SS – 1

SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS

The Institute of
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
Phones: **41504444, 24617321 ● *Fax*: 24626727 ● *E-mail*: info@icsi.edu**
● *Website*: www.icsi.edu

DECEMBER 2001

Published by :

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
'ICSI House', 22, Institutional Area, Lodi Road, New Delhi - 110 003
Phones : 011-41504444, 24617321 □ *Fax* : 24626727

CONTENTS

PREFACE TO THE SECRETARIAL STANDARDS

Secretarial Standards Board and its Objectives

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are :

(i) Formulating Secretarial Standards;

(ii) Clarifying issues arising out of the Secretarial Standards;

(iii) Issuing Guidance Notes; and

(iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

Need for Secretarial Standards

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

Scope of Secretarial Standards

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

ICSI will endeavour to persuade the Government and appropriate authorities to enforce these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardisation of secretarial practices.

Procedure for issuing Secretarial Standards

The following procedure shall be adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, shall determine the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.

2. In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.

3. The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.

4. The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Department of Company Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.

   A meeting of SSB with the representatives of such bodies / organisations may then be held, if considered necessary, to examine and deliberate on their suggestions.

5. On the basis of the preliminary draft and the discussion with the bodies / organisations referred to in 4 above, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI,

and also put on the Website of ICSI to elicit comments from members and the public at large.

6. The draft of the proposed Secretarial Standard will generally include the following basic points:

   (a) Concepts and fundamental principles relating to the subject of the Standard;

   (b) Definitions and explanations of terms used in the Standard;

   (c) Objectives of issuing the Standard;

   (d) Disclosure requirements; and

   (e) Date from which the Standard will be effective.

7. After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.

8. The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

Compliance with Secretarial Standards

In the initial years, the Secretarial Standards will be recommendatory. The Institute will request the Government and other appropriate authorities to enforce these Standards and will endeavour to educate the users about the utility and need for compliance with these Standards. The Standards would be made mandatory thereafter.

SECRETARIAL STANDARD

ON

MEETINGS OF THE BOARD OF DIRECTORS

The following is the text of the Secretarial Standard-1 (SS-1) issued by the Council of the Institute of Company Secretaries of India, on "Meetings of the Board of Directors".

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

INTRODUCTION

This Standard seeks to prescribe a set of principles for the convening and conduct of Meetings of the Board of Directors and matters related thereto.

The principles enunciated in this Standard for meetings of the Board of Directors are equally applicable to meetings of Committees, unless otherwise stated herein or otherwise stipulated by any other applicable guidelines, Rules or Regulations.

Although a company is a legal entity, it cannot act by itself and can do so only through its Directors, thus establishing a relationship of principal and agent. Moreover, Directors are in a fiduciary position vis-à-vis the company and, to that extent, they are also deemed to be trustees of the properties and assets of the company. They owe a duty to the shareholders and should exercise care, skill and diligence in the discharge of their functions and in the exercise of the powers vested in them. All the powers vested in Directors are exercisable by them only collectively. As an individual Director, no Director has the power to act on behalf of the company unless such powers have been delegated to him by the Board.

DEFINITIONS

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

> *"Act"* means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof and includes any Rules and Regulations framed there under.

"Article" means the Articles of Association of a company, as originally framed or as altered from time to time, including, where they apply, the Regulations contained in the Tables in Schedule I to the Act.

"Board" means the Board of Directors of a company.

"Chairman" means the Chairman of the Board, or the Chairman appointed or elected for a Meeting.

"Committee" means a Committee of the Board.

"Disinterested Director" means a Director who is not an "Interested Director".

"Interested Director" means a Director whose presence cannot count for constituting a quorum and who can neither participate in the discussion nor vote on an item of business since he is, directly or indirectly, concerned or interested in the contract or arrangement forming part of the business under consideration by the Board.

"Meeting" means a Meeting, duly convened and constituted, of the Board or any Committee thereof.

"Original Director" means a Director in whose place the Board has appointed any other individual as an Alternate Director.

"Quorum" means the minimum number of Directors whose presence is necessary for a Meeting.

"Unpublished price sensitive information" means any information which is material and is generally not known or is not published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company. Such information includes financial results, intended declaration of dividend, announcement of bonus, rights shares and other corporate benefits, issue of securities, any major expansion plans or execution of new projects, amalgamation, merger and takeovers, de-mergers, compromise or arrangement with creditors and members, disposal of the whole or substantially the whole of the undertaking, any changes in policies, plans or operations of the company, and such other information as may affect the earnings of the company.

Words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

SECRETARIAL STANDARDS

1. Convening a Meeting

1.1 *Authority*

Unless the Articles provide otherwise, any Director of a company may, and the Manager or Secretary on the requisition of a Director should, at any time, summon a Meeting of the Board.

1.2 *Notice*

1.2.1 **Notice in writing of every Meeting should be given to every Director by hand or by post or by facsimile or by e-mail or by any other electronic mode. Where a Director specifies a particular mode, the Notice should be given to him by such mode.**

1.2.2 **The Notice should specify the day, date, time and full address of the venue of the Meeting.**

A Meeting may be held at any time, on any day, including a public holiday, and at any place.

1.2.3 **The Notice of a Meeting should be given even when Meetings are held on pre-determined dates or at pre-determined intervals.**

1.2.4 **Unless the Articles prescribe a longer notice period, Notice should be given at least fifteen days before the date of the Meeting.**

Notice need not be given of an adjourned Meeting other than a Meeting that has been adjourned "sine die". However, Notice of the reconvened adjourned Meeting should be given to those Directors who did not attend the Meeting which had been adjourned.

1.2.5 **No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given.**

1.2.6 **The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda**

should be given at least seven days before the date of the Meeting.

1.2.7 Each item of business should be supported by a note setting out the details of the proposal and, where approval by means of a Resolution is required, the draft of such Resolution should be set out in the note.

1.2.8 The Notice, Agenda and Notes on Agenda may be given at shorter periods of time than those respectively stated above, if the majority of members of the Board or of the Committee, as the case may be, agree. The proposal to hold the Meeting at a shorter notice should be stated in the Notice and the fact that consent thereto was obtained should be recorded in the Minutes.

Notice, Agenda and Notes on Agenda should be given to all Directors or to all members of the Committee, as the case may be, at the address provided by them, whether in India or abroad, and should also be given to the Original Director, even when the Notice, Agenda and Notes on Agenda have been given to the Alternate Director.

1.2.9 Any supplementary item not originally included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of the majority of the Directors present in the Meeting. However, no supplementary item which is of significance or is in the nature of Unpublished price sensitive information should be taken up by the Board without prior written Notice.

The items of business to be transacted should be arranged in order of those items that are of a routine or general nature or which merely require to be–noted by the Directors, and those items which require discussions and specific approval.

Besides the items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board and all material items having a significant bearing on the operations of the company, there are certain items which, if applicable, should also be placed before the Board. An illustrative list of such items is given at *Annexure 'A'.*

There are certain specific items which should be placed before the Board at its first Meeting and there are certain items which should be placed before the Board at the Meeting held for consideration of the year-end accounts. Illustrative lists of such items are given at *Annexures 'B' and 'C'* respectively.

2. Frequency of Meetings

2.1 Meetings of the Board

The Board should meet at least once in every three months, with a maximum interval of 120 days between any two Meetings such that at least four Meetings are held in each year.

Each Meeting should be of such duration as would enable proper deliberations to take place on items placed before the Board.

2.2 Meetings of Committees

Committees should meet at least as often as stipulated by the Board or as prescribed by any other authority.

3. Quorum

3.1 *Meetings of the Board*

3.1.1 Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not so present.

The Quorum for a Meeting of the Board should be one-third of the total strength of the Board (any fraction contained in that one-third being rounded off as one), or two Directors, whichever is higher.

Where the requirements for the Quorum, as provided in the Articles, are stricter, the Quorum should conform to such requirements.

If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, should be the quorum during such time.

3.1.2 Where the number of Directors is reduced below the minimum fixed by the Articles, no business should be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.

If a Meeting of the Board could not be held for want of quorum, then, unless the Articles otherwise provide, the Meeting should automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a public holiday, to the next succeeding day which is not a public holiday, at the same time and place.

3.2 *Meetings of Committees*

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 by the Board while constituting the Committee.

Certain guidelines, Rules and Regulations framed under the Act or by any statutory authority may contain provisions for the Quorum of a Committee and such stipulations should then be followed.

Illustrations : (a) In the case of the Remuneration Committee, constituted pursuant to the requirements of the Listing Agreement with stock exchanges, all the members of such Committee should be present to form the Quorum.

(b) In the case of a Committee constituted to give effect to or implement any of the provisions contained in The Companies (Issue of Share Certificate) Rules, 1960, the Board cannot prescribe a Quorum smaller than what has statutorily been laid down.

4. Attendance at Meetings

4.1 An Attendance Register, containing the names and signatures of the Directors present at the Meeting, should be maintained.

If an attendance register is maintained in loose-leaf form, it should be bound at reasonable intervals and may be destroyed after eight years, with the approval of the Board.

4.2 Leave of absence should be granted to a Director only when a request for such leave has been communicated to the Secretary or to the Board or to the Chairman.

5. Chairman

5.1 *Meetings of the Board*

Every company should have a Chairman who would be the Chairman for Meetings of the Board.

