings
- Quorum
- Presence of Directors and Auditors
- Chairman
- Proxies
- Voting including e-voting
- Conduct of Poll
- Resolutions
- Adjournment of meetings
- Minutes



Convening a General Meeting

Who has the Authority:

➤ **The Board of Directors**

A General Meeting, whether annual or extra-ordinary general meeting shall be convened under the authority of the Board.

No Director or the Secretary or the Manager or any other Officer of the company has power to convene a General Meeting on his own.



Convening a General Meeting

The Board shall, on the requisition of members, call an EGM of the Company.

If Board fails, the requisitionists may themselves call and hold the meeting.

Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

Convening a General Meeting



- Notice for convening the meeting shall be given to every member of company and such other persons entitled to such notice.
- Notice shall be sent - by hand /ordinary post /speed post /registered post/ courier /facsimile /e-mail or by any other electronic means. (certain exceptions)
- A Member can, upon payment of such fee as determined by company at AGM, request for a particular mode of delivery of notice.

Convening a General Meeting

Q. Can a General Meeting be convened on a public holiday or on a Sunday?

Yes. General Meetings may be convened on a Public Holiday or on a Sunday, unless such day happens to be a National Holiday.

Q. Why to convene an extraordinary general meeting called by the requisitionists only on a working day?

Explanation to Rule 17(2) of Companies (Management and Administration) Rules, 2014 prescribes that an Extraordinary General Meeting called by the requisitionists shall be convened only on a working day. Para 1.2.4 of SS-2 is in line with the same.



Mode of Issuing Notice

- Meeting shall be called during business hours (9am-6pm).
- A Meeting call be requisitionists shall be convened only on a working day.

Notice



Q.What is the manner of service of Notice of General Meetings to Corporate Members?

Section 20(1) of the Act provides that a document may be served on a company at the registered office of the company. Therefore, Notice of general meetings may be served to a corporate member at its registered office.

Q. Is Notice of general meetings required to be given to preference shareholders?

Considering that Preference Shareholders are Members of the company, Notice of general meetings should also be given to them.

Notice

Q. Is it mandatory for companies to issue the notice of general meetings to all Directors and Auditors?

Yes, it is mandatory for all companies to issue notice of general meetings to all the Directors and the Auditors of the company. This is in line with Section 101(3) of the Act. In addition, it should also be given to Secretarial Auditor and Debenture Trustee, if any, as per Para 1.2.1 of SS-2.

Q. Para 1.2.1 of SS-2 requires Notice in writing of every Meeting of the company to be given, wherever applicable or so required, to other specified persons. Who are the other specified persons to whom Notice should be given?

In addition to giving Notice to persons specified in Para 1.2.1 of SS-2, Court may direct issuance of Notice to some other persons such as Court-appointed Chairman or observers or persons whose entitlement is under challenge.



- Contents of Notice:
 - day, date, time and full address of the venue of the Meeting including route map and prominent land mark for easy location
 - nature of the Meeting;
 - business to be transacted

Q. Is the requirement of providing the route map of venue relevant for closely held companies?

This is a good practice benefitting the shareholders. Providing a route map and prominent landmark would facilitate the Shareholders of companies to attend the Meeting. However if it is a very closed company(say of Husband and wife) the route map may not be given.



Q. Is a company required to ascertain from the Members every year whether they wish to receive documents by e-mail?

In terms of Rule 18 of the Companies (Management and Administration) Rules, 2014, a company is required to provide an opportunity at least once in a financial year, for registration of e-mail addresses, only to those members who have not got their email id recorded earlier with the company or with the depository.

However, as a measure of good corporate governance, Notice of the Annual General Meeting may contain a Note in this regard.

Notice contd....



Q. Whether the proof of sending of the Notice of General Meeting is required to be maintained? If so, for how long should it be preserved?

This should be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

Q. Is it mandatory for all the companies to have a website and host the Notice on that website?

Under SS-2, it is not mandatory for the companies to have a website. But if a company has a website, the Notice, results of voting etc. is required to be hosted on the website.

