



# The Companies Act 2013

*Enlightening Nation*

## E-News Letter



**MAY ISSUE-2015**

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SECRETARIAL STANDARDS

## SECRETARIAL STANDARDS

### Introduction to Secretarial Standard:

Though we have the law in place for taking necessary action and steps as and when required and thereafter the various rules and regulations to follow the procedure laid down for business activities but in order to bring **harmony and unity** between the secretarial practice adopted by all the companies, a need was felt to develop some kind of **Standards** by means of which in certain areas professionals could have standard format of work and there could be **Integration of Secretarial Practice**. In need of the same **Institute of Company Secretaries of India (ICSI/Institute)** constituted **Secretarial Standards Board (SSB)** for formulating **Secretarial Standards** in the year 2000-2001. SSB formulated 10 Secretarial Standards and published the same for the voluntary compliance by the companies. Now with the enactment of The Companies Act, 2013 compliance of the two secretarial standards has been made mandatory w.e.f. 01.07.2015.

### Need for Secretarial Standards:

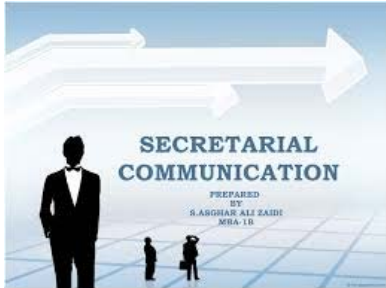
Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency.

The Secretarial Standards Board formulates Secretarial Standards taking into consideration the applicable laws, usages, business environment, practical applicability and the best secretarial practices prevalent. Secretarial Standards are developed:

- in a **transparent manner**;
- after extensive **deliberations, analysis, research**; and
- after taking views of **corporate, regulators and the public at large**.

## Scope of Secretarial Standard:

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations. Secretarial Standards that are issued will be in **conformity** with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes **inconsistent** with such law, the provisions of the **said law shall prevail**.



## Compliances for Secretarial Standard:

**Section 118(10)** of the Companies Act, 2013 introduces Secretarial Standards and provides statutory recognition to Standards issued by ICSI. It **mandates** observance by every company of the Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) specified by ICSI and approved by the Central Government. Under the Companies Act 2013, the responsibility of ensuring compliance is entrusted with the Company Secretary. **Clause 205** prescribes the functions of the Company Secretary which inter-alia includes ensuring that the **company complies** with the applicable Secretarial Standards. PCS conducting secretarial audit must also ensure compliance with applicable Secretarial Standards.

### Note:

**Section 118(10)** of the Companies Act, 2013 mandates companies **other than One Person Companies** to observe Secretarial Standards with respect to **General and Board Meetings** specified as such by the Institute of Company Secretaries of India. For the compliance of section 118(10) of the Companies Act, 2013, **Ministry of Corporate Affairs vide letter no.1/3/2014/CL/I dated April 10, 2015** accorded its approval to follow Secretarial Standards (SS) specified by the **Institute of Company Secretaries**.



## CHECKLIST FOR BOARD MEETING UNDER COMPANIES ACT, 2013, READ WITH SECRETARIAL STANDARD 1(SS-1):

### ➔ Compliances before the Meeting

#### A) Notice of Meeting

##### Ensure that:

- A Meeting of Board shall be called by giving **not less than 7 days** notice in writing to every director unless **the Articles prescribe a longer period.**
- Notice shall be sent to every Director at his **Registered Address** with the Company or any of such addresses appearing in the **Director Identification Number (DIN)** registration of the Director or Where a Director specifies a **particular means** of delivery of Notice, the Notice shall be given to him by such means.
- Notices to be send through **Post** or by **hand delivery** or by **electronic means** or **registered post** or by **courier** or by **facsimile** or by **e-mail.**
- **Proof of sending Notice and its delivery** shall be maintained by the company.
- The Notice shall be issued by the **Company Secretary** or where there is no Company Secretary, any Director or any **other person** authorized by the Board for the purpose.
- Notice shall Contain **Serial number, day, date, time (Meeting can be held at any place, time or date but not National Holiday) and full address of the venue of the Meeting.**
- The Notice shall inform the Directors about the availability of **Electronic Mode facility**, and provide them necessary information.
- Notice shall also contain the **contact number or e-mail address (es)** of the Chairman or the Company Secretary or any other person authorized by the Board, to whom the Director shall confirm.
- Absence of an Advance Confirmation from the Director, it shall be assumed that he will attend the **Meeting physically.**
- Notice for Adjourned Meeting shall be given to both Directors Present and Not but **not less than 7 days before the Meeting.**
- Notice for Agenda and its Notes shall be given to the Directors at their **Registered Address** or **Address in DIN** or any other **at least 7days** before the date of the Meeting, unless the **Articles prescribe a longer period.**
- Notice for Agenda shall be sent through by **hand** or by **speed post** or by **registered post** or by **courier** or by **e-mail** or by any **other electronic means**
- Proof of Agenda's Notice to be Maintained
- Any item if not included in Agenda can be taken only with the permission of Chairman and Majority Director's Consent including **at least 1 Independent Director.**
- Each item of business to be taken up at the Meeting shall be **serially numbered.**

