GUIDANCE NOTE ON

MEETINGS OF THE BOARD OF DIRECTORS

The "Secretarial Standard-1 (**SS-1**) on Meetings of the Board of Directors", formulated by the Secretarial Standards Board of the Institute of Company Secretaries of India (ICSI) and issued by the Council of the ICSI, has been approved by the Central Government. Adherence to this Secretarial Standard is mandatory in terms of sub – section (10) of Section 118 of the Companies Act, 2013 (Act) read with Notification No. ICSI No. 1 (SS) of 2015 dated 23rd April, 2015 published in the Gazette of India Extraordinary Part III - Section 4. SS-1 applies to the Meetings of the Board and its Committees, in respect of which Notices are issued on or after 1st July, 2015.

SS-1 prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.

This Guidance Note sets out the explanations, procedures, interpretations and practical aspects in respect of the provisions contained in SS -1 to facilitate the compliance thereof by the stakeholders.

BACKGROUND

The Act empowers the Board, subject to the provisions of the Act, to exercise all such powers, and to do all such acts and things as the company is authorised to exercise and do, except those powers which can only be exercised or done by the company in a general meeting. The powers of the Board are also subject to the provisions of the Act, other statutes, as well as the Memorandum and Articles of Association of the company or any other regulations not inconsistent therewith, including regulations made by the company in the general meeting. (Section 179 of the Act).

All the powers vested in Directors are exercisable by them collectively, acting together, unless such powers have been delegated to one or more Directors by the Board. The Board may also delegate any of the powers exercisable by it to a Committee of Directors. The Articles of Association of the company or members of the company in a general meeting may also authorise any of the Directors or a Committee of Directors to exercise such powers as may be authorised by means of such a Resolution passed at general meetings.

Powers to be exercised at Board Meetings

The Board of Directors of a company shall exercise certain powers on behalf of the company by means of Resolutions passed at a Meeting of the Board and not by a Resolution passed by circulation. These powers as provided under Sub – section (3) of Section 179 read with Rule 8 of the Companies (Meetings of the Board and its Powers) Rules, 2014, are given in **Annexure IA**. Further, SS-1 lists out certain illustrative items which shall be placed before the Board at its Meeting and shall not be passed by circulation. List of such additional items prescribed in SS-1 which are other than those provided under the Act is given in **Annexure IB**.

Powers which must be exercised by unanimous consent

Certain powers of the Board must be exercised by Resolutions passed at Meetings, with the consent of all the Directors present at the Meeting. These powers are given in **Annexure IC.**

Powers exercisable by passing of Special Resolution at general meeting

Certain powers of the Board are exercisable by the Directors only with the consent of the company by way of a special Resolution passed in a general meeting. Such powers are given in **Annexure ID**.

Powers subject to other approvals

There are several powers in the realm of the day-to-day management of the company which the Board should exercise subject to the approval of the general meeting or the Central Government or the National Company Law Tribunal or Company Law Board or the requirements of other Statutes and/or Regulators. An Illustrative list of such powers is given in **Annexure IE**.

Delegation of Powers

The Board may, by a Resolution passed at a Meeting, delegate its powers to any Committee of Directors, the Managing Director, the Manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, on such conditions as it may specify. [First Proviso to sub-section (3) of Section 179 of the Act]

A list of such items is given in **Annexure IF**.

The Board may delegate any of its powers to Committees subject to such restrictions and limits as may be imposed, if the Articles so provide. For example, a company may incorporate a Regulation in its Articles which reads as follows:

"(1) The Board may, subject to the provisions of the Act, delegate any of its powers to Committees consisting of such member or members of its body as it thinks fit.

(2) Any Committee so formed should, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board".

The authority to delegate any power to a Committee or any other person must not be in contravention of any of the provisions of the Act and of the Memorandum or Articles of Association of the company or the requirements of any regulatory body. The scope of the authority given may be limited by the Board and conditions may also be attached thereto.

The Board may, subject to the provisions of the Act, delegate any of its powers to Committees consisting of such member or members of its body as it thinks fit (Article 71 (i) of Table-F of Schedule I of the Act). However, a Committee cannot delegate any of its powers to a sub-committee or to a member of the Committee, unless authorised to do so.

In addition, powers may also be delegated by the Board to one or more Directors or to employees of the company or to others not in the employment of the company (such as powers delegated to employees of the holding or subsidiary company, powers delegated to employees of group/associate companies, powers delegated to the financial institutions from which financial assistance has been taken for execution of documents, etc.).

INTRODUCTION

The fundamental principles with respect to Board Meetings are laid down in the Act. SS-1 facilitates compliance with these principles by giving clarity where there is ambiguity or by standardising the diverse practices prevalent. For the benefit of the companies, SS-1 provides necessary flexibility in many cases viz. with respect to calling Meeting at shorter Notice, transacting any other business not contained in the agenda and passing of Resolutions by circulation. Complying with SS-1 ensures a reliable Board process which protects the interests of the company and its stakeholders. Incidentally, it has been observed that litigations are a direct consequence of not following proper procedures and the non-availability of proper records, especially in the case of small and private companies. The objective of SS-1 is to address such issues.

