



KEY AMENDMENTS TO SECRETARIAL STANDARDS

BACKGROUND

The Companies Act, 2013 (“Act”) states that companies shall observe secretarial standards issued by Institute of Company Secretaries of India (‘ICSI’) with respect to board and general meetings. The Secretarial Standards notified by the ICSI have been in effect since 1 July 2015.

Pursuant to the various changes brought in the Act due to various notifications, amendments and clarifications by Ministry of Corporate Affairs (“MCA”), it was very necessary to align the changes with Secretarial Standard-1 (“SS-1”) (Meeting of the board) and Secretarial Standard-2 (“SS-2”) (Meeting of the shareholders). The revised standards have come into force from 1 October 2017.

CHANGE in SS-1

Some of the relevant changes to the SS-1 are as follows:

- The erstwhile SS-1 provided that SS-1 shall apply to board meetings of all the companies incorporated under the Act except one person company wherein there is only 1 director on its board. Now this exemption is also applicable to Section 8 (i.e formation of companies with charitable objects, etc.) of the Act. However, it is clarified that Section 8 companies need to comply with the applicable provisions of the Act relating to board meetings.
- The definition of ‘secretarial auditor’ meant a company secretary in practice, appointed in pursuance of the Act to conduct the secretarial audit of the company. The revised standards provide that firm of company secretary(ies) in practice would also be included in the definition.
- The erstwhile SS-1 provided that a board meeting may be convened at any time and place, on any day, *excluding a National Holiday*. The revised SS-1 has removed the restriction that a board meeting can not be held on a national holiday.
- The erstwhile SS-1 provided that the proof of sending (a) notice, (b) agenda and (c) notes on agenda and its delivery shall be maintained by the company. The revised SS-1 provides that such proof has to be maintained for such period as decided by the board, which shall not be less than three years from the date of the meeting.
- The erstwhile SS-1 provided that board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive board meetings. The revised SS-1 provides that 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 of the board. Thus the strict requirement of conducting a board meeting in every quarter is dispensed with.
- The erstwhile SS-1 provided that a copy of the signed minutes certified by the company secretary or where there is no company secretary, by any director authorized by the board shall be circulated to all directors within fifteen days after these are signed. The revised SS-1 provides that the company is not required to circulate the signed minutes to directors who have waived their right to receive the same either in writing or such waiver is recorded in the minutes.
- The erstwhile SS-1 provided that 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. The revised SS-1 provides that the decision taken in respect of any other item (i.e. for which the consent of the majority directors was not taken) 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.
- The erstwhile SS-1 provided that 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 revised SS-1 provides that the report of the board of directors shall include a statement on compliances of applicable secretarial standards.

CHANGE in SS-2

Some of the relevant changes to the SS-2 are as follows:

- The erstwhile SS-2 provided that the notice shall contain particulars of the venue of the meeting, route map, prominent land mark for easy location. The revised SS-2 provides that this condition shall not

apply to (i) a company in which only its directors and their relatives are members, and (ii) a wholly owned subsidiary.

- The erstwhile SS-2 provided that in case of companies having a website, the route map shall be hosted along with the notice on the website. The revised SS-2 provides that the notice has to be hosted till the conclusion of the meeting.
- The erstwhile SS-2 provided that the scrutiniser of the meeting shall submit his report to the chairman. The revised SS-2 provides that the scrutiniser is required to submit the report within seven days from the last date of receipt of postal ballot forms.
- The erstwhile SS-2 provided that minutes book shall be kept at the registered office of the company or at such other place, as may be approved by the board. The revised SS-2 provides that minutes book shall be kept only at the registered office of the company.
- The erstwhile SS-2 provided that every listed company shall prepare a report on annual general meeting. This shall be signed and dated by the chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the managing director, if there is one and company secretary. The revised SS-2 has deleted this requirement.

Some of the important changes introduced in SS-1 and SS-2 pursuant to the MCA's exemption notification dated 5th June 2015 are as follows:

1. In case of government company, the annual general meeting can be held at any place with the approval of government company.
2. In case of meeting of members in private company, unless otherwise provided in the articles of association of the company:
 - a. Notice shall specify entitlement of member to appoint proxy.
 - b. Consent for shorter notice shall be obtained from ninety five percent of the members.
 - c. Appointment of chairman shall be as per the Act.
 - d. Appointment of proxy, deposit of proxies and inspection of proxies shall be in accordance with the Act and SS-2.
 - e. Voting rights shall be reckoned in accordance with the Act and SS-2.
 - f. The adjournment of meeting for want of quorum shall be in accordance with the Act and SS-2.

CONCLUSION

The changes brought in the secretarial standards are intended to align the SS-1 and SS-2 with the provisions of the Act due to all the recent changes in the Act. The Act and the secretarial standards have made changes keeping in mind the practical issues and at the same time overcoming the impediments, while ensuring good corporate governance.

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