## B) FREQUENCY OF MEETING

### Ensure that:

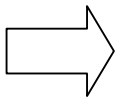
#### Company shall hold its Board Meeting:

- **Within 30 days** of the date of its incorporation
- Board shall meet **at least once in every calendar quarter**, with a maximum gap of **120 days between any 2 consecutive Meetings of the Board**, such that **at least 4 Meetings** are held in each Calendar Year.
- **One Person Company, Small Company or Dormant Company** holds **1 Meeting** of the Board in each half of a calendar year and the gap between the **two Meetings** of the Board is **not less than 90 days**.
- The interval period for adjourned Meeting, shall be counted from the date of the **original Meeting**.
- Committees shall meet **as often** as necessary subject to Frequency decided by Board or as per law.
- Independent Directors (if there) should meet **once in a Calendar Year** and Company will convene such Meeting.

## C) AUTHORITY

### Ensure that:

Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary if not then any person authorized by the Board, on the requisition of a Director, shall in consultation with the **Chairman or the Managing Director or the Whole-time Director, where there is any, unless otherwise provided by the articles.**



## COMPLIANCES DURING THE MEETING

### A) QUORUM

#### Ensure that:

- The quorum shall be **1/3rd of its total strength or 2 directors**, whichever is **higher**, and the participation of the directors by **video conferencing or by other audio visual means** shall also be counted for the purposes of quorum..  
**Note:** if quorum in Articles is **higher than 1/3rd then higher limit will be considered**
- **Quorum shall be present throughout the Meeting**(both while transacting business and while Commencement)
- A Director shall not be counted for Quorum in respect of an item in which **he is interested**
- Where at any time the number of Interested Directors **exceeds or is equal to 2/3rd of the total strength of the Board of Directors**, the number of disinterested directors present being **not less than 2, shall be the quorum.**

- Directors participating **through Electronic Mode in a Meeting** shall be counted for **Quorum**, unless they are excluded for items of business under the provisions of the Act or any other law.
  - **Some of the restricted items are as follows:**
    - Consideration and Approval of the annual financial statement including Consolidated Financial Statement
    - Board's Report,
    - prospectus
    - Matters relating to amalgamation, merger, demerger, acquisition and takeover
  - Where the number of Directors is reduced below the limit fixed by the Articles, **no business shall be transacted unless the number is first made up by the remaining Director(s) or through a general meeting.**
- Note:** Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company provide, the meeting shall automatically stand adjourned to the **same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a National holiday, at the same time and place.**
- The presence of all the members of any Committee is necessary to form the Quorum **otherwise provided in the Act or any other law or the Articles or by the Board.**

## **B) ATTENDANCE AT THE MEETING**

### **Ensure That:**

- Every company shall maintain **Separate Attendance Registers** for the Meetings.
- It must be preserve **for 8 years or more** with the approval of Board.
- The pages of the attendance registers shall be **serially numbered** and **Date** should be mentioned.
- It shall be bound **periodically depending on the size and volume.**
- Every Director, Company Secretary (Present) and every Invitee who attends the Meeting (Both Board and Committee) shall **sign the attendance register at that Meeting.**
- In case of a Committee Meeting: **Name** of the Committee; **place** of the Meeting; time of the Meeting; **names of the Directors and signature** of each Director present; name and signature of the **Company Secretary** who is in attendance and also of persons attending the **Meeting by invitation.**
- Attendance register shall be maintained at the **Registered Office of the company or place approved by Board.**
- The attendance register is open for inspection by the **Directors or PCS or the Secretarial Auditor or Statutory Auditor.**
- The recording of attendance of Meetings through Electronic Mode shall be preserved for a period of **at least 8 financial years** and may be **destroyed** thereafter with the approval of the Board.
- It is to be authenticated by **CS or Chairman by appending their signature at each page**
- The attendance register shall be kept in the **custody of the Company Secretary** Otherwise Director.

