

# **SECRETARIAL STANDARD**

## **ON**

### **MEETINGS OF THE BOARD OF DIRECTORS**

The following is the text of the Secretarial Standard-1 (SS-1) on “Meetings of the Board of Directors”, issued by the Council of the Institute of Company Secretaries of India and approved by the Central Government.

Adherence by a company to this Secretarial Standard is mandatory, as per the provisions of the Companies Act, 2013.

***(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal. Both the Standard portions and the background material have equal authority).***

#### **INTRODUCTION**

This Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.

#### **SCOPE**

This Standard is applicable to the Meetings of Board of Directors of all companies incorporated under the Act except One Person Company (OPC) in which there is only one Director on its Board and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof.

However, Section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings.

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.

This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.

## DEFINITIONS

The following terms are used in this Standard with the meaning specified:

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

*“Articles”* means the Articles of Association of a company, as originally framed or as altered from time to time or applied in pursuance of any previous company law or the Companies Act, 2013.

*“Calendar Year”* means calendar year as per Gregorian calendar i.e. a period of one year which begins on 1<sup>st</sup> January and ends on 31<sup>st</sup> December.

*“Chairman”* means the Chairman of the Board or its Committee, as the case may be, or the Chairman appointed or elected for a Meeting.

*“Committee”* means a Committee of Directors mandatorily required to be constituted by the Board under the Act.

*“Electronic Mode”* in relation to Meetings means Meetings through video conferencing or other audio-visual means. *“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.

*“Invitee”* means a person, other than a Director and Company Secretary, who attends a particular Meeting by invitation.

*“Maintenance”* means keeping of registers and records either in physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

*“Meeting”* means a duly convened, held and conducted Meeting of the Board or any Committee thereof.

*“Minutes”* means a formal written record, in physical or electronic form, of the proceedings of a Meeting.

*“Minutes Book”* means a Book maintained in physical or in electronic form for the purpose of recording of Minutes.

*“National Holiday”* means Republic Day i.e. 26<sup>th</sup> January, Independence Day i.e. 15<sup>th</sup> August, Gandhi Jayanti i.e. 2<sup>nd</sup> October and such other day as may be declared as National Holiday by the Central Government.

*“Original Director”* means a Director in whose place the Board has appointed any other individual as an Alternate Director.

*“Quorum”* means the minimum number of Directors whose presence is necessary for holding of a Meeting.

*“Secretarial Auditor”* means a Company Secretary in Practice or a firm of Company Secretary(ies) in Practice appointed in pursuance of the Act to conduct the secretarial audit of the company.

*“Secured Computer System”* means computer hardware, software, and procedure that –

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

*“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.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act.

## **SECRETARIAL STANDARD**

### **1. Convening a Meeting**

#### **1.1 Authority**

- 1.1.1 Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with 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.**

**1.1.2 The Chairman may, unless dissented to 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.**

## **1.2 Day, Time, Place, Mode and Serial Number of Meeting**

**1.2.1 Every Meeting shall have a serial number.**

**1.2.2 A Meeting may be convened at any time and place, on any day.**

Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.

**1.2.3 Any Director may participate through Electronic Mode in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business.**

Directors shall not participate through Electronic Mode in the discussion on certain restricted items. 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 takeover. Similarly, participation in the discussion through Electronic Mode shall not be allowed in Meetings of the Audit Committee for consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board.

## **1.3 Notice**

**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 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. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Notice.

Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

**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.**

**1.3.3 The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.**

**1.3.4 The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.**

If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year.

The Notice shall also contain the contact number or e-mail address(es) of the Chairman or the Company Secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard. In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

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

**1.3.6 Notice convening a Meeting shall be given at least seven 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 by registered post, an additional two days shall be added for the service of Notice.

Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

**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.**

Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post 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.

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

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. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Agenda and Notes on Agenda.

Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

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. However, the mode of sending Notice, Agenda and Notes on Agenda to the original director shall be decided by the company.

Notes on items of business which are in the nature of Unpublished Price Sensitive Information 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: –

- (i) financial results;
- (ii) dividends;

- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement\*.

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.

Where general consent as above has not been taken, the requisite consent shall be taken before the concerned items are taken up for consideration at the Meeting. The fact of consent having been taken shall be recorded in the Minutes.

Supplementary Notes on any of the Agenda Items 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.

**1.3.8 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.**

Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting. However, any other decision taken at the Meeting may also be recorded in the Minutes in the form of Resolution.

The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. An illustrative list of such items is given at *Annexure 'A'*.

There are certain items which shall be placed before the Board at its first Meeting. An illustrative list thereof is given at *Annexure 'B'*.

**1.3.9 Each item of business to be taken up at the Meeting shall be serially numbered.**

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\* Definition under SEBI (Prohibition of Insider Trading) Regulations, 2015

Numbering shall be in a manner which would enable ease of reference or cross-reference.

**1.3.10 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.**

The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of 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.

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

## **2. Frequency of Meetings**

### **2.1 Meetings of the Board**

**The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings.**

The company shall hold first Meeting of its Board within thirty days of the date of incorporation. It shall be sufficient if subsequent Meetings are held with a maximum interval of one hundred and twenty days between any two consecutive Meetings.

Further, it shall be sufficient if a One Person Company, Small Company or Dormant Company holds one Meeting of the Board in each half of a Calendar Year and the gap between the two Meetings of the Board is not less than ninety days.



An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

## **2.2 Meetings of Committees**

**Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.**

## **2.3 Meeting of Independent Directors**

**Where a company is required to appoint Independent Directors under the Act, 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 Company Secretary, wherever appointed, shall facilitate convening and holding of such Meeting, if so desired by the Independent Directors.

## **3. Quorum**

### **3.1 Quorum shall be present throughout the Meeting.**

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

### **3.2 A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.**

For this purpose, a Director shall be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company:

- (a) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or
- (b) with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.