

LESSON 4

BOARD PROCESSES THROUGH SECRETARIAL STANDARDS

INTRODUCTION

- The Companies Act, 2013 introduced major changes in the conduct of board meetings.
- Use of electronic mode is permitted for:
 - Sending notices of meetings.
 - Passing resolutions by circulation.
 - Conducting board meetings via video conferencing or other audiovisual means.
- A key development is the **mandatory observance of Secretarial Standards** for board and general meetings.
- Secretarial Standards are **codified governance practices** aimed at harmonizing and standardizing secretarial procedures.
- As per **Section 118(10)** of the Companies Act, 2013:
 - Every company must observe Secretarial Standards **specified by the Institute of Company Secretaries of India (ICSI) and approved by the Central Government.**
- The Ministry of Corporate Affairs (MCA) has approved two key Secretarial Standards:
 - SS-1: Meetings of the Board of Directors.
 - SS-2: General Meetings.
- These standards were first made effective from **July 1, 2015.**
- In 2024, revised Secretarial Standards were issued by the ICSI and approved under Section 118(10), effective from April 1, 2024.
- ICSI also released a Guidance Note based on the revised SS-1, effective from the same date.
- Before the Companies Act, 2013, these standards were recommendatory, not mandatory.
- The formal adoption of Secretarial Standards marked a significant step toward improving corporate governance practices.

Applicability of SS-1

Legal Requirement: As per Section 118(10) of the Companies Act, 2013, **all companies** must observe Secretarial Standard-1 (SS-1).

Issuing Authority: SS-1 is issued by the Institute of Company Secretaries of India (ICSI) and approved by the Central Government.

Applicability:

- Applicable to all companies incorporated under the Companies Act, including private and small companies.
- **Not applicable to:**
 - ✓ One Person Companies (OPC) with only ONE director.
 - ✓ Companies EXEMPTED BY THE CENTRAL GOVERNMENT through notification.
- Applicable to OPCs having more than one director.

Exemption for Section 8 Companies:

- MCA Notification G.S.R. 466(E) dated 5th June 2015 **exempts Section 8 companies** from Section 118, and therefore SS-1 does not apply.
- **Exception:** These companies **must still record Minutes WITHIN 30 DAYS if their Articles allow confirmation by circulation.**
- They **may voluntarily comply** with SS-1.
- They **must still follow other Board Meeting provisions** under the Act.

Condition for Exemption Validity:

- As per MCA Notification G.S.R. 584(E) dated 13th June 2017, exemption under the 2015 notification applies only if the Section 8 company has **NOT DEFAULTED in filing its financial statements or annual return with the Registrar of Companies.**

Applicability to companies governed under Special Acts

SS-1 is also applicable to

- ✓ Banking Companies,
- ✓ Insurance Companies,
- ✓ Companies engaged in generation or supply of electricity, and
- ✓ Companies governed by any Special Acts, if incorporated under the Act.

However, if the **provisions of these Special Acts** such as the Banking Regulation Act, 1949, the Insurance Act, 1938, etc. applicable to these companies **are inconsistent with SS-1, then the provisions of such Special Acts shall prevail.**

Applicability to Meetings of the Committees

SS-1 is also **applicable to the Meetings of Committee(s) of the Board** constituted in compliance with the requirements of the Act. At present, the Act provides for the constitution of following committees of the Board:

- ✓ Audit Committee;
- ✓ Nomination and Remuneration Committee;
- ✓ Corporate Social Responsibility (CSR) Committee;
- ✓ Stakeholders Relationship Committee.

In case any other committee of the Board is constituted voluntarily or pursuant to any other statute or regulations etc., the company may comply with SS-1 with respect to meetings of such committee(s) as a good governance practice.

Illustration:

Housing Development Finance Corporation Limited

The Board has formulated various committees such as Investment Committee, Fraud Monitoring Committee, IT Strategy Committee, Derivatives Committee etc. comprising of directors and senior management to monitor alignment with the vision and mission of the HDFC.

Applicability of provisions relating to Independent Directors

All the provisions in SS-1 relating to Independent Directors are **required to be complied with by companies which are not statutorily required to appoint “Independent Directors” but have done so VOLUNTARILY.**

Effect of subsequent changes in the Act

SS-1 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 from the date of change or such date as the change to the Act specifies in this respect.**

Moreover, if any **stipulation contained in SS-1 is derived from any provision of law or rule and if such provision is declared inapplicable to any class of companies, such stipulation shall not apply to such class of companies.**

Non-applicability of Section 118(10)

Specified IFSC Public Company

The MCA vide Notification dated 4th January, 2017 has notified that Section 118(10) **shall not apply on the Specified IFSC Public/Private Company.**

What is Specified IFSC Public Company?

According to **explanation to Rule 3** of the Companies (Acceptance of Deposits) Rules, 2014, a Specified IFSC Public company means an **UNLISTED public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre** located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act 2005 read with the Special Economic Zones Rules, 2006.

What is Specified IFSC private company?

A private company which is **licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located** in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006.