## C) CHAIRMAN OF THE BOARD MEETING

### Ensure that:

- The Chairman of the Board shall conduct the Meetings of the Board. If no Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to conduct the Meeting, unless otherwise provided in the Articles.
- **Chairman with the assistance of Company Secretary** Check that the Meeting is duly convened with Provisions of the Act and other laws.
- If Chairman is interested in any business then with the consent of Members, he may give the duty to proceed the Meeting of that particular transaction in which he is interested to **Disinterested Director and Chairman shall not be present during that Meeting**
- In case of Committee Meeting any Member of the Committee can be the chairman and if no chairman is elected then Committee **can select any Member to be the chairman** unless otherwise provided in Articles.
- **Chairman will Ensure Proper Security**, if Directors participate through **Electronic Mode**.

### NOTE:

No person other than the Director concerned shall be allowed access to the proceedings of the Meeting **where Director(s) participate through Electronic Mode**, except a Director who is differently able, provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains **confidentiality** of the matters discussed at the Meeting.

Unless otherwise provided in the Articles, in case of an equality of votes, **the Chairman shall have a second or casting vote**.

## D) RESOLUTION BY CIRCULATION

### Ensure that:

- The **Chairman** of the Board or the **Managing Director** or the **Whole-time Director** and where there is none, any Director other than an **Interested Director**, shall decide, , whether the approval of the Board for a particular business is required to be obtained by means of a **Resolution by circulation**.
- Where not less than **1/3rd of the total number of Directors** require the Resolution to be decided at a Meeting, and then it will be decided at Board Meeting.
- The draft of the Resolution in duplicate with necessary papers, if any shall be circulated amongst the Directors or Committee Members by **hand**, or by **speed post** or by **registered post** or by **courier**, or by **e-mail** or by any other recognized **electronic means** or by **Facsimile at the Registered addresses of Directors in India ; by signing one Copy of the Resolution and Sending it back to Company**
- Record the Resolution in the minutes of the **immediate next Board meeting**

- Enclose a copy of the Resolution to the agenda ensuing immediately next Board Meeting and mentioning in the Notes **assent and dissent** for said Resolution and also that it was passed by majority of Directors.
- Each business proposed to be passed by way of Such Resolution shall be explained by a note providing details of the proposal, **relevant material facts**, the **nature of concern** or **interest**, if any, of any Director in the proposal, which the Director had earlier disclosed. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.  
**Provided: Not more than 7 days** from the date of circulation of the draft Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.
- The Resolution shall be effective from the last date specified for signifying assent or dissent by the Directors if passed, or the date on which assent from more than 2/3rd of the Directors has been received, whichever is earlier, and if no other effective date is specified in such Resolution.



## Compliances After Meeting

### A) MINUTES

#### Ensure that:

- A **distinct Minutes Book** shall be maintained for Meetings of the Board and each of its Committees.
- Minutes may be maintained in **electronic form** in such manner as may be decided by the Board.
- Minutes in electronic form shall be maintained with **Timestamp**.
- The pages of the Minutes Books shall be **consecutively numbered**.
- Minutes shall not be **pasted or attached to the Minutes Book, or tampered**.
- Minutes, 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
- Minutes of the Board Meeting shall be kept **at the Registered Office of the company** or at **other place** as may be approved by the Board
- Minutes shall at the beginning state the **serial number** and **type of the Meeting**, **name of the company**, **day, date, venue and time of commencement and conclusion of the Meeting**.
- Minutes shall record the names of the **Directors present physically or through Electronic Mode, the Company Secretary ( present) and Invitees, if any,**