SS-1 requires the Company Secretary(ies) to oversee the vital process of recording and facilitating implementation of the decisions of the Board. Where there is no Company Secretary or in the case of absence of the Company Secretary, any Director or other Key Managerial Personnel (KMP) or any other person authorised

by the Board for this purpose may perform all the functions of the Company Secretary given in SS-1 and/or the Guidance Note.

APPLICABILTY OF SS-1

In terms of sub-section (10) of section 118 of the Act, SS-1 is applicable to the Meetings of the Board of Directors of all companies incorporated under the Act. This shall include private and small companies, unless expressly exempted by the Central Government through Notification.

However, it is needless and impractical for a One Person Company (OPC) having only one Director on Board to comply with SS-1 and hence, SS-1 is not made applicable to such OPCs.

SS-1 is thus applicable to the Meetings of the Board of all companies incorporated under the Act except One Person Company (OPC) having only one Director on the Board and class or classes of companies which are exempted by the Central Government through notification.

Applicability to companies governed under Special Acts

SS-1 is also applicable to Banking Companies, Insurance Companies, Companies engaged in generation or supply of electricity, Companies governed by any Special Acts, bodies corporate notified by the Central Government, if incorporated under the Act. However, if the provisions of these Special Acts such as The Banking Regulation Act, 1949, The Insurance Act, 1938, etc. applicable to these companies are inconsistent with the Secretarial Standards, then the provisions of such Special Act shall prevail.

Applicability to Meetings of the Committees

SS-1 is also applicable to the Meetings of Committee(s) of the Board, whether constituted voluntarily or statutorily, of all companies incorporated under the Act,

unless otherwise stated in SS-1 or stipulated by any other applicable Guidelines, Rules or Regulations.

SS-1 is applicable to Meetings of the Committees only if:

a) all the members of the said Committee are Directors i.e. members of the Board of the company; and
b) the Committee has been constituted by the Board, whether statutorily or otherwise.

Therefore, in the event there is any Committee constituted by the Board voluntarily, in which a Non-Director such as a Chief Executive Officer or a Manager or any other Key Managerial Personnel (KMP) or any other senior manager or officer of the company is a member, SS-1 is not applicable to the Meetings of such a Committee.

Applicability of provisions relating to Independent Directors

Further, all the provisions in SS-1 relating to Independent Directors are required to be complied with by companies which are not statutorily required to appoint Director (s) as "Independent Directors" specifically but have done so voluntarily.

Effect of subsequent changes in the Act

SS-1 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.Moreover if any stipulation contained in SS-1 is derived from any provision of law or rule and if such provision is declared inapplicable to any class of companies, such stipulation shall not apply to such class of companies.

The Ministry of Corporate Affairs, Government of India (MCA), in exercise of its powers conferred by clauses (a) and (b) of Sub – section (1) of Section 462 and in pursuance to Sub-section (2) of the said section of the Act issued Notifications No.

G.S.R. 463(E), G.S.R. 464(E), G.S.R. 465(E), G.S.R. 466(E) (hereinafter referred to as MCA Notification (s)) all dated 5th June, 2015 has directed that certain provisions of the Act shall not apply or shall apply with such exceptions, modifications and adaptations as specified in the MCA Notification(s) to Government Companies, Private Companies, Nidhis and Companies with charitable objects etc. and not for profit incorporated under Section 8 of the Act (erstwhile Section 25 of the Companies Act, 1956), respectively.

Accordingly, due to the MCA Notification(s) referred to herein above or Notification/s that may be issued in future, if provisions of the SS-1 or any part thereof become inconsistent with any of the provisions of the Act, such corresponding provisions of the Act read with the MCA Notification(s) shall prevail.

MCA Notification No. G.S.R. 466(E) dated 5th June, 2015 exempts Companies with charitable objects etc. and not for profit incorporated under Section 8 of the Act (erstwhile Section 25 of the Companies Act, 1956) from the applicability of Sub–section (10) of Section 118 of the Act. Consequently, SS-1 is not applicable to such companies. However, the provisions relating to holding of Board Meetings as provided under the Act are still applicable to such companies and therefore such companies may voluntarily observe SS-1.

SCOPE OF THE GUIDANCE NOTE

This Guidance Note shall be read in the context of SS-1.

This Guidance Note elucidates, wherever necessary, the basis for setting the particular Standard, explains its ingredients and nuances and gives illustrative examples. It also integrates the replies to various queries raised by the stakeholders on the particular Standard after the issuance of SS-1.

(In this Guidance Note, the Secretarial Standards have been set in bold type, the explanations forming part of the Secretarial Standard in normal type and the analysis in italics. However, Annexures, as appearing in SS-1, are elaborated, bifurcated, renamed and renumbered in this Guidance Note to integrate it with other Annexures herein and for better coherence.)

