EXPOSURE DRAFTS

(*Last date for comments : 30th September, 2008*)

PROPOSED SECRETARIAL STANDARDS SS-7, SS-8 AND SS-9

The following is the text of the Exposure Drafts of the proposed **Secretarial Standard on Passing of Resolutions by Circulation (SS-7), Secretarial Standard on Affixing of Common Seal (SS-8)** and **Secretarial Standard on Forfeiture of Shares (SS-9)** issued by the Secretarial Standards Board of the Institute of Company Secretaries of India, for comments. The comments and suggestions on the Exposure Drafts may be sent to Shri Gopal Chalam, Dean, ICSI-CCRT at Plot No.101, Sector - 15, Institutional Area, CBD Belapur, Navi Mumbai-400 614 (E-mail: *ccrt@vsnl.com)* so as to reach him by 30th September, 2008, with a copy to *drs4@icsi.edu*.

PROPOSED SECRETARIAL STANDARD ON PASSING OF RESOLUTIONS BY CIRCULATION (SS-7)

The following is the text of the Secretarial Standard-7 (SS-7) issued by the Council of the Institute of Company Secretaries of India, on "Passing of Resolutions by Circulation".

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

Introduction

A Company, being a legal entity, cannot act by itself but can do so only through its Board of Directors.

Board is entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do subject to the restrictions and limitations imposed by the Act, memorandum and articles and the company in general meeting.

Decisions relating to the policy and operations of the Company are arrived at meetings of the Board held periodically.

Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on collective wisdom of the Board.

However, it may not always be practicable to convene a Meeting of the Board to discuss matters on which decisions are needed urgently. In such circumstances, passing of resolution by circulation can be resorted to.

Scope

This Standard seeks to lay down a set of principles for passing of resolutions by circulation.

Definitions

The following terms are used in this standard with the meaning specified :

"*Act*" means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof.

"*Articles*" means the articles of association of a company.

"*Board*" means the Board of directors of a company and includes a Committee constituted by the Board.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

Secretarial Standards

The Act requires certain business to be approved at meetings of the Board of Directors only. Other businesses that do not require detailed discussion can be approved by means of Resolutions by Circulation. However, there must be a provision in the Articles to pass a resolution by circulation.

1. Authority

1.1 Chairman of the Board or the Managing Director shall decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.

If the resolution is proposed by any other Director, the approval of any of the aforesaid officers, if there is one, shall be obtained before the draft Resolution is circulated to all the Directors.

1.2 Where there is no Chairman or Managing Director, any other Director shall decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.

2. Procedure

2.1 A resolution proposed to be passed by circulation should be sent in draft form, together with the necessary papers, individually to all the directors or, in the case of a Committee to all the members of the Committee, at the same time.

The resolution together with all papers must be sent to all directors including Interested Directors and directors who are usually residing abroad.

2.2 Each business proposed to be passed by way of resolution by circulation shall be explained by a note setting out the

details of the proposal and the draft of the resolution proposed.

The note should also indicate how to signify assent or dissent to the resolution proposed and the date by which the Director of the Board or of the Committee must signify his assent or dissent to the resolution.

2.3 The draft of the resolution to be passed and the necessary papers shall be circulated by hand, or by post, or by facsimile, or by email or by any other electronic mode.

Where the draft of the resolution and necessary papers are sent by email or any other electronic mode, a hard copy of the same may be sent by post.

3. Approval

3.1 The resolution is passed, when it is approved by a majority of Directors entitled to vote on the Resolution.

If any special majority or the affirmative vote of any particular director or directors is specified in the Articles, the resolution shall be passed only with the assent of such special majority or such affirmative vote.

3.2 The date of passing of the resolution is the date of circulation, if so specified, or the last date by which the assent or dissent of the directors was required to be communicated.

Directors signify their assent or dissent by signing the Resolution to be passed by circulation.

Directors should append the date on which they have signed the Resolution. In case a Director does not append a date, the date of receipt by the company of the signed Resolution shall be taken as the date of signing.

