

# CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS

**Focus on  
Secretarial  
Standards**



**THE INSTITUTE OF  
Company Secretaries of India**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

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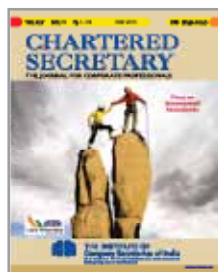


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- 01 >> Launch of Secretarial Standards – Address by Pavan Kumar Vijay (Chairman, SSB of ICSI)
- 02 >> Launch of Secretarial Standards – Release of the gazette notification by the Chief Guest and the Guest of Honour on the occasion – standing from Left: CS Vineet Chaudhary, CS Pavan Kumar Vijay, CS Atul Mehta, Chief Guest Justice Vibhu Bhakru ( Hon'ble Senior Judge, Delhi High Court), Guest of Honour Hon'ble Justice Dilip Raosaheb Deshmukh (Chairman, CLB), CS Mamta Binani and CS Sutanu Sinha.
- 3-4 >> Launch of Secretarial Standards – Address by Justice Dilip Raosaheb Deshmukh (Chairman, CLB) & Justice Vibhu Bhakru (Hon'ble Senior Judge, Delhi High Court).
- 05 >> National Seminar on Secretarial Audit – A Panacea for Good Governance held at Nagpur –Vijay Darda (Chairman of Editorial Board of Lokmat Media and Rajya Sabha Member) lighting the lamp. Others standing from Left: CS Ashok Dixit, CS Y C Rao, CS Atul Mehta, CS Ashish Garg, CS O P Bagdia, CS Mukesh Parakh and CS Tushar Pahade.
- 06 >> WIRC - Indore Chapter – Co-ordination Committee Meeting of CA, CS and CMA at Indore – Standing from Left: Dr. S K Dixit, CS Sutanu Sinha, G Ranganathan, V Sagar, CS Ashish Garg , CS Atul Mehta (President, ICSI), CA Manoj Fadnis (President, ICAI), Dr. A S Durgaprasad (President, ICoAI), CMA Dr. S C Mohanty, CA Atul Kumar Gupta and S C Gupta.
- 07 >> 100th Meeting of SSB of ICSI – Group Photo of Chairman and Members of SSB 2015 with President, Vice President and past Chairmen and Members of the SSB.



08 >> QRB Symposium on Quality of Audit and Attestation Services rendered by professionals – CS Atul Mehta presenting a bouquet to S L Bunker (Member, CCI).

09 >> Address by U C Nahta (Member, CCI and Chairman, QRB of ICSI)..

11 >> EIRC - National Seminar on Secretarial Audit - From Left: CS Rupanjana De, CS S K Agarwala, CS Amit Sen, CS S Radhakrishnan (Past President, BCCI), CS Mamta Binani and CS Sunita Mohanty releasing 'Guidance Note on Secretarial Audit'.

13 >> WIRC – Members' Meet – Sitting from Left: CS P S Shastri, CS Nagendra D Rao, CS Atul Mehta, CS Sutanu Sinha and CS Ramasubramaniam C.

10 >> Release of Guidance Manual on Quality of Audit and Attestation Services – Standing from Left: U C Nahta, CS Atul Mehta, S L Bunker and CS Sutanu Sinha.

12 >> EIRC –full Day Seminar on Innovate to Foster Growth- CS Atul H Mehta addressing. Others sitting on the dais from Left: CS Sutanu Sinha, CS Sunita Mohanty, C M Bachhawat (Addl. Chief Secretary, Dept. of Food Processing Industries & Horticulture, Govt. of WB), CS Mamta Binani and CS Rupanjana De.

14 >> WIRC - Vadodara Chapter – Seminar on Securities laws – New Dimension – On the dais from Left: CS Nishant Javlekar, CS Mahavir Lunawat, Ranjan Bhatt ( Member of Parliament, Vadodara), CS Swati Bhatt and CS Prakash Pandya.



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- 15 >> Twenty-fifth World Congress on Leadership for Business Excellence & innovation held at Dubai (UAE) – CS Atul Mehta addressing.
- 16 >> Twenty-fifth World Congress on Leadership for Business Excellence & innovation held at Dubai (UAE) –Prof. Colin Coulson Thomas (Chairman, Audit and Risk Committee, United Learning , UK ) addressing. Others sitting from Left: CS Atul Mehta and Dr. Ashraf Gamal El Din (CEO, Hawkamah, The Institute of Corporate Governance, Dubai).
- 18 >> Meeting of ICSI delegation with Capital Markets Board of Turkey (CMB)– Standing from Left: Tevfik Kinik (Executive Vice Chairman, CMB), Aysegul Eksit (Vice Chairman, CMB), CS Atul Mehta (President, ICSI), Vineet Chaudhary (Central Council Member, ICSI). Sitting: Vahedettin Ertaş (Chairman, CMB).
- 20 >> SIRC – Bangalore Chapter – ICSI President’s Meet with Members – CS Atul Mehta addressing.

- 17 >> Seminar on Board Evaluation – Purpose & Process - From Left: CS Manish Aggarwal, CS Satwinder Singh, Prashant Saran (WTM, SEBI), M. Damodaran (Former Chairman, SEBI), CS Alka Kapoor, CS NPS Chawla, CS Vineet Chaudhary and S Pradeep Debnath.
- 19 >> Meeting of ICSI President with Deputy Secretary General, Istanbul Chamber of Commerce – Standing from Left: Tezer Palacioglu (Deputy Secretary General, Istanbul Chamber of Commerce) and CS Atul Mehta (President, ICSI).
- 21 >> WIRC - Indore Chapter - Head to head discussion with President of all three Professional Bodies and a Talk on GST held at Indore.



## Articles

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### Secretarial Standards – Vision

P-13

#### Pavan Kumar Vijay

The adoption of the Secretarial Standards by the corporate sector will have a substantial impact on the quality of secretarial practices being followed by companies, making them comparable with the best practices in the world. Secretarial Standards not only help in the implementation of law by bringing in clarity wherever needed but also advocate good governance practices in certain areas where definite law is not feasible or where divergent practices are followed.

### Introduction of Secretarial Standards in India

P-21

#### S C Vasudeva & S H Rajadhyaksha

The concept of Secretarial Standards was conceived by the Council of the Institute of Company Secretaries (ICSI) somewhere in the year 2000, with intentions to integrate, consolidate, harmonise and standardize the prevalent diverse secretarial practices. A major initiative in this regard was thereafter taken by the ICSI in setting up a Secretarial Standards Board (SSB) comprising of senior members of the profession. SSB decided to formulate and prepare Preface to Secretarial Standards and the first Secretarial Standard on Meetings of the Board of Directors (SS-1). These two documents were finalized in 2001 and released at the inaugural session of 29th National Convention. Thereafter Secretarial Standard on General Meetings was formulated by SSB which was released by Sh. Arun Jaitley, the then Union Minister of Law, Justice and Company Affairs on May 1, 2002. It is a matter of great pride for the SSB and the ICSI that the Companies Act, 2013 has recognized the importance of two Standards i.e. Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2). These Standards are required to be complied by the Company Secretaries in accordance with the provisions of section 118(10) of the Companies Act, 2013 while issuing the Secretarial Audit Report required to be issued under section 204 of the Companies Act, 2013.

### The Value Creation by and Making of Secretarial Standards

P-24

#### Alka Kapoor

A democratic and transparent consultative process paves the way for effective implementation of legal mandate. Secretarial Standards will bring a huge change in the corporate practices which will certainly become benchmark for counterparts to follow. Consequently, the position of Company Secretaries will enhance.

### Secretarial Standards: Adding Value to Law

P-30

#### Ahalada Rao V & VSSR Murthy Eranki

Today, companies are not to be seen as an isolated entity, but as a part of Interconnected Chain of Various stakeholders. They have crossed the borders and have presence in many countries. In such scenario, there is definitely a need of universally acceptable governance standard to be followed by each organization or firm. The Secretarial Standards are an attempt in this regard.

### Secretarial Standards – A Plethora of Opportunities For Company Secretaries

P-39

#### G. P. Madaan & Sanjay Grover

The Secretarial Standards seek to harmonise, incorporate and standardize diverse secretarial practices followed by companies throughout the country, which when uniformly and consistently applied, would result in the establishment of sound Corporate Governance principles.

### Twin Standards – An Analysis

P-44

#### DR. K. S. Ravichandran

The scope and applicability of SS-1 and SS-2 framed by the ICSI and approved by the Government recently are sought to be explained in the form of a dialogue between two persons.

### Secretarial Standards : A new Era

P-49

#### Subhash Setia & Raju Paul

When the India Inc. was facing multitude of Corporate Governance practices whereby two activities particularly Board and shareholders decision(s) are crucial, the introduction of SSs pertaining to these areas is timely, apt and need of the hour. Moreover, when India is preparing towards ease in doing business in the country and initiative of



## at a Glance

'Make in India' along with to attract foreign capital for building country's infrastructure, Secretarial Standards of course would support all these endeavors. Secretarial Standards might put in rest long drawn litigation around Board and shareholders decision(s). However, having said that, the Secretarial Standards has to navigate the judiciary test and may be debated in the years to come before having its wider acceptability. It is yet to be seen whether non-adherence of Secretarial Standards would make the decision of Board and Shareholders as null and void thereby making that decision bad in law.

**Secretarial Standards -  
A New Requirement for Companies**

» P-53

### **Subhasis Mitra**

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 Secretarial Standards 1 and 2, to start with, has thus been timely and appropriate.

**Secretarial Standards –  
Professional Responsibility**

» P-57

### **Dr V. R. Narasimhan**

The adoption of secretarial standards by the corporate will have substantial impact on the quality of secretarial practices being followed by the companies, making them comparable with the best practices in the world.

**A Broad Overview of Secretarial  
Standards for Company  
Board Meetings**

» P-61

### **Delep Goswami & Anirrud Goswami**

Secretarial Standards will facilitate adoption of standard yardstick for meetings of the Board of Directors and the committees of the Board and this will help in compliance management of the provisions of the Companies Act, 2013 and will also ensure good corporate governance systems. This article covers some of the important aspects of SS-1 and also highlights the powers of the Board and the relevant provisions of the Act with regard to holding of Board meetings. Additionally, it also highlights the role of PCS in reporting whether the secretarial standards are being adopted by the company concerned.

**Secretarial Standard on  
General Meetings would  
enhance investors' confidence and  
strengthen their protection**

» P-66

### **Dr. S Chandrasekaran**

The standard on General Meetings do address several issues, which are otherwise not available in the Act. SS-2 provides guidance and solution for proper compliance as well as to ensure good services to the shareholders to protect their legitimate rights.

**Board Minutes: Statutory & Secretarial  
Standard's Provisions**

» P-70

### **Dr. Sanjiv Agarwal**

The practices postulated by ICSI in SS-1 are bound to have far reaching consequences in enhancing transparency, ensuring good governance and standardizing corporate practices across the corporate spectrum. It is imperative upon all corporates, directors, auditors, company secretaries and other stakeholders to propagate adoption and compliance of Secretarial Standards which will only add to quality of governance amongst Indian corporates.

**Board Procedure under Secretarial  
Standard for Board Meetings of the  
Board of Directors**

» P-75

### **Geetika Anand**

Companies in India have till now been following varied and diverse secretarial practices and hence, SS-1 and SS-2 approved by the Government and notified will guarantee the harmonization and standardization of such practices, more so, since the SSs shall be applicable to all the companies irrespective of their size, type and listing status.

**Secretarial Standard: A Panacea for  
Secretarial Audit & Auditors**

» P-79

### **Ranjeet Kumar Pandey**

The statutory recognition to Secretarial Standards will, to a larger extent, be successful in prescribing the parameters for good corporate practices and corporate conduct. The Secretarial Standard on Meetings of the Board of Directors extensively deals with "proper Board Process", and therefore these Standards will definitely bridge the gap between Act and actual secretarial practices.





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

➤ P-83

#### Dr. V. Balachandran & Sudheendhra Putty

For the first time the Companies Act, 2013 has given statutory recognition to the Secretarial Standards issued by the ICSI. Recently the Ministry of Corporate Affairs accorded its approval to SS-1 on Meetings of the Board of Directors and SS-2 on General Meetings formulated by the SSB of ICSI. This article analyses the provisions contained in the SS-1 on Meetings of the Board of Directors with regard to maintenance, contents and recording of minutes.

### Effect of Secretarial Standards on the scope & ambit of jurisdiction of Oppression and Mismanagement

➤ P-88

#### Vineet K Chaudhary & Saurabh Kalra

Notification of much needed Secretarial Standards by the ICSI has set the bar of management & administration at a higher level. The observance of Secretarial Standard -1 on Meetings of the Board of Directors and Secretarial Standard-2 on General Meetings has provided the much needed impetus on the management & administration of companies.

### Legal World

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▶ LW: 39:05:2015 Supreme Court declared section 66A of the Information Technology Act, 2000 to be unconstitutional.[SC] ▶ LW: 40:05:2015 What is contemplated under the "solutions programme" is a mere possibility of the employee seeking arbitration as opposed to an obligation to refer all disputes to arbitration. [SC] ▶ LW: 41:05:2015 The Tribunal has rightly passed an award directing the Corporation to regularise the services of the concerned workmen. [SC] ▶ LW: 42:05:2015 It is clear from clause 5 and 9 (e) (viii) of the private treaty agreement that the intention of the parties to the Agreement was to restrict limitation to the forums/courts of Mumbai only. Therefore, we are of the opinion that the Courts of Mumbai were granted exclusive jurisdiction as per the Agreement and we find no reason to create any exception to the intention of the parties.[SC] ▶ LW: 43:05:2015 The Technical Committee and the Tender

Evaluation Committee after evaluation of the bid of the Petitioner has concluded that the bid of the Petitioner is not suitable and acceptable for the award of the tender and as such is technically non-responsive and non-compliant. The evaluation by the expert committee appears to be bonafide and as such, the same cannot be faulted. [Del] ▶ LW: 44:05:2015 Addition of 1% of free on board value is thus, in the circumstance, clearly arbitrary and irrational and would be violative of Article 14 of the Constitution. [SC] ▶ LW: 45:05:2015 Any endeavour to drag the works contract involved within the framework of Entry No.2 would be repugnant to the basic principles of interpretation of statutes and subordinate legislations like the statutory Notification under Section 55A of the Act. [SC] ▶ LW: 46:05:2015 Financier of a motor vehicle is not liable for accident compensation. [SC]. ▶ LW: 47:05:2015 CCI passed cease and desist order on "Verifone" with penalty for abusing dominance.

### From the Government

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▶ The Companies (Auditor's Report) Order, 2015 ▶ The Companies (Acceptance of Deposits) Amendment Rules, 2015 ▶ Delegation of Powers to RD under Section 94(5) of the Companies Act, 2013 ▶ Appointment of Registrars of Companies as Adjudicating Officers ▶ Remuneration to managerial person under Schedule XIII of the Companies Act, 1956 - Clarification with regard to payment for period. ▶ Clarification under sub-section (7) of section 186 of the Companies Act, 2013 ▶ Amounts received by private companies from their member, directors or their relatives before 1st April, 2014 - Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014

### Other Highlights

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- ▶ Members Admitted / Restored
- ▶ Certificate of Practice Issued / Cancelled
- ▶ Licentiate ICSI Admitted
- ▶ Company Secretaries Benevolent Fund
- ▶ FAQs on Secretarial Standards
- ▶ Our Members

## Articles in Chartered Secretary

# Guidelines for Authors

1. Articles on subjects of interest to the profession of company secretaries are published in the Journal.
2. The article must be original contribution of the author.
3. The article must be an exclusive contribution for the Journal.
4. The article must not have been published elsewhere, and must not have been or must not be sent elsewhere for publication, in the same or substantially the same form.
5. The article should ordinarily have 2500 to 4000 words. A longer article may be considered if the subject so warrants.
6. The article must carry the name(s) of the author(s) on the title page only and nowhere else.
7. The articles go through blind review and are assessed on the parameters such as (a) relevance and usefulness of the article (from the point of view of company secretaries), (b) organization of the article (structuring, sequencing, construction, flow, etc.), (c) depth of the discussion, (d) persuasive strength of the article (idea/argument/articulation), (e) does the article say something new and is it thought provoking, and (f) adequacy of reference, source acknowledgement and bibliography, etc.
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9. The Institute/the Editor of the Journal has the sole discretion to accept/reject an article for publication in the Journal or to publish it with modification and editing, as it considers appropriate.
10. The article shall be accompanied by a summary in 150 words and mailed to ak.sil@icsi.edu
11. The article shall be accompanied by a 'Declaration-cum-Undertaking' from the author(s) as under:

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2. I affirm that:
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## Standards must be observed, but they are Only The Starting Points for further improvements.

– Shigeru Nakamura  
(World karate champion)



Dear Professional Colleagues,

The Companies Act, 2013 has mandated Secretarial Standards for Board and General Meetings. This would result in overall improvement in the governance system of India Inc., because of aspects such as improved board process, informed decision making, better shareholder democracy etc..

These standards indeed are only an initial point for quality assurance with respect to processes involved in Board and General Meeting. It is desired that the spirit of law has to be truly felt, implemented and the secretarial process should surpass the standards set. The institute is also in the process of issuing new standards in emerging areas such as Independent Directors, Corporate Social Responsibility, Board's Report and so on.

I express my sincere thanks and gratitude to the Ministry of Corporate Affairs for according its approval to the Secretarial Standards; SS:1 (Secretarial Standard on Meetings of the Board of Directors) and SS:2 (Secretarial Standard on General Meetings), which has been notified on 23rd April 2015 and will be effective from 1st July, 2015. I also thank the SSB team headed by Shri Pavan Kumar Vijay, Past President of the Institute.

The standards were formally launched on April 23, 2015 and are available on the website of the Institute. I was privileged to be the part of the historical event that has left pleasant nostalgia in our minds.

The Institute is in the process of issuing new standards in critical areas such as Independent Directors, Board's report, CSR etc. I appeal to all members to follow the standards in letter and spirit to reap the governance benefits desired by law.

It is very essential for both Practicing Members and Members in whole-time employment, to understand the finer points of Secretarial Standards, since the functions of company secretary as specified under Section 205 (1) of the Companies Act, 2013 *inter-alia* includes ensuring compliance with applicable Secretarial Standards and the Secretarial Auditor, under Form MR-3 is required to examine and report on the compliance with applicable secretarial standards.

### G20/OECD Corporate Governance Forum

OECD Principles of Corporate Governance are currently being revised with a view to supporting sound financial markets. On the invitation of OECD, a delegation of the ICSI represented the Institute at G20/OECD Corporate Governance Forum held on 10th April, 2015 at Istanbul (Turkey). The G20/OECD Forum discussed the content and the direction of the review of the OECD Principles with particular focus on presenting the revised Principles at the meeting of G20 Finance Ministers and Central Bank Governors in September 2015.

While the meeting discussed the global issues and challenges in corporate governance, it brought together the participants interested in corporate governance across the globe including jurisdictions like China, Pakistan, USA, Indonesia, Istanbul, India, etc. which provides networking opportunity with global institutional bodies.

Before the OECD meeting, ICSI delegation also met the representatives of Capital Market Board of Turkey and Corporate



# From the President

Governance Association of Turkey to discuss the ICSI initiatives in promoting good corporate governance and to explore the international level cooperation in areas of mutual interest. The follow up with these authorities is being made to enter into a Memorandum of Understanding.

## Dubai Global Convention

Institute's vision and mission echo our ambition to become global leader in promoting good corporate governance. The Institute actively collaborates with other institutions in advancing the culture of corporate governance. I am happy to inform that the Institute partnered with Institute of Directors [IOD] in organizing IOD's Dubai Global Convention (2015) on the theme "Leading 21st Century Organisation through 'ICE' (Innovation, Creativity & Excellence)" held on April 20-22, 2015 at Dubai.

On the invitation of IOD, I got the opportunity to address the participants at the Plenary Session on "Installing a Governance, Risk and Compliance Framework for Business Sustainability". CS Mamta Binani, Vice President, ICSI also attended the Dubai Global Convention. The convention was addressed by eminent professionals, distinguished academicians, leading industrialists and entrepreneurs, and Government Officials from Dubai (UAE). We also availed the opportunity to interact with Members and Students in Dubai (UAE) during the visit.

## Dubai Chapter

Friends, you are aware that the Institute has been making constant effort to formally open a Chapter at Dubai. Since 2013, we have made encouraging progress in this direction and recently the Dubai Government has in principle approved our application subject to certain legal formalities. I am sure that the first overseas Chapter Office of the Institute will be opened shortly. In this regard, we are pondering upon the idea of organising an international conference of Company Secretaries at the time of launch of Dubai Chapter office. I seek your views in this regard.

## Capital Markets Week

You are aware that the Institute has been actively engaged in promoting the interest of investors and the orderly development of the capital market in India. Our members have been authorised by SEBI, stock exchanges to issue various certificates and to undertake internal audit of capital market intermediaries.

I am pleased to inform you that, as part of its initiative towards investor education and good governance in capital market, the Institute has decided to observe ICSI Capital Markets Week on the theme Capital Markets – The Engine for Economic Growth, from May 25 to May 31, 2015 throughout the country. Mega events are being organised at Kolkata, Delhi, Chennai, Mumbai, Guwahati, Jodhpur, Madurai and Ahmedabad. Topics to be deliberated during ICSI Capital Markets Week include Microfinance - Growth Engine for Tiny Industry, Empowering India's MSME Sector, Indian Debt Capital Markets: Small Investor Perspectives, Investor Protection

and Rebuilding Investor Confidence, Convergence of Company Law and Securities Laws and Role of Company Secretary in Capital Markets.

In addition, a number of activities will also be undertaken during the week at Regional Councils and Chapters such as panel discussions, lectures, interactive meetings with capital market regulators/stock exchanges and investor awareness programmes by the Regional Councils and Chapters of ICSI. I invite all of you to attend and participate in these programmes and extend your wholehearted support and cooperation in making the Capital Markets Week a grand success.

## Programmes on Secretarial Audit

You are aware that the capacity building programmes on Secretarial Audit is being organised by various Regional Offices and Chapters. This month I attended full day seminar on Secretarial Audit organised by Nagpur, Raipur, Faridabad and Goa Chapters respectively. I congratulate the Managing Committee of these Chapters and request other Chapters to organise such programmes for capacity building of our members in undertaking Secretarial Audit efficiently.

## Investment Outlook - 2015

The Institute (ICSI) joined hands with Indian Merchants' Chamber as Co-Organiser for a full day seminar on 'Investment Outlook 2015' on April 28, 2015 at Mumbai. The seminar discussed the Investment Outlook for the year 2015. Each session had a policy maker as a key note speaker and renowned panellists representing different interest groups - buyers, sellers, financiers, venture capitalists, major users, advisors, economists, etc.

## First Symposium of Quality Review Board

I am happy to inform you that the first Symposium of Quality Review Board was organised on May 01, 2015 at New Delhi on Quality of Audit and attestation services rendered by professionals. The programme had around 200 participants. Mr. S L Bunker, Member, Competition Commission of India was the Chief Guest. Mr. U C Nahta, Chairman, Quality Review Board gave the inaugural address. The expert faculty deliberated on Quality of Audit/ Attestation Services through audit documentation, Importance of quality in professional services, Professional discipline and code of conduct. I appeal to all of you to not only maintain but surpass the quality of the professional services beyond the expectations of stakeholders.

With kind regards,

May 08, 2015.

Yours sincerely,

(CS ATUL H MEHTA)  
president@icsi.edu



### Pavan Kumar Vijay\*, FCS

Chairman, Secretarial Standards  
Board of ICSI  
Managing Director, Corporate  
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## Secretarial Standards – Vision

- The adoption of the Secretarial Standards by the corporate sector will have a substantial impact on the quality of secretarial practices being followed by companies, making them comparable with the best practices in the world. Secretarial Standards not only help in the implementation of law by bringing in clarity wherever needed but also advocate good governance practices in certain areas where definite law is not feasible or where divergent practices are followed.

### BACKGROUND

*“No organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate nor any document of reasonable length contain express provisions for all possible questions.”*

Abraham Lincoln, First Inaugural Address, Mar. 4, 1861

**L**aws framed by the legislature are founded on reason and is obvious to common sense. However, no legislation can be framed to cover all possible questions. Law cannot be specific in many areas which gives scope to varied interpretations. Some such approaches of interpretations are:

1. Company vs Stakeholders' approach
2. Company vs Interested Board approach
3. Promoters vs Shareholders/Investors approach
4. Approach by third parties for common good

Mischief mongers use this flexibility to interpret the laws for their own benefit and not for common good as is the intention of the legislature.

Just to cite an example, there existed a partnership firm engaged in the business of producing import substitutes and export products with three partners. One partner was a technocrat holding 66% share in the capital and the other two partners were experts in law & accountancy holding the remaining 33%. The business was being run successfully on the goodwill of the technocrat promoter. Considering the advantages of joint stock companies, the firm was incorporated as a private limited company with these three partners as Directors. The two Directors forming majority in the Board but minority in shareholding, joined hands together with



\*Past President, The Institute of Company Secretaries of India.



➤ The formulation of Secretarial Standards by the SSB of ICSI and its statutory recognition is a unique and pioneering step towards standardization of diverse secretarial practices. No similar Standards are in existence anywhere in the world. It is therefore a proud achievement for our country; more for our Institute and all of us, who are the torch bearers of the governance profession.

malafide intentions and used the law for their own vested interest. The tools in their hands were manipulation of notice, attendance register and Minutes. However, while doing so, they ensured that none of the provisions of law were violated. By following practices such as conducting the meetings without proper notice (so that the 3rd Director remained absent for 3 consecutive Meetings), passing Resolutions in such Meetings without his knowledge etc., they ousted the third technocrat Director from the Directorship of the company and reduced his majority shareholding to minority shareholding. This obviously gave rise to disputes between both groups and now the matter is pending before the Court for years together. Meanwhile, the company suffered losses and more than the financial losses, the episode reflected very badly on the corporates and its culture since the Technocrat Director who was a victim started discouraging larger group from forming a company.

The above case is a classic example of far reaching effects which bad secretarial practices have on the corporate culture, industry and the country in turn. Majority of the cases pending before CLB today are these kinds of cases, which also eats out the valuable time of the judiciary. While these are few of the stated cases, there could be many such instances/cases which go unreported, which harm the development of healthy corporate culture. Further, majority of the companies in India are family-owned and promoter-driven companies, where disputes which arise due to oppression and mis-management, would disturb the social fabric of the country.

## SECRETARIAL STANDARDS – INTRODUCED FOR THE FIRST TIME IN ANY COUNTRY - UNIQUE AND PIONEERING EFFORT

The above scenario makes it clear that law is subject to wide and varied interpretations with certain grey areas which need clarity. There is thus a need to *integrate, harmonise and*

*standardised* diverse secretarial practices and aid implementation of law in true letter and spirit.

The Institute of Company Secretaries of India (ICSI) recognised this need and constituted the Secretarial Standards Board (SSB) in the year 2000 with the objective of formulating Secretarial Standards. Subsequently, the SSB came up with 10 Secretarial Standards on various subjects viz. Meetings, Minutes, Passing of Resolutions by Circulation, Dividend, Transmission of shares and debentures, Forfeiture of shares, Board's Report etc.

The Institute has been making consistent efforts to sensitize the law makers about the significance of Secretarial Standards, which would bring under its scope the grey areas of law. Our long cherished dream has come true and appreciating the significance of the Secretarial Standards, the Companies Act, 2013 under section 118 (10) mandated every company to observe Secretarial Standards with respect to General and Board Meetings formulated by ICSI and approved by the Central Government. Further, section 205 (1) of the Companies Act, 2013 lays down the functions of the Company Secretary which *inter-alia* include ensuring that the company complies with the applicable Secretarial Standards. Similarly, Form No. MR-3, pursuant to Section 204 (1) of the Companies Act, 2013 and Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, which is the format of the Secretarial Audit Report, requires the Secretarial Auditor to examine compliance by the company with the applicable clauses of the Secretarial Standards issued by the Institute of Company Secretaries of India and certify compliance or non-compliance thereof.

Accordingly, Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) formulated by ICSI were approved by MCA and notified by ICSI, which are implementable from 1<sup>st</sup> July 2015.

The formulation of Secretarial Standards by the SSB of ICSI and





its statutory recognition is a unique and pioneering step towards standardization of diverse secretarial practices. No similar Standards are in existence anywhere in the world. It is therefore a proud achievement for our country; more for our Institute and all of us, who are the torch bearers of the governance profession.

## ADVANTAGES OF SECRETARIAL STANDARDS

The adoption of the Secretarial Standards by the corporate sector will have a substantial impact on the quality of secretarial practices being followed by companies, making them comparable with the best practices in the world.

The adoption of Secretarial Standards would bring following advantages to the corporate sector:-

- Improvement in the quality of secretarial practices being followed by companies.
- Furthering the shareholders' democracy
- Better corporate disclosures
- Better interpretation of laws
- More transparency
- Enhancing Professionalism in corporates
- Reduction in Non-compliances
- Enhance Corporate Culture
- Better corporate governance
- Higher Confidence of JV Partners world-wide
- More recognition to the ICSI and its Members

## VISION OF SECRETARIAL STANDARDS

“To set up distinct corporate governance practices, which would be global benchmarks benefitting all stakeholders.”

Secretarial Standards not only aid in implementation of law by bringing in clarity wherever needed but also recommend good governance practices in certain areas where definite law is not feasible or where divergent practices are followed.

This focus of this article is more on the Vision of the Secretarial Standards i.e. what these Standards seek to achieve in the long run.

To be specific, Secretarial Standards, as a whole seek to achieve the following: (some of the provisions in the Secretarial Standards on Board and General Meetings in this direction are also listed hereunder)

### 1. Strengthen the Board Processes

Proper and robust Board processes are a pre-requisite for the true effectiveness of the Board whereby all the directors including in particular non-executive and independent directors

actively contribute in the deliberations within the Board, and are enabled to discharge their duties with due and reasonable care, skill and diligence. This can be achieved by calling the meeting by proper notice, dissemination of timely and adequate information on items of agenda to be deliberated and maintaining timely and proper records of the proceedings of the Board meetings. Secretarial Standards aim to strengthen these processes through the following provisions:

- To give sufficient time to the Directors to prepare and arrive at informed decisions in case of Board Meetings. Agenda & Notes on Agenda are required to be sent at least 7 days prior to the Board Meetings.
- As a good practice, separate 7 days' Notice of a Meeting is required to be given even if Meetings are held on pre-determined dates or intervals.
- To discourage the practice of tabling Notes on Unpublished Price Sensitive Information at the Board Meeting thereby giving very less / no time to the Board to study them in detail, provision requiring the consent of a majority of the Directors (which shall include at least one Independent Director, if any) to send such notes at a shorter period of time has been introduced.
- To facilitate timely decision making in case of urgent matters, time-frame to be given to Directors for responding to the draft of the Resolutions proposed to be passed by circulation has been laid down.
- 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 by the Chairman or any Director present at the Meeting in the Minutes.
- For easy reference to the basis of important decisions taken earlier, 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 for specified periods have been introduced. To keep the Board informed and apprised on destruction of important records, taking the approval of the Board before destroying these papers 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.

## 2. Protect the interest of Individual Directors including Independent Directors

The Secretarial Standards aim to protect the interest of individual directors including independent directors by enabling them to make proper and adequate information in a transparent manner thereby reducing areas of dispute and managing the risks associated, especially in the light of the increased accountability of the Independent Directors. Some such provisions are:

- To avoid manipulation of Minutes and reduce related disputes, provision has been introduced for circulation of a copy of the signed Minutes certified by the Company Secretary to all Directors within fifteen days after these are signed.
- Besides to avoid possible litigations, a Director who ceases to be a Director after a Meeting of the Board has been given a right to receive copy of draft Minutes of that Meeting and also inspect the said Minutes. Similarly, a past Director is allowed to inspect Minutes of a Meeting held during the period of his Directorship.
- Provisions have been introduced to discourage the practice of bringing in last minute agenda in Board Meetings
- Provision for facilitating the Meetings of Independent Directors by company secretaries has also been introduced.

## 3. Prevent Oppression and Mismanagement

There have been several instances whereby the directors in control manipulated the Board processes leading to oppression of minority and mismanagement. Day in and day out cases are filed in CLB complaining oppression and mismanagement. The Secretarial Standards aim to meticulously address these grey areas so that such instances are minimized. SS-1 and SS-2 *inter-alia* introduce following provisions in this direction:

- 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
- 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
- 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.

## 4. Higher Investor confidence

The Secretarial Standards aim to boost investor confidence through robust Board processes. The JV partners, foreign investors, non-executive directors as well as independent directors will get reassured that no director attempts to achieve any undue gain or advantage to himself or to his associates.

- With an objective of preventing insider trading, Notes on Unpublished Price Sensitive Information are allowed to be placed at a shorter notice with the consent of a majority of directors, which shall include at least one independent director, if any.
- In order to avoid manipulation of the market for personal gains, withdrawal of resolutions which are likely to affect market price of the securities is prohibited. For example, Resolutions for issue of bonus shares or rights shares or for buy-back of securities may have an impact on the share price and the subsequent withdrawal of any such Resolution would adversely affect those who may have taken any investment decisions based on such information.

## 5. Benefits to Auditors, Trustees and Others

Secretarial Standards strengthen the position of auditors, debenture trustees, scrutinisers etc. for the proper discharge of their duties *inter-alia* through following provisions:

- To enable the Auditors to discharge their duties fairly and to the best of their knowledge, they have been conferred the right to inspect important documents of the company, which they may consider necessary for the performance of their duties.
- To facilitate discharge of their duties effectively, Auditors are required to attend General Meetings and therefore Notice of General Meetings is required to be served to







- secretarial auditor / debenture trustees.
- Instances where postal ballot forms are to be rejected are also laid down, which would be of help to scrutinizers
- If the position of these professionals/experts are strengthened thereby enabling effective discharge of the duties entrusted to them by the Regulators and other stakeholders, the beneficiaries are none other than Regulators and Stakeholders at large.

## 6. Enhancement of the position of the Company Secretary (CS)

Secretarial Standards have greatly enhanced the role of CS to ensure that they play the role of governance professionals effectively. Certain provisions introduced in SS-1 and SS-2 in this regard are as follows.

- Only CS alongwith the Directors are in attendance at the Board Meetings. All others are invitees.
- CS attending the General Meetings of the company is required to be seated with the Chairman.
- CS has been made the custodian of all the important documents related to Meetings viz. Minutes Books, Attendance Register etc.
- PCS appointed by the company or the Secretarial Auditor has the right to inspect such documents of the company as he may consider necessary for the performance of his duties.
- Where there is no Company Secretary, any Director or Chairman, as the case may be, will be responsible to carry out all such functions, thereby bringing the position of CS at par with the Board.

## 7. Common goal of better Corporate Governance

The thrust of Secretarial Standards is to infuse better corporate governance in Board functioning. This is sought to be achieved through following provisions:

- The Company Secretary on the requisition of a director is required to consult the Chairman for convening a Board meeting.
- Interested Chairman is required to entrust the Chair to a Non-interested Director during discussion on items in which he is interested. Moreover, he shall not be present at the Meeting during discussion, thus encouraging unbiased and fair decision making at the Meeting.
- The director attending through video conferencing is not to be allowed to participate in meetings as far as restrictive items are concerned. However, the Chairman has been given the discretion to allow such participation over and above the physically present Quorum in case he needs to take views of any such Director on restrictive items. This would encourage informed decision making.

- 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 especially so when it is remote venue. In case of companies having a website, the route map is also required to be hosted on the website.
- 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 objective and implications of the Resolutions before they are put to vote at the Meeting.
- Secretarial Auditor or his authorized representative is required to be present in the General Meetings. This would enable the members to seek answers from secretarial auditors, if required, on the compliance and governance aspects of the company.
- The practice of distribution of gifts to shareholders at the Meeting is prohibited.

## 8. e-initiatives

Besides all above, Secretarial Standards have also to keep pace with the new era of globalization and hence certain e-initiatives have been introduced for good governance. Some of these are as follows:

- In order to avoid manipulation of Minutes maintained in electronic form, the concept of maintaining Minutes in electronic form with Timestamp has been introduced. "Timestamp" means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added, removed, sent or received.
- Disclosure on the website of the company and newspapers of various information viz. Notice of Meeting, Results of voting etc. is required thereby bringing in transparency





➤ The SSB of ICSI seeks to bring out a Guidance Note on Structured Board Agenda and MIS incorporating Template Agenda and MIS for Board Meetings. This is an ambitious project of SSB considering the amount and difficulty level of exercise involved in the light of industry specific agenda requirements. However, the Guidance Note, once formulated, would be one of the best documents which would help in laying down effective board processes, benefit the Directors especially Independent Directors & KMP, save their valuable time and energy and facilitate effective deliberations & informed decision making.

and better governance.

It can thus be seen that Secretarial Standards create templates of the highest order for people to follow, which would go a long way in achieving our common goal of corporate governance and ethical corporate culture, while simultaneously facilitating professionals and benefitting the industry.

## WAY FORWARD

From the provisions of the Companies Act, 2013 as stated above, the intention of the legislature to insist observance of Secretarial Standards by the companies thus appears to be clear as it would require the companies to adopt uniform practices. Keeping this in view, the SSB of ICSI has commenced the process of reformulating the following existing Secretarial Standards as per the new law:

1. Secretarial Standard on Dividend
2. Secretarial Standard on Board's Report
3. Secretarial Standard on Register and Records
4. Secretarial Standard on Transmission and Transfer

To facilitate the corporate sector to comply with the Secretarial Standards, the SSB also formulates Guidance Notes. The Institute has so far issued Guidance Notes on:

1. Meetings of the Board of Directors
2. General Meetings

3. Passing of Resolution by Postal Ballot
4. Dividend
5. Buy Back of Securities
6. Board's Report
7. Preferential Issue of Shares
8. Corporate Governance Certificate
9. Listing of Corporate Debt
10. Related Party Transactions
11. Board Processes
12. Non-Financial Disclosures

In the light of the Companies Act, 2013 and SEBI Regulations, the SSB proposes to revise all existing Guidance Notes at the earliest. As a priority, SSB is at present working on the Guidance Notes on the SS-1 and SS-2 approved by MCA, so that this could be released at the earliest. Further, new Standards/Guidance Notes *inter-alia* including the following are proposed:

- a. Loans & Advances by a company
- b. Corporate Social Responsibility (under Companies Act, 2013)
- c. Independent Directors
- d. Key Managerial Personnel (KMP)
- e. Mergers, Acquisitions and Corporate Restructuring
- f. Prevention of Insider Trading
- g. Takeovers
- h. Deposits
- i. Anti-Frauds and Whistle Blower Mechanism
- j. Lien of Shares
- k. Registration, Modification and Satisfaction of Charges
- l. Board Evaluation
- m. Mediation & Conciliation
- n. Managerial Remuneration
- o. ESOP including Sweat Equity
- p. Companies Incorporated outside India





## GUIDANCE NOTE ON STRUCTURED BOARD AGENDA AND MIS - AMBITIOUS PROJECT

In the corporate scenario, where an individual can be a Director in many companies, he is in receipt of bulky agenda notes in different formats from each company. This makes it practically difficult for a Director to absorb the contents in the available time. If he fails to do so, it would be dangerous for him since the responsibility cast on Director especially the Independent Director is onerous and he is liable and accountable for all the decisions of the Board – the decisions which are taken on the basis of the information contained in these agenda notes. The Agenda Notes therefore is required to be prepared in such a manner as to facilitate understanding and absorption of information therein in the least possible time.

In this direction, the SSB of ICSI seeks to bring out a Guidance Note on Structured Board Agenda and MIS incorporating Template Agenda and MIS for Board Meetings. This is an ambitious project of SSB considering the amount and difficulty level of exercise involved in the light of industry specific agenda requirements. However, the Guidance Note, once formulated, would be one of the best documents which would help in laying down effective board processes, benefit the Directors especially Independent Directors & KMP, save their valuable time and energy and facilitate effective deliberations & informed decision making.

## INDIA SET TO LEAD IN GLOBAL FORA

India is the first country to issue Secretarial Standards and ICSI is the pioneer. One of the purposes of constituting SSB by ICSI was to set up international benchmarks in Secretarial Standards.

In this direction, the Institute seeks to bring out common laws for Board and General Meetings across all countries similar to the cyber laws, which are common worldwide. This would reduce non-compliance of international laws arising out of lack of knowledge, impracticability or nano punishment and also suppression of developing countries by developed countries. For this purpose, the concerned laws from all countries are being identified, which would then be consolidated to bring out best practices and common standards. This is then sought to be made as the base and countries would be requested to consider the same and amend their laws accordingly.

With this objective, ICSI has started its move and has submitted a proposal for issue of International Corporate Secretarial Standards to the Corporate Secretaries International Association (CSIA). CSIA Council members at its Meeting held in Sao Paulo, Brazil on October 10-11, 2014 agreed to the proposal and requested ICSI to circulate a draft of “Best Practices Guide on Board Meetings” for consideration of CSIA members. ICSI is working on the Draft based on our SS-1.

The above initiative would be a major step in the direction of bringing out a single set of high quality, understandable, enforceable and globally accepted secretarial standards based upon clearly articulated principles. From industry perspective, this would facilitate Cross Border Deals in the context of globalization, enhance Corporate Governance, transparency & disclosures and facilitate Seamless trade.

International seminars on the need and effectiveness of SS in line with globally accepted Accounting Standards is also being explored.

## VISION PLAN OF SECRETARIAL STANDARDS BOARD

Having completed a decade and a half, the significant changes in the company law mark the time to revisit and refresh the vision of the Board and tackle the complex issues faced by the corporate & Professionals in the face of multiple regulations.



The Vision of the SSB is to formulate a distinct set of practices, which will be acceptable globally as benchmarks.

Vision Plan of SSB inter-alia encompasses the following:

### 1. Constitution of SSB as a separate autonomous body

Considering the elevated status of the Secretarial Standards Board (SSB) and its vision to globalise the Secretarial Standards, a separate and autonomous body of Secretarial Standards Board in the form of a Trust/Society to be formed.

### 2. 360 degree robust standardized procedure for bringing out SS

Over the years, SSB has evolved its own procedure of bringing out SS. With the recognition granted to Secretarial Standards under the new Act and the task expected to be undertaken by SSB, a need is felt to lay down 360 degree robust standardized procedure for bringing out SS which shall *inter-alia* include seeking the comments of the Members/RC/Chapter of ICSI before it is put for the comments of Regulators & public at large, under various categories such as

- Drafting Errors or Improvements in law
- Areas not covered in law suggested to be covered in the Standard



# Article

Secretarial Standards – Vision

- Contradictions with the Act, Rules or Forms
- Contradictions with any other law
- Multiple or diverse Interpretations of any part of the law
- Conflict with Judicial Pronouncements
- Best Secretarial/ Industry Practices and
- Typical Situations/Scenarios to be addressed in the Standard, and stress tests of Standards are also proposed

Further, a committee of SSB has been formed to address the queries from stakeholders on SS-1 and SS-2, which SSB would endeavor to clarify through Guidance Notes/ FAQs.

Besides, SSB seeks to solicit suggestions/comments of public at large in respect of the practices followed by corporates with respect to the topics of our SS/GN and also any grey areas/issues identified by them in the Act, Rules and /or Forms with respect to the same, which in their opinion, needs to be addressed in the SS/GN so as to enable the SSB to address the same through its SS/ GN.

### 3. Use of Technology and Social Media

Technology and Social Media to be leveraged to the maximum by SSB for collecting and compiling of comments on Draft Standards from public.

### 4. Advocacy of Secretarial Standards(SS)

For acceptance of SS at global level, SS need to be promoted. The following may be done *inter-alia* for promotion of SS:

- Pursue with other Regulators like SEBI, Stock Exchanges, RBI to consider Secretarial Standards for implementation through their regulations/guidelines.
- Promotion/Creating awareness regarding SSB and its Standards With Media, Regulators, Chambers, quasi-judicial bodies (NCLT/CLB/SAT etc)
- Organizing Chain seminars to disseminate information to the members, corporates and other professionals, need and advantages of the SS at RC/Chapter level
- Webcasting on Standards to enable communication with the Members and others all over the country
- Introduction of SS in Syllabus for CS Exam
- Exam for Members of ICSI on Know your Secretarial Standards. Candidates passing would be entitled for PCH.
- An SS award may also be instituted and companies/CS may be awarded at separate function of SSB - Award to the Best Company which has adopted the Secretarial standard in true letter and spirit
- Newsletter on SS *inter-alia* including Information regarding activities of SSB and work-in-progress, List of Companies adopting SS, One of the Best Companies using SS and its expert views, Interview of Chairman/CS of the Company

which has adopted SS etc.

- Introduction of Audit of Secretarial Standards


The SSB will, in the light of all above, rededicate itself to play a strong role in developing company secretaries navigate the journey to be global corporate professionals.

## CONCLUSION

Secretarial Standards, which are a repository of knowledge, covers the finer aspects of law and are expected to have a cascading effect on all.

It is possible that in the beginning, the professionals or corporates may feel the compliance to these Secretarial Standards to be an additional responsibility and process but in due course of time when the significance and advantages of these Secretarial Standards would be experienced, they would themselves not only come forward to adopt the existing voluntary set of Secretarial Standards but also demand from the ICSI and Regulators for Secretarial Standards on new areas.

In the days to come, Secretarial Standards would definitely be internationally recognized as indispensable for enhancing the corporate culture and growth of the global economy.

