

**RESPONSES TO QUERIES RECEIVED ON  
SECRETARIAL STANDARDS ON BOARD MEETINGS (SS-1)**

**Scope/1. Is SS-1 applicable to banking entities which are listed on Stock exchanges?**

**Ans.** SS-1 is applicable to all companies incorporated under the Act (for definition of Act refer Q.2). If a banking company is incorporated under the Act then SS-1 is applicable to such company.

**Scope/2. Para of SS-1 the Scope states that “if due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail.”**

**Does the aforesaid Para mean that Secretarial Standards shall override subsequent amendments made in the Rules?**

**Ans.** The term “Act” has been defined in SS-1 to mean the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder. Hence, if due to subsequent change in the Rules, a particular Standard or any part thereof becomes inconsistent with the Act/Rules, the provisions of the Act/Rules shall prevail.

**Scope/3. Is SS-1 applicable to only statutory committees or also to those committees which are constituted by the company voluntarily? Further, is SS-1 applicable to Meetings of a Committee where Non-Directors are also members?**

**Ans.** “Committee” has been defined in SS-1 to mean a Committee of Directors constituted by the Board. SS-1 is thus applicable to Meetings of Committees fulfilling the following conditions:

- a) All the Members of the Committee are Directors and
- b) The Committee has been constituted by the Board.

Such committees may be constituted by the company statutorily or voluntarily.

In case there is any Committee in which a Non-Director such as CEO/Manager, is a member, SS-1 will not apply to such Committee.

**Scope/4. Will SS-1 be applicable for a Board meeting, the notice for which has been issued in the month of June, 2015?**

**Ans.** SS-1 shall apply only to those Board Meetings in respect of which Notices are issued on or after 1st July, 2015.

**1/1. Are Independent Directors empowered to summon a Meeting of the Board under Para 1.1.1 of SS-1?**

**Ans.** “Independent Director” is also a Director of the company. As such, he may also summon a Meeting of the Board, unless otherwise provided in the Articles.

**1/2. Can a Director send an oral requisition to the Company Secretary to convene a Board Meeting?**

**Ans.** A requisition by the Director to convene a Board Meeting should be in writing. However, if the requisition, so received, is not in writing, it should be put in writing by the Company Secretary and the same should be placed before the Chairman/Managing Director/Whole-time Director, as the case may be, with a copy to the Director concerned who requisitions the Meeting.

**1/3. Can the Company Secretary issue the notice of Board meeting if after consultation, the Chairman refuses to convene a meeting in terms of Para 1.1.1 of SS-1?**

**Ans.** On consultation by the Company Secretary, if the Chairman / Managing Director / Whole-time Director, as the case may be, refuses to convene the Meeting, the Articles of the company would prevail. In case the Articles are silent, a Company Secretary cannot convene a Meeting as requisitioned by the Director. He may communicate the same to the Director concerned. However, the Director may on his / her own convene a Meeting.

**1/4. Para 1.1.2 of SS-1 refers to objection by the majority of Directors present at a Meeting for adjourning a Meeting. If they do not represent majority of Directors of the Board, would it make a difference?**

**Ans.** It would not make any difference. Majority of Directors present at the meeting may object to adjournment of a meeting, whether or not they represent majority of Directors of the Board.

**1/5. What does serial number of Board meeting as referred to Para 1.2.1 of SS-1 mean?**

**Ans.** Every Meeting of the Board should be serially numbered. While doing so, the company may choose to follow its existing system of numbering, if any, or any new system of numbering, which would be distinct and enable ease of reference or cross-reference.

Illustrations:-

(i) Serially numbering on calendar year basis as follows:

"1/2015", "2/2015", "3/2015" and so on....

In the next year, numbering would be "1/2016", "2/2016", "3/2016" and so on..

(ii) Continuous serially numbering across years:

120th Meeting, 121st Meeting, 122nd Meeting .....to nth Meeting.

Here, a company may choose to either count and give continuous numbering from its incorporation or from Meetings held on or after 1<sup>st</sup> July, 2015. However, in this case the minutes of the first meeting held on or after 1st July, 2015 should include a mention about such serial numbering.

(iii) Serially Numbering on financial year basis as follows:

"1/2015-16", "2/2015-16", "3/2015-16" and so on....or 1/15-16, 2/15-16, 3/15-16 and so on.....

In any case, the company should follow a uniform and consistent system.