This Guidance Note is prepared on the basis of the relevant provisions of the Act as amended up to 31st August, 2015 and the rules, circulars, clarifications etc. issued by the MCA until 31st August, 2015.

DEFINITIONS

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

"Act" means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Articles" means the Articles of Association of a company, as originally framed or as altered from time to time or applied in pursuance of any previous company law or the Companies Act, 2013.

"Calendar Year" means calendar year as per the Gregorian calendar i.e. a period of one year which begins on 1st January and ends on 31st December.

"Chairman" means the Chairman of the Board or its Committee, as the case may be, or the Chairman appointed or elected for a Meeting.

"Committee" means a Committee of Directors constituted by the Board.

"Electronic Mode" in relation to Meetings refers to Meetings through video conferencing or other audio-visual means. "Video conferencing or other audio-visual means" means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate

concurrently with each other without an intermediary and to participate effectively in the Meeting.

"Invitee" means a person, other than a Director and Company Secretary, who attends a particular Meeting by invitation.

"Maintenance" means keeping of registers and records either in physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

"Meeting" means a duly convened, held and conducted Meeting of the Board or any Committee thereof.

"Minutes" means a formal written record, in physical or electronic form, of the proceedings of a Meeting.

"Minutes Book" means a Book maintained in physical or in electronic form for the purpose of recording of Minutes.

"National Holiday" includes Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.

"Original Director" means a Director in whose place the Board has appointed any other individual as an Alternate Director.

"Quorum" means the minimum number of Directors whose presence is necessary for holding of a Meeting.

"Secretarial Auditor" means a Company Secretary in Practice appointed in pursuance of the Act to conduct the secretarial audit of the company.

"Secured Computer System" means computer hardware, software, and procedure that–

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures.

"Timestamp" means the current time of an event that is recorded by a Secured Computer System and is used to describe a time that is printed to a file or other location to help keep track of when data is added, removed, sent or received.

The abovementioned definitions are identical to the definitions provided by SS-1.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act.

References herein to Sections and Regulations relate, respectively, to Sections of the Act and Regulations of Table F of Schedule I to the Act, unless otherwise stated.

Words importing the singular include the plural and words importing any gender include every gender.

Meanings of some of the terms used in this Guidance Note are placed at the end of this Guidance Note under the heading "Glossary".

GUIDANCE ON THE PROVISIONS OF SS -1

1. Convening a Meeting

1.1 Authority

1.1.1 Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.

Any Director, including an Independent Director, of the company may, at any time, summon a Meeting of the Board unless otherwise provided in the Articles.

As a best practice and a measure of good governance, in case any Director wishes to summon a Meeting for any purpose, he should send his requisition, in writing, to convene such Meeting along with the agenda proposed by him for discussion at the Meeting, either -

- *to the Chairman or in his absence, to the Managing Director or in his absence, to the Whole-time Director, or*
- *to the Company Secretary or in his absence, to any other person authorised by the Board in this regard.*

  "any person authorised by the Board", whether an officer of the company or any person other than the officer of the company, should be a definite person.

Once a requisition to convene a Meeting is received by the Chairman or in his absence, by the Managing Director or in his absence, by the Whole-time Director, such person may either proceed to convene the Meeting himself or direct the Company Secretary or in his absence, any other person authorised by the Board. The Company Secretary or in his absence, any other person authorised by the Board should then proceed to convene the Meeting.

Once a requisition to convene a Meeting is received by the Company Secretary or any other person authorised by the Board in this behalf, he should forthwith place this requisition for the approval of the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is one. Upon receipt of approval from the Chairman or the Managing Director or the Whole-time Director, as the case may be, the Company Secretary or any other person authorised by the Board in this behalf should convene the Meeting.

Where the company has neither a Chairman nor a Managing Director nor a Whole-time Director, the Company Secretary or the person authorised by the Board in this regard should proceed to convene the Meeting as requisitioned by the Director.

Implications of the words "Unless otherwise provided in the Articles"

The words "unless otherwise provided in the Articles" appearing in paragraph 1.1.1 of SS-1 suggest that a company may have in its Articles, a provision that is different from what is stated in this paragraph of the Standard. In such cases, it shall be mandatory to comply with the Articles.

For instance, if the Articles of a company provide that no Director other than the Managing Director shall summon a Board Meeting, the said clause in the Articles shall prevail. Similarly, if the Articles of a company state that only the Chairman is authorised to convene a Meeting or to give instructions to the Manager or the Company Secretary to do so, the said clause in the Articles alone shall prevail. Complying with such a clause cannot be construed as a violation of the requirements of the Standard in this regard.

The Model Articles under the Act state that a Director may, and the Manager or Secretary on the requisition of a Director shall, at any time, summon a Meeting of the Board. [Article 67(ii) of Table F of Schedule I to the Act]

A Meeting called by a person who is duly authorised to do so as per this paragraph of SS-1 read with the Articles of Association of the company shall be deemed to be valid.

