

# QUESTION BOOK ESG

## CHAPTER 4: BOARD PROCESSES THROUGH SECRETARIAL STANDARDS

### QUESTION 1:

What is the applicability of secretarial standards? (JUNE 2017) (5 MARKS)

Ans:

- (a) Section 118 (10) of the companies act states that every company must observe the secretarial standards referred by the ICSI and approved by the central government which makes SS-1 and SS-2 mandatory.
- (b) SS-1 applies to Meetings of the Board of Directors and its Committees, and SS-2 applies to General Meetings.
- (c) Applicability of SS-1:
  1. Every public company.
  2. Every private company.
  3. Every OPC (having more than 1 director)
  4. Every company established under the special act (unless it contravenes the special act)
  5. However, it does not apply upon IFSC / private/ public companies.
    - (i) OPC having one director
    - (ii) Companies registered as section 8 companies however If a private company / NPO have defaulted in filing their annual return financial statement then this exemption shall not apply.

**QUESTION 2:**

**You have been appointed as a Company Secretary for a Company formed a month ago. As the secretary, you are required to list out the items of business for the agenda for first meeting of Board of the Company. (OLD SYLLABUS) (JUNE 2023)**

**Ans:**

Each item which is supposed to be discussed at the meeting is contained in the agenda along with note explaining and providing details of the proposal.

The first agenda of the first meeting of the board may include the following agendas:

- (a) acknowledge the company's Certificate of Incorporation issued by the Registrar of Companies.
- (b) To appoint a chairman for the meeting, check if the quorum is present, and approve any leaves of absence.
- (c) To confirm the location of the company's registered office and approve the title deed or a notarized lease/rent agreement in the company's name.
- (d) To acknowledge the company's Memorandum and Articles of Association as officially registered.
- (e) To read and record any declarations made by directors about their interests in other entities.
- (f) To take note of the company's first directors.
- (g) To consider the appointment of the company's first auditors.
- (h) To consider appointing any additional directors, if needed.
- (i) To consider appointing a chairman for the Board of Directors.

**QUESTION 3:**

**“The Secretarial Standard 1(SS1) requires Company Secretary to oversee the Vital process of recording and facilitating implementations of the decisions of the Board” Discuss SS1 with its applicability. (JUNE 2024) (5 MARKS)**

**Ans:**

- (a) The above mentioned statement is correct as Secretarial Standard 1 (SS-1) requires the Company Secretary to record board decisions and help in their implementation.
- (b) SS-1 applies to all meetings of the Board of Directors and its Committees, except:
  - (i) One Person Companies with only one director.

- (ii) Section 8 Companies, though they must follow relevant board meeting provisions of the Companies Act, 2013.
- (c) Key responsibilities of the Company Secretary under SS-1:
  - (i) Convening meetings: Ensures that meetings are called properly by sending notices in advance through the preferred mode (email, physical, etc.).
  - (ii) Agenda: Prepares the meeting agenda, listing items to be discussed, and ensures that all necessary documents are circulated to directors ahead of time.
  - (iii) Conduct and Minutes: The Company Secretary is present during the meeting to ensure it is conducted properly and in accordance with the rules. They are responsible for accurately recording the minutes, including all key discussions, decisions taken, and any objections or differing views raised by the directors.
  - (iv) Maintenance of minute book: Maintains the minute book of board and committee meetings, ensures the Chairperson signs the minutes, and stores them securely.
  - (v) Post-Meeting communication: Helps implement decisions by communicating with relevant departments, preparing resolutions, and updating the Board on progress.
- (d) To conclude, SS-1 plays a vital role in improving Board functioning, and the Company Secretary acts as a key facilitator in maintaining governance, compliance, and decision execution.

#### QUESTION 4:

**ABC Ltd., is a Joint Venture between an Indian Company and a Multi-National Company. In present Covid pandemic situation, a Board Meeting through video conference was held on 29th October, 2020 at a shorter notice of 3 days. One of the agenda items was approval of the financial statements for the quarter ended 30th September, 2020. One of the Directors joined late in the Board Meeting and was not present while discussing one agenda item. None of the Independent Directors were present. The Company needs funds and is proposing to issue rights shares. Board recommended increase in authorised share capital as well as approved convening of an EGM through Video Conference on 31st December, 2020. The Board discussed on a business proposal at length in the Board Meeting. When minutes were circulated by the Company Secretary, both the joint venture nominee Directors on the Board of the Company had different views on the discussions made and suggested modifications to the minutes which were not in harmony with the minutes circulated by the Company Secretary. Chairman of the Board of Directors is nominee of**

Indian Company. He is firm that Chairman's decision is final in finalising the minutes of the meeting.

