

SECRETARIAL STANDARD II

UNDER COMPANIES ACT 2013 & SECRETARIAL STANDARD

SERIES NO
86

GOYAL DIVESH & ASSOCIATES
Practicing Company Secretary

SECRETARIAL
STANDARD- II

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BACKGROUND:

The Ministry of Corporate Affairs (MCA) has issued circular Dated: 10th April, 2015 vide Letter No. 1/E/2014/CA/I and same has been notified in official Gazette on 23rd April, 2015. Secretarial standard has been applicable on Companies from 1st July, 2015.

FREQUENCY

A. FREQUENCY OF GENERAL MEETING:

Every Company in each Calendar Year, hold a General Meeting called the Annual General Meeting.

ANNUAL GENERAL MEETING:

The Board shall every year convene meeting of members called Annual General Meeting.

AGM



Annual General Meeting specifically called to transact Special Business.

If the Board fails to convene its Annual General Meeting in any year, any Member of the company may approach the prescribed authority, which may then direct the calling of Annual General Meeting of the Company.

First AGM:

First AGM within 9 month from the date of closing of First Financial year of the Company.

Subsequent AGM: Subsequent AGM shall be hold **EARLIER** of followings:

- Within SIX month from the end of each Financial Year or
- Within FIFTEEN month from the last Annual General Meeting.

Note:

- In case of First AGM, it is not necessary for the company to hold any AGM in the calendar year of its Incorporation.
- Extension of Subsequent AGM: The period of 6 month or 15 month in case of subsequent AGM **MAY** be extended by a period not exceeding 3 (three) Month with the Prior approval of **ROC**.
- ** Time period of First Annual General Meeting after Incorporation of Company **cannot be extended**.

EXTRA ORDINARY GENERAL MEETING:

EGM

The Board may also, whenever it deems fit, call an Extra- Ordinary General Meeting of the Company.

The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition can call an Extra- Ordinary General Meeting,

- a) In the case of Company having a Share Capital, not less than $1/10^{\text{th}}$ of the paid-up share capital carrying Voting Rights; OR
- b) In the case of a Company not having share capital, not less than $1/10^{\text{th}}$ of total voting power of the Company.

QUORUM



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B. QUORUM OF GENERAL MEETING:

Private Limited:

Minimum No. of Members required being present "Two Members Personally Present".

Public Limited:

In case of Public Company "Minimum Present of Members required"

- 5 (five members) personally present if the number of Members as on the date of Meeting is more than 1000 (one thousand).
- 15 (Fifteen members) personally present if the number of Members as on date of Meeting is more than 1000 (one thousand) but upto 5000 (five thousand)
- 30 (thirty member) personally present if the number of members as on date of the Meeting exceeds 5000 (five thousand)

Note:

- Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.
- Larger Number: Company by provision in its Article can provide for larger number (more than minimum mentioned above) of quorum for a General Meeting.
- Proxy: Proxy shall be excluded for determining the Quorum.
- Personal Presence: Members need to be personally present at a Meeting to constitute the Quorum.

Attendance of Meeting by Authorized Representative:

ATTENDANCE

Presence of a duly authorized representative of below mentioned deemed to be a Member personally present and enjoy all the rights of a Member present in person.

- Representative of "Body Corporate"
- Representative of "President of INDIA"
- Representative of "Governor of State"

Note:

- One person can be an authorized representative of more than one body corporate. Even he will treat as more than one member for the purpose of Quorum but there should be at least one more member in personally present.
- A member who is not entitled to vote on any particular item of business being a related party, if present shall be counted for the purpose of Quorum.



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- Postal Ballot: Stipulation of the presence of Quorum doesn't apply with respect to items of business transacted through postal ballot.

C. PRESENCE OF DIRECTOR AND AUDITORS:

PRESENCE

Director:

- If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.
- The Director who attends the General Meeting shall seat with Chairman.

Company Secretary:

- The Company Secretary shall seat with Chairman.
- The Company Secretary shall assist the Chairman in conduction the Meeting.

Auditor:

- It is mandatory for the Auditor to attend General Meeting,
- Exemption: Auditor can absent himself by following two ways:
- If it get exemption from the Company to attend General Meeting.
- If his authorized representative attend the General Meeting.
- [Condition: Authorized representative should also be qualified to be an Auditor]

Secretarial Auditor: (Annual General Meeting)

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- It is mandatory for the Auditor to attend Annual General Meeting.
- Exemption: Auditor can absent himself by following two ways:
- If it get exemption from the Company to attend General Meeting.
- If his authorized representative attend the General Meeting.
- [Condition: Authorized representative should also be qualified to be an Auditor]
- The Chairman may invite the Secretarial Auditor to attend "Any Other General Meeting".

Note:

- Presence of Chairman of Committee: The Chairman of Committee's and any other member of such Committee authorized by the Chairman of the Committee to attend on his behalf shall attend the General Meeting.

D. CHAIRMAN:

CHAIRMAN

- Who will be the Chairman?
- The Chairman of the Board shall take the Chair and conduct the Meeting. BUT
- If the Chairman is not present within 15 minutes after the time appointed for holding of Meeting, or
- If he is unwilling to act as Chairman of the Meeting, or
- If no Director has been so designated.
- (In above three situations) The Director present at the Meeting shall elect one of them to be the Chairman of the Meeting.
- If no Director is present within 15 Minutes after the time appointed for holding of Meeting, or
- If no Director is willing to take the Chair.
- (In above two situations) The Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Article.
- If poll is demanded for election of Chairman.
- It shall be taken forthwith in accordance with the provisions of the Act and
- The Chairman elected on a show of hands shall continue to be the Chairman as a result of the Poll, and
- Such other person shall be the Chairman for the rest of the Meeting.