Oral Requisition from a Director for convening a Meeting

In case an oral requisition is received from a Director for convening a Meeting and a written requisition does not follow, such requisition should be put in writing by the Company Secretary and placed before the Chairman/Managing Director/Whole-time Director, as the case may be, with a copy to the Director concerned who has requisitioned such Meeting.

Course of action upon refusal by the Chairman/Managing Director/Whole-time Director to convene the Meeting as requisitioned

Upon consultation by the Company Secretary, if the Chairman/Managing Director/Whole-time Director, as the case may be, refuses to convene the Meeting as requisitioned, the Articles of the company would prevail and the Company Secretary should act accordingly.

In case the Articles are silent, the Company Secretary cannot convene a Meeting requisitioned by the Director; and he should communicate the same to the Director concerned.

In any case, the Director may, on his own, convene a Meeting.

Authority of the Company Secretary to summon a Meeting

The Company Secretary cannot summon a Meeting on his own, unless authorised by the Board of Directors or the Articles to do so.

In case any Meeting is required to be held under the Act or any other Statute and the Chairman or any of the Directors does not proceed to summon such Meeting, the Company Secretary should write to the Chairman and the Directors about such statutory requirement, bringing to their notice the need to summon such Meeting and requesting them to comply with the same. Such situations may arise where the gap between two Board Meetings is set to exceed one hundred twenty days or where the Board fails to or refuses to summon the minimum number of Board Meetings required to be held in a Calendar Year/ quarter, as the case may be.

Manner of conducting requisitioned Meeting

Where any Meeting of the Board is called and held on the basis of a requisition by a Director, the provisions of the Act and SS-1 relating to Notice, Agenda, Notes on Agenda, length of Notice and manner of service of Notice and all other applicable provisions have to be complied with.

While calling a Meeting, the Director concerned should, as far as possible, hold the Meeting at the same place, if any, where Meetings of the Board are usually held.

Save and except under exceptional circumstances, the Director(s) summoning / requisitioning the Meeting should attend the Meeting.

Where a Director proceeds to issue a Notice to call a Meeting for the same issues on the same date when already a Meeting has been called, there is no reason why the said Director should not attend the original Meeting, and proceed to convene a parallel Meeting at a different place. Such a step by the said Director cannot be justified, and the Board Meeting convened by the said Director is illegal; and hence, declared to be null and void [Sanjiv Kothari vs. Vasant Kumar Chordia [2005] 66 CLA 45].

When a Notice of a Meeting has already been issued, if a Director wishes to bring up any particular item for discussion, he may, instead of issuing Notice for a parallel Meeting or a Meeting on another day, inform the Company Secretary and / or the Chairman to consider including the said item in the Agenda for the Meeting. In such a case, where the Agenda for the Meeting has already been circulated, provisions relating to circulation of Agenda at shorter period will apply to such Agenda item.

Absence of Company Secretary

Where there is no Company Secretary or in case of absence of the Company Secretary, any other KMP or any other person authorised by the Board for this purpose can perform all the aforesaid functions of a Company Secretary.

1.1.2 The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.

This paragraph of SS-1 deals with adjournment of a Meeting otherwise than for want of Quorum. As per Major Law Lexicon, 4th Edition 2010, adjournment means "a putting off until another time or transferring to a different place". Tomlin's Law Dictionary defines adjournment as "act of adjourning or state of being adjourned; also, the time or interval for which a body adjourns".

Adjournment of a Meeting otherwise than for want of Quorum may be necessitated for paucity of time to complete the Agenda or for any other reason viz. curfew, earthquakes etc.

The Act does not contain any provisions as to who has the power to adjourn a Meeting, otherwise than for want of Quorum. The Model Articles merely provide that the Board of Directors may adjourn its Meetings, as it thinks fit [Article 67(i) of Table F of Schedule I to the Act].

Hence paragraph 1.1.2 of SS-1 clarifies that a Meeting which has been validly summoned or convened and where the requisite Quorum is present may still be adjourned by the Chairman for any reason, unless a majority of the Directors present at the Meeting dissent or object to such adjournment.

For reckoning such majority, the majority of Directors present at the Meeting should be considered and not the majority of Directors of the Board.

1.2 Time, Place, Mode and Serial Number of Meeting

1.2.1 Every Meeting shall have a serial number.

Every Meeting of the Board should be serially numbered for ease of reference.

While numbering serially, the company may choose to follow its existing system of numbering, if any, or any new system of numbering, which would be distinct and enable ease of reference and/ or cross reference.

Illustrations:-

(i) Serially numbering on Calendar Year basis as follows: "1/2015", "2/2015", "3/2015" and so on…. In the next year, numbering would be "1/2016", "2/2016", "3/2016" and so on.

(ii) Serially numbering on financial year basis as follows: "1/2015-16", "2/2015-16", "3/2015-16" and so on….or 1/15-16, 2/15-16, 3/15-16 and so on.....

