

**RESPONSES TO QUERIES RECEIVED ON
SECRETARIAL STANDARD ON GENERAL MEETINGS (SS-2)**

Scope/1. Is SS-2 applicable to banking entities which are listed on Stock exchanges?

Ans. SS-2 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-2 is applicable to such company.

Scope/2. The Scope Para of SS-2 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-2 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. Will the SS-2 be applicable for a General Meeting notice for which has been issued in the month of June?

Ans. SS-2 shall only apply to General Meetings in respect of which Notices are issued on or after 1st July, 2015. Hence for General Meetings, notice for which has been issued in the month of June, 2015, Secretarial Standards shall not apply.

Scope/4. Is SS-2 applicable to private companies?

Ans. The Ministry of Corporate Affairs (MCA), in exercise of its powers conferred by clauses (a) and (b) of Section 462 (1) and in pursuance to sub-section (2) of the said section of Companies Act, 2013 (the Act) issued Notifications No. G.S.R. 463(E), G.S.R. 464(E), G.S.R. 465(E), G.S.R. 466(E) (hereinafter referred to as "the MCA Notification (s)") all dated 5th June, 2015, has directed that certain provisions of the Act shall not apply or shall apply with such exceptions, modifications and adaptations as specified in the MCA Notification (s) to Government companies, Private Companies, Nidhis and Section 8 (Non-Profit) Companies respectively.

The Scope of the Secretarial Standards as laid down in SS-1 and SS-2 is as under:

"This Standard is in conformity with the provisions of the Act. However, if due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail."

Accordingly, if due to MCA Notification (s) referred to herein above, a particular standard or any part thereof becomes inconsistent with any of the provisions of the Act, such corresponding provisions of the Act read with the MCA Notification (s) shall prevail.

Definition/1. Section 102(2) of the Companies Act, 2013 while defining 'ordinary business' refers to appointment of and fixing remuneration of Auditors. However, the Secretarial Standard defines 'ordinary business' to include appointment or ratification of Auditors? Does the term 'appointment' as used in Section 102(2) includes 'ratification'?

Ans. Annual Ratification is contemplated in law for 'continuation of appointment' of Auditors under Section 139(1) of the Act and Rule 3(7) of the Companies (Audit and Auditors) Rules, 2014. It falls within the scope of 'appointment' and hence is an item of 'ordinary business' to be transacted at the annual general meeting.

1/1. In terms of Para 1.2.1 of SS-2 relating to service of Notice of general meetings, what is the manner of service of such Notices to corporate members.

Ans. Section 20(1) of the Act provides that a document may be served on a company at the registered office of the company. Therefore, Notice of general meetings may be served to a corporate member at its registered office.

1/2. Is it mandatory for companies to issue the notice of general meetings to all their Directors and Auditors?

Ans. Yes, it is mandatory for all companies to issue notice of general meetings to all the Directors and the Auditors of the company. This is in line with Section 101(3) of the Act.

In addition, it should also be given to Secretarial Auditor and Debenture Trustee, if any, as per Para 1.2.1 of SS-2.

1/3. Para 1.2.1 of SS-2 requires Notice in writing of every Meeting of the company to be given, wherever applicable or so required, to other specified persons. Who are the other specified persons to whom Notice should be given?

Ans. In addition to giving Notice to persons specified in Para 1.2.1 of SS-2, Court

may direct issuance of Notice to some other persons such as Court-appointed Chairman or observers or persons whose entitlement is under challenge.

1/4. Is Notice of general meetings required to be given to preference shareholders?

Ans. Considering that Preference Shareholders are Members of the company, Notice of general meetings should also be given to them.

1/5. Does the Act lay down any business hours for convening general meetings or such requirement has been laid down only in the Standard?

Ans. Para 1.2.4 of SS-2, which is in line with Section 96(2) of the Companies Act, 2013, requires that general meetings should be called during business hours i.e. between 9 a.m. and 6 p.m.

1/6. Why does Para 1.2.4 of SS-2 require companies to convene an extraordinary general meeting called by the requisitionists only on a working day?

Ans. Explanation to Rule 17(2) of Companies (Management and Administration) Rules, 2014 prescribes that an Extraordinary General Meeting called by the requisitionists shall be convened only on a working day. Para 1.2.4 of SS-2 is in line with the same.

1/7. Can any other business be taken up in the General Meeting with the permission of the Chair?

Ans. Any other business not set out in the Notice or not specifically permitted under the Act is not permitted to be transacted at the General Meeting.

2/1. Why 'calendar year' and not 'financial year' has been prescribed in the Secretarial Standards for AGM?

Ans. The Act requires that AGM 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.
Calendar Year has therefore been prescribed in the Standard.

6/1. Are the details of all proxies received by the company required to be entered in the Register of Proxies or only the valid proxies?

Ans. In terms of Para 6.9.1 of SS-2, all proxies received by the company shall be recorded in the Register. In the case of rejection of Proxies, the reasons therefor shall also be entered in the remarks column as a best secretarial practice.

8/1. Can a company appoint Scrutiniser on the following basis – Appointment of Mr. A as scrutinizer and failing him Mr. B as scrutinizer?

Ans. Yes, appointment of Scrutinizer can also be made in this manner:
Appointment of Mr. A as scrutinizer and failing him Mr. B as scrutinizer.

8/2. Is the requirement to publish advertisement in newspapers applicable in all cases or only in those cases where e-voting or postal ballot is applicable?

Ans. Paras 8.5 and 16.4 of SS-2 are in line with the amended Rule 20(4)(v) and Rule 22 of the Companies (Management and Administration) Rules, 2014. Hence, it applies to only those companies to which e-voting or postal ballot applies.

16/1. Para 16.1 of SS-2 provides that ordinary business cannot be transacted through postal ballot. However, is the facility of e-voting required to be provided for transaction of ordinary business?

Ans. As defined in SS-2, “Voting by postal ballot” means voting by ballot, by post or by electronic means. So far as ordinary business is concerned, Postal ballot is not permitted. However facility for e-voting, which is a substitute for voting at the General Meeting, is required to be provided for all business including ordinary business, as required under Rule 20 of the Companies (Management and Administration) Rules, 2014.

17/1. 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.

17/2. Is the fact of presence of Quorum throughout the Meeting required to be recorded in the Minutes?

Ans. Yes. Para 17.2.2.1 of SS-2, *inter-alia*, requires recording of presence of Quorum throughout the Meeting in the Minutes.

17/3. Is the fact of the presence of Chairman of the prescribed Board Committees at the general meeting required to be recorded in the Minutes?

Ans. Yes, Para 17.2.2.1(f) of SS-2 requires companies to record the fact of presence of Chairman of Board Committees in the Minutes of general

meetings.

18/1. Why does Para 18.2 of SS-2 require approval of the Board for destruction of Notices, scrutiniser's report, and related papers 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 1st July 2015 will require the Board's approval, even if it pertains to the prior period.

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