It would be the duty of the Chairman to see that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before it proceeds to transact business. The Chairman should then conduct the proceedings of the Meeting and ensure that only those items of business as have been set out in the Agenda are transacted and generally in the order in which the items appear on the Agenda. The Chairman should encourage deliberations and debate and assess the sense of the Meeting. The Chairman should ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as he deems fit.

In the case of a public company, if the Chairman himself is interested in any item of business, he should entrust the conduct of the proceedings in respect of such item to any other dis-interested Director and resume the Chair after that item of business has been transacted.

5.2 *Meetings of Committees*

The Board, while constituting any Committee, should also appoint the Chairman of that Committee, unless such appointment is to be made in pursuance of any other applicable guidelines, Rules or Regulations.

6. Passing of Resolution by Circulation

6.1 A Resolution proposed to be passed by circulation should be sent in draft, together with the necessary papers, individually to all the Directors or, in the case of a Committee, to all the members of the Committee.

The Act requires certain matters to be approved at Meetings of the Board of Directors only. Though the Act permits that all other matters can be approved by means of Resolutions by circulation, it would be appropriate if only those matters, which are of an urgent nature are approved by means of Resolutions by circulation.

6.2 The draft Resolution to be passed by circulation and the necessary papers should be circulated by hand, or by post, or by facsimile, or by e-mail or by any other electronic mode.

6.3 The Resolution should be deemed to have been passed on the date on which it is signed and dated as approved by all the Directors then in India, being not less than the Quorum, or on the date on which it is approved by the majority of the Directors entitled to vote on the Resolution, whichever is earlier.

6.4 Resolutions sent for passing by circulation should be noted along with the decision thereof, at the next Meeting of the Board or Committee, as the case may be, and recorded in the Minutes of such Meeting.

7. Accounts

7.1 The annual accounts of a company should be approved at a Meeting of the Board and should not be approved by means of a Resolution passed by circulation.

7.2 Quarterly or half-yearly financial results should be approved at a Meeting of the Board or its Committee and should not be approved by means of a Resolution passed by circulation.

7.3 In the case of a listed company, if there is any material variance between un-audited and audited results, the limited review report of the Auditors should also be discussed and approved at a Meeting of the Board and not approved by means of a Resolution passed by circulation.

8. Minutes

8.1 Within fifteen days from the date of the Meeting of the Board or Committee or of an adjourned Meeting, the draft Minutes thereof should be circulated to all the members of the Board or the Committee, as the case may be, for their comments.

The Directors should forward their comments on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

8.2 The Minutes of proceedings of a Meeting should be entered in the Minutes Book within thirty days from the conclusion of the Meeting.

In case a Meeting is adjourned, the Minutes should be entered in respect of the original Meeting as well as the adjourned Meeting within thirty days from the date of the respective Meetings. In respect of a Meeting adjourned for want of Quorum, a statement to that effect should be recorded in the Minutes Book by the Chairman or any Director present at the Meeting.

8.3 The date of entering the Minutes should be specified in the Minutes Book by a Director or the Secretary.

8.4 The Chairman should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.

While the law requires that Minutes of the proceedings should be entered in the Minutes Book within thirty days of the Meeting, there is no prescribed time limit within which such Minutes have to be signed. They could be signed beyond a period of thirty days if the succeeding Meeting is held after a period of thirty days from the date of the earlier Meeting. However, it is also not obligatory to wait for the next Meeting in order to have the Minutes of the previous Meeting signed. Such Minutes may be signed by the Chairman of the Meeting at any time before the next Meeting is held.

The Minutes of Meetings of the Board can be inspected only by the Directors. While the Auditor or Cost Auditor of the company or Secretary in whole-time practice appointed by the company can also inspect the Minute Books in the course of audit or certification, a member of the company has no right to inspect the Minutes of Meetings of the Board or any Committee thereof. Officers of the Registrar of Companies, or other Government or regulatory bodies duly authorised in this behalf under law, during the course of an inspection, can also inspect the Minutes.

8.5 Minutes should not be pasted or attached to the Minutes Book.

8.6 Minutes, if maintained in loose-leaf form, should be bound at intervals coinciding with the financial year of the company.

The pages of the Minutes Book should be serially numbered and there should be proper locking device to ensure security and proper control to prevent irregular removal of the loose leaves.

8.7 Extracts of the Minutes should be given only after the Minutes have been duly signed. However, certified copies

of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairman, if the draft of that Resolution had been placed at the Meeting and was duly approved.

8.8 Minutes of an earlier Meeting should be noted at the next Meeting.

8.9 Any alteration, other than grammatical or minor corrections, in the Minutes as entered, should be made only by way of express approval taken in the subsequent Meeting in which such Minutes are sought to be altered.

8.10 The Minutes of Meetings of any Committee should be circulated to the Board along with the Agenda for the Meeting of the Board next following such Meeting of the Committee and should be noted at the Board Meeting.

If the Minutes of Meetings of any Committee are pending noting by the Committee at the time of circulating the Agenda for the Meeting of the Board, such Minutes should be circulated to the Board in draft form.

9. Recording in the Minutes

9.1 In addition to the names of Directors present at the Meeting, the names of persons in attendance and the names of invitees, if any, should be recorded in the Minutes.

9.2 Apart from the Resolution or the decision, the Minutes should mention the brief background of the proposal and the rationale for passing the Resolution or taking the decision.

9.3 The names of the Directors who dissented or abstained from the decision should be recorded. Similarly, the fact that an interested Director did not participate in the discussion or vote should be recorded in the Minutes.

9.4 Wherever any approval of the Board or of the Committee is taken on the basis of certain papers laid before the Board or the Committee, proper identification by initialling of such papers by the Chairman or any Director

should be made and a reference thereto should be made in the Minutes.

10. Preservation of Minutes and other Records

10.1 The Minutes of all Meetings should be preserved permanently.

10.2 Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, the Minutes of all Meetings of the Board and Committees of the transferor company should be preserved permanently by the transferee company, notwithstanding the fact that the identity of the transferor company may not survive such arrangement.

10.3 Office copies of Notices, Agenda and Notes on Agenda and other related papers should be preserved in good order for as long as they remain current or for ten years, whichever is later, and may be destroyed thereafter under the authority of the Board.

11. Disclosure

The Annual Report of a company should disclose the number of Meetings of the Board and Committees held during the year indicating the number of Meetings attended by each Director.

EFFECTIVE DATE

This Standard shall come into effect from 13th December, 2001.

Annexure 'A'

Illustrative list of items of business which should be placed before the Board

1. Calls on shareholders in respect of money unpaid on their shares.
2. Issue of debentures.
3. Borrowing money otherwise than by issue of debentures.
4. Investing the funds of the company.
5. Making loans.
6. Filling casual vacancies in the office of Directors.
7. Making donation to political parties.
8. Granting loans to Directors.
9. According sanction for specified contracts in which one or more Directors are interested and to sign the Register of Contracts.
10. Disclosure of interest by a Director.
11. Receiving notice of disclosure of Directors' interest.
12. Receiving notice of disclosure of Directors' shareholdings.
13. Appointment or Resignation of Managing Director or Whole-time Director or Manager.
14. Appointment and removal of the Chief Financial Officer and the Company Secretary.
15. Appointment of sole-selling agents.
16. Making a declaration of solvency where it is proposed to wind up the company voluntarily.
17. Forfeiture of shares.

18. Taking note of the quarterly financial results.

19. Approving the half-yearly financial results.

20. Noting Minutes of Meetings of Committees of the Board.

21. Quarterly results for each operating division or business segment.

22. Annual operating plans and budgets.

23. Any material default in financial obligations.

24. Non-compliance of any regulatory / statutory provisions or listing requirements.

25. Sale of investments, subsidiaries or assets which is not in the normal course of business.

26. Show cause notices, prosecutions and penalty notices of material nature.

27. Any material effluent or pollution problems, industrial accidents, labour problems, signing of wage agreement, implementation of Voluntary Retirement Scheme, etc.

28. Any issue which involves possible public or product liability claims.

29. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.

30. Foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movements.

31. Information on recruitment and remuneration of senior officers and transfers or resignations.

32. Details of any joint venture or collaboration agreement.

33. Material liability – legal or contractual.

34. Report of the Compliance Officer regarding share transfer process and analysis of movement of bulk transfers.

35. Fixed deposit advertisements.

36. Certificate regarding compliance with various applicable laws.

37. Events which are significant or have material commercial / financial implications, such as:

    (a) strikes, lockouts, lay-off**,** closure of units/factory, etc.;

    (b) change in the general character or nature of business;

    (c) major expansion plans or execution of new projects;

    (d) disruption of operations due to natural calamity or Act of God;

    (e) commencement of commercial production / commercial operations;

    (f) developments with respect to pricing/realisation arising out of change in the regulatory framework;

    (g) litigation / dispute with a material impact;

    (h) revision in ratings assigned by credit rating agencies;

    (i) issue of any class of securities;

    (j) acquisition, merger, demerger, amalgamation, restructuring, scheme of arrangement, spin off of divisions of the company;

    (k) change in market lot and sub-division of equity shares of the company;

    (l) voluntary delisting of securities from the Stock Exchange(s);

    (m) default in the repayment of any deposits or redemption of any securities including debentures and in payment of interest, if any, due thereon;

    (n) any action which will result in alteration in the terms regarding redemption / cancellation / retirement in whole or in part of any securities issued;

(o) information regarding opening, closing of status of ADR, GDR or any other class of securities issued abroad;

(p) cancellation of dividend / rights / bonus, etc.;

(q) formation of a subsidiary company and/or de-subsidiarisation of an existing subsidiary company.