(iii) Continuous serially numbering across years: 120th Meeting, 121st Meeting, 122nd Meeting and so on ……

Here, a company may choose to either count and give continuous numbering from its incorporation or give continuous numbering from Meetings held on or after 1st July, 2015.

In any case, the company should follow a uniform and consistent system.

It is advisable that the Board be informed about the system of numbering of the Meeting and/or any change in the system of numbering; and the same be recorded in the Minutes.

Serial number of Adjourned Meetings

Serial number of the original Meeting and the adjourned Meeting would be the same. For eg: In case the serial number of the original Meeting is 12th Meeting, the serial number of the adjourned Meeting should be 12th Meeting (Adjourned).

1.2.2 A Meeting may be convened at any time and place, on any day, excluding a National Holiday.

A Meeting may be convened at any time, place and day as per the Gregorian calendar, including on a public holiday, unless the Articles provide otherwise.

However, a Meeting should not be held on a National Holiday. Sub–section (4) of Section 174 of the Act prohibits holding of Meetings adjourned for want of Quorum on National Holidays. Further, as per sub–section (2) of Section 96 of the Act, Annual General

Meeting cannot be held on a National Holiday. Aside from these statutory references, for a Meeting to be conducted smoothly, the presence of the employees of the company will be needed and committing them to work on a National Holiday might result in contravention of relevant Central and State Labour and Employment Laws. Keeping in line with the legislative intent, Meetings should thus not be convened on National Holidays.

As National Holidays are very few and well known, the Meeting can be planned on a day that is not a National Holiday.

The term "National Holiday" for this purpose refers to the National Holidays in India.

A Meeting adjourned for want of Quorum shall also not be held on a National Holiday.

In respect of Meetings adjourned for want of Quorum or otherwise, the prohibition relating to holding Meetings on a National Holiday will apply in terms of sub–section (4) of Section 174 of the Act.

A Meeting adjourned for want of Quorum, should be held on the same day at the same time and same place in the next week, unless the Articles of the company provide otherwise. If that day happens to be a National Holiday, then such adjourned Meeting should be held on the next succeeding day which is not a National Holiday at the same time and place, unless the Articles of the company provide otherwise.

Illustration:

A Meeting is convened on Friday, 8th August, 2015 at 4:00 p.m. at the Registered Office of the company. On that day, the required Quorum is not present. In the absence of any provisions to the contrary in the Articles, the Meeting is automatically adjourned to the same day in the next week, i.e. Friday, 15th August, 2015, at the same time and place. However, since Friday, 15th August, 2015 is a National Holiday, the adjourned Meeting should be held on Saturday, 16th August, 2015.

The Articles may provide for a stricter requirement than what is contained in the law.

Aspects to be considered while fixing Time

A Meeting maybe held at any time. However, this should be practically construed to mean a convenient time. As detailed deliberations are expected to take place in Board Meetings, it is desirable to have Meetings during working hours, though the Meeting may continue beyond working hours.

Aspects to be considered while fixing the Venue

A Meeting may be held at the Registered Office of the company or at any other place, including a remote place, in India or abroad. In case the Articles provide for a specific place/city in which the Meetings should be held, the Meetings should be held only at that place/city. If a Meeting of the Board is held elsewhere, contrary to such clause in the Articles, none of the decisions taken by the Board at such Meeting can be put into operation in any manner. The same are liable to be set aside, because the decisions cannot be validated by any belated amendment of the Minutes of the Board Meeting at which the decision to hold the Board Meeting elsewhere may be purported to have been taken [*Aidqua holdings (Mauritius) Inc. v. Tamil Nadu Water Investment Co. Ltd. And Ors. [2008] 83 CLA 352].*

Notice of the Meeting, wherein the facility of participation through Electronic Mode is provided, shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and it shall be the place where all the recordings of the proceedings at the Meeting would be made.

With respect to every Meeting conducted through Electronic Mode, the scheduled venue of the Meeting as set forth in the Notice convening the Meeting, should be deemed to be the venue of the said Meeting and all recordings of the proceedings at the Meeting should be deemed to be made at such place. [Rule 3(6) of the Companies (Meetings of Board and its Powers) Rules, 2014]

Thus, the venue of the Meeting mentioned in the Notice shall be deemed to be the place where recording of proceedings take place and therefore the Notice of a Meeting proposed to be conducted through Electronic Mode shall necessarily mention a place of the Meeting.

In case the company offers the facility of participation through Electronic Mode, the place of the said Meeting should be chosen by the company, keeping in mind the availability of infrastructure at such place for recording the proceedings, the security and identification procedures and other requirements of law in this regard which enable participation through Electronic Mode and safeguarding the integrity of the Meeting.

Meetings of the Committee and the Board on the same day

There are no restrictions on Meetings of Committees and of the Board being held on the same day.