Together, let's make Secretarial Standard a success mantra for Corporate India and create Good Governance. 

## Grievances against Field Offices of Northern Region of Ministry of Corporate Affairs - reg.

*[Issued by the Ministry of Corporate Affairs, Office of the Regional Director (NR) vide Letter No. RD/NR/PA/Misc/88, dated 01.04.2015]*

I am to say that the undersigned is the Supervisory Head of the offices for all the states of Delhi, Haryana, J&K, U.P., Uttarakhand, Himachal Pradesh, Punjab and Chandigarh of the Northern Region. Hence, in case any of the members of your Institute has any grievance against the field offices of the Northern Region, they may contact the undersigned on the telephone (0120-2445342) or through email (rd.north@mca.gov.in).

Please circulate this message amongst your members.

A.K. Chaturvedi  
Regional Director (NR)

**S C Vasudeva\***

Chartered Accountant  
S C Vasudeva & Co.  
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**S H Rajadhyaksha\*, ACS**

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## Introduction of Secretarial Standards in India

- The statutory recognition of SS-1 and SS-2 has placed the profession of company secretaries at a higher pedestal and provided the necessary impetus for higher levels of corporate governance in companies. The ICSI is also endeavouring to get statutory recognition for several other Standards to be issued by the SSB.

**T**he concept of Secretarial Standards was conceived by the Council of the Institute of Company Secretaries (ICSI) somewhere in the year 2000, with the intent of integrating, consolidating, harmonizing and standardizing the prevalent diverse secretarial practices. A major initiative in this regard was thereafter taken by the ICSI in setting up of a Secretarial Standards Board (SSB) comprising senior members of the profession. The ICSI took this initiative keeping in view the growth and enhanced visibility of the profession and its members. Another factor taken into consideration for setting up the SSB and for formulating Secretarial Standards was to set up an international bench mark in Secretarial Practices.

The first meeting of the SSB was held on 18th July, 2000 at New Delhi and decisions were taken on many crucial issues regarding the formulation of Standards. The second meeting was held in August 2000 at which discussions were held for preparing preliminary drafts of Secretarial Standards on Board Meetings, Annual General Meetings, Directors' Report and Investments, Loans and Guarantees. It was also decided that Secretarial Standards on Minutes, Nomination, Transfer & Transmission of Securities, Dividend and Interest should be brought out. The foremost decision taken by the SSB was to formulate and prepare a Preface to the Secretarial Standards, so as to lay down the Objectives of the SSB, its

\*Member SSB of ICSI, 2015.

Scope and Functions, Need for Secretarial Standards, Scope of Secretarial Standards, Procedure for issuing Secretarial Standards and Compliance with the Secretarial Standards to be issued by the SSB. The Preface to the Secretarial Standards and the Secretarial Standard on Meetings of the Board of Directors (SS-1)

were the first two documents which were finalized by the SSB somewhere in December 2001. It took substantial time to prepare these documents as this was a maiden effort ever undertaken by any Institute in the world and there were no precedents anywhere for the preparation of Secretarial Standards. The format, language and the contents of the aforesaid documents had to be debated intensely so as to achieve the objective of international benchmarking. These two documents were well received by the profession and the authorities when they were exposed for public comments. Several comments and suggestions were received in the light of which the Preface to Secretarial Standards and the Secretarial Standard on Meetings of the Board of Directors (SS-1) were finalized. In the process, the ICSI achieved the distinction





➤ **Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations but seek to supplement such laws, rules and regulations.**

of being the first body of Company Secretaries in the world to issue Secretarial Standards. The aforesaid two documents were released at the inaugural session of the 29th National Convention of the ICSI. The SSB thereafter formulated the second Secretarial Standard on General Meetings (SS-2). The same was exposed for public comments and finalized after taking into consideration the comments received. The Secretarial Standard on General Meetings (SS-2) was released by Shri Arun Jaitley, the then Union Minister of Law, Justice and Company Affairs on May 1, 2002.

The Preface to Secretarial Standards clarified that the ICSI, recognizing the need for integration, harmonization and standardization of diverse secretarial practices has constituted the SSB with the objective of formulating Secretarial Standards. It was also clarified in the Preface that the scope of the Secretarial Standards Board is to identify the areas in which Secretarial Standards need to be issued by the Council of the ICSI and to formulate such standards, taking into consideration the applicable laws, business environment and best secretarial practices. The functions of the SSB also include:-

- a) Clarifying issues arising out of the Secretarial Standards.
- b) Issuing Guidance Notes for the benefit of the members of the ICSI, corporates and other users.
- c) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

The Preface clarified that the Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations but seek to supplement such laws, rules and regulations. It was also clarified that Secretarial Standards, will be in conformity with the applicable laws and in case any Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail. The procedure for formulating and issuing of Standards was laid down in the Preface. The procedure as contained therein is given hereunder:-

- (a) The SSB, in consultation with the Council, shall determine the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.
- (b) In the preparation of Secretarial Standards, the SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.

- (c) The preliminary draft of the Secretarial Standards prepared by the Working Group shall be circulated amongst the members of the SSB for discussion and shall be modified appropriately, if so required.
- (d) The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/Chapters of the ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Ministry of Corporate Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, the Reserve Bank of India, the Department of Public Enterprises and to such other bodies / organizations as may be decided by the SSB, for ascertaining their views and specifying a time-frame within which such views, comments and suggestions are to be received.

A meeting of the SSB with the representatives of such bodies/ organizations may then be held, if considered necessary, to examine and deliberate on their suggestions.

- (e) On the basis of the preliminary draft and the discussion with the bodies / organizations referred to in (d) above, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of the ICSI, and also put on the Website of the ICSI to elicit comments from members and the public at large.
- (f) The draft of the proposed Secretarial Standard will generally include the following basic points:
  - (i) Concepts and fundamental principles relating to the subject of the Standard;
  - (ii) Definitions and explanations of terms used in the Standard;
  - (iii) Objectives of issuing the Standard;
  - (iv) Disclosure requirements; and
  - (v) Date from which the Standard will be effective.
- (g) After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalized by the SSB and submitted to the Council of the ICSI.
- (h) The Council will consider the final draft of the proposed Secretarial Standard and finalize the same in consultation with the SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

A paragraph with regard to compliance with the Secretarial Standards was also added in the Preface. It was explained that the Secretarial Standards would be recommendatory for the time being. However, the Institute, would endeavour to educate the users about the utility and the need for compliance with such Standards and also request the authorities to enforce these Standards so that diverse practices followed by various companies are standardized.

Over the years, the SSB has grown in strength and has been given



➤ It is a matter of great satisfaction for the SSB and the ICSI that the Companies Act, 2013, has recognized the importance of two Standards viz. Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) as issued by the ICSI. These Standards were revised by the Secretarial Standards Board in line with the provisions of the Companies Act, 2013 and have been approved by the Government of India.

due recognition by various regulators as a body of experts. The following Standards have been issued by the Secretarial Standards Board since it was set up:

SS-1: Secretarial Standard on Meetings of the Board of Directors
SS-2 : Secretarial Standard on General Meetings
SS-3 : Secretarial Standard on Dividend
SS-4 : Secretarial Standard on Registers and Records
SS-5 : Secretarial Standard on Minutes
SS-6 : Secretarial Standard on Transmission of Shares and Debentures
SS-7 : Secretarial Standard on Passing of Resolutions by Circulation
SS-8 : Secretarial Standard on Affixing of Common Seal
SS-9 : Secretarial Standard on Forfeiture of Shares
SS-10 : Secretarial Standard on Board's Report

It is a matter of great satisfaction for the SSB and the ICSI that the Companies Act, 2013, has recognized the importance of two Standards viz. Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) as issued by the ICSI. These Standards were revised by the Secretarial Standards Board in line with the provisions of the Companies Act, 2013 and have been approved by the Government of India vide its letter dated 10th April, 2015. Pursuant to the provisions of Section 118(10) of the Companies Act, 2013, and the notification of these two standards, it is now mandatory for companies to comply with these two Standards and the Secretarial Audit Report to be issued under section 204 of the Companies Act, 2013 is required to report on such compliance.

The SSB has also issued Guidance Notes on various subjects over the years. The remaining Standards and the Guidance Notes are in the process of revision by the SSB so as to bring the same in

line with the provisions of the Companies Act, 2013. Apart from the revision of the existing Standards and Guidance Notes, the Secretarial Standards Board has a voluminous and important agenda for this year. Various new topics have been identified for issue of Secretarial Standards and Guidance Notes. Some of these are Corporate Social Responsibility, Loans & Investments, Key Managerial Personnel, Charges, Mergers Acquisitions & Corporate Restructuring, Deposits, etc.

The statutory recognition of SS-1 and SS-2 has placed the profession of company secretaries at a higher pedestal and has provided the necessary impetus for higher levels of corporate governance in companies. It is understood that the international community has also approached the ICSI to provide necessary guidance for the preparation of Secretarial Standards in accordance with the law of such countries. The ICSI is also endeavouring to get statutory recognition for several other Standards to be issued by the SSB. The objective of setting up of the SSB would truly be achieved when all the Standards issued by the ICSI are given statutory recognition and compliance with them by companies is made compulsory. CS

**File No. PFA/63/2007-CLB  
COMPANY LAW BOARD  
GOVERNMENT OF INDIA**

**3rd Floor, B-Block  
Paryavaran Bhawan  
C. G. O. Complex, Lodhi Road,  
New Delhi-110003 Dated: 26.3.2015**

### **ORDER**

In view of the fact that despite directions of the Hon'ble Chairman, both on the Administrative and Judicial side, Shri Kanthi Narahari, Member (Judicial) continues to refrain hearing matters pertaining to the States of Telangana and Andhra Pradesh and considering the serious dislocation of judicial work pertaining to the States of Telangana and Andhra Pradesh due to such refusal, it is ordered that upon refusal by Shri Kanthi Narahari, Member (J), Chennai Bench to hear the urgent mentioning matters pertaining to the States of Telangana and Andhra Pradesh, such urgent matters may be mentioned before Shri B.S.V.Prakash Kumar, Member(J), New Delhi Bench at New Delhi on any working day at 2.30 PM after prior notice to the other side and to the Bench Officer, New Delhi Bench.

2. This Order shall come into force with effect from 26.3.2015.

By Order of the Company Law Board  
(P. K. Malhotra) Secretary  
Company Law Board  
Tel. No. 24363451



**Alka Kapoor, FCS**

Joint Secretary  
The ICSI  
New Delhi

[alka.kapoor@icsi.edu](mailto:alka.kapoor@icsi.edu)

## The Value Creation by and Making of Secretarial Standards

- A democratic and transparent consultative process paves the way for effective implementation of legal mandate. Secretarial Standards will bring a huge change in the corporate practices which will certainly become benchmark for counterparts to follow. Consequently, the position of Company Secretaries will enhance.

### INTRODUCTION

**A** Standard is a published document formulated by consensus and approved by a recognised body. Standards establish specifications and procedures designed to ensure the reliability of services to the stakeholders by establishing consistent protocols that can be universally understood and adopted.

As Standards deal with issues that matter to stakeholders, it is important that Standards are developed through a transparent, rigorous and consultative process with opportunity being given to the stakeholders to share their views and suggestions and fully participate in formulation of a Standard.

It is important that a standard process is adopted in developing the Standards. It is also equally important that such process is well disseminated in public domain and the stakeholders are aware of the process of developing the standards.

**Secretarial standards issued by the ICSI, earlier only a stakeholders' mandate, have now become a regulatory mandate.**

Most of the systems supporting governance issues, were initially

recommenatory in nature but have become mandatory with time. These issues include tenure of Board members, tenure of Auditors, Board Evaluation, Corporate Social Responsibility, whistle blower mechanism, sustainability reporting and so on. Secretarial Standards is not an exception to this. In fact, Compliance with Secretarial Standards had already become a stakeholders mandate, since they perceived the companies following secretarial standards voluntarily as relatively better governed companies. With section 118(10) of the Companies Act, 2013 this stakeholder's







- Secretarial Standards would help in achieving the national agenda of ease of doing business, improved governance norms, confidence building in minds of investors, improved compliance level ultimately leading to flow of capital in India and achieving the objective of Make in India.

mandate has become a regulatory mandate.

## SECRETARIAL STANDARDS TO SUPPLEMENT AND NOT SUPPLANT THE LAW

Secretarial Standards intend to reduce ambiguity in law and adopt best practices of the Industry followed over decades conventionally. They do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.

**India is the first country to introduce secretarial standards and the Institute is the pioneer in issuing the same.**

## VALUE CREATION BY SECRETARIAL STANDARDS (SS)

Secretarial Standards are unique, in fact, they not only ensure uniformity of diverse practices but also cover the softer aspects of governance with a well documented set of codes.

SS will help in **strengthening board processes**. They will bring more clarity as board processes will be documented. The information to be placed before the Board shall be duly codified. As the agendas would be circulated well in advance, Board members will come prepared in board meetings, engage in constructive debate, and take informed decisions. The Board members can and should demand that all the information is provided to them.

1. Transparency and accountability are considered essential characteristics of good corporate governance. The Standards would lead to **higher standards of governance** as they will strengthen the flow and quality of information and improve transparency.
2. Consistent, unambiguous and uniform board room practices as well as better transparency and disclosure norms including timely flow of information, will lead to better protection

of minority interests. It would also be easier to fix the accountability on account of any lapse or mismanagement.

3. The Secretarial Standards have the potential to create **enormous confidence in minds of investors** particularly fund managers and overseas investors as these investors are very much concerned about good governance practices and sound procedures. They invest in companies where top management values transparency and recognises the need to follow healthy governance practices. Consequently, this will lead to increased flow of capital into India, new projects, more modernisation and expansion. Ultimately, it would help in achieving objective of 'Make in India'.
4. Board Meetings and General Meetings are events where all important decisions are taken which affect business operations, performance and profitability. Standardisation of processes and adoption of best practices in these meetings will improve credibility of the decision making process.
5. It would also **complement ease of doing business** in India as there would be clarity and uniformity in the processes being followed by companies in respect of the very important task of taking decisions at the highest level – whether at board meetings or at general meetings.
6. Adoption of fair and transparent practices would certainly reduce the meeting related litigations, including conflicts in attendance, decisions & minutes.





# Article

The Value Creation by and Making of Secretarial Standards

India is the torch bearer to world to introduce International Secretarial Standards. In fact, Corporate Secretaries International Association, of which the Institute is a founder member, has it on its agenda to develop International Secretarial Standards. This is aptly so, as there is a convergence of governance norms across countries.

Therefore, the Secretarial Standards would help in achieving the national agenda of ease of doing business, improved governance norms, confidence building in minds of investors, improved compliance level ultimately leading to flow of capital in India and achieving the objective of Make in India.

## ENHANCED ROLE OF COMPANY SECRETARY

Good corporate governance involves a commitment of a company to run its business in a legal, ethical and transparent manner and runs from the top and permeates throughout the organisation.

The role of Company Secretary has changed, enhanced, improved and widened over a period of time along side the changing governance norms viz., globalisation, technology, stakeholders' awareness and enhanced perspective, impact of non-financial issues on financial performance and sustainability and so on. The Company secretary is the vital link between the top management and rest of the organisation.

The Companies Act, 2013 has for the first time defined the functions of the Company Secretary. This inter alia includes assisting the Board in the conduct of the affairs of the company and assisting and advising the Board in ensuring good Corporate Governance and in complying with the Corporate Governance requirements and best practices. In short, the Company Secretary is the Right Hand Man to the Board.

The Company Secretary has always been the interface between the company and the shareholders and the investors.

By codifying many of the critical areas, the Secretarial Standards provide a clear guidance to the Company Secretary to enable him to function effectively and efficiently and on the other hand he will be in a stronger position to guide boards on the uniform corporate practices.

## THE PROCESS OF FORMULATING AND ISSUING SECRETARIAL STANDARDS

The Secretarial Standards are formulated by the Institute of Company Secretaries of India through a completely transparent, interactive and consultative process. The view of all stakeholders is taken into consideration be it professional bodies, industry associations, investor associations, regulators or government

and public at large. The views and suggestions of all institutions representing the corporate world are considered and taken into account. A detailed research is also carried out to identify the best practices prevalent amongst corporate both nationally as well as internationally.

Secretarial Standards are formulated by the Secretarial Standards Board (SSB) constituted by the Council of the Institute. The SSB comprises of -

- senior members of the profession with diverse experience both in employment and practice;
- the representatives of the industry – there are nominees of CII, FICCI, ASSOCHAM;
- the representative of Stock Exchanges-NSE & BSE
- representative of MCA;
- representative of SEBI;
- representative of RBI;
- representatives of sister professional institutions – there are nominees of ICAI and ICoAI.

The SSB is headed by a Chairman who is a person of eminence and repute. The SSB is supported by the secretariat of the Institute.

## PROCEDURE FOR FORMULATING SECRETARIAL STANDARDS

The procedure adopted by SSB for formulating Secretarial Standards is briefly explained below:

- The Council of the Institute in consultation with the SSB determines the topics for formulation of Secretarial Standards and the priority in regard to the selection thereof.
- In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.
- The Preliminary Draft of the Secretarial Standard prepared by the Working Group/SSB is circulated amongst the members of SSB for discussion.
- Several rounds of meetings of SSB are held wherein the Preliminary Draft is discussed and finalized.
- In preparation of preliminary draft, the diverse practices prevalent in the corporate sector are considered as also the international best practices which could be adopted.
- The Preliminary Draft is then circulated to the members of the Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Ministry of Corporate Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received. A meeting of SSB with the representatives of such bodies / organizations may be



held, if considered necessary, to examine and deliberate on their suggestions.

- On the basis of the preliminary draft and the discussion with the bodies / organisations referred to above, an “Exposure Draft” is prepared and published in the “Chartered Secretary”, the journal of the Institute, and also put on the Website of the Institute to elicit comments from members and the public at large.
- The exposure draft of the proposed Secretarial Standard generally includes the following basic points:
  - (a) Concepts and fundamental principles relating to the topic of the Standard;
  - (b) Definitions and explanations of terms used in the Standard;
  - (c) Objectives of issuing the Standard;
  - (d) Disclosure requirements; and
  - (e) Date from which the Standard shall be effective.
- The comments/suggestions received on the exposure draft are then considered by the SSB and the draft of the proposed Secretarial Standard is finalised.
- The proposed Secretarial Standard is then submitted to the Council of the Institute.

## APPROVAL BY THE COUNCIL

The Council considers the final draft of the proposed Secretarial Standard and approves the same, with or without modification. The Council may, if it so desires consult the SSB. The Secretarial Standard on the relevant topic is then issued under the authority of the Council.

## COURSE OF FORMULATION OF SS-1 AND SS-2

Following the above procedure, the SSB had in the year 2001 issued Secretarial Standard on Meetings of the Board, SS-1 and in 2002 issued Secretarial Standard on General Meetings, (SS-2). These Standards were observed by forward looking corporates voluntarily in addition to the other eight Secretarial Standards issued by the Institute over a period of time.

With the enactment of the Companies Act, 2013 and notification of Rules thereunder in April 2015, the existing Secretarial Standards issued by ICSI required revision as per the applicable laws and sent to the Central Government for its consideration and approval as per sub section (10) of section 118. Accordingly, the Secretarial Standards Board (SSB) of the Institute revised/redrafted its Secretarial Standard on Meetings of the Board of Directors (SS-1), and Secretarial Standard on General Meetings (SS-2) as per the new Act and Rules thereunder. The Secretarial Standard on Minutes (SS-5) and Secretarial Standard on Passing of Resolutions by Circulation (SS-7) were also merged in revised SS-1 and SS-2.

The preliminary drafts of the Secretarial Standards were sent to various organizations/authorities as mentioned above for their views/comments/suggestions.

Based on the comments, the revised drafts of the Standards, which also included aspects relating to Meetings through Electronic Mode, Voting by Electronic Mode, Passing of Resolutions by Circulation, Passing of Resolutions by Postal Ballot and Minutes, were finalised by the SSB and put up for public comments as exposure draft in the month of June 2014.

A 360 degree approach was followed to get views from all quarters. For which the following actions were initiated:

- Inviting public comments electronically, to enable speedy and effective compilation of comments. The drafts were also put up on Facebook for propagation.
- Separate Communication sent to the regulatory bodies, professional institutes, industrial associations & chambers of commerce, consumer organisations, best governed companies in India, top listed and unlisted companies, proxy firms, council members of the Institute, past members of the SSB, past presidents of the Institute, eminent academicians and members of the Institute seeking their comments on SS-1 and SS-2.
- Regional Councils and Chapters of the Institute are requested to collect and compile the comments of the Members on SS-1 and SS-2 in their respective regions through Programmes/ Workshops/Study Circles and submit the consolidated comments/suggestions.
- Interaction by the Members of the Secretarial Standards Board with Corporate Houses of their respective regions/circles to get feedback in exposure drafts of SS-1 and SS-2.
- Follow-up with the Professional bodies / Industrial Associations & Chambers / stock exchanges through their respective Nominees on the SSB for their feedback on SS-1 and SS-2.
- Regional Councils of the Institute constituted sub-committees on Secretarial Standards at the regional level (with one or more





➤ Unprecedented efforts and consistent and persistent follow up were made by several Presidents, Councils and Secretariat of the Institute to get recognition to the Secretarial Standards on the Statute Book. Presentations were made before the Expert Committee on Company law (Dr. J J Irani Committee), Parliamentary Standing Committee on Finance as well as MCA officials. Efforts were also made to educate the industry and corporate on the utility of these Secretarial Standards. The Companies observing Secretarial Standards voluntarily were recognized by the Institute through its journal Chartered Secretary .

SSB Members as a contact point) for giving suggestions on the Standards from time to time.

Accordingly, final drafts of SS-1 and SS-2 were prepared. These were considered, deliberated and approved by the Council of Institute and submitted to MCA on 11th August 2014.

Following this, an internal Committee was formed by the Ministry of Corporate Affairs to consider SS-1 and SS-2 as specified by ICSI and to submit its recommendation to the Central Government (MCA) for approval. The Committee suggested some changes in SS-1 and SS-2, which were forwarded to the Institute for consideration. These were considered by SSB at its Meeting and the Standards were again submitted to MCA on 30th December 2014. MCA made some further comments on the same, which the Institute discussed with MCA officials and committee members and as a result, the final SS-1 and SS-2 were approved by the internal committee of MCA in January, 2015.

In the meantime, there were some changes in law affecting Secretarial Standards, as a consequence of which the SSB in consultation with MCA, revised the standards and re-submitted to MCA on 11th February 2015.

The MCA has since approved the Secretarial Standard on Meetings of the Board of Directors ( SS-1) and Secretarial Standard General Meetings ( SS-2) vide its letter dated 10th April 2015. Upon receipt of the Government approval, the ICSI issued Gazette ICSI Notification No. 1(SS) of 2015 Published in the Gazette of India Extraordinary Part III - Section 4 on 23rd April, 2015. These

Standards notified by ICSI shall be effective from 1st July 2015.

## PRINCIPLES GOVERNING FORMULATION OF SS-1 AND SS-2

The following guidelines/principles have been followed while formulating the Secretarial Standards:

- All sections/rules/regulations of the law relating to the topic are identified
- These are analysed and the issues to be addressed and broad approach thereof is decided on following lines:
  - a. Issues where the law is ambiguous:  
Clarity is given to the language of law, if necessary or else the same is ignored – Standard is Descriptive/Explanatory in nature
  - b. Issues where the law is subject to multiple interpretations:  
The right or clear interpretation is brought out - Standard is Clarificatory in nature
  - c. Issues where multiple/divergent practices exists, though the law is clear:
- Endeavour is made to lay down uniform practices - Standard is Explanatory in nature
- While doing so, the following are taken into consideration:
  - a. the applicable laws,
  - b. divergent practices,
  - c. usages,
  - d. business environment,
  - e. practical applicability and
  - f. the best secretarial practices prevalent world over keeping in view the governance aspects.
- As regards definition, terms defined by SSB, definitions in explanations under various sections of Companies Act, 2013 or rules thereunder, definitions borrowed from other Acts are included, as may be applicable to the particular Secretarial Standard. Any term defined under section 2 of the Companies Act 2013 or Companies (Specification of definitions details) Rules, 2014 are not included under the 'Definitions' section.

If the term is appearing at multiple places in the SS, the term is defined in the 'Definitions' section, whereas if it appears





➤ The Secretarial Standards for the first time appeared in the Companies Bill, 2009 and mandated as Companies Act, 2013.

only once, it is defined only at such place.

## THE STATUTORY RECOGNITION

Although the compliance of Secretarial Standards was recommendatory initially when the Standards were formulated in 2001-02, it was decided that the Institute will request the Government and other appropriate authorities to enforce these Secretarial Standards and will endeavour to educate users about the utility and need for compliance with these Secretarial Standards. Accordingly, unprecedented efforts and consistent and persistent follow up were made by several Presidents, Councils and Secretariat of the Institute to get recognition to the Secretarial Standards on the Statute Book. Presentations were made before the Expert Committee on Company law (Dr. J JIrani Committee), Parliamentary Standing Committee on Finance as well as MCA officials. Efforts were also made to educate the industry and corporate on the utility of these Secretarial Standards. The Companies observing Secretarial Standards voluntarily were recognized by the Institute through its journal Chartered Secretary .

The Parliamentary Standing Committee on Finance in its twenty first report on the Companies Bill, 2009 made following recommendations on Secretarial Standards:

“10.53 Keeping in view its significance for ensuring procedural compliance by companies, particularly with regard to various statutory disclosures and to ensure adherence to prescribed secretarial standards, the Committee recommend that Secretarial Audit report may be required to be attached with financial statements by companies exceeding certain threshold limit of paid-up share capital.”

“13.34 The Committee would like the Ministry to suitably incorporate the new sub-clauses as proposed above in the Bill relating to secretarial audit, delineation of functions and role of chief financial officer and company secretary”.

Proposed New Clause 178C provides for the functions of Company Secretary to inter alia include:--

“ (e) to ensure that the company complies with the applicable secretarial standards.

Explanation. - For the purpose of this clause, the term “Secretarial Standards” means Secretarial Standards issued by the Institute of Company Secretaries of India and approved by the Central Government.”

Based on the recommendations of the Parliamentary Standing

Committee, the concept of the Secretarial Standards was for the first time included in the Companies Bill, 2009, which was a historic moment for the profession of Company Secretaries as its long cherished dream was translated into a reality.

The Secretarial Standards for the first time appeared in the Companies Bill, 2009 and mandated as Companies Act, 2013.

Finally, the Statutory recognition came in the form of inclusion of section 118(10) and section 205(1)(b) in Companies Act, 2013

## CONCLUSION

Thus, the Secretarial Standards have been developed in a totally transparent manner after extensive deliberations, analysis, research, and after taking the views of professionals, corporates, regulators, stakeholders and the public at large. These Secretarial Standards, in the statutory recognition and formulation of which herculean efforts have been made, would not only strengthen the decision making process in companies but would also lead to raising standards of governance, confidence building of investors, improving compliance levels, protection of all stakeholders and improvement of overall business culture in the country as well as enhancing the position of a Company Secretary. CS

### Appointment

**REQUIRED**  
**Qualified Company**  
**Secretary for a Bhavnagar**  
**based manufacturing**  
**Company**  
**0-1 year experience, salary**  
**negotiable, apply to:**

**Mr. Pravin Parmar**  
 Madhu Silica Pvt. Ltd.

Plot No. 147, GIDC Estate, Vartej, Bhavnagar - 364060



# Article

Secretarial Standards: Adding Value to Law



**Ahalada Rao V\*, FCS**

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Practising Company Secretary  
Hyderabad

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## Secretarial Standards: Adding Value to Law

- Today, companies are not to be seen as an isolated entity, but as a part of Interconnected Chain of Various stakeholders. They have crossed the borders and have presence in many countries. In such scenario, there is definitely a need of universally acceptable governance standard to be followed by each organization or firm. The Secretarial Standards are an attempt in this regard.

***“JRD Tata had a friend who used to say that he misplaces and loses his pen often. He will use only cheap pens so that he need not worry about losing them. He was worried about carelessness habit. JRD suggested him to buy the costliest pen he could afford and see what happens. He did that and purchased a 22 carat gold pen. After nearly six months JRD met him and asked him if he continues to misplace his pen. His friend said that he is very careful about his costly pen and he is surprised how he has changed! JRD explained to him that the value of the pen made difference and there was nothing wrong with him as a person.”***

**T**he Companies Act, 2013 is a landmark statute which includes comprehensive provisions to govern all listed and unlisted companies in the country which has far-reaching implications that change the manner in which corporates operate in India. The Institute of Company Secretaries of India has notified Secretarial Standard-1 & Secretarial Standard-2. Having been approved by the Central Government, adherence by a company to these Secretarial Standards is now mandatory, as per the provisions of the Companies Act, 2013.

These Secretarial Standards make an attempt to fill those gaps which the Companies Act has left untouched, by providing those Clauses which make an attempt to bring uniformity in the conduct of Board Meetings and General Meetings of Corporates, which were divergent. Thus, without encroaching upon the provisions of Companies Act, the Standards add value to the existing provisions



\*Central Council Member and also Member SSB of ICSI, 2015.



- The Company Secretary conducting Secretarial Audit has to exercise utmost due diligence in his conduct of the audit. The CS conducting the Secretarial Audit, in addition to the Audit of Compliance of other Laws, has also to check the compliance of the Secretarial Standards by the company as non compliance of these Standards means violation of the law.

by ensuring uniformity in Secretarial Practices. Secretarial Standards 1 & 2, since approved by the Government and brought into force, it is incumbent on the Professionals and Corporates to well equip themselves with the provisions of these Standards. This Article makes an attempt to briefly analyse the scope of these standards and its implications to all the stakeholders.

The Board Room and General Meeting Practices differ from organization to organization. The governance mechanism in each organization is shaped by its own objective (vision, mission). The practices adopted in any organization reflect mind set of top management and value systems adopted in that organization over a long period of time. For most of the organization these standards evolved and emerged through a natural business process. Hence, different organizations have set the code of Practices in their own way. In view of this, an important question arises as to whether it is possible to have a set of universally acceptable Standards.

Today, companies are not to be seen as an isolated entity, but as a part of interconnected chain of various stakeholders. They have crossed the borders and have presence in many countries. In such scenario, there is definitely a need of universally acceptable governance standard to be followed by each organization or firm. Secretarial Standards are an attempt in this regard. This article gives a brief overview of these Standards with respect to various stake holders and the way in which they add value to the existing legal scenario of the Country.

## LEGAL PROVISIONS UNDER COMPANIES ACT, 2013

### SECTION 118 (10)

(10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

### SECTION 205

- (1) The functions of the company secretary shall include,
- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
  - (b) to ensure that the company complies with the applicable secretarial standards;
  - (c) to discharge such other duties as may be prescribed.

The above provision specifies that once these Standards are approved by the Central Government, they would become the law of the country and hence every company and every Company Secretary shall ensure that these standards are being complied with. Insertion of this requirement in the Act is one of the landmark developments for the profession of the company secretaries and the ICSI. The rationale of mandating the compliance of non financial standard would ensure that all companies adopt uniform practice in convening the meetings, agenda items which should be placed before the board and finalization of minutes etc.

### SECTION 204 - SECRETARIAL AUDIT

- (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.
- (2) It shall be the duty of the company to give all assistance and facilities to the Company Secretary in Practice, for auditing the secretarial and related records of the Company.
- (3) The Board of Directors, in their report made in terms of sub-section (3) of Section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).
- (4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

The above provision speaks of the duty of the Company being subjected to Secretarial Audit in relation to the Secretarial Auditor. Sub Section (4) of the above section speaks of penal consequences for the Secretarial Auditor in case of non compliance of the provisions of this section. Thus, the Company Secretary conducting Secretarial Audit has to exercise utmost due diligence in his conduct of the audit. The CS conducting the Secretarial Audit, in addition to the Audit of Compliance of other Laws, has also to



check the compliance of the Secretarial Standards by the company as non compliance of these Standards means violation of the law.

The following passages give a brief overview of the utility of these Standards to various Stake Holders.

## SECRETARIAL STANDARDS AND STAKEHOLDERS

### SECRETARIAL STANDARD-1: “MEETINGS OF THE BOARD OF DIRECTORS”

This Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto. The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee (s) of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations. “Invitee” means a person, other than a Director and Company Secretary, who attends a particular Meeting by invitation. Thus, in defining the Word “Invitee” to include any Person other than a Director and Company Secretary, it has brought such other people like Statutory Auditors, Nominees of Financial Institutions, Nominees of CG and the like under its Ambit.

#### 1.3.1 Notice in Writing of Every Meeting Shall be Given to Every Director by Hand or by Speed Post or by Registered Post or by Courier or by Facsimile or by E-Mail or by any other electronic means.

The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director. Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. With the operation of this clause, the ambiguity of Delivery of Notice to the Directors has been Resolved to a larger extent.

#### 1.3.2 Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for The purpose.

The notice of board meeting can be given by company secretary or a director or any other person authorized by the Board for the purpose. The words any authorized person implies that such authorized person can be any officer of the company but also any other person who is not an officer of the company.

This can be explained with the help of an illustration as follows:-

1. The notice of the board meeting of a subsidiary company can be issued by any authorized or Responsible person of holding company.
2. The notice of a holding company's Board Meeting can be issued by any responsible officer of the Holding company authorized in this behalf.

The word ‘responsible officer’ has been defined under Companies act,1956 to be read with rules. But in the Companies Act, 2013, it was nowhere defined, leaving it to the wisdom of the Directors to decide the Competent Officer for the purpose.

Thus, this clause on the one hand gives flexibility to corporate in their conduct of meetings and on other hand shows the importance of Notices with respect to directors and officers of the companies.

#### 1.3.5 The Notice of a Meeting shall be given even if Meetings are held on Predetermined dates or at pre-determined intervals.

It is of late, a common practice among corporates to decide well in advance the date of Board meetings keeping in view the busy Schedules of the Directors. However, there may be deviations from the date of meetings owing to certain circumstances, in which case the Chairman or M.D. tend to deviate without notice or consent of other directors. Further, the above clause ensures that all the companies follow a definite and uniform system of Board Meeting procedures regardless of pre determined understandings of the Company.

#### 1.3.7 The Agenda, setting out the business







**to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.**

Where a Director specifies a particular means of delivery of Agenda and Notes on Agenda, these papers shall be sent to him by such means. Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company.

There is no express provision on agenda though the notice period is specified as seven days. The Standard insists on a seven days notice along with notice and at the same time gives cushion for specifying longer period in the Articles. A company may circulate the agenda of meeting well in advance without mentioning the date of notice, in which case as subsequent notice may issued by mentioning the date of board meeting with in the limits of law. This is a healthy practice as it avoids last minute screening of agenda. this laws is beneficial for all the directors of the company.

**1.3.11 To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.**

In view of the above clause, the Company Secretary conducting the Secretarial Audit or assisting the company has to ensure that all the above requirements w.r.t. shorter notice has been complied with. The above Standard is a solution for companies especially for transacting urgent business. This Standard also helps the companies in the following two situations:

1. Where appointment of Independent director is mandatory, but not appointed and where appointed but there is a vacation in the office.

2. Where appointment of Independent director is not mandatory.

In the Act, it is said that, in case of an emergency situation, the decision taken shall be valid only after ratification by one Independent Director. However, this Standard fills the gap where there is no Independent Director by specifying the ratification by majority Members on Board. This gives a clarity in and enables the Board to transact the business flexibly.

## 2.1 Meetings of the Board

**The Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four Meetings are held in each Calendar Year.**

### 4.1.5 The attendance register is open for inspection by the Directors.

The Company Secretary in Practice appointed by the company or the Secretarial Auditor or the Statutory Auditor of the company can also inspect the attendance register as he may consider necessary for the performance of his duties. A member of the company is not entitled to inspect the attendance register. Therefore, the Company Secretary in Practice appointed by the company or the Secretarial Auditor in his capacity as such can inspect the attendance register.

The Companies Act, 1956 mandated quarterly Board Meeting, but the Companies Act 2013 mandates a Board Meeting every 120 days and 4 times in a year in such a way that it prevents the conduct of all Board Meetings continuously and possibility of skipping a Board Meeting in one quarter. This Standard benefits the Investors





➤ SS-2 seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto. This Standard also deals with conduct of e-voting and postal ballot. This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification.

of Listed Companies so as to keep a track on the declaration of Quarterly Results and in the case of unlisted companies by way of inculcating a sense of discipline with time phased Board Meetings.

## 5. Chairman

### 5.1 Meetings of the Board

**5.1.1 The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.**

**5.1.2 The Chairman of the Board shall conduct the Meetings of the Board. If no Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the Articles.**

It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting. If the Chairman is interested in any item of business, he shall, with the consent of the members present, entrust the conduct of the proceedings in respect of such item to any Disinterested Director and resume the Chair after that item

of business has been transacted. The Chairman also shall not be present at the Meeting during discussions on such items. In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures. No person other than the Director concerned shall be allowed access to the proceedings of the Meeting where Director (s) participate through Electronic Mode, except a Director who is differently abled, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the Meeting. Unless otherwise provided in the Articles, in case of an equality of votes, the Chairman shall have a second or casting vote.

Therefore, this Standard provides a solution where there is a tie. Where there is a tie in the opinion of the Board, then such a deadlock can be resolved by the Chairman by a casting vote. However, as the above clause provides, this shall be authorized by The Articles of Association.

**6.3.2 The Resolution, if passed, 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 assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.**

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 as not passed.

**7.2.1.3 Minutes shall contain a record of all appointments made at the Meeting.**

Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, First Auditors, Key Managerial Personnel, Secretarial Auditors, Internal Auditors and Cost Auditors, shall be deemed to have been duly approved by the Board. All appointments made one level below Key Managerial Personnel shall be noted by the Board.

This provision ensures that all the appointments have been made in accordance with statutes applicable and shall act as a check against the arbitrary appointments by the companies. Further, the Standard distinguishes three categories of people present in the Meeting, who have to be duly recorded in the attendance Register namely (1) Members who are present; (2) Invitees and (3). Attendants.



Attendants are the deemed Members present in the Meeting like Company Secretary, CFO of the company, etc, Invitees are those members invited in the meeting like statutory auditor. "Invitee" means a person, other than a Director and Company Secretary, who attends a particular Meeting by invitation."

Appointments of all KMPs, Statutory Auditors, Internal Auditors are to be approved by the Board and all appointments made one level below Key Managerial Personnel shall be noted by the Board.

### **7.5.2 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 duly authorised by the Board or by the Chairman. The person so authorized by the Board for the purpose shall be a competent person and need not necessarily be an officer of the company.

## **SECRETARIAL STANDARD-2: GENERAL MEETINGS**

SS-2 seeks to prescribe a set of principles for the convening and conducting of General Meetings and matters related thereto. This Standard also deals with conduct of e-voting and postal ballot. This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification. The principles enunciated in this Standard for General Meetings of Members are applicable mutatis-mutandis to Meetings of debenture-holders and creditors.

A Meeting of the Members or class of Members or debenture holders or creditors of a company under the directions of the



Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by this Standard without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect to the conduct of such Meetings.

"Timestamp" means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added, removed, sent or received."

The Time Stamp, helps the Regulators to assess, track and authenticate the events that have taken place in the General Meetings of the company.

### **1.2.1 Notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.**

In the case of Members, Notice shall be given at the address registered with the Company or depository. In the case of shares or other securities held jointly by two or more persons, the Notice shall be given to the person whose name appears first as per records of the Company or the depository, as the case may be. In the case of any other person who is entitled to receive Notice, the same shall be given to such person at the address provided by him. Where the company has received intimation of death of a Member, the Notice of Meeting shall be sent as under:

- (a) Where securities are held singly, to the Nominee of the single holder;
- (b) Where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;
- (c) Where securities are held by more than one person jointly and all the joint holders die, to the Nominee appointed by all the joint holders;

In the absence of a nominee, the Notice shall be sent to the legal representative of the deceased Member. In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member. In case the Member is a company or body corporate which is being wound up, Notice shall be sent to the liquidator.

Earlier, only Shareholders, Statutory Auditors, Debenture Holders were given Notice of General Meetings, without any reference to the Directors of the Company as it was considered not necessary keeping in view the fact that it is the Board itself which approves



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the Notice. Interestingly enough, this Standard requires the Notice to be sent to the Board of Directors in order to address non receipt of Approved Notice by the Directors owing to technical difficulties.

Further, this Standard benefits the Shareholders, by providing a cushion to send the Notice to the legal representatives of the Shareholders in case where no nominee is appointed. The requirement of Succession certificate was also done away with. This Standard was included keeping in view the various disputes before the Company Law Board, thereby addressing the Grievances of Nominees and Legal Representatives and avoiding unnecessary time consuming process.

## **4.1.2 Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman.**

Interestingly, by including the above Standard, the Board of Directors were recognized collectively as a single Body and was intended to work as a whole being accountable to the Shareholders. Further, this Standard has also recognized the competence of Company Secretaries in the Conduct of Board Meeting and its procedures.

## **4.3 Secretarial Auditor**

**The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorized representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.**



The Chairman may invite the Secretarial Auditor or his authorized representative to attend any other General Meeting, if he considers it necessary. The authorized representative who attends the General Meeting of the company shall also be qualified to be a Secretarial Auditor. Therefore, it is incumbent on the Company Secretary to be well equipped with the Agenda governing the meeting.

## **6.1 Right to Appoint**

**A Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and a Proxy need not be a Member.**

A proxy shall be a Member in case of companies with charitable objects etc. and not for profit registered under the specified provisions of the Act. A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder. If a Proxy is appointed for more than fifty Members, he shall choose any fifty Members and confirm the same to the company before the commencement of specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty proxies received as valid.

## **8.4 Board Approval**

**The Board shall appoint one or more scrutinisers for e-voting or the ballot process.**

The scrutinizer (s) may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, or an Advocate or any other person of repute who is not in the employment of the company and who can, in the opinion of the Board, scrutinize the e-voting process or the ballot process, as the case may be, in a fair and transparent manner. The scrutinizer (s) so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

The scrutinizer so appointed shall be required to be a person who is not in the employment of the company. This will ensure that the Scrutinizer acts independently and impartially in the process of scrutinizing the ballot process.



**8.7 Custody of scrutinizers' register, report and other related papers** The scrutinizers' register, report and other related papers received from the scrutinizer(s) shall be kept in the custody of the Company Secretary or any other person authorized by the Board for this purpose.

#### **9.4 Appointment of scrutinisers**

The Chairman shall appoint such number of scrutinizers, as he deems necessary, who may include a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company, to ensure that the scrutiny of the votes cast on a poll is done in a fair and transparent manner.

At least one of the scrutinizers shall be a Member who is present at the Meeting, provided such a Member is available and willing to be appointed.

**13.2 The qualifications, observations or comments or other remarks if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.**

**17.4.2 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.

### **17.6. Inspection and Extracts of Minutes**

**17.6.1 Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal**

#### **ballot.**

Minutes of all General Meetings shall be open for inspection by any Member during business hours of the company, without charge, subject to such reasonable restrictions as the company may, by its Articles or in General Meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection. The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties. Inspection of Minutes Book may be provided in physical or in electronic form. While allowing inspection of Minutes Book, the Company Secretary or the official of the company authorized by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

**17.6.2 Extract of the Minutes shall be given only after the Minutes have been duly signed. However, any Resolution passed at a Meeting may be issued even pending signing of the Minutes, provided the same is certified by the Chairman or any Director or the Company Secretary.**

When a Member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company shall furnish the





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same within seven working days of receipt of his request, subject to payment of such fee as may be specified in the Articles of the company. In case a Member requests for the copy of the Minutes in electronic form, in respect of any previous General Meetings held during a period immediately preceding three financial years, the company shall furnish the same on payment of such fee as prescribed under the Act. Copies of the Minutes or the extracts thereof as requisitioned by the Member, duly certified by the Company Secretary or where there is no Company Secretary, an officer duly authorised by the Board in this behalf, may be provided in physical or electronic form.

## 18.3 Minutes Books shall be kept in the custody of the Company Secretary.

Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorized for the purpose by the Board. The person so authorized by the Board shall be person of integrity and competence to handle the custody of Minutes Books.

## CONCLUSION

Now, that these Standards have been approved and notified by the Central Government it shall be the Duty of the Companies to adapt themselves to the Changes in the Law and that of the Professionals to assist and guide the Management of the companies in doing so. The Secretarial standards Board had made a great attempt in codifying these standards so as to fit them in the present legal and corporate scenario of the country. The benefits arising from these two approved Standards can be summarized thus:

1. Recognising the practices prevalent in the Companies in the conduct of Board and General Meetings and supporting them by addressing legal provisions and thereby enhancing the importance of Board and General Meetings.
  2. Ensuring that the Rights of Investors are protected by providing protective measures which cannot be ignored or overridden by the Management.
  3. Allowing the Professionals to perform their duties fairly and independently and preference to their knowledge and expertise has been given.
  4. Supporting Regulators to ensure that the Companies are functioning in a Fair and Transparent manner which avoids the violation of Law and protecting the Rights of Investors.
- This is what happens in our life. We are careful with things which we value most.
  - If we value our health, we will be careful about what and how we eat;
  - If we value our friends, we will treat them with respect;
  - If we value money, we will be careful while spending;
  - If we value our time, we will not waste it.

- If we value relationship we will not break it.
- Carefulness is a basic trait all of us have, we know when to be careful!
- Carelessness only shows what we don't value.....
- (an excerpt from JRD Tata's Life)
- From the above story, we can learn that-
- if we understand the Law , we follow it with Heart!!
- if we value money, we will be careful while spending it!!
- if we value our time, we will not waste it!!
- if we value our relationships, we will not break it!!
- Likewise, if we can value the Standards, we ensure Good Governace!!

