IMPORTANT POINTS ON SECRETARIAL STANDARD - 2

APPLICABILITY

- SS-2 is applicable to all companies incorporated under the Act except OPC.
- This Standard shall come effect from 01.07.2015
- Applicable to all types of General Meetings.

ANNUAL GENERAL MEETING

- Every Company shall in each Calendar Year, hold a General Meeting called the Annual General Meeting.
- The Board shall every year convene meeting of members called Annual General Meeting.
- Ordinary and Special Business are transacted in AGM.
- 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 shall be held within 9 month from the date of closing of First Financial year of the Company.
- Subsequent AGM: Subsequent AGM shall be held **EARLIER** of followings:
  - Within **six month** from the end of each Financial Year or
  - **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**.

NOTICE OF MEETING

- Notice and accompanying documents shall be given at least 21 clear days in advance of the Meeting, excluding the day of sending the Notice and the day of Meeting.
- For sending notice by post or courier, an additional 2 days shall be provided for the service of Notice.
- If any special notice is received from any member, same has to be sent atleast 7 clear days in advance.
- Shorter notice can be given provided at least 95% of the Members entitled to vote at the Meeting give their consent in writing.

- Notice shall prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and that a Proxy need not be a Member.
- In case of companies having a website, the Notice shall be hosted on the website along with the route map for venue of the meeting.
- Amendments can be made to the notice provided the notice of amendment is given 21 clears days in advance.
- Documents to be accompanied with the notice:
  - Explanatory statement for each item of special business
  - The request for consenting to shorter Notice, if required
  - Attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.
- Notice in writing of every general meeting shall be given to
  - Every Member of the company.
  - Directors of the company
  - Auditors of the company
  - Secretarial Auditor,
  - Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.
- Notice shall be sent by
  - Hand,
  - Ordinary post, except for postal ballot and where e-voting is provided
  - Speed post,
  - Registered post,
  - Courier,
  - Facsimile
  - E-mail,
  - Any other permitted electronic means
- Notice shall specify the
  - day,
  - date,
  - time, and
  - full address of the venue of the Meeting including route map and prominent land mark for easy location
  - Nature of the meeting
  - Business to be transacted at the meeting

- Resolution for each item of special business supported by explanatory statement
- Resolution for items of ordinary business which pertain to appointment of directors and auditors, other than those retiring
- Details relating to e-voting

Time, Day and Venue of meeting

- Time and day for holding meeting
  - Meetings shall be called during business hours, i.e., between 9 a.m. and 6 p.m. on a day that is not a **National Holiday** *("National Holiday" includes Republic Day, i.e., 26th January, Independence Day, i.e., 15th August, Gandhi Jayanti, i.e., 2nd October and such other day as may be declared as National Holiday by the Central Government.*
- Venue of Meeting
  - AGM and meeting called by requisitionists shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

EXTRA ORDINARY GENERAL MEETING

- The Board may also, whenever it deems fit, call an Extra- Ordinary
- 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,
  - In the case of Company having a Share Capital, not less than 1/10th of the paid-up share capital carrying Voting Rights; OR
  - In the case of a Company not having share capital, not less than 1/10th of total voting power of the Company.

QUORUM

Quorum represents minimum members required to constitute a valid 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.
- ➔ Company by provision in its Article can provide for larger number (more than minimum mentioned above) of quorum for a General Meeting.
- ➔ Proxy shall be excluded for determining the Quorum.
- ➔ Members need to be personally present at a Meeting to constitute the Quorum.

Attendance of Meeting by Authorized Representative

- ➔ 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 be treated 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 or In other words Related parties, not entitled to vote on any specific item of business, are counted for purpose of quorum.
- ➢ Members who have already voted through remote e-voting are counted for purpose of quorum.
- ➢ For postal ballot, quorum requirements are not applicable.

Presence of Directors and Auditors and Provisions relating to Chairman.

- ➔ If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.
- ➔ Chairman of various mandatory committees under the Act, or some member of the committee authorised by the Chairman, is required attend all general meeting.
- ➔ Statutory Auditors, or their authorised representative, who is also qualified to be an auditor, shall attend all general meetings, unless exempted by the Company.
- ➔ Secretarial Auditors or their authorised representative, who is also qualified to be an auditor, shall attend Annual General Meeting, unless exempted by the Company. Other general meetings may be attended, if invited by the Chairman.
- ➔ The Chairman of the Board shall take the Chair and conduct the Meeting.
- ➔ 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.
- The Company Secretary shall seat with Chairman.
- The Company Secretary shall assist the Chairman in conduction of the Meeting.

<u>Duties of Chairman</u>

- 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.
- 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
- The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act.
- 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.

<u>PROXY</u>

- 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 proxy 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.

