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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.

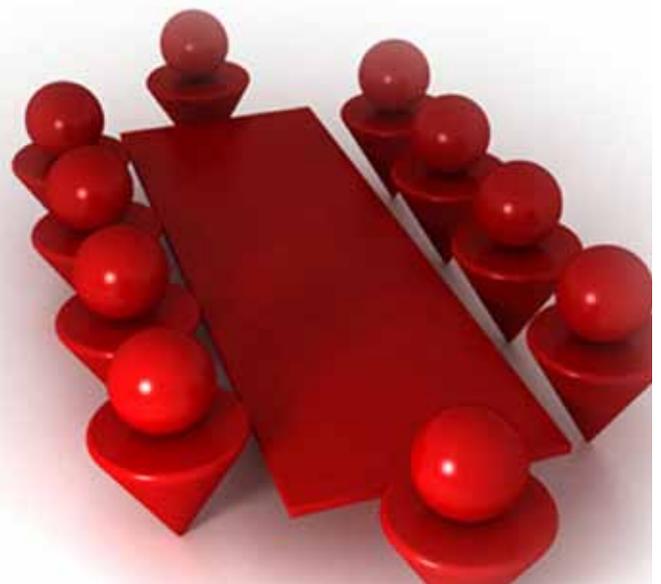
"Boardroom governance will receive sharper focus with the release of Secretarial Standards on Meetings of Board of Directors."

The 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.



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Article

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➤ 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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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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