- Minutes shall mention the brief background of all proposals and summaries the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.
- Minutes shall be written in **clear, concise and plain language.**
- Minutes shall be written in **third person and past tense.** Resolutions shall however be written in present tense.
- Any document, report or notes placed before the Board and referred to in the Minutes shall be identified by initialing of such document, report or notes by the Company Secretary or the Chairman
- Where any earlier Resolution is modified, Minutes shall contain a reference to such earlier Resolution.
- **Within 15 days** from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by electronic means to all the members for their comments.
- Minutes shall be entered in the **Minutes Book within thirty days** from the date of conclusion of the Meeting.
- **The date of entry** of the Minutes in the Minutes Book shall be recorded by the Company Secretary.
- Minutes, once entered in the Minutes Book, **shall not be altered.** Any alteration in the Minutes as entered shall be **made only by approval of the Board** at its subsequent Meeting in which such Minutes are sought to be altered.
- Minutes of the Meeting of the Board shall be **signed and dated** by the Chairman of the Meeting or by the Chairman of the next 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.**
- Minutes, **once signed by the Chairman, shall not be altered.**
- A copy of the signed Minutes certified by the Company Secretary or where there is no Company Secretary, by any Director authorized by the Board shall be circulated to all Directors **within fifteen days after these are signed.**
- The Minutes of **Meetings of the Board and any Committee** thereof can be inspected by the Directors.
- Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, **certified copies of any Resolution** passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting.
- Minutes of all Meetings shall be preserved permanently in **physical or in electronic form with Timestamp**
- Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form **for as long as they remain current or for eight financial years, whichever is later** and may be destroyed thereafter with the approval of the Board
- Minutes Books shall be kept in the **custody of the Company Secretary.**
- 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 indicating the number of Meetings attended by each Director.

### Contents to be included:

- Record of election, if any, of the **Chairman of the Meeting**.
- Record of **presence of Quorum**.
- **The names of Directors** who sought and were granted leave of absence.
- In case of a **Director, Company Secretary and invitees** if any participating through Electronic Mode, his particulars, the location from where and the Agenda items in which he participated.
- Noting of the Minutes of the **preceding Meeting and Committee Meetings**
- The text of the Resolution(s) passed by circulation since the last Meeting, **including dissent or abstention, if any**.
- The fact that an **Interested Director was not present during the discussion and did not vote**.
- The views of the Directors particularly the Independent Director, and in the opinion of the Chairman is not **defamatory, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company**.
- The fact of the **dissent and the name of the Director who dissented** from the Resolution or abstained from voting thereon.
- Ratification by Independent Director or majority of Directors, as the case may be, in case of **Meetings held at a shorter Notice**.
- **The time of commencement and conclusion** of the Meeting.

## CHECKLIST FOR GENERAL MEETING UNDER COMPANIES ACT, 2013, READ WITH SECRETARIAL STANDARD 2(SS-2):

Ensure that a General Meeting shall be convened only by or on the authority of the Board



### Pre Meeting Compliances

#### A) Frequency of the Meeting

1. Company shall In each Calendar Year hold a Annual General Meeting ,further make sure that company hold its:
  - First AGM within a period of 9 months from the date of closing of the first financial year of the company.
  - Every subsequent AGM within a period of 6 months from the date of closing of the financial year
  - Not more than 15 months have elapsed between the two AGM's

#### B) Notice

- Ensure that Company shall give Notice of **21 clear days** for a general meeting either in writing or through electronic mode.
- Ensure that Notice shall specify:-
  - The Day & date, that is **not a national holiday**;
  - Time i.e. during business hours, i.e., **between 9 a.m. and 6 p.m;** and

- **Full address of the venue including route map and prominent land mark** for easy location. of the Meeting along with a statement of the business to be transacted at such meeting
- **whether it was an AGM or EGM**
- Ensure that Notice of every general meeting **shall given to :-**
  - Every member of the company, legal representative of any **deceased member or the assignee of an insolvent member**
  - **Auditors**
  - **Directors**
  - **The Secretarial Auditor,**
  - **The Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.**
  - Company has obtained consent of **at least 95% of the members** for convening the meeting at shorter notice.
  - Notice shall be posted on **the website, if any**
- **Ensure that** Company uses a system which produces confirmation of the total number of recipients e-mailed and Company has maintained a record of each recipient to whom the Notice has been send i.e. **“proof of sending”**.
- **Ensure that** Notice shall not be sent to members by ordinary post if:
  - the company provides the facility of e-voting;
  - the item of business is being transacted through postal ballot;
- **Ensure that** Notice shall be accompanied, by an **attendance slip and a Proxy form** with clear instructions for filling, stamping, signing and/or depositing the Proxy form.
- **At least three days** prior intimation is given to the members, to transact the same business as specified in the original Notice, if, a Meeting cannot be held on the date originally fixed.
- **Ensure that** notice shall contain a statement that “a member of a company entitled to attend and vote at a meeting shall also be entitled to appoint another person **as a proxy to attend and vote at the meeting on his behalf”**
- **Ensure that** notice shall disclose the justification for choosing the appointees for appointment as **Independent Directors, in case the appointment is made at such meeting.**
- **Ensure that** the company has give Notice of the Resolution to all its Members **at least 7 days** before the Meeting, In case a valid special notice under the Act has been received from Member(s)
- **Ensure that** Notice shall clearly specify the **nature of the Meeting and the business to be transacted thereat.**
- **Ensure that** every notice of the company shall annex the **explanatory statement** in respect of special business.