APPLICABLE to all Meetings of Board of following companies	NON-APPLICABLE to all meetings of Board of following companies
Private Limited Companies	Specified IFSC Public Company
Public Limited Companies	Specified IFSC Private Company
One Person Company (where OPC is having more than one director)	One Person Company (where the OPC is having only one director)
Companies incorporate under Special Acts. If provisions of SS-1 are in consistence with the provisions of such Special Act, then the provisions of the Special Acts shall prevail.	Such class of companies which are exempted by the Central Government through Notification.

SS-1 also applies on all Committee Meetings of the Board, whether mandatory as per the Companies Act, 2013 or SEBI (LODR) Regulations, 2015 or non-mandatory.	Companies incorporated under Section 8 of the Companies Act, 2013 (or incorporate under Section 25 of the erstwhile Companies Act, 1956), provided such companies have not defaulted in filing Annual Returns with the Registrar.
Companies voluntarily appointing Independent Directors shall also comply with the provisions of SS-1 relating to Independent Director.	

SS-1: Meetings of the Board of Directors

- Company policies and operations are decided in periodic Board meetings.
- Board meetings enable discussion and collective decision-making.
- The Act lays down fundamental principles for Board meetings.
- Secretarial Standard SS-1 (SS-1) aids in clarifying these principles and standardizing practices.
- SS-1 offers flexibility in:
 - ✓ Calling meetings at shorter notice,
 - ✓ Transacting business not on the agenda,
 - ✓ Passing resolutions by circulation.
- Compliance with SS-1 ensures a reliable Board process that safeguards company and stakeholder interests.
- Companies have developed varied secretarial practices due to differing business cultures.
- ICSI introduced Secretarial Standards to harmonize, integrate, and standardize these practices.
- SS-1 also clarifies ambiguous or silent provisions of the Act without altering the law.
- The Company Secretary is responsible for recording and implementing Board decisions as per SS-1.
- In the absence of a Company Secretary, a Director, KMP, or an authorized person may fulfill these duties.
- SS-1 promotes a transparent and structured process for convening and conducting Board meetings.

Key Definitions

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

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

“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.

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

“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.

Board processes through Secretarial Standards (SS-1)

1. Convening of a Meeting

Authority [Para 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**. [Para 1.1.1]

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. [Para 1.1.2]

Notes:

In case an oral requisition is received from a Director for convening a Meeting and a written requisition does not follow, such requisition should be put in writing forthwith by the Company Secretary or the person authorised by the Board in this behalf, and placed before the Chairman/Managing Director/ Whole-time Director, as the case may be, with a copy to the Director concerned who has requisitioned such Meeting.

Upon consultation by the Company Secretary or the person authorised by the Board in this behalf, if the Chairman/ Managing Director/Whole-time Director, as the case may be, refuses to convene the Meeting as requisitioned, the Company Secretary or the person authorised by the Board in this behalf, should act in accordance with the provisions of the Articles in this regard.

In case the **Articles are silent**, the Company Secretary or the person authorised by the Board in this behalf **cannot convene a Meeting requisitioned by the Director and he should communicate the same to the Director concerned**. In any case, **the Director may, on his own, convene a Meeting.**

The **authority to summon a meeting of the Board VEST WITH THE DIRECTORS ONLY. The Company Secretary CANNOT SUMMON A MEETING ON HIS OWN, unless authorised by the Board of Directors or the Articles to do so.**

Adjournment of a Meeting otherwise than for want of Quorum may be necessitated for paucity of time to complete the Agenda or for any other reason viz. curfew, earthquakes or other events of force majeure etc.

Day, Time, Place, Mode and Serial Number of Meeting [Para 1.2]

Every Meeting **shall have a serial number**. [Para 1.2.1] A Meeting **may be convened at any time and place, on any day**. [Para 1.2.2]

(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.)

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. [Para 1.2.3]

Notes:

Numbering of meetings: While numbering serially, the company may choose to follow its existing system of numbering, if any, or any new system of numbering, which should be distinct and enable ease of reference and/ or cross reference. The company should follow a uniform and consistent system.

For example: 1/ 2020, 2/2020 and so on... and in next year 1/2021, 2/2021 and so on. Alternatively continuous serially numbering across years viz: 120th Meeting, 121st Meeting and so on... Further the serial number of the original and adjourned meeting should be same, viz: Original meeting No. is 12th Meeting, the serial number of the adjourned Meeting should be 12th Meeting (Adjourned).

Board Meeting on Public Holiday: The Board Meeting **may be convened on any day**

including the public holiday, UNLESS THE ARTICLES PROVIDE OTHERWISE. Sub-section (4) of Section 174 of the Act prohibits holding of Board Meetings adjourned for want of Quorum on National Holidays. However, law is not specifically prohibiting the original meeting to be held on a National Holiday.

Adjourned Meeting: UNLESS THE ARTICLES OF THE COMPANY PROVIDE OTHERWISE, a Meeting adjourned for want of Quorum should be held on the same day at the same time and same place in the next week.

If that day happens to be a National Holiday, then such adjourned Meeting should be held on the NEXT SUCCEEDING DAY WHICH IS NOT A NATIONAL HOLIDAY

at the same time and place, **UNLESS THE ARTICLES OF THE COMPANY PROVIDE OTHERWISE**.