A coincidental Meeting of Directors cannot be treated as a Meeting

A mere coincidental physical presence of all Directors at one place cannot constitute a Meeting.

Where such situations take place, there is no Board Meeting. [Barron v. Potter, 1914, 1 Ch. 895].

1.2.3 Any Director may participate through Electronic Mode in a Meeting, if the company provides such facility, unless the Act or any other law specifically does not allow such participation through Electronic Mode in respect of any item of business.

The abovementioned requirement is in line with sub – section (2) of Section 173 of the Act, which is an enabling provision recognising the presence of Directors participating through Electronic Mode. There is an option available to the Director to attend the Meeting through Electronic Mode. This option may be exercised by the Director when this facility is provided by the company to its Director(s).

Furthermore, a Director may attend all the Board Meetings through Electronic Mode, subject to such limitations as the Act or any other law may specify, and further subject to the restriction on participation in restricted items, as elaborated below.

Participation of a Director in a Meeting via telephone or tele-conferencing cannot be considered as participation of a Director through Electronic Mode.

Communication by a Director of his intention to participate through Electronic Mode

A Director intending to participate through Electronic Mode should communicate his intention to the Chairman or the Company Secretary of the company. He should give prior intimation to that effect sufficiently in advance so that the company is able to make suitable arrangements in this behalf [Rule 3(3)(d) of the Companies (Meetings of Board and its Powers) Rules, 2014].

Participation by all Directors through Electronic Mode

All the Directors may participate in a Meeting through Electronic Mode. In such a case, at least one person, who may either be the Chairman or the Company Secretary or in his absence, any other person duly authorised in this behalf, should be physically present at the scheduled venue of the Meeting given in the Notice to enable proper recording, to safeguard the integrity of the Meeting and to fulfill other requirements of law in this regard.

Offering of facility of participation through Electronic Mode by the company

There is no restriction for a company to hold all its Meetings through Electronic Mode provided the company ensures presence of physical Quorum during consideration of any of the restricted items of business.

It is also not mandatory for the companies to offer the facility of participation through Electronic Mode for its Meetings. If the company has not offered to provide any facility for participation through Electronic Mode and a Director insists on attending the Meeting through Electronic Mode, the company shall exercise due discretion in order to decide whether to provide such facility or not.

Similarly, a Director cannot participate in a Board Meeting through Electronic Mode from his end, if the company does not provide such facility at the specified location since it is necessary to take due and reasonable care to safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures.

Participation of persons other than Directors through Electronic Mode

There are no restrictions on the participation of the Company Secretary or the Auditors or the Invitees through Electronic Mode.

Directors shall not participate through Electronic Mode in the discussion on certain restricted items, unless expressly permitted by the Chairman. Such restricted items of business include approval of the annual financial statement, Board's report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover. Similarly, participation in the discussion through Electronic Mode shall not be allowed in Meetings of the Audit Committee for consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board, unless expressly permitted by the Chairman.

Rule 4 of the Companies (Meetings of the Board and its Powers) Rules, 2014 requires that restricted items shall not be dealt with in a Meeting through Electronic Mode. In other words, the number of Directors required to constitute Quorum should be present physically in such Meeting.

In terms of this paragraph of SS-1, which is an enabling provision, the Chairman has the discretion to allow participation in discussions by Directors through Electronic Mode in respect of restricted items provided there is requisite Quorum present physically and the Chairman deems it necessary or advisable to take the views of any such Director on such restricted items to enable informed decision making.

The following three aspects need to be considered for any Director participating through Electronic Mode in respect of any item:

1) Counting of such Director for the purpose of Quorum,

2) Participation of such Director in the discussion on the said item and

3) Voting right of such Director

Paragraph 1.2.3 of SS-1, at the discretion of the Chairman, allows only participation in the discussion on restricted items by a Director through Electronic Mode to facilitate value addition to the deliberations by such Director who otherwise is not able to attend the Meeting physically to participate in such deliberations of the Board. Any such Director participating through Electronic Mode in respect of restricted items with the express permission of the Chairman, shall neither be entitled to vote nor be counted for the purpose of Quorum in respect of such restricted items. Therefore, by participating in the discussion, the concerned Director does not alter the result of the Resolution since he has no right to vote.

Chairman participating through Electronic Mode in respect of restricted items

In case the Chairman of the Meeting is participating through Electronic Mode, he should, while transacting any restricted items of business, vacate the Chair and entrust the conduct of the proceedings in respect of such items to any other dis-interested Director attending the Meeting physically. The Chairman of the Meeting participating through Electronic Mode may give his views on matters pertaining to restricted items of business only with the express permission of the Chairman appointed for conducting the business relating to such restricted items. In any case, he is not entitled to vote or be counted for Quorum on such restricted items of business.

Conduct of adjourned Meetings through Electronic Mode

Even if the original Meeting of the Board was conducted physically, the adjourned Meeting may be conducted through Electronic Mode as long as the provisions relating to Meetings conducted through Electronic Mode are complied with. Similarly, if the original Meeting of the Board was conducted through Electronic Mode, the adjourned Meeting may be conducted physically.