In cases where the interest of a Director is not already known to the Company, the Interested Director must disclose this fact and abstain from voting.

4. Recording

4.1 Resolutions passed by circulation should be noted, at the next Meeting of the Board or Committee, as the case may be, and the decision recorded in the Minutes of such Meeting.

The minutes shall record the text of the resolution passed and the majority with which such resolution was passed.

5. Validity

5.1 Passing of resolution by circulation shall be valid as if it had been passed at a duly convened Meeting of the Board or of the Committee.

This does not dispense with the requirement for the Board to meet at the specified frequency.

Appendix

Illustrative matters to be passed at a duly convened Board Meeting and which cannot be passed by circulation

- To purchase its own securities.
- To make calls on shares in respect of unpaid share capital of the company.
- To issue debentures.
- To borrow money otherwise than on debentures.
- To invest the funds of the company.
- To give loans.
- To make political contributions.
- To fill Casual vacancy in the Board.
- Sanction for contracts in which a director is interested.
- Investment in shares of other companies.
- Declaration of solvency at the time of voluntary winding up.
- To Enter into a Joint Venture.
- To commence a new business activity.
- To carry out mergers and acquisitions.
- To commence a major dispute resolution exercise.
- To shift the location of plant or factory or a registered office.
- To appoint or remove senior management personnel of one level below board.
- To appoint Internal Auditors.
- To appoint a Managing Director / Manager as a Managing Director / Manager in more than one company.
- Adoption / affixation of Common Seal.
- Forfeiture of shares.
- Granting loans to Directors.
- Noting of Directors' interest.
- Noting of Directors' shareholdings.
- Appointment or Resignation of Managing Director or Whole-time Director or Manager.
- Appointment and removal of the Chief Financial Officer and the Company Secretary.
- Appointment of sole-selling agents.
- Taking note of the quarterly financial results.
- Approving the half-yearly financial results.
- Quarterly results for each operating division or business segment.
- Annual operating plans and budgets.
- Any material default in financial obligations.
- Compliance of regulatory / statutory provisions or listing requirements and reporting show cause notices, prosecutions and penalty notices of material nature.
- Sale of investments, subsidiaries or assets which is not in the normal course of business.

- Any issue which involves possible public or product liability claims.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movements.
- Material liability – legal or contractual.
- Fixed deposit advertisements.
- Events which are significant or have material commercial / financial implications.

PROPOSED SECRETARIAL STANDARD ON AFFIXING OF COMMON SEAL (SS – 8)

The following is the text of the Secretarial Standard-8 (SS-8) issued by the Council of the Institute of Company Secretaries of India, on "Affixing of Common Seal."

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

Introduction

Common seal means the seal of a company. It is the signature of the company to any document on which it is affixed and binds the company for all obligations undertaken in the document.

The Act provides that from the date of incorporation mentioned in the certificate of incorporation, the company shall have a common seal.

The Articles of Association provides the procedure relating to affixing of common seal.

Scope

This Standard seeks to lay down a set of principles for affixing of the common seal.

Definitions

The following terms are used in this standard with the meaning specified:

"*Act***"** means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof.

"*Articles***"** means the articles of association of a company.

"*Board***"** means the Board of directors of a company.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

Secretarial Standards

The Act requires affixation of the common seal on certain documents, share certificates and share warrants issued by the company.

1. Approval

1.1 The common seal shall be adopted by a resolution of Board.

1.2 Adoption of a new common seal in place of the existing common seal shall also require a resolution of the Board.

1.3 The impression of the common seal shall be made part of the minutes of the meeting in which it is adopted.

2. Form and Content

2.1 The common seal shall be made of metal and capable of being manually operated.

2.2 The common seal shall have the name of the company and state in which the registered office of the company is situate engraved in legible characters.

3. Authority and Mode of affixation

3.1 The common seal shall be affixed to any instrument only by authority of a resolution of the Board.

3.2 The common seal shall be affixed in the presence of managing director or any two directors, and the company secretary or any other person as the Board may authorize for the purpose.

The Articles may provide for affixing of common seal in any other manner.

