

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?
- ❖ Further, other Secretarial Standards issued by ICSI in line with the provisions of the Companies Act, 1956 are under revision to align these Secretarial Standards with the provisions of the Companies Act, 2013. Accordingly, such other Secretarial Standards are also not applicable presently.
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.