Duties of Chairman:

Ensure that the Meeting is Duly Constituted	The Chairman shall 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.
Conduct the Meeting in a fair and impartial manner.	The chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in Notice is transacted.
Regulate the manner in which voting is conducted	The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act.
Explain the objective and implications of the resolutions	The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.
In case of Public Company	Chairman shall not propose any resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.

E. PROXY:**Right to Appoint:****PROXY**



- A member entitled to attend and vote is entitled to Appoint Proxy.
- A proxy shall not be member **EXCEPT** in case of Companies will Charitable objects etc.
- A proxy can't act on behalf of more than 50 members and members holding aggregate more than 10% of the total share capital of the Company carrying voting rights.

If acted for more than 50 Members:

- He shall choose any 50 Members and confirm the same to the Company before the commencement of specified period for Inspection.
- In case, the proxy fails to do so, the Company shall consider only the first 50 proxies received as valid.

F. Proxy Form:

- An Instrument appointing a proxy shall be either:
 - In the form specified in the Article; or
 - In the form set out in Act.



*PROXY
FORM*

Signing of Proxy Form:

- In case of Member is (other than body corporate) the instrument of Proxy shall be signed by the:
 - Appointer, or
 - His attorney duly authorized in writing, or
- If the appointer is a body corporate than the instrument of Proxy should be under its seal and shall be signed by the:
 - An officer, or
 - An attorney duly authorized by it.

Validity of Proxy Form:

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

Stamping of Proxy:

- An instrument of proxy is valid only if it is properly stamped as per the applicable law.
- Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are **INVALID**.

Execution of Proxy:

- The proxy-holder shall prove his identity at the time of attending the Meeting.
- An authorized 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.

Invalid Proxy forms:

- Unnamed Proxy Form.
- Undated Proxy Form.
- If company receive multiple proxies for the same holdings of the Member and they are not dated or bear the same date without mention of time, all such multiple proxies shall be treated as invalid.

Note:

- If a company receives multiple proxies from the same holding of a member, the Proxy which is dated last shall be considered valid.

Proxy form:

Time of Deposit	It should be deposit with the Company at least 48 hour before the commencement of the Meeting
Modes of Sending	Proxy form can be send either in Person or Through Post
Submission on Holiday	Proxy form shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.
Increase in time period of submission	By altering in the provision of Articles by specifies a longer period for deposits.

Revocation of Proxy:

- A proxy later in date can revoke the earlier dated proxies.
- Proxy is valid until written notice of revocation has been received by the Company before the commencement of the Meeting or adjourned meeting.
- A notice of revocation of proxy shall be signed by the same Member(s) who had signed the proxy, in the case of joint membership.



- When both the Member and Proxy attend the Meeting, the proxy stand automatically revoked.

Inspection of Proxy:

- Proxies shall made available for inspection:
 - During the period beginning 48 hours before the commencement of the Meeting and
 - Ending with the conclusion of the Meeting
 - Between 9 a.m. to 6 p.m.

Record of Proxy:

- All the proxies shall be recorded chronologically in a register kept for that purpose.
- In case any proxy entered in the register is rejected, the reasons there for shall be entered in the remarks column.

G. Withdrawal/ Rescinding/Modification of Resolution:

Prohibition on withdrawal of Resolution: Below given resolution can't be withdrawal after proposed

- Resolution for item of business which is likely to affect the market price of the securities of the Company shall not be withdrawn.
- Any resolution proposed for consideration through e-voting shall not be withdrawn.

Rescinding of Resolution:

A resolution passed at a Meeting shall be only by a resolution passed at a subsequent Meeting.

Modification of Resolution:

- If any resolution has already been put to vote by Remote e-voting before the Meeting ***can't be modified.***



- Grammatical, Clerical, Factual and typographical error, if any, may be corrected as deemed fit by the Chairman.
- A 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 modified resolution shall be duly proposed, seconded and put to vote.

H. Distribution of Gifts:

No gifts, gifts coupons, or cash in lieu of gifts shall be distributed to Member at or in connection with the Meeting.

I. Adjournment of Meeting:

▪ Power to adjourn Meeting:

A Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.

▪ Reason for adjourned Meeting:

- Meeting shall stand adjourned for want of requisite Quorum.
- A duly convened Meeting shall not be adjourned unless circumstances so warrant.
- A Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.

▪ If Meeting adjourned for period more than 30 days:

If a Meeting adjourned for a period of 30 days or more, a Notice of the adjourned meeting shall be given a company issue notice for fresh General Meeting.

▪ If Meeting adjourned for period less than 30 days:

- The company shall give notice less than 3 days notice specifying the:
 - Day, date time and venue of the Meeting to the members
- Either individually or by publishing an advertisement in a vernacular newspaper in the principia vernacular language and one in English newspaper in the district where office of the company is situated.

▪ If Meeting adjourned for want of Quorum:

- If a meeting other than requisitioned Meeting, stands adjourned for want of quorum, the adjourned Meeting shall be held
- On the same day, in the next week, at the same time and place or
- On such other day, not being a National Holiday, or
- At such other time and place as may be determined by the Board.

▪ If Quorum not present in Adjourned meeting: (Meeting other then called by Requisitionists)

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

▪ If Quorum not present in Adjourned meeting: (Meeting other called by Requisitionists)

If, at an adjourned Meeting, quorum is not present within half hour from the time meeting called by the Requisitionists, the ***Meeting shall stand cancelled.***

▪ Resolution to be discuss at adjourned Meeting:

At an adjourned Meeting, only the unfinished business of the original Meeting shall 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.

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Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. The observations