



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

15.04.2020

Dear Professional Colleagues,

Subject: Clarification/Guidance on applicability of Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2)

As you are aware Section 118(10) of the Companies Act, 2013 provides for mandatory observance of SS-1 and SS-2 by all companies.

Due to COVID-19 outbreak and lockdown situation prevailing in the Country, various provisions of the Companies Act, 2013 and rules made there under have already been relaxed by the Ministry of Corporate Affairs (MCA) for ease of compliance by the stakeholders.

Few queries have also been received from members on the compliance of SS-1 and SS-2 in the current situation and clarification sought on various issues.

In this context, we would like to emphasise the "SCOPE" of the SS-1 and SS-2 which read as under:

"This Standard is in conformity with the provisions of the Act. However, if, due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail."

The term "Act" as defined under the SS-1 and SS-2, means the Companies Act, 2013 or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed there under.

Hence, any relaxation granted by the Central Government from the compliance of provisions of Board and General Meetings under the Act will automatically and consequentially apply to Secretarial Standards as the case may be and the relaxed provisions of the Act will prevail to the extent applicable in terms of enforceability.

Pursuant to the recent relaxations granted by the MCA, few provisions of the SS-2 also stand relaxed as specified in the Annexure. Accordingly the provisions of SS-2 should be construed in the light of the relaxations already granted by the MCA.

Further, guidance on certain provisions of SS-2 have also been provided in the context of COVID-19 situation and placed at the Annexure. The guidance provided is voluntary in nature and is in line with the relaxations given by the MCA and will be applicable only for the period of relaxation so extended by the MCA.

All are requested to take note of the above to facilitate compliance and continue to promote good corporate governance.

Regards,

(CS Ashish Garg)
President

Guidance on Certain provisions of SS-2

The MCA Circulars dated 8th April 2020 and 13th April 2020 provides clarification on passing of ordinary and special resolutions by companies under the Companies Act 2013 and rules made there under at extra ordinary general meetings ("EGM") through Video Conferencing (VC) or other audio-visual means (OAVM) on account of the threat posed by Covid-19.

Certain relaxations as provided in the said circulars, is also provided below with respect to Secretarial Standard on General Meetings (SS-2).

To facilitate the compliance of law in true letter and spirit, guidance on certain provisions of SS-2 is provided as under:

1. Para 1.2.1

Notice in writing of every Meeting shall be given to every Member of the company....

Para 1.2.2

Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means....

Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

- (a) if the company provides the facility of e-voting ;
- (b) if the item of business is being transacted through postal ballot.

If a Member requests for delivery of Notice through a particular mode, other than the one followed by the company, he shall pay such fees as may be determined by the company in its Annual General Meeting and the Notice shall be sent to him in such mode.

Notice shall be sent to Members by registered post or speed post or e-mail if the Meeting is called by the requisitionists themselves where the Board had not proceeded to call the Meeting.

Guidance by the ICSI:

The MCA circular dated 08.04.2020 has allowed the EGM to be held through Video Conferencing (VC) or other audio visual means (OAVM). Further MCA circular dated 13.04.2020 provides that the notices to members for the aforesaid general meetings may be given only through e-mails registered with the company or with the depository participant/depository.

In SS-2, wherever reference is made for sending of Notices through physical mode of delivery in case of general meetings, e- voting and postal ballots, it should be sufficient compliance if such notices are sent only through e-mail to the members whose emails are registered with the company or with the depository participant/depository **subject to compliance of other requirements stated in the abovementioned MCA circulars.**

This guidance equally applies to Paragraph 8.5.1 and Paragraph 16.4.1 of SS-2, which deals with sending of Notices in case of e-voting and postal ballot respectively.

2. Para1.2.4

Notice shall specify the day, date, time and full address of the venue of the Meeting. Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark, if any, for easy location.....

Guidance by the ICSI:

Since the MCA circular dated 08.04.2020 has already allowed the EGM to be held through VC, the requirement of SS-2 to mention route map need not be stated in the notice of the meeting, if the meeting is convened in accordance with the aforesaid circular of MCA.

Whilst Notice of the EGM shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting , the notice of the EGM shall make a mention that proceedings of the Meeting, if conducted through VC or OAVM, shall be deemed to be made at such place.

3. Para1.2.5 (4th Para)

Where reference is made to any document, contract, agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection and such documents shall be so made available for inspection in physical or in electronic form during specified business hours at the Registered Office of the company and copies thereof shall also be made available for inspection in physical or electronic form at the Head Office as well as Corporate Office of the company, if any, if such office is situated elsewhere, and also at the Meeting.

Guidance by the ICSI:

In SS-2, wherever reference is made for inspection of documents in the context of the general meeting, it would be sufficient compliance, if such documents are available for inspection through e-mode and guidelines for such inspection are given in the notice.

4. Para1.2.10

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.

Guidance by the ICSI:

MCA has already clarified that general meetings may be held through video conferencing or other audio-visual means and in such meetings proxy shall not be applicable.

Hence, the requirement of attendance slip and Proxy form will not apply to meetings convened in accordance with the aforesaid circular of MCA dated 08.04.2020.

Process for Attendance recording

Companies should ensure that a secure mechanism is provided to the shareholders to attend and participate through VC or OAVM.