3.3 The persons in whose presence the seal is affixed shall sign every instrument to which the seal of the company is so affixed.

The share certificates issued by the company shall be sealed and signed in accordance with the provisions of the Rules prescribed in this regard.

4. Register of Documents executed under common seal

4.1 Every company shall maintain a register containing particulars of documents on which the common seal of the company has been affixed.

4.2 The register shall contain the description of the document; date of the resolution authorizing the affixation of common seal; date of affixing seal on the document; name(s) of person(s) who attested the affixation; and the place at which the document was so sealed.

4.3 The register shall be maintained at the registered office of the company.

5. Custody

5.1 The common seal shall be kept at the registered office in the custody of a director of the company or the company secretary, as may be authorized by the Board.

5.2 The common seal shall not be moved from the registered office except under the authority of a resolution of the Board

6. Official seal for use outside India

6.1 A company may, have an official seal for use outside India.

Use of official seal outside India requires a provision in the Articles.

6.2 **The official seal shall be facsimile of the common seal.**

6.3 **Official seal shall have engraved in it the name of the territory, district or place where it is to be so used in addition to the name and state in which the registered office of the company is situate.**

6.4 **The official seal shall be adopted by a resolution of Board.**

6.5 **Adoption of a new official seal in place of the existing official seal shall also require a resolution of the Board.**

6.6 **The impression of the official seal shall be made part of the minutes of the meeting in which it is adopted.**

7. **Authority and Mode of affixation**

7.1 **The Board shall authorize a person to affix the official seal to any deed or other document to which the company is a party in that territory, district or place.**

A deed, instrument or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

7.2 **The person affixing the official seal shall sign and write on the deed or other instrument, the date and place at which it is affixed.**

8. **Register of documents executed under official seal**

8.1 **Every company shall maintain a register containing particulars of documents on which the official seal of the company has been affixed.**

8.2 **The register shall contain the description of the document; date of the resolution authorizing the affixation of official seal; date of affixing seal on the document; name(s) of person(s) who attested the affixation; and the place at which the document was so sealed.**

8.3 **The register shall be maintained at the office where the official seal is kept.**

8.4 **Every entry made in the register should be transmitted forthwith to the registered office of the company in India.**

9. **Custody**

The official seal shall be kept in the custody of the person as may be authorized by the Board.

PROPOSED SECRETARIAL STANDARD ON FORFEITURE OF SHARES (SS – 9)

The following is the text of the Secretarial Standard-9 (SS-9) issued by the Council of the Institute of Company Secretaries of India, on "Forfeiture of Shares".

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

Introduction

Forfeiture is withdrawal of shares due to non-payment of any call by the shareholder or for any other ground as may be provided in the Articles. On forfeiture of shares the member loses the amount paid thereon and his interest in the ownership of the shares.

Scope

This Standard seeks to lay down a set of principles for forfeiture of both equity and preference shares arising from non-payment of calls.

Definitions

The following terms are used in this standard with the meaning specified:

"*Act***"** means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof.

"*Articles***"** means the articles of association of a company.

"*Board***"** means the Board of directors of a company.

"*Call***"** means a demand made by the company on members for payment of an amount due on shares whether in respect of nominal value or premium.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

Secretarial Standards

1. **Authority**

1.1 **The Articles should contain a provision for forfeiture of shares.**

1.2 **Forfeiture of shares requires approval of the Board in a duly convened meeting.**

2. **Procedure**

2.1 **Non – Payment of Calls**

A forfeiture of shares held by a member should be made under the authority of the Board, if a call on the shares, together with interest accrued thereon, in accordance with the terms of issue of the shares, remains unpaid after the day appointed for payment thereof.

2.2 **Notice**

2.2.1 **If a member fails to pay any call, the company should during such time as any part of the call or installment remains unpaid, serve a notice on him requiring payment of the call remaining unpaid, together with interest which may have accrued.**

2.2.2 **Notice should be served by the company on any defaulting member by registered post acknowledgment due.**

The notice shall be sent at the address registered with the company.