1.3 Notice

1.3.1 Notice in writing of every Meeting shall be given to every Director by hand 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 is the intimation for the holding of the Meeting.

A Meeting of the Board should be called by giving a Notice in writing to every Director [Sub–section (3) of Section 173 read with Rule 3(3)(a) of the Companies (Meetings of Board and its Powers) Rules, 2014].

Notice of the Meeting should be given to all the Directors. It is necessary that Notice should be in writing. An oral Notice conveyed, either telephonically or by word of mouth, is not a valid Notice. [Eastern Linkers Pvt. Ltd. v. Dina Nath Sodhi (1984) 55 Comp. Cas. 462 (Delhi) Equivalent Citation 1982(3) DRJ 239]

Various means of sending Notice are recognised under SS-1 viz. by hand or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means.

"Electronic mail" means a message sent, received or forwarded in digital form using any electronic communication mechanism that the message so sent, received or forwarded is storable and retrievable [Definition in Rule 2(1)(g) of Companies (Specification of Definition Details) Rules, 2014].

Notice sent through e-mail may be sent as a text or as an attachment to an email or as a notification providing electronic link or Uniform Resource Locator for accessing such Notice.

Notice sent through any electronic means should be sent through such means where proof of sending and delivery can be retrieved.

Notice cannot be given by ordinary post since proof of delivery or acknowledgement is not available. Notice should also be given to Directors who have gone abroad or who usually reside abroad and who do not have an address in India.

Address for sending Notice

The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director.

Notice of the Meeting should be sent to the Directors at their address registered with the company. [Sub–section (3) of Section 173 of the Actread with Rule 3(3)(a) of the Companies (Meetings of Board and its Powers) Rules, 2014].

If the Director has specifically required the company to send Notices to a particular postal address, facsimile number or e-mail ID, the Notices should be sent to that address or number.

Aspects relating to means of issuing Notice

If the Articles prescribe the means by which Notice has to be given, it should be given accordingly, unless the Articles prescribe sending of Notice through ordinary post, in which case proof of sending Notice and its delivery should be maintained.

Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means.

If the Director is residing outside India, unless the Director concerned has instructed that Notice be sent by post or courier, Notice of Meetings could be sent to him by e-mail or facsimile.

Proof of sending and delivery of the Notice

Proof of sending Notice and its delivery shall be maintained by the company.

The Act requires the Directors to devise proper systems to ensure compliance with the provisions of all applicable laws and confirm that such systems are adequate and operating effectively [Sub-section (5)(f) of Section 134 of the Act]. Ensuring proper and robust Board systems becomes all the more important in the light of the increased accountability of the Directors and Key Managerial Personnel as laid down under sub–section (12) of Section 149 read with sub–section (60) of Section 2 of the Act.

It is in this context that SS-1 mandates companies to have a system of maintaining the proof of sending and delivery of the Notice of a Meeting. This would ensure appropriate and timely delivery of Notice and also help in addressing disputes arising due to non-receipt of Notices.

Proof of sending and delivery of the Notice should be preserved for such period, as may be decided by the Board.

In case any legal proceedings in connection with the same are pending, this proof should be maintained till complete disposal of the proceedings, including accounting for limitation period for any appeals.

The proof may be maintained in soft form.

If the Notice is sent by e-mail, it should be sent using a system where proof of sending and delivery can be received or retrieved.

If the Notice is sent by hand, the signature of the Director or the recipient should be obtained as an acknowledgement, which should then be maintained as proof of delivery of Notice. Companies may also maintain a register for this purpose where signature of the concerned Director or the recipient could be obtained.

<u>Form of Notice</u>

The Notice should preferably be sent on the letter-head of the company, except where it is sent by e-mail or any other electronic means in which case there should be, whether as a header or footer, the name of the company and complete address of its registered office together with all its particulars such as Corporate Identification Number (CIN) as required

under Section 12 of the Act, date of Notice, authority and name and designation of the person who is issuing the Notice and preferably, the phone number of the Company Secretary or any other senior officer who could be contacted by the Directors for any clarifications or arrangements.

A specimen Notice is given in ***Annexure II****.*

Consequences of Irregular Notice

All the above stipulations with respect to issuing Notices of Meetings emphasise that a Meeting should be called and held after issuing a proper Notice in the manner prescribed by SS-1. Any material irregularity in the Notice may affect the validity of the Meeting itself and the decisions taken thereat.

Where it was found that the Notice of a Meeting was irregular, it was held that Resolutions passed at such a Meeting are void. [Homer District Consolidated Gold Mines, (1888) 39 Ch D. 546 and Parmeshwari Prasad Gupta v. The Union of India 1973 AIR 2389, 1974 SCR (1) 304].

Additional persons to whom Notice should be given

As provided in fourth explanation to Para 1.3.7 of SS-1, Where an Alternate Director has been appointed and although Notice is given to him, it should also be given to the Original Director at the same time.

