



Article

Analysis of Provisions Relating to Minutes in Secretarial Standard on Board Meetings

➤ The company secretary, in his role as minute writer, needs to be aware of the onerous responsibility cast upon him, in as much as, every decision that is taken, including how and why it was taken will be cast in stone by his minuting. It is imperative for the company secretary to thus keep in mind the rule of interpretation while drafting them.

of the Act, the Ministry of Corporate Affairs (MCA) vide letter no.1/3/2014-CL-I dated April 10, 2015 has accorded its approval under Section 118(10) of the Companies Act, 2013 to the two Secretarial Standards (SS) namely - SS-1 on Meetings of the Board of Directors and SS-2 on General Meetings. According to Section 118(10) of the Act, every company shall observe Secretarial Standards with respect to general and board meetings formulated by the ICSI constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

It would be apt to ruminate over the genesis of secretarial standards – to bring about uniformity and cogency in the diverse secretarial practices, usher in a modicum of clarity on matters where the law is either silent or ambivalent and promote professionalism. One such area, where divergent practices were followed was in the context of drafting and maintenance of minutes of meetings. The SS1 and SS2 of the ICSI as approved by the MCA supra have waxed eloquent about minutes. This article seeks to highlight and analyse

the aspects pertaining to minutes in the SS, particularly in SS-1.

MEANING OF SECRETARIAL STANDARDS

According to Explanation to Section 205(1) of the Companies Act, 2013, “Secretarial Standards” means secretarial standards issued by the ICSI and approved by the Central Government.

SIGNIFICANCE OF MINUTES OF MEETINGS

The drafting and maintenance of minutes of meetings has traditionally and for long been a core function of the Company Secretary. Being a part of the board discussions and deliberations, a witness to the cogitations that go on inside the hallowed portals of the board room and recording them for posterity, sans any emotion, dutifully and meticulously was and is seen as a major calling for the profession. Justifiably so, for, the company secretary does not merely write minutes, he writes history – the history of the company, the history of the corporate sector and, in a vicarious manner, of the economy and the country. The minutes are the summary of the distilled wisdom of the board of directors, their views, thoughts and aspirations that provide strategic guidance and a road map for ensconcing it on the growth trajectory. No doubt, it is the duty of the Company Secretary to comply with the Secretarial Standards.

MEANING OF MINUTES

Palmer’s Company Law defines minutes as the written record of the business transacted and the decisions made at a meeting. In a myopic sense minutes are understood as a record of resolutions





and matters ancillary thereto. SS1 has defined minutes as “a formal written record, in physical or electronic form, of the proceedings of a Meeting.”

Standard 7 of SS-1 deals with minutes. It opens with the lines, “every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.(Emphasis supplied)”. The primary purpose of maintaining minutes is succinctly and aptly captured in the last limb of the standard. Minutes are to be comprehended as the key and means to understanding the thinking and reflections of the participants (directors). It is the channel that enables a reader or user to understand the purpose, reason and background of any decision that is taken. It is the route to the root of the decision maker. The company secretary, in his role as minute writer, needs to be aware of the onerous responsibility cast upon him, in as much as, every decision that is taken, including how and why it was taken will be cast in stone by his minuting. It is imperative for the company secretary to thus keep in mind the rule of interpretation while drafting them.

CONTENTS OF MINUTES

Standard 7.2 of SS-1 deals with the contents of minutes – classifying them as general contents and specific contents. These are generic in nature and cover those aspects that are historically and by practice included in the minutes of meetings. It is interesting that the standard also requires that the minutes record the time of commencement and conclusion of the meeting. While every company secretary worth his salt religiously records the time of commencement of the meeting, the time of conclusion, will, for most be a new requirement.



INCLUSION OF SUMMARY OF DELIBERATIONS AND BACKGROUND OF ALL PROPOSALS

Standard 7.2.2.2 states that apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned. This standard seeks to add real value to the minutes rather than they be passed off as perfunctory records of meetings. While it says that resolutions or decisions must be recorded, it also stipulates that the minutes mention the brief background of all proposals and summarise the deliberations thereof. This would mean the following in the context of recording in the minutes:

A crisp and concise background of the proposal including its pros and cons, costs involved, ramifications on various other aspects (business, commercial, technical, financial, societal, political, environmental, as applicable) must be captured

- The deliberations and discussions to be summarized such that all material utterances by the directors or those with an interest to speak are appropriately captured
- Further, in case of major decisions (what constitutes major will need to be determined on a case to case basis), the rationale behind the decision must also be mentioned. The logic, reasoning or basis of arriving at the decision needs to be mentioned, in other words
- It will have to be a structured, logical way of presentation so that the present situation affords *inter alia*, the various alternatives and the cost benefit analysis.

RECORDING OF MINUTES

Standard 7.3 deals with recording of minutes and is in many ways the centre piece of the standard. It is reproduced below:

“7.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded. The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

7.3.2 Minutes shall be written in clear, concise and plain language.



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➤ Clarity is the hallmark and bulwark of good communication. Good communication can only happen when there is clarity of thought coupled with clarity of expression. In furtherance of the same truism, the standard also provides that the minutes need to be written in clear, concise and plain language.

