



Subhasis Mitra*, FCS

Group Company Secretary
CESC Ltd., Kolkata

subhasis.mitra@rp-sg.in

Secretarial Standards - A New Requirement for Companies

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INTRODUCTION

The Companies Act, 2013 has made it compulsory now for every company to observe the two secretarial standards with respect to general meetings and board meetings. The Standards to be effective from 1 July, 2015 are said to have been mandated in India for the first time in the world, so it is indeed a significant development.

COMPANIES ACT, 2013

The Companies Act, 2013 brought in to replace the earlier Companies Act of 1956 has introduced many new concepts, fresh requirements and additional compliances. A new legislation always has grey areas. This is especially true when it replaces a statute in place for almost six decades. When the new Act first came in, there were many areas of concern. Some provisions were not clear. Implementing some provisions was considered not practicable. In certain instances, there were contradictions. As always, the transitional phase added to the confusion. Many notifications have since been issued by the Ministry of Corporate Affairs (MCA), Government of India. Certain provisions have been

*Member SSB of ICSI, 2015.





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➤ SS-1 seeks to ensure that a healthy and transparent procedure is followed for convening a board meeting by an authorised person, sufficient advance notice is given to the directors, the agenda contains adequate details of the proposals, board members are given proper opportunity to take an objective view on the matters to be discussed, necessary discussion follows at the meeting and recording of decisions is made objectively by drawing up proper minutes of the business transacted at the meetings.

amended or substituted, some deleted and a few clarified.

BROAD STRUCTURE

Under the new law, companies have to follow the Act, Rules framed under the Act and both accounting and secretarial standards. Accounting Standard related provisions were added to the 1956 Act through amendments made in 1999. In some modified version, these provisions have been reintroduced in the new Act.

SECRETARIAL STANDARDS

As noted above, for the first time in the history of corporate India, the new Act requires companies to observe two Secretarial Standards. These two Standards specifically mentioned in the new Act - one on general meetings of members of a company ('general meetings') and the other on meetings of the board of directors ('Board meetings') – have already been approved by the Central Government. The approval came in after, as required under the new law, the two Standards were specified (that is, drafted and submitted) by the Institute of Company Secretaries of India (ICSI). All companies, irrespective of their size, type or listing status, will have to observe these two Standards. There is no exception. Penalty provisions specified in Section 118 of the new Act will apply to the defaulting company and also to the officers concerned for defaults in observing these two Standards.

Apart from the above two Standards, since December 2001 ICSI has published eight other Secretarial Standards also. These other Standards do not, as of now, have the statutory recognition and are, therefore, recommendatory at this stage.

WHAT IS SECRETARIAL STANDARD

Simply said, Secretarial Standard is a set of some good practices and procedures. Adherence to a Standard brings in uniformity, transparency and objectivity. This becomes important in the context of the need to have good corporate governance in the wake of corporate failures and reports of irregular corporate practices surfacing in recent times. Adherence to the Standards also indicates that the company concerned is alive to the hygiene factor and takes care to have it embedded in the organizational practices and procedures.

WHY SECRETARIAL STANDARDS

The question is why, after so many years, the concept of Secretarial Standards had to be introduced by the lawmakers. Surely, this development indicates the changing perception about the company secretarial work. Such work was long perceived to be, at best, some compliance oriented administrative work. That mind set is changing and changing steadily. In the new law, there are many manifestations of recognition of this change. It defines both "company secretary" and "company secretary in practice". A company secretary is now one of only four specifically mentioned managerial personnel considered as Key Managerial Personnel of companies. All listed companies and unlisted companies with a paid up share capital of at least five crore rupees need to have a whole time company secretary. His functions have now been indicated in the law. Secretarial audit is now mandatory for bigger companies. Many of the Forms statutorily required to be filed by companies may continue to be certified by a company secretary in practice.

As a result of the above evolution in the recognition of company secretarial work, the profession of company secretaries has been gaining strength. It is now recognized that a company secretary not only records minutes of meetings. He does much more. In the ever growing complexities of modern businesses, he is no longer engaged in routine functions. ICSI's role in making this transformation happen has been significant.

The other development in recent times has been the increasing awareness of the investors. Both Indian and overseas investors favour investing in companies not only with right business prospects but also where the top management values transparency and recognizes the need to follow applicable laws, regulations and healthy practices. As an illustration, institutional shareholders have been found in recent times to have voted against resolutions proposed in company meetings which they perceive to be not fully transparent with adequate details or not fully tuned to serve the interests of minority shareholders. The company secretarial functions have assumed significance in this context as well.

Further, in view of the ever growing need these days to strengthen corporate governance as discussed above, there is obviously a



➤ Secretarial Standard SS-2 on general meetings is meant to ensure that members of a company receive the notice of a general meeting in time, it contains particulars required by a member to decide whether or not to support a resolution, he has proper opportunity to attend the meeting, vote with or without attending the meeting physically either in favour of or against the resolution, such votes are counted properly for declaration of the voting results, the meeting is conducted in a fair manner, proceedings at the meeting are recorded objectively in the minutes of the meeting and the minutes form a part of the permanent record of the company.

pressing urgency to ensure that proper systems and procedures are followed for protecting the interests of various other stakeholders of companies. The report on Corporate Governance, now a compulsory part of the annual reports of listed companies, is closely read and analyzed by business analysts, proxy advisory firms and other stakeholders. Queries are often raised on many parts of such reports. Governance related details are these days indeed as important a part as annual company financial results are.

In the above background, there is a clear need to bring in uniformity in secretarial matters just as the need was felt earlier to standardize the accounting treatments by having in place accounting standards on different topics. The introduction of the above two Secretarial Standards, to start with, has thus been timely and appropriate.