2.3 **Contents of Notice**

2.3.1 **The notice should contain the amount of the call due; interest accrued.**

2.3.2 **The Notice shall also specify a day not being earlier than the expiry of twenty-one days from the date of posting of the notice on or before which the payment required by the notice is to be made ; and state that in the event of non-payment on or before the day so specified, the shares in respect of which the call was made including the amount already paid thereon will be forfeited.**

If the notice is not given, the forfeiture cannot be effected.

2.4 **Forfeiture on non - payment**

If the amount payable specified in the notice was not paid within the stipulated date, any share in respect of which the notice has been given may, at any time thereafter be forfeited.

Any entitlement of the defaulting member for dividends on his partly paid up shares may, together with amount already paid by him upon his shares, be adjusted against his dues on calls, in such a way that the number of shares credited to his account as fully paid up shares is maximized and only the remaining shares are taken up for forfeiture.

3. **Requirements of Forfeiture**

3.1 **The Board at its duly convened meeting shall approve the forfeiture as also authorizing any director or manager or the secretary to make a declaration of the forfeiture.**

3.2 **The date of approval of the Board for the forfeiture as may be authorized shall be the date of forfeiture.**

3.3 **Upon forfeiture, any director or manager or the secretary duly authorized by the Board, of the company shall make a declaration specifying the particulars of shares forfeited.**

3.4 **The declaration shall be conclusive evidence of forfeiture as against all persons claiming to be entitled to the share of the company which has been forfeited.**

3.5 **The Board shall issue individual notices to the defaulting members whose shares have been forfeited.**

3.6 **Entries in the register of members shall be made with regard to forfeited shares.**

3.7 **Share certificates in relation to forfeited shares shall stand cancelled upon forfeiture.**

3.8 **There shall be a reference to the forfeiture of shares in the Report of the Directors to the shareholders.**

4. **Annulment of forfeiture**

4.1 **The Board can annul the forfeiture by passing a resolution before the reissue of forfeited shares.**

4.2 **On annulment, the name of the member shall be restored in the Register of Members for those shares, on such terms as it may think fit.**

In case of shares issued in physical form, fresh Share Certificates shall be issued for those shares.

The forfeiture can be annulled by the Board at its discretion, if the member pays all outstanding calls due on the shares together with interest.

The member whose shares have been forfeited shall be duly informed by the Board on revoking the forfeiture and restoring the member on the register.

5. **Effect of Forfeiture**

5.1 **A person whose shares have been forfeited would cease to be a member of the company.**

5.2 **A person whose shares have been forfeited would notwithstanding the forfeiture, remain liable to pay to the Company all moneys, which at the date of forfeiture were payable by him to the Company in respect of the shares.**

The liability of the defaulting member shall not cease till the company receives the full payment which is due in respect of shares. The name of the defaulting member will be placed as a past member on the list of contributories if a winding up commences within one year of the date of forfeiture.

6. **Reissue**

6.1 **A forfeited share may be reissued or otherwise disposed of on such terms and in such a manner as the Board may think fit.**

In the case of a company whose shares are listed in a recognized stock exchange, re-issue of forfeited shares shall require ordinary resolution of members of the Company.

The reissue of forfeited shares is a sale of shares and it does not amount to an allotment. The Company shall duly record the particulars of the members who acquire those shares as if it were a transfer of shares.

6.2 **Pricing on Re-Issue of Forfeited Shares**

The directors would fix a price for the forfeited share that should not be lower than the sum of the amount of the call due and unpaid on the share at the time of forfeiture.

A new share certificate would be issued in name of the transferee who shall be registered as the holder of share/ shares.

In the case of a company whose shares are listed in a recognized stock exchange, the price at which the re-issue is contemplated shall not be less than the difference between the price arrived at as per Guidelines for Preferential Allotment of Shares and the amount already paid on those shares by the defaulting member.

For this purpose, the “relevant Date” specified in the Guidelines shall be the date of forfeiture.

6.3 **Effect of re-issue**

On reissue the transferee shall be registered as the holder of the share.

The title of the transferee shall not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

A new share certificate shall be issued in his/her name.