Sending of Notice



- Notice to be given at least 21 clear days in advance of the Meeting.
- May be given at a shorter period of time if consent in writing is given, by physical or electronic means, by not less than 95 per cent of the Members entitled to vote at such Meeting.

Q. Can the consent for shorter notice be handed over at the venue of the meeting?

Such consent may be given at any time prior to the Meeting. A person holding a specific power of attorney may sign the consent, if such consent is sought at the Meeting, as he is deemed to be a Member personally present.

Sending of Notice

Q. Is it mandatory to send notice to all members, if requisite consent from shareholders holding 95% of the total voting power is obtained for meeting at Shorter Notice?

The requirement of giving Notice of the Meeting to all the Members has still to be fulfilled and Notice has to be sent to all the Members including to those who did not join the consent for shorter Notice.

Q. Can an AGM Notice be approved by the Board by means of resolution by circulation.

There is no such restriction on approving the notice of AGM in a Board meeting by way of resolution by circulation.

Sending of Notice (Cont...)

Q. Can Notice of General Meeting be amended?

Any amendment to the Notice, including the addition of any item of business, can be made provided the Notice of amendment is given to all persons entitled to receive the notice of the meeting at least twenty one clear days before the meeting.

- **Q. Can items of business not specified in Notice be taken up at the Meeting?**

A Resolution shall be valid only if it is passed in respect of an item of business contained in the Notice convening the Meeting or it is specifically permitted under the Act..

Place of General Meeting



Q. Can AGM or EGM be held in any part of the world?

No. As per Section 96 of the Companies Act, 2013 and Para 1.2.4 of SS-1, AGM is required to be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

In terms of Explanation to Rule 18 of the Companies (Management and Administration) Rules, 2014 and Para 1.2.4 of SS-2, EGM is required to be held at any place within India.



Quorum

Q. Is presence of quorum required throughout the meeting?

Quorum shall be present not only at the time of commencement of the meeting but also while transacting each business.

A Member not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.

One person can be authorised representative of more than one body corporate. In such a case, he is treated as more than one member present in person for the purpose of Quorum.

Quorum

Q. ABC Ltd. (a public company) having 800 members convened a general meeting upon due notice, however only two members were personally present at the meeting, one of whom is authorised representative of 5 bodies corporate. Is this valid quorum for meeting?

Yes. If two or more corporate bodies who are members of a company are represented by a single individual, each of the bodies corporate will be treated as personally present through that individual representing it.

An authorised representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more Member is personally present.

Q. Are proxies to be excluded for determining the Quorum even in case of private companies?

In terms of MCA's Notification No. G.S.R. 464(E) dated 5th June, 2015, Sections 101 to 107 and Section 109 of the Act relating to meetings shall apply to a private limited company, unless otherwise specified in respective sections or the Articles of the said company prescribe otherwise.



Q. Whether directors are mandatorily required to attend all general meetings?

All Directors are expected to attend the General Meetings of the company since all are equally responsible for the actions of the company. In the event of their inability to attend, Chairman should explain their absence.

Q. If a Secretarial Auditor has signed more than two secretarial audits and those companies conducts AGM's at different places at same time. In such case how can it be possible for the Secretarial Auditors to attend those AGM's?

As per SS- 4.3 The auditors may attend the meeting through their authorised representatives. The authorised representative who attends the General Meeting of the Company shall also be qualified to be a secretarial auditor.

Presence of Directors and Auditors



Q. Which Secretarial Auditor is required to attend the AGM – the one for the last financial year whose Secretarial Audit Report has been annexed to the Board’s Report or the one appointed for the current financial year in which AGM is being held?

The Secretarial Auditor for the last financial year whose Secretarial Audit Report has been annexed to the Board’s Report is required to attend the AGM to give details about any qualifications/observations/comments or other remarks, if any, in his report and the explanations/comments given by the Board in their report and/or reply to the queries, if any, of the stakeholders on the compliance and governance aspects of the company.