A notice in regard to the adjourned Meeting should be given to ALL THE DIRECTORS.

Time of Meeting: A Meeting may be held at any time. However, this should be practically construed to mean a convenient time. As detailed deliberations are expected to take place in Board Meetings, it is desirable to have Meetings during working hours, though the Meeting may continue beyond working hours.

Illustration

A Meeting is convened on 8th August at 4:00 p.m. at the Registered Office of the company. On that day, the required Quorum is not present. In the absence of any provisions to the contrary in the Articles, the Meeting is automatically adjourned to the same day in the next week, i.e. 15th August, at the same time and place. However, since 15th August is a National Holiday, the adjourned Meeting should be held on 16th August.

Venue of Meeting: A Meeting may be held at the Registered Office of the company or at any other place, including a remote place. A Meeting may be held in India or abroad.

In case the Articles provide for a specific place or city in which the Meetings should be held, the Meetings should be held only at that place or city.

If a Meeting of the Board is held elsewhere, contrary to such clause in the Articles, none of the decisions taken by the Board at such Meeting can be put into operation in any manner.

Coincidental physical presence of Directors: A mere **coincidental physical presence of all Directors at one place cannot constitute a Meeting.**

Meeting conducted through Electronic Mode: With respect to every meeting conducted through electronic mode the **scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.** [Rule 3(6) of the Companies (Meetings of Board and its Powers) Rules, 2014].

Participation of a Director in a Meeting via telephone or tele-conferencing or any other Mode which does not conform to the requirements of the relevant provisions of the Act **cannot be considered as participation of a Director through Electronic Mode.**

If due to any technical issue emerged during the Meeting held through Electronic Mode, a Director chooses to participate through telephone or tele- conferencing for remaining Meeting, then such participation cannot be considered as participation of a Director through Electronic Mode and his presence **should not be counted for the purpose of quorum.**

Communication by a Director of his intention to participate through Electronic Mode: If the director intends to participate through video conferencing or other audio visual means, he shall **give prior intimation to that effect sufficiently in advance** so that company is able to make suitable arrangements in this behalf. [Rule 3(3)(d) of the Companies (Meetings of Board and its Powers) Rules, 2014].

A Director **cannot participate in a Board Meeting through Electronic Mode from his end, since it is necessary for the company to take due and reasonable care to safeguard the integrity of the Meeting** held through Electronic Mode by ensuring sufficient security and identification procedures.

Participation by all Directors through Electronic Mode: All the Directors may participate in a Meeting through Electronic Mode. In such a case, **AT LEAST ONE PERSON, who may either be the Chairman or the Company Secretary or in the absence of the Company Secretary, any other person duly authorised in this behalf by the Chairman, should be physically present at the scheduled venue of the Meeting given in the Notice to enable proper recording,** to safeguard the integrity of the Meeting and to fulfil other requirements of law in this regard.

Meetings of the Committee and the Board on the same day: There are **no restrictions on Meetings of Committees and of the Board being held on the same day, provided reasonable time gap is kept between the two Meetings.**

Meetings of Audit Committee of Board and Board of Directors to consider the Financial Statements: In case of equity listed companies, **the gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.** [Schedule B to SEBI (Prohibition of Insider Trading) Regulations, 2015].

Notice [Para 1.3]

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. [Para 1.3.1]

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. [Para 1.3.2]

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

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

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

Provisions under the Companies Act, 2013

Rule 3 (3)(e) of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such **declaration shall be valid for one year:**

Provided that such declaration **shall not debar him from participation in the meeting in person** in which case he shall intimate the company sufficiently in advance of his intention to participate in person.

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

Notice convening a Meeting **shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.** [Para 1.3.6]

Notes:

A Meeting of the Board **should be called by giving a Notice in writing to EVERY DIRECTOR** [Sub-section (3) of Section 173 read with Rule 3(3)(a) of the Companies (Meetings of Board and its Powers) Rules, 2014].

“Electronic mail” means the message sent, received or forwarded in digital form using any electronic communication mechanism that the message so sent, received or forwarded is storable and retrievable [Definition in Rule 2(1)(g) of Companies (Specification of Definitions Details) Rules, 2014].

Where an **Alternate Director has been appointed, Notice should also be given to the Original Director at the same time when Notice is given to such Alternate Director.**

Like other Directors on the Board, **the Original Director should have knowledge of the developments and decisions taken at the Meetings of the Board.** Therefore, Notice, Agenda and Notes on Agenda should also be sent to the Original Director for his information.

Notice-where to send: 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.** Notice of the Meeting should be sent to the Directors at their address registered with the company [Sub-section (3) of Section 173 of the Act read with Rule 3(3) (a) of the Companies (Meetings of Board and its Powers) Rules, 2014].

Illustration:

The Articles of Association of XYZ Ltd. provides that all Notices of the Meetings of the Board and Committees thereof shall be sent to all the members of the Board/ Committees by e-mail or through speed post or registered post with acknowledgment. Accordingly, the company is sending Notices through speed post to all Directors.