5. Para 3.1 - Quorum (3rd Para)

Unless the Articles provide for a larger number, the Quorum for a General Meeting shall be:

- (a) in case of a public company, –
- (i) five Members personally present if the number of Members as on the date of Meeting is not more than one thousand;
 - (ii) fifteen Members personally present if the number of Members as on the date of Meeting is more than one thousand but up to five thousand;
 - (iii) thirty Members personally present if the number of Members as on the date of the Meeting exceeds five thousand;
- (b) in the case of a private company, two Members personally present.

Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement.

Members need to be personally present at a Meeting to constitute the Quorum. Proxies shall be excluded for determining the Quorum.

Guidance by the ICSI:

Since MCA has clarified that attendance of members through video conferencing or other audio-visual means will be counted as quorum for the purpose of Section 103 of the Act, the requirement of physical presence of quorum shall not apply.

It would be sufficient compliance of quorum if the meeting is convened in accordance with the aforesaid circular of MCA dated 08.04.2020, provided the company has followed the secured mechanism of attendance.

6. Para5.1 - Appointment of 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, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.

Guidance by the ICSI:

It would be sufficient compliance if the appointment of Chairman is done as per the aforesaid circular of MCA dated 08.04.2020.

7. Para 6 - Proxies

Guidance by the ICSI:

Since MCA has already clarified that in case of EGM to be convened by video conferencing or other audio-visual means, proxies shall not be applicable, hence provisions in paragraph 6 relating to proxies shall not be applicable.

8. Para 6.6.3 (2nd Para)

In case of postal ballot such letter of appointment/ authorisation shall be submitted to the scrutiniser along with physical ballot form.

Guidance by the ICSI:

Since the postal ballot notices / forms will be sent through e-mail only in accordance with MCA circular dated 13.04.2020, the aforesaid requirement of SS-2 will be complied with if such appointment/authorisation letter and ballot form is submitted through e- mail.

9. Para7.3 - Show of Hands

Every company shall, at the Meeting, put every Resolution, except a Resolution which has been put to Remote e-voting, to vote on a show of hands at the first instance, unless a poll is validly demanded.

Guidance by the ICSI:

For EGM to be conducted through video conferencing or other audio-visual means, the process of voting by show of hands shall be as per the process mentioned under MCA Circular dated 08.04.2020 and MCA Circular dated 13.04.2020.

10. Para7.4 - Poll

The Chairman shall order a poll upon receipt of a valid demand for poll either before or on the declaration of the result of the voting on any Resolution on show of hands.

Poll in such cases shall be through a Ballot process.

While a Proxy cannot speak at the Meeting, he has the right to demand or join in the demand for a poll.

The poll may be taken by the Chairman, on his own motion also.

Guidance by the ICSI:

For the EGM to be conducted through video conferencing or other audio-visual means, the poll shall be conducted as per the process mentioned under MCA Circular dated 08.04.2020.

11. Para7.5 - Voting Rights (3rd Para):

A Member present in person or by Proxy shall, on a poll or ballot, have votes in proportion to his share in the paid up equity share capital of the company, subject to differential rights as to voting, if any, attached to certain shares as stipulated in the Articles or by the terms of issue of such shares.

Guidance by the ICSI:

In view of the circular of MCA for the EGM to be conducted through video conferencing or other audio-visual means, the words "present in person or by proxy" shall be construed as "present in person or through video conferencing or other audio-visual means".

12. Para8.6.2

The result of the voting, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed for at least three days on the Notice Board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere. Further, the results of voting along with the scrutiniser's report shall also be placed on the website of the company, in case of companies having a website and of the Agency, immediately after the results are declared.

Guidance by the ICSI:

Due to COVID 19 and lockdown situation in the country, all the offices of companies are closed and it may not be possible to display the result of voting on the notice board of the company at its registered office, head office and corporate office. Hence it will be sufficient compliance if the said result is declared and posted on the website of the company, if any.

This guidance equally applies to Paragraph 9.5.2. and Paragraph 16.6.2 of SS-2, which deals with declaration of the result of poll and postal ballot respectively.

13. Para 9 - Conduct of Poll

Guidance by the ICSI:

For the EGM to be conducted through video conferencing or other audio-visual means, the poll shall be conducted as per the process mentioned under MCA Circular dated 08.04.2020.

14. Para16.4.3

Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed.

Notice shall also specify the mode of declaration of the results of the voting by postal ballot.

Guidance by the ICSI:

If the postal ballot is conducted in accordance with MCA circular dated 08.04.2020, the requirement of SS-2 to mention "venue" where the result of the voting by postal ballot will be announced, need not be stated in the notice and it will be sufficient compliance if a link of the website where such result will be declared is given.

15. Para 16.5.1

The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.

Guidance by the ICSI:

Since the postal ballot notices / forms will be sent through e-mail only in accordance with MCA circular dated 13.04.2020, the requirement to send "postage prepaid reply envelope" as mentioned in SS-2 will not apply.

16. Para 17.4 - Entry in the Minutes Book

17.4.1 Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.

Para 17.5.1

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 authorised by the Board for the purpose, within thirty days of the General Meeting.

Guidance by the ICSI:

Due to covid-19 situation all the EGMs are now allowed to be conducted through video conferencing or other audio visual means and minutes thereof are being circulated over emails.

Therefore, company may not be able to record/print the final minutes in the Minutes book maintain for this purpose at the registered office of the company and get the same signed physically by the chairman.

In such cases the company should record and acknowledge/sign the minutes digitally by the chairman and the same can be recorded and signed physically once the normalcy resumes.