However, it is advisable that the Secretarial Auditor appointed for the current financial year in which AGM is being held also attends the AGM.

Chairman



Q. Who will be the chairman of the adjourned meeting?

Since an adjourned Meeting is a continuation of the original Meeting, the Chairman of the original Meeting should be the Chairman of the adjourned Meeting unless he is unable or unwilling to act as such or is validly removed by the Meeting.

If the Chairman of the Board was not present to chair the original Meeting but is present at the adjourned Meeting, he should take the Chair.

Q. If the Chairman of the Board arrives after the Meeting has commenced, will the Chairman elected for such Meeting continue to Chair?

The Chairman elected for such Meeting may continue to Chair the rest of the Meeting also.

Q. Does the Chairman need to explain the objective and implications of the Resolutions before they are put to vote at the Meeting even in cases where Resolutions have already been put to vote by remote e-voting?

Yes. Members who have not cast their vote through remote e-voting and have come to attend the Meeting physically are entitled to cast their votes at the meeting. Therefore, Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting, as a good governance practice.

Q. In case of Special Business to be transacted at meeting, Is it mandatory for the Chairman to explain the objective and implications of the Resolutions before they are put to vote, even if they are accompanied by “Explanatory Note”?

Yes. Even though Resolutions coming within the description of “Special Business” pertaining to each item of special business are accompanied by an explanatory note, the Chairman shall, at the Meeting, explain the objective and implications of each Resolution in simple language, taking the assistance, if required, of any other Director or Officer of the Company to do so.

Company Secretary at AGM

Q. Is it necessary that the Company Secretary be seated with the Chairman at the AGM?

Rule 10 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 clearly provides that it is the duty of the Company Secretary to facilitate the convening of meetings and attend Board, Committee and General Meetings and maintain the minutes of these meetings.

Accordingly, Company Secretary should be seated with the Chairman for convenience of the Chairman, since he is the one who assists the Chairman in conducting the Meetings.



Proxy

Q. What to do if signature of the member on Proxy form is found different from the company/R&TA Records?

Proper details of name and folio number of the Member shall be entered on the Proxy form to facilitate identification.

If the signature of the Member on the Proxy form differs from that which is registered with the Company, the Proxy shall be rejected, unless such different signature has been duly attested.

Proxy

Q. Are the details of all proxies received by the company required to be entered in the Register of Proxies or only the valid proxies?

In terms of Para 6.9.1 of SS-2, all proxies received by the company shall be recorded in the Register. In the case of rejection of Proxies, the reasons thereof shall also be entered in the remarks column as a best secretarial practice.



E-voting



- Listed Companies & Companies having not less than 1000 shareholders to provide e-voting facility.
- Facility of Remote e-voting does not dispense with the requirement of holding a General Meeting;
- Notice to inform the Members about procedure of Remote e-voting and other necessary information.

E - Voting



Q. Whether the shareholders who have utilised the e-voting facility and are in attendance at the general meeting, be counted for quorum?

Yes. all the members personally present at the meeting shall constitute the quorum.

Q. Can a member who has exercised his votes through e-voting appoint a proxy for the general meeting?

There is no such prohibition for a member who has casted his vote through e-voting to appoint a proxy for the meeting. Such a Member may appoint a proxy, the proxy so appointed may attend the meeting but he shall not be entitled to vote.

E - Voting



Q. In case of companies providing e-voting facility, can a member cast his vote by show of hands at the General Meeting?

No

Q. Can a member, holding shares in physical form, cast his vote through e-voting?

Yes

Q. What is minimum or maximum time for opening or closing of the e-voting facility?

The facility for e-voting shall remain open for not less than 3 days and shall close at 5:00 pm on the date preceding the date of general meeting.