SECRETARIAL STANDARD ON BOARD MEETINGS (SS-1)

The Secretarial Standard on Board meetings adherence to which is mandatory now contains detailed practices and procedures mainly with regard to the following:

- who may convene the meeting
- time, place and mode of holding such meeting
- meeting notice & agenda
- frequency of meetings
- meetings of Board committees and independent directors
- quorum

- attendance at meetings
- directors' participation in a meeting through electronic mode
- chairman of board or committee meetings
- procedure for passing board resolutions at board meetings, or, by circulation
- minutes of board meetings and minute books

SS-1 seeks to ensure that a healthy and transparent procedure is followed for convening a board meeting by an authorised person, sufficient advance notice is given to the directors, the agenda contains adequate details of the proposals, board members are given proper opportunity to take an objective view on the matters to be discussed, necessary discussion follows at the meeting and recording of decisions is made objectively by drawing up proper minutes of the business transacted at the meetings.

SECRETARIAL STANDARD ON GENERAL MEETING (SS-2)

Adherence to the Secretarial Standard on General Meetings which is also mandatory now will ensure that within the overall legal framework laid down in the new 2013 Act, a uniform practice is followed by companies mainly with regard to the following:

- the meeting is duly authorized and convened,
- notice is given in time and sent in an authorized manner,
- agenda contains the requisite particulars,
- frequency of meetings,
- quorum,
- presence of directors and auditors,
- chairman of the meeting and his responsibilities,
- proxies,
- voting by a show of hands, postal ballot, poll and electronic voting,
- scrutineer's role and responsibilities,
- rescinding of, or, modification to resolutions,
- distribution of gifts,
- adjournment of meetings, and
- minutes.

Clearly, the above Standard SS-2 on general meetings is meant to ensure that members of a company receive the notice of a general meeting in time, it contains particulars required by a member to decide whether or not to support a





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resolution, he has proper opportunity to attend the meeting, vote with or without attending the meeting physically either in favour of or against the resolution, such votes are counted properly for declaration of the voting results, the meeting is conducted in a fair manner, proceedings at the meeting are recorded objectively in the minutes of the meeting and the minutes form a part of the permanent record of the company.

In view of the express provision in the Companies Act, 2013 requiring all companies to observe the above two Secretarial Standards, with effect from 1 July, 2015 contents thereof are as much part of the legal requirements as are the provisions contained in the Act itself.

IMPORTANCE OF THE TWO SECRETARIAL STANDARDS

Board meetings and general meetings are the two most significant events in any corporate structure. Board meetings are important because decisions taken therein ensure charting out the manner in which companies should carry on their operations in the best interests of all stakeholders. On the other hand, general meetings are held to take stock of the company's performance and take decisions on certain matters which only members are authorized under the law to take decisions on.

The above two types of meetings have supreme importance. Therefore, the new Act specifically has laid down the requirement for all companies to observe the two Secretarial Standards thereon. Adherence to these Standards is bound to lend greater credibility to the processes involved as the practices and procedures on important matters relating to the above meetings will now follow a standardized pattern.

EVOLUTION OF SECRETARIAL STANDARDS

Evolution of Secretarial Standards happened in an interesting way. Following introduction of the concept of Accounting Standards in the late nineties in the earlier Companies Act of 1956, ICSI started working on the concept of bringing in Secretarial Standards. A body, Secretarial Standards Board (SSB), was formed by ICSI's Central Council with SSB members selected from across the country on a rotational basis. The members represent practising company secretaries and those working in industry apart from representatives nominated by various regulatory bodies and industry associations. SSB recently had the unique distinction of holding its 100th meeting. In its existence of more than a decade now, SSB has published ten Secretarial Standards out of which, as pointed out above, contents of two have, from 1 July 2015, the same force as that of provisions of the new Act itself.

GUIDANCE NOTES

SSB also issues, from time to time, Guidance Notes. Since 2002, twelve such Notes have been issued. Some fresh Guidance Notes are being planned to be published by the SSB. These Notes deal with procedures, interpretations and practical aspects along with relevant case laws. They elaborate the contents of the relevant Secretarial Standard, if there is any on the same topic. These Notes help the members and other users to get a feel of best practices and procedures. Such Notes are recommendatory and not compulsory.

SECRETARIAL STANDARDS & GUIDANCE NOTES

SSB usually follows the practice of first formulating a Guidance Note on a particular topic. Depending on how important the topic is and also keeping in view the interest a Note generates, a decision is taken to upgrade a Guidance Note. When both Secretarial Standard and Guidance Note have been issued on the same topic, it is best to read the two in conjunction with each other.

SSB'S WORKING

How does SSB work? SSB is led by its Chairman nominated by the Central Council. It has an active secretariat. The secretariat circulates an initial draft on the chosen topic to the SSB members. Then follows threadbare and marathon discussions which often take the form of intense brainstorming sessions spanning over months. After protracted deliberations amongst its members, a Standard or a Note is approved and forwarded to the Council for its approval for publication. Depending upon the developments, these publications are revised from time to time. SSB has the advantage of having senior level ICSI members and other professionals as its members. So its publications have the stamp of their experience and expertise.

FUTURE OF SECRETARIAL STANDARDS

Business is getting more and more complex. Stakeholders' expectations are rising. Investors these days put a premium on companies following transparent practices and procedures. There will be a need in the days to come to have many more Secretarial Standards especially on topics like issue of new securities, deposits, registration of charges, managerial remuneration, winding up, fraud, corporate social responsibility and so on. The quality of Standards to be issued in future has to meet market expectations. Wherever relevant, latest developments in the corporate sector have to be suitably reflected in the Standards. It is, therefore, expected that SSB's hands would continue to remain full in future. 