

Part - I (65 marks)

5-10 marks

4 - Board Processes through Secretarial Standards

Secretarial Standards



A codified set of good governance practices which seeks to integrate, harmonize & standardise the diverse secretarial practices followed by Companies with respect to conduct of meeting & play indispensable role in enhancing corporate culture & governance across the organisation.

SS-1: Meetings of board of directors and;

SS-2: General Meetings

Applicability of SS-1



- every company must comply, However, OPC having 1 director is not obligated to comply. Further any company specifically exempt -
- Section 8 Co. are exempted only a provision pertaining to recording of minutes may be applicable if provided by articles. This exemption is not applicable if Co. has defaulted in filing of its Financial statement & annual return with ROC.
- applicable to special act Co. also, provided further that special Act will prevail, if there is any conflict b/w SS1 & SA.

An IFSC is set up as an specialized financial zone to provide finances to resident as well as non-residents in foreign countries.
Example - gift city that is gujarat international finance tech city further it can be in form of private or public IFSC Co. When it's licensed to set up a financial service centre in approved segment

Non-applicability

- Specified IFSC public Co.
- Specified IFSC private Co.
- Sec 8 Co. (except minutes)
- any other Co. as may be notified by the CEs.

Authority

Any director of the board may call a BM by making a requisition to the CS (if no CS then any other authorised person).

If requisition is given orally, the same has to be reduced in writing by the CS.

CS has no authority to call a BM, he only has right to convene.

(Authority by board OR Article)

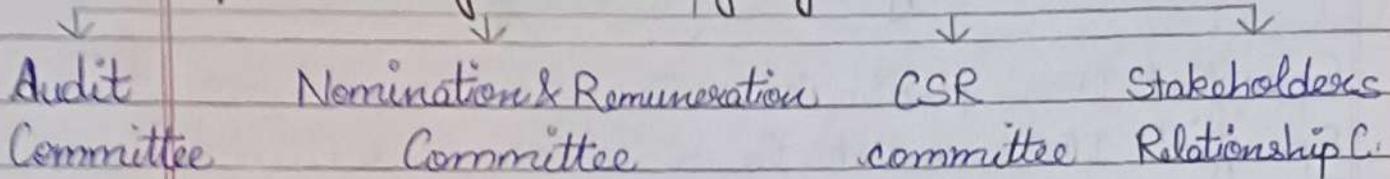
After the requisition is received the meeting can be called with approval of Chairmans in his absence, by MD in his absence WTD.

(if refused articles are to be referred)

if Article is silent - meeting cannot be convened by CS

In such case, director may call the meeting by himself at his personal expenses.

Applicability to meetings of Committees



any other voluntarily constituted or pursuant to any statute or regulation company may comply.

Note - If ID appointed voluntarily when not statutory required, then Co. has to comply SS-1 mandatorily.

Meeting of BOD

- ~ Every BM must be serially numbered.
- ~ can be held at any place at any time.
- ~ Venue - RO or any other place as may be prescribed (If Co. doesnot holds meeting at stated venue, the same has no effect.)
- ~ can be held on any day (including a public holiday - 26 Jan, 15 Aug, 20 Oct or such other day declared by CG)

- ~ However, adjournment due to quorum → Meeting is automatically shifted to next week same day/time.

the day should not be a national holiday. → In such a case, succession day would be day of meeting.

Meeting through electronic mode

↓
any director may participate through audio-visual means. Provided if the method of joining the meeting is not in compliance, he would not be counted for quorum.

Prior intimations

notice of attending meeting through video conference must be given well in advance.

Under the Act, it is to be given in the starting of year.

Attending meeting through video conference

All the directors can attend through VC concerning any matter. However, atleast one (1) person should be physically present at venue to convene the meeting properly.

It could be -

Chairman OR CS OR any other director

Note - Meeting of board & that of committee can be on the same day provided at different times allowing sufficient time gap.

Notice of adjourned meeting

shall be given to all directors including those who did not attend the meeting on originally convened date & unless date is decided at meeting.

notice thereof shall also be given not less than seven (7) days before meeting.