### **C) Explanatory Statement**

- **Ensure that** explanatory statement must contain a disclosure about nature of the concern or interest (financial or otherwise), if any, of the following persons, in any special item of business or in a proposed Resolution:-
  - **Directors and Manager,**
  - **Other Key Managerial Personnel; and**

➤ **Relatives of the persons mentioned above**

- **Ensure that** the explanatory statement must provide all information and facts that necessary for the members to understand the meaning, scope and implications of the items of the business and to take decision thereon
- **Ensure that** a performance evaluation report of such Director or summary thereof shall be included in the explanatory statement, in case of re-appointment of Independent Directors is made at such meeting.

➔ **Compliances during Meeting**

**A) Quorum**

- **Ensure that** the appropriate quorum was presented at the meeting i.e.-
  - **2**; in case of private company
  - **5**; in case of public company having less than 1000 members on the date of meeting
  - **15**; in case of public company having more than 1000 but less than 5000 members on the date of the meeting.
  - **30**; in case of public company having more than 5000 members on the date of the meeting.
- **Ensure that** no business shall discuss unless proper quorum was presented in the meeting
- **Ensure that** following members if present shall be counted for the purpose of Quorum.
- Member who is not entitled to vote on any particular item of business **being a related party**,
- Members who have voted by **Remote e-voting** have the right to attend the General Meeting
- **Ensure that** Quorum shall be presented throughout the meeting.

**B) Chairman**

- The Chairman of the Board shall take the **chair and conduct the Meeting**.
- If the Chairman is not present within **fifteen minutes** after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall **elect one of themselves** to be the Chairman of the Meeting.
- If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the chair, the **Members present shall elect, on a show of hands/ poll**
- **Ensures that** a Chairman must be elected before the **business of the meeting discussed**
- **Ensure that** the Chairman shall explain the **objective and implications** of the Resolutions before they are put to vote at the Meeting.
- **Ensure that** the Chairman shall explain the **reasons of absence of any Director** at the Meeting, If is unable to attend the Meeting,

## C) PROXIES

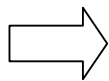
- **Ensure that** company must follow all the **provisions of proxy as contained in its articles.**
- **Ensure that** company has annexed appropriate statement of proxy with notice of **general meeting.**
- **Ensure that** appointment of proxy was done in Form no.**MGT -11.**
- **Ensure that** no proxy represents more than 50 members.
- **Ensure that** inspection of proxy register was offered to the members **within 24 hours before the meeting as well as during the meeting.**
- **Ensure that** All Proxies received by the company shall be recorded **chronologically in a register kept for that purpose**
- **Ensure that** Company has entered in the **remarks column the reasons for rejection of proxy entered in the register**
- **Ensure that** proxy **shall not vote** during the meeting expect on a poll.
- A proxy form shall be treated **invalid** if it is:
  - **Unstamped or Improperly Stamped;**
  - **Undated;**
  - **does not state the name of the Proxy**

## D) Reading of Reports

- **Ensure that** every **qualifications, observations or comments** mentioned in Statutory Audit Report and Secretarial Audit Report shall be read at the **Annual General Meeting.**
- **Ensure that** member's attention shall be drawn towards **explanation or comments given by Board of Directors in this regard.**

## E) Distribution of Gifts

- **Ensure that** company shall not distribute any **gifts, gift coupons, or cash in lieu of gifts** at or in connection with the Meeting to the Members.