E - Voting

Q. Whether a member, who has voted by remote e-voting, has the right to attend the General Meeting?

Yes

Q. If yes, will his presence be counted for the purpose of Quorum?

Yes

Q. Can he participate in the discussion?

Yes

Q. Can he vote again at the General Meeting? Can he change his vote cast earlier based on the discussions at the meeting?

No

E - Voting



Q. Can Scrutiniser have access to the details, before the start of the General Meeting, relating to members, who have cast votes through e-voting before the General Meeting?

Yes

Q. Can a company appoint Scrutiniser on the following basis –Appointment of Mr. A as scrutinizer and failing him Mr. B as scrutinizer?

Yes, appointment of Scrutinizer can also be made in this manner.

E - Voting



Q. What is the need for proposing and seconding any Resolution by a Member at a Meeting?

Any Resolution before its consideration must be proposed by a member and seconded by any member.

The requirement of proposing and seconding of a Resolution at a Meeting is very much relevant in those companies where voting through remote e-voting has not taken place.

E - Voting



Q. In case resolutions are put to vote by remote e-voting and requisite majority has approved; but quorum is not present at the General Meeting, what would be the implications?

Whether the Resolution has been approved by the requisite majority through e-voting can be ascertained only after the Meeting. In case, quorum is not present at the Meeting, the Meeting shall stand adjourned as per the applicable provisions, for want of Quorum. The fate of the Resolution would be decided at such adjourned Meeting.

Q. Is the requirement to publish advertisement in newspapers applicable in all cases or only in those cases where e-voting or postal ballot is applicable?

It applies to only those companies to which e-voting or postal ballot applies.

Q. For how long should the advertisement on remote e-voting remain on the website, if any, of the company and that of the Agency?

The Notice and the advertisement on remote e-voting should remain on the website of the company, in case of companies having a website and of the Agency, till the date of General Meeting.



Content of Notice for e-voting

In addition to all other information

- Notice shall also contain contact details of the official responsible to address the grievances connected with voting by electronic means.

Postal ballot



Q. For how long the notice of postal ballot shall be placed on website of a company, if any?

As per SS- 16.4.2, notice of meeting of postal ballot shall be placed on website of a company till the last date of receipt of the postal ballot forms from the members.



Withdrawal of Resolutions

Q. Can a Resolution be modified, before it is put to vote at the meeting, with the permission of the Chairman or the members?

No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman.

Modifications to Resolutions



Q. In case a Resolution is put to vote through remote e-voting, but Members propose modification to such Resolution at the AGM, can the Resolution be modified?

As per Second Explanation to Para 12 of SS-2, no modification shall be made to any Resolution which has already been put to vote by remote e-voting.



Passing of Resolution by Postal Ballot

Q. Para 16.1 of SS-2 provides that ordinary business cannot be transacted through postal ballot. Is the facility of e-voting required to be provided for transaction of ordinary business?

As defined in SS-2, “Voting by postal ballot” means voting by ballot, by post or by electronic means. So far as ordinary business is concerned, Postal ballot is not permitted. However facility for e-voting, which is a substitute for voting at the General Meeting, is required to be provided for all business including ordinary business, as required under Rule 20 of the Companies (Management and Administration) Rules, 2014.



Distribution of Gifts

No gifts, gift coupons, or cash in lieu of gifts to be distributed to Members at or in connection with the Meeting.

Q. Whether offering snacks, beverages at the meeting venue amount to gifts?

Offering snacks, beverages, etc at the meeting venue as a matter of courtesy would not be deemed to be gifts.

Q. Whether sweet packets would be considered as gift?

Q. Whether discount coupons would be gift?



Reading of Reports

Qualifications, observations or comments or other remarks on the financial transactions or matters having any adverse effect on the functioning of the company, if any, mentioned in

- the Secretarial Audit Report issued by the Company Secretary in Practice;
- the Auditor's Report

to be read at the AGM and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.

Adjournment of meetings



- If a Meeting is adjourned for a period of less than 30 days, the company need to give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement.
- Announcement should also be placed on the website, if any, of the Company.