**1/6. How will companies which were incorporated quite some time back (for example 50 years ago) and where old Board Minutes are not available, ensure compliance with Para 1.2.1 of SS1?**

**Ans.** In case companies are unable to count and give continuous numbering from their incorporation, they may start giving serial numbers from Meetings held on or after 1<sup>st</sup> July, 2015. Otherwise, they may choose to follow any other system of numbering as given above.

**1/7. What is the place where Board Meetings can be held?**

**Ans.** A Board Meeting may be held at any place, in India or abroad.

**1/8. Unlike Companies Act, 2013, why does SS-1 restrict companies to hold Board meetings on a National Holiday?**

**Ans.** Section 174(4) of the Companies Act, 2013 prohibits holding of Board meetings adjourned for want of Quorum on National Holidays. Even as per Section 96(2) of the Companies Act, 2013, AGM cannot be held on a National Holiday. By inference, it can be understood that the intention of the legislature is to avoid holding Meetings on National Holidays. Therefore, it is thought fit to state assertively that Board Meetings shall not be convened on National Holidays.

**1/9. Is it mandatory for companies to provide their directors with the facility of**

**participation in meetings through electronic mode?**

**Ans.** It is not mandatory for companies to provide their directors with the facility of participation in meetings through electronic mode.

**1/10. In case companies do not provide the directors with the facility of participation in meetings through electronic mode, can the directors insist on attending the meetings through such mode?**

**Ans.** Section 173(2) of the Act is an enabling provision which recognises presence of directors participating through electronic mode. Rule 3 of the Companies (Meetings of the Board and its Powers) Rules, 2014 is required to be complied with only if a company provides the facility of participation through electronic mode. It is thus, an option with the director to attend the Board Meeting through electronic mode but it is not his right. This option may be exercised by the Director only when this facility is provided by the company to its director(s).

If the company has not offered to provide facility of participation through electronic mode and the director insists to attend the meeting through electronic mode, the company may decide whether to provide the same or not.

**1/11. Can a Director participate in a Board Meeting through electronic mode from his end, even if the company does not provide such facility?**

**Ans.** A Director cannot participate in a Board Meeting through electronic mode from his end, if the company does not provide the facility. Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 requires the company to make necessary arrangements to avoid failure of video or audio video connection.

Further, Chairman and CS have to take due and reasonable care to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures.

**1/12. It appears that the explanation under Para 1.2.3 of SS-1 is in conflict with the law in as much as it allows directors to participate through electronic mode in discussions on restricted items, with the permission of the Chairman. How will companies ensure compliance with the requirements of both the Act and the Standards?**

**Ans.** This provision is not in conflict with law. Chairman has been given the discretion to allow such participation **only over and above the physically present Quorum** in case he needs to take views of any such Director on restrictive items to

encourage informed decision making. Any such Director participating through Electronic Mode in respect of restricted items with the express permission of Chairman should neither be counted for the purpose of Quorum nor be entitled to vote in respect of such restricted items.

**1/13. How can proof of sending Notice or Agenda or Notes on Agenda given by hand and its delivery be maintained by companies?**

**Ans.** While delivering Notice or Agenda or Notes on Agenda by hand, signature of the director or of his authorised representative can be taken on the office copy of the Notice or Agenda or Notes on Agenda as an acknowledgement, which can be maintained. In the alternative, companies may maintain a register for this purpose where signature of the concerned director or his authorised representative could be obtained.

**1/14. How can proof of sending and delivery be maintained when the Notice or Agenda or Notes on Agenda of a meeting is sent electronically?**

**Ans.** "Electronic mail" is defined in Rule 2(1)(g) of the Companies(specification of definition details) Rules, 2014 as the message sent, received or forwarded in digital form using any electronic communication mechanism that the message so sent, received or forwarded is storable and retrievable.

Accordingly, any document sent through electronic mode should be sent through such means where proof of delivery can be received.

**1/15. How long are companies required to preserve proof of sending and delivery of Notices or Agenda or Notes on Agenda?**

**Ans.** Proof of dispatch and delivery of the Notice or Agenda or Notes on Agenda should be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later, and may be destroyed thereafter with the approval of the Board in line with the requirements for the destruction of the other records of the company.

**1/16. If the date of the adjourned meeting is decided at the original meeting itself, are companies still required to give notice for an adjourned meeting? What if the date of the adjourned meeting is not decided at the original meeting?**

**Ans.** Yes, even if the date of adjourned meeting is decided at the original meeting, the Notice should be given. If the date of adjourned meeting is not decided at the

original meeting, the adjourned meeting should be held only after minimum 7 days, thereby making provision for fresh 7 days' Notice.