## Post Meeting Compliances

### A) Minutes

- **Ensure that** a distinct minute book was maintained by the company for each type of meeting
- **Ensure that** the minutes of proceedings of each meeting was entered in that book within **30days of the conclusion of the meeting**
- **Ensure that** Minutes shall contain a **fair and correct** summary of the proceedings of the Meeting.
- **Ensure that** Minutes shall be written in **clear, concise and plain language**
- **Ensure that** in case of resolution passed by postal ballot, a brief result on the postal ballot conducted, the summary of the scrutinizer's report shall be entered in the minute's book

- **Ensure that** each page of minute's books was **initialed or signed and last page of each meeting/report was dated and signed**
- **Ensure that** the pages of the Minutes Books shall be **consecutively numbered**.
- **Ensure that** Minutes shall not be **pasted or attached to the Minutes Book, or tampered with in any manner**.
- **Ensure that** Minutes Books shall be kept at the **Registered Office of the company or at such other place**, as may be approved by the Board
- **Ensure that** any deviation in form of **maintenance of minute's books** shall be authorized by the Board

## **Contents of Minutes**

### **a) General Contents**

- **Ensure that** Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.
- **If a Meeting convened but adjourned for want of Quorum a statement to that effect shall be recorded by the Chairman or any Director present at the Meeting in the Minutes.**
- **Ensure that** Minutes shall record the **names of the Directors and the Company Secretary** present at the Meeting.
- **Ensure that** the names of the Directors shall be listed in **alphabetical order or in any other logical manner**, but in either case starting with the name of the person in the Chair.

### **b) Specific Content**

**Ensure that** Minutes shall, inter alia, **contain:**

- **The Record of election**, if any, of the Chairman of the Meeting.
- The fact that certain registers, documents, the Auditor's Report and Secretarial Audit Report, as prescribed under the Act **were available for inspection**.
- The Record of **presence of Quorum**.
- The number of **Members present** in person including representatives.
- The number of **proxies and the number of shares represented by them**.
- The presence of the Chairman of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their authorized representatives.
- The presence if any, of the Secretarial Auditor, the Auditors, or their authorized representatives, the Court/Tribunal **appointed observers or scrutinizers**.
- **Summary of the opening remarks of the Chairman**.
- **Reading of qualifications, observations or comments or other remarks on the financial transactions or matters** which have any adverse effect on the functioning of the company, as mentioned in **the report of the Auditors**.
- **Reading of qualifications, observations or comments or other remarks** as mentioned in the report of the **Secretarial Auditor**.
- **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 favor 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.**
- The **time of commencement and conclusion** of the Meeting.

**Some other Points to be considered:**

- **Ensure that** the date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.
- **Ensure that** 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 authorized by the Board for the purpose, within thirty days of the General Meeting.
- **Ensure that** Extract of the Minutes shall be given only after the Minutes have been duly signed. However, any Resolution passed at a Meeting may be issued even pending signing of the Minutes, provided **the same is certified by the Chairman or any Director or the Company Secretary.**
- **Ensure that** Minutes of all Meetings shall be **preserved permanently in physical or in electronic form with Timestamp**

## **B) Report on General Meeting**

- **Ensure that** every Listed Company shall file a copy of Report on General Meeting with registrar in **Form.no.MGT.15 within 30 days** of the conclusion of the AGM
- **Ensure that** this report shall be signed and dated by the
  - **Chairman** of the meeting ;or
  - **Any two directors** of the company; one of them shall be **managing director;** and
  - **Company secretary** of the company
- **Ensure that** this report contains a **fair and correct summary** of the proceedings of the meeting the details in respect of following namely-
- **The day, date ,hour and venue** of the AGM;
- **Confirmation** with respect to **appointment of chairman** of the meeting;
- **Numbers of members** attending the meeting;
- **Confirmation of payment;**
- Business transacted at **the meeting and the result** thereof;

## **CONCLUSION:**

**Earlier in the companies Act 1956** the Secretarial Standards were **“Recommendatory”** in nature but after notification of the Companies Act 2013 Secretarial Standards are **“Mandatory”** in nature. Where Law is not clear or need explicit spirit of the law, Secretarial Standards, provide clarity on them.. Secretarial Standards only provide clarity on the respective subjects but it doesn't mean that the **Secretarial Standards are alternative to the original Law.**





## **G.S.R. (E) Companies (Incorporation) Rules, 2014, Dated 1st May, 2015**

In exercise of the powers conferred by section 3, section 4, sub-sections (5) And (6) of section 5, section 6, sub-section (1) and (2) of section 7, sub-sections (1) And (2) of section 8, clauses (a) and (b) of sub-section (1) of section 11, subsections (2), (3), (4) and (5) of section 12, sub-sections (3), (4) and the proviso to sub-section (5) of section 13, sub-section (2) of section 14, sub-section (1) of section 17, sub-sections (1) and (2) of section 20 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments to the Companies (Incorporation) Rules, 2014, namely: -

### 1. Short title and Commencement:

- (1) These rules may be called the Companies (Incorporation) Amendment Rules, 2015.
- (2) They shall come into force on the date of their publication in the Official Gazette.

