SHIKHA AGARWAL *(BBA, FCS, LLB)*

BOARD MINUTES

DEFINITION

- "Act" means 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.

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

- "Electronic Mode" means electronic medium of communication including videoconferencing or other audio-visual means, e-voting, e-mail or other electronic communication facility and/or record-keeping, as may be applicable.

- "Maintenance" means keeping Minutes either in physical or Electronic Mode, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

- "Meeting" means any meeting duly convened, constituted and held.

- The expression '**Minutes**' means a record of the proceedings of a Meeting. Minutes should contain a fair and correct summary of the proceedings of the Meeting and should normally convey why, how and what conclusions or decisions were arrived at in relation to each business transacted at the Meeting. It need not be an exact transcript of the proceedings. Every company is required to keep Minutes of all Meetings.

As noted earlier, minutes are an official and legal record of the board meeting. In a legal arena, meeting minutes are presumed to be correct and can be used as legal evidence of the facts they report.

Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

The Secretary or authorized official of the company should record the proceedings of the Meetings.

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THE RULES

Rule 3 (11) (a) of Companies (Meetings of Board and its Power) Rules, 2014

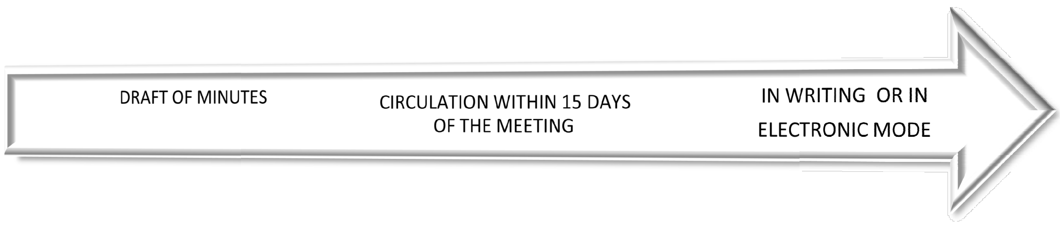
At the end of the discussion on each agenda item, the Chairperson of the meeting of the Board shall announce the summary of the decision taken on such item along with names of different Directors, if any, who dissented from the decisions taken by the majority.

Rule 3 (11) (b) of Companies (Meetings of Board and its Power) Rules, 2014

Disclosure of Directors who attend the meeting through Video Conferening or through audio visual means.

Rule 3 (12) (a) of Companies (Meetings of Board and its Power) Rules, 2014

Draft of the minutes of the meeting shall be circulated among all the Directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board.



Rule 3 (12) (b) of Companies (Meetings of Board and its Power) Rules, 2014

Every Director who attended the meeting either in person or through video conferencing /audio visual means shall confirm or give his comments in writing as to the accuracy of the recording of the proceedings of the particular meeting in the draft minutes. The confirmation or comments shall be given within seven days or some reasonable time as decided by the Board from the date of receipt of the draft minutes. If no comments or confirmation is given it shall be presumed that the concerned Director has given his consent to the minutes.