**1/17. Can Agenda and Agenda Notes of a Board Meeting be sent separately?**

**Ans.** There is no prohibition on sending Agenda and Notes on Agenda separately, subject to the condition that both should be sent atleast seven days before the meeting.

**1/18. What will companies do if consent of Independent Director is not obtained for providing notes on items in the nature of Unpublished Price Sensitive Information (UPSI) at a shorter period of time?**

**Ans.** The Standard provides for sending Notes on Agenda in relation to UPSI at a shorter notice with the consent of majority of directors which shall include at least one independent director, if any. Therefore, in case the company has Independent Directors, the consent of at least one Independent Director is required.

**1/19. As per Para 1.3.7 of SS-1, general consent for giving Notes on Agenda items which are UPSI in nature at a shorter Notice may be taken in the first Meeting of the Board held in each financial year. Considering that SS-1 is effective from 1<sup>st</sup> July 2015, what steps should the company take to comply with this requirement?**

**Further will providing "financial results" to the Directors at the meeting itself be sufficient compliance of Para 1.3.7 of SS1?**

**Ans.** The effective date of SS-1 being 1st July, 2015, general consent for giving Notes on Agenda Items which are UPSI in nature at a shorter notice for the year 2015-16 may be taken at the first Meeting of the Board held after 1<sup>st</sup> July 2015.

Further, providing "Financial results" is UPSI. Therefore, the financial results may be placed at the meeting with necessary consent being obtained before the concerned item is taken up for consideration at the meeting.

**1/20. Para 1.3.8 of SS1 provides that where approval by means of a resolution is required, the draft of such resolution shall be either set out in the note or placed at the meeting. Is it necessary for the Board to give approval for each and every item only by way of a resolution?**

**Ans.** It is not necessary that Board gives each and every approval only by way of Resolution. The decision shall be in the form of a Resolution, where it is

statutorily or otherwise required. In other cases, decisions can be in narrative form.

**1/21. Can any other item which is not included in the Agenda of a Board meeting be discussed at the said meeting?**

**Ans.** Yes. Any item not included in the Agenda can be taken up at the Meeting for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

**1/22. In case of a Board meeting held at a shorter notice, why is there an additional requirement to state the same in the Notice under Para 1.3.11 of SS-1?**

**Ans.** Holding a Meeting at shorter notice is doing something which is not ordinarily done. As such, this fact should be brought out in the Notice convening the Meeting.

**2/1. Why 'calendar year' and not 'financial year' has been prescribed in the Secretarial Standards for reckoning the minimum number of meetings?**

**Ans.** The Act requires that atleast 4 meetings of the Board shall be held in each year. "Year" is not defined in the Act and so the definition under the General Clauses Act, 1897 would be applicable. Further, the stipulation in the Act that it shall be sufficient if a One Person Company, Small Company or Dormant Company holds one Meeting of the Board in each half of a calendar year and the gap between the two Meetings of the Board is not less than ninety days also clarifies the intention of lawmakers that "year" should mean Calendar Year.

Calendar Year has therefore been prescribed in the Standard for reckoning minimum number of meetings.

**2/2. Para 2.1 of SS-1 provides that it shall be sufficient if a One Person Company , Small Company or Dormant Company holds one Meeting of the Board in each half of a calendar year and the gap between the two Meetings of the Board is not less than ninety days. Does it mean that such companies cannot hold Meetings with a gap of less than 90 days between two Meetings?**

**Ans.** If a One Person Company, Small Company or Dormant Company holds only 2 meetings in a year, then the gap between these two meetings should be minimum 90 days. If more than 2 meetings are held in a year where the gap between the 1st

and the last meeting in a year exceeds 90 days then it shall be sufficient compliance.

**2/3. Is the Board required to lay down the minimum number of meetings that should be held of a Board Committee?**

**Ans.** The Board **may** stipulate minimum number of Meetings to be held by the Committee and their frequency.

**2/4. Why does Para 2.3 of SS-1 with respect to Meeting of Independent Directors refer to 'calendar year' and not 'financial year'?**

**Ans.** Schedule IV of the Companies Act, 2013 provide for holding of atleast one meeting of independent directors in a year. As per General Clauses Act, "Year" connotes "Calendar Year". Thus, Para 2.3 refers to 'calendar year' and not 'financial year'.