Adjournment of meetings

Q. Whether fresh notice is required for a adjourned meeting?

As per standard 15.2 If a Meeting is adjourned sine- die or for a period of thirty days or more, a Notice of the adjourned Meeting has to be served in accordance with the provisions contained in the standard relating to Notice.

Minutes



- Company may maintain its Minutes in physical or in electronic form with Timestamp.
- In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.
- Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume;
- There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves

Minutes Contd..



- The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.
- Where there is no Company Secretary, it shall be entered by any other person authorised by the Board or the Chairman.
- Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.
- The Chairman to ensure that the proceedings of the Meeting are correctly recorded.

Minutes contd..

Q Do we need to minute explanations provided by chairman in AGM?

As per SS- 17.2.2.1 a summary of the opening remarks of the chairman and the summary of clarification provided on various agenda items are to be entered in the minutes Book.

This may include the explanation provided by chairman in AGM on various agenda items.

Q. Can AGM minutes be recorded in local language?

There is no prohibition in recoding the minutes in local language. Though as a good governance measure, since the AGM minutes are subject to inspection by the shareholders it is advisable that the true certified translated copies of minutes in English may also be maintained.

Q. How are the pages of the Minutes Book required to be numbered – meeting wise or year wise?

The pages of the Minutes Book should be consecutively numbered irrespective of break in the Minutes Book. This should also be followed irrespective of the number or year of Meeting.



Q A brief report of the resolution passed through postal ballot has to be entered in the minutes book and such report has to be signed by Chairman. What if chairman is not available, then who shall sign the such report?

As per standard 17.2.2.2 In the event of death or inability of the Chairman, such report has to be signed by any Director duly authorised by the Board for the purpose, within thirty days from the date of passing of Resolution by postal ballot.

Q If meeting is adjourned for more than 30 days within how many days minutes shall be entered in the minute book?

As per SS-17.4.1, in case a meeting is adjourned the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meeting.

Destruction of Records



Q. Why does Para 18.2 of SS-2 require approval of the Board for destruction of Notices, scrutiniser's report, and related papers etc.? Further, will Board's approval for such destruction also be required for the financial year 2015-16?

Since these are very important records, prior approval of the Board is necessary for their destruction. Yes. Any such Record destroyed after 1st July 2015 will require the Board's approval, even if it pertains to the prior period.

Report (MGT-15) on Annual General Meeting by Listed Companies shall specify -



- The day, date, time and venue of the AGM Meeting;
- Confirmation with respect to appointment of Chairman of the Meeting;
- Number of Members attending the Meeting;
- Confirmation of Quorum;

Report on Annual General Meeting by Listed Companies to specify



- Confirmation with respect to compliance of the Act and Standards with respect to calling, convening and conducting the Meeting;
- Business transacted at the Meeting and result thereof with a brief summary of the discussions;
- Particulars with respect to any adjournment, postponement of Meeting, change in venue; and
- Any other points relevant for inclusion in the report.

Report on AGM

- Report on AGM needs to be signed and dated by:
 - the Chairman;
 - In case of his inability to sign, any two directors, one of whom shall be MD, and Company Secretary.

Recognition to CS under the Standards



- CS to be seated with the Chairman.
- CS shall assist the Chairman in conducting the meeting.
- The Scrutiniser may be a PCS at remote e-voting, at the meeting and voting through postal ballot.
- Scrutiniser's Register, Report and other papers shall be kept in the custody of the CS.
- The qualifications, observations, comments or other remarks in the Secretarial Audit Report issued by the PCS, shall be read at the AGM and attention of Members present shall be drawn to the explanations / comments given in the Board's Report.

Recognition to CS under the Standards



- Minutes shall record the names of directors and the CS.
- The Company Secretary shall record the proceedings of the Meetings.
- The PCS and the Secretarial Auditor can inspect the Minutes.
- Extracts of the Minutes or Resolution can be certified by Chairman/director/CS.
- Minutes Book shall be kept in the custody of the CS.



THANK YOU