However, Mr. A, Independent Director on the Board of XYZ Ltd. requested the company to send all such Notices to him through courier at his office.

Since, Mr. A has specified a particular means of delivery of Notice, the company should send Notice of the Meetings through such means to him.

Notice Period: In line with sub-section (3) of Section 173 of the Act, **the requirement is to send seven days' Notice and not seven clear days' Notice.** Thus, for the purpose of computing the period of seven days, **the date of the Meeting should be excluded but the date of Notice need not be excluded.**

Section 173(3) of the Act provides that a meeting of the Board **shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company** and such notice shall be sent by **hand delivery or by post or by electronic means:**

Provided that a meeting of the Board **may be called at shorter notice to transact urgent business subject to the condition that AT LEAST ONE INDEPENDENT DIRECTOR, if any, shall be present at the meeting:**

Provided further that in **case of absence of independent directors** from such a

meeting of the Board, **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.

Notice period in the Articles: The company **may prescribe a longer Notice period** through its Articles, in which case the Articles should be complied with. However, **the statutory Notice period of seven days cannot be reduced by the company through its Articles**. The only exception to this is situations where the Articles provide for giving Notice at a shorter period of time to transact urgent business in terms of paragraph 1.3.11 of SS-1. 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 for adjourned Meeting: 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**.

Notice of a Meeting adjourned for want of Quorum or otherwise should be given to all Directors. This includes Directors who did not attend the Meeting on the originally convened date.

If the **date of the Meeting adjourned** otherwise than for want of Quorum **is decided at the Meeting itself**, the **Notice should be given forthwith**. If the **date of the Meeting so adjourned is not decided** at the Meeting, the **Notice should be given not less than seven days before such adjourned Meeting**.

This is also **applicable to Meetings held through Electronic Mode**.

Provisions under the SEBI (LODR) Regulations, 2015

Prior Intimations – Regulation 29

- 1) The listed entity shall give prior intimation of at least two working days in advance, excluding the date of the intimation and date of the meeting to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:

- a) financial results viz. quarterly, half yearly, or annual, as the case may be;
- b) proposal for buyback of securities;
- c) proposal for voluntary delisting by the listed entity from the stock exchange(s);
- d) fund raising by way of issue of securities (excluding security receipts, securitized debt instruments or money market instruments regulated by the Reserve Bank of India), through further public offer, rights issue, American Depositary Receipts/Global Depositary Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price:

Provided further that intimation for determination of issue price in a qualified institutions placement is not required if such placement is done in accordance with the provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Provided that intimation shall also be given in case of any annual general meeting or extraordinary general meeting or postal ballot that is proposed to be

held for obtaining shareholder approval for further fund raising indicating type of issuance.

- e) declaration/ recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend;
 - f) the proposal for declaration of bonus securities.
 - g) any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof;
 - h) any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.
- 2) The intimation required under sub-regulation (1) **shall mention the date of such meeting of board of directors.**

Agenda and Notes on Agenda [Para 1.3]

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. [Para 1.3.7]

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. [Para 1.3.8]

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

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.** [Para 1.3.10]

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.** [Para 1.3.11]

Notes:

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.

“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.

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.

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. Specimen agenda and items and business. 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'**.

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

Illustration

Assume there are 9 Directors and 5 have given their general consent at the beginning of the financial year to give Notes on items of Agenda which are in the nature of UPSI at shorter Notice. If 1 new Director is appointed, consent from the new Director to circulate Agenda items which are in the nature of UPSI at a shorter Notice may be obtained individually.

If this Director gives his consent, no fresh consent from the Board would be needed. In case, this Director dissents or does not give his consent, fresh consent should be taken from the Board.

2. Frequency of Meetings [Para 2]

Meetings of the Board [Para 2.1]

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**. [Para 2.1]

Meetings of the Committees [Para 2.2]

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. [Para 2.2]

Provisions under the SEBI (LODR) Regulations, 2015

Regulation 18(2)(a): The audit committee **shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings**.

Regulation 19(3A): The nomination and remuneration committee **shall meet at least once in a year**.

Meeting of Independent Directors [Para 2.3]

Where a company is required to appoint Independent Directors under the Act, such Independent Directors **shall hold at least one Meeting in a financial year without attendance of Non- Independent Directors and members of management**.

Notes:

Provisions under the Companies Act, 2013

Section 173(1) provides that every company **shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board**.

Section 173(5) provides that a **One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the 2 meetings is NOT LESS THAN 90 DAYS:**

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

Provisions under the SEBI (LODR) Regulations, 2015

Regulation 17(2) provides that the board of directors **shall meet at least four times a year, with a maximum time gap of 120 DAYS between any two meetings**.

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.

Illustration:

If a company is incorporated on 15th June, the first Meeting should be held within thirty

days

i.e. latest by 14th July. if the meeting is held say on 10th July, then the next Meeting should be held within 120 days from 10th July.

