



Delep Goswami, FCS

Advocate
Supreme Court of India
New Delhi

delepgoswami@gmail.com



Anirrud Goswami

Advocate
Goswami & Goswami
Advocates & Legal Consultants
New Delhi

anirrudgoswami@gmail.com

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.

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Article

A Broad Overview of Secretarial Standards for Company Board Meetings

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 1st 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,



Article

A Broad Overview of Secretarial Standards for Company Board Meetings

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 include, 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