### 1. In the Companies (Incorporation) Rules, 2014,-

- (a) Rule 5 shall be omitted;
- (b) In rule 6, for sub-rule (11), for the words "having paid up share capital of fifty lakhs rupees or less or average annual turnover", the words "having paid up share capital of fifty lakh rupees or less and average annual turnover" shall be substituted.
- (c) In rule 7, in sub-rule (1), for the words "having paid up share capital of fifty lakhs rupees or less or average annual turnover", during the relevant period is the words "having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period shall be substituted;
- (d) After rule 7, the following rules shall be inserted, namely: - "7A. Penalty.- If a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such Company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues";
- (e) In rule 8, in sub-rule (2), in clause (b), in sub-clause (xi), in the proviso, after the words and figures "under section 248 of the Act", the words, figures and brackets "or under section 560 of the Companies Act, 1956 (1 of 1956)" shall be inserted;
- (f) In rule 16, in sub-rule (1), for clause (q), the following shall be substituted namely:-

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The promoter or first director shall self attest his signature and latest photograph in Form No.INC.10.

(g) After rule 35, the following rules shall be inserted namely: -

**36. Integrated Process for Incorporation.**-(1) For the purpose of simplifying the filing of forms for incorporation of a company, the integrated process shall apply with effect from **01/05/2015**.

(2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number up to three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in **Integrated Form No. INC-29, for One Person Company, private company, public company and Producer Company**, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the fee of rupees two thousand in addition to the registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(3) For the purposes of filing Integrated Incorporation form, the particulars of maximum of three directors shall be allowed to be filled in INC-29 and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in Form INC-29 in case of proposed directors not having approved Director Identification Number.

(4) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC-29.

(5) The promoter or applicant of the proposed company may prepare Memorandum of Association as per templates in Form INC-3~ and may opt for templates of Articles of Association in Form INC-31 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Article of Association.

(6) The promoter or the applicant shall sign and witness, the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-form INC-29 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Articles of Association.

(7) The facility to file integrated application for incorporation in Form INC-29 is Available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and Incorporation of a Company as provided in these rules.

(8) For an application filed using the integrated process of incorporation as provided in this rule, the provisions of sub-clause (i) of sub-section (5) of section 4 of the Act and rule 9 of these rules shall not apply.

(9) A company using the provisions of this rule may furnish verification of its Registered office under sub-section (2) of section 12 of the Act by filing e-Form INC- 29 in which case the company shall attach along with such e-Form INC-29, any of The documents referred to in sub-rule (2) of rule 25.

(10) The requirement of filing e-form INC-28 may be dispensed with if; the proposed company maintains its registered office at the given correspondence address.

(11) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-29 including application for allotment of Director Identification Number.

(12) (a) Where the Registrar, on examining e-form INC-29, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

(c) In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such two opportunities, the E-form INC-29 of the proposed company shall be rejected.

(13) The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11.

(14) In Annexure, in Form No. INC-11, for the words, figures and brackets "and rule 8 of the Companies (Incorporation) Rules, 2014", the words, figures and brackets "and rule 18 of the Companies (Incorporation) Rules, 2014", shall be substituted.

(15) In Annexure,-

(a) For Form No. INC-7, INC-10, INC-11 and INC-22, the following form shall, respectively be substituted.



An Act to amend the Companies Act, 2013:

**1. (1)** This Act may be called the Companies (Amendment) Act, 2015.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

**2.** In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act),—

(i) In clause (68), the words “of one lakh rupees or such higher paid-up share Capital” shall be omitted;

(ii) In clause (71), in sub-clause (b), the words “of five lakh rupees or such Higher paid-up capital,” shall be omitted.