**2/5. Is SS-1 applicable to the Meetings of Independent Directors like Meetings of the Committees? Further can companies pay sitting fees to the Independent Directors for attending such separate meeting and are companies required to maintain Minutes of such meeting?**

**Ans.** Meeting of Independent Directors is not a Meeting of the Board or of a Committee of the Board. Therefore, provisions of SS-1 would not be applicable to such Meetings. Such Meeting may keep a record of its proceedings.

Further, in terms of Section 197(5) of the Act, the Board may decide to pay sitting fees to Independent Directors for attending such Meeting.

**3/1. In terms of Para 3.2 of SS-1, Interested Directors are not to be reckoned for the purpose of quorum in respect of an item in which he is interested and he should not be present, whether physically or through Electronic Mode, during discussions and voting on such item. This is applicable to Board Meetings only or will the same also apply to Committee Meetings?**

**Ans.** Yes, it will also apply to Meetings of Committees defined under SS-1. The scope of SS-1 clearly states that "The principles enunciated in this Standard for Meetings of the Board of Directors are also applicable to Meetings of Committee (s) of the Board, unless otherwise stated herein or stipulated by any other applicable Guidelines, Rules or Regulations."

**3/2. How will items relating to approval or change of sitting fees of Directors etc. be**

**transacted if the Interested Directors are not to be counted for the purpose of quorum and not entitled to vote or be present during discussions in respect of items in which they are interested?**

**Ans.** Payment of sitting fees *per se* is the fee paid to the Directors for attending Meetings of the Board and is not a contract or arrangement entered into or proposed to be entered into by the company with the Directors. The concerned directors therefore should not be treated as interested in an item of business requiring approval of payment of sitting fees/change in sitting fees.

**3/3. Para 3.5 of SS-1 states that “the presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the Articles or by the Board”. Which are the other laws which may contain provisions relating to quorum for Committee meetings?**

**Ans.** Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed. Illustratively, one such requirement is that at a Meeting of the Audit Committee of a Listed Company, the quorum should be either two members or one third of the members of the Audit Committee whichever is greater, but there should be a minimum of two independent Directors present (Clause 49 of the Listing Agreement).

**4/1. Should the attendance sheets maintained in loose leaf be bound alongwith the related minutes or separately?**

**Ans.** The attendance register, if maintained in loose-leaf form, shall be bound separately.

**4/2. Considering that Minutes of a meeting record the names of Directors present at the meeting, why does Para 4.1.1 of SS-1 require maintenance of a separate Attendance Register?**

**Ans.** Maintenance of Attendance Register is a good practice and helps in keeping proper record of the attendance in the Meeting, enables cross-verification and also protects interest of individual directors. It contains the signature of the Directors themselves present, which is not the case in Minutes. The Attendance Register is also contemplated in Article-65 of Table - F of Schedule I of the Act.

**4/3. While Paras 4.1.4 & 7.1.7 of SS-1 requires the Minutes book and attendance register to be maintained at the registered office, Paras 4.1.8 & 8.3 requires such books to be kept in the custody of the company secretary. In case the company secretary of the company is not located at the registered office, how will compliance of these Paras be ensured**

**Ans.** Custody doesn't mean that the company secretary should have physical custody of the documents. What the particular Standard signifies is the responsibility cast upon the Company Secretary with respect to the custody of Minutes Book and attendance register. The Standard re-emphasises the fact that Minutes are most important primary records and therefore it should be in the custody of a responsible officer.

**4/4. Why are entries in the attendance register required to be authenticated by the Company Secretary or Chairman?**

**Ans.** Authentication of the entries in the attendance register by the Company Secretary or Chairman, as per Para 4.1.6, confirms the integrity of the information entered in the Attendance Register.

**4/5. Why do Paras 4.1.7 and 8.2 of SS-1 require approval of the Board for destruction of Notices, Agenda, attendance register etc.? Further, will Board's approval for such destruction also be required for the financial year 2015-16?**

**Ans.** Since these are very important records, prior approval of the Board is necessary for their destruction.

Yes. Any such Record destroyed after 1<sup>st</sup> July 2015 will require the Board's approval, even if it pertains to the prior period.

**4/6. Can a request for leave of absence be given by a Director orally?**

**Ans.** Request for Leave of Absence by the Director may be oral or written. Any such request received should be mentioned at the Meeting by the Chairman of the Meeting or the Company Secretary and should be recorded in the Minutes.