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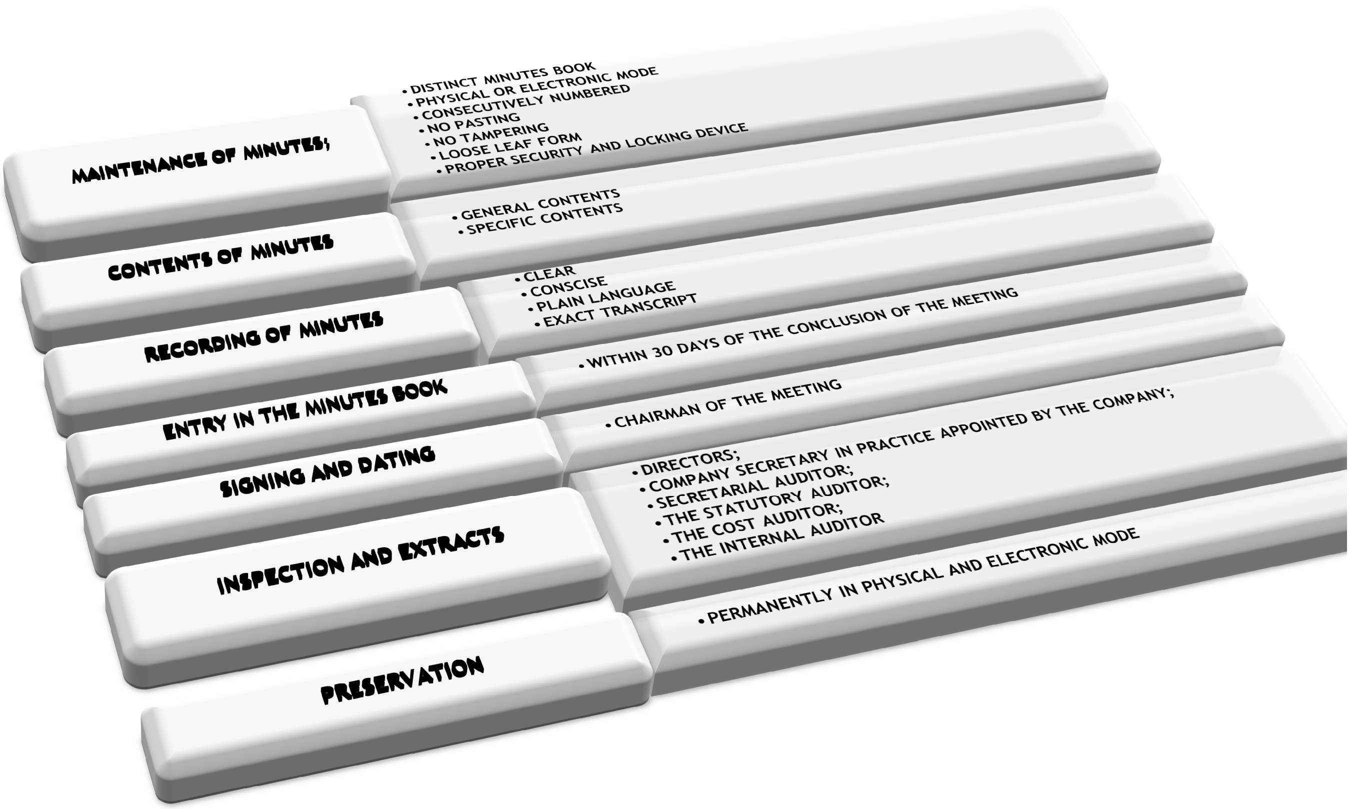

The Minutes gives a detailed discussion as to:-

A. Maintenance of Minutes;
B. Contents of Minutes;
C. Recording of Minutes;
D. Entry in the Minutes Book;
E. Signing and dating of minutes;
F. Inspection and extracts of minutes;
G. Preservation of minutes.

A. Maitainence of Minutes of Board Meeting Under The New Compliance Regime - Secretarial Standard 1

The Institute of Company Secretaries of India has issued the Secretarial Standards **(SS1 on Meeting of the Board of Directors and SS2 on General Meetings) which were approved** by the Central Government. The adherence by the Company to these Standards is mandatory, as per the provisions of Section 118(10) of the Companies Act, 2013.

Secretarial Standards came in force w.e.f. 01st July, 2015 and apply to all the Meetings of the Board of Directors of all the Companies except One Person Companies wherein only One director in the Board.

These Standards have overhauled the entire process of the Board Meeting. The highlights of the provisions relating to the preparation and recording of the minutes of the Meetings of the Board of Directors and committees thereof are narrated herein below:

Minutes of the Board/Committee Meetings: Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

- A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees;
- A company may maintain its Minutes in physical or in electronic form. Every company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorized by the Board;
- The pages of the Minutes Books shall be consecutively numbered;
- In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialed by the Chairman who signs the Minutes;
- Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner;
- Minutes of the Board Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company;
- There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves;
- Minutes of the Board Meeting shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.

B. CONTENTS OF MINUTES:

Minutes consist of below contents:

- **General Contents;**
- **Specific Content.**

GENERAL CONTENTS

- The serial number;
- Type of the Meeting;
- Name of the company;
- Day, date, venue and time of commencement of the Meeting;
- Conclusion of the Meeting.

- Names of the Directors present physically;
- Names of the Directors present through Electronic Mode;
- The Company Secretary who is in attendance at the Meeting;
- Invitees, if any, (including Invitees for specific items).

SPECIFIC CONTENTS

- Record of Election of Chairman of Meeting ;
- Granting of Leave of Absence ;
- Attendance of Director;
- Presence of quorum;
- Record Detail of Director present through video conferencing;
- Noting of the Minutes of the preceding Meeting;
- Noting the Minutes of the Meetings of the Committees;
- Noting of resolution passed by circulation.

Other items to be mention in Minutes:

- Brief background of all proposals
- Summaries the deliberations thereof;
- In case of major decisions, the rationale thereof shall also be mentioned.