Annexure 'B'

Illustrative list of items of business for the Agenda for the First Meeting of the Board of Directors 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.
5. To confirm/note the appointment of the first Directors of the company.
6. To read and record the notices of disclosure of interest given by the Directors.
7. To consider the appointment of Additional Directors.
8. To consider the appointment of the Chairman of the Board.
9. To fix the financial year of the company.
10. To consider the appointment of the first Auditors.
11. To adopt the Common Seal of the company.
12. To appoint Bankers and to open bank accounts of the company.
13. To authorise printing of share certificates.
14. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
15. To approve preliminary expenses and preliminary contracts.
16. To consider the appointment of the Managing Director/Whole time Director/Manager and Company Secretary, if applicable and other senior officers.

Annexure 'C'

Illustrative list of items of business for the Agenda for the Meeting of the Board of Directors at which annual accounts, etc. are to be considered.

(Besides regular Agenda items, such as confirmation of Minutes, granting leave of absence to Directors, reading Notices of disclosure of interest of Directors)

1. To consider and approve matters arising out of the accounts such as commission to Directors, write-offs, provisions, legal cases, etc.

2. To consider and approve transfers to Reserves and other appropriations.

3. To consider recommendation of dividend.

4. To consider and approve the Balance Sheet and the Profit & Loss Account as well as the abridged Accounts or statement of financial results.

5. To approve the cash flow statement.

6. To consider and take note of the Directors to retire by rotation at the Annual General Meeting.

7. To consider the draft Notice of the Annual General Meeting and to authorise issuance thereof.

8. To consider the appointment of Auditors and the payment of remuneration to them, to be proposed for members' consideration.

9. To take note of the draft Auditor's report.

10. To consider the draft Directors' Report and to authorise issuance thereof.

11. To open a Bank Account for payment of dividend.

12. To approve/note the closure of the Register of Members and the Share Transfer Books for the purposes of the Annual General Meeting.

13. To approve the text of the advertisement inviting fixed deposits.

14. To discuss the Compliance Certificate issued by a secretary in whole-time practice.

SS – 2

SECRETARIAL STANDARD ON GENERAL MEETINGS

The Institute of
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
Phones: **41504444, 24617321** ● ***Fax***: **24626727** ● ***E-mail***: **info@icsi.edu**
● ***Website***: **www.icsi.edu**

MAY 2002
Reprint March 2003

Published by :

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
'ICSI House', 22, Institutional Area, Lodi Road, New Delhi - 110 003
Phones : 24617321-24, 24644431-32 ☐ *Fax* : 24626727
Email : info@icsi.edu ☐ Website : www.icsi.edu

CONTENTS

PREFACE TO THE SECRETARIAL STANDARDS

Secretarial Standards Board and its Objectives

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are :

(i) Formulating Secretarial Standards;

(ii) Clarifying issues arising out of the Secretarial Standards;

(iii) Issuing Guidance Notes; and

(iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

Need for Secretarial Standards

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

Scope of Secretarial Standards

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

ICSI will endeavour to persuade the Government and appropriate authorities to enforce these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardisation of secretarial practices.

Procedure for issuing Secretarial Standards

The following procedure shall be adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, shall determine the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.

2. In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.

3. The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.

4. The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Department of Company Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.

   A meeting of SSB with the representatives of such bodies / organisations may then be held, if considered necessary, to examine and deliberate on their suggestions.

5. On the basis of the preliminary draft and the discussion with the bodies / organisations referred to in 4 above, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI, and also put on the Website of ICSI to elicit comments from members and the public at large.

6. The draft of the proposed Secretarial Standard will generally include the following basic points:

   (a) Concepts and fundamental principles relating to the subject of the Standard;

   (b) Definitions and explanations of terms used in the Standard;

   (c) Objectives of issuing the Standard;

   (d) Disclosure requirements; and

   (e) Date from which the Standard will be effective.

7. After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.
8. The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

Compliance with Secretarial Standards

In the initial years, the Secretarial Standards will be recommendatory. The Institute will request the Government and other appropriate authorities to enforce these Standards and will endeavour to educate the users about the utility and need for compliance with these Standards. The Standards would be made mandatory thereafter.

SECRETARIAL STANDARD

ON

GENERAL MEETINGS

The following is the text of the Secretarial Standard-2 (SS-2), issued by the Council of the Institute of Company Secretaries of India, on "General Meetings".

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

(In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards').

INTRODUCTION

This Standard seeks to prescribe a set of principles for the convening and conduct of General Meetings and matters related thereto.

The decision-making powers of a company are vested in its Members and the Board of Directors (the Board). Such powers are exercisable through Meetings of the Members and the Board respectively. Except where the law expressly provides that certain powers of a company are to be exercised only by the company in General Meeting, the Board is entitled to exercise all the powers of the company. Although Members acting through the forum of a General Meeting exercise ultimate check over a company, they should not interfere with the exercise by the Board of the powers which are vested in the Board.

Every company is required to hold, every year, a Meeting of its Members called the Annual General Meeting and may also hold any other meeting, called an Extra-Ordinary General Meeting, as and when required or on the requisition of Members. The business to be transacted at an Annual General Meeting may consist of items of ordinary business as well as special business. The items of ordinary business specifically required to be transacted at an Annual General Meeting should not be transacted at any other General Meeting.

Every public company having a share capital is also required to hold a Statutory Meeting.

If a company defaults in holding its Annual General Meeting in any year, any Member of the company has a statutory right to approach the prescribed authority to direct the company to hold the Meeting.

A company may also hold Meetings of its Members, or class of Members or debenture holders or creditors under the directions of the Court or the Company Law Board or any other prescribed authority, and any such Meeting shall be governed by the Articles or by the rules, regulations and directions prescribed for the conduct of any such Meeting.

SCOPE

The principles enunciated in this Standard for General Meetings may also be applicable to class meetings of Members, debenture holders and creditors. These principles may, however, not be applicable to any meeting convened on the directions of the Court or the Company Law Board or any other prescribed authority unless the directions themselves so prescribe.

This Standard does not deal with passing of resolutions by postal ballot.

DEFINITIONS

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

"Act" means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Articles" means the Articles of Association of a company, as originally framed or as altered from time to time, including, where they apply, the Regulations contained in the Tables in Schedule I to the Act.

"Board" or "Board of Directors" means the Board of Directors of a company.

"Chairman" means the Chairman of the Board or the Chairman appointed or elected for a Meeting.

"Member" means any person who agrees, either by subscribing to the Memorandum of Association of the company or by applying in writing, to become a Member of the company and whose name is entered either in the Register of Members of the company or in the records of the depository as a beneficial owner in respect of the equity shares of the company held by him.

"Meeting" or "General Meeting" or "Extra-Ordinary General Meeting" means a Meeting of Members duly convened by the Board or on the requisition of Members.

"Ordinary Business" means business to be transacted at an Annual General Meeting relating to (i) the consideration of the accounts, balance sheet and the reports of the Board of Directors and Auditors; (ii) the declaration of a

dividend; (iii) the appointment of Directors in the place of those retiring; and (iv) the appointment of, and the fixing of the remuneration of, the Auditors.

"Ordinary Resolution" means a Resolution when, at a General Meeting of which the Notice required under the Act has been duly given, the votes cast (whether on a show of hands or on a poll) in favour of the Resolution (including the casting vote, if any, of the Chairman) exceed the votes, if any, cast against the Resolution by Members entitled to vote thereon either in person or, where proxies are allowed, by Proxy.

"Proxy" means an instrument in writing signed by a Member, authorizing another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also means the person so appointed by a Member.

"Quorum" means the minimum number of Members whose presence is necessary for a Meeting.

"Special Business" means business other than the Ordinary Business to be transacted at an Annual General Meeting and all business to be transacted at any other General Meeting.

"Special Resolution" means a Resolution in respect of which (a) the intention to propose the Resolution as a Special Resolution has been duly specified in the Notice calling the Meeting or other intimation of the Resolution has been given to the Members; (b) the Notice required under the Act has been duly given of the Meeting; and (c) the votes cast in favour of the Resolution (whether on a show of hands or on a poll) are not less than three times the number of the votes, if any, cast against the Resolution by Members entitled to vote thereon either in person or, where proxies are allowed, by Proxy.

Words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

SECRETARIAL STANDARDS

1. Convening a Meeting

1.1 Authority

A General Meeting should be convened on the authority of the Board.

The Board of its own accord or on the requisition of Members should, either at a Meeting of the Board or by passing a resolution by circulation, convene or authorize the convening of a General Meeting.

If, on a requisition having been made in this behalf, the Board fails to call a Meeting, the requisitionists may themselves call the Meeting in the same manner, as nearly as possible, as that in which Meetings are to be called by the Board.

1.2 Notice

1.2.1 Notice in writing of every Meeting should be given to every Member of the company. Such Notice should also be given to the Directors and Auditors of the company, to the Practising Company Secretary who has given the Compliance Certificate, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.

Notice should be given to all persons entitled to receive such Notice, at the address provided by them in India or outside India. In the case of joint-shareholders, the Notice should be given to the person whose name appears first in the Register of Members or in the records of the depository, as the case may be.