**5/1. Will the Chairman have a second or casting vote in case of an equality of votes?**

**Ans.** The Articles of the company should be complied with in this regard. In case the Articles are silent, the Chairman shall have a second or casting vote, in case of an equality of votes.

Second or Casting Vote in such cases to the Chairman is also allowed by the Model Articles under the Act[Article 68 (ii) of Table F].

**6/1. How long is the proof of sending and delivery of resolutions passed by circulation required to be maintained?**

**Ans.** Proof of dispatch and delivery of the resolutions passed by circulation should be preserved in good order in physical or electronic form for as long as they remain current or for eight financial years, whichever is later, and may be destroyed thereafter with the approval of the Board, in line with the requirements for destruction of other records of the company.

**7/1. How are the pages of the Minutes Book required to be numbered – meeting wise or year wise?**

**Ans.** The pages of the Minutes Book should be consecutively numbered irrespective of break in the Minutes Book. This should also be followed irrespective of the number or year of Meeting.

**7/2. Why does Para 7.2.2.1(h) of SS-1 require the Board to take note of the Minutes of the Committee meetings?**

**Ans.** The Board must know the discussions and decisions taken at Committee Meetings. This is also a good governance practice followed by the well governed companies.

**7/3. What does recording of decisions in ‘narrative form’, as stated under Para 7.2.2.2 of SS-1, mean?**

**Ans.** The decisions of the Board shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

For instance: If Board approves a project, the decision of the Board may be mentioned in the following manner:

“Project XYZ was approved by the Board after thorough discussion.”

**7/4. Since the Notes on Agenda contain background of the proposal in detail, is such background again required to be recorded in the Minutes?**

**Ans.** Yes, the Minutes should mention the background in brief. It need not reproduce what is contained in the Agenda Notes but capture only the crux.

**7/5. Is the requirement to enter Minutes in the Minutes Book within 30 days provided in the Act or such requirement is being laid down by the Standards?**

**Ans.** Para 7.5.1 of SS-1 is in line with Rule 25(1)(b)(i) of the Companies (Management and Administration) Rules, 2014.

**7/6. Considering that SS-1 require companies to circulate draft Minutes to all Directors, why does Para 7.6.4 of SS-1 again require circulation of signed Minutes?**

**Ans.** The requirement of circulating signed copy of Minutes has been introduced with the aim of protecting the interest of individual directors including independent directors by requiring proper and adequate information in a transparent manner be provided thereby reducing areas of dispute and avoiding the associated risks, especially in the light of increased accountability of the Directors including independent directors.

**7/7. Why does Para 7.7.1 and 7.7.2 of SS-1 permit Directors to inspect or receive copy of the Minutes of Board meetings held during the period of his directorship, even if he ceases to be a Director?**

**Ans.** This Standard aims to protect the interest of individual directors, including independent directors, by enabling the provision of proper and adequate information in a transparent manner thereby reducing areas of dispute and managing the associated risks, especially in the light of increased accountability of independent directors. Sharing current and past Minutes with the Directors would only strengthen corporate governance. It would be a great comfort for a director to have copies of critical minutes of meetings and chances of tampering with past minutes would be eliminated, as copies of the Minutes are available with them.

In order to protect their interests, companies may introduce a system of requiring a past Director wanting to inspect the Minutes Book, to submit a formal application in writing and furnish a non-disclosure undertaking to ensure that he / she is bound to maintain confidentiality.

**7/8. Why does Para 7.7.1 and 7.7.2 of SS-1 permit a Directors to inspect or receive copies of Minutes of Board meetings held before the period of his directorship?**

**Ans.** A present Director of a company may need to inspect or receive copies of the Minutes of the Meetings held before the period of his directorship since the decisions taken earlier may have implications on the current decisions to be taken. Further, it will give him guidance to understand about the company and shape his thoughts to take part in the Meetings constructively and effectively.

**7/9. Explanation to Para 7.4 entitles a Director, who ceases to be a Director after a Meeting of the Board to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not. Will the draft Minutes be required to be given to a director who vacates office pursuant to Section 167 of the Act in terms of the above requirement?**

**Ans.** The fact that the Director has vacated his office, by any reason whatsoever, will not affect his right to receive such Minutes. As per Para 7.4 of SS-1, draft Minutes of a meeting would be made available to such Director provided the cessation of Directorship has taken place after the Meeting concerned.

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