C. RECORDING OF MINUTES:

The recording is on the Company Secretary. If no Company Secretary is appointed any other person duly authorized by the Board or by the Chairman in this behalf shall record the proceedings .The Chairman or the Company Secretary as the case may be shall ensure the below points:

- Proceedings of the meetings are correctly recorded;
- Absolute Discretion ;
- Minutes shall be written in clear , concise and plain language;
- Minutes shall be written in third person;
- It should be an exact transcript of the proceedings of the meetings ;
- There shall be also a reference in case an earlier resolution is superseded or modified;
- The minutes of the meetings of any committee shall be noted at a meeting of the Board held immediately following the date of entry of such minutes in the minutes book.

D. ENTRY IN THE MINUTES BOOK:

The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalized and entered in the Minutes Book within the specified time limit of thirty days.

If any Director communicates his comments after the expiry of the specified period of seven days, the Chairman shall have the discretion to consider such comments.

ADJOURNED MEETING:

In case a meeting is adjourned the minutes in respect of the original meeting and the adjourned meeting shall be entered within 30 days from the date of respective meetings.

Minutes can be circulated either by hand or by speed post or by registered post or by courier or by e-mail or by any other recognized electronic mode.

E. SIGNING AND DATING :

- Minutes of the Meeting of the Board should be signed and dated by the Chairperson of the Meeting or the Chairperson of the next Meeting;
- Such Minutes may be signed by the Chairperson of the Meeting at any time before the next Meeting is held;
- Minutes of a General Meeting should be signed and dated by the Chairperson of the Meeting or in the event of death or inability of that Chairperson, by the Vice-Chairperson or any Director who was present in the Meeting and duly authorized by the Board for the purpose, within thirty days of the General Meeting;
- The Chairperson should **initial each page** of the Minutes, **sign the last page** and the date on which he has signed the Minutes should be mentioned by him.

F. INSPECTION & EXTRACTS :

Following Persons can inspect the Minutes:

- Directors;
- Company Secretary in Practice appointed by the company;
- Secretarial Auditor;
- The Statutory Auditor;
- The Cost Auditor;
- The Internal Auditor

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 Chairperson, if the draft of that Resolution had been placed at the Meeting.

Extracts of the duly signed Minutes may also be provided in electronic form.

When a member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company should furnish the same within seven working days of receipt of his request, subject to payment of such fee as may be specified in the Articles of the company.

In case a Member requests for the copy of the Minutes in electronic form, in respect of any previous General Meetings held during a period immediately preceding three financial years, the company should furnish the same without any fee.

G. PRESERVATION OF MINUTES:

- Minutes of all Meetings should be preserved permanently in physical or electronic form;
- Office copies of Notices, Agenda, Notes on Agenda and other related papers should be preserved in good order in physical or electronic form for as long as they remain current or for ten years, whichever is later and may be destroyed thereafter with the approval of the Board.

EXTRACT OF SECTION 118 OF COMPANIES ACT, 2013

Minutes of Proceedings of General Meeting, Meeting of Board of Directors and Other Meeting and Resolutions Passed by Postal Ballot

Notified Date of Section: 01/04/2014

118. (1) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(3) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(4) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—

(a) the names of the directors present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

(5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—

(a) is or could reasonably be regarded as defamatory of any person; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

(6) The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

(7) The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

(8) Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

(9) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

(10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

(11) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

(12) If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

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FAQ'S ON MINUTES OF BOARD MEETING (As per Secretarial Standards)

Q1. **Within how many days Minutes should be kept by the Company?**

Ans.1 Within 30 days of Conclusion of every such Meeting.

Q2. **Whether it is required to mention name of director dissenting from any resolution?**

Ans.2 The minutes shall contain the names of the directors, if any, dissenting from, or not concurring with the resolution

Q3. **Who have absolute discretion in regard to the inclusion or non inclusion of any matter in the minutes?**

Ans.3

Chairman of the Company.

Q4. **Whether it is mandatory for the companies to observe secretarial standards with respect to general and Board meetings?**

Ans.4. YES, As per section 118(10) it is mandatory for the companies to observe secretarial standards with respect to General and Board Meetings.

Q5. **Whether any approval required, If a Company makes any deviation from uniform and consistent form of Minutes?**

Ans.5 Every company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be AUTHORIZED BY THE BOARD.

Q6. **Can minutes of Board and its committee maintained under same minute Book?**

Ans.6 A distinct Minutes Book shall be maintained for each type of meeting.

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Q7. **Whether minutes can be pasted or attached to the Minutes Book?**

Ans.7 Minutes SHALL NOT BE pasted or attached to the Minutes Book, or tampered with in any manner

Q8. **What will be the treatment if any page of Minutes Book left blank?**

Ans.8 It shall be scored out and initialed by the Chairman who signs the Minutes.