On receipt of intimation of death of a Member, the Notice of a Meeting should be sent to the surviving first joint-holder or to the nominee of the sole shareholder or to the person entitled to a share in consequence of the death of the Member. In case of insolvency of a Member, the Notice should be sent to the assignees of the insolvent or to the person entitled to a share in consequence of the insolvency of the Member.

Notice should be given by hand or by post and should also be placed on the website, if any, of the company.

1.2.2 The Notice should specify the day, date, time and venue of the Meeting with complete address.

Meetings should commence during business hours, on a working day, at the Registered Office of the company or at some other place within the city, town or village in which the Registered Office is situated.

If the venue of the Meeting is not a prominent place, a site map of the venue should be enclosed with the Notice.

The Notice should prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy to attend and vote instead of himself and that, except in the case of a private company and a company not having a share capital where the Articles may provide otherwise, a Proxy need not be a Member.

1.2.3 The Notice should clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item should be in the form of a Resolution and should be accompanied by an explanatory statement which should set out all such facts as would enable a Member to take an informed decision on the matter. In respect of items of Ordinary Business, Resolutions are not required to be specified in the Notice except where the appointment of Auditors has to be made by a Special Resolution, or where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.

All Resolutions and the explanatory statement should be framed in simple and intelligible language so as to enable Members to understand the meaning, scope and implications of the proposed items of business.

The nature of the concern or interest, if any, of Directors in any item of business or in a proposed Resolution should be disclosed in the explanatory statement, along with the extent of such concern or interest where the item relates to transactions with any other company.

Where reference is made to any document, contract, agreement or the Memorandum of Association and Articles, the relevant explanatory statement should state that such documents are available for inspection and such documents should be so made available for inspection for not less than two hours during business hours at the Registered Office of the company and copies thereof should also be made available at the head/corporate office of the company, if such office is situated elsewhere, and also at the Meeting.

In all cases relating to the appointment or re-appointment of Directors, details of each such Director should be given, including age, qualifications, experience, date of first appointment on the Board, shareholding in the company, relationship with other Directors of the company, other Directorships, membership/Chairmanship of Committees of other Boards and the number of Meetings of the Board attended during the year.

In the case of appointment/re-appointment or varying of the terms of remuneration of managerial personnel of the company, their personal resume, terms and conditions of appointment/re-appointment including full details of remuneration sought to be paid and the remuneration last drawn by such person should be stated in the explanatory statement.

1.2.4 Notice and accompanying documents should be sent at least twenty-five days in advance of the Meeting.

Where the Notice also is to be published in a newspaper, it should appear at least twenty-one days before the date of the Meeting and such Notice need not be accompanied by an explanatory statement.

1.2.5 Notice and accompanying documents may be given at a shorter period of time if consent in writing, in the prescribed form, is given thereto by, in the case of an Annual General Meeting, all the Members entitled to vote at the Meeting and, in the case of any other Meeting, Members holding ninety-five percent of the paid-up share capital carrying voting right or, where the company has no share capital, ninety-five percent of the total voting power.

Consent for shorter Notice may be given before or at the Meeting.

1.2.6 In the case of listed companies with more than 5,000 Members, an abridged version of the Notice, listing the items of business and the day, date, time and venue of the Meeting, should be published in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.

1.2.7 No business should be transacted at a Meeting if Notice in accordance with this Standard has not been given.

1.2.8 No items of business other than those specified in the Notice should be taken up for consideration at the Meeting.

No Resolution shall be valid if it is passed in respect of an item of business not contained in the Notice convening the Meeting.

Where Special Notice is required of any Resolution and Notice of the intention to move such Resolution is received by the company at least fourteen days before the Meeting, such item of business should be placed for consideration at the Meeting after giving Notice of the Resolution to Members in the manner specified.

Any amendment to the Notice, including the addition of any item of business, can be issued provided the notice of amendment is sent to all persons entitled to receive the Notice of the Meeting and is sent within the time limit prescribed for giving of the original Notice.

1.2.9 The Notice should be accompanied by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and depositing the Proxy form.

1.2.10 A Meeting convened upon due Notice should not be postponed or cancelled.

If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may defer the Meeting. The Meeting should be reconvened after giving not less than seven days fresh Notice published in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.

2. Frequency of Meetings

2.1 Statutory Meeting

Every public company having a share capital and every public company limited by guarantee and having a share capital should, after one month but not later than six months from the date on which it is entitled to commence business, hold a Meeting called the Statutory Meeting.

2.2 Annual General Meeting

Every company should, in each year, hold a Meeting called the Annual General Meeting.

Every company should hold its first Annual General Meeting within eighteen months of the date of incorporation and thereafter in each year within six months of the close of the financial year, with an interval of not more than fifteen months between two successive Meetings. The aforesaid period of six months or interval of fifteen months may be extended by a period not exceeding three months with the prior approval of the Registrar of Companies.

2.3 Extra-Ordinary General Meeting

Items of business of an urgent nature which need to be transacted before the next Annual General Meeting should be considered at an Extra-Ordinary General Meeting.

3. Quorum

Quorum should be present throughout the Meeting.

A minimum of five Members personally present and entitled to vote, in the case of a public company, and two Members personally present and entitled to vote, in the case of a private company, shall be the Quorum for a General Meeting. Where the requirements for Quorum as prescribed in the Articles are more stringent, the Quorum should conform to such requirements.

A Meeting must be constituted of at least two individuals present in person. The Quorum requirement of five Members in the case of a public company will be fulfilled where a person acting as an authorized representative of five bodies corporate is present in the Meeting along with another Member personally present. However, if there is no such other Member personally present, the Quorum requirement will not be fulfilled.

Since Members need to be personally present at a Meeting to constitute the Quorum, Proxies are to be excluded for determining the Quorum. However, a duly authorized representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.

4. Presence of Directors and Auditors

4.1 Directors

4.1.1 The Directors of the company should attend all Meetings of the company, particularly the Annual General Meeting, and should be seated with the Chairman.

If any Director is unable to attend the Meeting for reasons beyond his control, the Chairman should explain such absence at the Meeting.

4.1.2 The Chairman of the Audit Committee, where such a Committee exists, should attend the Annual General Meeting.

4.2 Auditors

While the Auditors of the company are entitled to attend the Annual General Meeting, the Auditors, represented by the proprietor or a partner, as the case may be, should attend the Meeting if there are any reservations, qualifications or adverse remarks in the Auditor's Report.

4.3 Practising Company Secretary

The Practising Company Secretary who has given the Compliance Certificate should attend the Annual General Meeting.

5. Chairman

5.1 Appointment

5.1.1 Where the Articles so provide, the Chairman of the Board should take the chair and conduct the Meeting. If there is no Chairman or if he is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unable to act as Chairman of the Meeting, the Directors present should elect one of themselves to be the Chairman of the Meeting. If the Directors are unable to do so or if no Director is willing to take the chair, the Members present shall elect one of themselves to be the Chairman of the Meeting.

5.1.2 In the absence of any express provision contained in the Articles, the Members personally present at the Meeting shall elect one of themselves to be the Chairman of the Meeting.

The Chairman should ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairman should then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the Notice is transacted.

5.2 The Chairman should explain the objective and implications of each Resolution before the Resolution is put to vote.

5.3 The Chairman should provide a fair opportunity to Members who are entitled to vote to raise questions and/or offer comments and ensure that these are answered.

5.4 The Chairman should not propose any Resolution in which he is deemed to be concerned or interested nor should he participate in the discussion or vote on any such Resolution.

If the Chairman is interested in any item of business, he should entrust the conduct of the proceedings in respect of such item to the Vice-Chairman, if there is one, or to any dis-interested Director or to a Member and resume the Chair after that item of business has been transacted. A person who so takes the Chair can exercise his casting vote in the event that a vote on such item of business results in a tie.

6. Voting

6.1 Proposing a Resolution

6.1.1 Every Resolution should be proposed by a Member and seconded by another Member entitled to vote thereon.

Every Member holding equity shares and, in certain events as specified in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.

6.1.2 A Director should not propose any Resolution in which he is deemed to be concerned or interested nor should he participate in the discussion or vote on any such Resolution.

6.2 On Show of Hands

Every Resolution should, in the first instance, be put to vote on a show of hands.

Every Member entitled to vote on a Resolution and present in person shall, on a show of hands, have only one vote irrespective of the number of shares held by him. Unless the Articles otherwise provide, a Proxy cannot vote on a show of hands.

6.3 By Poll

A Member present in person or by Proxy shall, on a poll, have votes in proportion to his share of the paid up equity capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.

While a Proxy cannot speak at the Meeting, he has the right to demand or join in the demand for a poll.

6.4 Casting Vote

If the Articles so provide, the Chairman shall have a casting vote.

7. Proxies

7.1 Notice of Right to Appoint

Every Notice calling a Meeting of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, should prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy to attend and vote instead of himself and that, unless the Articles provide otherwise, a Proxy need not be a Member.

7.2 Form of Proxy

7.2.1 An instrument appointing a Proxy should be either in the Form specified in the Articles or in any of the Forms set out in the Act.

If the Articles do not provide a form for 'two way voting' as per the format set out in *Annexure 'A'*, the Articles should be amended so as to provide accordingly.

7.2.2 An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.

7.3 Stamping of Proxies

An instrument of Proxy is valid only if it is properly stamped. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid.