3. Quorum [Para 3]

General Provisions [Para 3]

Quorum **shall be PRESENT THROUGHOUT** the Meeting. [Para 3.1]

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

Provisions under the Companies Act, 2013

Rule 3(5)(b) of the Companies (Meetings of Board and its Powers) Rules, 2014, with respect to Meetings through Electronic Mode, requires the Chairman to ensure that the required Quorum is present throughout the Meeting.

Provisions under SEBI (LODR) Regulations, 2015

Regulations 17(2A): The quorum for every meeting of the board of directors of the top 2000 listed entities with effect from April 1, 2020 **shall be one-third of its total strength or three directors, WHICHEVER IS HIGHER, including at least one independent director.**

Explanation I – For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means **shall also be counted for the purposes of such quorum.**

Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

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 disclose of this interest.** [Para 3.2]

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 2 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.

If the **item of business is a related party transaction**, then **HE SHALL NOT BE PRESENT AT THE MEETING, whether physically or through Electronic Mode, during discussions and voting on such item.**

Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the

provisions of the Act or any other law. [Para 3.3]

Meetings of the Board [Para 3.4]

The Quorum for a Meeting of the Board **shall be one-third of the total strength of the Board, or two Directors, WHICHEVER IS HIGHER.** [Para 3.4.1]

Where the Quorum **requirement provided in the Articles is higher than one third of the total strength, the company shall conform to such higher requirement.**

Meetings of the Board [Para 3.4]

Where the **number of Directors is REDUCED BELOW THE MINIMUM FIXED BY THE ARTICLES, no business shall be transacted UNLESS the number is first made up by the remaining Director(s) or through a General Meeting.** [Para 3.4.2]

Illustration

If, out of a total strength of fifteen Directors as fixed by the company in General Meeting, four places are vacant, then the actual strength of the Board for the purpose of computing the Quorum should be eleven and not fifteen.

Provisions under the Companies Act, 2013 Quorum for Meetings of Board -Section 174

- (1) The quorum for a meeting of the Board of Directors of a company **shall be one third of its total strength or 2 Directors, WHICHEVER IS HIGHER**, and the participation of the Directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.
- (2) The **continuing Directors may act notwithstanding any vacancy in the Board**; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, **the continuing Directors or director may act for the purpose of increasing the number of Directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.**
- (3) Where at any time the **number of interested Directors EXCEEDS OR IS EQUAL TO TWO THIRDS OF THE TOTAL STRENGTH OF THE BOARD OF DIRECTORS**, the number of Directors who are not interested Directors and present at the meeting, **BEING NOT LESS THAN TWO**, shall be the quorum during such time.
- (4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, **the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.**

Explanation. – For the purposes of this section–

- (i) any fraction of a number **shall be rounded off as one**;
- (ii) “total strength” **shall not include Directors whose places are vacant.**

Meetings of Committees [Para 3.5]

Unless otherwise stipulated in the Act or the Articles or under any other law, **the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.** [Para 3.5]

Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed.

4. Attendance at Meetings [Para 4]

Attendance Register [Para 4.1]

Every company **shall maintain attendance register** for the Meetings of the Board and Meetings of the Committee. [Para 4.1.1]

Provisions under the Companies Act, 2013

Clause 65 of Table F states that every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

The attendance register shall contain the following particulars: serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names and signatures of the Directors, the Company Secretary and also of persons attending the Meeting by invitation and their mode of presence, if participating through Electronic Mode. [Para 4.1.2]

The attendance register **shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary** or

where there is **no Company Secretary**, by **the Chairman or by any other Director present at the Meeting, if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes.** [Para 4.1.3]

The attendance register **shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.** [Para 4.1.4]

The attendance register is open for inspection by the Directors. **Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship.** [Para 4.1.5]

The attendance register shall be preserved for a period of **at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board.** [Para 4.1.6]

The attendance register **shall be in the custody of the Company Secretary.**[Para 4.1.7]

Notes:

The pages of the attendance register shall be serially numbered.

If an attendance register is maintained in loose-leaf form, **it shall be bound periodically, atleast once in every three years.**

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors.

Where there is **no Company Secretary, the attendance register shall be in the custody of any other person authorised by the Board for this purpose.**

Illustration

In case the attendance register contains the attendance record of a Meeting held on 5th May, 2010 as the first entry and 18th March, 2015 as the last entry, the attendance register should be preserved at least up to 31st March, 2023 i.e. for eight financial years from 31st March, 2015 since the last entry therein is 18th March, 2015.

Leave of absence [Para 4.2]

Leave of absence shall be granted to a Director **only when a request for such leave has been communicated** to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting. [Para 4.2]

Notes: The office of a Director shall become vacant in case the Director **absents himself from all the Meetings of the Board held during a period of 12 months WITH OR WITHOUT seeking leave of absence of the Board.**

5. Chairman [Para 5]

Meetings of the Board [Para 5.1]

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.** [Para 5.1.1]

Provisions under the Companies Act, 2013 Clause 70 of Table F:

- (i) The Board **may elect a Chairperson of its meetings and determine the period for which he is to hold office.**
- (ii) If no such Chairperson is elected, or if at any meeting the **Chairperson is not present within five minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.**

The Chairman of the Board **shall conduct the Meetings of the Board.**

If **no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, UNLESS OTHERWISE PROVIDED IN THE ARTICLES.** [Para 5.1.2]

Notes:

If the **Chairman is interested** in an item of business, **he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted.**

However, in case of a private company, the **Chairman may continue to chair and participate in the Meeting AFTER DISCLOSURE OF HIS INTEREST.**

If the **item of business is a related party transaction**, the **Chairman SHALL NOT BE PRESENT at the Meeting**, whether physically or through Electronic Mode, during discussions and voting on such item.