Companies must be adept to cope up with the ever-changing environment. Certain combinations of Statutes may work for certain periods of time. Change, however, will inevitably occur. When it does, how well a country' s corporate governance system adapts to its changed environment, not how well it adheres to any particular model, will determine its success. The two approved Secretarial Standards make it evident that they definitely add value to Law and are beneficial to various Stakeholders viz., Investors, Corporates, Professionals, Regulators, Investors, Financial Institutions by providing a win-win situation to all. CS

## Appointment

**REQUIRED**  
**Qualified Company**  
**Secretary for a**  
**Bhavnagar based**  
**manufacturing Company**  
**0-1 year experience, salary**  
**negotiable, apply to:**

**Mr. Girish Shah**  
 Aquagel Chemicals [Bhavnagar] Pvt. Ltd.  
 Plot No. 147, GIDC Estate, Vartej, Bhavnagar -  
 364060



**G. P. Madaan\***  
 Founder & CEO  
 Corporate Knowledge Foundation  
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## Secretarial Standards – A Plethora of Opportunities For Company Secretaries

- The Secretarial Standards seek to harmonise, incorporate and standardize diverse secretarial practices followed by companies throughout the country, which when uniformly and consistently applied, would result in the establishment of sound Corporate Governance principles.

*“A little neglect may breed great mischief – for the want of a nail, the shoe was lost; for the want of a shoe, the horse was lost; for the want of a horse, the rider was lost; and for want of a rider, the battle was lost.” -- Benjamin Franklin*

**W**ith gradual opening up of the global economy, trade, investments and international financial market liberalization, there is a growing recognition for effective Corporate Governance framework as an important instrument for sustained development of the world economy.

In order to comply with the requirements of Section 118(10) of the Companies Act, 2013, every company shall observe Secretarial Standards (SS) specified by the Institute of Company Secretaries of India (ICSI) and approved by the Central Government pertaining to General and Board meetings. Insertion of this requirement in the Act is a Landmark development for the profession of the Company Secretaries and the ICSI as a whole.

The Secretarial Standards seek to harmonise, incorporate and standardize diverse secretarial practices followed by companies throughout the country, which when uniformly and consistently applied, would result in the establishment of sound Corporate

Governance principles. Without overstepping or modifying the law laid down in the Act, the Secretarial Standards recommend good Governance practices and seek to bring clarity wherever the law is silent or leaves room for ambiguity.

The Secretarial Standards Board (SSB) of the ICSI has formulated “Secretarial Standard on Meetings of the Board of Directors (SS-1)” and “Secretarial Standard on General Meetings (SS-2)”. These



\*Co-Chairman - Assocham's National Council For M&A; Assocham's Nominee on SSB of ICSI, 2015.  
 \*\*Member SSB of ICSI, 2015 & immediate past Central Council Member, ICSI.



# Article

Secretarial Standards – A Plethora of Opportunities For Company Secretaries

➤ Boardroom governance has been the subject of intense debate throughout the world and is coming into sharper focus again here now with the Government, through the Institute of Company Secretaries of India, mandating corporate houses to adopt certain practices in areas where the provisions of the Companies Act are either silent or are subject to multiple interpretations.

Standards are not an alternative to the applicable laws, rules and regulations but are supplementary to the existing laws, rules and regulations under which the India Inc and others function. These Standards prescribe a set of principles for convening and conducting Board and General Meetings and matters related thereto.

The Standards mentioned above play an extremely crucial role for Corporates as they are essentially concerned with the process by which companies are governed and managed. The Standards enhance the concept of Corporate Governance that primarily hinges on complete transparency, integrity and accountability of the management with an increasingly greater focus on investor protection and public interest. It is assumed that even the minutest of compliance and good Governance would be ensured if the companies follow the Standards effectively.

## COMPLIANCE OF SECRETARIAL STANDARDS

Section 205(1) of the Companies Act, 2013 lays down the functions of a COMPANY SECRETARY which inter alia include ensuring compliance of the applicable Secretarial Standards by a Company. Similarly, Form No. MR-3, pursuant to Section 204 (1) of the Companies Act, 2013 and Rule No. 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, which is the format of the Secretarial Audit Report, requires the Secretarial Auditor to examine compliance by the company with the applicable clauses of the Secretarial Standards issued by the ICSI and certify compliance or non-compliance thereof.

Secretarial Standards on Board and General Meetings clarify in detail the procedure for conducting and convening Board Meetings, Committee Meetings and General Meetings. Some of the provisions prescribed under the Act may lead to ambiguity on certain aspects or there are diverse practices followed in different companies. Boardroom governance has been the

subject of intense debate throughout the world and is coming into sharper focus again here now with the Government, through the Institute of Company Secretaries of India, mandating corporate houses to adopt certain practices in areas where the provisions of the Companies Act are either silent or are subject to multiple interpretations. Moreover, some Secretarial Standards provide for some additional provisions that aim to systematize the differing practices and are being lauded as good governance practices.

If the Company fails to comply with the prescribed provisions of the Act, including the Secretarial Standards, penalties may be levied for non-compliances and contraventions. Compliance with the Secretarial Standards would help in reducing litigations as most of the requirements of the Act relating to Meetings are explained in detail in the Standards and compliance thereof is likely to weed out chances of inadvertent non-compliances of the provisions of the Act.

## ROLE OF COMPANY SECRETARY

The Standards recognise the need of dynamism in the boardroom. The Chairmen and the Directors are realising the need of special skills and technical knowledge in this area and thus amplifies the role of a COMPANY SECRETARY possessing these skills and knowledge.

The responsibilities of the modern day company secretary have evolved from that of a “note taker” at board meetings or “administrative servant of the Board” to that which encompasses a much broader role of acting as “Board advisor” and bestowed with the responsibility for the organisation’s Corporate Governance.

The Board and the Chairman in particular are now reliant on Company Secretaries to advise them not only on Directors’ statutory duties, disclosure obligations and listing regulations but also with respect to Corporate Governance requirements and practices and effective board processes. This specialised role of the modern COMPANY SECRETARY has emerged to position this valuable professional as one of the key governance professionals







➤ **The Standards have recognised the importance of the role of a Company Secretary in governance practices and thus have mandated various duties and responsibilities which he has to discharge as a Governance professional.**

within the organisation.

The COMPANY SECRETARY plays a leading role in good governance by advising the Company, its Board and Board Committees to function effectively and in accordance with their terms of reference and best practices, the support goes beyond scheduling meetings to proactively managing the agenda and ensuring the presentation of high quality information in advance of meetings. This enables the directors to contribute effectively in board discussions and debates and enhances the capability of the Board for good decision making.

Though the quantum and focus of the COMPANY SECRETARY's responsibilities will differ depending on the type and scale of a company, no matter what the organisation is, the role has expanded beyond simply ensuring statutory compliance to a pivotal one where the skills of the COMPANY SECRETARY can have a direct impact on the effectiveness of the Board, organisation and its decisions. Company secretaries can add real value to their role and increase their impact by bringing commercial acumen, strategic understanding and softer people skills in addition to their already much-sought-after legal and governance knowledge.

The Standards have recognised the importance of the role of a COMPANY SECRETARY in governance practices and thus have mandated various duties and responsibilities which he has to discharge as a Governance professional. Some of the recognitions to the role of COMPANY SECRETARY under these Standards have been summarised as under:

## AS STRATEGIC MANAGER

- Given his recognition under the Standards, a COMPANY SECRETARY has to attend and shall be present at the Board Meetings. He shall also act as secretary to the committees of directors. While recording the attendance, the COMPANY SECRETARY has been put at par with other directors. All the directors and the COMPANY SECRETARY shall be marked as attendees in the Attendance Register, while everyone else, present in the meeting, shall be marked as Invitee in the Attendance Register.

- Along with the names and signatures of the directors, the Attendance Register shall also contain name and signature of the COMPANY SECRETARY.
- Minutes of the Board meeting shall record the names of the directors and the COMPANY SECRETARY as attendees. Similarly, the Minutes of a General Meeting shall also record the names of directors and the COMPANY SECRETARY present at the meeting.
- In case of a Board meeting, where one or more of the directors of the company are participating in the meeting through Video Conferencing or other Audio-visual mode, the Chairman and the COMPANY SECRETARY 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 papers laid before the Board, their scrutiny, identification and authenticity has to be ensured by the COMPANY SECRETARY or the Chairman. A reference of such authentication shall also be made in the Minutes.

## AS BOARD ADVISOR

- As per SS-1, any director may summon a meeting of the directors and once summoned, it is the COMPANY SECRETARY who shall convene the meeting in consultation with the Chairman or Managing Director or Whole-time Director.
- The Notice of the Board Meeting shall contain the contact number or e-mail address of the Chairman or the COMPANY SECRETARY. This will facilitate other directors to communicate effectively on matters connected with the meeting.
- Though Schedule IV of the Act says that the Independent Directors shall hold at least one meeting in a year without the attendance of any member of the management. However, Standards make it mandatory for the COMPANY SECRETARY to facilitate convening and holding of such meeting, if so desired by the Independent Directors.
- While conducting Board meetings, It would be the duty of





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the Chairman to check, with the assistance of COMPANY SECRETARY, that the Meeting is duly convened and constituted in accordance with the Act

- Barring few exceptions, it has been observed that in case of general meetings of companies, the COMPANY SECRETARY is either not present on the dais or is seated in the back row behind the directors. Standards have recognised the role of company secretary at the general meeting and it has been prescribed that the COMPANY SECRETARY shall be seated with the Chairman and shall assist the chairman in conducting the meeting.

## AS GOVERNANCE PROFESSIONAL

- In the past it has been observed that some of the directors neither attend any Board Meeting nor apply for leave of absence, but the minutes usually record that leave of absence was granted to such directors. To curb such practices, the Standards now provide that the request for leave for not attending the meeting shall be granted to a director only if the leave for the same has been communicated either to the Chairman or to the COMPANY SECRETARY.
- Most cases of Oppression and Mismanagement arise out of non-maintenance of records by a company. Over the decades, whenever complaints for oppression and management were filed, the management would initiate the process of writing of the statutory records and registers with retrospective effect. To ensure proper and timely maintenance of all the records pertaining to meetings of directors, it has now been prescribed that a copy of the signed Minutes of the meeting, duly certified by the COMPANY SECRETARY, shall be circulated to all Directors within fifteen days after the minutes are signed. Such compliance by Companies would now compel them to maintain all the records and registers (more particularly attendance register, minutes book, register of directors, directors' interest, directors' shareholding etc etc.) prior to the signing of the minutes of each meeting.
- In case of a general meeting where voting by shareholders through remote e-voting process is mandatory for specified companies, a Scrutinizer needs to be appointed by a company. This Scrutinizer may be a COMPANY SECRETARY in Practice. Further, for the purpose of voting at the meeting of such companies, another Scrutinizer needs to be appointed. In this case either the same Scrutinizer, appointed for the purpose of remote e-voting, may continue or the company has to appoint another Scrutinizer who may again be another COMPANY SECRETARY in Practice. Even in case of resolutions to be passed through Postal Ballot, there is a requirement of appointment of a Scrutinizer, which maybe a COMPANY SECRETARY in Practice
- A COMPANY SECRETARY can certify copies of the Minutes

or the extracts thereof as requisitioned by any Member.

## AS SECRETARIAL AUDITOR

- Though the Act gives the right of inspection of Attendance Register and the Minutes Book, of the meetings of directors, to the directors only, Standards empower the COMPANY SECRETARY in Practice appointed by the company or the Secretarial Auditor to inspect the Attendance Register and the Minutes Book if he considers it necessary for the performance of his duties.
- The COMPANY SECRETARY in Practice and the Secretarial Auditor can also inspect the Minutes of the general meeting during the course of the audit or required for the performance of his duties.
- The Standards prescribe that any qualification, observation, comment or other remark in the Secretarial Audit Report issued by the COMPANY SECRETARY in Practice, shall be read at the AGM and attention of Members present shall be drawn to the explanations/comments given by the Board of Directors in its Report on such qualification, observation, comment or remark.

## AS COMPLIANCE OFFICER

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

## AS CUSTODIAN

- The attendance register of the Board and Committee meetings shall be kept in the custody of the COMPANY SECRETARY.
- Standards prescribe that the Minutes Books of the meetings of directors shall be kept in the custody of the COMPANY SECRETARY.
- The Minutes Book of the minutes of the General Meetings shall also be kept in the custody of the COMPANY SECRETARY
- For safe custody of Scrutinizer's Report, it has been prescribed that the Scrutinizer's Report, Register and other papers shall



be kept in the custody of the COMPANY SECRETARY.

Board a list specifying the laws applicable specifically to the company.

## CORPORATE SECRETARIAL SERVICES

- Though otherwise also it is the duty of the COMPANY SECRETARY to record the proceedings of the Meetings, the Standards specifically cast this duty on the COMPANY SECRETARY.
- To ensure proper compliance of the time schedule and to prove the genuineness of the meetings, discussions, decisions taken, attendance at the meetings, the date of entry of the Minutes in the Minutes Book of Board and general meetings shall be recorded by the COMPANY SECRETARY.
- The COMPANY SECRETARY shall record the proceedings of the Meetings.

## AN EXPERT BEYOND LAW

- To ensure compliance of all the laws applicable to the company, in every Board Meeting the COMPANY SECRETARY shall ensure, for consideration of the Board, the placing of a Compliance Certificate to confirm compliance with the provisions of all the laws applicable to the company.
- The COMPANY SECRETARY shall also place before the

The notification of the Secretarial Standards has even further strengthened the position of a COMPANY SECRETARY in the corporate sector and the requirement of this skilled professional well versed with the nitty-gritties of Corporate Laws. The clarity and uniformity brought out by the Standards with reference to Board and General Meetings will further help the Company secretary in smooth functioning and overcoming any uncertainties.

## CONCLUSION

The Standards have opened plenty of opportunities for the company secretaries, whether in employment or in practice. As SS-1 and SS-2 are mandatorily required to be adhered to by all the companies, except OPCs, where there is only one director, all the 13 lakh plus companies, incorporated in India, will now have to follow uniform governance norms and practices and these companies may be required to engage the services of company secretaries for necessary compliances, maintenance of records and registers and for proper conducting and convening of Meetings. This will enhance the standards of governance in Indian corporate sector and reduce unnecessary litigations, controversies and malpractices to a greater extent, bringing about more transparency and a healthier business environment from all perspectives. [ICS](#)



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

The ICSI requires Consultants, for a period of 6 to 12 months, subject to renewal, at it's Lodi Road office as per the following details :-

**QUALIFICATION & EXPERIENCE** : Members of the Institute possessing 1 to 3 years post qualification experience in various aspects of Company Law.

**COMPENSATION** : The compensation offered shall be between Rs 25,000 to Rs. 40,000/- p.m (Consolidated) on the basis of Qualification & Experience.

**JOB CONTENTS** : The consultants shall be responsible for preparation of Guidance Notes, Checklists, Backgrounders, Publications and other Research Material on Companies Act, 2013 and other laws .

**APPLICATION PROCEDURE** : Interested persons fulfilling the above requirements may mail their biodata to [gaurav.mehta@icsi.edu](mailto:gaurav.mehta@icsi.edu) latest by 25<sup>th</sup> May, 2015.

(P K Grover)  
Joint Secretary (SG) –HR



# Article

Twin Standards – An Analysis



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## Twin Standards – An Analysis

- The scope and applicability of SS-1 and SS-2 framed by the ICSI and approved by the Government recently are sought to be explained in the form of a dialogue between two persons.

**T**he expressions double benefits or double jeopardy or double purpose do not connote any negative impression as would double meaning or double standard would do. The purpose of a standard is that there shall be a uniform and standard practices across the country when it comes to meetings of directors and meetings of shareholders. The twin standards seek to offer much more than double benefits while removing inconsistencies. Institute of Company Secretaries of India has formulated, through their elite Secretarial Standards Board, the twin standards referred to in Section 118 of the Companies Act, 2013 [the Act] which have now been approved by the Ministry of Corporate Affairs.

IY, a shrewd lawyer asked KS if the twin standards would apply to a meeting of members supposed to be called in pursuance of an order of the Company Law Board [CLB]. Being a new standard, KS could not answer readily as his mind was thinking more about the cause of the meeting rather than the date of calling the meeting, having been a busy practitioner himself before CLB. He was happy to find that SS-2 which is the ICSI standard on general meetings explains as its scope that a meeting of the Members or class of Members or debenture-holders or creditors of a company under the directions of the Court or the Company Law Board (CLB) or the National Company Law Tribunal (NCLT) or any other prescribed authority shall be governed by this Standard without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect

\*Member SSB of ICSI, 2015.



to the conduct of such Meetings. IY said that as the CLB had not issued any specific order with respect to notices and quorum and other such procedural things. KS said, in that case, SS-2 has to be followed. In fact, IY had already taken the leave of the Bench to engage KS a qualified practicing secretary to guide the Chairman of the Company in calling and holding the meeting of shareholders.



➤ while convening and conducting meetings, different people followed different practices in different situations, many a times in self serving manner. Such practices might leave some members or groups unhappy, high and dry. SS-2 is the panacea for such problems.

IY could not resist enquiring about the need for all these standards, when the provisions of the Act and the relevant Rules are apparently sufficient to serve the purpose. He said in all these years of company law, meetings have been called and held without any such standards and why suddenly there is any need for introducing the standard as if there is something wrong in the way the meetings are being called and held and as if the mandatory rules of procedure contained in the Act are not sufficient to take care. KS simply asked IY as to why there was any need for any new law when the Companies Act, 1956 was doing good which Act came into force much prior to the date of birth of both of us. KS, compared the introduction of SS-2 to the way Indian Air Force constantly looks out for gaps in the surveillance map and deploys radar systems at remote locations so that 360 degree coverage takes place to guard the skies of the country. Similarly inspite of the fact that there are rules of procedures, everything was not captured by the statute and the rules. Therefore while convening and conducting meetings, different people followed different practices in different situations, many a times in self serving manner. Such practices might leave some members or groups unhappy, high and dry. SS-2 is the panacea for such problems, KS added with a proud smile for having answered satisfactorily. But IY would not buy these arguments so easily. IY said there may be problems here and there. But by and large there were no problems. He asked KS if he believed that this standard is going to prevent the occurrence of such problems.

With short lived happiness, KS had to again gather his wits and say that every problem has a solution; there is no problem without any solution. SS-2 must be strictly adhered to so that there cannot be any fundamental allegations of unfairness in the way in which meetings are conducted. The Chairman will find a ready reckoner in SS-2. In fact, KS added, as SS-2 is mandatory, there will be uniform procedures and reference to even the articles of association will not be very much needed except for certain purposes such as quorum. When IY asked KS if his job responsibility has increased, KS immediately said, "of course; and there must be a fee concomitant with the responsibility undertaken". IY was finding an inconsistency in this argument as SS-2 is supposed to offer a ready reckoner and therefore compliance requirements must have got crystallized leaving less scope for discretion and as such the fee must reduce. KS was cornered. KS answered that it is all a question of time; as more time is now required to be spent, more fee must be paid and

if there occurs any mistake, he is answerable. While IY does his job standing on his legs at the court, KS would do his job pretty comfortably and therefore there could be a little less fee for him, in this case.

As it was time to meet the Chairman and draw a road map to comply with the order of CLB, both went to his office where they were greeted by Chairman in his usual style and said when even one of you come I used to get butterflies in my stomach and now as two people are coming together there is a signal that there is some major problem. IY said that KS said about the new law that has come in the field of management and administration of companies and in particular about SS-1 and SS-2 which have to be followed for board meetings and general meetings. Immediately the Chairman asked if there is any difficulty, I don't mind asking KS to chair the meeting to conduct the proceedings and sit alongside happily watching the proceedings. KS said that as e voting has become mandatory, physical meetings have lost their charm. The Chairman asked if SS-2 has brought any change to his role as a Chairman. Being a veteran KS cannot afford to "YES Sir and NO Sir and YES Sir; NO Sir; DON'T KNOW Sir". Without fumbling for words, KS said definitely there is a change in the procedural aspects and as Chairman he must know the most important ones.

The Chairman asked whether there is any change in the length of notice to be given to shareholders and whether there is any change in the quorum requirements. KS said such things are provided by the Act itself and unless Articles of Association provides for harsher things, we can follow the provisions of the Act. KS added that with respect to Notice of General Meetings, SS-2 goes beyond the Act and prescribes that the notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark for easy location. In case of companies having a website, the route map shall be hosted along with the Notice on the website. Being a techno savvy man, the Chairman said probably we can send alongwith notice an App or link to members so that they are able to come to venue easily. Further, KS said SS-2 makes it very clear that for the purpose of reckoning 21 (twenty-one) days clear notice, the day of sending the notice and the day of meeting should not be counted. Further in case the company sends the notice by post or courier, an additional 2 (two) days should be provided for the service of notice.

The Chairman asked if there is any change in the manner of voting or in the representation at meeting through proxies. KS said those things have also not changed and they are as per the Act read with Articles. The Chairman asked KS if under SS-2 any right has been given to proxies to speak. KS said NO. He said new provisions on electronic voting applies to this company as it has more than 1000 members and therefore even members need not speak; all that they need is their mouse; they need not even take the trouble of coming to the venue of the meeting. They can sit at home and cast their votes even in their latest handsets. The Chairman said that seems to be a good development under SS-2 thinking that e voting is a concept introduced by SS-2. At the same time, IY too



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said “if I remember correct, e voting came in the Act much before SS-2 came”. KS clarified that e voting is a new concept introduced in the Act and SS-2 has shaped the procedure thereof and has captured e voting requirements also, sipping the lemon tea in style.

The Chairman then asked KS two more pertinent questions. He said what to do if some of the members have already died and their shares are continuing to be in the names of the deceased without legal heirs coming forward so far to claim the shares. Moreover he said whether a board meeting is necessary to call this general meeting as it is in pursuance of an order of the CLB. KS answered the second question first and said that even though CLB has directed the convening of a general meeting, the Board has to fix the date, venue and approve the notice of meeting and appoint scrutinizers and therefore for that purpose, the Company must follow SS 1 also. Inviting the attention of the Chairman to SS-2, KS explained the Chairman that where the company has received intimation of death of a member, the notice of meeting should be sent as under:

- where securities are held singly, to the Nominee of the single holder;
- where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;
- where securities are held by more than one person jointly and all the joint holders die, to the Nominee appointed by all the joint holders;

In the absence of a nominee, the notice shall be sent to the legal representative of the deceased member.

However if there is no intimation of death, the question of sending notice to any such person (other than the member) does not arise. Where intimation has been received without any information as to who is the legal representative, the notice can be sent to the person who has sent the intimation as a third person who is no way connected with the deceased is not expected to give any intimation at all. However the SS-2 does not add clarity on this point. IY, having a formidable practice in the field of company law and also property law explained that the term “legal representative” has not been defined under the Companies Act, 2013 nor was it defined under the Companies Act, 1956. He asked if there was any definition under the SS-2. KS quickly referred to the definition section of the standard and said that there was no definition in SS-2. IY said the Code of Civil Procedure, 1908 defines a “legal representative” as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. Thus while it is clear that the intimation of death would usually come from a relative of the deceased member, sometimes a third party such as a pledgee or receiver or an official assignee might come up with such intimation. KS immediately said that the words “whoever intermeddles with the estate of the deceased” are wide enough to include such category of people too and it would be better to give notice to such

people. One can always err on the right side of law. KS added that these things will be explained in the Guidance Note that is being prepared by the ICSI.

KS also clarified that when it comes to voting rights, one has to be careful to verify the status of the person and only after being sure, voting rights could be allowed. In fact, for e voting, persons whose names are entered in the register of members with a cut-off date of not earlier than 7 days before the date fixed for the meeting. Therefore sufficient time is available for getting the names of persons entitled to shares in consequence of death. However it must be remembered that though notice is required to be given to a legal representative, Section 47 of the Act grants voting rights only to members and only if a person’s name gets entered in the Register of Members as a member or the Register of Beneficial Owners, he is entitled to voting rights on any resolution placed before the members at the general meeting. The Act contains a definition for the word “Member”, KS informed the Chairman. IY however cautioned that care must be taken to verify the documents and a proper procedure must be devised to ensure that such matters are handled with care and no request is rejected arbitrarily.

The Chairman thereafter requested KS to accept appointment as the scrutinizer for e voting and requested KS to sit with the Company Secretary to organize the calendar and other formalities so that there are no hitches.

Another day KS and CS, the company secretary of the company, discussed several things about the provisions relating to minimum quorum, proxies, e voting and mode of despatch of the notices and certain other topics were discussed. CS asked KS if the same person can represent more than one body corporate, KS quoted SS-2 and said that subject to Section 113 of the Act, SS-2 nicely clarifies this aspect and therefore a single person could represent a number of bodies corporate. It must be however borne in mind, that a single person alone cannot constitute a meeting. Therefore there must be more than one person to constitute a meeting. Moreover even though there is going to be e voting, SS-2 asserts the need for the presence of a valid quorum in order to constitute a meeting. KS clarified that such finer aspects would be explained in detail in the Guidance Note being prepared by the ICSI. Moreover unlike postal ballot, e voting is not a substitute for the meeting itself.

The CS raised a very pertinent question on the point whether it is possible to send notices by ordinary post. KS clarified that as per the relevant rules and also SS-2 notice in such cases where e voting is mandatory must be sent either by registered post or speed post or by courier or by e-mail or by any other electronic means. The SS-2 says that an advertisement containing prescribed details shall be published, immediately on completion of despatch of notices for meeting but atleast twenty one days before the date of the general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district and at least once in English language in an English



newspaper, having country-wide circulation, and specifying therein. Moreover as per SS-2, notice should also be placed on the website of the company, in case of companies having a website, and of the agency that provides the e voting platform. Such notice must remain on the website till the date of the general meeting. Further the notice should contain complete particulars of the venue of the meeting including route map and prominent land mark for easy location. In case of companies having a website, the route map shall be hosted along with the notice on the website. CS added that immediately when the Act came into force he had written to all the members asking them to register their e mail IDs and the response was very good.

On declaration of results, for the result of any poll at the general meeting, SS-2 says that the Chairman shall declare the result of the poll within two days of the submission of report by the scrutiniser and taking into account the scrutiniser's report received on Remote e-voting and voting at the meeting, the Chairman or any other Director so authorised shall countersign the scrutiniser's report and declare the result of the voting forthwith with details of the number of votes cast for and against the resolution, invalid votes and whether the resolution has been carried or not. From a combined reading of both these paragraphs of SS-2, it is clear that two days are available for the Chairman to declare the result from the date of submission of the results. However, KS clarified that the standard does not say what the time limit for the scrutinizer of the poll at the meeting for submitting his report. This aspect would also be taken care of by the Guidance Note being prepared by ICSI. SS-2 makes it mandatory that the result of the poll with details of the number of votes cast for and against the resolution, invalid votes and whether the resolution has been carried or not should be displayed on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere, and in case of companies having a website, shall also be placed on the website.

While everything was going on very well, after commencement of e voting, one fine morning IY called KS and informed that CLB has stayed the meeting and his efforts to get the stay order modified to the effect that company will not implement the resolutions instead of a stay did not fructify. KS asked him if the order stays the meeting or has it the effect of cancelling the meeting. KS further asked him whether even e voting that is going on currently should also be stayed. IY clarified that it is only a stay of the meeting.

At this time, the Chairman dialed in and an urgent teleconference

with IY and KS to discuss the action to be taken took place. CS too joined and said that as per SS-2, a general meeting already convened with proper notice cannot be postponed or cancelled. However, CS continued, as there is an order of CLB which binds the company, there does not seem to be any chance of going ahead with the meeting. IY clarified that chances of getting the injunction vacated or modified are bleak in view of the short time available and the weekly holidays. When Chairman asked KS if the e voting should also be stayed, KS said it is better to get necessary clarification from the CLB itself. KS highlighted the need for creating awareness of such developments in company law amongst lawyers and judiciary too so that when issues of this nature arise, the new procedures will also be taken note of by all concerned. In it also necessary to vote such voting methods involve specialized agencies too such as NSDL and CDSL. KS acknowledged the fact that the concern of the Chairman in this regard was genuine and because it is actually very difficult to communicate to members and stop e voting which has already begun. These aspects will be dealt with in the Guidance Note that is being prepared by the ICSI.

With respect to the postponement of the meeting, as per SS-2, KS insisted that there has to be an announcement that the meeting has been postponed due to order of the CLB. SS-2 says that if, for reasons beyond the control of the Board, a general meeting could not be held on the date originally fixed, the Board may reconvene the general meeting, to transact the same business as specified in the original notice, after giving not less than 3 (three) days intimation to the members. The said intimation could be either sent individually in the manner stated in SS-2 or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district. SS-2 does not say anything as to how postponement of the meeting must be notified to the Members.





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This aspect will be elaborated and discussed only in the Guidance Note that is being prepared by the ICSI.

LY informed the Chairman that there would not be any contravention of a provision of SS-2 merely because it does not stop saying that a meeting validly called cannot be cancelled or postponed; at the same time, it also says if the meeting gets postponed, it can be reconvened to transact the same agenda. Thus the teleconference ended with a decision to make an announcement about the postponement through paper advertisement so that members from far off places do not spend their time and money to come and go back without any fruitful purpose. However, the Chairman added that as a matter of courtesy necessary arrangements have been made to offer some snacks and tea to the members and the proxies who turn up at the venue without knowing that it has been postponed. KS said that though SS-2 prohibits giving away

gifts, it does not prohibit such niceties and courtesies and these aspects will be surely discussed in the Guidance Note that is being prepared by the ICSI.

## CONCLUSION

SS-1 and SS-2 are akin to saying “Make Your Own Rules” as corporate practices have been thoughtfully captured and it is time to think of removing the Rules of Procedure as these twin standards could do their job more effectively and meaningfully. As the discussion makes it clear, there is still a lot of scope for value addition. One of the most advantageous features of the twin standards is that even a person who is not professionally qualified will be able to answer critical questions confidently without searching out for answers from the hundreds of provisions of the Act and the Rules relating to board and general meetings. **CS**

## 100TH MEETING OF THE SECRETARIAL STANDARDS BOARD (SSB) OF ICSI

The Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) commemorated its 100th Meeting on 20th April 2015 at ICSI-CCGRT, CBD Belapur, Navi Mumbai. CS Atul Mehta, President, ICSI, CS Mamta Binani (Ms.), VP, ICSI, CS Ashok Chhabra and CS S V Subramanian, Past Chairmen, SSB and CS Pavan Kumar Vijay, Chairman, SSB along with other current and past Members of SSB were present on the occasion.

Secretarial Standards Board (SSB), which is the think tank of ICSI, was constituted in July, 2000 with the objective of formulating Secretarial Standards for integration, harmonisation and standardisation of diverse secretarial practices. The constitution of SSB is a unique and pioneering step by the ICSI. The purpose of constituting this Board was for long-term benefits for the growth and enhanced visibility of the profession and setting up international benchmarks for corporate governance practices through Secretarial Standards.

Since its formation, SSB has come a long way and grown in importance and stature. Section 118 (10) of the Companies Act, 2013 provides statutory recognition to the Secretarial Standards issued by ICSI. It mandates observance by every company of the Secretarial Standard with respect to Board and General Meetings specified by ICSI and approved by the Central Government.

While speaking on the occasion, CS Atul Mehta thanked all its Chairmen and Members till date for their painstaking efforts, which has helped SSB to be what it is today. He pointed out that India is much ahead of other nations in the world as far as best secretarial and corporate governance practices are concerned and reiterated that the Secretarial Standards have taken the profession to altogether different altitude.

CS Pavan Kumar Vijay, in his introductory remarks, said that the Secretarial Standards would give new dimension to the Industry, Regulators and Practitioners by aiding in good governance. He expressed his deep gratitude towards all the Members of SSB till date, especially Past Chairmen, Shri N J N Vazifdar, CS Ashok Chhabra and CS S V Subramanian for their immense contribution, dedication, passion and diligence which has been the driving force for SSB. He also thanked the Secretariat of SSB at CCGRT and Delhi for providing technical and secretarial support to SSB, throughout this remarkable journey of 100 Meetings.

CS Mamta Binani, in her concluding remarks, stated that Secretarial Standards bring about standardization of procedures and recognized that it provides a sense of discipline in the industry. Congratulating the entire team of SSB for the great job done by them, she assured that ICSI would advocate it further through programmes, seminars, webcasting, examination on secretarial standards for self-evaluation etc.

All the Chairmen and Members of the SSB till date were felicitated on the occasion with a token of appreciation for their selfless contribution over the years.





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## Secretarial Standards : A new Era

- The adoption of the Secretarial Standards by the corporate sector will have a considerable impact on the quality of secretarial practices being followed by the companies, making them comparable with other entities and Standards would create uniformity of mottled secretarial practices under the Companies Act. Secretarial Standards are not there to substitute any applicable provisions of the law but as a repository of knowledge .

### INTRODUCTION

India Inc would wake to a new benchmark of Secretarial Standards(SSs) to foothold its corporate governance practices in the global arena. The recognition of Secretarial Standards by the legislature brings lots of challenges and provides opportunities for the profession of Company Secretary. At the same time, it demands responsibility and accountability to the profession. Over a period of time, various secretarial practices were adopted by India Inc which not only was based on 'as suits me' attitude; it also questioned whether such kind of practices were intended under the legislature. When India Inc was facing multitude of Corporate Governance practices whereby two activities particularly Board and shareholders decision(s) are crucial, the introduction of SSs pertaining to these areas is timely, apt and need of the hour. Moreover, when India is preparing towards ease in doing business in the country and initiative of 'Make in India' along with to attract foreign capital for building country's infrastructure, Secretarial Standards would support all these endeavors.

For the purpose of Companies Act, the expression "Secretarial Standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

\*Member SSB of ICSI, 2015.

### STATUTORY MANDATES

Sub-section (10) of Section 118 of the Companies Act, 2013 provides statutory recognition to Secretarial Standards with respect to Board and General Meetings, although other standards are not yet notified. Section 121 demands a confirmation with regard to compliance of secretarial standards with respect to calling, convening and conducting the Meeting when preparing report on the Annual General Meeting of the company. The Company Secretary is entrusted under Section 205(1) of the Companies Act, 2013 with the duty for ensuring compliance





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➤ Secretarial Standards are a path breaking initiative for the profession of Company Secretary. The significance of Secretarial Standards would depend on how it is implemented by the Company Secretary and adopted by the Board of Directors.

of Secretarial Standards, which is one of the key functions of Company Secretary. Further, Secretarial Audit Report issued by the Company Secretary in Practice requires certification on compliance of Secretarial Standards. Apart from Companies incorporated under the Companies Act, other entities might also adhere to these standards.

## SECRETARIAL STANDARDS – THE NEED

Secretarial Standards are the yardstick and in other words codifying a measure in order to avoid divergent approach towards compliance. Varied secretarial practices are followed by corporate entities, which was evolved over a period of time through practical application and as a response to 'need of the game'. Such kind of approach and practice was much needed to be re-looked and reviewed from the perspective of whether it is acceptable at a broader level or not. The introduction of Secretarial Standards would codify the best approach to such divergent secretarial practices in the right perspectives. The adoption of the Secretarial Standards by the corporate sector will have a considerable impact on the quality of secretarial practices being followed by the companies, making them comparable with other entities and standards would create uniformity of mottled secretarial practices under the Companies Act. Secretarial Standards is not there to substitute any applicable provisions of the law and in fact it is a repository of knowledge evolving based on the ever evolving principles.

## STAKEHOLDERS OF SECRETARIAL STANDARDS

The stakeholders of Secretarial Standards have to be clearly identified in order to avoid any ambiguity. Definitely, the profession of Company Secretary, Board of Directors, Ministry of Corporate Affairs, shareholders, regulatory authorities, stock exchanges, foreign institutional investors/foreign portfolio investors, statutory auditors, internal auditors are the stakeholders of Secretarial Standards. Creating awareness amongst the stakeholders would pose a challenge and long term endeavor. Gradual and systematic approach would make the task easier and effective.

## IMPLEMENTATION OF SSs AND THE COMPANY SECRETARY

Secretarial Standards are a path breaking initiative for the profession of Company Secretary. The significance of Secretarial Standards would depend on how it is implemented by the Company Secretary and adopted by the Board of Directors. The Company Secretary should introduce Secretarial Standards to his/her Board for effective decision making process. Every resolution passed by the Board as well as shareholders, in addition to the applicable section(s) of the Companies Act and Securities Laws, should have reference of Secretarial Standards in order to enrich best practices. Finally, Company Secretary is responsible for its implementation; it is not always the statutory recognition which would enhance the significance and acceptability of Secretarial Standards, but the passion with which it is being practiced.

## LOOKING INTO OTHER GLOBAL STANDARDS

IFRS principles are considered as global benchmark and wider acceptance for financial reporting. Its application earn status, recognition and are practiced in many countries. The stated objectives of IFRS is to develop a single set of high quality, understandable, enforceable and globally accepted financial reporting standards based upon clearly articulated principles. IFRS is clearly a principle based standard on financial reporting.

The vision statement of IFRS states that it is to develop, in the public interest, a single set of high quality, understandable and enforceable global accounting standards that require high quality, transparent and comparable information in financial statements and other financial reporting to help participants in the world's capital markets and other users make economic decisions. [www.ifrs.org]

One of the important stakeholders of IFRS is the participants in the world's capital markets.

## THE GLOBAL MANAGEMENT ACCOUNTING PRINCIPLES®

Looking into the CGMA website it becomes clear that the Global Management Accounting Principles were created for this era of business. Management accounting is at the heart of quality decision making, because it brings to the fore the most relevant information and analysis to generate and preserve value. The Principles guide best practices. They were prepared by the Chartered Institute of Management Accountants (CIMA) and American Institute of CPAs (AICPA) – which together represent more than 600,000 members and students in 177 countries. The Principles were developed in conjunction with



CEOs, CFOs, academics, regulators, government bodies and other professionals from 20 countries across five continents. The Principles are intended to be universally applicable to help organizations, large and small, public and private, to extract value from the increasing volume of available information. They are aimed at chief executives, chief finance officers and members of boards of directors who have oversight of their organizations' performance. Investors and other stakeholders will also find them useful. They can be used to support the development, execution and refinement of strategy through the performance management system, as well as to support the core activities of the management accounting function. It covers 14 different practice areas, ranging from financial strategy to risk management.[www.cgma.org]

## THE FOUR GLOBAL MANAGEMENT ACCOUNTING PRINCIPLES AND OUTCOMES

<p>Principle: Communication provides insight that is influential Outcome: Influence Management accounting begins and ends with conversations. The Principles have been designed to help organisations cut through silos and encourage integrated thinking, leading to better decision-making.</p>	<p>Principle: Impact on value is analysed Outcome: Value Management accounting connects the organisation's strategy to its business model. This Principle helps organisations to simulate different scenarios to understand their impact on generating and preserving value.</p>
<p>Principle: Information is relevant Outcome: Relevance Management accounting makes relevant information available to decision makers when they need it. The Principles provide guidance on identifying past, present and future information, including financial and non-financial data from internal and external sources. This includes social, environmental and economic data.</p>	<p>Principle: Stewardship builds trust Outcome: Trust Accountability and scrutiny make the decision-making process more objective. Balancing short-term commercial interests against long run value for stakeholders enhances credibility and trust</p>

[www.cgma.org]

The purpose of making reference to these standards is to inform

the readers about the best practiced global principles based standards.

## ACCOUNTING STANDARDS

Quality of financial reporting is of utmost importance. Accounting Standards necessarily having recognition under the Companies Act brings uniformity in the application of accounting principles. Apart from its mandates under the Companies Act, Accounting Standards also require compliance by other regulatory authorities, namely the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority (IRDA).

## SUPREME COURT ON ACCOUNTING STANDARDS AND THE "WTRUE AND FAIR" VIEW

Every profit and loss account and balance sheet of a Company shall comply with the accounting standards. Can it be said that just because the Accounting Standards are not complied with, the accounts of a company do not present a true and fair picture of its financial position? Is compliance with the Accounting Standards mandatory, or are certain deviations justified? The Supreme Court's observations in *JK Industries v. Union of India*, [2008] 143 Comp Cases 325 (SC), appears to have settled the issue. As to whether AS 22 was *ultra vires* the Companies Act the court stated thus:





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...implementation of the Accounting Standards and their compliance are made compulsory and mandatory by the afore stated sections 211 (3A), (3B) and (3C)... Before introduction of Sub-sections (3A), (3B) and (3C) in Section 211 (w.e.f. 31.10.98), these Standards were not mandatory. Therefore, the companies were then free to prepare their annual financial statements, as per the specific requirements of Section 211 read with Schedule VI. However, with the insertion of Sub-sections (3A), (3B) and (3C) in Section 211 the P&L a/c and the balance-sheet have to comply with the Accounting Standards ... non-compliance with these Standards would lead to violation of Section 211 inasmuch as the annual accounts may then not be regarded as showing a "true and fair view"...

However, the subsequent decision of the Bombay High Court indicates that the question is still an arguable one. *In Re Hindalco*, [2009] 94 SCL 1 (Bom): MANU/MH/0927/2009, Justice Khanwilkar observed:

On conjoint reading of Sub-sections (3A) and (3B) of Section 211, it necessarily follows that deviation from the accounting standards is permissible subject, however, to compliance of the requirement of disclosure in the profit and loss account and balance sheet of such deviation and the reasons for such deviation and financial effects thereof; in other words, deviation of accounting standards is not wholly prohibited, but is regulated by the provisions of Section 211 of the Act.

[<http://indiacorplaw.blogspot.in/2009/10/compliance-with-accounting-standards.html>]

The significance of discussing the Supreme Court view in Accounting Standards is not to understand the judiciary test on Accounting Standards, but to keep in mind the perception on standards.

## CONCLUSION

Unlike accounting and auditing standards, secretarial standards are not part of Section 2 of the Companies Act, 2013 which defines various terms under the Act. The intention of legislature for not defining the Secretarial Standards under the main definition section is not clear. However, Secretarial Standards would go a long way in creating confidence in the mind of investors, statutory and regulatory bodies towards adhering to corporate governance practices in India Inc. Apart from recognition under the Companies Act, Secretarial Standards need to be recognized under the SEBI, RBI, FDI and other relevant laws. Secretarial Standards might put to rest long drawn litigation around Board and shareholders decision(s). However, having said that, the Secretarial Standards have to navigate the judiciary test and may be debated in the years to come before having its wider acceptability. It is yet to be seen whether non-adherence of Secretarial Standards would make the decision of Board and Shareholders as null and void thereby marking that decision bad in law. A question, we leave to the readers to ponder upon. CS

## ATTENTION MEMBERS!

### SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

#### SEBI (Prohibition of Insider Trading) Regulation 2015 notified on January 15th, 2015 are effective from May 15, 2015.

Regulation 7(1) (a) mandates every Key Managerial Personnel (KMP), (besides others) of a company whose securities are listed on any recognised stock exchange to disclose his holdings of securities of the company as on the date of these regulations taking into effect (i.e on May 15, 2015) to the company within thirty days of these regulations taking effect.

Regulations 7(1) (b) stipulates that every person on appointment as a KMP (besides others) shall disclose his holding of securities of the company as on the date of appointment, to the company within seven days of such appointment.

Besides, there are continual disclosure requirements for KMPs as employees depending on the thresholds prescribed under Regulation 7(2).

Regulation 9 requires various entities including professional firms dealing with listed companies to formulate code of conduct adopting the minimum standards set out in Schedule B to these regulations. **This will be thus applicable to PCS firms.**

The Regulations also prescribes enhanced role of compliance officer covering aspects such as approval and monitoring of trading plans, reporting of disclosures to stock exchanges, advising the board of directors on matters including pre-clearance/ reporting, etc.



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# Secretarial Standards - A New Requirement for Companies

- 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 Secretarial Standards 1 and 2, to start with, has thus been timely and appropriate.

## INTRODUCTION

**T**he 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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Secretarial Standards - A New Requirement for Companies

➤ 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. 





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## Secretarial Standards – Professional Responsibility

- The adoption of secretarial standards by the corporate will have substantial impact on the quality of secretarial practices being followed by the companies, making them comparable with the best practices in the world.

**A** review on literature and introductory material on Accounting Standards in India and across the globe suggests that the objective of accounting standard is to standardize the diverse accounting policies and practices with a view to eliminate to the extent the non-comparability of financial statements and add the reliability to the financial statements. From this it appears that the need for accounting standards arises out of existence of diverse practices in implementation of accounting policies and the diversity is so intense that comparability of financial statements is hampered to the extent of even questioning reliability of financial statements. Added to this, companies operating from different countries have to harmonize the accounting policies and presentation of financial statements in manner that they are intelligible to stake holders in that company across the counties in which they operate. The ultimate customers of financial statements include Investors, tax authorities, regulatory authorities and other stake holders and these end customers routinely require to compare the financial statement of one company with the financial statements of other companies. Unless all companies adhere to the commonly accepted accounting policies and method of presentation of financial statements, comparison



of financial statements across companies will not be meaningful. It will not be an exaggeration to state that accounting standards when strictly followed ensure that entries in financial statements carry the same meaning

\*Views expressed in this article are personal views of the author and do not, in any way, represent views of his employer. He is also representative of NSE in SSB of ICSI, 2015.





