SECRETARIAL STANDARD  
ON  
PASSING OF RESOLUTIONS BY CIRCULATION (SS-7)

The following is the text of the Secretarial Standard-7 (SS-7) issued by the Council of the Institute of Company Secretaries of India, on “Passing of Resolutions by Circulation”.

This being one of the Secretarial Standards with respect to Board Meetings, adherence by a company to this Secretarial Standard is mandatory, as per provisions of the Companies Act, 2013.

(In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material which has been set in normal type, and in the context of the ‘Preface to the Secretarial Standards’. Both the Standard portions and the background material have equal authority).

Introduction

This Standard lays down a set of principles for passing of resolutions by circulation.

A Company, being a legal entity, cannot act by itself but can do so only through its Board of Directors.

The Board is entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do, subject to the restrictions and limitations imposed by the Act, Memorandum and Articles of Association and the company in General Meeting.

Decisions relating to the policy and operations of the company are arrived at Meetings of the Board held periodically.

Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on the collective wisdom of the Board.

However, it may not always be practical to convene a Meeting of the Board to discuss matters, which do not warrant detailed discussions at the Meeting or, in respect of which urgent decisions are required. In such circumstances, passing of resolution by circulation can be resorted to.

Resolutions passed by circulation are deemed to be passed at the duly convened Meetings of the Board and have equal authority.
Scope
The principles enunciated in this Standard for passing of resolutions by circulation by the Board of Directors are also applicable to resolutions passed by circulation by Committees, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations.

Definitions
"Act" means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Articles" means the Articles of Association of a company, as originally framed or as altered from time to time, including, where they apply, the Regulations contained in the Tables in Schedule I to the Act.

"Chairperson" means the Chairperson of the Board, or the Chairperson appointed or elected for a Meeting.

"Committee" means a Committee of Directors constituted by the Board.

"Interested Director" means a Director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.¹

"Meeting" means a Meeting, duly convened and constituted, of the Board or any Committee thereof.

SECRETARIAL STANDARD
The Act requires certain business to be approved at Meetings of the Board only. However other business that does not require detailed discussion or require urgent decisions can be approved by means of resolutions by circulation.

1. Authority
1.1 Chairperson of the Board or the Managing Director should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.

¹ Definition under Section 2(49) of the Companies Act, 2013
If the resolution is proposed by any other Director, the approval of any of the aforesaid officers, if there is one, should be obtained before the draft resolution is circulated to all the Directors.

1.2 Where there is no Chairperson or Managing Director, any Director should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.

1.3 Where not less than one-third of the total number of Directors for the time being require the resolution under circulation to be decided at a Meeting, the Chairperson should put the resolution to be decided at a Meeting of the Board.

The Interested Director should not be excluded for the above purpose.

2. Procedure

2.1 A resolution proposed to be passed by circulation should be sent in draft, together with the necessary papers, individually to all the Directors at the same time.

The resolution together with all papers should be sent to all Directors including Interested Directors and Directors who are usually residing abroad.

2.2 Each business proposed to be passed by way of resolution by circulation should be explained by a note setting out the details of the proposal and the draft of the resolution proposed. The note should also indicate how to signify assent or dissent to the resolution proposed and the date by which a Director should signify his assent or dissent to the resolution or require a Meeting.

Each Resolution should be separately explained.

The decision of the Directors should be sought for each Resolution.

A maximum of seven days from the date of receipt of draft of the resolution may be given to the Directors to respond and last date should be computed accordingly.

2.3 The draft of the resolution to be passed and the necessary papers should be circulated by hand, or by post or by courier, or by facsimile, or by email or by any other electronic mode.

If the draft Resolution and the necessary documents are circulated by hand or by post or by courier, it should be sent to all the Directors at their addresses in India as registered with the company.
3. Approval

3.1 The resolution is passed when it is approved by a majority of directors entitled to vote other than Interested Directors on the resolution, unless not less than one-third of the total number of Directors for the time being require the resolution under circulation to be decided at a Meeting.

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the resolution should be passed only with the assent of such special majority or such affirmative vote.

“Interested Director” for the above purpose would not include a Director whose interest in the other body corporate is solely by virtue of his shareholding in the other body corporate and such shareholding together with the shareholding of other directors is upto 2% shareholding of that body corporate.

3.2 The resolution shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which responses from all the Directors have been received, whichever is earlier and shall be effective from that date, if no other effective date is specified in such Resolution.

Directors signify their assent or dissent by signing the resolution to be passed by circulation.

Directors should append the date on which they have signed the resolution. In case a Director does not append a date, the date of receipt by the company of the signed resolution should be taken as the date of signing.