7.4 Execution of Proxies

7.4.1 In addition to the Member appointing a Proxy, the Proxy-holder also should sign the instrument of Proxy.

7.4.2 An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a company, may appoint a Proxy under his signature.

7.5 Proxies in Blank and Incomplete Proxies

7.5.1 A proxy form which does not state the name of the Proxy should not be considered valid.

7.5.2 If an undated Proxy, which is otherwise complete in all respects, is lodged within the prescribed time limit, it should be considered valid.

If a company receives multiple Proxies for the same holdings of a Member, which are either not dated or bear the same date without specific mention of time, all such multiple Proxies should be treated as invalid.

7.6 Deposit of Proxies

7.6.1 Proxies should either be deposited with the company in person or received through post not later than forty-eight hours before the commencement of the Meeting at which they are to be used and a Proxy should be accepted even on a holiday if the last date by which it could be accepted is a holiday.

Proxies may be accepted at a shorter period, being not less than twenty-four hours before the commencement of the Meeting, if the Articles so provide.

7.6.2 A Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjournment of such Meeting, not later than forty-eight hours before the time of such adjourned Meeting.

7.7 Revocation of Proxies

7.7.1 If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.

7.7.2 A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.

7.7.3 A Proxy is valid until written notice of revocation has been received by the company before the commencement of the Meeting or adjourned Meeting, as the case may be.

A Proxy need not be informed of the revocation of the Proxy issued by the Member. Even an undated letter of revocation of Proxy should be accepted. Unless the Articles provide otherwise, a notice of revocation should be signed by the same person who had signed the Proxy.

7.8 Inspection of Proxies

7.8.1 Requisitions, if any, for inspection of Proxies should be received in writing from a Member at least three days before the commencement of the Meeting.

7.8.2 Proxies should be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.

7.8.3 A fresh requisition, conforming to the above requirements, should be given for inspection of Proxies in case the original Meeting is adjourned.

7.9 Record of Proxies

7.9.1 All Proxies received by the company should be recorded chronologically in a register kept for that purpose.

7.9.2 In case any Proxy entered in the register is rejected, the reasons therefor should be entered in the remarks column.

8. Conduct of Poll

8.1 When a poll is demanded on any Resolution, the Chairman should get the validity of the demand verified and should order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.

8.2 In the case of a poll which is not taken forthwith, the Chairman should announce at the Meeting the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairman should also announce that any Member who so desires may be present at the time of counting of votes.

A Member who did not attend the Meeting can participate and vote in the poll.

8.3 Each Resolution on which a poll is demanded should be put to vote separately.

One ballot paper may be used for two or more items for which poll has been ordered.

8.4 The Chairman should appoint two scrutineers to ensure that the scrutiny of the votes cast on a poll is done fairly,

accurately and properly. At least one of the two scrutineers should be a Member who is present at the Meeting and is not an officer or employee of the company.

Based on the scrutineers' report, the Chairman should declare the result of the poll, with details of the number of votes cast for and against the Resolution and the final result as to whether the Resolution has been carried or not.

8.5 The result of the poll should be displayed on the notice board of the company at its Registered Office and its Corporate/Head Office, if such office is situated elsewhere, and also placed on the website, if any, of the company. In the case of listed companies with more than 5,000 Members, the result of the poll should also be published in a leading newspaper circulating in the neighbourhood of the Registered Office of the company.

9. Withdrawal of Resolutions

Resolutions for items of business which are likely to affect the market price of the securities of the company should not be withdrawn.

10. Rescinding of Resolutions

A Resolution passed at a Meeting should not be rescinded other than by a Resolution passed at a subsequent Meeting.

11. Modifications to Resolutions

Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the amended Resolution should be duly proposed, seconded and put to vote.

No amendment to any proposed Resolution should be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical and clerical errors may be corrected or words translated into more formal language and, if the precise text of the Resolution was not included in the Notice, it may be corrected into a formal Resolution, provided there is no departure from the substance as stated in the Notice.

12. Reading of Report/Certificate

12.1 The entire Auditor's Report including the Statement pursuant to the Manufacturing and Other Companies Auditor's Report Order should be read at the Annual General Meeting.

12.2 The Compliance Certificate given by the Practising Company Secretary and attached to the Directors' Report should be read at the Annual General Meeting.

13. Distribution of Gifts

No gifts, gift coupons, or cash in lieu of gifts should be distributed to Members at or in connection with the Meeting.

14. Adjournment of Meetings

14.1 A duly convened Meeting should not be adjourned arbitrarily by the Chairman. The Chairman may adjourn a Meeting with the consent of the Members and shall adjourn a Meeting if so decided by the Members.

Meetings may be adjourned for want of requisite Quorum. The Chairman may adjourn a Meeting in the event of disorder or other like causes, where it becomes impossible to conduct the Meeting and complete its business.

14.2 If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting should be given in accordance with the provisions contained hereinabove relating to Notice.

14.3 If a Meeting is adjourned for a period of less than thirty days, in the case of listed companies with more than 5,000 Members, Notice thereof specifying the day, date, time and venue of the Meeting should be published immediately in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.

14.4 If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting should be held on the same day, in the next week at the same time and place or on such other day and at such other time and place as may be determined by the Board. In the case of listed companies with more than 5,000 Members, Notice thereof, specifying the day, date, time and venue of the Meeting, should be

published immediately in a newspaper having a wide circulation within such States of India where more than 1,000 Members reside.

If, at an adjourned Meeting, a Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

14.5 If, within half an hour from the time appointed for holding a requisitioned Meeting, a Quorum is not present, the Meeting shall stand dissolved.

14.6 At an adjourned Meeting, only the unfinished business of the original Meeting should be considered.

Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

15. Minutes

15.1 Minutes should contain a summary of the proceedings of the Meeting, recorded fairly, correctly, completely and in unambiguous terms, and should be written in third person and past tense.

15.2 The Minutes should be entered and signed within thirty days from the conclusion of the Meeting.

In case a Meeting is adjourned, Minutes should be entered in respect of the original Meeting as well as the adjourned Meeting within thirty days from the dates of the respective Meetings.

The pages of the Minutes Book should be consecutively numbered. The Minutes should be dated and signed by the Chairman of the Meeting within a period of thirty days or, in the event of death or inability of the Chairman within that period, by a Director who was present in the Meeting and authorized by the Board for the purpose.

15.3 The Chairman should initial each page of the Minutes, sign the last page of the Minutes and append to such signature the date on which he has signed the Minutes.

15.4 Minutes, once entered in the Minutes Book, should not be altered. However, minor errors may be corrected and initialled by the Chairman even after the Minutes have been signed.

15.5 Minutes should not be pasted or attached to the Minutes Book.

15.6 Minutes, if maintained in loose-leaf form, should be bound at reasonable intervals.

16. Recording in the Minutes

16.1 The name of the Chairman of the Meeting and the names of Directors including the Chairman of the Audit Committee, if any, present at the Meeting should be recorded.

16.2 The number of Members required to form the Quorum and the fact that the required Quorum was present should be recorded.

16.3 The number of Members present in person and through representatives and Proxies should be recorded.

16.4 The presence, at the Annual General Meeting, of the Auditor and the Practising Company Secretary who has given the Compliance Certificate, should be recorded.

16.5 If the Chairman was interested in an item of business at the Meeting, the fact that he vacated the Chair and requested the Vice-Chairman, if any, or some other Director or Member to Chair the Meeting to transact such business, should be recorded.

17. Preservation of Minutes and other Records

17.1 Minutes Book to record Minutes of Meetings should be kept separately from those books used to record Minutes of any other meetings and should be kept at the Registered Office of the company.

17.2 The Minutes of all Meetings should be preserved permanently.

Minutes can be inspected by any Member. The Auditor or Cost Auditor of the company or Practising Company Secretary appointed by the company can also inspect the Minutes Book in the course of audit or certification.

17.3 Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, the Minutes of all Meetings of the transferor company should be preserved permanently by the transferee

company, notwithstanding the fact that the identity of the transferor company may not survive such arrangement.

17.4 Office copies of Notices and supporting papers relating to the Notice should be preserved in good order for as long as they remain current or for ten years, whichever is later, and may be destroyed thereafter, on the authority of the Board.

18. Disclosure

The Annual Report of a company should disclose particulars of all Meetings held during the last three years.

EFFECTIVE DATE

This Standard shall come into effect from 1st May 2002.

Annexure 'A"

FORM OF PROXY

Name of the Company ____

Registered Office ____

____

I/We ____ of ________________________________ being a member of the above-named Company, hereby appoint the following as my/our Proxy to attend and vote {on a poll}* for me/us and on my/our behalf at the _____________ Annual General Meeting/General Meeting of the Company, to be held on _____________, ____________, ________ at _______ a.m./p.m. and at any adjournment thereof :

1. Mr./Ms.___________, ... (signature), or failing him -

2. Mr./Ms.___________, ... (signature), or failing him -

3. Mr./Ms.__________, ... (signature).

** I/We direct my/our Proxy to vote on the Resolutions in the manner as indicated below :

Resolutions	For	Against
Resolution No. 1 [To specify]		
Resolution No. 2 [To specify]		
Resolution No. 3 [To specify]		
Resolution No. 4 [To specify]		

Affix Revenue Stamp

Number of Shares held

Signed this _________ day of _________________ 2___.

Reference Folio No. / DP ID & Client ID Signature(s) of Member(s)

(1)..................

(2).................

(3).................

* Delete if the Articles give a proxy-holder the right to vote even on a show of hands.