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense. Minutes need not be an exact transcript of the proceedings at the Meeting. In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.

7.3.3 Any document, report or notes placed before the Board and referred to in the Minutes shall be identified by initialling of such document, report or notes by the Company Secretary or the Chairman.

Wherever any approval of the Board is taken on the basis of certain papers laid before the Board, proper identification shall be made by initialling of such papers by the Company Secretary or the Chairman and a reference thereto shall be made in the Minutes.

7.3.4 Where any earlier Resolution (s) or decision is superseded or modified, Minutes shall contain a reference to such earlier Resolution (s) or decision.

7.3.5 Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

Minutes of the Meetings of any Committee shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.”

ANALYSIS OF THE PROVISIONS

The operative part of the Standard is that the minutes must contain

a fair and correct summary of the meeting. The crux is in the three words, “fair”, “correct” and “summary”. **Fair** is defined as just and not favouring any one side. As an adjective and in common usage, the word fair conveys some idea of justice or equity impartial and free from suspicion of bias. **Correct** has been defined as accurate and without mistakes. **Summary** is defined as short, concise and reduced into a narrow compass or into a few words. Proceedings are the happenings or the train and chain of events that take place. In the background of the above, a fair and correct summary would mean:

- Just, balanced and not favouring one or other director and is impartial and bereft of any bias
- Accurate and *sans* any mistakes
- Concise and crisp adumbration

Standard 7.3.2 provides that the minutes need to be written in clear, concise and plain language. Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense. Minutes need not be an exact transcript of the proceedings at the Meeting.

Minutes should be accurate, clear and unambiguous, concise and record the narrations that are vital to understand the proceedings. It would be good also to avoid general comments and expressions of opinion. As per the Standard, it is also not necessary that the minutes be an exact verbatim reproduction of the views expressed the directors. In case a director insists on the same, the final decision in this regard will be required to be made by the chairman. It is settled law that the records of the meeting of the board need not necessarily be in the form of resolutions so long as the minutes show the substance of the decision arrived at. However, the SS1 does not make an explicit mention of the same.

Clarity is the hallmark and bulwark of good communication. Good communication can only happen when there is clarity of thought coupled with clarity of expression. In furtherance of the same truism, the standard also provides that the minutes need to be written in clear, concise and plain language. It might be a good idea for company secretaries to have a look at Fowler or Wren & Martin – for there are few better guides to good communication that is clear, concise and plain.

The task of drafting minutes that satisfy the twin tests of clarity and plainness and yet capturing substance within the pith of the legal





framework is by no means simple or easy. It calls for a great deal of deftness, dexterity and command over the English language.

The Standard also clarifies that the minutes must be written in third person and past tense and that resolutions must be in present tense. It is submitted that resolutions must be positive and preferably in present continuous tense.

ABSOLUTE DISCRETION BY CHAIRMAN IN RECORDING MINUTES

It has been provided that the company secretary shall record the proceedings of the meetings. This is in sync with the duties of the company secretary prescribed under section 205 of the Act read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. Where there is no company secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings. However, the Standard further lays the responsibility of ensuring that the proceedings are correctly recorded at the door step of the Chairman. The Chairman has thus been provided absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

Standard 7.3.4 states that where any earlier Resolution (s) or decision is superseded or modified, Minutes shall contain a reference to such earlier Resolution (s) or decision. As per Standard 7.3.5 Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book. This provides clarity to a grey area – whether minutes of the previous meeting need to be ‘confirmed’. It is interesting that the Standard uses the term ‘note’ rather than ‘confirm’. Although the need for confirmation was never there (the Act of 1956 also did not provide for it), as a practice it had crept into the litany of many company secretaries. The correct practice is that decisions once arrived at do not need any confirmation and the practice adopted of confirming minutes has no legal significance. This now stands clarified and the correct position has been taken and upheld by the Standard.

One of the purposes of reading the minutes of a previous meeting is to offer an opportunity to make corrections of mis-statements or errors, if any, that may have crept into the record. As per Standard 7.5.3 Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting in which such Minutes are sought to be altered. 7.6.3 further states that minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard. This is of course as it ought to be and in the best interests of corporate governance.

Standard 17.3 of SS2 dealing with general meetings is almost a

replica of the above standards, *mutatis mutandis*.

CONCLUSION

The formulation of secretarial standards and their statutory recognition in the Act is a big leap for the profession. It will help in standardising diverse practices. In the context of minutes, it has ushered in salutary provisions with clear cut focus on what and how the proceedings are to be captured and recorded. A few creases have been ironed out. A few remain. With the passage of time, many more will emerge, necessitating further revisions. Be that as it may, it is time for company secretaries to look up to the drafting of minutes as a specialised function – one that calls for a high level of expertise over the English language, deftness and dexterity. It is yet another opportunity provided by the secretarial standards to show case our skills as experts to provide legally, commercially and ‘business-wise’ minutes of deliberations. The company secretary, in his role as minute writer, will need to be aware of the onerous responsibility cast upon him, in as much as, every decision that is taken, including how and why it was taken will be cast in stone by his minuting. It is thus imperative for the company secretary to keep in mind the rule of interpretation while drafting the minutes of meetings.

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