The Act provided for shorter notice in adjourned meeting, which is 3 days.

Notice

can be sent through

→ fax
→ email
→ speed post
→ Reg. post

(As per SS) 7 day before meeting (+ 2 days if by post)

CS issue it (in his absence, any other authorised person) if any director's particular mode of sending them must be sent through that mode.

- In case of alternate director, notice shall be given to original director also.
- while calculating 7 days - meeting date excluded, include sent date
- notice period can be
 - longer: should be prescribed in AOA.
 - shorter: only in urgent matters, 1/D ratify it if no 1/D present, has to be circulated & will be final only after 1/D ratify it.
- address shall be taken which is provided by director & if no address given retrieve from DIN.
- if notice sent by any other mode specified by

director then it shall not be considered as valid.

- Proof of sending notice shall be retained by Company.
- If the director has not communicated in advance of his intention of attending meeting in mode then it shall be presumed that he will physically attend.
- Notice has to be given even if the meetings has to be held on pre-determined date & time.

SEBI (LODR) Regulations, 2015

Regulation 29 (prior intimation)

↓
Listed Co.

↓
2 clear working days

- delisting
- dividend
- buyback
- further issue
- bonus issue

↓
5 clear days

Financial results
(quarterly, half-yearly,
annually)

↓
11 working days

- alteration in right of securities & its nature.
- alteration in date of repayment of int or principal.

↓
before Board Meeting

Date:
If any document has been made the basis of decision which was not part of agenda then same should be specifically initialised by CS in minutes.

Agenda

- to be sent with the notice 7 days before meeting.
- along with supporting notes.
- articles may provide for a longer period.
- Business of the meeting is restricted to the set agenda. However, a new matter may be taken up with the approval of majority & chairman.

Shorter → send the → allowed → 1 ID shall be present
time same

same provision for LPSI.

Frequency

4 BM per year, Max gap - 120 days
1st BM within 30 days of incorporation

OPC / dormant / small Co. — 2 meeting per year
min gap - 90 days

Quorum

1/3rd OR 2, whichever higher
For top 2000 listed Co. - 1/3rd OR 3, whichever higher, 1 ID

Interested directors

neither form part of quorum, nor can they

Info which is not available to general public & which upon becoming available shall have material effect on price.

Info -

- financial result
- Change in KMP
- Capital structure change
- Corporate restructuring
- dividend

Such decision passed in meeting with atleast 1/10,

if no 10 present \rightarrow circulation ratify by 1/10

if no 10 in Co. \rightarrow ratify by majority

participate.

Exception - private Co., director can participate after disclosing interest.

When director is considered interested?

- Individually OR along with other directors hold 2% OR more of SC of other Company, OR if he is promoter, CEO of other Company, OR is owner/member/partner of the firm.
- If the article provide for higher no of quorum then the Co. must comply with the same.
- If in case no are reduced below the quorum the remaining directors have to first make up the number to quorum requirement.
- Participation through videoconference → shall be counted for quorum.
- Where the no of interested directors exceed 2/3rd and a valid quorum cannot be formed then in such case the required quorum will be 2.

Attendance register

- Kept at registered office.
- maintained for 3 yrs from last entry OR as long as they are current.

- Custody of CS.
- A director can inspect a register of the time when he was a director.

Leave of absence

- request to be made to CS and with approval of chairman.
- If the director is continuously absent himself from all the meetings for a period of 12 months either with or without leave - vacate the office.

Chairman

↓
of committee → to be decided by board or majority of committee

if chairman not present within 5 minutes of meeting appoint another chairman by majority of committee.

Passing of resolution by circulation

↓
Chairman OR MD OR any director (except ID)

↓
may move a draft resolution

↓
to pass the resolution by circulation

↓
However the same should not be opposed by

$\frac{1}{3}$ rd or more (include ID)
this means ID is entitled to notice & right to appear

If majority approves the draft resolution (exclude ID)

Procedure

draft resolution \rightarrow to be circulated to all the directors
+
note explaining each business. \downarrow speed post / email / hand delivery
+
procedure as to how to cast vote & timeline.