Q9. **If a director cease as a director after the Meeting whether he is entitled to receive draft minutes?**

Ans.9 YES, A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.

Q10. **Who will record the proceeding of the Meetings?**

Ans.10 The *Company Secretary shall record* the proceedings of the Meetings.Where there is no Company Secretary, any o*ther person duly authorized by the Board* or by the Chairman in this behalf shall record the proceedings.

Q11. **Who have Power of Exclusion of any matters from the Minutes?**

Ans.11 **Chairman has Power of Exclusion of any matters from the Minutes.**

Q12. **Whether verification of documents relevant to resolution is necessary, If yes who will verify the same?**

Ans.12 Yes, verification of documents is necessary and Company secretary or chairman will verify the same.

Q13. **What is the time period of circulation of draft minutes?**

Ans.13 Within 15 days of Conclusion of Board Meeting company will circulate the draft minutes to directors of the Company.

Q14. **Modes of circulation of Draft Minutes?**

Ans.14 By hand or by speed post or by registered post or by courier or by e-mail or by any other recognized electronic means.

Q15. **If a director was not present in the meeting will be entitled to receive draft minutes of the Meeting and entitled to give his comments?**

Ans.15. YES, Even if a director is not present in the Meeting will get the copy of draft minutes and will have right to comment on the same.

Q16. **Time period in which director have to comment on the draft minutes?**

Ans.16 Director has to comment on the draft minutes within 7 days of circulation of Draft minutes.

Q17. **Who can inspect the Minutes of Board Meeting and Committee Meeting?**

Ans.17

a) DIRCTORS" can inspect the Minutes;

b) Company Secretary in Practice appointed by the company;

c) Secretarial Auditor;

d) the Statutory Auditor;

e) the Cost Auditor;

f) the Internal Auditor of the company

Q18. **If a director has resigned/removed/ceased from the directorship of the company can he inspect the Minutes books?**

Ans.18 Yes, a director can inspect the minutes book even after cessation from the directorship. But

" He is entitled to inspect the Minutes of the Meetings held during the period of his Directorship".

Q19. **Whether a newly appointed director can inspect the Minutes of earlier Meetings?**

Ans.19 YES, A director can inspect the Minutes of a Meeting held before the period of his Directorship.

Q20. **Whether a member of the company can inspect the Minutes of Board Meeting?**

Ans. 20 NO, A member of the company can't inspect the Minutes of Board Meeting

Q21. **Who can get the extract of Minutes of Board Meeting?**

Ans.21 Only "DIRECTORS" can Extracts the Minutes.

Q22. **How long companies have to preserve its Minutes?**

Ans.22 The Companies have to preserve the Minutes Books for the life time of the Company.

Q23. **How long companies have to preserve its Notice/Agenda/Notes?**

Ans.23 The Companies have to preserve the Notice/Agenda/notes for the period of 8 years.

Q24. **Who will be the custodian of the Minutes Book?**

Ans.24 Company Secretary. Where there is no Company Secretary, Any director duly authorized by Board for the purpose.

Q 25. **Whether any disclosure regarding Minutes in the Annual Report and Annual Return?**

Ans. 25 The Annual Report and Annual Return of a company shall disclose the Number and Dates of Meetings of the Board and Committees held during the financial year.

Q26. **Penalty under Companies Act on non Compliance of Secretarial Standard?**

MINUTES	SECTIONS	PENALTIES UNDER COMPANIES ACT, 2013
Non Preparation of minutes of Board Meetings/ General Meetings	Penalty under Companies Act on non Compliance of Secretarial Standard and Section 118 of Companies Act, 2013.	Fine: Rs. 25000 per meeting Fine: Rs. 5000 on every officer in default.
Tampering of Minutes of Board Meetings/General Meetings	Penalty under Companies Act on non Compliance of Secretarial Standard and Section 118 of Companies Act, 2013.	Imprisonment: 2 years Fine: Minimum of Rs. 25000 to maximum of Rs. 1,00,000

Q 27. How should the mode of attendance should be recorded?

Ans. 27.

- The names of officers in attendance and invitees, if any, for specific items and mode of their attendance i.e. whether personally or through Electronic Mode.

- If any Director has participated only for a part of the Meeting, the agenda items in which he participated.
- The mode of attendance of every Director whether personally or through Electronic Mode.
- In case of a Director joining through Electronic Mode, his particulars, the location from where and the agenda items in which he participated.

Q. 28. How to make noting in case meeting was also conducted through electronic mode?

Ans.28. 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 case voting by Electronic Mode was made available, the name of the scrutinizer appointed and summary of the scrutinizer's Report should also be recorded.