Notes:

1. The Proxy, to be effective should be deposited at the Registered Office of the Company not less than FORTY-EIGHT HOURS before the commencement of the Meeting.
2. A Proxy need not be a member of the Company.
3. In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the vote of the other joint holders. Seniority shall be determined by the order in which the names stand in the Register of Members.
4. This form of proxy confers authority to demand or join in demanding a poll.
5. The submission by a member of this form of proxy will not preclude such member from attending in person and voting at the Meeting.
6. **This is optional. Please put a tick mark (☐) in the appropriate column against the Resolutions indicated in the Box. If a member leaves the 'For' or 'Against' column blank against any or all the Resolutions, the proxy will be entitled to vote in the manner he/she thinks appropriate. If a member wishes to abstain from voting on a particular Resolution, he/she should write "Abstain" across the boxes against the Resolution.
7. In case a member wishes his/her votes to be used differently, he/she should indicate the number of shares under the columns 'For' or 'Against' as appropriate.

SS – 3

SECRETARIAL STANDARD ON DIVIDEND

The Institute of
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
Phones: **41504444, 24617321** ● ***Fax***: **24626727** ● ***E-mail***: **info@icsi.edu**
● ***Website***: **www.icsi.edu**

MAY 2003

Published by :

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
'ICSI House', 22, Institutional Area, Lodi Road, New Delhi - 110 003
Phones : 51504444, 24617321-24, 24644431-32 o *Fax* : 24626727
Email : info@icsi.edu o Website : www.icsi.edu

CONTENTS

PREFACE TO THE SECRETARIAL STANDARDS

Secretarial Standards Board and its Objectives

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are :

(i) Formulating Secretarial Standards;

(ii) Clarifying issues arising out of the Secretarial Standards;

(iii) Issuing Guidance Notes; and

(iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

Need for Secretarial Standards

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

Scope of Secretarial Standards

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

ICSI will endeavour to persuade the Government and appropriate authorities to enforce these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardisation of secretarial practices.

Procedure for issuing Secretarial Standards

The following procedure shall be adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, shall determine the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.

2. In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.

3. The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.

4. The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Department of Company Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.

   A meeting of SSB with the representatives of such bodies / organisations may then be held, if considered necessary, to examine and deliberate on their suggestions.

5. On the basis of the preliminary draft and the discussion with the bodies / organisations referred to in 4 above, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI, and also put on the Website of ICSI to elicit comments from members and the public at large.

6. The draft of the proposed Secretarial Standard will generally include the following basic points:

   (a) Concepts and fundamental principles relating to the subject of the Standard;

   (b) Definitions and explanations of terms used in the Standard;

   (c) Objectives of issuing the Standard;

   (d) Disclosure requirements; and

   (e) Date from which the Standard will be effective.

7. After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.
8. The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

Compliance with Secretarial Standards

In the initial years, the Secretarial Standards will be recommendatory. The Institute will request the Government and other appropriate authorities to enforce these Standards and will endeavour to educate the users about the utility and need for compliance with these Standards. The Standards would be made mandatory thereafter.

SECRETARIAL STANDARD
ON
DIVIDEND

The following is the text of the Secretarial Standard-3 (SS-3), issued by the Council of the Institute of Company Secretaries of India on "Dividend".

In the initial period, adherence by a company to this Secretarial Standard will be recommendatory.

In this Secretarial Standard, the Standard portions have been set in **bold** type. These should be read in the context of the background material, which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards'.

INTRODUCTION

This Standard seeks to prescribe a set of principles in relation to the declaration and payment of Dividend and matters incidental thereto or connected therewith.

Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest. For the purposes of this Standard, capitalization of profits in the form of bonus shares is not Dividend.

In commercial usage, the term "Dividend" refers to the share of the profits of a company that is distributed amongst the Members of the company.

The term "Dividend" has been inclusively defined in the Companies Act, 1956, ("the Act") to the effect that it includes Interim Dividend. The Act neither specifically defines the term Dividend nor makes any distinction between interim and final Dividend.

SCOPE

The principles enunciated in this Standard for Dividend relate to Dividend under the Act and are governed by the provisions of Sections 205, 205A, 205B, 205C, 206, 206A, 207 of the Act and also by the Companies (Transfer of Profits to Reserves) Rules, 1975, the Companies (Declaration of Dividend out of Reserves) Rules, 1975 and the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. The provisions of Section 27 of the Securities Contracts (Regulation) Act, 1956 are also applicable as are, in the case of listed companies, the requirements of the Listing Agreement. Any specific provision relating to Dividend in the Income Tax Act, 1961, and any other statute would, in addition, be applicable as set out in that statute/legislation.

The principles set out herein relate to both equity as well as preference share capital in accordance with the provisions of Sections 85 and 86 of the Act. While the principles generally relate to final Dividend, certain principles also apply to Interim Dividend declared by the Board of Directors, as stated hereinafter. Further, the principles set out herein are in respect of Dividend as it relates to a going concern. This Standard does not deal with Dividend of companies under liquidation, for which reference has been made in the Guidance Note on the subject.

DEFINITIONS

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

"Act" means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Articles" means the Articles of Association of a company, as originally framed or as altered from time to time, including, where they apply, the Regulations contained in the Tables in Schedule I to the Act.

"Board" or *"Board of Directors"* means the Board of Directors of a company.

"Dividend" means a distribution of any sums to Members out of profits or reserves available for the purpose and, in the context of this Standard, refers to Dividend recommended by the Board and declared by Members, i.e. 'final' Dividend.

"Free Reserves" means reserves the utilisation of which is not restricted in any manner.

"Interim Dividend" means the Dividend declared in a Meeting of the Board of Directors.

"Member" means any person who agrees, either by subscribing to the Memorandum of Association of the company or by applying in writing, to become a Member of the company and whose name is entered either in the Register of Members of the company or in the records of the depository as a beneficial owner in respect of the shares of the company held by him.

"Preference Shareholder" means a holder of such shares as carry a preferential right, in respect of Dividend, to a fixed amount or an amount at a fixed rate and, in respect of capital, to repayment of capital.

"Shareholder" means a Member as defined above and, where the context requires or admits, includes Preference Shareholder.

Words and expressions used but not defined herein shall have the meaning respectively assigned to them under the Act.

References herein to Sections and Regulations relate, respectively, to Sections of the Act and Regulations of Table A of the Act, unless otherwise stated.

SECRETARIAL STANDARDS

1. Ascertainment of amount available for payment/distribution as Dividend.

1.1 Out of profits

1.1.1 Dividend should be paid out of the profit of the company for the financial year or out of profit(s) for the previous financial year(s) which have not been transferred to reserves, or out of both, only after providing for depreciation for the year and arrears of depreciation, if any.

Dividend, being a portion of the profits of the company, is distributable amongst the Members of the company in accordance with the provisions of the Act. The Act requires a company to prepare a profit and loss account which should give a true and fair view of the profit or loss of the company for a financial year. The Act does not define the word 'profit' or the expression 'true and fair'. These words and expressions should therefore be understood in their natural and proper sense. This would imply that the profit and loss account should be prepared and presented in conformity with the requirements set out in the Act and the generally accepted principles of accounting, which should be consistently applied.

In order to arrive at a true and fair view and to ascertain such profit, depreciation should be calculated in accordance with the provisions of the Act. While the Act specifies the minimum rates of depreciation, companies may provide higher depreciation based on a technological evaluation of the life of the asset on which depreciation is to be provided.

Dividend may, however, be paid without providing for depreciation for the current year or previous year(s) with the prior permission of the Central Government.

1.1.2 Before declaring Dividend out of profit for the year, any loss for the previous year(s) or the amount of depreciation for the previous year(s),

whichever is less, should be set off against such profit.

The Act provides that in case a company has incurred loss in any previous financial year or years, the amount of loss or an amount which is equal to the amount provided for depreciation for that previous financial year or those previous financial years, whichever is less, shall be set off against the profit of the company for the year for which Dividend is proposed to be declared or paid. In either case, such profit is to be arrived at after providing for depreciation in accordance with the provisions contained in the Act.

1.1.3 Dividend should not be declared out of the Securities Premium Account or the Capital Redemption Reserve Account or Revaluation Reserve or Amalgamation Reserve or out of profit on re-issue of forfeited shares or out of profit earned prior to the incorporation of the company.

Dividend should be declared only out of profits, Free Reserves or out of moneys provided by the Central Government or State Government for this purpose in pursuance of a guarantee given by such Government. The Act does not permit payment of Dividend out of the Securities Premium Account. Revaluation Reserve and Amalgamation Reserve are not profits of the business nor are they created out of such profits, and hence cannot be applied in the payment of Dividend. Profit prior to incorporation is in the nature of capital reserve and hence is not available for distribution.

1.1.4 No Dividend should be declared unless the prescribed percentage of profit is transferred to reserves in accordance with the Companies (Transfer of Profits to Reserves) Rules, 1975.

In case Dividend is paid out of the opening balance in the profit and loss account, the company should make the prescribed transfer to reserves as if the Companies (Transfer of Profits to Reserves) Rules, 1975 are applicable. However, the company would not, in such a case, be required to comply with the Companies (Declaration of Dividend out of Reserves) Rules, 1975.

The Companies (Transfer of Profits to Reserves) Rules, 1975 only apply to equity Dividend and to that portion of Dividend relating to participating preference shares which is in excess of the fixed rate of preference Dividend.