- An Instrument appointing a proxy shall be either In the form specified in the Article; or In the form set out in Act.
- 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.
- An instrument of Proxy duly filed, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.
- 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.**
- 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.
- **Unnamed and Undated Proxy form is invalid.**
- If the 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 form, from the same holding of a member, the Proxy which is dated last shall be considered valid.
- Proxy form should be deposited 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.
- Proxy form shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.
- Time period can be increased by altering in the provision of Articles by specifying a longer period for deposits.
- 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.
- 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.
- All the proxies shall be recorded chronologically in a register kept for that purpose and in case any proxy entered in the register is rejected, the reasons there for shall be entered in the remarks column.

Voting at a meeting

- Every Resolution shall be proposed by a Member and seconded by another Member.
- E-voting is Mandatory for all equity listed companies and those having more than 1000 shareholders.
- Facility of voting at the meeting (electronic or ballot paper) to be mandatorily provided in addition to remote e-voting for every item of business.
- Members who have already voted on remote e-voting can attend the meeting but cannot vote again.
- Notice of meeting shall clearly state that person who is not a Member as on the cut-off date should treat the Notice for information purposes only.
- E-voting facility is to be provided even for resolutions proposed to be passed through postal ballot.
- Where remote e-voting is not applicable, every resolution to be first put to vote by show of hands, unless poll is demanded. Proxies cannot vote of show of hands.
- Poll can be taken by chairman on his own motion or on demand by any member of proxy.
- The Chairman shall appoint such number of scrutinisers as he deems fit.

Modification, recession and withdrawal of resolution

- Resolutions already put to vote by remote e-voting cannot be modified or withdrawn.
- Resolutions for items of business which are likely to affect the market price of the securities of the company cannot be withdrawn.
- A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.
- Grammatical, clerical, factual and typographical errors alone, if any, may be corrected as deemed fit by the Chairman. Modification which has the effect of, in any way, altering the substance of the Resolution as set out in the Notice cannot be made

Minutes of general meetings – Method of recording and maintenance

- The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person authorised by the Board or by the Chairman in this behalf shall record the proceedings.
- The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.
- Minutes shall be written in clear, concise and plain language, in third person and past tense.
- Each item should be numbered.

- ➔ Minutes need to be maintained in Minutes book.
- ➔ Separate book to be maintained for each type of meeting – members, creditors, etc.
- ➔ Resolutions passed by postal ballot shall be recorded in the Minutes book of General Meetings.
- ➔ Minutes may be maintained in electronic form or physical form, in the manner prescribed under the Act.
- ➔ Minutes maintained in electronic form must be maintained with time stamp.
- ➔ The pages of the Minutes Books shall be consecutively numbered.
- ➔ Pages left blank to be scored out and signed by Chairman who signs the minutes.
- ➔ There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.
- ➔ Minutes Books shall be kept at the Registered Office of the company or at such other place, as may be approved by the Board and shall be preserved permanently in physical or in electronic form with Timestamp.
- ➔ Minutes shall state, at the beginning, name of the company, day, date, venue and time of commencement and conclusion of meeting.
- ➔ Minutes shall also state in alphabetical order or in any other logical manner, but in either case starting with the name of Chairperson, names of Director and Company Secretary present at the meeting.
- ➔ In case of resolutions passed by e-voting or postal ballot, minutes to contain:
  - ➢ a brief report on the e-voting or postal ballot conducted including the
  - ➢ Resolution proposed
  - ➢ Result of voting
  - ➢ Summary of scrutinizer report
- ➔ Minutes shall also contain details about:
  - ➢ Election of Chairman, if any
  - ➢ Documents, registers and reports available for inspection at meeting
  - ➢ Presence of quorum
  - ➢ Number of members present in person and proxy (including details of shares represented by them) including representatives
  - ➢ Presence of chairman of various committees and auditors (statutory and secretarial)
  - ➢ Summary of the opening remarks of the Chairman
  - ➢ Reading of qualifications in the audit reports
  - ➢ Summary of the clarifications provided on various Agenda Items.
  - ➢ In respect of each Resolution, the type of the Resolution, the names of the persons who proposed and seconded and the majority with which such Resolution was passed

- In the case of poll, the names of scrutinizers appointed and the number of votes cast in favour and against the Resolution and invalid votes.
- If the Chairman vacates the Chair in respect of any specific item, the fact that he did so and in his place some other Director or Member took the Chair

➔ Minutes shall be entered in the Minutes Book within 30 days from the date of conclusion of the Meeting, which date shall be recorded by the Company Secretary or any other person authorised

➔ Minutes once entered in the books cannot be altered.

➔ Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within 30 days of the General Meeting.

➔ The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.

➔ Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

➔ Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal ballot.

➔ The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties

➔ Extract of the Minutes shall be given only after the Minutes have been duly signed else the resolution extracted has to be certified by the Chairman or any Director or the Company Secretary.

<u>Adjournment of Meeting</u>

➔ 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.

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

➔ If a Meeting adjourned for a period of 30 days or less, the company shall give notice not 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 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, at an adjourned Meeting(Meeting other then called by Requisitionists) 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, at an adjourned Meeting(Meeting called by Requisitionists), quorum is not present within half hour from the time meeting called by the Requisitionists, the **Meeting shall stand cancelled**.
- 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.

Thanks and Regards
PARASH