\downarrow
when a resolution is considered passed.

\downarrow
last date of casting vote. OR when majority has accepted & opposition if any along with other directors who has yet not voted is less than $\frac{1}{3}$ rd.

Annexure 'A'

Module Pg 227

\downarrow
Matters which cannot be passed by circulation see given here.

General business items -

1. Noting of minutes of committee.
2. Approving FS
3. considering compliance certificate

4. Specifying list of laws applicable specifically on Co.
- * 5. appointing secretarial auditor / Internal auditor.

* Specific items

1. Borrowing money
2. Investing funds of Co.
3. Granting loans OR giving guarantee OR security.
4. Making political contri.
5. KMPs → Remuneration / Appointment
6. Approving payment to directors for loan of office
7. Sale of subsidiaries

Corporate Actions

- * 1. Buyback
- * 2. Amalgamation, merger / reconstruction
3. Takeovers
- * 4. Issue of securities include deb., in or outside India
5. Diversify business

* Additional list (In listed Co.)

1. Show cause, demand, prosecution & penalty notice (materially imp)
2. fatal or serious accidents, pollution problem.
3. public or product liability claims of substantial nature issue
4. Significant labourer problem & their solutions.
5. Non-compliance - regulatory, statutory, listing.

Disclosure of interest by directors

Every director has a responsibility to disclose his interest in any Co or in firm by writing

in form MBPL.

Same has to be by director if he has acquired any interest should be disclosed in immediately next meeting and info. shall be preserved for 8 yrs.

Annexure 'B'

matters to be dealt in 1st BM of Co.:



1. Appointment of chairman
2. Note - Certificate of incorporation AND MOA/ AOA AND 1st directors AND RO of Co.
3. Ratification of pre incorporation contract
4. Appointment of additional directors & 1st auditor
5. To appoint Bankers & open A/c of Co.
6. adopt common seal, if any
7. Authorise printing & issue of sh certificate
8. To approve & appoint KMP

Minutes



- circulated within 15 days of conclusion of meeting
- approved & entered within 30 days.
- No alteration allowed after finalization



only be done in subsequent BM, facts shall be mentioned in minutes of subsequent BM.

- Preservation - permanent (physically / Electronically)

Meeting through video conferencing

- ✓ Co., chairman, CS has responsibility of -
Every Co shall have necessary arrangement to prevent failure of audio/video connection.
It is the responsibility of chairman & CS -
 - i to ensure integrity of meeting
 - ii ensure proper vc equipments are available
 - iii to record the minutes
 - iv to safekeep taperecording of meeting
- ✓ to ensure no one else attend meeting except those who are allowed.

Notice

- Notice to all the directors should be send, which contain the information about attending the meeting through vc.
- a director should well in advance tell his intention to attend meeting through vc.
- A declaration regarding shall be given at start of yr which shall be valid for period of 1 yr.
- The fact of above info. doesnot prevent him from attending the meeting physically.

Proceeding of the meeting

- ↓
- Roll call - at commencement of meeting,

roll call is done where director identifies his name, location, receipt of agenda and no one else is attending the meeting.

- The CS confirms the quorum to chairman & chairman proceed with the meeting.
- All the registers are kept at the venue on which director sign is required is deemed to have been signed for those directors who are attending through VC (if they gave consent for the same).
- A draft minute is to be circulated by CS within 15 days & has to be approved within 7 days failing which shall have to be presumed approved.
- Minutes shall be entered in minute book within 30 days.
- At the end of the discussion on particular agenda the chairman announces the summary of the decision taken.

Principles governing disclosure & obligation - Reg 4(1) LODR

- ↓
1. Follow the applicable standards

2. Adhere the same in letter of spirit.
3. Audit to be conducted by Independent/qualified auditor.
4. Refrain from misrepresentation.
5. Adequate & timely info.
6. Channels of disseminating info. should be effective.
7. abide by all provisions of applicable laws.