Meetings of Committees [Para 5.2]

A **member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee**, in accordance with the Act or any other law or the Articles, **shall conduct the Meetings of the Committee.**

If **no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting**, the Committee **shall elect one of its members present to chair and conduct the Meeting of the Committee, UNLESS OTHERWISE PROVIDED IN THE ARTICLES.** [Para 5.2]

Provisions under the Companies Act, 2013 Clause 72 of Table F:

- (i) A committee **may elect a Chairperson** of its meetings.
- (ii) If **no such Chairperson is elected, or if at any meeting the Chairperson is not present WITHIN FIVE MINUTES** after the time appointed for holding the meeting, **the members present may choose one of their members to be Chairperson of the meeting.**

6. Passing of Resolution by Circulation [Para 6]**Authority [Para 6.1]**

The **Chairman of the Board or in his absence, the Managing Director or in their absence, 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. [Para 6.1.1]

Where **not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting**, the Chairman shall put the Resolution for consideration at a Meeting of the Board. [Para 6.1.2]

Notes:

An illustrative list of items which shall be placed before the Board at its Meeting and shall not be passed by circulation is given at **Annexure A**.

Interested Directors **SHALL NOT BE EXCLUDED for the purpose of determining the above one-third of the total number of Directors**.

Illustration:

A company has 9 Directors, out of which say, 3 Directors are interested in the Resolution. In such a case, for the purpose of reckoning the 1/3rd stipulation as above, the total number of Directors should be taken as 9 and not 6 (9-3 Interested Directors). Thus, if 3 Directors (1/3rd of 9), (which number may include Interested Directors), require the Resolution under circulation to be decided at a Meeting, the Resolution by circulation should not be proceeded with. However, this does not mean that Interested Directors shall be entitled to participate and vote when the said item of business is taken up at a Meeting of the Board.

Procedure [Para 6.2]

A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, **to all the Directors including Interested Directors on the same day**. [Para 6.2.1]

The draft of the Resolution to be passed and the necessary papers **shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means**. [Para 6.2.2]

Each business proposed to be passed by way of Resolution by circulation **shall be explained 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, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed**.

The note **shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond**. [Para 6.2.3]

Notes:

The draft of the Resolution and the necessary papers **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 the addresses appearing in the Director Identification Number (DIN) registration** of the Director.

Approval [Para 6.3]

The Resolution is passed when it is **approved by a majority of the Directors entitled to vote** on the Resolution, **UNLESS NOT LESS THAN ONE-THIRD OF THE TOTAL NUMBER OF DIRECTORS** for the time being require the Resolution under circulation to be decided at a Meeting. [Para 6.3.1]

The Resolution, if passed, shall be deemed to have been passed on the **EARLIER OF:**

- (a) the **last date specified** for signifying assent or dissent by the Directors, or
- (b) the **date on which assent has been received from the required majority**,
provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board,

shall not be one third or more of the total number of Directors; and

shall be effective from that date, if no other effective date is specified in such Resolution. [Para 6.3.2]

Notes:

An Interested Director **shall not be entitled to vote**. For this purpose, a Director shall be treated as interested in a contract or arrangement entered 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
- (b) he is a promoter, or manager or chief executive officer of that body corporate; or
- (c) 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.

Directors **shall signify their assent or dissent by signing the Resolution** to be passed by circulation or by e-mail or any other electronic means.

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**.

Illustration:

If, out of the Board strength of 10 Directors, 6 Directors communicate their assent, the Resolution shall not be considered as passed until the stipulated last date has expired, or, if ahead of the said date, 2 more Directors have also signified their assent/dissent so that the possibility of 1/3rd asking for a physical Meeting is no longer possible.

Recording [Para 6.4]

Resolutions passed by circulation **shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting**. [Para 6.4]

Validity [Para 6.5]

Passing of Resolution by circulation **shall be considered valid as if it had been passed at a duly convened Meeting of the Board.** This **shall not dispense with the requirement for the Board to meet at the specified frequency.**

7. Minutes [Para 7]**Maintenance of Minutes [Para 7.1]**

Minutes **shall be recorded in books** maintained for that purpose. [Para 7.1.1]

A distinct Minutes Book **shall be maintained for Meetings of the Board and each of its Committees.** [Para 7.1.2]

A company **may maintain its Minutes in physical or in electronic form.** [Para 7.1.3] The pages of the Minutes Books **shall be consecutively numbered.** [Para 7.1.4]

Minutes **shall not be pasted or attached to the Minutes Book, or tampered with in any manner.** [Para 7.1.5]