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➤ General and Board Meetings, in a way, are signature events of each company and every company cherishes a feeling that it has its own unique 'style' of conducting these meetings. However, statute requires that the ingredients of these meetings have to be strictly in compliance with the law. Secretarial standards on meetings try to harmonize the statutory requirements and 'unique style' of company.

and impact.

The need for Accounting standards is easy to imagine; the variety and complexity of financial transactions result in to variations in the aspects of recognition, measurement, treatment, presentation & disclosure of accounting transaction in the financial statement. Do we have such complications while dealing with secretarial practices? More importantly, if there are variations, does it really matter to any stakeholders? This question gets even more accentuated in the context of the new structure of the Companies Act, 2013. Unlike the earlier Act, the 2013 Act has created a second tier of law in the form of Rules under various provisions of the Act to prescribe procedures relating to the subject discussed in that provisions. The rules can be amended by the executive without having to wait for legislative approval which ensures dynamic adjustment of procedures to changing needs of business. With such dynamism induced in the statute, is there still a need for Secretarial Standards? If yes, what should such Standards be serving?

As per Section 118 (10) "Every company shall observe secretarial standards with respect to general and Board Meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government". Clearly this provision recognises the need for secretarial standards with respect to general and board meetings. It only suggests that the legislature is of the view that dynamic Rules format is inadequate to address practical needs of business in bringing about standard approach to matters relating to General and Board Meetings. General and Board Meetings, in a way, are signature events of each company and every company cherishes a feeling that it has its own unique 'style' of conducting these meetings. However, statute requires that the ingredients of these meetings have to be strictly in compliance with the law. Secretarial standards on meetings try to harmonize the statutory requirements and 'unique style' of company.

Section 205 which deals with functions of company secretary



states at sub-section (b) that functions of company secretary shall include "to ensure that the company complies with the applicable secretarial standards". Explanation under the section states that for the purpose of this section, the expression, "Secretarial Standards" means secretarial standards issued by the Institute of Company Secretaries of India and approved by the Central Government.

The subtle difference between section 118(10) and explanation to Section 205 brings out a legislative reality that companies shall necessarily have to adhere to the secretarial standards issued by the Institute of Company Secretaries (and approved by Central Government) in relation to general and board meetings where as company secretary is obligated to ensure that the company adheres to any other secretarial standard that may be issued by the Institute of Company Secretaries of India (and approved by the Central Government). ICSI has framed Secretarial Standard – 1 (SS-1) and Secretarial Standard – 2 (SS-2) which have since been



➤ Professional Responsibility with respect to Secretarial standards has two dimensions. One is towards compliance with the secretarial standards issued. Penal provisions under Section 118(11) and 204(4) are relevant to be reckoned in this context. Failure to be complaint with secretarial standards attract penalty to the company and also to the company secretary. The second and more important area of professional responsibility is to contribute to the process of setting up secretarial standards only in areas that require a standard to be set up.

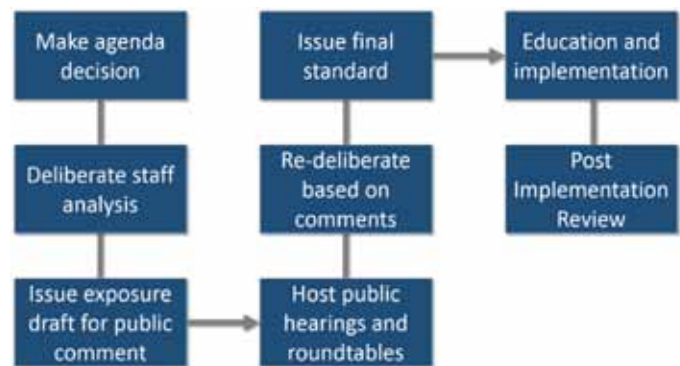
notified by Government of India and these two standards would be effective from July 1, 2015.

The Companies Act, 2013 and Rules viz., The Companies (Management and Administration) Rules, 2014, etc form regulatory structure for general and board meetings. This structure give sufficient clarity on “what”, “when” “who” aspects of regulations but there are several grey shades on “how” aspects of these meetings. SS-1 and SS-2 address the grey areas of “how” aspects adequately. The Secretarial Standards Board expects that these secretarial standards integrate, harmonize and standardize such secretarial practices prevalent in the Corporate Sector. The adoption of the secretarial standards by the corporate will have substantial impact on the quality of secretarial practices being followed by the companies, making them comparable with the best practices in the world.

Standards of corporate governance, fairness in disclosures, preservation of respect to shareholder rights, compliance with applicable laws in form and substance, etc are all dependent upon the character and standards of performance set by company secretary of the company and support that company secretary enjoys from the top management. Changes in company law, increasing regulatory requirements arising out amendments and prescriptions under Listing Agreement, globalization of businesses and increasing participation of domestic and foreign institutional investors continually increasing bar for governance standards. The traditional practice of pursuing company specific secretarial practices may not continue to be compatible to expected standards of secretarial performance.

The responsibilities on Board in general and independent directors

specifically have dramatically changed under the new Act and consequences are personalized. Ability of these directors to take up these challenges directly depends on the quality of secretarial support and efficiency. To illustrate, quality of policies formulated on subjects like related party transactions, subsidiary companies, policies to regulate insider trading in the company, whistle blower policy, risk management policy, etc depend on the understanding, application and coordination achieved by company secretary across functions in the organization. Implementation of these policies, monitoring compliance and reporting to the Board or its subcommittee depends on the effectiveness with which the company secretary functions. As it is commonly observed, directors usually have common directorships across companies. The expectations and demands by such directors will require company secretary to bench mark his/her practices with the best. But, in the absence of established best practices, professionals will have to satisfy themselves with peer comparison. Peer comparison and compatibility in itself is not an assurance that the practices are the best and helpful in fulfilling legislative/ regulatory and governance requirements. Peer comparison will only democratize existing practices. Secretarial Standards issued by a competent professional body stand as reference and to help assure the Boards and company secretary that practices adopted by it are in conformity with legislative and regulatory requirements. Secretarial Standards do not supplant the law or regulations but supplement them. Any standard setting process goes through the following process (taken from FASB paper):



Secretarial Standards getting statutory recognition is unique to India. No other country has given such statutory recognition. As members of the Institute and as professionals (also key managerial personnel recognised under the Companies Act, 2013) all company secretaries should contribute to the process of setting up Secretarial Standards as given in table below.

Professional Responsibility with respect to Secretarial standards has two dimensions. One is towards compliance with the secretarial standards issued. Penal provisions under Section 118(11) and 204(4) are relevant to be reckoned in this context. Failure to be complaint with secretarial standards attract penalty to the



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company and also to the company secretary. The second and more important area of professional responsibility is to contribute to the process of setting up secretarial standards only in areas that require a standard to be set up. As the Secretarial Standards have assumed a statutory force, every Secretarial Standard issued will have a legal force. Essentially the Act and Rules structure handle several of procedural requirements under the Companies Act. Every company secretary has to voice his views publicly, unhesitatingly in a manner that the Institute listens to it such that secretarial standards are issued only in the areas required and no standard is issued which is a mere repetition of what is already stated in Law. It is possible that some topics require 'guidance note' as opposed to a "Secretarial Standard". It is necessary to appreciate that repeating what is said in the law but in different words under the head secretarial standards may have unintended impact of resulting in compliance complications. If the Institute is convinced that company secretaries need some guidance in any matter, only a guidance note may be issued unless a Secretarial Standard is warranted.

Stage of setting up standard	Contribution expected
Formulation of Agenda for the secretarial standard board	By way of articles in the chartered secretary and debates at chapter levels, grey areas ie., issues not addressed by the Act or rules framed thereunder shall be brought on to debating forums. Also Listing Agreement and Listing Regulations may induce grey areas by prescribing expectations different from the Act/Rules. Such issues should be brought to the debating forum. Raging debates will set the agenda for secretarial standards board. In all debates, it is necessary that enough attention is given to cost vs benefits of introducing a secretarial standard. Benefit could be to any stake holder but necessarily cost will be borne by the company. Company resource will be well spent on compliance with a standard only when the benefit accrued to stake holders like investors is far more than the cost incurred by the company.
Staff deliberation	Staff assisting the SSB may require inputs from the industry to prepare notes for SSB. When invited or voluntarily, members may offer their inputs to the Institute on issues confronted by professionals and the way in which they were handled. It is expected as a part of preparing a draft note on secretarial standard, staff assisting the Secretarial Standard Board will administer questionnaires. Every company secretary should respond to such an opportunity.

Draft Exposure for public comment	It is an open invitation to professionals to contribute to the exposure draft. Professionals should offer comments without fail. The exposure draft shall address essential elements like explaining reason for proposing the secretarial standard, why it cannot be a guidance note, international comparison on the subject under discussion, current legislative position, relevant case laws, cost benefit analysis of introducing the secretarial standard, proposed standard, etc. Response from professionals should be sharp enough to establish the need for secretarial standard and the language of the same.
Issue of final standard	On Issue of final standard, accept the standard, implement the same and assess its effectiveness, understand limitations, if any, etc. Give feedback/comments to the Institute appropriately.
Re deliberate based on comments	It is expected that the Institute will open a public debate on every secretarial standard issued after a period of one year to assimilate experience and do mid-course corrections, if warranted. Every professional shall participate in re-deliberate on the standards issued.
Public hearings and round table	Participate in public hearings. Organize round tables and participate in the same. In all probability, all chapters of the Institute will organize round table discussions on the subject. Where a chapter does not organize one, or where a group of company secretaries are of the opinion that it requires even a deeper deliberation amongst a homogenous group, such group should send its reports to the Institute based on the discussions amongst them.
Education and implementation	On final issue / as approved by the Central Government, internalize the standard and implement the same. Participate in education efforts initiated by the Institute. It will be a good idea to generate manual on every such standard so implemented to make the implementation process smooth and effective.
Post implementation review	Standards after implementation may still confront limitations, etc. Feedback should be given to the Institute to sensitize amendments to the standard if necessary.

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# A Broad Overview of Secretarial Standards for Company Board Meetings

- Secretarial Standards will facilitate adoption of standard yardstick for meetings of the Board of Directors and the committees of the Board and this will help in compliance management of the provisions of the Companies Act, 2013 and will also ensure good corporate governance systems. This article covers some of the important aspects of SS-1 and also highlights the powers of the Board and the relevant provisions of the Act with regard to holding of Board meetings. Additionally, it also highlights the role of PCS in reporting whether the secretarial standards are being adopted by the company concerned.

In India, the manner in which business was being conducted and perceived by investors, different stakeholders and regulatory authorities, has undergone a tremendous transformation during the last couple of years. At present, the emphasis is more on transparency, accountability and social responsibility and the Government has therefore changed many of the applicable laws and regulations and has also started interacting and banking on the professional bodies for ensuring compliances with the applicable laws and regulations by the corporate sector. Broadly, in this backdrop of the scenario prevailing in India, it is indeed heartening to note that in the newly incorporated Companies Act, 2013 (“the Act”), the role and responsibilities of the Company Secretaries have been given tremendous importance and from being merely a paid corporate executive, they are being visualised and entrusted with the role of compliance officer in good corporate governance. This changed role of the Company Secretaries has also put tremendous responsibility on the Institute of Company Secretaries of

India (ICSI) to guide, train and assist the large body of qualified company secretaries, be they in employment or in practice, to fulfil the heavier responsibility entrusted in the Act.

Since the Board of Directors of any company plays an increasingly





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important role in the policy formulation and management of the business and affairs of the company, the recently introduced “Secretarial Standard for the Meetings of the Board of Directors” (in short, the “SS-1”) and its acceptance and notification by the Government for effective implementation from 1<sup>st</sup> July, 2015 is indeed a historical moment and deserves to be applauded as it ushers in a new dimension in corporate functioning and throws open before the company secretaries newer challenges to follow and comply with the secretarial standards, particularly those that have been notified by the Government for implementation.

Keeping in view the importance of SS-1 for the corporate sector and the company secretaries, an attempt has been made here, briefly, to have a broad overview of the SS-1 and its legal parameters. At the outset it needs to be appreciated that Section 205 of the Act postulates the functions of a company secretary. It states that the functions of the company secretary shall include –

- a) to report to the Board of Directors about compliance with the provisions of the Act, the rules made thereunder and other laws applicable to the company;
- b) to ensure that the company complies with the applicable secretarial standards;
- c) to discharge such other duties as may be prescribed.

By way of Explanation, Section 205 of the Act further clarifies that for the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India (ICSI) and approved by the

Central Government. It also clarifies that the provisions contained in Section 204 and Section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under the Act, or any other law for the time being in force.

Since the company secretaries in employment and also company secretaries in practice (PCS) have been entrusted with onerous duties and responsibilities, it is also necessary to appreciate how the Act recognises them. For instance, the newly added section 203 in the Act treats the “Company Secretary” as a “Key Managerial Personnel” (KMP) and whose appointment is to be made by the Board of Directors. Further, Section 203 of the Act read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (“CARMP Rules”) stipulates that every listed company and every other public company having a paid up share capital of Rs.10 crores or more shall have whole-time key managerial personnel. In other words, in those companies, where the appointment of KMPs are mandatory, the company secretary has to give his whole time and attention in fulfilling his duties and responsibilities. In addition, Rule 10 of the aforesaid CARMP Rules, stipulates additional duties of company secretary and he shall also discharge the following duties–

- (i) to provide to the directors of the company collectively and individually, such guidance as they may require with regard to their duties, responsibilities and powers;
- (ii) to facilitate the convening of meetings and attend Board, Committee and General Meetings and maintain the Minutes





➤ Prior to issuance of the secretarial standards by ICSI, the companies were complying with the provisions of the Act and its Rules without adhering to any formalised yardstick. With the advent of the secretarial standards, as issued by the ICSI and approved and notified by the Central Government, a uniform framework of procedures and practices have been prescribed for adoption and adherence by the companies which will function as a facilitator of good corporate governance and compliance management.

of these meetings;

- (iii) to obtain approvals from the Board, General Meeting, the Government and such other authorities as required under the provisions of the Act;
- (iv) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (v) to assist the Board in the conduct of the affairs of the company;
- (vi) to assist and advice the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
- (vii) to discharge such other duties as have been specified under the Act or rules.
- (viii) such other duties as may be assigned by the Board from time to time.

In the aforesaid context of the duties and responsibilities of the Company Secretary, it is necessary to understand what is generally meant and understood by the word "standard". It means something used as a measure, norm or model in comparative evaluations. It also means something considered by an authority or by general consent as a basis of comparison: an approved model. Prior to issuance of the secretarial standards by ICSI, the companies were complying with the provisions of the Act and its Rules without adhering to any formalised yardstick. With the advent of the secretarial standards, as issued by the ICSI and approved and notified by the Central Government, a uniform framework of

procedures and practices have been prescribed for adoption and adherence by the companies which will function as a facilitator of good corporate governance and compliance management.

In this context it is relevant to note here that the SS-1 is in addition to and not in substitution of the statutorily prescribed mandates under section 166 (duties of directors); section 173 (Meetings of the Board); section 173 (quorum); section 173 (resolution by circulation); section 177 (audit committee); section 178 (nomination and remuneration committee and stakeholder's relationship committee); section 179 (powers of the Board); section 180 (restriction on powers of the Board); section 185 (loans to directors); section 186 (loans and investments by company); section 187 (investments of company to be held in its own name); section 188 (related party transactions); section 190 (contract of employment with managing and whole-time directors); section 192 (restriction on non-cash transactions involving directors); section 194 (prohibition on forward dealings); section 195 (prohibition of insider trading of securities).

In the light of the above, some of the key principles enunciated in SS-1 are given here and these, *inter-alia*, relate to:-

- i) **Authority to convene meeting**—Any director of a company may, summon a meeting of the Board and the CS (in his absence any person authorised by the Board in this regard) on the requisition of a director, shall convene the meeting of the Board, in consultation of the Chairman or in his absence the Managing Director, or in his absence the Whole-time Director, where there is any, unless otherwise provided in the Articles.
- ii) **Adjournment**: The Chairman may, unless dissented or objected by the majority of directors present at a meeting at which a quorum is present, adjourn the meeting for any reason, at any stage of the meeting.
- iii) **Serial Number**: Every meeting shall have a serial number.
- iv) **Time and Place**: A meeting may be convened at any time and place on any day, excluding a national holiday.
- v) **Participation**: Any director may participate through electronic mode in a meeting, if the company provides such facility, unless the Act or any other law specifically does not allow such participation through electronic mode in respect of any item of business. A director shall not participate through Electronic Mode in the discussion on certain restricted items, unless expressly permitted by the Chairman. Such restricted items of business include approval of the annual financial statement, Board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and take-over. Similarly, participation in the discussion through electronic mode shall not be allowed in the meeting of the Audit Committee for consideration of Annual Financial Statement including consolidated financial statement, if any,



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to be approved by the Board, unless expressly permitted by the Chairman.

- vi) **Notice:** Notice shall be issued by the CS or where there is no CS, any director or any other person authorised by the Board for the purpose. Notice shall be sent to the postal address or e-mail address registered by the Director with the company or in the absence of such details or changes thereto, any of such addresses appearing in the DIN registration of the director. Notice in writing of every meeting shall be given to every director by hand or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means. Where a director specifies a particular means of delivery of notice, the notice shall be given to him by such means and proof of sending and its delivery shall be maintained by the company. The notice shall contain the contact number or email address of the Chairman or the CS or any other person authorised by the Board to whom the Director shall confirm in this regard. In the absence of such advance communication or confirmation from the Director as above, it shall be assumed that he will attend the meeting physically. The notice shall be given at least 7 days before the date of the meeting, unless the Articles prescribe a longer period. In case the company sends the notice by speed post or registered post or by courier, an additional 2 days shall be added for the service of the notice. The procedures for adjournments and notice in respect thereof are also provided for in the SS-1.
- vii) **Agenda:** The Agenda, setting out the business to be transacted at the meeting, each item serially numbered, and notes on Agenda, shall be given to the directors, at least 7 days before the date of the meeting unless the Articles prescribe a longer period. The prescribed standards applicable for sending of notices shall also be applicable here. Additionally, the notice, agenda, and notes on Agenda, shall also be sent to the original director at the address registered with the company even if these have been sent to the Alternate Director.
- viii) **Agenda Notes on 'Unpublished Price Sensitive Information':** These may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any. For this purpose unpublished price sensitive information means any information relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available, is likely to materially affect the price of the securities and shall ordinarily including, but not restricted to, information relating to the following :-
- a) Financial results
  - b) Dividends
  - c) Change in capital structure
  - d) Mergers, demergers, acquisitions, de-listings, disposals and expansion of business and such other transactions
  - e) Changes in KMP and
  - f) Material events in accordance with the listing agreement.
- (The aforesaid meaning of unpublished price sensitive information is in accordance with the definition as given under SEBI (Prohibition of Insider Trading) Regulations, 2015.)
- ix) **Supplementary Notes on Any Agenda Item:** These may be circulated at or prior to the meeting, but shall be taken up with the permission of the Chairman and with the consent of a majority of the directors present in the meeting, which shall include at least one Independent Director, if any.
- x) **Items to be considered at a Meeting of the Board:** Where such items of business are required by the Act or any other applicable law to be considered at a meeting of the Board, they shall be placed before the Board at its meeting and the SS-1 also provides by way of an Annexure an illustrative list of such items. The company directors are required to know the statutorily mandated items of business that are to be considered at a meeting of the Board.
- xi) **Items to be considered at the First Meeting of the Board:** Furthermore, SS-1 also illustrates a list of items of business for the Agenda for the first meeting of the Board of the company. These include, *inter-alia*, appointment of chairman of the meeting; noting the certificate of Incorporation issued by the Registrar of Companies; to take note of the Memorandum and Articles of the company as registered; the first directors of the company; to read and record the notices of disclosure of interest given by the directors; to consider appointments of the Chairman of the Board, Additional Directors, the first Auditors, Bankers, KMP and other senior officers, if applicable.
- xii) **Items that are not included in the Agenda:** Any item not included in the agenda may be taken up for consideration with the consent of the Chairman and a majority of the directors present in the meeting, which shall include at least one Independent Director, if any.
- xiii) **Transaction of urgent business:** Notice, agenda and notes on Agenda for transacting urgent business, may be given at a shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such meeting.
- xiv) **Frequency of meetings:** The Board shall meet at least once in every calendar quarter with the maximum interval of 120 days between any two consecutive meetings of the Board, such that at least four meetings are held in each calendar year. The Board shall hold its first meeting within 30 days of the date of incorporation of the Company. In relation to an adjourned meeting of the Board, being a continuation of the original meeting, the interval period in such a case, shall be counted from the date of the original meeting. The Committees constituted by the Board shall meet as often as necessary, subject to the minimum number and frequency as may be stipulated by the Board or any Law or any Authority.





- xv) **Meetings of Independent Directors:** Where the Act mandates a company to appoint Independent Directors, such Independent Directors shall meet at least once in a calendar year. The meeting shall be held to review the performance of non-independent directors and the Board as a whole; to review the performance of the chairman and to assess the quality, quantity and timeliness of flow of information between the company management and the Board and its members that is necessary for the Board to effectively and reasonably perform their duties. The CS shall facilitate convening and holding of such meeting, if so desired by the Independent Directors.
- xvi) **Quorum:** Quorum as prescribed under the Act and the Articles, shall be present throughout the meeting and also while transacting business. A director, in respect of an item, in which he is interested, shall not be counted for the purpose of quorum and shall not be present physically or through electronic mode, during discussion and voting on such item.
- xvii) **Attendance Register:** Separate attendance registers for Board meetings and committee meetings are to be maintained and preserved for eight financial years and shall be kept in the custody of the CS. Statutory auditors and PCS shall be entitled to inspect the register.
- xviii) **Chairman of the meeting:** The Chairman of the company shall be the chairman of the Board. If the company does not have a Chairman, the directors may elect one of themselves to be the Chairman of the Board. Meetings of the Board shall be conducted by the Chairman and the CS shall assist the Chairman in ensuring that the meeting has been duly convened and constituted as per the Act or other Rules or regulations or Guidelines, before transacting the business.
- xix) **Resolutions passed by circulation:** Items of business that require urgent decisions, other than those that can be approved only at the meetings of the Board, can be approved by circulation resolution.
- xx) **Maintenance and Recordings of Minutes of the Meetings:** The Company may maintain its minutes in physical or in electronic form with timestamp. Every company shall however follow a uniform and consistent form of maintaining the minutes. Any deviations in such form of maintenance shall be authorised by the Board. Pages of the minutes book shall be consecutively numbered and minutes shall not be pasted or attached to the Minutes Book or tampered with in any manner. If maintained in loose leaf form, the Minutes shall be bound periodically, depending on the size and volume and coinciding with one or more financial years of the company. Minutes of the meeting of the Board shall be signed and dated by the Chairman of the meeting or by the Chairman of the next meeting. The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.

Any blank space between the conclusion of the Minutes and signature of the Chairman shall be scored out. Minutes once signed by the Chairman shall not be altered, save as otherwise mentioned in the SS-1. Copy of the signed Minutes certified by the CS or where there is no CS, by any Director authorised by the Board, shall be circulated to all Directors within 15 days after these are signed. The Minutes of the meetings of the Board and any Committee thereof can be inspected by the Directors. Minutes of all meetings shall be preserved permanently in physical or in electronic form with Timestamp. Minutes Books shall be kept in the custody of the CS or where there is no CS, by the director authorised by the Board.

- xxi) **Disclosure:** The number and dates of the Board meetings and Committee meetings held during the financial year indicating the number of meetings attended by each director, shall be disclosed in the Annual Report and the Annual Return of the Company.

**(Note:** The highlights of SS-1 are only the broad indicators and not the exhaustive lists given in SS-1 and hence while complying with the Standards, the CS shall have to look into the details given in SS-1 and not depend on the broad indicators given above.)

## DUTY OF THE PCS IN RELATION TO SS-1

Section 204 of the Act read with Rule 9 of the CARMP Rules prescribes that every public company having a paid-up share capital of Rs.50 crore or more and every company having a turnover of Rs.250 crore or more, shall annex with the Report of its Board of Directors (made in terms of section 134(3) of the Act) a Secretarial Audit Report by the PCS as per the format prescribed in Form No.MR-3. The PCS in his Secretarial Audit Report has also to report whether the company has complied with the prescribed secretarial standards. This will ensure giving sanctity to the secretarial standards and avoid deviations from the prescribed standards.

## CONCLUSION

With tumultuous developments in the Indian corporate sector and a sharp rise in cases of reported corporate frauds and financial scams, it is now, more than ever, imperative to ensure that the interest of stakeholders are protected by the lawmakers of the country. In this regard there is no merit in adding or piling up of new legislations, but rather it would be considered wise to fill up the gaps in the existing laws and to make the present company law regime fool-proof and flawless towards attaining the ideal goal of having an effective compliance system and governance process. In view of this, the secretarial audit and the newly introduced secretarial standards will go a long way in solidifying the foundation of a healthy company secretarial practice and value creation by the professionals associated with the corporate sector. CS



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## Secretarial Standard on General Meetings would enhance investors' confidence and strengthen their protection

- The standard on General Meetings do address several issues, which are otherwise not available in the Act. SS-2 provides guidance and solution for proper compliance as well as to ensure good services to the shareholders to protect their legitimate rights.

"The Companies Act (the Act) regulates all class of companies under the overall supervision of the Ministry of Corporate Affairs. The views and opinions of the compliance team viz., Directors, Executives, professionals, Auditors and Consultants differ in compliance management. The Compliance relating to investors' and other stakeholders' interest are equally important. The article briefly deals with all such issues."

### SECRETARIAL STANDARDS BOARD

**T**he Act, though addresses procedural issues yet there are instances where companies to follow divergent practices. Several terms not being defined in the Act, there is room for different interpretation leading to divergent views in compliance. The compliance of the Act is the responsibility of the Board of Directors and they are professionally assisted by Company Secretaries to ensure proper, timely and adequate compliance. The Institute of Company Secretaries of India (ICSI) over a period of time while regulating the profession of Company Secretary noticed about the divergent secretarial practices and felt the need for integration, harmonisation and standardisation

of divergent secretarial practices and constituted the Secretarial Standards Board (SSB) in 2000. It is an unique and positive step and for the first time in the history of corporate sector globally ICSI constituted such a board. The idea conceived by ICSI in establishing an independent board for secretarial standards has set a bench mark not only for the corporate sector worldwide but also for every regulator of countries regulating them. The SSB consists of experienced company secretaries representing companies and also company secretaries in practice, besides representative from regulators, other professional bodies and various chambers.

### STANDARDS ISSUED BY SSB

The SSB, since its formation has issued 10 Standards which have been approved by the Council of ICSI, from time to time. All such standards are presently voluntary in nature. Several companies have started following the standards to their best. Some companies having considered the standard for general meeting, published the notice of convening annual general meeting in the recommended standard which is otherwise not provided in the Act or its Rules. Some companies, in order to respect the shareholders' democracy, and

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to be uniform, considered and welcomed one of the standards on general meetings and mentioned in the notes to the notice convening annual general meeting that no gifts would be distributed. However, such companies in the traditional style welcomed the shareholders and proxy holders at the venue of the general meeting with snacks, soft drinks and beverages. Even there is a listed company which went further in conducting an audit on secretarial standards on board and general meetings and published the same in its annual report. The Government at the time of re-writing the Act, recognised the need and importance of secretarial standards and introduced the concept of mandatory compliance of two secretarial standards namely the standard on meetings of the Board of Directors (SS-1) and standard on general meetings (SS-2).

## MANDATORY SECRETARIAL STANDARDS

The Act having given due recognition to the Secretarial Standards, has initially, mandated two Standards namely the standard on meetings of the Board of Directors (SS-1) and Standard on General Meetings (SS-2). The ICSI on its part geared up and strengthened the SSB to take up both the said standards on war footing to review and revise them in line with the provisions of the Act. The SSB without taking any lenient view reviewed and revised both the Standards on record time, had several rounds of discussions with the officials of Ministry of Corporate Affairs and after taking their valuable inputs, finalised both the standards. The Council on its part, approved the same and at last the Government notified both the standards SS-1 and SS-2 on 23rd April, 2015. Now, both the standards would be applicable effective 1st July, 2015.

The Act provides that every company shall observe both the secretarial standards and any non-compliance would attract penal provisions. Further, the Act has also reposed confidence on the profession of Company Secretary and aptly provided in the Act under the "functions of Company Secretary", to ensure that the company complies with the applicable secretarial standards and for the time being both the standards SS-1 and SS-2.

In addition to the above, a duty is also cast on the company secretary in practice who is associated with a company to carry out Secretarial Audit, to examine and certify that the company has complied with applicable clauses of the Secretarial Standards issued by ICSI.

Besides, a company secretary in practice who is associated with a company for certifying annual return and to issue his certificate in MGT -8 has to ensure compliance of secretarial standards in terms of para 4 of MGT -8.

## SALIENT FEATURES OF SS-2

The Standard on General Meetings do address several issues, which are otherwise not available in the Act. SS-2 provides guidance and solution for proper compliance as well as to ensure good services to the shareholders to protect their legitimate rights. Some of the

salient features are dealt with hereunder:

1. Definitions: SS-2 starts with providing solutions for various terms not defined otherwise in the Act. In the absence of any definition in the Act, there are occasions for different interpretations among the professionals and management. SS-2 provides definitions to the terms such as:
  - a) Calendar year;
  - b) Chairman;
  - c) Maintenance;
  - d) Meeting, general meeting or annual general meeting;
  - e) Minutes and minutes book;
  - f) National holiday;
  - g) Ordinary business and special business;
  - h) Proxy;
  - i) Quorum;
  - j) Remote e-voting;
  - k) Secretarial auditor;
  - l) Secured computer system; and so on.

Defining the above said terms which are otherwise not defined in the Act, would go a long way to extend support to the professionals and management.

- 2) Entitlement to receive notice: There are divergent views on whom to send notices convening general meetings on the receipt of intimation of death of a member. SS-2 has identified three categories and further in the absence of a nominee, the notice need to be sent to the legal representative of the deceased member.

Besides, it also addresses about sending notices to the liquidator where the member of the company is a company or body corporate and went into liquidation/being wound up.

- 3) Route map and prominent land mark: There being no provision in the Act about giving clear message about the location of the venue of the meeting, which are sometimes held at the registered office of a company at a remote place, SS-2 included and guided that the "notice shall contain complete particulars of the venue of the meeting including route map and prominent land mark for easy location".
- 4) Issue of notice in accordance with this Standard: It is, in fact, an important clause in SS-2 which is, "No business shall be transacted at a meeting if notice in accordance with this Standard has not been given". This directly mandates every company other than one person company to issue notice convening general meeting in compliance of SS-2.
- 5) Postponement or cancellation of meeting: There is no answer available in the Act for postponement or cancellation of a meeting which are otherwise convened with proper notice. There may be instances where due to natural calamities or riots etc., it would be reasons beyond the control of the Board for not



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conducting the meeting and a decision has to be taken about postponement or cancellation of the meeting. SS-2 provides guidance in such odd situations.

- 6) **Authorised representative for more than one member:** Similarly, SS-2 considered a situation where a single person may represent more than one company or body corporate and for quorum purposes, such individual member be counted separately for each member. SS-2 while expressing views on the issue, also considered the merit and fact that unless two minds join together there would not be a meeting and clarified such a situation too.
- 7) **Seating at the General Meeting:** Another issue on practice is the seating arrangement on the dais at the meeting. SS-2 address the issue and included that "Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman".

SS-2 also covers the presence of Auditors and Secretarial Auditors. Here, it would be pertinent to place on record that several companies also seat the Secretarial Auditor on the dais along with the Board members.

- 8) **Chairman's Explanation:** The divergent practices at the meeting is now addressed. It is made compulsory for the Chairman of the meeting to explain the objective and implications of the resolutions before they are put to vote at the meeting.
- 9) **Chairman's Interest:** The Act again silent on the proposal to be made by the Chairman at the meeting in which he is interested, though he may also be a shareholder. In order to avoid any confusion, SS-2 mandates that the "Chairman of the meeting shall not propose any resolution in which he is deemed to be concerned or interested nor shall conduct the proceedings for that item of business".
- 10) **Record of Proxies:** SS-2 also covers in the clause record of proxies that "in case any proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column". Such a clarity is not available in the Act and this would not only guides the company secretary but also explains the reasons for a proxy to know about his rejection.
- 11) **Proposing a resolution:** The Act is silent on the issue. It is customary in the meeting that someone proposes the resolution and seconded by another before they are put to vote. Now, the standard provides for such practice to follow and removed the ambiguity.
- 12) **Conduct of e-voting:** The concept of e-voting is new. There is no precedents available for conducting of e-voting on several issues. Now, the standard makes it clear that the Board shall:
  - a) appoint one or more scrutinisers for e-voting or the ballot process;
  - b) appoint an agency;

- c) decide the cut-off date for the purpose of reckoning the names of members who are entitled to voting rights;
- d) authorise the Chairman or in his absence, any other director to receive the scrutiniser's register, report on e-voting and other related papers with requisite details.

There is no practice for the Board to take such decisions and now it is clear for company secretary of the company to take appropriate actions at the time of taking a decision on e-voting.

- 13) **Declaration of results:** It is yet another issue addressed in the standard for which there was no clarity about the declaration results after receipt of scrutiniser's report.
- 14) **Guidance on withdrawal, rescinding and modification of resolutions:** The investors are put into confusions when the resolutions are proposed in the notice convening the general meetings and subsequently at the meeting either withdrawn or rescinded or modified.

There used to be fluctuations in the market price of shares when the proposed resolutions are modified or withdrawn. The Standard now has clearly specified that resolutions cannot be withdrawn and for rescinding, a resolution needs to be passed at a subsequent meeting by the shareholders. Similarly, for modification, it is restricted only grammatical, clerical, factual and typographical errors and nothing more.

The Standard now has addressed all such issues which will go a long way for the benefit of investors and other stakeholders.

- 15) **Calendar of events:** The Standard has dealt extensively on Board's approval for postal ballot. The shareholders' approval is sought for various transactions which are otherwise mandated in the Act and Listing agreement. Besides, companies also opt for postal ballot route for quick approval from shareholders. One of the issue, inter alia, is the calendar of events. Now, it is compulsory for the board to approve the calendar of events at the time of taking a decision for postal ballot.
- 16) **Invalidation of postal ballot:** There is no clear cut answer available about when and the reasons for invalidating a postal ballot. The Standard has extensively dealt with this and has identified at least 11 items for consideration while invalidating a postal ballot. This would be a tool for the scrutiniser at the time of verifying the postal ballot and issue of a report on postal ballot.
- 17) **Contents of the minutes:** Interestingly, every professional and management is aware that there is no recording of conclusion of meeting of shareholders. Now, the standard provides for recording the time of conclusion of general meeting which would set not only as a good governance but also ensures investors' protection.
- 18) **Paging of minutes book:** In physically maintained minutes books, there are instances and complaints before Company Law Board



➤ The objective of the Act is to dispense with the Government's interference and extended shareholders' democracy to take a call by themselves in protecting their interest. In this direction, the standard addresses several issues for proper compliance and as a good governance it will not only protect the investors' interest but also would extend to take care of the interest of every stakeholder in a company.

on several counts. One such count is that a page is left blank which gives room for suspicion. SS-2 considered such a situation and has provide that "in the event of 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". The issue was unaddressed in the Act, and now a solution is provided in such a situation.

## INVESTORS' PROTECTION

Some of the salient features of SS-2 have been discussed above. Several issues while give clarity for the management and the company secretary to adhere for proper compliance, other issues take care of the investors' interest. The objective of the Act is to dispense with the Government's interference and extended shareholders' democracy to take a call by themselves in protecting their interest. In this direction, the standard addresses several issues for proper compliance and as a good governance it will not only protect the investors' interest but also would extend to take care of the interest of every stakeholder in a company.

## REPORT ON ANNUAL GENERAL MEETING

The Company Secretary of a company has to ensure compliance of all applicable clauses of Secretarial Standards and companies which do not have Company Secretary it is the responsibility of the Board to comply with the Secretarial Standards. Duty is also cast on the company secretary in practice while issuing secretarial audit report and/or issuing certificate on annual return.

Besides, a company at the time of filing a report on Annual General Meeting with the Registrar of Companies has to give a "confirmation with respect of compliance of the Act and the Rules, **Secretarial Standards made thereunder**, with respect to calling, convening and conducting the meeting.

The above said document is open for public inspection and would give confidence to the investors not only on compliance of the

Act and Rules but also on the Secretarial Standards which have addressed for divergent practices and given solution for several unaddressed issues.

## CONCLUSION

The contribution made by several members of SSB since its formation and the efforts of ICSI all these years in setting standards for divergent practices in the corporate sector in complying with the provisions of the Act, its Rules and Regulations have been well recognised by the Government. It has been notified at the right time with a time gap of at least two months to enable the professionals and management to study and understand all the clauses of both the Standards so that they same may be implemented in letter and spirit. Interestingly, many companies are already lined up for convening the annual general meeting in the early part of the second quarter of this financial year and the company secretaries while issuing notice convening the annual general meeting on or after 1st July, 2015 have to adhere SS-2 and of course, the responsibility of the company secretaries in practice also increased many folds. The ensuing annual general meeting of a listed company would be a tough task to comply with the standard on general meeting this time, but simultaneously would enhance the governance in such companies and overall take care of the interest of all stakeholders of a company. CS

**REQUIRED**

# A COMPANY SECRETARY

**A full time qualified Company Secretary proficient in English and well acquainted with Company Law and legal matters with a minimum experience of 5 years is required for Credit Rating Agency in Delhi.**

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Sujan Singh Park, New Delhi – 110003.**

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## Board Minutes: Statutory & Secretarial Standard's Provisions

- The practices postulated by ICSI in SS-1 are bound to have far reaching consequences in enhancing transparency, ensuring good governance and standardizing corporate practices across the corporate spectrum. It is imperative upon all corporates, directors, auditors, company secretaries and other stakeholders to propagate adoption and compliance of Secretarial Standards which will only add to quality of governance amongst Indian corporates.

### PROLOGUE

**M**inutes of meetings (board, general or any other) are important documentary evidence of proceedings of any meeting which convey the actions taken, decisions made, deliberations held and proceedings happened at such meetings. These convey the sense of the meeting and is the only evidence of what transpired at any meeting to which it relates. This article is an attempt to highlight the focus areas of Secretarial Standard-1 on Board Meetings.

### MANDATE FOR SECRETARIAL STANDARDS IN THE COMPANIES ACT, 2013

Section 118 (10) of the Companies Act, 2013 provides as follows – “Every company shall observe Secretarial Standards with respect to general an Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the



Company Secretaries Act, 1980 and approved as such by the Central Government.”

Further, section 205 of the Companies Act, 2013 prescribe the



functions of a company secretary and these include :

- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company ;
- (b) to ensure that the company complies with the applicable Secretarial Standards;
- (c) to discharge such other duties as may be prescribed.

The Explanation to the section provides that for the purpose of this section, the expression 'secretarial standards' means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

## APPLICABLE SECRETARIAL STANDARDS

In terms of section 118 (10), Secretarial Standards are required to be specified by the Institute of Company Secretaries of India (ICSI) and approved by the Central Government.

As per section 205, Secretarial Standards refer to standards issued by the ICSI and approved by the Central Government. Since both these provisions talk about Secretarial Standards , ICSI has formulated the two Secretarial Standards, viz,

- SS-1 Meetings of the Board of Directors
- SS-2 General Meetings

Both SS-1 and SS-2 have been duly approved by Central Government and notified by the ICSI on 23 April, 2015 as issued / specified standards under section 118 of the Companies Act, 2013

These standards shall be applicable in entirety w.e.f. 1 July, 2015 for mandatory compliance by all the companies except the one person company (OPC) and such other class of companies as the Central Government may exempt by way of notification.

## MINUTES : STATUTORY PROVISIONS

Section 118 of the Companies Act, 2013 comprehensively provides for minutes of proceedings of general meetings, meetings of board of directors, other meetings and resolutions passed by postal ballot. Section 118 corresponds to provisions contained in sections 193,194, 195 and 197 of erstwhile Companies Act, 1956. It *inter alia*, provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitions and all proceedings of meeting of any class of share holders or creditors of Boards of Directors or Committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. In case of meeting of Board of Directors or of a Committee of Board, the minutes shall contain the name of the directors present and also name of dissenting director or a director who has not concurred the resolution. The chairman shall exercise his absolute discretion in respect of inclusion or non-inclusion of the matters which is regarded as defamatory of any person, irrelevant or detrimental to company's interest in the minutes. The minutes shall be evidence of the proceedings recorded in a meeting . This section also seeks to provide that every company shall observe secretarial standards with respect to general and Board meeting. It also provides penalty for the company who contravenes the provisions as well as the person who is found guilty of tampering with the minutes of the meeting .

Thus, the requirements of section 118 can be summarized as follows –

- All companies are required to cause minutes of proceedings of meetings (includes one person company)
- Meetings for which minutes are required to be caused are
  - General meetings of members (includes annual general meetings, extra ordinary general meetings, class meetings)
  - General meetings of other security holders





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Board Minutes: Statutory & Secretarial Standard's Provisions

- General meetings of creditors
  - Meetings of board of directors
  - Meeting of any committee of board of directors
  - Resolutions passed by postal ballot .
- Minutes are to be kept within thirty days of the conclusion of meeting or passing of resolutions
  - Minutes are required to be prepared, signed and kept in prescribed manner [Rule 25 -29 of the Companies (management and Administration) Rules 2014]
  - Minutes shall be kept in books with their pages consecutively numbered
  - Minutes to contain fair and correct summary of proceedings at meeting
  - Minutes to specifically include appointments made at the meeting
  - Minutes to be considered as evidence of the proceedings at such meeting
  - Chairman to have absolute discretion on what to include or not to include in the minutes on any specified matter
  - Minutes not to include any specified matter which in Chairman's opinion is / could be defamatory of any person, is irrelevant or immaterial to the proceedings or is detrimental to the interest of the company
  - Minutes of board or committee meetings to also contain name of directors present at the meeting and for each resolution, name(s) of director(s) dissenting from or not concurring with the resolutions
  - In respect of all such minutes kept in accordance with law/ (unless proved to the contrary), it will be deemed that said meeting was duly called and held, proceedings have duly taken place, resolutions passed and appointments of directors, key managerial personnel and auditors/ secretarial auditor are valid
  - No company shall at its expense, circulate or advertise any document purporting to be a report of proceedings of any general meeting unless it includes the matters or information to be contained in minutes as per section 118
  - Companies are mandated to observe (comply with) Secretarial Standards with respect to General Meetings and Board Meetings (i.e. SS-1 and SS-2) issued by ICSI and approved by Central Government
  - There are penal provisions for non compliance by company and fine and imprisonment for any person found guilty of tampering with minutes of proceedings of meetings.

Following Rules of the Companies (Management and Administration) Rules 2014 relate to minutes-

Minutes of proceedings of general meeting, meeting of Board of Directors and other meetings and resolutions passed by postal ballot (Rule 25) - A distinct minute book shall be maintained for each type of meeting namely, general meetings of the members, meetings of the creditors , meetings of the Board; and meetings of each of the committees of the Board. Resolutions passed by postal

ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting.

The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting. In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed – (i) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the







next succeeding meeting (ii) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose, and (iii) In case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

The minute books of general meetings, shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board or at such other place as may be approved by the Board.

The minutes books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

Copy of minutes book of general meeting (Rule 26) - Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page. A member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

The minutes book can be maintained, both in physical form or in electronic mode as prescribed.

## MINUTES OF MEETINGS OF BOARD/ BOARD COMMITTEES (SECRETARIAL STANDARD- I)

Companies and professionals should note to comply with the following specific requirements in relation to minutes of board / committee meetings in compliance with SS-1 –

- Minutes book can be kept and maintained either in physical form or in electronic form. In case of electronic form, it should be maintained with 'timestamp'
- Companies may adopt any mode and then follow it consistently
- Separate minute books should be maintained for meetings of board of directors and its committees – For each committee of board, separate book is desirable.
- Minutes book pages are required to be consecutively

numbered, ie, serial number of page need not be broken even if the book is changed owing to size or volume or its periodical binding.

If any page is left blank inadvertently, it should be scored out/ cancelled and initialed by Chairman signing the minutes. Numbering of pages with same number is undesirable (eg page no 9,10,10A, 11, ..... ) and must be avoided. It may be good practice to have minutes pages pre-numbered so that it could be avoided.

- Loose leaf minutes, if so maintained should be got bound periodically . In such cases, there ought to be a proper locking device for loose leafs . Also minutes are not required to be pasted/ affixed or attached to minutes book.
- Minutes are ordinarily required to be kept at company's registered office. However, if these are approved by board to be kept at some other place, it can be done. it shall be kept at any place in India only.
- Minutes shall contain the following information/ matters –
  - Details about meeting such as name of company , serial number of meeting, date, day, time, venue address and type of meeting.
  - time of commencement and conclusion, both shall be mentioned.
  - It shall also indicate whether it is an adjourned meeting or meeting was adjourned.
  - Quorum and attendance of directors.
  - Names of directors present in person and *via* electronic mode, company secretary in attendance and other invitees/attendees. If some are attending part of the meeting, it shall be disclosed. Names may be in alphabetical order or in any other consistent manner. Nominee director's names may contain a mention of organization which they represent.
  - Election of chairman.
  - Details/record of appointments made.
  - Details of resolutions discussed/ moved and decisions taken.