The Companies (Transfer of Profits to Reserves) Rules, 1975 are given at *Annexure 'A'.*

1.1.5 Interim Dividend, if declared, is payable out of estimated profit for the period for which Interim Dividend is to be declared, after taking into account depreciation for the full year and arrears of depreciation, Dividend at the contracted rate on preference shares, if any, appropriations and transfers to statutory reserves, taxation, and the provisions of the Companies (Transfer of Profits to Reserves) Rules, 1975.

Interim Dividend may be declared after the Board has considered the interim financial statements for the period for which Interim Dividend is to be declared and is satisfied that the financial position of the company justifies and can support such declaration. The interim financial statements so prepared should take into account depreciation for the full year, taxation including deferred tax and other anticipated losses for the year. The interim financial statements should also take into account the Dividend that would have to be paid at the contracted rate on preference shares.

The Board should also take into account the specified percentage required to be transferred to reserves before declaration of Interim Dividend. Such transfer should be effected while preparing final accounts for the year.

1.1.6 Where a company has issued equity shares with differential rights as to Dividend, Interim Dividend may, at the option of the Board, be declared on all or any one or more of the classes of such shares in accordance with the terms of issue.

In case Interim Dividend is declared on only one class of equity shares, the Directors should ensure that the profit as shown in the interim financial statements is adequate to meet the Dividend that would have to be paid on the other classes of equity shares apart from the depreciation for the full year and arrears of depreciation, taxation including deferred tax, transfer to reserves, Dividend on preference shares issued, if any, and other anticipated losses for the year.

Where a company has issued equity shares with differential rights as to voting, no differentiation should be made in the declaration of Interim Dividend on equity shares.

Standards 1.1.1, 1.1.2 and 1.1.3 shall also apply to Interim Dividend.

1.2 Out of Reserves

1.2.1 In a year in which the profits are inadequate or there are no profits, the company may declare and pay Dividend out of Free Reserves after making provision for depreciation and subject to the provisions of the Companies (Declaration of Dividend out of Reserves) Rules, 1975.

The Companies (Declaration of Dividend out of Reserves) Rules, 1975, specify the maximum amount which can be paid out of Free Reserves as Dividend on equity shares. The Act provides that if a company intends to declare a Dividend which is not in accordance with the aforesaid Rules, the company should seek prior approval of the Central Government.

The maximum rate of Dividend that may be declared from reserves in terms of the Companies (Declaration of Dividend out of Reserves) Rules, 1975, is ten per cent of paid-up capital while the Companies (Transfer of Profits to Reserves) Rules, 1975 become applicable only in respect of declaration of Dividend at a rate exceeding ten per cent. Hence, any company, which draws from its reserves to pay Dividend, will not be required to make any appropriation to reserves in terms of the Companies (Transfer of Profits to Reserves) Rules, 1975 since the Dividend declared by it from reserves cannot exceed ten per cent.

The Companies (Declaration of Dividend out of Reserves) Rules, 1975 are given at *Annexure 'B'*.

1.2.2 Interim Dividend should not be declared out of reserves.

While final Dividend may be paid out of Free Reserves, no Interim Dividend should be paid, in the event of a loss or inadequacy of profits, by transfers out of any reserves.

2. Declaration of Dividend

2.1 Dividend should be declared only on the recommendation of the Board, made at a meeting of the Board.

The recommendation for declaration of Dividend should not be made by a Committee of the Board nor by way of a Resolution passed by circulation.

Unless the Dividend has been recommended by the Board, Members in General Meeting cannot on their own declare any Dividend.

Where a company has an Audit Committee, this Committee should consider the financial statements before submission to the Board. Dividend should be recommended by the Board after consideration and approval of the financial statements. All requisite approvals should be obtained before declaration of Dividend. Dividend should not be declared subject to any condition such as the approval of financial institutions/banks or foreign collaborators or compliance with any other contractual obligation.

2.2 Dividend should be declared only at an Annual General Meeting.

Dividend should relate to a financial year and should be declared by the Members at the Annual General Meeting of the company after consideration of the balance sheet and profit and loss account. Members may declare a lower rate of Dividend than what is recommended by the Board but have no power to increase the amount or rate of Dividend recommended by the Board.

2.3 No Dividend should be declared on equity shares for previous years in respect of which annual accounts have

already been adopted at the respective Annual General Meetings.

Arrears of preference Dividend on cumulative preference shares for previous years may, however, be declared and paid.

2.4 Interim Dividend should be declared by the Board, at a meeting of the Board.

Declaration of Interim Dividend should not be made by a Committee of the Board nor by way of a Resolution passed by Circulation.

While final Dividend is recommended by the Board and declared by Members, approval of Members is not required for declaration of Interim Dividend. Where a company has an Audit Committee, this Committee should consider the interim financial statements which should then be submitted to the Board for consideration and declaration of Interim Dividend.

2.5 If redeemable preference shares have not been redeemed on the due date, no Dividend should be declared on equity shares until such preference shares are redeemed.

While the Act now does not permit the issue of irredeemable preference shares, where a company had issued redeemable preference shares but has failed to redeem them on the due date, no Dividend should be declared on equity shares until such failure has been remedied.

Standard 2.5 shall also apply to Interim Dividend.

3. Entitlement to Dividend

3.1 Only the registered holders of shares are entitled to Dividend.

Dividend should be paid (i) in respect of shares held in electronic form, to those persons whose names appear as beneficial owners in the statement(s) furnished by the Depository(ies) as on the close of the market day prior to book closure or, in the case of Interim Dividend, on the record date; (ii) in respect of shares held in physical form, to those Shareholders whose names appear on the company's register of members after giving effect to all valid share transfers in physical form lodged with the company before the date of book closure or, in the case of Interim Dividend, on the record date; and (iii) in respect of share warrants, to the holders of such warrants.

3.2 Preference Shareholders should be paid Dividend before Dividend is paid to the equity Shareholders of the company.

Preference shares carry a preferential right as to Dividend in accordance with the terms of issue and the Articles. However, this right is subject to the availability of distributable profits.

If there are two or more classes of preference shares, the holders of the class which has priority are entitled to their preference Dividend before any Dividend is paid in respect of the other class, if the terms of issue so provide. If the terms of issue are silent, Dividend should be distributed on pro-rata basis.

In the case of Interim Dividend, while Preference Shareholders need not necessarily be paid Dividend before Interim Dividend is paid to equity shareholders, the Board should set aside such sum as would be necessary to pay Dividend to Preference Shareholders at the contracted rate.

3.3 Arrears of Dividend on cumulative preference shares should be paid before payment of any Dividend on equity shares.

Preference shares may be cumulative or non-cumulative. Dividend in arrears on cumulative preference shares can be paid in a later year where there are profits to justify such payment. In the case of non-cumulative preference shares, if no Dividend can be paid in a year, there is no right to receive it in future years.

After paying the preference Dividend and any arrears of Dividend on cumulative preference shares, residual profit may be utilized for payment of Dividend to equity Shareholders. However, where participating preference shares have been issued, the holders thereof also have the right to participate in such residual profit.

3.4 Dividend on equity shares should be paid in accordance with the rights of the respective classes, if any, of such shares.

Where a company issues equity shares with differential rights as to Dividend, the terms of issue of such shares will govern the rights of each such class of holders as to receipt of Dividend.

Standards 3.1, 3.3 and 3.4 shall also apply to Interim Dividend.

4. Dividend in Abeyance

4.1 The amount of Dividend in respect of shares for which an instrument of transfer has been tendered to the company but which have not been registered for any valid reason should be transferred to Unpaid Dividend Account.

If a Member authorizes the company in writing to pay the Dividend to the transferee specified in the instrument of transfer, the company should act upon such authorization. However, in the case of shares which have not been transferred because the ownership thereof is in dispute, or where attachment/prohibitory orders have been passed by a court or statutory authority, Dividend should be held in abeyance by transferring to the Unpaid Dividend Account.

Standard 4.1 shall also apply Interim Dividend.

5. Payment of Dividend

5.1 Dividend should be paid within thirty days of declaration.

The amount of Dividend after deducting tax at source, if applicable, should be deposited in a separate bank account within five days from the date of declaration of Dividend.

Dividend should be paid out of such bank account within thirty days of declaration.

5.2 Dividend should be paid in cash, not in kind.

Dividend payable in cash may be paid by cheque or warrant or demand draft or pay order or may be credited to the bank account of the Member in terms of a mandate given by the Member.

The cheque or warrant or demand draft or pay order should be sent to the registered address of the Member and, in the case of joint holders, to the registered address of the person named first in the register of members or to such person or to such address as the Member or the joint holders have directed, in writing.

5.3 Initial validity of the Dividend warrant should be for three months.

A cheque or warrant for payment of Dividend should be valid for three months from the date thereof and, where such cheque or warrant remains unpaid after this initial period of validity, it should be revalidated for not more than three months or a fresh instrument should be issued which should have a validity of three months.

The company should revalidate the Dividend warrant or issue a fresh Dividend warrant or a demand draft or pay order in lieu thereof, within fifteen days of the receipt of a request for revalidation.

Particulars of every revalidated Dividend warrant should be entered in a Register of Revalidated Dividend Warrants indicating the name of the person to whom the Dividend warrant is issued, the number and amount of the Dividend warrant and the date of revalidation.

5.4 A duplicate Dividend warrant should be issued only after the expiry of the validity of the Dividend warrant and the reconciliation of the paid amounts thereof. In case the original instrument is not tendered to the company, a duplicate warrant should be issued only after obtaining requisite indemnity/ declaration from the Shareholder.