Minutes Books, if maintained in loose-leaf form, **shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.** [Para 7.1.6]

Minutes Books **shall be kept at the Registered Office** of the company or at such other place as may be approved by the Board. [Para 7.1.7]

Notes:

Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

General Contents of Minutes [Para 7.2.1]

Minutes **shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement** of the Meeting. [Para 7.2.1.1]

Minutes **shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees**, if any, including Invitees for specific items. [Para 7.2.1.2]

Minutes **shall contain a record of all appointments** made at the Meeting. [Para 7.2.1.3]

Notes:

In respect of a Meeting adjourned for want of Quorum, **a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded** in the 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.**

Specific Contents of Minutes [Para 7.2.2]

Minutes shall *inter alia* contain:

- (a) The name(s) of Directors present and their mode of attendance, if through Electronic Mode.
- (b) In case of a Director participating through Electronic Mode, his particulars, the location from where he participated and wherever required, his consent to sign the statutory registers placed at the Meeting.
- (c) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.
- (d) Record of election, if any, of the Chairman of the Meeting.
- (e) Record of presence of Quorum.
- (f) The names of Directors who sought and were granted leave of absence.
- (g) Noting of the Minutes of the preceding Meeting.
- (h) Noting the Minutes of the Meetings of the Committees.
- (i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.
- (j) The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of a related party transaction such director was not present in the meeting during discussions and voting on such item.
- (k) The 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.
- (l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.
- (m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.
- (n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice.
- (o) Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.
- (p) The time of commencement and conclusion of the Meeting. [Para 7.2.2.1]

Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned. [Para 7.2.2.2]

Recording of Minutes [Para 7.3]

Minutes **shall contain a fair and correct summary** of the proceedings of the Meeting. [Para 7.3.1]

Minutes **shall be written in clear, concise and plain language**. [Para 7.3.2]

Wherever the decision of the Board is based on any unsigned documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are referred to in the Minutes, shall be identified by initialling of such documents by the Company Secretary or the Chairman. [Para 7.3.3]

Where any earlier Resolution(s) or decision is superseded or modified, **Minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions** passed in that regard. [Para 7.3.4]

Minutes of the preceding Meeting **shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes** in the Minutes Book. [Para 7.3.5]

Illustration:

A Board Meeting was held on 1st July 2020 and the next Board Meeting is scheduled to be held on 25th July 2020.

If the minutes of the first Board Meeting are entered in the minutes books before the date of next Board Meeting i.e. 25th July, 2020, the same should be placed for noting thereat. If the minutes are yet to be entered in the minutes books, the same should be placed at the subsequent Board Meeting following the entry of minutes in the minutes books.

Finalisation of Minutes [Para 7.4]

Within **15 days** from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof **shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee**, as on the date of the Meeting, for their comments. [Para 7.4]

Illustration:

If the Meeting is held and concluded on 1st September, 2015, the Minutes should be circulated latest by 15th September, 2015 and the receipt of the same by the Directors thereafter would be in compliance.

Entry in the Minutes Book [Para 7.5]

Minutes **shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting**. [Para 7.5.1]

The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary. [Para 7.5.2]

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 at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting**. [Para 7.5.3]

Signing and Dating of Minutes [Para 7.6]

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**. [Para 7.6.1]

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. [Para 7.6.2]

Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard. [Para 7.6.3]

Within fifteen days of signing of the Minutes, a copy of the said signed Minutes, certified by the Company Secretary or where there is no Company Secretary by any Director authorised by the Board, shall be circulated to all the Directors, as on the date of the Meeting and appointed thereafter, EXCEPT TO THOSE DIRECTORS WHO HAVE WAIVED THEIR RIGHT TO RECEIVE THE SAME either in writing or such waiver is recorded in the Minutes. [Para 7.6.4]

Inspection and Extracts of Minutes [Para 7.7.]

The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors. [Para 7.7.1]

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. [Para 7.7.2]

Notes:

A Director is entitled to receive, a copy of the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, EVEN IF HE CEASES TO BE A DIRECTOR

Case Law

Usha Martin Telematics Ltd. v. Registrar of Companies High Court Of Calcutta, C.R.R. 494 OF 2019, in this matter it was held that **typographical/inadvertent error in recording of minutes, which is rectified subsequently cannot be termed as an offence**, far less an offence under provisions of Companies Act.

8. Preservation of Minutes and other Records [Para 8]

Preservation of Minutes and other Records [Para 8]

Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp. [Para 8.1]

Provisions under the Companies Act, 2013

Rule 15 of the Companies (Management and Administration) Rules, 2014 provides a period of eight years for preservation of register of debenture-holders or any other security holders and annual return.

Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, WHICHEVER IS LATER and may be destroyed thereafter with the approval of the Board. [Para 8.2]

Minutes Books **shall be in the custody of the Company Secretary**. [Para 8.3]

Notes:

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**.

9. Disclosures:

Disclosures [Para 9]

The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards. [Para 9]

Provisions under the Companies Act, 2013

Section 134(5)(f) provides that the Directors' Responsibility Statement shall state that the **Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively**.