There are certain other contents required to be incorporated in minutes as mentioned in para 7.2.2. of the SS-1

- Minutes should incorporate the resolutions in detail covering its background, deliberations held, voting, interest of directors, dissent, if any etc.
- Ordinarily, company secretary shall cause recording of the minutes which ought to be fair and correct summary of the proceedings. Where there is no company secretary, Board or Chairman can authorize any other person
- Chairman has to ensure that proceedings are correctly recorded in minutes book and that it does not contain any undesirable content
- While minutes need not be verbatim transcript of proceedings, it shall be written in clear, concise and plain language
- To record the proceedings properly, it is necessary that documents or papers referred to in the minutes which were



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part of discussion should be initialed by Chairman or Secretary for identification. Sometimes, earlier decisions or resolutions are altered, modified or superseded. In such cases, a cross reference of earlier meeting's minutes is desirable.

- In case of committee meetings, their minutes shall also be prepared in similar manner and placed before the next board meeting for noting / perusal / ratification, as the case may be. This should be done for all such committee meetings' minutes which are entered in minutes book and are held between two board meetings
- On finalization of minutes and their entry in minutes book, following may be noted for compliance-
  - Draft minutes should be prepared within fifteen days of the conclusion of meeting and need to be circulated to all members of the board or committee for comments, if any.
  - Such circulation of minutes may be done by hand, mail, speed post, registered post or e-mail or any other recognized mode of communication.
  - In case any director has preferred a particular mode, for him, such mode be used.
  - Company should keep proof of dispatch of draft minutes.
  - Draft minutes shall be sent to all directors, irrespective of whether he attended the meeting or not.
  - Directors are expected to send their comments within seven days from the date of circulation of draft minutes.
  - Minutes are required to be entered in the minutes book within 30 days of the meeting.
  - Chairman shall consider all comments received within stipulated time. In case of comments being sent/ reaching company beyond seven days, it shall be Chairman's discretion to consider the same. Where no comments are received, it will be deemed that concerned director has approved the draft minutes.
  - Any person who was director on the date of meeting, whether he attended or not, shall be entitled to receive draft minutes. This would include even those who ceased to be director of the company after such meeting.
  - While Chairman approves and sign the minutes, it is obligated on the company secretary to enter the date of entry of minutes in the minutes book. If there is no company secretary, it shall be done by any other person, duly authorised to do so.
  - No alteration in minutes is allowed after being entered in the minutes book. Alterations, if any and necessary, shall be approved by the board in any subsequent board meeting only.
- Subject to above, minutes once signed by Chairman can not be altered.
- Copy of signed minutes shall be circulated to all board members within fifteen days of signing by Chairman.
- Chairman is required to initial each page of minutes of meeting, sign the last page of such minutes, mention place and put date below his signatures by his hand.
- Company secretary can certify the minutes before circulation.
- In case the minutes are kept electronically, minutes need to be digitally signed by the Chairman.
  - Any director can inspect the minutes of board or committee meetings which shall include minutes of a meeting held in a period prior to his appointment and meeting held in his tenure after he ceases to be a director.
  - Minutes book can also be inspected by statutory auditors, secretarial auditor and internal auditor of the company
  - Inspection can be done, both under physical or electronic form
  - Company secretary or any other duly authorised officer of company should ensure that during inspection, minutes book is not tampered with by the inspecting person
  - Minutes book can not be inspected by members of company
  - Like inspection, directors are allowed to receive copy of signed minutes from the company
  - Extracts of minutes can be provided only after minutes are duly entered in the minutes book
  - Such extracts or copies can be provided in physical or electronic form
  - minutes of meetings are to be preserved permanently. This can be done either physically or in electronic form
  - Company secretary shall keep safe custody of minutes book. If there is no secretary, a person duly authorised to do so will ensure safe custody of minutes book.

## EPILOGUE

The practices postulated by ICSI in SS-1 are bound to have far reaching consequences in enhancing transparency, ensuring good governance and standardizing corporate practices across the corporate spectrum. It is imperative upon all corporates, directors, auditors, company secretaries and other stakeholders to propagate adoption and compliance of Secretarial Standards which will only add to quality of governance amongst Indian corporates. CS



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# Board Procedure under Secretarial Standard for Board Meetings of the Board of Directors

- Companies in India have till now been following varied and diverse secretarial practices and hence, SS-1 and SS-2 approved by the Government and notified will guarantee the harmonization and standardization of such practices, more so, since the SSs shall be applicable to all the companies irrespective of their size, type and listing status.

## "Boardroom governance will receive sharper focus with the release of Secretarial Standards on Meetings of Board of Directors."

**T**he Board of directors as an institution plays a prominent role in corporate governance. It is responsible for directing and overseeing the business and management of the company. Given this pivotal role of the board, directors are considered as fiduciaries in that they are required to act in the interest of various constituencies in a company such as shareholders and other stakeholders. Accordingly, the law foists on the directors duties and liabilities as instruments that modulate their conduct.

Directors' duties and liabilities garnered substantial attention in India lately post enactment of the new Companies Act, 2013 (the 2013 Act), a landmark piece of legislation that clarifies, redefines and enlarges the ambit of directors' duties and liabilities.

This legislation got supplemented with revised SEBI norms on Corporate Governance which apply to public listed companies. The provisions of the 2013 Act and the revised SEBI norms on

Corporate Governance were made effective from April 1, 2014 and October 1, 2014 respectively.



\*Member SSB of ICSI, 2015.



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Board Procedure under Secretarial Standard for Board Meetings of the Board of Directors

➤ The Standard on meetings which was earlier of recommendatory in nature has been completely modified to meet the new requirements of the 2013 Act and Rules prescribed thereunder and keeping in mind the practical aspects of the functioning of Board of various companies.

Directors are, however, entitled to various protective measures in the form of mitigating factors either conferred upon them by law or through practical mechanisms they may establish.

While the 2013 Act is has taken a step ahead in terms of the provisions of the old Act, it, however, leaves certain areas open for interpretation thereby resulting into varied procedures for conducting of Board/Committee Meetings.

The 2013 Act by the provisions of Section 118(10) mandates on every company to observe the Secretarial Standards with respect to Board Meetings (SS-1) as specified by the Institute of Company Secretaries of India(ICSI).

ICSI has released SS-1 and the release could not have been better timed as Indian companies, their boards and managements are in the first year of implementation to encounter heightened standards of director conduct.

The Standard on meetings which was earlier of recommendatory in nature has been completely modified to meet the new requirements of the 2013 Act and Rules prescribed thereunder and keeping in mind the practical aspects of the functioning of Board of various companies.

Given below are the instances where SS-1 helps in providing clarity in certain areas where the law is either silent or ambiguous. Wherever the law is silent, certain good governance practices have been recommended and where it is ambiguous, the standards try to bring in more clarity. These do not overstep or modify the law in any way.

## Definition of “Electronic Mode” in relation to Meetings

“Video conferencing or other audio-visual means” means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

## Definition of Timestamp

Timestamp means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added, removed, sent or received.

This is used in the context of the Minutes to be maintained in electronic form.

## Convening of Meeting

Every Meeting shall have a serial number.

A Meeting may be convened at any time and place, on any day, excluding a National Holiday.

An additional 2 days shall be added (to the 7 days period) for the service of Notice and the Notes on Agenda, in case the company sends the Notice by speed post or by registered post or by courier.





## MEETING HELD FOR PURPOSES CONTAINING "UNPUBLISHED PRICE SENSITIVE INFORMATION"

Every Company to take the General consent for giving Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information at a shorter Notice may be taken in the first Meeting of the Board held in each financial year and also whenever there is any change in Directors and where such general consent has not been taken, the requisite consent shall be taken before the concerned items are taken up for consideration at the Meeting and such fact of consent having been taken shall be recorded in the Minutes.

The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.

### Agenda Notes

Each item of business requiring approval to be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

Each item of business to be taken up at the Meeting shall be serially numbered. Numbering shall be in a manner which would enable ease of reference or cross-reference.

### Quorum - Interested Director

Interested Director / Director participating through Electronic Mode in respect of restricted items with the express permission of Chairman shall however, neither be entitled to vote nor be counted for the purpose of Quorum in respect of such restricted items.

### Quorum - Committee Meetings

The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the Articles or by the Board.

### Attendance registers & Authentication

Serially numbering of attendance registers and periodically bounding, if the same is maintained in loose-leaf form, depending on the size and volume.

Entries in the attendance register shall be authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman by appending his signature to each page.

### Duties of Chairman & Casting Vote

It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.

- Unless otherwise provided in the Articles, in case of an equality of votes, the Chairman shall have a second or casting vote.

### Circular Resolution

- The Chairman of the Board or in his absence, the Managing Director or in his absence, the Whole-time Director and where there is none, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.
- A time of not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.
- Every such Resolution shall carry a serial number.
- The Resolution, if passed, 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 assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.
- In case the Director does not respond on or before the last date specified for signifying assent or dissent, it shall 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 as not passed.

### Minutes

- A company may maintain its Minutes in physical or in electronic form with Timestamp. Minutes in electronic form shall be maintained with Timestamp.
- Every company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.
- The pages of the Minutes Books shall be consecutively numbered. This shall be equally applicable for maintenance of Minutes Book 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.



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Board Procedure under Secretarial Standard for Board Meetings of the Board of Directors

## Contents of Minutes

- The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair.
- The capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company shall also be recorded.
- Apart from the other matters, specific new items included are:-
  - a) Time of commencement and conclusion of the Meeting
  - b) Views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the Company.
  - c) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice and the transacting of any item other than those included in the Agenda.

## Recording of Minutes

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.

## Identification of any document, report or notes placed before the Board

Any document, report or notes placed before the Board and referred to in the Minutes shall be identified by initialing of such document, report or notes by the Company Secretary or the Chairman and a reference thereto shall be made in the Minutes.

## Finalisation of Minutes

- Minutes have to be finalised within 15 days from the date of the conclusion of the Meeting of the Board or the Committee
- If the draft Minutes are sent by speed post or by registered post or by courier, an additional 2 days may be added for delivery of the draft Minutes
- If any Director communicates his comments after the expiry of the said period of 7 days, the Chairman shall have the discretion to consider such comments
- Minutes are finalised and entered in the Minutes Book within the specified time limit of 30 days
- A Director, who ceases to be a Director after a Meeting of the

Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not

- 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.

## Inspection and Extracts of Minutes

- A Member of the company is not entitled to inspect the Minutes of Meetings of the Board
- The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties
- Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.

## Preservation of Minutes

- Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp
- Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

## Disclosure

The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.

The above practices will certainly put to rest few debates on Board room governance since it covers wide range of issues and will help in improving the Board Governance practices. Further, companies in India have till now been following varied and diverse secretarial practices and hence, these SS shall now guarantee the harmonization and standardization of such practices. More so, since the SS shall be applicable to all the companies irrespective of their size, type and listing status.

This is also essential, since the minutes are very credible evidence of the proceedings and prima facie evidence in any subsequent proceeding challenging the directors' conduct in respect of a particular decision.

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# Secretarial Standard: A Panacea for Secretarial Audit & Auditors

- The statutory recognition to Secretarial Standards will, to a larger extent, be successful in prescribing the parameters for good corporate practices and corporate conduct. The Secretarial Standard on Meetings of the Board of Directors extensively deals with "proper Board Process", and therefore the Standard will definitely bridge the gap between Act and actual secretarial practices.

## INTRODUCTION

**S**ection 118 (10) of the Companies Act, 2013 (the Act) deals with Secretarial Standards and provides for statutory recognition to Standards specified by the ICSI. The new Act mandates observance by every Company of the Secretarial Standards laid down by the ICSI and approved by the Government. The Secretarial Standards on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) formulated by ICSI have since been approved by the Central Government.

In terms of the provisions of section 205 of the Companies Act, 2013, the functions of the Company Secretary *inter-alia* includes ensuring compliance of the applicable Secretarial Standards. This means that it would be the duty of the Company Secretaries in employment, which is logical also, to ensure that Secretarial Standards relating to Board and General meetings or such other Standards, as may be specified by the ICSI, and approved by the Central Government are complied with. [Explanation to Section 205(1)].

Pursuant to section 204(1) of the Companies Act, 2013 read with

\* Central Council Member & Member SSB of ICSI, 2015.

Rule No. 9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014, every listed company, every public company having a paid-up share capital of fifty crore rupees or more or every public company having a turnover of two hundred fifty crore rupees or more are required to obtain Secretarial Audit Report from a Practising Company Secretary.

The Practising Company Secretaries conducting secretarial audit





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Secretarial Standard: A Panacea for Secretarial Audit & Auditors

➤ The ultimate aim of the Secretarial Standards is to promote good corporate practices leading to better corporate governance. The Standards are basically compilation of good secretarial practices with a view to ensuring promotion of proper Board Process and shareholders democracy with utmost transparency, integrity and fair play, going beyond the minimum requirements of law. The adoption of the Secretarial Standards in true letter and spirit, will ensure adoption of uniform, consistent and best secretarial practices in the corporate sector.

must also ensure reporting of compliance of applicable Secretarial Standards, as the format for Secretarial Audit Report (i.e. Form MR – 3) specifically states that “I/we have also examined compliance with the applicable clauses of Secretarial Standards issued by The Institute of Company Secretaries of India”.

## MEANING OF “SECRETARIAL STANDARDS ISSUED BY ICSI” IN FORM MR 3

There are a total of 10 (Ten) Secretarial Standards issued by the ICSI till date and now two of its standards namely Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) have been approved by Central Government and thereby given statutory recognition .



On the one hand the language used in the Form MR 3 mandates comments of the secretarial auditors on compliance of all the Secretarial Standards issued by ICSI, and on the other hand, in terms of provisions of section 205, one of the functions of Company Secretary is to ensure that the company complies with the applicable Secretarial Standard issued by ICSI and approved by Central Government. As of now the corporate(s) are required to follow only the two Standards approved by Central Government.

In view of the above the Secretarial Auditors are required to offer their comments on compliance of SS-1 and SS-2 only.

## TERMINOLOGY USED IN FORM MR 3 AND TAKEN CARE OF IN SECRETARIAL STANDARDS

Form MR 3 has prescribed verification and reporting of

1. Adherence to good corporate practices
2. Corporate conducts
3. Proper Board-processes

Although the thrust has been on the above aspects and a mandate has been given to the Secretarial Auditors to report or atleast give comments on the above, all the three aspects are subjective in nature and are completely left at the wisdom of the Corporate and the Secretarial Auditors to decide.

Now, the statutory recognition to Secretarial Standards will, if not completely but to a larger extent, be successful in prescribing the parameters for good corporate practices and corporate conducts. Further, the Secretarial Standard on Meetings of the Board of Directors is extensively dealing with “proper Board Process”, and therefore the Standard will definitely bridge the gap between Act and actual secretarial practices.

A detailed analysis of both Standards will provide the specific instances, where the Standards have taken care of or addressed most of the important issues of the Secretarial Audit Report.

## EVALUATING THE CORPORATE CONDUCTS AND ADHERENCE TO GOOD CORPORATE PRACTICES

The ultimate aim of the Secretarial Standards is to promote good corporate practices leading to better corporate governance. The Standards are basically compilation of good secretarial practices with a view to ensuring promotion of proper Board Process and shareholders democracy with utmost transparency, integrity and fair play, going beyond the minimum requirements of law. The adoption of the Secretarial Standards in true letter and spirit, will ensure adoption of uniform, consistent and best secretarial





practices in the corporate sector. Such uniformity of best practices, will result into furtherance of effective decision making by the Board and shall promote shareholders democracy and thus add value to the general endeavour to strive for good governance.

Secretarial Standards help in evaluating the corporate conduct and adherence of good corporate practices of a particular company. Some of the clauses of the Secretarial Standards which may be helpful for the Secretarial Auditors in evaluating corporate conducts and practices are reproduced hereunder:-

1. Clause 1.3.5 of SS-1- The Notice of a Meeting shall be given, even if Meetings are held on predetermined dates or at predetermined intervals. This will promote participation of every director at the Board Meeting.
2. Clause 1.3.7 of SS-1- Notes on items of business, which are in the nature of Unpublished Price Sensitive Information (UPSI), may be given at a shorter period of time than seven days before the date of the meeting, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any. This will promote good corporate conduct amongst all companies and at the same time preserve the UPSI.
3. Clause 1.2.9 of SS-2 -No item of business other than those specified in the notice shall be taken up at the meeting. This clause will help the directors in taking informed decisions on each Agenda item, for the betterment of Company and its stakeholders.
4. Clause 4.1.1 of SS-1- Every company shall maintain separate attendance registers for the Meetings of the Board and Meetings of the Committee and every Director, Company Secretary who is in attendance and every Invitee who attends a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting as per clause 4.1.3. This will substantially reduce the management disputes between directors.
5. Clause 7.4 of SS-1-The draft Minutes of the Meeting of the Board or the Committee thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee for their comments within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee. This provision will enable every director to provide their inputs on the recording of deliberations and decisions taken by the Board and substantially reduce subsequent disputes on content of the minutes.
6. Clause 7.1.3 of SS-1-Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp. This will help in better

maintenance of minutes.

## PROPER BOARD PROCESSES

The Secretarial Auditors are also required to provide their opinion on the "Proper Board Process" and the Secretarial Standards aims to improve the board process and participation of directors by requiring the company to circulate all information necessary to arrive at an informed decision in the following manner:-

1. **Clause 1.3.7 of SS-1** - Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by courier or by e-mail or by any other electronic means. These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.

The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least 7(seven) days before the date of the Meeting.

In case the company sends the Agenda and Notes on Agenda by speed post or by registered post or by courier, an additional two days shall be added for the service of Agenda and Notes on Agenda.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director. This will enable the Board to deliberate on each and every item in a meaningful manner and original director will remain aware of decisions being taken by Board.





# Article

Secretarial Standard: A Panacea for Secretarial Audit & Auditors

➤ The Companies Act, 2013 and rules made thereunder are silent on two very important aspects relating to Secretarial Audit. First, serving notice of AGM to the Secretarial Auditors and his eventual presence in AGM. Second, laying of Secretarial Audit Report before the members in Annual General Meeting. The Secretarial Standard on General Meetings (SS-2) has given due recognition to the Secretarial Audit Report and Secretarial Auditors.

2. **Clause 1.3.8 of SS-1** -Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed. This clause will enable the directors to arrive at a decision after verifying the pros and cons of the proposal.
3. **Clause 1.3.10 of SS-1** - Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any. This will ensure that only such items (reference of which was not included in the agenda) is transacted at the meeting which are of utmost necessity.
4. **Clause 1.3.10 of SS-1** - Presence of one independent director, if any, shall be mandatory to transact urgent business in case the Notice, Agenda and Notes on Agenda is given at shorter period of time than stated in SS-1. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company. This will promote transparency.
5. **Clause 4.2 of SS-1** - Leave of absence shall be granted to a Director only when a request for such leave has been received by the Company Secretary or by the Chairman.
6. **Clause 3.1 of SS-1** - Quorum shall be present not only at the time of commencement of the Meeting but also while

transacting business. This will promote better participation by directors.

In the absence of uniform Corporate Practices / Corporate Conduct, it was increasingly becoming difficult for the CS in employment to apply best practices in their Companies as well as to the Secretarial Auditors to express their opinions on any of the above phrases. Now, SS-1 and SS-2 will be providing a helping hand to both Company Secretary in employment to educate their management that these practices are mandatory and also to the Secretarial Auditors by prescribing parameter for reporting or commenting on corporate conducts and good corporate practices and also on proper Board Process.

## IMPORTANCE OF SECRETARIAL AUDIT REPORT THROUGH SECRETARIAL STANDARD-2

The Companies Act, 2013 and rules made thereunder are silent on two very important aspects relating to Secretarial Audit. First, serving notice of AGM to the Secretarial Auditors and his eventual presence in AGM. Second, laying of Secretarial Audit Report before the members in Annual General Meeting. The Secretarial Standard on General Meetings (SS-2) has given due recognition to the Secretarial Audit Report and Secretarial Auditors. Clause 1.2.1 of SS-2 states that notice in writing of every meeting shall be given to the Secretarial Auditors.

Clause 4.3 of SS-2 states that the Secretarial Auditors, unless specifically exempted by the Company shall, either by himself or through his authorised representative, attend the Annual General Meeting and shall have the right to be heard at such meeting on that part of the business, which concerns him as Secretarial Auditor.

Further, Clause 13.2 of SS-2 states that the qualification, observations or comments or other remarks, if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, shall be read at the Annual General Meeting and attention of members present shall be drawn to the explanations/comments given by the Board of Directors in their report.

## CONCLUSION

The Secretarial Standards, on the one hand, prescribe the parameters for good corporate conduct and practices, and on the other hand, require the Company Secretary in employment to establish the same within the organisation. It also empowers the Company Secretary in practice to verify and report good corporate conduct and practices in its report in Form MR-3. Therefore, it can be concluded that Secretarial Standards act as panacea for both Company Secretary in Employment as well as Company Secretary in Practice i.e. Secretarial Auditor. CS





# 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.



# Article

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

➤ 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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## ATTENTION!

### MEMBERS HOLDING CERTIFICATE OF PRACTICE

The Institute has brought out a CD containing List of Members holding Certificate of Practice of the Institute as on 31st March 2015. The CDs are available at the head quarters of the Institute and will be supplied free of cost to the members holding Certificate of Practice on receipt of request. Request may please be sent to the Membership Section at e-mail id-rajeshwar.singh@icsi.edu



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## Effect of Secretarial Standards on the scope & ambit of jurisdiction of Oppression and Mismanagement

- Notification of much needed Secretarial Standards by the ICSI has set the bar of management & administration at a higher level. The observance of Secretarial Standard -1 on Meetings of the Board of Directors and Secretarial Standard-2 on General Meetings has provided the much needed impetus on the management & administration of companies.

**S**ubstantial litigation under the Companies Act seeking remedy of derivative action arise under the provisions of Sections 397 and 398 of Companies Act, 1956 dealing with prevention of oppression and mismanagement (O&M in short). As the provisions of 1956 Act are 57 years old, it was seen that when it comes to these corporate disputes, companies have found indigenous ways to overcome provisions of law or at times have given their own interpretation on various provisions, mainly due to ambiguous law at times, to suit their own benefits. This has led to many shareholders invoking the jurisdiction of O&M before High Courts and subsequently before Company Law Board. A careful analysis of the disputes which are filed under O&M will reveal that in cases of large corporations usually the disputes are qualitative in nature, where as in cases of medium and small enterprises, the disputes usually revolve around matters of unilateral actions by one group to the exclusion of the other group. It is also pertinent to note that majority cases are usually filed w.r.t. small or medium corporations being companies

in nature of quasi partnerships in one form or the other and due to the law being old & indigenous methods of corporates., The nature of such disputes are not so qualitative, as a result of which the courts are often



\* Central Council Member of ICSI, 2015.





- SS-1 & SS-2 seek to provide for setting bench mark for the companies to set up uniform practices for conducting shareholders and Board meeting, transacting corporation businesses through proper disclosures with the knowledge of all required stakeholders in fair & transparent manner.

burdened to dwell on those petty matters leading to lengthy litigations. The new Companies Act, Rules and now Secretarial Standards seek to redress such a situation and seek to provide a mechanism to have adjudication of qualitative disputes before Company Law Board and NCLT when it materializes.

## COMPANIES ACT, 2013 & JURISDICTION OF OPPRESSION AND MISMANAGEMENT (O&M)

The new Companies Act, 2013 along with various changes in company management & administration, brings in various changes in the matter of derivative action under the jurisdiction of oppression and mismanagement. The scope of derivative mechanism of oppression and mismanagement under the CA, 13 has been made much wider, though these provisions are not yet notified owing to pendency of issue of NCLT & allied matters, the old provision of 397 and 398 of the CA, 1956 are still in force. However, it may be noted that since majority provisions w.r.t. prospectus & allotment of securities, share capital, management & administration, appointment & qualification of directors, meetings of board of directors of the new CA, 13 have been notified, the same have surely brought in the new CA, 13 into force substantially w.r.t jurisdiction of O&M. Cases dealing with prevention of oppression & mismanagement are filed primarily wherein there is a break down or breach of basic administration and management of the affairs of the company. Some of the illustrations of the same are discussed hereunder:

### ILLUSTRATIONS W.R.T. GENERAL MEETING

- Not calling a general meeting and keeping shareholders in dark.
- Inadequate or no Notice of calling of general meeting to the shareholders and actions / decisions taken unilaterally by one group to the exclusion of the other group.

- Inadequate quorum at the meeting or for a particular transaction passed by one group to the exclusion of the other group.
- Inadequate statement annexed to the notice of general meeting.
- Ineffective mechanism of recording of minutes of meeting as well as improper attendance of shareholders and no special notice to director(s) in case of removal and dispute with regard to the same.
- Not following various provisions of law w.r.t. general meeting.

### ILLUSTRATIONS W.R.T. BOARD MEETING

- Allotment of shares to one group to the exclusion of the other group thereby creating a new majority or dilution of one group to the exclusion of the other.
- Inadequate or improper or no notice of calling of board meeting to the directors and actions / decisions taken unilaterally by one group to the exclusion of the other group.
- Improper or no quorum for a transaction, particularly in two directors & shareholders companies, where decisions are taken by one director unilaterally and where merely forms are filed with the Registrar of Companies.
- Defects in appointment, resignation, removal of directors.
- Disqualification of Director and consequent cessation of director(s) of companies unilaterally or not following due process of law.

A careful perusal of the above broad reasons of these categories of dispute shows that the majority of these matters revolve around dispute w.r.t. procedural aspect and for the reasons of not following the provisions of Companies Act. The Companies Act, 1956 was enacted 57 years ago, when the said law was made only with regard to the broad provisions of notice of meeting, quorum, passing of resolutions and other management provisions were provided and since then the working of companies has gone a sea change. Though the jurisdiction of prevention of oppression & mismanagement has seen several decided matters in original jurisdiction before the High Courts and subsequently before the Company Law Board and even at appellate stage before High Courts and Apex Court w.r.t. the above, still we have seen the misuse of the above provisions by the companies under dispute and management in one form or the other from. Inadequate notice or agenda, unilateral decisions, non maintenance of proper records amongst many others leading to dispute of O&M.

### SECRETARIAL STANDARDS AFFECTING JURISDICTION OF O&M

The New Companies Act, 2013 has certainly brought in several welcome changes and has made an attempt to get over those bottlenecks to see that the administration and management of the company is run in a smooth and transparent manner and



# Article

Effect of Secretarial Standards on the scope & ambit of jurisdiction of Oppression and Mismanagement

the same will bring in reduction in litigation of derivative action under Companies Act. Several changes have been brought in for conducting general meetings, notice of board & general meeting, allotment of shares especially right issues to all kind of companies, change in directorship amongst others. In this context provisions of Section 118(10) of CA, 13 mandated all companies to observe secretarial standards with respect to general and board meetings as specified by ICSI and approved by Central Government.

The notification of the much needed Secretarial Standards by the ICSI has set the bar of management & administration at a higher level. The observance of Secretarial Standard -1 on Meetings of Board of Directors and Secretarial Standard-2 on General Meetings has provided the much needed impetus on the management & administration of companies. Various provisions in SS-1 & SS-2 seek to provide for setting bench mark for the companies to set up uniform practices for conducting shareholders and Board meeting, transacting corporation businesses through proper disclosures with the knowledge of all required stakeholders in fair & transparent manner. SS-1 & SS-2 have a thought process of bringing a regime, whereby the litigation is reduced for the usual reasons of unilateral actions, irregular notices and meetings. Some of the highlights of important provisions of Secretarial Standards 1 & 2, relevant to the oppression and mismanagement are summarized as follows :

- **Power to call meeting:** - Clause 1.1 of SS-1 clearly provides as to who can call a meeting of the Board. SS-1 clearly provides that any director and CS can call the meeting or where there is no CS any person authorized by the Board can call a meeting of the Board. It is seen that meetings have been called unilaterally by any director or by any person and actions are taken unilaterally by one group to the exclusion of the other. Since SS-1 clearly provides that the notice shall be issued in the above form and also a clarity that the same shall be done in consultation of the Chairman/MD/WTD, the same brings transparency in calling Board Meetings and hope to bring lesser litigations on these grounds. Similarly SS-2 also provides that a general meeting shall be called with the authority of the Board. Several matters have been filed before Company Law Board, where unilaterally board & general meetings have been called and in the absence of any clarity in the Act and Articles of Association, the provisions of calling board & general meetings have been misused to suit majority over minority.
- **Notice & manner of Notice:** – SS-1 Clearly provides that the notice shall be in writing and the mode shall be by way of hand delivery, speed post or by registered post or by courier or by facsimile or by electronic means. SS-1 even provides that time, place mode and serial number of meeting shall also be clearly provided. Similarly SS-2 also clearly provides the manner and time frame of notice.

Notice of Board and General Meeting in majority of the cases

is the single largest reason of filing litigations of O&M before Company Law Board. The new SSs clearly bring lot of clarity in conducting board and general meetings. Under the old Act in the absence of manner of notice, time frame of notice and various other provisions w.r.t. notice were reportedly misused by the errant management for taking unilateral actions in the companies. This has led to several litigations of O&M before Company Law Board. Though the Supreme Court has held in Parmeshwari Prasad Gupta vs Union of India, AIR 1973 SC 2389, that an enhancement in capital of the company without prior notice to the petitioners who are shareholders is bad in law and is liable to be set aside, still in every matter the courts are required to see the facts and circumstances and corroborative evidence in each case. Such a scenario was due to the limited provision w.r.t. notice of meetings. The new Act and SSs seek to redress the same and now the combined reading of the new Act along with the SSs have set the bar very high. Clear and unambiguous provision not only provides the calling of meeting but also provides the manner of conducting the meetings. Even clarity in the manner of conducting adjourned meeting and notice to alternate director is provided. Earlier in several management decisions even a single director used to call meetings or used to show that a meeting is called or has taken place and only E-forms were used to be filed with the Registrar of Companies, which led to several litigations of oppression and mismanagement. However now when the Act and SSs provide the clear and unambiguous way of conducting and calling meeting, the same will reduce the litigation on these grounds and may encourage the management to take up the said issues in a more democratic manner in meetings itself or taking up litigations for quality matters, rather than taking actions unilaterally behind the warring group.

- **Agenda of Meeting:** SS-1 clearly provides that the agenda and notes to the agenda are required to be provided for the board meeting. The earlier Act was silent on the agenda to be provided to the board meeting. There have been instances where various actions were taken by one group either without giving any notice or by only giving notice & without sending agenda, thereby taking decisions without the knowledge of the other group. The new SSs not only provide for agenda to be provided before seven days, but also provide for agenda notes thereby giving reasons for such a proposed action. Further the clear provision for matters not to be transacted through video conferencing is also a welcome provision. The same will no doubt bring lot of clarity on any action taken by the management.
- **Quorum:** SS-1 & SS-2 contain clear provisions for quorum. The Standards not only provide that the quorum is required to be present throughout the meeting, but also provide for quorum when certain directors are interested in specific transactions, In several O&M matters, it is seen that a single



director or a board without sufficient quorum was taking decisions to the detriment to the minority, Even directors have participated when they were interested in certain transaction and have taken benefit in the absence of a specific provision of law. The revised SSs seek to redress the same and hopefully the same will be adhered to by the managements as otherwise stringent penalties are provided in the CA,13.

- **Attendance Register:** For the first time elaborate provision w.r.t. attendance register are made. The earlier Act was silent on the same and this lead to several litigations and everyone used to dispute the maintenance of attendance register in the absence of specific requirement in law as the same was not required to be maintained. Companies used to rely on corroborative evidence of notice, events leading to meeting and other evidence in the absence of attendance register to show that a director or shareholder was present in meeting. SSs also clearly provide the manner of keeping attendance register as well manner of inspection of attendance register. Further SS-1 provides that only directors & CS will be attending the meeting in their respective capacities and all other will be only attending as an invitee. Such matters wherein dispute arose due to invitee and decisions taken in the meetings, hopefully will now be avoided consequent upon introduction of SSs.
- **Minutes of Meeting:** SS-1 & SS-2 also now clearly provide an elaborate mechanism of preparation, recording, maintenance of minutes of board and general meetings. The new SSs clearly provide that the minutes of the meeting be finalized within fifteen days from the date of conclusion of the meeting. It also provides for draft minutes to be circulated to all the board members, circulation of signed minutes, as well mode of sending the minutes, custody of minutes to be kept by CS and the manner of maintenance of minutes. Numerous litigations have arisen in the past on account of disputed minutes. Directors used to dispute as to what transpired in the meeting and used to dispute the recording of minutes. The specific time frame of 15 days to circulate the minutes as well as recording of minutes in the minute books, will definitely resolve all such controversies as now all the disputed matters are required to be closed in a time bound manner. Several disputes have taken place in oppression and mismanagement matters as to what transpired in meeting, decisions taken in meetings, presence of directors or members etc. It was also seen in several matters that dispute always arose with regard to the manner of maintaining minutes, preparation of the minutes and even as to who is in custody of the records of the company. Further clear provision of non pasting of minutes & recording of appointments (which also used to be major bone of contention in minutes) at the meetings are possible steps towards better governance. The new SSs will bring a better clarity on the same as elaborate mechanism is provided for the preparation, recording & maintenance of

minutes of board and general meeting.

Thus SSs as a whole no doubt assist the CA,13 for better administration & management in the affairs of the company. Due to bottlenecks of the old Act, considerable litigation arose on petty matters, which has resulted into loss of confidence of entrepreneurs in the corporate laws. From old corporations to even fresh startups all have several litigations, wherein often a technocrat or a professional who has no idea of the laws to be followed have been made scapegoat due to unclear law. Even, frivolous litigations have been filed in cases of O&M, owing to limited laws required to be followed. As it has been held Re. Bengal Luxmi Cotton Limited, (1965) 35 CC 187 (Cal) that mere vague allegations of fraud or misconduct are not enough; particulars must be given if minority shareholders wish to raise a grievance; in case minority shareholders did not have particulars they should have them and approach the court, else courts will not entertain such petitions. Certainly CA,13 along with Rules & SSs seek to redress such situations and encourage entrepreneurs to have confidence in corporate structure and its laws. Thus it is imperative that all corporations whether large or even relatively small are required to follow such provisions though the same may appear to be elaborate for small corporations initially, but in the long run, it will be a good mechanism to strengthen governance in all classes of companies.

## CONCLUSION

The various provisions in the Companies Act, 2013 no doubt provide a platform for a better administration and management of companies. However, the Secretarial Standards strengthens the said provisions by bringing clarity in the administration and management of companies, thereby providing a hope for reduction of litigation in the jurisdiction of oppression and management and encourage corporates to fight on qualitative matters in case of a dispute. Moreover, Secretarial Standards will provide a better platform to the board and members of the companies to exercise corporate democracy and fight out in a transparent manner in board and general meeting rather than taking action unilaterally thereby forcing oppressed shareholders to approach the Company Law Board under the jurisdiction of oppression and mismanagement or even before NCLT in times to come. At the same time, various elaborate provisions carve out higher responsibilities on the professionals to act in more transparent and responsible manner to bring in better governance. Detailed provisions dealing with agenda, notice, quorum minutes, attendance of meetings, resolution by circulation, e-voting amongst others will surely are towards an endeavour for better governance and encouraging the litigants to fight on quality and legitimate issues rather than taking mechanism of unilateral decisions, which lead to high number of protracted litigations on these matters.

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## **Communique from Chairman & Past Chairmen of Secretarial Standards Board (SSB) of ICSI**

The statutory recognition of Secretarial Standards in the Companies Act, 2013 and notification of the Secretarial Standards by the ICSI on 23rd April, 2015 are indeed historic moments for the profession of Company Secretaries.

The concept of Secretarial Standards was conceived by the Council of the Institute of Company Secretaries in the year 2000 when an imminent need was felt to integrate, consolidate, harmonize and standardize all the prevalent diverse secretarial practices, so as to ensure that uniform practices are followed by the companies throughout the country. To formulate the Secretarial Standards, the Council constituted the Secretarial Standards Board in the year 2000 as a visionary step. There is no similar Board or authority in existence anywhere in the world for the purpose of formulating Secretarial Standards.

The journey of Secretarial Standards from being a vision of the Council to finding place in the Statute Book has been ambitious, challenging and arduous. People congratulated me and my present Team of SSB for the success. I would say that it is not the efforts of only one person or the present team, but the continuous efforts of many persons involved in the process as it is rightly said:

“If a stone is broken by the last stroke, it does not mean that first stroke is less important. Success is the result of each and every stroke”.

I would thus fail in my duty if I do not acknowledge the special contribution of those specifically involved in the process – the past Chairmen Mr. N J N Vazifdar, Mr. Ashok Chhabra, Mr. S V Subramanian and the members of Secretarial Standards Board over the years for their outstanding contribution throughout this remarkable journey.

I am very grateful to the Team SSB-2014 (listed out in Annexure) who have worked day and night tirelessly for giving finality to SS-1 and SS-2. I know I have extracted too much of work from them; conducted late evening meetings, given them home-work for night and again commenced meetings early in the morning next day, but they have worked without complaining. I also acknowledge the valuable contribution made by Shri V K Agarwal, Retd. Principal Director; Shri Henry Richards, Retd. Regional Director –South Eastern Region, Ministry of Corporate Affairs for the legal inputs given and all other special invitees of SSB-2014.

I would like to make a specific mention about Mr. J Sridhar, Past President, ICSI for playing a major role in constituting the SSB in 2000 and giving it direction. I also acknowledge contribution of persons who ensured that Standards found place on the statute book i.e. in Companies Act, 2013. These include, the past President Ms. Preeti Malhotra, who as a member of the Expert Committee to advise the Government on the new Company Law constituted by the Ministry of Corporate Affairs under the Chairmanship of Dr. J J Irani (Irani Committee), suggested the inclusion of Secretarial Standards in the recommendations of the Committee. I acknowledge the Past Presidents Mr. Datla Hanumanta Raju, Mr. Vinayak S. Khanvalkar, Mr. Anil Murarka and Past Secretary & Chief Executive Officer Mr. N K Jain, Retd. Principal Director Mr. V K Aggarwal, and Joint Secretary Ms. Alka Kapoor, who worked tirelessly for several years to secure statutory recognition for the Secretarial Standards by making presentations before the Parliamentary Standing Committees and regular interaction with the political leadership, parliamentarians and MCA Officials to convince them about the relevance and importance of the Standards, I acknowledge Dr. S P Narang, Past Secretary under whose stewardship Secretarial Standards were conceived. My special thanks to Mr. Atul Mehta, President, ICSI and Mr. Sutanu Sinha, Chief Executive & Officiating Secretary, ICSI for the support extended in getting the approval of MCA.

I also wish to place on record my sincere appreciation for the pain staking efforts put in by Ms. Priya Iyer, Secretary, SSB for lending excellent technical, secretarial and administrative support to SSB under the able guidance of Shri Gopal Chalam, Dean, CCGRT. I also acknowledge Ms. Banu Dandona, Deputy Director and Ms. Deepa Khatri, Assistant Director for their academic support.

The Standards are a reality now and company secretaries in employment as well as company secretaries in practice have been entrusted with the duty to ensure the adherence of Secretarial Standards. This has given a new dimension to the profession.

Members are therefore advised to get themselves familiarized with the Secretarial Standards issued by the ICSI and ensure that the corporates they are associated with observe the Standards.

For the benefit of our Members, SSB's endeavor is to bring out further Secretarial Standards and Guidance Notes. Meanwhile, Members are requested to contribute generously in the formulation of Secretarial Standards and Guidance Notes by giving their specific comments and expressing their views. They may also bring to the notice of the SSB any issues in implementation of law/grey areas on the subject of Secretarial Standards/Guidance Notes. SSB would definitely endeavor to clarify these through their Secretarial Standards/Guidance Notes/FAQs.

Your co-operation and support is solicited in order to achieve our joint commitment effectively.

- Pavan Kumar Vijay, Chairman, SSB, Year 2014



## Communique from Chairman & Past Chairmen of Secretarial Standards Board (SSB) of ICSI

### Annexure

**TEAM SSB- 2014: Members** - Ahalada Rao V, Anil Kumar Murarka, Atul H Mehta, Devendra Bhandari, Jagannadha Rao C V, Lakshmmi Subramanian, Lalit Jain, M S Sahoo, Milind B Kasodekar, Narayan Shankar, Dr. Ravichandran K S, S C Vasudeva, S H Rajadhyaksha, Sanjay Grover, Dr. Sanjiv Agarwal, Subhasis Mitra, Suresh Krishnan, Puneet Duggal (Representative of MCA), Amit Tandon (Representative of SEBI), Bazil Shaikh (Representative of RBI), Dr Narasimhan V R (Representative of NSE), Mukesh Singh Kushwah (Representative of ICAI), Amit A Apte (Representative of ICoAI), Rajendra Singhi (Representative of CII), Rajendra Chopra (Representative of FICCI), G P Madaan (Representative of ASSOCHAM).

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It is indeed a great pleasure to know that the Government has mandated all Corporates to follow the Standards set by the Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India while conducting the Board as well as the General body meetings. A formal notification is still awaited.

The scope of the Secretarial Standards Board (SSB) is to examine the areas where the law is not specific, giving a lot of flexibility for interpretation and therefore lending itself to differing practices not necessarily the best. Unlike some other areas such as accounting practices, the scope for setting standards is therefore limited. A few words about the working of the SSB - There were regular meetings of the SSB, for which detailed agenda and explanatory material were sent to members well in advance. The members are expected to come well prepared to contribute to the deliberations. At the meeting, every member is encouraged to participate and his/her views are fully heard. Healthy arguments and debates were part of the proceedings.

Once the discussion phase was over, the conclusions arrived at were by consensus. Whenever there were divergent views, they were taken up for discussions once again and, if still there was no consensus, the members usually left it to the Chairman to take a call.

As Chairman, when I had to select one among the different views, I was not only studying the regulations and its various interpretations but also giving emphasis to the intention of the legislation rather than what is expressed or written. The decisions were then converted into standards. The Dean of the CCGRT and the Co-ordinator were doing an excellent job of drafting with final editing by the Chairman.

I have tried to explain this in an elaborate manner to convey that SSB has set an example as to how a Board meeting should be conducted, in a democratic way, before setting a standard for corporates. My association with the SSB commenced in 2005 when I was inducted as a member. The following year, perhaps due to the then Chairman's inability to continue, I was appointed Chairman of SSB, which position I held till 2013. Apart from giving me an opportunity to interact with senior professionals, this made it a compulsory learning experience for me, which I thoroughly enjoyed and benefited from.

- S V Subramanian, Chairman, SSB, Years 2006-2013

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### My reminiscences as Chairman, SSB

Secretarial Standard on Registers and Records was finalised during the short stint I was Chairman of SSB. I had to leave the responsibility as I was transferred to regional head position in Procter & Gamble, Singapore. I had then not imagined Secretarial Standards will gain statutory acceptance. But Institute had the vision; strong belief to undertake pioneering work.

During my career I have lived with a limitation, which new generation will not; thanks to standards. I recall secretarial practices for the board meetings used to change with change in chairman of the Board. New chairman would set a different standard for agenda papers; change presentation material; change way of writing minutes. It will no longer be the case. Now standards will guide the Chairman, Board of Directors.

I had the privilege of working with very argumentative, which we proudly are, but knowledgeable group of SSB members; always ready to add their experiences. The group was diverse with representations from stock exchange, SEBI. My respect for CS fraternity increased many fold as they brought on table significant value, based on their rich practical experience.

It was a challenge to head a group so diverse, where every member was eager to make a point. Obviously many meetings seemed chaotic; red-herrings took the discussion away from topic. On some days very little was achieved. But we all know the butterfly effect comes from initial stages when small changes result in meaningful differences in a later stage.

- Ashok Chhabra, Chairman, SSB, Year 2005





## General Laws

LW: 39:05:2015

SHREYA SINGHAL v. U.O.I [SC]

Writ Petition (Criminal) No.167 of 2012 [with batch of petitions]

J. Chelameswar & Rohinton Fali Nariman, J.J. [Decided on 24/03/2015]

Section 66A of the Information Technology Act, 2000 read with Article 19 of the Constitution of India-punishment for sending offensive messages through communication- face book, twitter postings on political events - unbridled power to police to arrest people-whether constitutionally valid- Held, No.

### Brief facts:

This batch of writ petitions filed under Article 32 of the Constitution of India raises very important and far-reaching questions relating primarily to the fundamental right of free speech and expression guaranteed by Article 19(1) (a) of the Constitution of India. The immediate cause for concern in these petitions is Section 66A of the Information Technology Act of 2000. This Section was not in the Act as originally enacted, but came into force by virtue of an Amendment Act of 2009 with effect from 27.10.2009. A related challenge is also made to Section 69A introduced by the same amendment.

The petitioners' various counsel raised a large number of points as to the constitutionality of Section 66A. According to them, first and foremost Section 66A infringes the fundamental right to free speech and expression and is not saved by any of the eight subjects covered in Article 19(2). According to them, the causing of annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will are all outside the purview of Article 19(2). Further, in creating an offence, Section 66A suffers from the vice of vagueness because unlike the offence created by Section 66 of the same Act, none of the aforesaid terms

are even attempted to be defined and cannot be defined, the result being that innocent persons are roped in as well as those who are not. Such persons are not told clearly on which side of the line they fall; and it would be open to the authorities to be as arbitrary and whimsical as they like in booking such persons under the said Section. In fact, a large number of innocent persons have been booked and many instances have been given in the form of a note to the Court. The enforcement of the said Section would really be an insidious form of censorship which impairs a core value contained in Article 19(1) (a). In addition, the said Section has a chilling effect on the freedom of speech and expression. Also, the right of viewers is infringed as such chilling effect would not give them the benefit of many shades of grey in terms of various points of view that could be viewed over the internet.