**Based on the above facts, answer the following questions:**

- (i) What is the procedure to be followed by the Company Secretary when conducting Board Meeting through Video Conferencing as per SS-1?
- (ii) How is proceeding of the Meeting is recorded by the Company Secretary in the Board Meeting? Discuss on recording and finalisation of minutes in light of the provisions of applicable SS-1.

**(GRMCE, AUG 2021) (5 MARKS EACH)**

**Ans:**

- (i) The process of meeting through video conferencing
  - (a) It is the responsibility of the company to provide for necessary equipments to avoid failure of video or audio visual connections.
  - (b) It is the responsibility of the chairman and the company secretary to check for the following:
    1. To ensure the availability of proper video conferencing equipments to facilitate effective participation
    2. To safeguard the integrity and security of the meeting
    3. To record and prepare minutes of the meeting
    4. To store the tape recording of the meeting
    5. To ensure that no person other than the director has access to the meeting except the one who has been allowed
  - (c) The notice must be sent to all the directors and it must comply with the following:
    1. That the directors have an option to participate in the meeting through video conferencing and all the other information to enable him to participate through video conferencing.
    2. Those directors who intend to attend the meeting through video conferencing shall intimate sufficiently in advance about his intention to attend the meeting through video conferencing.
    3. He may alternatively intimate about the same at the beginning of the calendar year and such declaration and shall be valid for 1 year and it does debar him from participating in the meeting in person in which case he should sufficiently in advance intimate the same.

4. The chairman/ CS should ensure and confirm that the quorum was present throughout the meeting.
5. At the end of discussion on each agenda item the chairperson shall announce the summary of the decision taken along with the names of those directors who dissented.

(ii)

- (a) As per SS-1, the Company Secretary is responsible for recording the proceedings of the meetings. If there is no Company Secretary, another person authorized by the Board or Chairman will take on this responsibility. The Chairman must ensure that the proceedings are accurately recorded.
- (b) Proceedings of the meeting shall be recorded by the company secretary In distinct book which contains all deliberations known as the minutes book
- (c) Minutes can be recorded in loose-leaf form provided it shall be bound periodically.
- (d) It should be kept in the custody of the company secretary at the registered office of the company or any other place approved by the board.
- (e) Minutes should be circulated within 15 days from conclusion of meeting to all those directors which were member of board on date of meeting for their comments.
- (f) Further the minutes shall be entered in the minutes book within 30 days from conclusion of meeting and fact of the same has to be certified by the company secretary.
- (g) Minutes are to be noted in the next board meeting, immediately held after the recording of the minutes and in the event if board meeting happens earlier than entry, then the same should be noted in subsequent meeting.
- (h) Once the minutes are finalized it must be circulated to all the directors within the next 15 days.
- (i) Minutes shall be signed by chairman of meeting or by chairman of next meeting, who shall append his initial on each page and sign the last page along with place and date.

**QUESTION 5:**

P Ltd. is a listed company having 10 directors but only 9 were present in a particular board meeting. What would be the quorum required for the board meeting? The number of interested directors in respect of an agenda item is 7. What would be the quorum in such a case? Discuss with reference to Secretarial Standard–1 (SS-1). (GRMCE, DEC 2021) (5 MARKS)

**Ans.**

- (a) Quorum should be present throughout the meeting.
- (b) As per SEBI (LODR) the quorum is  $1/3^{\text{rd}}$  or 2 whichever higher. Further in case of top 2000 listed companies quorum is  $1/3^{\text{rd}}$  or 3 whichever is higher.
- (c) A director should not be considered for the purpose of quorum nor he shall be allowed to participate in any item of business in which he is interested.
- (d) If the interested directors exceeds  $2/3^{\text{rd}}$ , remaining directors not being less than 2 shall be the quorum.
- (e) In the instant case, P Ltd. has 10 directors. One-third of 10 is 3.33, which is rounded up to 4. Since 9 directors are present, the quorum requirement is met.
- (f) if 7 out of 9 directors present are interested in a particular matter, and the company has 10 directors in total, then two-thirds of the total strength is 6.67, rounded up to 7. Since 7 directors are interested, the quorum for that item will be the remaining 2 directors who are not interested and present at the meeting.