In cases where the interest of a Director is yet to be communicated to the company, the concerned Director should disclose his interest before the last date specified and abstain from voting.

In case the Director doesn't respond on or before the last date specified for signifying assent or dissent, it should be presumed that the Director has abstained from voting.

If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the resolution shall be considered not passed.

Retrospective effect should be avoided unless permitted by law.
4. Recording
4.1 Resolutions passed by circulation should be noted at the next Meeting of the Board and the text thereof with dissent or abstention, if any, should be recorded in the minutes of such Meeting.

Minutes should also record the fact that the Interested Director did not vote on the resolution.

5. Validity
5.1 Passing of resolution by circulation should be considered valid as if it had been passed at a duly convened Meeting of the Board.

This does not dispense with the requirement for the Board to meet at the specified frequency.

Effective Date
This Standard is effective from _________________.

Annexure

Illustrative matters which should not be passed by circulation but should be passed only at a duly convened Meeting of the Board

General Business Items

- Noting Minutes of Meetings of Committees of the Board and Resolutions passed by Circulation.
- Action Taken Report (ATR) - Progress made in respect of the decisions taken at the earlier Meetings of the Board.
- Signing Register of contracts or arrangements in which directors are interested
- Periodical Disclosure of interest by a Director.
- Noting notice of disclosure of Directors’ and KMP’s shareholdings.
- Convening of General Meetings and Postal Ballot and approving notices thereof
- Report to the Board by the Secretary about compliance with the provisions of the Act and other applicable laws.
- Report of the Secretary/Compliance Officer regarding share transfer process and analysis of movement of bulk transfers, through the Stakeholder Relationship Committee.
- Approving Quarterly and half-yearly financial results, including segment results.
- Approving annual financial statements and the Board’s Report.
- Approving Annual operating plans and budgets.
- Appointment of Secretarial Auditors, Statutory Auditors, Internal Auditors and Cost Auditors

**Specific Items**
- Formulation of Policies and its review
- Borrowing money otherwise than by issue of debentures.
- Invitation or Acceptance or Renewal of public deposits and related matters and/or review or change in the terms and conditions thereof
- Investing the funds of the company.
- Making loans or giving guarantee or providing security in respect of loans.
- Making donations for the purpose of CSR activity.
- Making political contributions
- Calls on shareholders in respect of money unpaid on their shares.
- Forfeiture of shares.
- Appointment, Removal, Remuneration or Resignation of Directors and Key Managerial Personnel
- Noting Appointment, Removal or Resignation of senior management personnel one level below Key Managerial Personnel.
- Appointment of a person as a Managing Director / Manager in more than one company.
- Permitting a Key Managerial Personnel of the company to hold office of Director in another company
- Removal of Secretarial Auditors, Statutory Auditors, Internal Auditors and Cost Auditors
- Noting notice of disclosure of Directors’ interest in a particular transaction
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm’s length basis.
- Purchase and Sale of material investments, subsidiaries/assets or which are not in the normal course of business.
- Foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movements.
- Items arising out of separate Meeting of the Independent Directors.
- Any material default in financial obligations.
- Any issue which involves possible public or product liability claims.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Material liability – legal or contractual.
- Material non-compliance of regulatory / statutory provisions or listing requirements.
- Show cause notices, prosecutions and penalty notices of material nature.
- Any material effluent or pollution problems, industrial accidents, labour problems, signing of wage agreement, implementation of Voluntary Retirement Scheme, etc.
- Events which are significant or have material commercial / financial implications, such as:
  (a) strikes, lockouts, lay-off, closure of units/factory, etc.;
  (b) change in the general character or nature of business;
  (c) major expansion plans or execution of new projects;
  (d) disruption of operations due to natural calamity or Act of God;
  (e) commencement of commercial production / commercial operations;
  (f) litigation / dispute with a material impact;
  (g) revision in ratings assigned by credit rating agencies;
  (h) voluntary delisting of securities from the Stock Exchange(s);
  (i) default in the repayment of any deposits or redemption of any securities including debentures and in payment of interest, if any, due thereon;
(j) any action which will result in alteration in the terms regarding redemption / cancellation / retirement in whole or in part of any securities issued;

(k) information regarding opening, closing of status of ADR, GDR or any other class of securities issued abroad;

(l) cancellation of dividend / rights / bonus, etc.;

(m) formation of a subsidiary company and/or an existing subsidiary company ceasing to be so.

(n) purchase / sale / licensing of important intangibles owned by the company.

(o) performance review of the subsidiary companies.

**Corporate Actions**

- Buy Back of securities
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Taking over a business/company or acquiring controlling or substantial stake in another company.
- Approval of voluntary winding up, voluntary liquidation, declaration of solvency, liquidators and statement of affairs.