The petitioners also contend that their rights under Articles 14 and 21 are breached inasmuch there is no intelligible differentia between those who use the internet and those who by words spoken or written use other mediums of communication. To punish somebody because he uses a particular medium of communication is itself a discriminatory object and would fall foul of Article 14 in any case.

In reply, learned Additional Solicitor General defended the constitutionality of Section 66A. He argued that the legislature is in the best position to understand and appreciate the needs of the people. The Court will, therefore, interfere with the legislative process only when a statute is clearly violative of the rights conferred on the citizen under Part-III of the Constitution. There is a presumption in favour of the constitutionality of an enactment. Further, the Court would so construe a statute to make it workable and in doing so can read into it or read down the provisions that are impugned. The Constitution does not impose impossible standards of determining validity. Mere possibility of abuse of a provision cannot be a ground to declare a provision invalid. Loose language may have been used in Section 66A to deal with novel methods of disturbing other people's rights by using the internet as a tool to do so. Further, vagueness is not a ground to declare a statute unconstitutional if the statute is otherwise legislatively competent and non-arbitrary. He cited a large number of judgments before us both from this Court and from overseas to buttress his submissions.

**Decision: Section 66A was declared as unconstitutional and struck down.**

### Reason:

It has been held by us that Section 66A purports to authorize the imposition of restrictions on the fundamental right contained in Article 19(1) (a) in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action. We have held following K.A. Abbas' case (Supra) that the possibility of Section 66A being applied for purposes not sanctioned by the Constitution cannot be ruled out. It must,



therefore, be held to be wholly unconstitutional and void. Romesh Thappar's Case was distinguished in R.M.D. Chamarbaugwalla v. The Union of India, [1957] S.C.R. 930 in the context of a right under Article 19(1) (g) as follows:

"20. In Romesh Thappar v. State of Madras [(1950) SCR 594], the question was as to the validity of Section 9(1-A) of the Madras Maintenance of Public Order Act, 23 of 1949. That section authorised the Provincial Government to prohibit the entry and circulation within the State of a newspaper "for the purpose of securing the public safety or the maintenance of public order." Subsequent to the enactment of this statute, the Constitution came into force, and the validity of the impugned provision depended on whether it was protected by Article 19(2), which saved "existing law insofar as it relates to any matter which undermines the security of or tends to overthrow the State." It was held by this Court that as the purposes mentioned in Section 9(1-A) of the Madras Act were wider in amplitude than those specified in Article 19(2), and as it was not possible to split up Section 9(1-A) into what was within and what was without the protection of Article 19(2), the provision must fail in its entirety. That is really a decision that the impugned provision was on its own contents inseverable. It is not an authority for the position that even when a provision is severable, it must be struck down on the ground that the principle of severability is inadmissible when the invalidity of a statute arises by reason of its contravening constitutional prohibitions. It should be mentioned that the decision in Romesh Thappar v. State of Madras [(1950) SCR 594] was referred to in State of Bombay v. F.N. Balsara [(1951) SCR 682] and State of Bombay v. United Motors (India) Ltd. [(1953) SCR 1069 at 1098-99] and distinguished."

The present being a case of an Article 19(1)(a) violation, Romesh Thappar's judgment would apply on all fours. In an Article 19(1) (g) challenge, there is no question of a law being applied for purposes not sanctioned by the Constitution for the simple reason that the eight subject matters of Article 19(2) are conspicuous by their absence in Article 19(6) which only speaks of reasonable restrictions in the interests of the general public. The present is a case where, as has been held above, Section 66A does not fall within any of the subject matters contained in Article 19(2) and the possibility of its being applied for purposes outside those subject matters is clear. We therefore hold that no part of Section 66A is severable and the provision as a whole must be declared unconstitutional.

Counsel for the petitioners have argued that Article 14 is also infringed in that an offence whose ingredients are vague in nature is arbitrary and unreasonable and would result in arbitrary and discriminatory application of the criminal law. Further, there is no intelligible differentia between the medium of print, broadcast, and real live speech as opposed to speech on the internet and, therefore, new categories of criminal offences cannot be made on this ground. Similar offences which are committed on the internet have a three year maximum sentence under Section 66A as opposed to defamation which has a two year maximum

sentence. Also, defamation is a non-cognizable offence whereas under Section 66A the offence is cognizable.

We have already held that Section 66A creates an offence which is vague and overbroad, and, therefore, unconstitutional under Article 19(1) (a) and not saved by Article 19(2). We have also held that the wider range of circulation over the internet cannot restrict the content of the right under Article 19(1) (a) nor can it justify its denial.

## LW: 40:05:2015

**PAYAL CHAWLA SINGH v. THE COCA-COLA CO. & ANR [SC]**

Arbitration Petition (Civil) No.3 of 2008

**Ranjan Gogoi, J. [Decided on 10/04/2015]**

Arbitration and Conciliation Act, 1996- employee of Indian subsidiary of US company- foreign company had "solutions programme" to address the employee disputes globally- employee of the Indian company claimed arbitration under the solutions programme- whether maintainable- Held, No.

### Brief facts:

The petitioner is a former employee of Coca-Cola India, Inc., the respondent No.2 herein. At the time of joining the respondent company an agreement dated 20.09.1995 was entered into between the petitioner and the respondent No.2, relevant features of which will be noticed in due course. It appears that while in employment in the respondent company, the petitioner had complained of gender discrimination and harassment primarily on account of the service conditions relating to pay and emoluments. The complaint of the petitioner was sought to be redressed by the respondent company by appointing an independent investigator and thereafter through mediation proceedings which did not yield any result. With effect from 28.07.2004, the petitioner's resignation from service in the respondent No.2 company became effective and payment in full and final settlement of her claims had also been tendered and received by the petitioner.

It appears that on 05.12.2006 the petitioner issued a legal notice to the respondents invoking the arbitration mechanism under the "solutions programme" and claiming compensation against harassment and gender discrimination that she claimed to have suffered during the course of her employment and even after her resignation. While it will not be necessary to go into the detailed facts and circumstances in which the grievance of the petitioner came to be resurrected after her resignation, suffice it will be to notice that an SMS message received around this time by



the petitioner from one Mr. Adil Malia, Vice-President, Human Resources of the respondent No.2 company, apparently, had triggered off the aforesaid response of the petitioner. The demand for arbitration made by the petitioner was refused by the respondent on the ground that the "solutions programme" was not applicable to the petitioner and the same was meant only for employees of the first respondent in the United States of America. This has led to the filing of the instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short the "1996 Act") resulting in the proceedings in question.

## Decision: Petition dismissed.

### Reason:

Having heard the petitioner-in-person and Shri Amit Sibal, learned senior counsel appearing for the respondents, this Court unhesitatingly comes to the conclusion that there is no binding arbitration agreement between the petitioner and her employer so as to enable this Court to exercise its jurisdiction under Section 11(6) of the 1996 Act. The attempt of the petitioner to bring in the provision for arbitration contained in the "solutions programme" as a part of the terms of her employment with the respondent No.2 remains wholly unsubstantiated. Not only the employment contract signed by the petitioner does not contain any specific clause of arbitration or makes the provision for arbitration contained in the "solutions programme" applicable to her employment, the clause providing for exclusive jurisdiction of the courts in Bombay specifically negate the claim of the existence of an arbitration clause in the contract of employment of the petitioner. There is no specific incorporation of the provisions for arbitration contained in the "solutions programme" to the case of the petitioner by any other communication though a bald assertion to the said effect has been made by the petitioner in her pleadings which has remained unsubstantiated. Even on a hypothetical application of the "solutions programme" the provisions contained therein with regard to conduct of arbitration proceedings in terms with the Federal Arbitration Act and the National Rules for resolution of employment disputes of the American Arbitration Association would specifically exclude the provisions of Part I including Section 11(6) of the 1996 Act on the strength of the decisions of this Court in Bhatia International Vs. Bulk Trading S.A. & Anr (2002) 4 SCC 105 followed in Videocon Industries Limited Vs. Union of India & Anr (2011) 6 SCC 161 and Yograj Infrastructure Limited Vs. Ssang Yong Engineering and Construction Company Limited (2011) 9 SCC 735 which would be applicable to the issue having regard to the point of time when the question had arisen. Besides, under Section 7 of the 1996 Act the parties to an arbitration agreement must agree to submit their disputes to arbitration. What is contemplated under the "solutions programme" is a mere possibility of the employee seeking arbitration as opposed to an obligation to refer all disputes to arbitration. Also as held by this Court in K.K. Modi Vs. K.N. Modi & Ors (1998) 3 SCC 573 an integral element of Section 7 of the 1996 Act is the agreement of the parties to be

bound by the decision of the arbitrator. The same is not to be found in the "solutions programme" which leaves the employee with an option to accept or reject the decision of the arbitrator.

For the aforesaid reasons, we are of the view that the petitioner is not entitled to invoke this Court's jurisdiction under Section 11(6) of the 1996 Act. In view of the aforesaid conclusion, it will not be necessary for this Court to go into certain other issues that have been raised by the contesting parties, namely, whether the petitioner's claim is time barred and whether the same has been instituted with oblique/collateral motives. .



## LW: 41:05:2015

### ONGC LTD v. PETROLEUM COAL LABOUR UNION & ORS [SC]

Civil Appeal No. 3727 of 2015 [Arising out of SLP (C) No. 5532 of 2012]

V. Gopala Gowda & C. Nagappan, JJ. [Decided on 17/04/2015]

Industrial Disputes Act, 1947- contract workers were employed in an irregular manner- they had worked for more than 480 days- their services were dispensed with- claim for regularisation- whether they are entitled for regularisation- Held, Yes.

### Brief facts:

The appellant-Corporation has questioned the correctness of the judgment and order dated 11.08.2011 passed by the High Court of Judicature at Madras whereby the High Court dismissed the Writ Appeal No. 1006 of 2011 filed by the appellant-Corporation against the dismissal of their W.P. No. 1846 of 2000 challenging the award dated 26.05.1999 passed by the Industrial Tribunal, Tamil Nadu, in I.D. No.66 of 1991, wherein it was held that non-regularisation of the concerned workmen in the dispute is not justified and directed the appellant-Corporation to regularise the services of the concerned workmen with effect from 14.01.1990,





the date on which all of them completed 480 days.

After considering the facts, circumstances and nature of the evidence on record which was placed before the Tribunal the same was appreciated by the learned single Judge, the learned Division Bench of the High Court held that the appointment of the concerned workmen by the Corporation cannot be termed as illegal appointment, but was only an irregular appointment and therefore, they were entitled for regularisation in their services having been employed on temporary basis and having completed more than 240 days in the calendar year subsequent to 13.1.1988. Therefore, it was held by the learned Division Bench of the High Court that no justifiable or reasonable grounds were found for it to interfere with the judgment and order passed by the learned single Judge of the High Court. The writ appeal of the Corporation was dismissed accordingly. Hence, the Corporation filed this appeal by framing certain substantial questions of law for consideration of this Court.

**Decision: Appeal dismissed.**

## Reason:

We have heard the factual and rival legal contentions urged by the learned senior counsel on behalf of both the parties and answer the same as discussed below.

Whether jurisdiction of the Tribunal to direct the Corporation to regularise the services of the concerned workmen in the posts is valid and legal?

The Central Government in exercise of its powers under Section 10 of the Act referred the existing Industrial Dispute between the concerned workmen and the Corporation to the Tribunal which rightly adjudicated point (i) of the dispute (supra) on the basis of the facts, circumstances and evidence on record and passed an award dated 26.5.1999 directing the Corporation that the services of the concerned workmen should be regularised with effect from the date on which all of them completed 480 days, subsequent to their appointment by the memorandum of appointment. The contention urged on behalf of the Corporation that the Tribunal has no power to pass such an award compelling the Corporation to regularise the services of the concerned workmen is wholly untenable in law. Even if we consider the same, the said contention is contrary to the legal principles laid down by this Court in the case of Hari Nandan Prasad & Anr. v. Employer I/R to Management of Food Corporation of India & Anr. (2014) 7 SCC 190. Therefore, the Tribunal has rightly passed an award directing the Corporation to regularise the services of the concerned workmen.

Whether the appointment of the concerned workmen in the services of the Corporation is irregular or illegal?

In the case on hand, the concerned workmen were employed by the Corporation initially through contractors. Thereafter, on issuance of notification dated 08.12.1976 by the Central Government

abolishing contract labour for the posts of Watch and Ward, dusting and cleaning jobs in the Corporation under Section 10(1) of the Contract Labour (Abolition and Regulation) Act, 1970, the Corporation and the concerned workmen arrived at a settlement under Section 18(1) of the Act, wherein a Co-operative Society was formed in the name of 'Thai Security Service Priyadarshini Indira Cooperative Society' for their welfare, thus dispensing with intermediary contractors. During the pendency of the sanction from the Central Government of the alleged "Policy decision", the concerned workmen were appointed directly from 13.1.1988 to 29.2.1988 and thereafter, they were employed continuously without written orders by the Corporation. Further, this Court in the case of Ajaypal Singh v. Haryana Warehousing Corporation 2014(13) SCALE 636 opined that when a workman is initially appointed in violation of Articles 14 and 16 of the Constitution of India, then the employer at the time of re-employment of the retrenched workman cannot take the plea that the initial appointment was in violation of the abovementioned provisions.

The plea of the Corporation that the reason for not regularising the concerned workmen under the Certified Standing Orders of the Corporation is allegedly due to the fact that the appointment of the concerned workmen was made without following due procedure under the Recruitment Rules and that their appointments were illegal. This plea cannot be accepted by us in view of the legal principle laid down by this Court in the above decision, wherein it is clearly laid down that the Corporation cannot deny the rights of the workmen by taking the plea that their initial appointment was contrary to Articles 14 and 16 of the Constitution.

For the reasons recorded in this judgment, we hold that the judgments and orders of both the learned single Judge and Division Bench of the High Court in favour of the concerned workmen are legal and valid. The High Court has rightly dismissed the appeal of the Corporation by affirming the award passed by the Tribunal.

Therefore, this appeal must fail and accordingly, the same is dismissed. Since the industrial dispute between the parties has been litigated for the last 25 years, it would be just and proper for this Court to give directions as hereunder:

- (i) The Corporation is directed to comply with the terms and conditions of the award passed by the Tribunal and regularise the services of the concerned workmen in their posts and compute the back-wages, monetary benefits and other consequential monetary benefits including terminal benefits payable to the concerned workmen on the basis of the periodical revision of pay scales applicable from the date of their entitlement, namely, by regularizing them in their services after their completion of 240 days of service in a calendar year in the Corporation as provided under Clause 2 (ii) of the Certified Standing Orders, within eight weeks from the date of receipt of the copy of this Judgment;
- (ii) If the Corporation fails to comply with the above given



directions, the back-wages shall be paid to the concerned workmen with an interest at the rate of 9% per annum. The Corporation is further directed to submit the compliance report for perusal of this Court after the expiry of the said eight weeks. There shall be no order as to costs.

## LW: 42:05:2015

### EXCEL DEALCOMM PVT LTD v. ASSET RECONSTRUCTION COMPANY (INDIA) LTD & ORS [SC]

Civil Appeal No. 3272 of 2015 [Arising out of S.L.P. (C) No.15900 of 2013]

**M.Y. Eqbal & Pinaki Chandra Ghose, JJ. [Decided on 01/04/2015]**

Code of Civil Procedure, 1908- jurisdiction of court- suit property situated in Maharashtra- agreement between the parties conferred jurisdiction on courts of Mumbai- nature of the suit was to deliver the suit property- suit instituted in Kolkatta- whether the suit is maintainable- Held, No. Whether plaint to be returned-Held, Yes.

### Brief facts:

The appellant had entered into an agreement with the Respondent to buy the assets and properties of the borrower 'Uniworth' respondent 3, which were situated in the State of Maharashtra. The agreement had a jurisdiction clause vesting jurisdiction on Mumbai courts. However, the deal could not sail through and the property was sold to the fourth respondent. The appellant filed a suit for specific performance of the agreement in the High Court of Kolkata which returned the plaint stating that it had no jurisdiction, which was affirmed by the Division Bench. This judgement was challenged before the Supreme Court.

**Decision: Appeal dismissed.**

### Reason:

In the present case, a suit was filed for the specific performance of the Agreement which contemplated the sale of property, as has been described in para 1 under Section 13 of SARFAESI Act in terms of the Rules. The question with respect to Clause 12 of Letters Patent in the present case is that whether the present suit is suit for land.

The suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property.

Further it is an established rule that to determine whether it is a suit for land, the Court will look into barely the Plaint and no other evidence. If by the averments in the plaint and prayers therein, it appears that the suit is one for land, it shall be so held and if it does not so appear, then the suit shall continue under leave granted under clause 12.

It may be noted that the sale certificate sought under the prayer requires the delivery of possession of the suit property. Thus, we find that the prayer for delivery of possession was an implicit one in the present case. The prayer as sought in the plaint could not have been granted without the delivery of possession of the suit property as the sale certificate itself contemplates the delivery of the immovable property. Therefore, we hold that the present suit was indeed a suit for land.

Now, we shall consider as to which court has the jurisdiction to entertain and try the suit. It is clear from clause 5 and 9 (e) (viii) of the private treaty agreement that the intention of the parties to the Agreement was to restrict limitation to the forums/courts of Mumbai only. Therefore, we are of the opinion that the Courts of Mumbai were granted exclusive jurisdiction as per the Agreement and we find no reason to create any exception to the intention of the parties.

In view of the above-mentioned two findings that the present suit is a suit for land, and that the parties had granted exclusive jurisdiction to the Court of Mumbai, the jurisdiction of the Court at Calcutta is clearly ousted as per law.

## LW: 43:05:2015

### GAMMON INDIA LTD v. DELHI METRO RAIL CORPORATION LTD & ORS [DEL]

W.P. (C) 285/2015

**Badar Durrez Ahmed & Sanjeev Sachdeva, J. [Decided on 15/04/2015]**

Rejection of bid on the basis of sound technical evaluation-whether tenable-Held, Yes.

### Brief facts:

The petitioner has filed the present writ petition impugning the letter dated 08.12.2014 issued by respondent no.1 to the petitioner intimating that the bid of the petitioner has been found to be technically non-responsive and technically non-compliant on the basis of technical evaluation of the tender. The impugned letter states that the technical non-compliance is based on unsatisfactory progress of contract UAA-02 and 03 at CMRL (Chennai Metro Rail Limited), practically abandonment of work under Contract BC-30R of DMRC (Delhi Metro Rail Corporation-Respondent No. 1) and



recovery made post rectification of serious defects in cantilever arm carried out under contract BC-13 of DMRC at their risk and cost. The petitioner has further impugned the letter dated 09.02.2014 issued in favour of respondent No.4 whereby the contract has been awarded to respondent No.4.

As per the petitioner, on 26.11.2014, the petitioner came to know that the financial bids of the selected applicants were going to be opened on 27.11.2014. However, the petitioner was not intimated of the same by the respondent No.1. The financial bids of the qualified bidders were opened on 27.11.2014 but the bid of the petitioner was not opened. The petitioner requested for the reasons for not opening of the financial bid of the petitioner, however, the same were not supplied. The petitioner filed a writ petition being W.P. (C) No.8774/2014 on 09.12.2014. The writ petition was listed on 10.12.2014 on which date the respondent No.1 handed over the impugned letter dated 08.12.2014 issued by the respondent No.1 to the petitioner and also the impugned letter dated 09.12.2014 issued by respondent No.1 to respondent No.4. The petitioner, aggrieved by the disqualification of the petitioner by respondent No.1 by impugned letter dated 08.12.2014 and the consequent award of contract to respondent No.4 by letter dated 09.12.2014, has filed the present writ petition.

## Decision: Petition dismissed.

Reason: The Evaluation mechanism stipulated is that firstly there shall be general evaluation of the Tender to determine whether each tender is accompanied with the valid tender security. Thereafter there shall be evaluation to check if the tenderers qualify the minimum eligibility criteria of work experience, financial standing and Bid Capacity criteria. The Employer is to determine whether each tender is substantially responsive to the requirements of the Tender Documents. Thereafter the tender is to be evaluated for any material deviation or reservation. Then there is to be an evaluation of the qualifying conditions. Finally, the Employer is to evaluate the technical suitability and acceptability of the proposals as per the employer's requirements. Only the tender qualifying the above evaluation is to be considered further.

The Evaluation Mechanism stipulated shows that the same is not a mere mechanical evaluation process; it lays down a detailed evaluation process. The evaluation process includes general evaluation, evaluation of minimum eligibility criteria, evaluation of responsiveness, evaluation of material deviation or reservation, evaluation of qualifying conditions and the evaluation of technical proposal & other technical data.

During the evaluation of a bid, the bid is to be scrutinised to firstly examine the compliance with the requirement of submission of the requisite documents to establish satisfaction of the minimum eligibility criteria and then there is an evaluation of the proposal/bid submitted to ascertain whether the proposal/bid submitted is suitable and acceptable.

It cannot be held that the Technical Committee and the Tender Evaluation Committee is only to examine the bid to ascertain whether the requisite documents have been submitted or not and is not to evaluate the bids/proposals to ascertain whether the bidder is suitable and the bid is acceptable or not. If the requirement was only the former then there would be no requirement to constitute a technical committee of experts who are specialists in the field.

The Contention of the Petitioner that material other than what was called for could not have been taken into account cannot be accepted. If some material adverse to the bidder comes to the knowledge of the employer, the employer cannot be expected to ignore the same while evaluating the bid to ascertain the suitability and acceptability of the bidder for the work covered by the subject tender. The Technical Committee and the Tender Evaluation Committee is entitled to take into account all material, adverse and favourable to the bidder, while evaluating the proposal/bid of the bidders.

In the present case the Technical Committee and the Tender Evaluation Committee noted the unsatisfactory progress of contract UAA-02 and 03 at CMRL (Chennai Metro Rail Limited), practically abandonment of work under Contract BC-30R of DMRC and recovery made post rectification of serious defects in cantilever arm carried out under contract BC-13 of DMRC at their risk and cost. Even if assuming that the adverse material received from the CMRL was liable to be ignored, the Committees were certainly entitled to take into account the adverse material in respect of the progress of the work executed by the Petitioner for two projects with the Respondent No. 1 itself.

The contention of the Petitioner that taking into account adverse material would amount to blacklisting of the petitioner, is not acceptable. Blacklisting would occur where the Petitioner is prohibited from participating in all contracts during the stipulated period. The Petitioner has not been prohibited from participating. On an evaluation of the bid/proposal, the Technical Committee and the Tender Evaluation Committee has found the bid/proposal to be not suitable or acceptable for the present tender. The said finding would not ipso facto apply to all subsequent tenders. The Technical Committee and the Tender Evaluation Committee would have to evaluate the bid/proposal of the Petitioner for each tender independently and assess whether the same is suitable or acceptable for the subject tender or not.

The plea that the Petitioner has been singled out, is not correct in as much as the Technical Evaluation Report of the Technical Committee and the Tender Evaluation Committee shows that for another bidder also adverse material has been taken into account and the said bidder has also been found to be not suitable and the bid not acceptable. (Annexure R - 10 to counter affidavit of respondent No. 1).

In our view, none of the conditions permitting interference under Article 226 exist in the present case. The Technical Committee



and the Tender Evaluation Committee after evaluation of the bid of the Petitioner has concluded that the bid of the Petitioner is not suitable and acceptable for the award of the tender and as such is technically non-responsive and non-compliant. The evaluation by the expert committee appears to be bonafide and as such, the same cannot be faulted.

In view of the above, we find no merit in the petition and accordingly the same is dismissed but with no orders as to costs..



## LW: 44:05:2015

### WIPRO LTD v. ASST. COLLECTOR OF CUSTOMS & ORS [SC]

Civil Appeal No(s). 9766-9775 of 2003

A.K. Sikri & Rohinton Fali Nariman, JJ. [Decided on 16/04/2015]

Customs Valuation (Determination of Price of Imported Goods) Rules, 1988- Rule 9(2) - Import of software-adhoc addition of 1% on FOB- whether tenable-Held, No.

### Brief facts:

The subject matter of those writ petitions/writ appeals was the constitutional validity of proviso (II-i) of Rule 9(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (hereinafter referred to as the "Valuation Rules"). This proviso has been inserted by Notification No.39/90 dated 05.07.1990 issued by the Ministry of Finance, Department of Revenue, Union of India.

According to this amendment notification a predetermined percentage based on the value of the imported goods were added towards handling and loading charges so as to arrive at the transactional value for levying customs duty.

As per the appellant, this proviso is not only ultravires Section 14(1)

and Section 14(1-A) of the Customs Act, 1962 (hereinafter referred to as the 'Act') but is also violative of Article 14 and Article 19(1) (g) of the Constitution of India. The challenge, however, stands repelled by the High Court in the impugned judgment leading to dismissal of writ petitions and writ appeals. This is how these appeals have come up in this Court, via special leave petition route, in which leave was granted.

**Decision: Appeals allowed.**

### Reason:

It can very well be seen from the Valuation Rules, 1988 that these Rules are made to facilitate arriving at the valuation of goods in all the contingencies provided in sub-section (1) of Section 14. We have already reproduced the relevant Rules and indicated the scheme thereof. To recapitulate in brief, Rule 3 echoes the principle enshrined in sub-section (1) of Section 14 by mentioning that value of the imported goods would be the transaction value. Likewise, Rule 4 again reproduces the concept behind sub-section (1) of Section 14 by stipulating in no uncertain terms, that the transaction value shall be the price actually paid or payable for the goods when sold for exports to India. The adjustments which are made in accordance with the provisions of Rule 9 are nothing but the costs and services, as specified in first proviso to Section 14(1) of the Act. It is only in those cases where value of the imported goods i.e. transaction value cannot be determined, that we have to resort to Rules 5 to 8 of the said Rules. The purpose of these Rules is to fix the transaction value of the goods notionally. However, even when the fiction is applied, the scheme and spirit behind Rules 5 to 8 would amply demonstrate that the endeavour is to have closest proximity with the actual price. That is why Rules 5 to 8 are to be applied in a sequential manner, meaning thereby we have to first resort to Rule 5 and if that is not applicable only then we have to go to Rule 6 and in the case of inapplicability of Rule 6, we have to resort to Rule 7 and even if that is not applicable, then Rule 8 comes into play. In order to find out as to what would be the closest real value of the goods, Rule 5 mentions that transaction value of "identical goods" is to be taken into consideration. Thus, wherever the value of identical goods is available, one can safely rely upon the said value in the event transaction value of the goods in question is indeterminable. Value of the identical goods is most proximate. If that is also not available, next proximate value is provided in Rule 6 which talks of value of "similar goods". In the absence thereof, we come to the formula of applying the "deductive value" as contained in Rule 7. In those cases, where even deductive value cannot be arrived at, one has to resort to residual method provided in Rule 8 which prescribes that the value shall be determined using "reasonable means". This would indicate adopting "Best Judgment Assessment" principle. However, even while having best judgment assessments, Rule 8 reminds the authorities that such reasonable means or best judgment assessments has to be in consonance with the principles of general provisions contained in the Rules as



well as sub-section (1) of Section 14 of the Act and also on the basis of data available in India.

On the aforesaid examination of the scheme contained in the Act as well as in the Rules to arrive at the valuation of the goods, it becomes clear that wherever actual cost of the goods or the services is available, that would be the determinative factor. Only in the absence of actual cost, fictionalised cost is to be adopted. Here again, the scheme gives an ample message that an attempt is to arrive at value of goods or services as well as costs and services which bear almost near resemblance to the actual price of the goods or actual price of costs and services. That is why the sequence goes from the price of identical goods to similar goods and then to deductive value and the best judgment assessment, as a last resort.

In the present case, we are concerned with the amount payable for costs and services. Rule 9 which is incorporated in the Valuation Rules and pertains to costs and services also contains the underlying principle which runs through in the length and breadth of the scheme so eloquently. It categorically mentions the exact nature of those costs and services which have to be included like commission and brokerage, costs of containers, cost of packing for labour or material etc. Significantly, Clause (a) of sub-rule (1) of Rule 9 which specifies the aforesaid heads, cost whereof is to be added to the price, again mandates that it is to be "to the extent they are incurred by the buyer". That would clearly mean the actual cost incurred. Likewise, Clause (e) of sub-rule (1) of Rule 9 which deals with other payments again uses the expression "all other payments actually made or to be made as the condition of the sale of imported goods".

Keeping in mind this perspective, we need to look into clause (b) of sub-rule (2) of Rule 9 which deals with loading, unloading and handling charges associated with the delivery of imported goods at the place of importation, which are to be included to arrive at the value of such imported goods. It is these charges with which we are directly concerned with in the instant case.

The provision of sub-rule (2) of Rule 9, as originally stood, made it clear that wherever loading, unloading and handling charges are ascertainable i.e. actually paid or payable, it is those charges that would be added. Proviso to the said Rule contained the provision that only in the event the same are not ascertainable, it shall be 25% of the free on board value of such goods. In fact, sub-rule (3) of Rule 9 leaves no manner of doubt when it mentions that additions are to be made on the basis of objective and quantifiable data.

It would be pertinent to mention here that sub-rule (2) talks of three kinds of charges. Apart from loading, unloading and handling charges which are mentioned in Clause (b), Clause (a) deal with cost of transport of imported goods to the place of importation and Clause (c) dealt with cost of insurance. All these costs were to be included on actual basis. Only when such costs were not ascertainable, proviso got attracted which stipulated that such

costs and charges shall be 25% of the free on board value of such goods. Even when the aforesaid proviso was amended vide notification dated 19.12.1989, the spirit behind the unamended proviso was maintained and kept intact. Only difference was that instead of addition of 25% of free on board value of goods in respect of all the three kinds of charges, under the amended proviso, this percentage fixed was different in respect of each of the aforesaid charges. As far as cost of transport is concerned, it was changed at 20% of the free on board value of goods. Insofar as loading, unloading and handling charges are concerned, it was reduced to 1% of the free on board value of goods and in case of insurance charges, the amended provision provided for such cost at 1.125% free on board value of goods. However, as mentioned above, the spirit behind this proviso continued to be the same viz. the proviso was to be made applicable only when the actual cost was indeterminable.

In contrast, however, the impugned amendment dated 05.07.1990 has changed the entire basis of inclusion of loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation. Whereas fundamental principle or basis remains unaltered insofar as other two costs, viz., the cost of transportation and the cost of insurance stipulated in clauses (a) and (c) of sub-rule (2) are concerned. In respect of these two costs, provision is retained by specifying that they would be applicable only if the actual cost is not ascertainable. In contrast, there is a complete deviation and departure insofar as loading, unloading and handling charges are concerned. The proviso now stipulates 1% of the free on board value of the goods irrespective of the fact whether actual cost is ascertainable or not. Having referred to the scheme of Section 14 of the Rules in detail above, this cannot be countenanced. This proviso, introduces fiction as far as addition of cost of loading, unloading and handling charges is concerned even in those cases where actual cost paid on such an account is available and ascertainable. Obviously, it is contrary to the provisions of Section 14 and would clearly be ultravires this provision. We are also of the opinion that when the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved. On the contrary, it goes against the objective behind Section 14 namely to accept the actual cost paid or payable and even in the absence thereof to arrive at the cost which is most proximate to the actual cost. Addition of 1% of free on board value is thus, in the circumstance, clearly arbitrary and irrational and would be violative of Article 14 of the Constitution.

## LW: 45:05:2015

VOLTAS LTD v. STATE OF GUJARAT [SC]

Civil Appeal No. 2957 of 2007



H.L. Dattu (CJI), Arun Mishra & Amitava Roy, JJ.  
[Decided on 08/04/2015]

Gujarat Sales tax Act- section 55A- composition tax on works contract- design, fabrication and installation of air cooling system- treated as installation of air conditioners and subjected to higher rate of tax-whether tenable-Held, No.

## Brief facts:

the appellant company is engaged in executing works contract of designing, fabricating and installing air-cooling plants. The works contract falls under Entry No.5 attracting lesser tax while installation of air conditioners falls under Entry No.2 attracting higher tax. The department considered the transaction as installation of air conditioners and levied tax at higher rate while the appellant claimed that it is a works contract attracting lesser tax. The appellant also challenged the vires of the tax notification.

**Decision: Appeal allowed.**

## Reason:

The rival assertions have received our due consideration. The competing entries requiring scrutiny to ascertain the correct composition rate of tax payable vis-a-vis the works contract involved are engrafted admittedly in the Notification issued by the Government of Gujarat in exercise of powers conferred by Section 55A of the Act. Logically thus, the interpretation necessitated by the rival orientations ought to be in furtherance of the underlying objective of the said provision. A plain perusal thereof would attest that thereby, in the circumstances to be prescribed, a dealer can be left at his option to pay in lieu of the amount of tax payable, a lump sum by way of composition, at the rate or rates as may be fixed by the State Government having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract. Unmistakably, therefore, the State Government while fixing the composition rate of tax has to be mindful of the nature of the works contract executed and by no means can be oblivious thereof. Further, a composition rate of tax in lieu of the amount of levy otherwise payable by the dealer under the Act. The scheme of composition as envisaged by Section 55A therefore in our comprehension does not admit of any synonymy with that of exemption as contemplated in law. This pre-supposition of the High Court as one of the contributing factors in concluding that the works contract in question did fall within the framework of Entry No.2 of the Notification is apparently erroneous.

As adverted to hereinabove, the work order in clear terms did enjoin that the design parameters pertaining to tonnage of refrigeration, final temperature of the water to be made available for the process of manufacturing pigments and the quantity of the chilled water

essential therefor were indispensable and were in addition to the other specifications as offered by the appellant. The rigour of the insistence for the adherence to the design parameters is patent also from the request of the customer requiring the appellant to provide it with the lay out detail, foundation drawing and other necessary information essential for the erection of the water chilling plant. The exercise as a whole as contemplated by the work order thus was neither intended nor can be reduced to mere installation of the finally emerging apparatus. The work order noticeably did not refer to any readymade or instantly available devices, meeting the requirements of the customer so much so to be only installed at its factory. Instead, the work order had been apparently tailor-made to the requirements from which no departure was intended or comprehended. It is in this perspective that the word "fabrication" appearing in Entry No.5 of the Notification assumes a decisive significance.

The legislative intent entrenched in Section 55A of the Act to maintain a direct correlation between the composition rates of tax as the Notification would reveal and the description of the corresponding works contract is patent. Understandably, the word "fabrication" had not been applied in the works contract for installation of air-conditioners and A.C. coolers contained in Entry No.2 of the Notification. The author of the said Notification, however, did consciously include the expression "fabrication" while describing the works contract enumerated in Entry 5 thereof. Having regard to the inseparable interdependence between the description of a works contract and the corresponding composition rate of tax, none of the inherent components of the works to be executed can either be ignored or disregarded for identifying the correct composition rate of the levy under the Act. Any other approach could tantamount to doing violence not only to the legislative purpose conveyed by Section 55A but also the language of its yield i.e. the Notification seeking to promote the statutory end. Viewed in that context, mere omission of the expressions "air-conditioners" and "A.C. coolers" in Entry No.5 would not be of any definitive consequence. The words plant and machinery applied in Entry 5 are otherwise compendious enough to include air-conditioners and A.C. coolers, if the works contract involved require fabrication as well as installation thereof.

The High Court, as the impugned judgment would exhibit, had confined itself wholly to the components of various air-conditioning devices available and the range of the use thereof and in our estimate had missed the significant aspect of "fabrication" integrally involved in the works contract to supply the water chilling plant with the design parameters stipulated by the customer. The High Court did adopt a general approach vis-a-vis the air-conditioning devices commercially available in different forms dehors the singular factual aspects of the work order constituting the works contract. The High Court, thus, in our view, by overlooking the component of fabrication in the works contract opined that the same was within the purview of Entry No.2 and not Entry No.5. The description of the works contract, to reiterate, being of determinative bearing for



ascertaining the composition rate of tax, we are of the unhesitant opinion, in the face of the design parameters insisted upon in the work order and consequential process of fabrication involved to cater thereto, that the works contract involved squarely falls within the ambit of Entry No.5 of the Notification. The margin of difference in rates of tax as prescribed by the Act compared to those mentioned in the Notification ipso facto does not detract from this conclusion. This consideration per se cannot override the decisive characteristics of the works contract otherwise unequivocally spelt out by the work order.

In the overall legal and factual perspectives as obtained herein, any endeavour to drag the works contract involved within the framework of Entry No.2 would be repugnant to the basic principles of interpretation of statutes and subordinate legislations like the statutory Notification under Section 55A of the Act. To exclude the work of fabrication from the works contract as per the work order would render it (works contract) truncated to a form not intended by the customer. This would strike as well at the root of the mandate of correlation of a works contract and the corresponding composition rate of tax as envisaged by Section 55A of the Act and the Notification issued thereunder.



## Competition & Consumer Protection Laws

**LW: 46:05:2015**

**CENTRAL BANK OF INDIA v. JAGBIR SINGH [SC]**

Civil Appeal No. 3645 OF 2015 [Arising out of S.L.P. (Civil) 2343 of 2014]

**Dipak Misra & Prafulla C. Pant, JJ. [Decided on 16/04/2015]**

Consumer Protection Act, 1985- financing of motor vehicle- vehicle met with accident- insurance was not renewed at the time of accident- owner directed to pay compensation to the victim- owner claimed compensation from the financier on the ground that it had failed to renew the insurance policy- whether tenable- Held, No.

### Brief facts:

Respondent Jagbir Singh purchased a tractor bearing registration No. HR-14B-3913, after getting loan sanctioned from the appellant-Bank. The said tractor was driven by a river met with an accident in which, the accident claims tribunal awarded a compensation of Rs. 4,01,460/- with 7.5% interest per annum, against driver and owner of the vehicle. It has not been disputed between the parties that on the date of accident the vehicle was not insured with any of the insurance companies, as required under Section 146 of the Motor Vehicles Act, 1988.

The respondent filed complaint before District Consumer Disputes Redressal Forum, praying that the Central Bank of India (appellant), i.e., the creditor bank should be made liable to pay the compensation, awarded against him by the Tribunal. This was upheld by both the State Commission and National Commission. The bank appealed to the Supreme Court.

**Decision: Appeal allowed.**

### Reason:

On the merits of the case, we find that none of the authorities under the Consumer Protection Act, 1986, in the case at hand has taken note of the law laid down by this Court on the issue of liability of the financier, in the cases of accident occurred, after the vehicle is purchased with loan sanctioned to the owner of the vehicle. In *Pradeep Kumar Jain v. Citi Bank & Anr* (1999) 6 SCC 361, discussing Section 146 of Motor Vehicles Act, 1988, this Court has held as under: -

"5. Under Section 146 of the Act there is an obligation on the owner of a vehicle to take out an insurance policy as provided under Chapter XI of the Act. If any vehicle is driven without obtaining such an insurance policy it is punishable under Section 196 of the Act. The policy may be comprehensive or only covering third parties or liability may be limited. Thus when the obligation was upon the appellant to obtain such a policy, merely by passing of a cheque to be sent to the insurance company would not obviate his liability to obtain such policy. It is not clear on the record as to the nature of the policy that had been obtained by the appellant earlier when he purchased the vehicle and which was to be renewed from time to time. It is also not clear whether even in the case of renewal, a fresh application has to be made by the appellant or on the old policy itself an endorsement would have been made. In the absence of such material on record, and the nature of the insurance policy or any anxiety shown by the appellant in obtaining the policy as he could not ply such vehicle without such an insurance policy being obtained, he cannot claim that merely because he had passed on the cheques, the entire liability to pay all damages arising would be upon the first respondent."

A Three-Judge Bench of this Court, in *HDFC Bank Ltd. v. Kumari Reshma & Ors* AIR 2015 SC 290, has further explained the law



relating to liability of the creditor bank, and it has been held that the liability of such bank to get the vehicle insured is only till the vehicle comes out on the road. In other words, the creditor bank is not liable to get renewed the insurance policy on behalf of the owner of the vehicle from time to time.

On a careful analysis of the principles stated in the foregoing cases, it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration.

In view of the above discussion and the principle of law laid down by this Court, the impugned order passed by the NCDRC and the orders passed by the State Consumer Disputes Redressal Commission, Haryana and the District Consumer Disputes Redressal Forum, Jhajjar, are liable to be set aside.

## LW: 47:05:2015

**ALTOS WORLDLINE INDIA PVT LTD v. VERIFONE INDIA SALES PVT LTD & ORS [CCI]**

Case No. 56 of 2012

**Ashok Chawla, S.L.Bunker, Sudhir Mital, Augustine Peter, U. C. Nahta [Decided on 10/04/2015]**

Competition Act,2002- section 3 and 4- abuse of dominance- restrictive conditions on supply of POS materials, SDK kits etc. - whether abuse of dominance- Held, Yes.

### Brief facts:

The Informant is a global information technology services company operating in the areas of hi-tech transactional services, consulting and technology services and system integration and management services. The Informant is stated to be engaged in the provision of services such as software development including Value Added Services (hereinafter "VAS"), maintenance, implementation, up gradation, applications management and infrastructure management. It delivers end-to-end service in industries of public sector, healthcare, transport and financial services and also operates as a third party processor (hereinafter "TPP"). As a TPP, it tracks the flow of intervening events between a card holder swiping his card and finally receiving a printed charge slip at the Point of Sale (hereinafter "POS") Terminals on the premises of a merchant from whom the card holder buys products/ services. As a VAS provider, the Informant develops applications such as

loyalty, gift card, bill payment, top-up, money transfer, dynamic currency conversion, etc. for integration into POS Terminals. The customers of the Informant such as banks and financial institutions use its services for customising, commissioning, installing and maintaining POS Terminals at merchant locations.

The Opposite Party No. 1 is a leading supplier of POS Terminals in India having control over nearly 70% to 80% of the market. It has acquired several other players in the POS Terminals market in India such as Lipman Electronic India Private Limited in 2006, Hypercom India and Gemalto in 2011.

The Informant, inter-alia, prayed to the Commission to direct the Opposite Party No. 1 to cease and desist from indulging in abusive conduct; discontinue from imposing unfair, restrictive and discriminatory conditions in relation to use of SDKs and enhancements to core applications; not to give effect to the 2012 Termination Letter; impose appropriate penalty on the Opposite Party No. 1 for abuse of dominant position and grant such other reliefs as the Commission may deem appropriate in the facts and circumstances of the case.

**Decision: Cease and desist order passed. Penalty imposed.**

### Reason:

Having considered the contention of the Informant and the Opposite Party No. 1 and the findings of the DG report in this regard, the Commission concurs with the findings of the DG that the Opposite Party No. 1 is in a dominant position in the relevant market of POS Terminals in India. Further, it is revealed from the DG report that in terms of size, resources and economic power the Opposite Party No. 1 is in an advantageous position compared to Ingenico, its nearest competitor. It is observed that presence of the Opposite Party No. 1 across the country, its capabilities in terms of hardware and software and the number of machines presently in use makes the consumers dependant on it. The Commission also notes that in the POS Terminal market there exists vertical integration of upstream hardware market with the downstream service provision market which enables the enterprise to act independent of others. The Commission also takes note of the submissions of NCPI wherein it stated that the Opposite Party No. 1 has substantial (80%) market share. Thus, based on the above, the Commission is of the opinion that there is no reason to deviate from the conclusion drawn by the DG in regards to position of dominance of the Opposite Party No. 1 in the relevant market. The contention of the Opposite Party No. 1 in this regard is devoid of merit and is

The Commission has perused the findings of DG and the rival submissions in regards to the alleged abusive conduct of the Opposite Party No. 1. It is observed that the core issue in this case relates to supply of SDK to VAS providers for development of software on the POS Terminals. From the DG investigation





it is revealed that no other POS Terminal vendor in India or outside India has been found to be imposing any restrictions on development of applications or other restrictive clauses similar to SDK agreement of the Opposite Party No. 1. The intent of the Opposite Party No. 1 seems to be to exploit the VAS players by either restricting them or sharing the revenue with them because VAS market is highly profitable and has recurring benefits. Being in a dominant position in the relevant market, the Opposite Party No. 1 is strengthening its position in the downstream market by imposing restrictive clause in the SDK agreement and by refusing the VAS providers to allow access to development tools like SDK on reasonable terms and conditions.

The Commission observes that the restriction placed on the Informant not to use the licensed software to develop any payment software that directly or indirectly interacts with any acquiring bank appears to be unfair as it limits/ controls the provision of VAS services and limits/ restricts the technical and scientific development of VAS services used in POS Terminals in India. It is pertinent to note that the Informant being the lawful owner of the proprietary rights in the VAS is neither allowed to exploit it for its own purpose nor for its customers. Further, the above mentioned restrictive clause acts as a disincentive for the Informant to continue investing in development and innovation of VAS services as its

business would be adversely affected by such restrictive clauses.

Based on the above analysis the Commission comes to the conclusion that the conduct of the Opposite Party No. 1 is abusive in terms of section 4 of the Act. The Commission is of the considered opinion that through the SDK agreement the Opposite Party No. 1 has imposed unfair conditions on VAS/TPP service providers which is in contravention of section 4(2) (a) (i) of the Act; restricted the provision of VAS services as well as limited/restricted the technical and scientific development of VAS services used in POS Terminals market in India which is in contravention of 4(2) (b) (i) and (ii) of the Act. Also, the conduct of the Opposite Party No. 1 with respect to seeking disclosure of sensitive business information from its customers in the downstream market in order to enable to enter into the downstream market of VAS services is in contravention of the provisions of section 4(2)(e) of the Act.