Disclosures by a Director of his Interest – Rule 9 the Companies (Meetings of Board and its Powers) Rules, 2014

- (1) Every director **shall disclose his concern or interest in any company or companies or bodies corporate** (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1.
- (2) It **shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice**.
- (3) All notices **shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board** for the purpose.

Disclosure Provisions under the SEBI (LODR) Regulations, 2015 Principles governing disclosures and obligations – Regulation 4(1)

- (1) The listed entity which has listed securities **shall make disclosures and abide by its obligations** under these regulations, in accordance with the following principles:
 - (a) Information **shall be prepared and disclosed in accordance with applicable standards of accounting** and financial disclosure.
 - (b) The listed entity **shall implement the prescribed accounting standards in letter and spirit** in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
 - (c) The listed entity **shall refrain from misrepresentation** and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
 - (d) The listed entity **shall provide adequate and timely information** to recognised stock exchange(s) and investors.
 - (e) The listed entity **shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely** and presented in a simple language.
 - (f) Channels for disseminating information **shall provide for equal, timely and cost efficient access** to relevant information by investors.
 - (g) The listed entity **shall abide by all the provisions of the applicable laws** including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.
 - (h) The listed entity **shall make the specified disclosures and follow its obligations in letter and spirit** taking into consideration the interest of all stakeholders.
 - (i) **Filings, reports, statements, documents and information** which are event based or are filed periodically **shall contain relevant information**.
 - (j) Periodic filings, reports, statements, documents and information reports **shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time** and shall provide sufficient information to enable investors to assess the current status of a listed entity.

Disclosure of information – Regulation 4(2)(f)(i)

- (1) Members of board of directors and key managerial personnel **shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction** or matter directly affecting the listed entity.
- (2) The board of directors and senior management **shall conduct themselves so as to meet the expectations of operational transparency** to stakeholders while at the same time maintaining confidentiality of information in order to foster a

culture of good decision-making.

Some Good Practices in Convening Board Meetings

Maintaining Annual Calendar: An Annual calendar that schedules the Board and committee meetings and accordingly dates by which action required is accomplished is an effective planner for the year. The planner schedules in advance the events so that both the providers of inputs and receivers of inputs can plan their work systematically.

Directors' Time Commitment: Directors typically should allocate at least as much time for preparation as for the board meeting itself. With strategy retreats or "away days," travel, reading, meeting preparation time, and attendance at *ad hoc* and committee meetings, directors usually spend three or four days per month for a single, non-executive director position. The time spent to prepare for audit committee meetings is normally longer than that for most other board meetings. Directors should always evaluate the demands on their time before allowing themselves to be considered for an appointment. Directors should disclose any other board or external appointment to the nomination committee before their appointment, and regularly update the board after appointment.

ANNEXURE 'A' [REFER PARA 1.3.8]

Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting

General Business Items

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

Specific Items

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager.
- Appointment or Removal of Key Managerial Personnel.

- Appointment of a person as a Managing Director / Manager in more than one company.
- In case of a public company, the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Sale of subsidiaries.
- Purchase and Sale of material tangible/intangible assets not in the ordinary course of business.
- Approve Payment to Director for loss of office.
- Items arising out of separate Meeting of the Independent Directors if so decided by the Independent Directors.

Corporate Actions

- Authorise Buy-Back of securities.
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business.
- Takeover another company or acquiring controlling or substantial stake in another company.

Additional list of items in case of listed companies

- Approving Annual operating plans and budgets.
- Capital budgets and any updates.
- Information on remuneration of Key Managerial Personnel.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
- Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non- payment of dividend, delay in share transfer etc.

ANNEXURE 'B' (PARA 1.3.8)

Illustrative list of items of business for the Agenda for the First Meeting of the Board of the company

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarised copy of lease / rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company, if any.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.

MEETING THROUGH VIDEO CONFERENCING

Section 173(2) of Companies Act, 2013 read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.

The Complete process for conducting of Board Meeting through video conferencing is prescribed under Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Secretarial Standard-1.

Rule 3 of The Companies (Meetings of Board and its Powers) Rules, 2014 Meetings of Board Through Video Conferencing or Other Audio Visual Means

A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

1. Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care –
 - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
 - (c) to record proceedings and prepare the minutes of the meeting;
 - (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;
 - (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
 - (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

3.
 - (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub- section (3) of section 173 of the Act.
 - (b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
 - (c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
 - (d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
 - (e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. Provided that such declaration

shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.”

- (f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.
4. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-
 - (a) name;
 - (b) the location from where he is participating;
 - (c) that he has received the agenda and all the relevant material for the meeting; and
 - (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b).
5.
 - (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.
Explanation.- A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.
 - (b) The Chairperson shall ensure that the required quorum is present throughout the meeting.
6. With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting 1[Omitted], shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
7. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
8.
 - (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
 - (b) If a statement of a director in the meeting through video conferencing or other

audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

9. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
10. From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
11.
 - (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority "and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub- rule (12)".
 - (b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
12.
 - (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
 - (b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
 - (c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation.- For the purposes of this rule, "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.