**3.** In section 9 of the principal Act, the words “and a common seal” shall be omitted.

**4.** Section 11 of the principal Act shall be omitted.

**5.** In section 12 of the principal Act, in sub-section (3), for clause (b), the following clause shall be substituted, namely:—

“(b) Have its name engraved in legible characters on its seal, if any;”

**6.** In section 22 of the principal Act,—

(i) in sub-section (2),—

(a) For the words “under its common seal”, the words “under its common Seal, if any,” shall be substituted;

(b) The following proviso shall be inserted, namely:—

“Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.”;

(ii) in sub-section (3), the words “and have the effect as if it were made under its common seal” shall be omitted.

**7.** In section 46 of the principal Act, in sub-section (1), for the words “issued under the common seal of the company”, the words “issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary” shall be substituted.

**8.** After section 76 of the principal Act, the following section shall be inserted, namely:—

“76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or both.

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.”.

**9.** In section 117 of the principal Act, in sub-section (3),—

(i) In clause (g), the word “and” occurring at the end shall be omitted;

(ii) After clause (g), the following proviso shall be inserted, namely:—

“Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and”.

**10.** In section 123 of the principal Act, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.”.

**11.** In section 124 of the principal Act, in sub-section (6),—

(i) For the words, brackets and figure “unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be”, the words “dividend has not been paid or claimed for seven consecutive years or more shall be” shall be substituted;

(ii) After the proviso, the following Explanation shall be inserted, namely:—

“Explanation.—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.”.

**12.** In section 134 of the principal Act, in sub-section (3), after clause (c), the following clause shall be inserted, namely:—

“(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.

**13.** In section 143 of the principal Act, for sub-section (12), the following sub-section shall be substituted, namely:—

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.

**14.** In section 177 of the principal Act, in sub-section (4), in clause (iv), the following proviso shall be inserted, namely:—

"Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;"

**15.** In section 185 of the principal Act, in sub-section (1), in the proviso, after clause

(b), the following clauses and proviso shall be inserted, namely:—

"(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.”

**16.** In section 188 of the principal Act,—

(a) In sub-section (1),—

(i) For the words "special resolution", at both the places where they occur, the word "resolution" shall be substituted;

(ii) After the third proviso, the following proviso shall be inserted, namely:—

"Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.";

(b) In sub-section (3), for the words "special resolution", the word "resolution" shall be substituted.

**17.** In section 212 of the principal Act, in sub-section (6), for the words, brackets and figures "the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447", the words and figures "offence covered under section 447" shall be substituted.

**18.** In section 223 of the principal Act, in sub-section (4), in clause (a), for the words "by the seal", the words "by the seal, if any," shall be substituted.

**19.** In section 248 of the principal Act, in sub-section (1),—

(i) In clause (a), after the word 'incorporation', the word 'or' shall be inserted;

(ii) Clause (b) shall be omitted.

**20.** In section 419 of the principal Act, in sub-section (4), the words "or winding up" shall be omitted.

**21.** In section 435 of the principal Act, in sub-section (1),—

(i) For the words "trial of offences under this Act", the words "trial of offences punishable under this Act with imprisonment of two years or more" shall be substituted;

(ii) The following proviso shall be inserted, namely:—

"Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law."

**22.** In section 436 of the principal Act, in sub-section (1), in clause (a), for the words "all offences under this Act", the words, brackets and figures "all offences specified under sub-section (1) of section 435" shall be substituted.

**23.** In section 462 of the principal Act, for sub-section (2), the following sub-sections Shall be substituted, namely:—

“(2) a copy of every notification proposed to be issued under sub-section (1), Shall be laid in draft before each House of Parliament, while it is in session, for a total Period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification Shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in subsection (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”.



- [The Companies Incorporation \(Amendment\) Rules, 2014.](#)
- [Integrated Incorporation Form INC-29.](#)
- [Procedures Relating to Appointment of Statutory and Cost Auditors.](#)
- [Procedures for obtaining the Status of Dormant Company.](#)
- [Supreme Court gives green Signal for setting up National Company Law Tribunal.](#)
- [Resolution Required to passed under Companies Act, 2013.](#)
- [Appointment of Independent Director.](#)
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- [Checklist for Preference Allotment of Shares Under Section 62\(1\)\(c\) of Companies Act, 2013.](#)
- [Declaration of Independence by Independent Director](#)
- [The Companies\(Amendment\)Act, 2015](#)
- [Board's Report](#)
- [Post Incorporation Works](#)

## Editors Column

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