In view of the above findings, the Commission directs the Opposite Party No. 1 to cease and desist from indulging in the activities which have been found to be in contravention of the provisions of section 4 of the Act. Having regard to the above, the Commission decides to impose a penalty on the Opposite Party No. 1 at the rate of 5% of its turnover based on the financial statements filed by the Opposite Party No. 1.

## CLARIFICATION ON APPLICABILITY OF SECRETARIAL STANDARDS

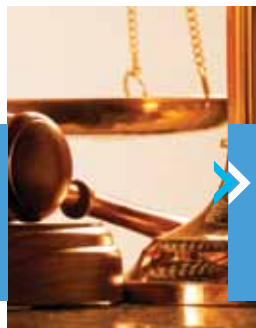
The Secretarial Standards on Meetings of the Board of Directors (SS-1) and Secretarial Standards on General Meetings (SS-2) (together referred to as the Secretarial Standards), as approved by the Central Government, have been issued by the Institute of Company Secretaries of India (ICSI) under the provisions of Section 118(10) of the Companies Act, 2013 (the Act), vide ICSI Notification No. 1 (SS) of 2015 dated April 23rd, 2015 and published in the Gazette of India Extraordinary Part III - Section 4. These Secretarial Standards shall come into force w.e.f. 1st July 2015.

The Secretarial Audit Report issued pursuant to the provisions of Section 204 (1) of the Act read with Rule 9(2) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, shall be in Form No. MR-3 (Secretarial Audit Report) and shall inter-alia mention about the examination conducted by the Secretarial Auditor w.r.t. the compliance by a Company under the applicable clauses of the Secretarial Standards.

Considering the date of effectiveness of Secretarial Standards, the Institute clarifies the following:

1. These Secretarial Standards (SS-1 and SS-2) shall apply to Board Meetings and General Meetings, in respect of which Notices are issued on or after 1<sup>st</sup> July, 2015.
2. The Secretarial Audit Report for the Financial Year 2014-15 need not report specific non-compliances/observations/audit qualification, reservation or adverse remarks in respect of compliance with SS-1 and SS-2.
3. Further, other Secretarial Standards issued by ICSI in line with the provisions of the Companies Act, 1956 are under revision to align with the provisions of the Companies Act, 2013. Accordingly, such other Secretarial Standards are not applicable presently.

Members of the ICSI are advised to take note of the above suitably on matters pertaining to compliance of the Secretarial Standards.



## Corporate Laws

### 01 The Companies (Auditor's Report) Order, 2015

[Issued by the Ministry of Corporate Affairs vide File No. 17/45/2015-CL-V, dated 10.04.2015. To be published in the Gazette of India, Extraordinary, Part II-Sec. 3(ii).]

In exercise of the powers conferred by sub-section (11) of section 143 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Auditor's Report) Order, 2003, published in the gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 480 (E), dated the 12th June, 2003, except as respects things done or omitted to be done before such supersession, the Central Government, after consultation with the Institute of Chartered Accountants of India, constituted under the Chartered Accountants Act, 1949 (38 of 1949), hereby makes the following Order, namely:-

1. **Short title, application and commencement.** - (1) This order may be called the Companies (Auditor's Report) Order, 2015.

(2) It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except -

- (i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (ii) an insurance company as defined under the Insurance Act, 1938 (4 of 1938);
- (iii) a company licensed to operate under section 8 of the Companies Act;
- (iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and
- (v) a private limited company with a paid up capital and reserves not more than rupees fifty lakh and which does not have loan outstanding exceeding rupees twenty five lakh from any bank or financial institution and does not have a turnover exceeding rupees five

crore at any point of time during the financial year.

(3) It shall come into force on the date of its publication in the Official Gazette.

2. **Auditor's report to contain matters specified in paragraphs 3 and 4.** -

Every report made by the auditor under section 143 of the Companies Act, on the accounts of every company examined by him to which this Order applies for the financial year commencing on or after 1st April, 2014, shall contain the matters specified in paragraphs 3 and 4.

3. **Matters to be included in the auditor's report.** - The auditor's report on the account of a company to which this Order applies shall include a statement on the following matters, namely:-

- (i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;
- (b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;
- (ii) (a) whether physical verification of inventory has been conducted at reasonable intervals by the management;
- (b) are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;
- (c) whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;
- (iii) whether the company has granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 189 of the Companies Act. If so,
  - (a) whether receipt of the principal amount and interest are also regular; and
  - (b) if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the principal and interest;
- (iv) is there an adequate internal control system commensurate



with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and services. Whether there is a continuing failure to correct major weaknesses in internal control system.

- (v) in case the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules framed there under, where applicable, have been complied with? If not, the nature of contraventions should be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?
- (vi) where maintenance of cost records has been specified by the Central Government under sub-section (i) of section 148 of the Companies Act, whether such accounts and records have been made and maintained:
- (vii) (a) is the company regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, wealth tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.
- (b) in case dues of income tax or sales tax or wealth tax or service tax or duty of customs or duty of excise or value added tax or cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not constitute a dispute).
- (c) whether the amount required to be transferred to investor education and protection fund in accordance with the relevant provisions of the Companies Act, 1956 (1 of 1956) and rules made thereunder has been transferred to such fund within time.
- (viii) whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the immediately preceding financial year;
- (ix) whether the company has defaulted in repayment of dues

to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported:

- (x) whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;
  - (xi) whether term loans were applied for the purpose for which the loans were obtained;
  - (xii) whether any fraud on or by the company has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated.
4. **Reasons to be stated for unfavourable or qualified answers.-**
- (1) Where, in the auditor's report, the answer to any of the questions referred to in paragraph 3 is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified answer, as the case may be.
  - (2) Where the auditor is unable to express any opinion in answer to a particular question, his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.

Amardeep Singh Bhatia  
Joint Secretary

## 02 The Companies (Acceptance of Deposits) Amendment Rules, 2015

[Issued by the Ministry of Corporate Affairs vide Notification No. G.S.R. 241(E), dated 31.03.2015. Published in The Gazette of India, Extraordinary, Part II-Sec. 3(i), dated 31.03.2015]

In exercise of the powers conferred by Sections 73 and 76 read with sub-section (i) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely—

- 1. (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2015.
- (2) They shall come into force from the date of their publication in the official Gazette.
- 2. In the Companies (Acceptance of Deposits) Rules, 2014.—
  - (1) in rule 2, in sub-rule (l), in clause (c),—
    - (a) in sub-clause (vii), in Explanation (a), the following



# From the Government

proviso shall be inserted, namely:—

"Provided that unless otherwise required under the Companies Act, 1955 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules or regulations made thereunder to allot any share, stock, bond, or debenture within a specified period, if a company had received any amount by way of subscriptions to any shares, stock, bonds or debentures before the 1st April, 2014 and disclosed it in the balance sheet for the financial year, ending on or before the 31st March, 2014 against which the allotment is pending on the 31st March, 2015, the company shall, by the 1st June 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules."

(b) in sub-clause (xii), in item (b),—

(A) for the words "consideration for property", the words "consideration for an immovable property" shall be substituted;

(B) for the words "against the property", the words "against such property" shall be substituted;

(c) in sub-clause (xii), in the Explanation, for the words "referred to in the first proviso", the words "referred to in the proviso" shall be substituted;

(2) in rule 3, after sub-rule (7), the following sub-rule shall be inserted, namely:-

"(8) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified herein below and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3;

Name of the agency	Minimum investment Grade Rating
(a) The Credit Rating Information Services of India Ltd.	FA- (FA Minus)
(b) ICRA Ltd.	MA- (MA Minus)
(c) Credit Analysis and Research Ltd.	CARE BBB(FD)
(d) Fitch Ratings India Private Ltd.	tA-(ind)(FD)
(e) Brickwork Ratings India Pvt. Ltd.	BWR F A
(f) SME Rating Agency of India Ltd.	SMERA A"

(3) in rule 5, in sub-rule (I), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2016 or till the availability of a deposit insurance product, whichever is earlier."

(4) in Annexure, for Form "DPT-3" the following form shall be substituted, namely:—

**Form DPT-3**

**Return of deposits**

*[Pursuant to rule 16 of the Companies (Acceptance of Deposits) Rules, 2014]*

1. (a) CIN:

(b) GLN:

2. (a) Name of the company:

(b) Registered office address:

(c) E-mail Id:

3. Whether the company is

Public company

Private company



4. Whether the company is a Government company:  
YES  
NO
5. Objects of the company:
6. (a) Date of issue of advertisement or circular:  
(b) Date of last closing of accounts:  
(c) Date of expiry of validity of advertisement or circular:
7. Net Worth as per the latest audited balance sheet preceding the date of the return-  
(a) (i) Paid up share capital  
(ii) Free reserves  
(b) (i) Accumulated loss  
(ii) Balance of deferred revenue expenditure  
(iii) Accumulated unprovided depreciation  
(iv) Miscellaneous expense and preliminary expenses  
(v) Other intangible assets  
(c) Net worth: (a-b)  
(d) Maximum limit of deposits (i.e., 35% of the above in case of Government Company or 25% in case of others)
8. Particulars of deposits(to be furnished in respect of deposits from shareholders and others separately)  
(a) Amount of existing deposits as at 1st April  
(b) Amount of deposits accepted or renewed during the year  
(i) Secured deposits  
(ii) Unsecured deposits  
(c) Amount of deposits repaid during the year  
(d) Balance of deposits outstanding at the end of the year (a+b-c)
9. Details of outstanding deposits:

Particulars	Date of receipt of deposit	Rate of interest	Repayable after .....

10. (a) Amount of deposits that have matured but not claimed:  
(b) Amount of deposits that have matured and claimed but not paid:
11. Particulars of liquid assets  
(a) Amount of deposits maturing before 31st March next year and following next year:  
(b) Amount required to be invested in liquid assets:



# From the Government

## (c) Details of liquid assets—

	Date of investment/deposit	Amount
(a) Amount in current or other deposits account, free from charge or lien, with any scheduled bank		
(b) Unencumbered securities of Central/State Government		
Face value		
Market value		
(c) Unencumbered trust securities		
Face value		
Market value		

### 12. Particulars of deposit insurance:

- (a) Date of entering into deposit insurance contract
- (b) Name of the insurer
- (c) Premium payable
- (d) Premium paid upto:
- (e) Maximum ceiling limit for every depositor

### 13. Particulars of charge

- (a) Date of entering into trust deed
- (b) Name of the trustee
- (c) Short particulars of the property on which charge is created for securing depositors
- (d) Value of the property

### 14. Credit Rating obtained

From: \_\_\_\_\_

Rating: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

#### Attachment:

- 1. Auditor's certificate;
- 2. Deposit insurance contract;
- 3. Copy of trust deed;
- 4. Copy of instrument creating charge;

5. List of depositors indicating name, address, amount deposited, repaid during the year and outstanding, interest due, paid and payable as at the close of the Financial Year and separately indicating deposits not yet matured, matured, claimed and paid and matured, claimed but not paid and matured but not claimed for payment. List of deposits matured, cheques issued but not yet cleared to be shown separately.

6. Copy of rating obtained.

7. Optional attachment, if any.

Signature

Amardeep Singh Bhatia  
Joint Secretary



## 03 Delegation of Powers to RD under Section 94(5) of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O. 891(E), dated 31.03.2015. Published in the Gazette of India, Extraordinary, Part II-Sec. 3, Sub-section(ii), dated 31.03.2015]

In exercise of the powers conferred by Section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong the powers and functions vested in it under sub-section (5) of Section 94 of the Companies Act, 2013, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest.

- This notification shall come into force with effect from the date of its publication in the Official Gazette.

Amardeep Singh Bhatia  
Joint Secretary

## 04 Appointment of Registrars of Companies as Adjudicating Officers

[Issued by the Ministry of Corporate Affairs vide Notification No. S.O.831(E), dated 24.03.2015. Published in the Gazette of India, Extraordinary, Part II, Sec. 3, Sub-section(ii), dated 25.03.2015]

In exercise of the powers conferred by section 454 of the Companies Act, 2013 (18 of 2013) read with the Companies (Adjudication of Penalties) Rules, 2014, the Central Government hereby appoints following Registrars of Companies as adjudicating officers for the purposes of this Act in respect of jurisdictions indicated against each Registrar.

Sl. No.	Designation	States/ Union territories under his Jurisdiction
1.	Registrar of Companies, Delhi	Union territory of Delhi and whole State of Haryana.
2.	Registrar of Companies, Chandigarh	Whole State of Punjab and Union territory of Chandigarh.
3.	Registrar of Companies, Kanpur	Whole State of Uttar Pradesh
4.	Registrar of Companies-cum -Official Liquidator, Nanital	Whole State of Uttrakhand
5.	Registrar of Companies-cum -Official Liquidator, Jammu	Whole State of Jammu and Kashmir
6.	Registrar of Companies-cum -Official Liquidator, Shimla	Whole State of Himachal Pradesh

1.	Registrar of Companies, Kolkata	Whole State of West Bengal.
8.	Registrar of Companies-cum -Official Liquidator, Patna	Whole State of Bihar.
9.	Registrar of Companies-cum -Official Liquidator, Cuttack	Whole State of Orissa.
10.	Registrar of Companies-cum -Official Liquidator, Ranchi	Whole State of Jharkhand
11.	Registrar of Companies, Shillong	Whole States of Assam, Meghalaya, Manipur, Tripura, Mizoram, Nagaland and Arunachal Pradesh.
12.	Registrar of Companies Chennai	(i) Whole State of Tamil Nadu except Coimbalore, Dhamupuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem, Tiruppur districts,  (ii) Union territory of Andaman and Nicobar Islands.
t3.	Registrar of Companies, Coimbatore	Coimbalore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem, Tiruppur districts of the State of Tamil Nadu.
14.	Registrar of Companies, Puducherry	Union territory of Puducherry
15.	Registrar of Companies, Ernakulam	Whole State of Kerala and Union territory of Lakshadweep Islands.
16.	Registrar of Companies, Hyderabad	Whole States of Andhra Pradesh and Telangana.
17.	Registrar of Companies, Bangalore	Whole State of Karnataka.
18.	Registrar of Companies, Mumbai	Whole State of Maharashtra except Pune, Ahmednagar, Kolhapur, Solapur, Satara, Sangli, Ratnagiri, Sindhudurg
19.	Registrar of Companies, Pune	Pune, Ahmednagar, Kolhapur, Solapur, Satara, Sangli, Ratnagiri, Sindhudurg districts of the State of Maharashtra,
20.	Registrar of Companies-cum -Official Liquidator, Goa	Whole State of Goa and Union territory of Daman and Diu
21.	Registrar of Companies, Ahmedabad	Whole State of Gujarat and Union territory of Dadra and Nagar Haveli
22.	Registrar of Companies, Gwalior	Whole State of Madhya Pradesh
23.	Registrar of Companies-cum -Official Liquidator, Bilaspur	Whole State of Chhattisgarh



24.	Registrar of Companies- cum -Official Liquidator, Jaipur	Whole Stare of Rajasthan
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- The Appeals, if any, filed before the concerned Regional Director having jurisdiction over the adjudicating offices shall be disposed of in accordance with the notification of the Government of India in the Ministry of Corporate Affairs published in the Gazette of India, Extraordinary, Part II, Section 3 Sub-section (i), vide number GSR 887 (E), dated the 14th December, 2011 and G.S.R.763 (E), dated the 15th October, 2012.
- This notification shall come into force with immediate effect.

Amardeep Singh Bhatia  
Joint Secretary

## 05 Remuneration to managerial person under Schedule XIII of the Companies Act, 1956 - Clarification with regard to payment for period.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 7/2015, dated 10.04.2015.]

Stakeholders have drawn attention to the provisions of Schedule XIII (sixth proviso to Para (C) of Section II of Part II) of the Companies Act, 1956 (Earlier Act) and as clarified vide Circular number 14/11/2012-CL-VII dated 16th August, 2012, which allowed listed companies and their subsidiaries to pay remuneration, without approval of Central Government, in excess of limits specified in para II Para (C) of such Schedule if the managerial person met the conditions specified therein. Stakeholders have expressed that since similar provisions are not available in the Schedule V of the Companies Act, 2013, there is a need for a clarification that a managerial person appointed in accordance with such provision of Schedule XIII of Earlier Act may receive relevant remuneration for the period as approved by the company in accordance with such provisions of Earlier Act.

- The matter has been examined in the light of earlier clarifications on transitional matters issued by the Ministry. It is clarified that a managerial person referred to in para 1 above may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of earlier Act even if the part of his/her tenure falls after 1st April, 2014.
- This issues with the approval of the competent authority.

KMS Narayanan  
Assistant Director

## 06 Clarification under sub-section (7) of section 186 of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide General Circular No. 6/2015, dated 09.04.2015.]

Attention of this Ministry has been drawn to General Circular No 06/2013 dated 14.03.2013 vide which it was clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the yield on prevailing bank rate, there was no violation of Section 372A(3) of Companies Act, 1956. Stakeholders have requested for similar clarification w.r.t. corresponding section 186(7) of the Companies Act, 2013.

- The matter has been examined in the Ministry and it is hereby clarified that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan, there is no violation of sub-section (7) of section 186 of the Companies Act, 2013.
- This issues with the approval of competent authority.

KMS Narayanan  
Assistant Director

## 07 Amounts received by private companies from their member, directors or their relatives before 1st April, 2014 - Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014

[Issued by the Ministry of Corporate Affairs vide General Circular No. 5/2015, dated 30.03.2015.]

Stakeholders have sought clarifications as to whether amounts received by private companies from their members, directors or their relatives prior to 1st April, 2014 shall be considered as deposits under the Companies Act, 2013 as such amounts were not treated as 'deposits' under section 58A of the Companies Act, 1956 and rules made thereunder.

- The matter has been examined in consultation with RBI and it is clarified that such amounts received by private companies prior to 16th April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.
- Any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.
- This issues with the approval of the competent authority.

KMS Narayanan  
Assistant Director



# FAQs ON SECRETARIAL STANDARDS

1. What is the need of the Secretarial Standards?
  - ❖ Companies follow diverse secretarial practices. These practices have evolved over a period of time through varied usages and as a response to differing business cultures. As an illustration, in Companies Act, 2013, there are no provisions with regard to time within which Agenda and Notes on Agenda have to be sent to the Board. The Secretarial Standards require in case of Board Meetings, Agenda & Notes on Agenda are required to be sent at least 7 days prior to the Board Meetings to give sufficient time for the Directors to prepare and arrive at informed decisions. Similarly, provision for facilitating the Meetings of Independent Directors by company secretaries has been introduced. Companies, therefore, follow varied secretarial practices and thus there is a need to integrate, harmonise and standardise such practices. Secretarial Standards therefore becomes inevitable.
2. Who formulates the Secretarial Standards?
  - ❖ The Institute of Company Secretaries of India (ICSI) constituted the Secretarial Standards Board (SSB) in the year 2000 for formulating Secretarial Standards. The SSB comprises eminent members of the profession in employment and in practice, as well as representatives of regulatory authorities, such as the Ministry of Corporate Affairs, Securities & Exchange Board of India, Reserve Bank of India, Bombay Stock Exchange, National Stock Exchange and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India and Industry Associations viz. FICCI, CII and ASSOCHAM. The ICSI-CCGRT (Centre for Corporate Governance, Research & Training) provides technical support to SSB.
3. What are the guidelines/principles/procedure for formulation of Secretarial Standards?
  - ❖ The following guidelines/principles/procedure are followed while formulating the Secretarial Standard on a subject:
    1. All sections/regulations/rules of the law relating to the subject are identified
    2. This is analysed and the issues to be addressed and broad approach thereof are decided on following lines:
      - a. Issues where the law is not clear;
      - b. Issues where the law is subject to multiple interpretations;
      - c. Issues where multiple/divergent practices exist though the law is clear.
    3. While framing the Standards, SSB considers the applicable law, divergent practices, usages, business environment, practical applicability and best secretarial practices.
    4. A draft is prepared after extensive analysis and research and considering the issues that need to be clarified/ addressed.
    5. Suggestions and comments are invited from Members and Public at large on the draft and based on these, draft is finalized.
    6. This is then sent to the Council of ICSI for approval, which in turn issues the same under its authority.
    7. Mandatory Standards are then sent to Ministry of Corporate Affairs by ICSI for their consideration and approval.
    8. Any query or concerns of Ministry of Corporate affairs are then sent back to ICSI, which then finalises the same in consultation with SSB and sends it back to MCA.
9. Once Ministry of Corporate Affairs approves these Secretarial Standards, ICSI issues a Notification in this regard.
4. Is there any other country which has issued Secretarial Standards?
  - ❖ No. The formulation of Secretarial Standards by the SSB and its statutory recognition is a unique and pioneering step towards standardization of diverse secretarial practices prevalent in the corporate sector. No similar Standards are in existence elsewhere in the world.
5. What will prevail in case of any variations in any provision of the applicable laws and the Secretarial Standards?
  - ❖ Generally, in addition to the Secretarial Standards, the requirements laid down under any other applicable laws and rules and regulations, need to be complied with. However, in case of variations in any provision of the applicable laws and the Secretarial Standards, the stricter provisions need to be complied with.
6. What would be the position if a particular Standard becomes inconsistent due to subsequent changes in the law?
  - ❖ If, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.
7. What will be the impact of adoption of the Secretarial Standards?
  - ❖ The adoption of the Secretarial Standards by the corporate sector will have a substantial impact on the quality of secretarial practices being followed by the companies, making them comparable with the best practices in the world. It will also ensure observance of uniform practices across Board, while strengthening the Board processes, protecting individual directors, preventing oppression & mismanagement, building up investor confidence and better monitoring of compliances, thereby achieving the common goal of better corporate governance.
8. Is the observance of Secretarial Standards issued by ICSI mandatory? If so, which Secretarial Standards and under which provisions of the Companies Act, 2013?
  - ❖ The provisions of Section 118 (10) of the Companies Act, 2013 mandate the observance of Secretarial Standards on General and Board Meetings specified by The Institute of Company Secretaries of India and approved by Central Government.
  - ❖ Accordingly, the Secretarial Standards on Meetings of the Board of Directors (“SS-1”) and Secretarial Standards on General Meetings (“SS-2”), as approved by the Central Government, have been issued by the ICSI vide ICSI Notification No. 1 (SS) of 2015 dated April 23rd, 2015 and published in the Official Gazette on April 20, 2015.
  - ❖ Thus, Secretarial Standard on the Meetings of Board of Directors (SS-1) and Secretarial Standard on General Meeting (SS-2) have absolute binding force.
9. Are SS-1 and SS-2 applicable to all types of companies?

## FAQs ON SECRETARIAL STANDARDS

- ❖ SS-1 is applicable to all companies incorporated under the Act except One Person Company (OPC) in which there is only one Director on its Board.
  - ❖ SS-2 is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and class or classes of companies which are exempted by the Central Government through notification.
10. What is the effective date of applicability of SS-1 and SS-2?
- ❖ Vide ICSI Notification No. 1 (SS) of 2015 dated April 23rd, 2015, SS-1 and SS-2 are effective from 1st July 2015.
11. As per the Notification issued by ICSI, SS-1 and SS-2 are applicable from 1st July 2015. Would it then be applicable to Meetings to be held after 1st July 2015 but in respect of which Notices have already been issued or would be issued on or before 1st July 2015? If so, to what extent?
- ❖ No, these are not applicable to such Meetings. SS-1 and SS-2 shall apply only to Board Meetings and General Meetings, in respect of which Notices are issued on or after 1st July, 2015.
  - ❖ However, the companies may choose to voluntarily follow provisions of SS-1 and SS-2 in case of such Meetings.
12. Other than 118 (10) which other provisions of the Act require compliance with the Secretarial Standards issued by ICSI?
- ❖ Section 121 of the Companies Act, 2013 requires confirmation with respect to compliance of Secretarial Standards in the Report on the AGM.
  - ❖ Section 205 (1) of the Companies Act, 2013 lays down the functions of the Company Secretary which inter-alia include ensuring that the company complies with the applicable Secretarial Standards.
  - ❖ Form No. MR-3 (format of the Secretarial Audit Report), pursuant to Section 204 (1) of the Companies Act, 2013 and Rule No. 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, requires the Secretarial Auditor to examine compliance by the company with the applicable clauses of the Secretarial Standards and report on compliance or non-compliance thereof.
13. Are Secretarial Standards other than SS-1 and SS-2 binding on Companies?
- ❖ other Secretarial Standards issued by ICSI in line with the provisions of the Companies Act, 1956 are under revision to align with the provisions of the Companies Act, 2013. Accordingly, such other Secretarial Standards are not applicable presently.
14. A Secretarial Audit Report in Form MR-3 inter-alia requires the Secretarial Auditor to examine compliances with the applicable clauses of the Secretarial Standards issued by the Institute of Company Secretaries of India. Whether SS-1 and SS-2 and/or other Standards issued by ICSI would be applicable for secretarial audit purpose for the F.Y. 2014-2015?
- ❖ Considering the date of effectiveness of the Secretarial Standards, it is hereby clarified that the Secretarial Audit Report for the Financial Year 2014-15 need not report specific non-compliances/observations/audit qualification, reservation or adverse remarks in respect of compliance with SS-1 and SS-2.
15. What is the time-frame for review of Secretarial Standards issued by ICSI?
- ❖ The Secretarial Standards issued would be reviewed by the SSB once in a year or whenever there are substantial changes in law, whichever is earlier.
16. Whether and if so, how will any queries/issues of stakeholders arising out of SS-1 and SS-2 be addressed?
- ❖ Yes. A committee of SSB has been formed to address the specific queries from stakeholders on SS-1 and SS-2, which SSB through ICSI, would clarify to the individual concerned asking the query.
  - ❖ General issues likely to arise during the practical implementation of SS-1 and SS-2 would be clarified through the Guidance Notes.
17. What does the Guidance Notes mean?
- ❖ For the benefit of members of ICSI, corporates and other users and to facilitate the compliance of law and Standards, SSB formulates Guidance Notes which deal with procedural and practical aspects of a given topic/subject along with relevant case laws.
  - ❖ These Guidance Notes are recommendatory and not mandatory.
18. Are there any Guidance Notes on SS-1 and SS-2 set to be released?
- ❖ Yes. To facilitate the corporate sector and professionals to comply with SS-1 and SS-2, SSB is in the process of finalizing Guidance Notes on Secretarial Standard on Meetings of the Board of Directors (SS-1) and Guidance Note on Secretarial Standard on General Meetings (SS-2), which would be released shortly.
  - These Guidance Notes seek to annotate and provide Guidance in interpreting and implementing the Secretarial Standards by covering the procedural aspects in detail and addressing all possible issues which may arise in practical implementation.
19. How can Members contribute in formulation of these Guidance Notes?
- ❖ In case Members of ICSI and others come across any issues, concerns or suggestions w.r.t SS-1 and SS-2, which in their opinion, need to be clarified or addressed through the Guidance Notes, the same along with their suggestions, if any, may be sent to Ms. Priya Iyer, Secretary, SSB at priya.iyer@icsi.edu or ccgrt.ssb@gmail.com.



## Members Admitted

S. No.	Name	Membership No.	Region
<b>FELLOWS*</b>			
1	SH RUPAK KUMAR SINHA	FCS - 7947	NIRC
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3	SH. GOLOKA BEHARI PADHI	FCS - 7949	NIRC
4	MS. MANPREET KAUR	FCS - 7950	NIRC
5	SH. PAWAN KUMAR	FCS - 7951	NIRC
6	SH. B V DESAI	FCS - 7952	WIRC
7	SH. ANAND KUMAR SHARMA	FCS - 7953	NIRC
8	SH. VENKATA REDDY MARELLA	FCS - 7954	SIRC
9	SH. CHIRANJEEB SHARMA	FCS - 7955	EIRC
10	SH. DILIP BHARADIYA	FCS - 7956	WIRC
11	MRS. AMRITHA MARY ABRAHAM	FCS - 7957	SIRC
12	MS. MADHU GUPTA	FCS - 7958	NIRC
13	MS. SONIA BANSAL	FCS - 7959	NIRC
14	SH. ASUTOSH VIMALBHAI SHAH	FCS - 7960	WIRC
15	SH. S. VENKATARAMAN	FCS - 7961	SIRC
16	SH. T KANNAN	FCS - 7962	SIRC
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18	MRS. MONIKA KAMDAR SHAH	FCS - 7964	WIRC
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28	SH. GAUTAM RAJ CHOUDHARY	FCS - 7974	EIRC
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31	MS. SASMITA PARIDA	FCS - 7977	NIRC
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33	SH SURENDRA PRASAD BARNWAL	FCS - 7979	NIRC
34	SH. M. MANOHARAN	FCS - 7980	SIRC

\*Admitted during the period from 20.03.2015 to 19.04.2015.

35	SH. RAJEEV KUMAR JAIN	FCS - 7981	WIRC
36	SH. MANOJ SINGH BISHT	FCS - 7982	NIRC
37	SH. CHIRAG DILIP KUMAR SHAH	FCS - 7983	WIRC
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### ASSOCIATES\*

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132	MS. URVASHI A MUNDHRA	ACS - 39122	SIRC	18	Ms. VERSHA SAROHA	ACS 27051	NIRC
133	MR. DEV KISHAN P D	ACS - 39123	SIRC	19	Mr KAPIL MAKKAR	ACS 34006	NIRC
134	MS. SANGEETHA HN	ACS - 39124	SIRC	20	WG. CDR GIRJA DUTT DABRAL	ACS 34128	NIRC
135	MS. VINITA SUBHASH MANTRI	ACS - 39125	WIRC	21	Mr SANDEEP SETH	ACS 14635	WIRC
136	MR. GYANENDU SHEKHAR PANDEY	ACS - 39126	NIRC	22	Mr RAJESH U RAO	ACS 8091	WIRC
137	MR. KEVALKUMAR BHARATBHAI THAKKAR	ACS - 39127	WIRC	23	Ms. RANJI SRIVASTAVA	FCS 6037	NIRC
138	MS. PREETI VERMA	ACS - 39128	WIRC	24	Mr S J AHMAD	FCS 3951	NIRC
139	MS. RICHA JAIN	ACS - 39129	WIRC	25	Mr K N JACOB	FCS 755	SIRC
140	MR. CHETAN PRAVIN BHAI PRAJAPATI	ACS - 39130	WIRC	26	Ms. POORNIMA SAGAR	ACS 24462	NIRC
141	MS. AASHNA BHAVESH GANDHI	ACS - 39131	WIRC	27	Mr VIVEK BHATIA	ACS 11996	NIRC
142	MR. ADWAIT SHRIKANT JOSHI	ACS - 39132	WIRC	28	Mr V R THAKKAR	ACS 3695	WIRC
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145	MS. SHREYA GANDHI	ACS - 39135	WIRC	31	Mr BONELA NARASINGA RAO	ACS 15876	SIRC
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147	MS. PRIYANKA DINESHKUMAR JASANI	ACS - 39137	WIRC	33	Mr M C SUDARSAN	ACS 11158	SIRC
148	MR. VINAY SONI	ACS - 39138	WIRC	34	Mr ASHISH GUPTA	ACS 11213	NIRC
149	MR. BIPIN BHANDARI	ACS - 39139	NIRC	35	Mr RUPESH KUMAR MISHRA	ACS 24601	NIRC
150	MR. ASHISH BABULAL JAIN	ACS - 39140	WIRC	36	Ms RAKA RAJNISH	FCS 3169	NIRC
151	MS. NIDHI JAIN	ACS - 39141	WIRC	37	Ms. PRITI SOMANI	ACS 16408	EIRC
152	MS. DEEPIKA BHATT	ACS - 39142	NIRC	38	Ms. PRIYA RANJAN	ACS 13826	EIRC
153	MR. R SHADANANAN	ACS - 39143	WIRC	39	Ms. ANNU TIWARI	ACS 25254	SIRC
154	MR. MUKESH BAHETI	ACS - 39144	EIRC	40	Mr MANISH KUMAR NARANIWAL	ACS 23495	WIRC
155	MR. PIYUSH MOHTA	ACS - 39145	EIRC	41	Mr VIJAY VERMA	FCS1251	WIRC
156	MR. ASHISH AGARWAL	ACS - 39146	EIRC	42	Mr GAUTAM VOHRA	ACS 14851	NIRC
157	MR. AKHIL PRASHAR	ACS - 39147	NIRC	43	Ms. SHALINI BUDHWAR	ACS 20316	EIRC
158	MR. KETAN K BHALGAMIYA	ACS - 39148	WIRC	44	Mr. VINEET KUMAR JAIN	FCS 7033	NIRC

## MEMBERS RESTORED\*

Sl.No.	Name	ACS/FCS No.	Region
1	Mr A KAMAL KISHORE	ACS 17430	NIRC
2	MS MEENAKSHI GOEL	ACS 29758	NIRC
3	Mr K S GOPALAKRISHNAN	ACS 27615	SIRC
4	Mr NAVEEN JAISALMERIA	ACS 16957	WIRC
5	Mr VIPIN KUMAR TIWARI	ACS 10837	NIRC
6	Mr ADARSH PAUL SINGH	ACS 8000	NIRC
7	Mr CHINTAN ANIL KUMAR DIXIT	ACS 21355	WIRC
8	MS RASHMI PANDEY	ACS 20567	WIRC
9	Mr SUDHIR BHANSALI	ACS 3423	SIRC
10	Mr VARUN CHOPRA	ACS 27843	NIRC
11	Mr B A RAJU	ACS 5457	SIRC
12	Mr SANJAY TIWARI	ACS 14632	NIRC
13	Ms. SMITA JAIN	ACS 19138	EIRC
14	Ms. VARSHA PATIL	ACS 30472	NIRC

## Certificate of Practice\*\*

SL. NAME No.	MEMB NO	COP NO.	REGION
S.NoName	Memb no.	COP no.	Region
1	MS. NEHA SHARMA	ACS - 36071	NIRC 14419
2	MRS. SUMAN SHEORAN	ACS - 37972	NIRC 14420
3	MR. AMIT AGARWAL	ACS - 28574	NIRC 14421
4	MS. POOJA DILIP SAWANT	ACS - 24884	WIRC 14422
5	SH. SHAILENDRA LODHA	ACS - 23109	WIRC 14423
6	MR. ANIL KUMAR	ACS - 36197	NIRC 14424
7	MS. NEHA GOYAL	ACS - 37116	NIRC 14425
8	MS. RACHANA PATEL	ACS - 38485	WIRC 14426
9	MS. SANDHYA RAVI NAIR	ACS - 24944	WIRC 14427
10	MS. MEENAKSHI NAAG	ACS - 38479	WIRC 14428
11	MR. SNEHAL MAHAVIR PAHADE	ACS - 38699	WIRC 14429
12	MR. ROHIT MEHARCHANDANI	ACS - 32722	NIRC 14430

\*Restored from 21.03.2015 to 20.04.2015.

\*\*Issued during the Month of March, 2015





# News From the Institute

13	MS. DIPANKY THAKUR	ACS - 35887	EIRC	14431	58	MR. ANISH KUMAR	ACS - 38896	NIRC	14476
14	MS. JIGNA SANGHVI	ACS - 27320	WIRC	14432	59	MS. NRITHYA M GANAM	ACS - 38778	SIRC	14477
15	MS. MONIKA LODHA	ACS - 33797	NIRC	14433	60	MS. TARUNA GUPTA	ACS - 38630	NIRC	14478
16	MRS. RIDDHISHREE BHAVIN TANNA	ACS - 35873	WIRC	14434	61	MS. GARIMA SATIJA	ACS - 34642	NIRC	14479
17	MR. PAWAN KUMAR BAIRWA	ACS - 38674	NIRC	14435	62	MRS. TEJASWI ANANDKUMAR VASTRAD	ACS - 36929	WIRC	14480
18	SH. RAO P VENKATESWARA	FCS - 7166	SIRC	14436	63	MS. BHAVIKA BHARAT JAIN	ACS - 35718	WIRC	14481
19	MRS. SANJANA MANDAR JOSHI	ACS - 21824	WIRC	14437	64	MS. ARTI BHADANI	ACS - 38496	EIRC	14482
20	MS. POONAM KAMBOJ	ACS - 38544	NIRC	14438	65	SH. SUNDARESAN P K	ACS - 13800	SIRC	14483
21	MS. SAVITA KUMARI AGRAWAL	ACS - 34849	EIRC	14439	66	SH. CHANDRA PRAKASH ABAR	ACS - 29752	SIRC	14484
22	MRS. VISHAKHA HARBOLA	ACS - 38782	NIRC	14440	67	MR. ASHUTOSH SHARMA	ACS - 38997	NIRC	14485
23	MS. AMRUTA SANJAY GOGATE	ACS - 32695	WIRC	14441	68	SH. ANKUSH AGARWAL	ACS - 21125	NIRC	14486
24	MR. SACHIN KUMAR KADD	ACS - 34305	NIRC	14442	69	SH. D SRINIVASA RAO	ACS - 12394	SIRC	14487
25	MR. ZAHEERUDDIN M SHAIKH	ACS - 38731	WIRC	14443	70	MR. SHANKAR PRASAD DAS	ACS - 38811	EIRC	14488
26	MR. RANJEET PRAKASH KHANDEKAR	ACS - 34269	WIRC	14444	71	MR. BHARAT CHOUDHARY	ACS - 36818	NIRC	14489
27	MR. SATHEESH KUMAR A	ACS - 27756	SIRC	14445	72	SH. ARUN KUMAR MAITRA	ACS - 3010	EIRC	14490
28	MR. GAURANG RADHESHYAM SHAH	ACS - 38703	WIRC	14446	73	MS. SWATI RAMPURIA	ACS - 34918	EIRC	14491
29	MR. AMIT SURESH JOSHI	ACS - 30590	WIRC	14447	74	MS. RUPANJANA DE	FCS - 7530	EIRC	14492
30	MR. PRINCE MOHAN SINHA	ACS - 38693	NIRC	14448	75	MS. MANSI GARG	ACS - 26484	NIRC	14493
31	MR. M B SUNEEL	ACS - 31197	SIRC	14449	76	MS. VARSHA PATIL	ACS - 30472	NIRC	14494
32	MS. AISHWARYA SINGH	ACS - 38323	NIRC	14450	77	MS. MALA KUMARI UPADHYAY	ACS - 38738	EIRC	14495
33	MS. SWEETY KUMARI KEJRIWAL	ACS - 38388	EIRC	14451	78	MS. PRANTIKA NATH	ACS - 38126	EIRC	14496
34	MS. RUPALI MIYA BAZAZ	ACS - 32324	WIRC	14452	79	MS. VANDITA JAY DOSHI	ACS - 39059	WIRC	14497
35	MR. PRAMOD KUMAR SURI	ACS - 32865	SIRC	14453	80	MS. AYUSHI JAIN	ACS - 37430	NIRC	14498
36	MS. POONAM KUMARI	ACS - 37057	NIRC	14454	81	SH. NIRAKAR PRADHAN	ACS - 8882	EIRC	14499
37	MS. KARUNA K	ACS - 38166	SIRC	14455	82	MR. MADASUDHAN REDDY	ACS - 33355	SIRC	14500
38	MS. DEVIKA PANDA	ACS - 38289	EIRC	14456	83	MR. PRAVEEN SHARMA	ACS - 30365	EIRC	14501
39	MR. SUNNY CHOPRA	ACS - 38768	NIRC	14457	84	MR. GAGAN DEEP SINGH	ACS - 37973	NIRC	14502
40	MR. MANJEET SINGH	ACS - 31208	NIRC	14458	85	MR. JITENDRA PRAVINBHAI LEEYA	ACS - 31232	WIRC	14503
41	MR. KAMALA KANTA GIRI	ACS - 34449	EIRC	14459					
42	MR. NITIN DASHARATH KARANDE	ACS - 38199	WIRC	14460					
43	MRS. DEBARATI GUPTA	ACS - 27763	EIRC	14461					
44	MRS. RASHMI P DEEPAK	ACS - 21852	SIRC	14462					
45	MS. ANJU	ACS - 38225	NIRC	14463					
46	MR. CHENCHU KRISHNAIAH CHEVURU	ACS - 28049	SIRC	14464					
47	MR. D ASHOK	ACS - 31755	WIRC	14465					
48	SH. LALIT KUMAR JAIN	FCS - 2370	NIRC	14466					
49	SH. T KANNAN	FCS - 7962	SIRC	14467					
50	SH. JIGAR KAMLESH VYAS	ACS - 25139	WIRC	14468					
51	MR. BHARAT BHUSHAN	ACS - 31951	NIRC	14469					
52	MS. HARINI V J	ACS - 37807	SIRC	14470					
53	MR. HARISH DAMANI	ACS - 37635	NIRC	14471					
54	MR. MANISH NAMA	ACS - 36860	NIRC	14472					
55	MS. VERSHA VERMA	ACS - 38762	NIRC	14473					
56	MR. KISHOR KUMAR GUPTA	ACS - 38776	WIRC	14474					
57	MR. PRATIK KIRIT PUJARA	ACS - 34442	WIRC	14475					

## CANCELLED\*

SL. No.	NAME	MEMB NO	COP NO.	REGION
1	MR. PRASAD SURESH MORE	ACS 29693	10967	WIRC
2	MR. S N MADHAVAN	FCS 3846	12446	SIRC
3	MS. PAVANA JYOTHI AYALURU	ACS 32818	12068	SIRC
4	MR. ANKIT KUMAR	ACS 37198	14334	NIRC
5	MR. RAVEENDRA BABU MANNEM	ACS 34409	13065	SIRC
6	MRS. SHEETAL DIWAN	ACS 35751	13240	WIRC
7	MS. ALKA DABAS	ACS 32352	12009	NIRC
8	MS. JYOTI	ACS 35184	13818	NIRC
9	MS. SHALU PANSARI	ACS 34873	13764	NIRC
10	MR. NEERAJ MANGAL	ACS 32576	13660	NIRC
11	MS. ASTHA MOHAN	ACS 36419	13803	NIRC
12	MR. ASHISH KUMAR SHRIVASTAVA	ACS 25433	13228	WIRC
13	MR. RAKESH MULSHANKER PATHAK	ACS 8400	2693	WIRC

\*Cancelled during the Month of March, 2015.



14	MR. L SUBBA REDDY	FCS 2957	11683	WIRC	54	MR. PREM KANT JHA	ACS 36450	13538	NIRC
15	MS. SWATI AGARWAL	ACS 31723	12627	WIRC	55	MS. LAKSHMI ADDURI	ACS 31458	11611	SIRC
16	MS. BALJEET KAUR	FCS 6128	11819	SIRC	56	MR. SUSHANTA KUMAR DEHURY	ACS 37539	14330	EIRC
17	MS. NAMRATA JAIN	ACS 31963	12201	EIRC	57	MR. PRAVIN PRABHAKAR CHAVAN	ACS 16857	8390	WIRC
18	MS. NISHANKA SRIVASTAVA	ACS 28684	12456	NIRC	58	MR. AKSHAY SHRI KRISHNA PATHAK	ACS 32997	13550	WIRC
19	MS. MADHURI C	ACS 27110	10016	SIRC	59	MR. AMIT VEGAD	ACS 22959	8847	WIRC
20	MS. GUNJAN SHAH	ACS 35120	13107	EIRC	60	MR. SWATANTRA KUMAR SETH	FCS 7836	14084	NIRC
21	MR. SHAILESH VISHWAS GADGIL	ACS 32745	12383	WIRC	61	MR. SUMIT MUTHA	ACS 30341	13180	NIRC
22	MR. VIVEK ADITYA V	ACS31876	12765	SIRC	62	MS. NAFISA RAMPURAWALA	ACS 27766	13731	WIRC
23	MR. ARJIT GUPTA	ACS 30696	12176	NIRC	63	MR. PREET KANWAR SINGH	ACS 29415	12125	NIRC
24	MR. JIGAR RUPANI	FCS 7777	8638	EIRC	64	MR. GAGANDEEP SINGH SABHARWAL	ACS 27653	10135	NIRC
25	MS. NIKITA AGGARWAL	ACS 36586	13716	NIRC	65	MR. PRATIK GHANSHAM NAIK	ACS 35220	14242	WIRC
26	MS. RUPALI SHRINIVAS JAKHOTIA	ACS 32669	12769	WIRC	66	MR. RUPESH SURESH LCHANDRA AGARWAL	ACS 36963	13982	WIRC
27	MS. ARPITA DHAR	ACS 38304	14318	EIRC	67	MS. GAYATHRI G	ACS 32949	12095	SIRC
28	MR. VIKASH PAREEK	ACS 30619	11796	EIRC	68	MS. MANASA LALITHA	ACS 27963	10661	SIRC
29	MS. PREETI KHEPAR	ACS 36219	13931	NIRC					
30	MR. M RAJENDRAPRASATH	ACS 22451	10793	SIRC					
31	MS. SAMPOORNA M L	ACS 23286	13835	SIRC					
32	MRS. RAKA SINHA	ACS 29714	12620	SIRC					
33	MS. PREETI JAIN	ACS 29541	11278	NIRC					
34	MR. NAVEEN WISHWABANDHU	FCS 7034	11858	NIRC					
35	MRS. ADEEBA KERIWALA	ACS 29229	10604	WIRC					
36	MR. GOPAL LADDA	ACS 34522	13191	SIRC					
37	MS. SHILPY CHOPRA	ACS 22338	13234	NIRC					
38	MS. ANKITA AGARWAL	ACS 33873	13444	NIRC					
39	MS. NIDHI SINGH	FCS 7829	8344	NIRC					
40	MR. MANISH KUMAR LAKHOTIA	ACS 33778	12557	EIRC					
41	MR. PAWAN KUMAR	FCS 7951	8276	NIRC					
42	MR. K VASUDEVAN NAMBIAR	ACS 4651	2762	SIRC					
43	MS. ANSHU TOMAR	ACS 31486	14324	NIRC					
44	MS. SRINIDHI NAWALGARIA	ACS 36988	14022	EIRC					
45	MR. VIVEKKUMAR SUSHILKUMAR BARLOTA	ACS 32694	11988	WIRC					
46	MRS. MINU TULSIAN	ACS 24930	9038	EIRC					
47	MRS. TANUSHREE AGARWAL	ACS 28056	11244	NIRC					
48	MR. R JANARTHANAN	ACS 3962	9923	SIRC					
49	MS. SULEKHA DUTTA	ACS 16130	6765	EIRC					
50	MR. LALIT AVINASH BHANU	ACS 32788	12900	WIRC					
51	MR. HOSHI DHUNJISHA BHAGWAGAR	FCS 2945	13882	WIRC					
52	MR. SUMIT DHAWAN	ACS 30852	11339	NIRC					
53	MR. MANOJ KHAGENDRA SHAH	FCS 4925	14249	EIRC					

## LICENTIATE ICSI\*\*

L.No.	NAME	DOA	Region
6734	SUNNY GUPTA	05-03-2015	NIRC
6735	SRIKANTH N	05-03-2015	SIRC
6736	ABHISHEK AGARWAL	05-03-2015	EIRC
6737	MS. KANUPRIYA CHOWKHANI	05-03-2015	EIRC
6738	MS ANUPRIYA SINGLA	10-03-2015	NIRC
6739	MS. DHARA RAMESHCHANDRA BHAYANI	20-03-2015	WIRC
6740	GAURAV SAINI	20-03-2015	NIRC
6741	Ms. RITU SANGHI	20-03-2015	NIRC
6742	VIVEK GUPTA	20-03-2015	EIRC
6743	Ms. BIJAL RAJESH DOSHI	25-03-2015	WIRC
6744	SAMARTH BHARGAVA	25-03-2015	WIRC

\*\*Admitted during the Month of March, 2015.