In the case of defaced, torn or decrepit Dividend warrants, a duplicate warrant may be issued before the expiry of the validity period of the Dividend warrant on surrender to the company of such defaced, torn or decrepit warrant.

Particulars of every Dividend warrant issued as aforesaid should be entered in a Register of Duplicate Dividend Warrants, indicating the name of the person to whom the Dividend warrant is issued, the number and amount of the Dividend warrant in lieu of which the duplicate warrant is issued and the date of issue of such duplicate warrant.

5.5 The Dividend warrant must be accompanied by a statement in writing showing the amount of Dividend paid and the amount of tax deducted at source, if any.

Where a tax on distribution of Dividend is not levied on the company but income tax is required to be deducted at source from Dividend payable to Members, a tax deduction certificate, in the prescribed form, should be issued to the Members to whom Dividend has been paid after deduction of income tax at source at the applicable rates.

Even where payment of Dividend is made by electronic mode directly to the credit of the bank account of the Member, the company should send to the Member a statement in writing showing the amount of Dividend paid and the amount of tax deducted at source, if any.

5.6 Dividend should be paid proportionately on the paid-up value of shares.

Unless the Articles provide otherwise, Dividend should be paid in proportion to the amount paid-up on the shares and for the portion of the period of the financial year in respect of which it is paid. If any shares are issued on terms providing that they shall rank for Dividend as from a particular date, Dividend on such shares should be paid accordingly.

5.7 Calls in arrears and any other sum due from a Member may be adjusted against Dividend payable to the Member.

In the case of listed companies, calls in arrears or any other sum due from a Member in the capacity of a Member may be adjusted against the Dividend payable to him after giving such notice, as may be required. In the case of other companies, unless the Articles provide otherwise, any other sums due from a Member, in a capacity other than as a Member, may also be adjusted against the Dividend payable to him.

Standards 5.1 to 5.7 shall also apply to Interim Dividend.

6. Unpaid Dividend

6.1 The amount of Dividend which remains unpaid or unclaimed after thirty days from the date of declaration should be transferred to a special Dividend account, to be called 'Unpaid Dividend Account' of the company, within seven days from the date of expiry of the thirty days period provided for payment of Dividend.

The company should maintain the details of unpaid or unclaimed Dividend and reconcile the amounts thereof with the concerned bankers, periodically.

6.2 Any amount in the Unpaid Dividend Account of the company which remains unclaimed and unpaid for a period of seven years from the date of transfer of such

amount to the Unpaid Dividend Account should be transferred to the Investor Education and Protection Fund.

Any transfer to the Investor Education and Protection Fund should be made within thirty days of the expiry of seven years from the date of transfer to the Unpaid/Unclaimed Dividend Account.

6.3 Before transferring any amount to the Investor Education and Protection Fund, the company should give individual intimation to the Members in respect of whose unclaimed Dividend the amount is being transferred, at least six months before the due date of such transfer.

After the expiry of the period of seven years from the date from which unclaimed and unpaid Dividends were transferred to the Unpaid Dividend Account, no claims shall lie against the Fund or the company in respect of any such amounts. Hence, the company should intimate the concerned Members individually of the amount of Dividend remaining unclaimed which is liable to be transferred to the Investor Education and Protection Fund and advising the Member to claim such amount of Dividend from the company before such transfer.

6.4 Any interest earned on the Unpaid Dividend Account should be transferred to the Investor Education and Protection Fund.

If the Unpaid Dividend Account is kept as a fixed deposit or in any account on which interest is earned, the interest earned should be transferred to the Investor Education and Protection Fund.

Standards 6.1 to 6.4 shall also apply to Interim Dividend.

7. Revocation of Dividend

7.1 Dividend, once declared, becomes a debt and should not be revoked.

Standard 7.1 shall also apply to Interim Dividend.

8. Preservation of Dividend Warrants and Dividend Registers

8.1 Dividend warrants returned by the Bank, after payment thereof, and the Dividend Registers should be preserved for a period of eight years.

Where the company has given an undertaking to the Bank for preservation or safe keeping of paid Dividend warrants for a specified period, the warrants should be preserved for such period or eight years from the date of the warrant, whichever is longer.

Standard 8. 1 shall also apply to Interim Dividend.

9. Disclosure

9.1 The Balance Sheet of the company should disclose under the head 'current liabilities and provisions', the amount lying in the Unpaid Dividend Account together with interest accrued thereon, if any.

9.2 The Annual Report of the company should disclose the total amount lying in the Unpaid Dividend Account of the company in respect of the last seven years. The amount of Dividend, if any, transferred by the company to the Investor Education and Protection Fund during the year should also be disclosed.

The amounts lying in the Unpaid Dividend Account and the amounts transferred to the Investor Education and Protection Fund should be disclosed in the Directors' Report.

9.3 The Annual Return of the company should mention that the amount of Dividend remaining unpaid or unclaimed for a period of seven years from the date such Dividend became payable by the company, together with interest accrued thereon, if any, has been credited to the Investor Education and Protection Fund.

Standards 9.1 to 9.3 shall also apply to Interim Dividend.

EFFECTIVE DATE

This Standard shall come into effect from 22nd May 2003.

Annexure 'A'

Companies (Transfer of Profits to Reserves) Rules, I975
[GSR 426(E), DATED 24-7-1975]

In exercise of the powers conferred by Sub-section (2A) of Section 205, read with clause (a) *of Sub-section (1) of Section 642, of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely :—*

Short title

1. These rules may be called the Companies (Transfer of Profits to Reserves) Rules, 1975

Percentage of profits to be transferred to reserves

2. No dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of Sub-section (2) of Section 205 of the Act, except after the transfer to the reserves of the company of a percentage of its profits for that year as specified below :

   (i) where the dividend proposed exceeds 10 per cent but not 12.5 per cent of the paid-up capital, the amount to be transferred to the reserves shall not be less than 2.5 per cent of the current profits;

   (ii) where the dividend proposed exceeds 12.5 per cent but does not exceed 15 per cent of the paid-up capital, the amount to be transferred to the reserves shall not to be less than 5 per cent of the current profits;

   (iii) where the dividend proposed exceeds 15 per cent but does not exceed 20 per cent of the paid-up capital the amount to be transferred to the reserves shall not be less than 7.5 per cent of the current profits; and

   (iv) where the dividend proposed exceeds 20 per cent of the paid-up capital, the amount to be transferred to reserves shall not be less than 10 per cent of the current profits.

Conditions governing voluntary transfer of a higher percentage

3. Nothing in rule 2 shall be deemed to prohibit the voluntary transfer by a company of a percentage higher than 10 per cent of its profits to its reserves for any financial year, so however, that :

   (i) Where a dividend is declared,—

(a) a minimum distribution sufficient for the maintenance of dividends to shareholders at a rate equal to the average of the rates at which dividends declared by it over the three years immediately preceding the financial year, or

(b) in a case where bonus shares have been issued in the financial year in which the dividend is declared or in the three years immediately preceding the financial year, a minimum distribution sufficient for the maintenance of dividends to shareholders at an amount equal to the average amount (quantum) of dividend declared over the three years immediately preceding the financial year

is ensured:

Provided that in a case where the net profits after tax are lower by 20 per cent or more than the average net profits after tax of the two financial years immediately preceding, it shall not be necessary to ensure such minimum distribution,

(ii) where no dividend is declared, the amount proposed to be transferred to its reserves from the current profits shall be lower than the average amount of the dividends to the shareholders declared by it over the three years immediately preceding the financial year.

Penalty

4. If company fails to comply with any of the provisions contained in these rules, the company and every officer of the company in default, shall be punishable with fine which may extend to five hundred rupees, and, where the contravention is a continuing one, with further fine which may extend to fifty rupees for every day, after the first, during which such contravention continues.

Annexure 'B'

Companies (Declaration of Dividend out of Reserves) Rules, 1975 [GSR 427(E), DATED 24-7-1975]

In exercise of the powers conferred by Sub-section (3) of Section 205A, read with clause (a) *of Sub-section (1) of Section 642, of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely :—*

Short title

1. These rules may be called the Companies (Declaration of Dividend out of Reserves) Rules, 1975.

Declaration of dividend out of reserves

2. In the event of inadequacy or absence of profits in any year, dividend may be declared by a company for that year out of the accumulated profits earned by it in previous years and transferred by it to the reserves, subject to the conditions that—

(i) the rate of the dividend declared shall not exceed the average of the rates at which dividend was declared by it in the five years immediately preceding that year or ten per cent of its paid-up capital, whichever is less;

(ii) the total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves shall not exceed an amount equal to one-tenth of the sum of its paid-up capital and free reserves and the amount so drawn shall first be utilized to set off the losses incurred in the financial year before any Dividend in respect of preference or equity shares is declared; and

(iii) the balance of reserves after such drawal shall not fall below fifteen per cent of its paid-up share capital.

Explanation : For the purposes of this rule, "profits earned by a company in previous years and transferred by it to the reserves" shall mean the total amount of net profits after tax, transferred to reserves as at the beginning of the year for which the dividend is to be declared; and in computing the said amount, the appropriations out of the amount transferred from the Development Rebate Reserve [at the expiry of the period specified under the Income-tax Act, 1961 (43 of 1961)] shall be included and all items of Capital Reserves including reserves created by revaluation of assets shall be excluded.