## OBITUARIES

“Chartered Secretary” deeply regrets to record the sad demise of the following members:

**Shri BRIJINDER MOHAN CHOPRA**, (23.03.1933 – 03.08.2012), a Fellow Member of the Institute from Chandigarh.

**Shri V M DAVE**, (01.08.1924 - 20.03.2015), a Fellow Member of the Institute from Jaipur.

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the Departed souls rest in peace.



## Company Secretaries Benevolent Fund



MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND\*

Region	LM No.	Name	Membership No.	City
<b>EIRC</b>				
1	10803	MS. MONA BAHADUR	ACS - 27452	JAMSHEDPUR
2	10819	MR. RAJESH KUMAR YADAV	ACS - 35400	HOOGLHY
<b>NIRC</b>				
3	10792	SH. PRAKASH BHATT	ACS - 19720	NOIDA
4	10793	MR. KARANVEER JINDAL	ACS - 38774	LUDHIANA
5	10804	SH. MANINDER KUMAR JHA	ACS - 27205	KANPUR
6	10806	MS. RITU ARORA	ACS - 30730	DELHI
7	10809	MR. MANISH KUMAR GARG	ACS - 26934	NEW DELHI
8	10810	MRS. SHALU AGGARWAL	ACS - 27671	NEW DELHI
9	10814	MRS. PRIYAMVADA MAURYA	ACS - 29315	NEW DELHI
10	10817	MR. SATYAM TIWARI	ACS - 30383	KANPUR
11	10820	MR. DEEPAK KUMAR AJMERA	ACS - 36054	BHILWARA
12	10824	MS. MEGHA GANDHI	ACS - 30798	JALANDHAR
13	10827	MR. JASBIR SINGH	ACS - 38801	YAMUNA NAGAR
14	10831	SH. UJJWAL SHARMA	ACS - 23979	NEW DELHI
15	10832	MS. SUNITA POKHARNA	ACS - 39071	BHILWARA
16	10842	MR. PARVEEN KUMAR GOYAL	ACS - 35494	SONEPAT
<b>SIRC</b>				
17	10797	MR. SRIRAM S	ACS - 39023	CHENNAI
18	10798	MR. P NAGARAJAN	ACS - 38881	SIVAGANGA
19	10799	MR. SRIGOPI K	ACS - 38987	CHENNAI
20	10801	MS. PAVITHRA E	ACS - 38906	CHENNAI
21	10802	MR. R PONNUSWAMY	ACS - 38890	COIMBATORE
22	10807	MS. N CHANDRA KALA	ACS - 32377	HYDERABAD
23	10808	SH. G V SESHAREDDY	ACS - 7492	BANGALORE
24	10815	MR. MAHESH N	ACS - 26506	BANGALORE
25	10816	SH. VENKATESWARLU BHARATHULA	ACS - 17615	HYDERABAD
26	10818	MS. ROOPALI KALE	ACS - 32956	HYDERABAD
27	10822	SH. S R BAALAJI	FCS - 5966	COIMBATORE
28	10828	MS. NEETA REVANKAR	ACS - 13992	BANGALORE
29	10830	MR. SHAILESH SHYAM AYACHIT	ACS - 38989	BANGALORE

Region	LM No.	Name	Membership No.	City
30	10835	MR. VENKATESH GANAPATI BHAT	ACS - 32837	BANGALORE
31	10838	MR. SENDIL KUMAR S	ACS - 39182	CHENNAI
32	10839	MR. E ALWAR	ACS - 39233	BANGALORE
33	10840	MR. SHAIK MASTAN	ACS - 39226	HYDERABAD
34	10841	MR. RAGHAV R	ACS - 31110	CHENNAI
36	10751	MR. YATIN WAMAN PANDIT	ACS - 38707	THANE
37	10753	MR. LAV MISHRA	ACS - 31676	KORIYA DISTT
38	10758	MR. SHARDUL VIKRAM SINGH	ACS - 30328	REWA
39	10760	MS. PRATIMA CHANDRASEKHAR	ACS - 38755	MUMBAI
40	10761	MR. HARSH PRADEEP BHANDARI	ACS - 38749	MUMBAI
41	10771	MR. ABHISHEK KUMAR LAKHOTIA	ACS - 29285	MUMBAI
42	10791	SH. VIPIN MEHTA	ACS - 25385	MUMBAI
<b>WIRC</b>				
35	10794	SH. JIGAR KAMLESH VYAS	ACS - 25139	SURAT
36	10795	MRS. KAJAL ANKIT SHUKLA	ACS - 22024	AHMEDABAD
37	10796	MR. ANKIT SHAILESHKUMAR SHUKLA	ACS - 22041	AHMEDABAD
38	10800	MR. PRAVIN BHUJANGA SHETTIGAR	ACS - 39037	MUMBAI
39	10805	MS. CARISHMA RAJU PATNEY	ACS - 34777	THANE
40	10811	SH. MANOJ KUMAR MIMANI	ACS - 17083	BHAYANDAR
41	10812	MS. RANJANA MIMANI	FCS - 6271	BHAYANDAR
42	10813	MRS. BHAKTI ASHISH TALIKOT	ACS - 27027	NASHIK
43	10821	MR. KARTIK KISHORKUMAR BAVISHI	ACS - 36471	RAJKOT
44	10823	SH. RAVINDRA DAMLE	ACS - 9864	MUMBAI
45	10825	SH. NARAYAN DAS DUJARI	FCS - 834	MUMBAI
46	10826	SH. VINEET CHOPRA	FCS - 5259	INDORE
47	10829	SH. MEET JAYANTILAL JOSHI	ACS - 28814	AHMEDABAD
48	10833	MR. JAYDEEP DIPAK NAZARE	ACS - 39070	PUNE
49	10834	MR. R SHADANANAN	ACS - 39143	INDORE
50	10836	MS. SONAM AGRAWAL	ACS - 31209	RAIPUR
51	10837	SH. ANAND KUMAR SAHU	FCS - 7670	RAIPUR

\*Enrolled during the period from 21/03/2015 TO 20/04/2015.





## List of Practising Members Registered For The Purpose of Imparting Training During The Month of December, 2014

Company Name	AddressLine	Membership No.
AASHISH A GOLCHA	NO:846-A, MOUNT ROAD, PURUSHOTAM BUIDLING, FIRST FLOOR, CHENNAI	A28010
ABHISHEK MODI	912, CENTRAL STREET, C/O MAHESH MODI, BHOPAL,	A38253
AISHWARYA MOHAN GAHRANA	D-74-76, B K DUTT COLONY, NEW DELHI	F6896
AKSHIT GUPTA	52/74, L3, GALI NO. 25, ANAND PARBAT Pincode:110005, DELHI	A22963
AMIT KUMAR	H-5, GROUND FLOOR, RADHEYPURI, NEAR KRISHNA NAGAR, incode:110051, NEW DELHI	A36223
AMITKUMAR DHANPAL BHAVE	NEAR KISAN MILK DAIRY, A/P RAI, TALUKA -HATKMANGLE, DIST KOLHAPUR	A37742
ANANDA RAO RAVADA	55-3-48/1, MAIN ROAD,HBCOLONY, OPP:SANDHYA BAR AND RESTAURAN, OLD VENKOJIPALEM Pincode:530022, VISAKHAPATNAM	A28459
ANJALI GROVER	F- 24/261, SECTOR -3, ROHINI, DELHI	F5349
ANKUR GUPTA	32, PULL QUZI, NEEM KI CHARAI, BADA BAZAR, BAREILLY	A37030
ANSHUL CHHABRA	28, COLLECTOR GANJ, RAILWAY ROAD, HAPUR	A37155
ARPAN SENGUPTA	PRANTIK, DE-2/A, FLAT, NO.5/10, D B NAGAR, SAHAPARA, BAGUIATI Pincode:700059, KOLKATA	A37706
AWADH KISHORE PRASAD	296, 1ST FLOOR, SECTOR-2B, VAISHALI, GHAZIABAD	A20614
BHUWANEESVARI V M	119/53,A-2, APPOLO TWINS APTS., PERIYAR PATHAI, CHOO LAI MEDU, CHENNAI	A26887
CHANDER KANT	U-41 BUDH VIHAR PHASE -I, NEAR JAIN STHANAK, NEW DELHI	A36886
CHETAN KAKKAR	Q-75, STEET NO - 4, BHAGAT ENCLAVE, BINDAPUR EXTENSION UTTAM NAGAR, NEW DELHI	A33373
CHETNA GUPTA	25, CHINAR PARK., DESTINY TOWER, FLAT NO 5B, BEHIND RAKESH MARBLES, KOLKATA	A27849
DEEPTI JOSHI	104, RAMNAGAR, Pincode:440033, NAGPUR	A23848
DIPIKA BIYANI	B-402, MAYFAIR SONATA GREENS, NEAR, PARK SIDE, HATKOPAR-POWAI LINK ROAD, VIKHROLI(W), MUMBAI	A13908
DIPONKAR BANERJEE	SIDDHESWARI APARTMENT, 122/ C, N K BANERJEE STREET, RISHRA, HOOGHLY	A28181
DIVESH GOYAL	H-17, 265, 2ND FLOOR, SECTOR - 7, ROHINI Pincode:110085 NEW DELHI	A35817
G VIJAY KUMAR	#2-1-392/1/6, 3RD FLOOR, OPP: FEVER HOSPITAL, ABOVE VENU GRAPHICS, PRINTING PRESS , NALLAKUNTA, HYDERABAD	F6465
HARLEEN KAUR	121, JASOLA, NEW DELHI	A36220
JAEE GOSWAMI	`SOHAM`, 115, NATRAJ SOCIETY, KARVENAGAR, PUNE	A19698
JATIN PRABHAKAR PATIL	B/304, PRAJAKTA APARTMENT, III T.P.S ANNASAHEB VARTAK RD BORIVALI (WEST) Pincode:400092, MUMBAI	F7282
JAYKISHAN KANJIBHAI FEFAR	OFFICE NO.3, THIRD FL, ASHAPURA TOWER, OPP. NEW BUS TAND, SANALA ROAD, MORBI	A38407
KESHAV RATHI	17/E 291, CHOPASHI HOUSING BOARD, JODHPUR	A35438
KHUSHBOO HASMUKH SIKOTRA	416, DIMPLE ARCADE, ASHA NAGAR, THAKUR COMPLEX, KANDIVALI (EAST) Pincode:400101, MUMBAI	A36557
KISHORKUMAR MOHANLAL TOSHNIWAL	E-505, AISHWARYAM GREENS, NEAR APPLE HOSPITAL, VISHAL NAGAR, WAKAD, PUNE	A26829
KUNAL SHARMA	F -712, TITANIUM CITY CENTRE, 100FT SHYAMAL TO PRAHLADNAGAR ROAD, SATELLITE, AHMEDABAD	A34708
MONIKA CHECHANI	A-1, AMBICA HOUSE (ARCHWOOD), NR PREMIER HOUSE, OPP GURUDWARA, SG ROAD, AHMEDABAD	A30143
NEELU DASLANA	0 -14, 3RD FLOOR, WEST PATEL NAGAR, NEAR SHADIPUR DEPOT, NEW DELHI	A35566
NIKI BACHHAWAT	D/O TARACHAND BACHHAWAT, BACHHAWAT STREET, BADA BAZAR, BIKANER	A34234



# News From the Institute

NILAM ANAND CHANDAK	PLOT NO1, KRUSHNAI BUNGLOW, NEXT TO MHATRE BRIDGE OPP SHAMSUNDER SOCIETY, PUNE	A30390
NISHU	H.NO. 812, SECTOR-15A, NEAR VIDYA MANDIR SCHOOL, Pincode:121007, FARIDABAD	A28405
PARAMESWARAN VISWANATHAN	DOOR NO.20/639/2, 1ST FLOOR, SEON TOWERS, KOTTAPPURAM ROAD, THRISSUR	A30845
POOJA MAYANK JAIN	OFFICENO. 12, 14TH FL, NAVJIVAN, COMMERCIAL PREMISES CO-OP. SOCIETY, LTD., BUILDING NO. 3, LAMINGTON ROAD, MUMBAI	A23674
PRASHANT AGARWAL	301, SARVODAYA APARTMENT, BAGARIA BHAWAN, SUBHASH MARG, C -SCHEME, JAIPUR	A36633
PRATIBHA AJAY VICHARE	201, MANGALMURTI, PLOT NO. 52, ROAD NO. 4, ABHINAV NAGAR, NEAR NATIONAL PARK , BORIVALI(E) Pincode:400066, MUMBAI	F6809
PREETI JINDAL	D-2, EAST VINOD NAGAR, INDIRA GANDHI MARG, Pincode:110091, DELHI	A27258
PRIYA HIRALAL AGRAWAL	MALSARIYA TRADING CORPORATION, JAGNATH ROAD, KETESHWAR MANDIR, GANDHIBAGH, NAGPUR	A34838
PRIYANKA CHUGH	775 FOUR STOREY, RAJOURI GARDEN, NEAR VISHAL ENCLAVE Pincode:110027, NEW DELHI	A35991
PUJA SHARMA	101, SHRI ARBINDO ROAD,SALKIA, NEELKANTH APPARTMENT, 5TH FLOOR, ROOM NO. 503 Pincode:711106, HOWRAH	A32622
RAJENDRA KUMAR GUPTA	F 615, BEHIND OPERA HOSPITAL, INDRA VIHAR, KOTA DISTT	F753
RAJESH GARG	H.NO: 1226, URBAN ESTATE II, NEAR DABRA CHOWK, HISAR	F5960
RITIKA MAHESHWARI	8/146 SECTOR -3, RAJENDER NAGAR, SAHIBABAD Pincode:201005 GHAZIABAD	A27743
RITU JAIN	X-24, SHIVAJI GALI, GANDHI NAGAR, DELHI	A30316
ROHINI JAIPRAKASH HARIDAS	SHOP L-2, TIRUMALA ARCADE, N-2, CIDCO, AURANGABAD	A28861
ROHIT NATANI	C-15, LAXMI NARAYAN PURI, SURAJ POLE GATE, JAIPUR	A35659
SAMSAD ALAM KHAN	A/32, ARSHAD PARK, OPP. AMBER TOWER, SHARKHEJ ROAD AHMEDABAD	A28719
SATYAVARDHINI K	B3A/10 A, JANAK PURI, Pincode:110058, NEW DELHI	A36781



## List of Companies Registered for Imparting Training during the month of March, 2015

AEON CREDIT SERVICE INDIA PRIVATE LIMITED  
UNIT 702, 7TH FLOOR, C&B SQUARE BLDG. 127, ANDHERI  
KURLA ROAD, CHAKALA, ANDHERI (E), PIN - 400 059,  
MUMBAI

AFII LEGAL LLP  
B1/14 SAFDARJUNG ENCLAVE, LOWER GR FLOOR,  
DELHI

ATHENA PROJECTS PRIVATE LIMITED  
HALL NO.1, WEST BLOCK, 1ST FLOOR, NBCC TOWER, 15,  
BHIKAJI CAMA PLACE, NEW DELHI, DELHI

AVANSE FINANCIAL SERVICES LIMITED  
GR. FLOOR, MADHAVA BUILDING, BANDRA KURLA  
COMPLEX, NEAR FAMILY COURT, BANDRA EAST, MUMBAI

AVENDUS WEALTH MANAGEMENT PRIVATE LIMITED  
THE IL&FS FINANCIAL CENTRE, 5TH FLOOR, B QUADRANT,  
BANDRA-KURLA COMPLEX, BANDRA(E), MUMBAI-400051,  
MUMBAI

BEST HEALTHCARE PRIVATE LIMITED  
106, 1ST FLOOR, SURYAKIRAN BUILDING, 19 K. G. MARG  
DELHI

CHENAB VALLEY POWER PROJECTS PRIVATE LIMITED  
JKPCC COMPLEX RAILHEAD COMPLEX, PANAMA CHOWK  
JAMMU

CLEARMEDI HEALTHCARE PRIVATE LIMITED  
HAMDARD IMAGING CENTRE, JAMIA HAMDARD,  
HAH CENTENARY HOSPITAL, NEW DELHI--110062



CREATIVE GARMENTS PRIVATE LIMITED  
118, CAMA INDUSTRIAL ESTATE, SUN MILL COMPOUND,  
LOWER PAREL, MUMBAI

DHANSAMRIDHI FINANCE PRIVATE LIMITED  
810, ARUCHAL BHAWAN, BARAKHAMBHA ROAD, NEW DELHI  
- 110001

DHARA MOTOR FINANCE LIMITED  
DHARA COMPLEX, CIVIL LINES-1, BIJNOR, UP

DHARAMSONS FINLEASE PRIVATE LIMITED  
S-561, 2ND FLOOR BHAGWATI COMPLEX, SCHOOL BLOCK  
LAXMI NAGAR-110092, DELHI

DORF KETAL CHEMICALS INDIA PVT LTD  
DORF KETAL TOWER, D'MONTE STREET, ORLEM, MALAD  
WEST- MUMBAI - 400064

GMR KRISHNAGIRI SEZ LIMITED  
CORPORATE OFFICE: IBC KNOWLEDGE PARK,  
PHASE - 2, D BLOCK, 11TH FLOOR, BANNERGHATTA ROAD,  
BANGALORE

GOLDEN GATE PROPERTIES LIMITED  
#820, 80 FEET ROAD, 8TH BLOCK, KORAMANGALA,  
BANGALORE

GOLDSOUK INFRASTRUCTURE PRIVATE LIMITED  
GOLD SOUK BLOCK C SECTOR-43, SUSHANT LOK, GURGAON

HERO ECOTECH LIMITED  
PHASE VIII, FOCAL POINT, CHANDIGARH ROAD  
VILLAGE-MANGLI, LUDHIANA, PUNJAB

HIMSHAKTI PROJECTS PVT. LTD.  
1ST HOUSE, BHUMIAN ESTATE, NAVBAHAR BHUMIAN  
ROAD, CHHOTA SHIMLA, SHIMLA

IFMR RURAL CHANNELS AND SERVICES PRIVATE LIMITED  
10TH FLOOR, PHASE I, IIT-M RESEARCH PARK  
KANAGAM VILLAGE, TARAMANI  
CHENNAI

INTEGRATED MASTERS SECURITIES PVT. LTD.  
303-304, 3RD FLOOR, NEW DELHI HOUSE 27, BARAKHAMBHA  
ROAD, NEW DELHI-110001

ISOLUX CORSAN INDIA ENGINEERING & CONSTRUCTION  
PVT. LTD.  
2ND FLOOR, BLOCK- 2, VATIKA BUSINESS PARK, SEC- 49,  
SOHNA ROAD, GURGAON

JAI DURGA IRON PRIVATE LIMITED  
70, DIAMOND HARBOUR ROAD, DHANSHREE TOWER,  
KOLKATA

JPM EXPORTS PRIVATE LIMITED  
INFINITY BENCHMARK  
12TH FLOOR, OFFICE NO-1202, BLOCK-GP, SECTOR-V  
SALT LAKE CITY, KOLKATA-700091

KALLAPPANNA AWADE ICHALKARANJI JANATA SAHAKARI  
BANK LTD  
JANATA BANK BHAVAN, MAIN ROAD, ICHALKARANJI,  
KOLHAPUR

KHIMJI RAMDAS INDIA PRIVATE LIMITED  
4TH AND 5TH FLOOR WINNERS HOUSE  
NR VIJAY CROSS ROAD NAVRANGPURA, AHMEDABAD

KINGS ELECTRONICS PRIVATE LIMITED  
EDEN GARDEN, OFFICE NO. 301-304, 3RD FLOOR,  
NEAR SAI BABA MANDIR, TAKKA, PANVEL, NAVI MUMBAI

KINGSTON PAPTECH PRIVATE LIMITED  
A-904, 9TH FLOOR SOLITAIRE CORPORATE PARK,  
NR YMCA CLUB, S.G. HIGHWAY, AHMEDABAD

LEGACY PARTNERS LLP  
2ND FLOOR, MARKAZ COMPLEX ANNEX, I.G ROAD, CALICUT

LUXORA INFRASTRUCTURE PRIVATE LIMITED  
6TH FLOOR, SOHAM HOUSE, HARI OM NAGAR  
MULUND EAST, MUMBAI

MAHALAXMI POLYPACK PVT LTD  
A-82, FIRST FLOOR, SOUTH EXTENSION  
PART-II, NEW DELHI



## News From the Institute

MAHESH TIMBER PRIVATE LIMITED  
TIMBER MARKET IMAM BARA, KARNAL (132001)

MUSCAT POLYMERS PRIVATE LIMITED  
212, ADITYA CENTER, PHULCHHAB CHOWK, RAJKOT

NEHRU PLACE HOTELS LIMITED  
S-1, AMERICAN PLAZA, INTERNATIONAL TRADE TOWER  
NEHRU PLACE, DELHI

NEW DELHI CENTRE FOR SIGHT PRIVATE LIMITED  
B-5/24, SAFDARJUNG ENCLAVE, DELHI

NOKHA AGRO SERVICES PRIVATE LIMITED  
FLOOR-3RD, 18, SIR HARIRAM GOENKA STREET, KOLKATA-  
700007, WEST BENGAL

PARAS COTSPIN LIMITED  
PATIALA ROAD, SAMANA 147101, DISTT. PATIALA, SAMANA,  
PUNJAB

PATIL AND ASSOCIATE  
SHOP NO 8 & 9, YASH PLAZA HALL, PIMPRALA ROAD, OPP  
DR. K.D. PATIL, JALGAON, MAHARASHTRA

POWERICA LIMITED  
9TH FLOOR, BAKHTAWAR, NARIMAN POINT, MUMBAI

RITTAL INDIA PRIVATE LIMITED  
NO. 23 & 24, KIADB INDUSTRIAL AREA, VEERAPURA  
DODDABALLAPUR, BANGALORE

SHARE SAMADHAN  
B-27, LOWER GROUND FLOOR, SOUTH EXTENSION-II, DELHI

SHREE GANESH METALIKS LIMITED  
2ND FLOOR, A-1 COMMERCIAL COMPLEX  
CIVIL TOWNSHIP, ROURKELA, ORISSA

SIGNATURE BUILDERS PRIVATE LIMITED  
1102, 11TH FLOOR, TOWER-A, SIGNATURE TOWER,  
GURGAON

SMITA EXIM PVT. LTD.  
PLOT NO.189, SECTOR-4, GANDHIDHAM, GUJRAT

SMS SHIVNATH INFRASTRUCTURE PRIVATE LIMITED  
20 IT PARK, PARSODI, NAGPUR

SPA CAPITAL ADVISORS LIMITED  
25, C-BLOCK, COMMUNITY CENTRE, NEAR JANAK CINEMA  
BEHIND INDIAN OIL PETROL PUMP, JANAK PURI, DELHI

SPYTECH BUILDCON PRIVATE LIMITED  
501, "GEETANSH" CLASS OF PEARL, K-48, 49 INCOME TAX  
COLONY, TONK ROAD, JAIPUR

STERLITE GRID LIMITED  
F-1, THE MIRA CORPORATE SUITES, 1 & 2, ISHWAR NAGAR,  
NEW DELHI - 110065

VA TECH WABAG LIMITED  
WABAG HOUSE, NO. 17, 200 FEET RADIAL ROAD  
S.KOLATHUR (NEAR KAMAKSHI HOSPITAL), CHENNAI

VEDA LEGAL  
24 DDA FLATS, PANCHSHEEL PARK, SHIVALIK ROAD  
NEW DELHI

VIRTUOUS URJA LIMITED  
D-116, OKHLA INDUSTRIAL AREA, PHASE-1, OKHLA, DELHI

VISTAAR FINANCIAL SERVICES PRIVATE LIMITED  
NO80, "BILIGIRI", IAS COLONY, MCHS LAYOUT, 21ST MAIN,  
5THA CROSS, BTM LAYOUT IIND STAGE, BANGALORE

VSE STOCK SERVICES LTD  
3RD FLOOR, FORTUNE TOWER, SAYAJIGUNJ,  
VADODARA-390005

WAVE MEGACITY CENTRE PRIVATE LIMITED  
WAVE INFRATECH  
C-1, SECTOR-3, NOIDA-2013010 (U.P.), NOIDA

## News From the Regions

Due to space constraint, this issue of Chartered Secretary is not featuring News from the Regions Column. The proceedings of the programmes which were to be carried in this issue will now be featured in the next (June, 2015) issue of the journal. Inconvenience caused to our readers is regretted.



## Post Graduate Certificate in Capital Markets (PGCCM)



### About PGCCM

Students aspiring a career in securities markets, PGCCM is an extremely unique opportunity to obtain first-hand knowledge, both theoretical and practical. The faculty, consisting of academicians and practitioners, has the capability to deliver a high-quality programme to the students looking for knowledge and skill-sets as a solid foundation.

Informal estimates indicate that the securities markets would require about 32,000 professionals every year. The required skill-sets should be grouped as follows: (1) Fund Management, Analysis and Dealings (2) Sales, Product Management and Brand Management (3) Operations and Services (4) Information Technology (5) Compliance and (6) Financial Advice and Planning.

PGCCM thus seeks to prepare students to become Fund Managers, Analysts, Dealers, Institutional Sales Persons, Product Designers, Operations Managers, Compliance Officers, Risk Management Officers, Investment Bankers, and Investment Advisors in the securities markets.

### Course Curriculum

PGCCM is for select students of ICSI who have cleared the executive level. PGCCM will cover the following course subjects.

Sr. No.	Course Subject
1	Economics
2	Financial Institutions & Markets
3	Corporate Finance
4	Fixed Income Securities
5	Securities Analysis & Valuation
6	Portfolio Management
7	Derivatives & Risk Management
8	Project Dissertation

The programme duration shall be 2½ months, full-time from March/April 2015. The batch size could be between 20 to 50. At the maximum, 2 batches of 50 each could be conducted at CCGRT.

### Why PGCCM:

To become a complete securities markets professional.

### Where can PGCCM lead to :

Equity and Fixed Income Research, Credit Rating, Financial Analytics, Stock Broking, Investment Banking Compliance, Risk Management, etc.

### Who should do PGCCM :

Students of ICSI who are Executive Passed with a passion for securities markets. Experience of 6 months to 2 years is desirable but not essential. Admission shall be conducted through interviews.

### ADMISSION PROCEDURE

#### Eligibility Criteria

**Minimum Qualification:** Graduate in any stream from a recognised University and Executive Or Professional Level Passed from Institute of Company Secretaries of India.

**Age :** There is no age limit for the programme, but it is desirable that the candidate is below 30 years of age.

Selection will be based on Scrutiny of application form by committee of experts, Interviews and Performance at easy writing. Approx batch size will be between 20-50 students per batch (Max 2 batch at a time).

Application form to be downloaded from website [www.icsi.edu/ccgrrt](http://www.icsi.edu/ccgrrt) and along with a DD of 500/- on the name of ICSI-CCGRT payable at Mumbai should be made from Nationalized bank only to be send to ICSI-CCGRT, Plot No. 101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614.

Course will commence from 15th June 2015 to 25th August 2015. To register send Registration Form along with a DD/ Cheque (in favor of ICSI CCGRT ) of 500/- Rs, to the Following address:- ICSI CCGRT , Plot 101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai - 400614

Registration Form available on [www.icsi.edu/ccgrrt](http://www.icsi.edu/ccgrrt)

For more details Contact

022-41021534/10/01/15, or Email [ccgrrt@icsi.edu](mailto:ccgrrt@icsi.edu)

### Contact For more Information

## ICSI - CCGRT

Plot No. 101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai - 400 614. Tel: 022-2757 7814, 4102 1515/01/03/34/10 | Email : [ccgrrt@icsi.edu](mailto:ccgrrt@icsi.edu)



## OBITUARY



### L. R. PURI

With profound grief we express our heart felt condolences on the demise of Shri L R Puri, a Fellow Member and Past President of The Institute of Company Secretaries of India (ICSI) on Monday, April 6, 2015 at New Delhi.

He was also a Fellow Member of the Institute of Cost & Management Accountants of UK; Institute of Chartered Secretaries & Administrators, UK; Institute of Directors, UK; British Institute of Management, UK and Institute of Cost Accountants of India.

Shri Puri a person of vision with passion for professional excellence had experience of about seven decades in Finance, Taxation, Corporate Laws, Administration and General Management. He served as President of the ICSI for two consecutive terms during 1973-1975 and contributed immensely towards the growth and development of the profession of Company Secretaries.

He has been associated with the HSS Group, comprising cement, tyres, paper, engineering, milk and dairy products and served on the Boards of several companies. He was Chairman, Audit Committee for the HSS Group. He was also associated with various Chambers of Commerce including Confederation of Indian Industries (CII).

ICSI pays homage to the departed soul and prays the almighty to give courage and strength to his family and near and dear ones to bear this irreparable loss.

May the departed soul rest in eternal peace.

## PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2015-16

The annual membership fee and certificate of practice fee for the year 2015-16 became due for payment w.e.f. 1<sup>st</sup> April, 2015. The last date for payment of fee is 30<sup>th</sup> June, 2015.

The membership and certificate of practice fee payable is as follows:

1. Annual Associate Membership fee Rs.1125/- (\*)
2. Annual Fellow Membership fee Rs.1500/- (\*)
3. Annual Certificate of Practice fee Rs.1000/- (\*\*)

\*A member who is of the age of sixty years or above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee and a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration to that effect.

\*\*The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute [www.icsi.edu](http://www.icsi.edu).

### MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

Online (through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu)).

- (i) Cash/Cheque at par/Demand draft/Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr. Saurabh Bansal, Asst. Education Officer at email id [saurabh.bansal@icsi.edu](mailto:saurabh.bansal@icsi.edu).

### Steps for online payment:

- a. Login to portal [www.icsi.edu](http://www.icsi.edu)
- b. Click **Online services** on the right top corner and then click **Login**
- c. Fill the User name: Enter your membership no. (e.g. A1234) as per the sample given on the page
- d. Password. Fill the password. In case you do not have a password, you may retrieve the password in case your email is correctly registered in the Institute's record. Alternatively, you may send an email request for password with your ACS/FCS membership no. to [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu)
- e. After login, go to **Members Option** (from top menu) then click on **'My Account'**
- f. Click on Payment Requests
- g. Click on Membership fee request
- h. Make the payment and press submit button

## ATTENTION MEMBERS!

### THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION, PROHIBITION & REDRESSAL) ACT, 2013

#### (Disclosure Requirements under the Annual Report of Companies)

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013 mandates that all companies need to make necessary disclosure about compliance with the said law in their Annual Report as per section 22 and 28 of the said Act which is reproduced for your ready reference:

"Section 22: Employer to include information in Annual Report

The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the Annual Report of his organization or where no such report is required to be prepared, intimate such number of cases if any, to the District Officer.

Section 28: Act not in derogation of any other law

The provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

Accordingly companies would need to incorporate the said

information in their Annual Report to be filed with Registrar of Companies for the year ending 31st March, 2015. The disclosure can be made as follows:

"Disclosure under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

*"The Company has in place an Anti Sexual Harassment Policy in line with the requirements of The Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013. Internal Complaints Committee (ICC) has been set up to redress complaints received regarding sexual harassment. All employees (permanent, contractual, temporary, trainees) are covered under this policy.*

*The following is a summary of sexual harassment complaints received and disposed off during each calendar year.*

- No of complaints received:
- No of complaints disposed off:"

\*\*\*\*\*





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6. Hand over to customer/shareholder
7. Satisfaction from customer/shareholder



### Our Services:

- 1 No.1 courier company in india
- 2 We already dispatched 500+ corporate clients Annual-Reports.
3. We have largest networks across india
4. We dispatch postal ballot notice, EGM notice, CCM notice etc.



**Mr. Samir Patel**

(+91) 9320485308, 9327303438

[info@progressivecourier.com](mailto:info@progressivecourier.com), [samir@progressivecourier.com](mailto:samir@progressivecourier.com)

[www.progressivecourier.com](http://www.progressivecourier.com)



#### Corporate Office:

No-5, Ground Floor, Naigaon Labour Camp, Marathi Granthalay Marg, Naigaon, Dadar (E), Mumbai-400014 (Maharashtra)



#### Warehouse:

Manisha Palace, Plot No.137, Shop No.1 to 5, Sector-5, Ghansoli, Navi Mumbai-400701 (Maharashtra)



#### Registered Office:

D/36, Vivekanand Industrial Estate, Rakhial-Sarangpur Bridge Road, Rakhial Cross Road, Rakhial, Ahmedabad-380014 (Gujarat)





**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
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## ICSI celebrates Capital Markets Week May 25-31, 2015

The Institute of Company Secretaries of India (ICSI) has been actively engaged in promoting the interest of investors and the orderly development of the capital market in India. As part of its continuous initiative towards investor education and good governance in Capital Markets, the ICSI observes Capital Markets Week every year. This year, we are observing Capital Markets Week during May 25-31, 2015 throughout the country. The Theme, Sub-themes and mega programmes to be organized during the Capital Markets Week are as follows:

### *Theme*

## Capital Markets – The Engine for Economic Growth

### *Sub-themes*

- ❖ **Microfinance- Growth Engine for Tiny Industry**
- ❖ **Empowering India's MSME Sector**
- ❖ **Indian Debt Capital Markets: Small Investor Perspective**
- ❖ **Investor Protection and Rebuilding Investor Confidence**
- ❖ **Convergence of Company Law and Securities Laws**
- ❖ **Role of Company Secretary in Capital Markets**

### *Mega Programmes*

<i>Place</i>	<i>Programme Director(s)</i>	<i>Place</i>	<i>Programme Director(s)</i>
<b>Kolkata</b>	CS S. K. Agrawala, <i>Council Member, ICSI</i>	<b>Guwahati</b>	CS Mamta Binani, <i>Vice-President, ICSI</i>
<b>Delhi</b>	CS Vineet Chaudhary, <i>Council Member, ICSI</i>	<b>Jodhpur</b>	CS Shyam Agrawal, <i>Council Member, ICSI</i>
<b>Chennai</b>	CS Ramasubramaniam C., <i>Council Member, ICSI</i>	<b>Madurai</b>	CS Ramasubramaniam C., <i>Council Member, ICSI</i>
<b>Mumbai</b>	CS Ashish Garg, <i>Council Member, ICSI</i>	<b>Ahmedabad</b>	CS Ashish C Doshi, <i>Council Member, ICSI</i>

In addition to organization of mega programmes at abovementioned eight cities, a number of activities will be undertaken during the week such as panel discussions, lectures, interactive meetings with capital market regulators/stock exchanges and investor awareness programmes by the respective Regional Councils and Chapters.

For details and updates regarding dates, time, venue and faculty of the mega programmes and other events during the Capital Markets Week, please visit [www.icsi.edu](http://www.icsi.edu)

### *Programme Credit Hours*

- ◆ **Four PCH** would be awarded to members for attending Mega Programmes.
- ◆ PCH for other programmes would be awarded as per the guidelines of the Institute.

***All are cordially invited to attend and participate in the Capital Markets Week activities.***

**CS Sutanu Sinha**  
Chief Executive and Officiating Secretary  
ICSI

**CS Makarand Lele**  
Council Member, ICSI &  
Chairman, Financial Services Committee

**CS Atul H. Mehta**  
President  
ICSI





**(With Effect from 1<sup>st</sup> April 2012)**

<b>BACK COVER (COLOURED)</b>		<b>COVER II/III (COLOURED)</b>	
<b>Non - Appointment</b>		<b>Non - Appointment</b>	
Per Insertion	₹ 75,000	Per Insertion	₹ 50,000
4 Insertions	₹ 2,70,000	4 Insertions	₹ 1,80,000
6 Insertions	₹ 3,96,000	6 Insertions	₹ 2,64,000
12 Insertions	₹ 7,65,000	12 Insertions	₹ 5,10,000

<b>FULL PAGE (COLOURED)</b>		<b>HALF PAGE (COLOURED)</b>	
<b>Non-Appointment</b>	<b>Appointment</b>	<b>Non-Appointment</b>	<b>Appointment</b>
Per Insertion	₹ 40,000	Per Insertion	₹ 20,000
4 Insertions	₹ 1,44,000	4 Insertions	₹ 72,000
6 Insertions	₹ 2,11,200	6 Insertions	₹ 1,05,600
12 Insertions	₹ 4,08,000	12 Insertions	₹ 2,04,000
	₹ 10,000		₹ 5,000
	₹ 3,000		₹ 18,000
			₹ 26,400
			₹ 51,000

<b>PANEL (QTR PAGE) (COLOURED)</b>		<b>EXTRA BOX NO. CHARGES</b>	
Per Insertion	₹ 10,000	For 'Situation Wanted' ads.	₹ 50
(Subject to availability of space)	₹ 3,000	For Others	₹ 100

**MECHANICAL DATA**

• Full Page - 18 x 24 cm • Half Page - 9 x 24 cm or 18 x 12 cm • Quarter page - 9 x 12 cm

- The Institute reserves the right not to accept order for any particular advertisement.
- The journal is published in the 1<sup>st</sup> week of every month and the advertisement material should be sent in the form of typed manuscript or art pull or open file CD before 20th of any month for inclusion in the next month's issue.

For further information write to:  
The Editor,  
"CHARTERED SECRETARY",



ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003  
Tel: 011-45341024, 41504444. Fax: + 91-11-24626727, 24645045  
Email : ak.sil@icsi.edu website : www.icsi.edu

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CHARTERED SECRETARY

548

***Attention Members !***



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

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***16<sup>th</sup>***  
***National Conference of  
Practising Company Secretaries***

**August 13-14, 2015**  
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**Venue**  
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Members are requested to send their suggestions on theme  
and sub theme of the Conference  
at [devender.kapoor@icsi.edu](mailto:devender.kapoor@icsi.edu)

The details of the Conference would be hosted on the ICSI  
website in due course.

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  - Enhanced Cash Withdrawal Facility at ATM of ₹50,000 per day
  - Higher Transaction Limits at POS and Internet of ₹2,00,000 per day
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  - Additional Personal Accident (Death) Insurance cover of ₹2,00,000 by NPCI
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# SECRETARIAL STANDARDS

## EFFECTIVE FROM JULY 1, 2015



### ICSI IS THE PIONEER AND THE ONLY INSTITUTION IN THE WORLD SO FAR TO HAVE ISSUED SECRETARIAL STANDARDS

Section 118(10) of the Companies Act, 2013 mandates every company to observe Secretarial Standards with respect to General and Board Meetings specified by the Institute of Company Secretaries of India and approved as such by the Central Government. The Ministry of Corporate Affairs has accorded its approval to the Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) specified by the Institute of Company Secretaries of India (ICSI).

The Secretarial Standards have been notified vide Notification No. ICSI NO. 1(SS) of 2015 dated April 23, 2015 and published in the Gazette of India Extraordinary Part III Section 4.

**These will be effective from July 1, 2015.**

ICSI is the pioneer and the only institution in the world so far to have issued Secretarial Standards. The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to

supplement such laws, rules and regulations. By adhering to the Secretarial Standards in true letter and spirit, companies will be able to ensure adoption of uniform, consistent and best practices. It will result in better corporate accountability and disclosures leading to better value enhancement to stakeholders including shareholder, regulators and international investors.

The Secretarial Standards are formulated by the Secretarial Standards Board constituted by the Council of the Institute. It comprises experienced members of the CS profession, the representatives of regulatory bodies such as the Ministry of Corporate Affairs, Securities and Exchange Board of India, Reserve Bank of India, Representatives from Industry Associations and chambers such as CII, FICCI, ASSOCHAM as well as the nominees of sister professional bodies, the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India.

Secretarial Standards are available on website at <http://www.icsi.edu/SecretarialStandards.aspx> these are also available at the E- book Store of the Institute for online purchase.



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## POST MEMBERSHIP QUALIFICATION (PMQ) COURSE EXAMINATION - JUNE, 2015

### TIME-TABLE & PROGRAMME

#### I. PMQ COURSE IN CORPORATE GOVERNANCE

DATE AND DAY	PART	MORNING SESSION 09.00 A.M. To 12.00 NOON
06.06.2015 Saturday	I-H	PMQ Course in Corporate Governance

#### II. PMQ COURSE IN CORPORATE RESTRUCTURING AND INSOLVENCY

DATE AND DAY	PAPER	MORNING SESSION 09.00 A.M. To 12.00 NOON
06.06.2015 Saturday	I	Corporate Restructuring, Rescue and Insolvency
07.06.2015 Sunday		NO EXAMINATION
08.06.2015 Monday	II	Strategic Options for Corporate Restructuring
09.06.2015 Tuesday	III	Cross Border Insolvency Practice and Procedure
10.06.2015 Wednesday	IV	Professional and Ethical Practices for Insolvency Practitioners

Note : All examination shall be conducted in Open Book Mode.

### Required Company Secretary

We are a growing Health Care provider having our registered office at Bhilai, Chhattisgarh. We would prefer an experienced person for the post of Company Secretary to handle all Secretarial functions with focus towards Corporate Governance.

Interested persons may send their profile to

[csradhika24@gmail.com](mailto:csradhika24@gmail.com)

### GUIDANCE NOTES ON SS-1 AND SS-2

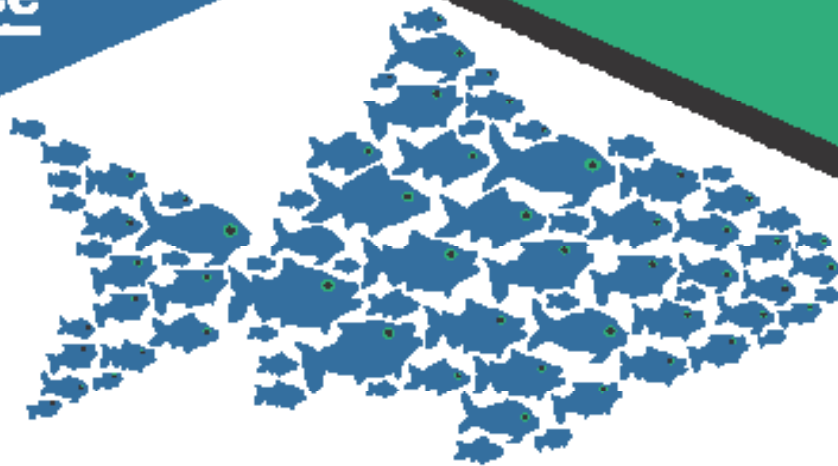
For the benefit of members of ICSI & other users and to facilitate the compliance of law and Standards by the corporate sector, the SSB of ICSI formulates Guidance Notes which deal with the procedural and practical aspects of a given topic/subject along with relevant case laws.

To facilitate the corporate sector to comply with SS-1 and SS-2, SSB is in the process of finalizing Guidance Notes on Secretarial Standard on Meetings of the Board of Directors (SS-1) and Guidance Note on Secretarial Standard on General Meetings (SS-2), which would be released shortly. These Guidance Notes seek to annotate and provide Guidance in interpreting and implementing the Secretarial Standards by covering the procedural aspects in detail and addressing all possible issues which may arise in practical implementation.

SSB has endeavoured to anticipate all possible issues/questions/concerns wr.t. these Secretarial Standards. However, in case you also come across any such issues/concerns in these two Standards, which in your opinion, should be clarified or addressed in the Guidance Note, please send it alongwith your suggestions, if any, to Ms. Priya Iyer, Secretary SSB at [priya.iyer@icsi.edu](mailto:priya.iyer@icsi.edu) or [ccgrt.ssb@gmail.com](mailto:ccgrt.ssb@gmail.com) to enable the SSB to do the needful.

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