Like other Directors on the Board, the Original Director is equally responsible and liable for all the decisions taken at the Meetings of the Board and should have knowledge of the developments. Therefore, Notice, Agenda and Notes on Agenda should also be sent to the Original Director for his information.

The office of Alternate Director is nowhere related to the attendance of the Original Director in the Board Meeting. The office of Alternate Director is terminated if and when the Director in whose place he has been appointed returns to India (Second Proviso to Sub-section (2) of Section 161 of the Act).

1.3.2 Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose.

For any Meeting to be valid, it should be called by proper Notice given by a person duly authorised to do so. Notice should, be issued by the Company Secretary, if there is one.

Where there is no Company Secretary or in the absence of the Company Secretary, any Director or any other person who is authorised by the Board for the purpose should issue Notice.

No authorisation of the Board is required for a Company Secretary or a Director to issue Notice; he is empowered to issue Notice by virtue of his designation.

Signing of Notice

Notice should be signed by the Company Secretary, if there is one. If there is no Company Secretary, the Notice should be signed by any Director or any other person who is authorised by the Board to issue Notice.

1.3.3 The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.

The Notice should specify the serial number given to the Meeting, as required under paragraph 1.2.1 of SS-1.

Day and date specified in the Notice should be as per the Gregorian calendar.

The time specified in the Notice should be the time of commencement of the Meeting. If two Meetings of a company are scheduled to be held on the same day - one Meeting at the conclusion of the other Meeting, it would be valid if the Notice of the second Meeting states that the Meeting will be held at the time specified in such Notice or at the conclusion of the earlier Meeting, whichever is later.

Notice of Requisitioned Meeting

In the case of a requisitioned Meeting, the fact that the Meeting is being convened on the requisition of a Director should be stated in the Notice.

1.3.4 In case the facility of participation through Electronic mode is being made available, the Notice shall inform the Directors about the availability of such facility, and provide them necessary information to avail such facility.

In case the facility of participation through Electronic Mode is being made available, the Notice should clearly set out necessary information such as manner of participation, link, password, details of software and hardware infrastructure needed, etc.

Where such facility is provided, the Notice shall seek advance confirmation from the Directors as to whether they will participate through Electronic Mode in the Meeting.

As per Rule 3(3)(e) of the Companies (Meetings of Board and its Powers) Rules, 2014, {read with Rule 3(d)}, the Director who desires to participate through Electronic Mode may intimate his intention of such participation at the beginning of the Calendar Year and such declaration shall be valid for one Calendar Year.

However, in case, after giving the aforesaid intimation, the Director decides to participate by being present physically at a particular Meeting, he may so participate after suitably communicating the same to the Chairman or the Company Secretary or any other person authorised by the Board.

In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

Additional details to be included in such Notice

The Notice shall also contain the contact number or e-mail address(es) of the Chairman or the Company Secretary or any other person authorised by the Board, to whom the Director shall confirm in this regard.

Time-period within which the Directors need to send such confirmation may also be mentioned in the Notice.

1.3.5 The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

The Articles or Resolution or any agreement to which the company is a party may provide that Meetings should be held on a particular day of the week or month or at prescribed intervals, or the Directors may agree in advance upon the dates for Meetings.

In all the above cases, Notice should be given separately for each Meeting in accordance with SS-1.

1.3.6 Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

In line with Sub–section (3) of Section 173 of the Act, the requirement is to send seven days' Notice and not seven clear days' Notice. Thus, for the purpose of computing the period of seven days, the date of the Meeting should be excluded but the date of Notice should be included.

Illustration

If the Meeting is proposed to be held on Friday, 14th November, the last date for sending the Notice would be Friday, 7th November.

Adequate Notice should be given

Adequate Notice of the Meeting should be given so that Directors can plan their schedule so as to attend and participate in the Meeting. Participation in Meetings is central to the discharge of a Director's responsibilities. Unless Directors attend Meetings and participate in discussions with other members of the Board, they are unlikely to be fully aware of the affairs of the company and may be unable to exercise the care and diligence that is expected of them. Thus, a requisite and adequate Notice of a Board Meeting to all Directors in the

manner prescribed by the Act is essential as held in Sunder Lal Jain v Sandeep Paper Mills P Ltd [[1986] 60 Comp. Cas. 77].

Additional two days for Notice sent by post or courier

In case the company sends the Notice by speed post or by registered post or by courier, an additional two days shall be added for the service of Notice.

Addition of two days in case the company sends the Notice by post or courier is in line with Rule 35(6) of the Companies (Incorporation) Rules, 2014 which provides that in case of delivery of a Notice of a Meeting by post, the service shall be deemed to have been effected at the expiration of forty eight hours after the letter containing the same is posted.

However, the requirement of adding two days is applicable only if the Notice is sent to any of the Directors solely by speed post or by registered post or by courier and not by e-mail or any other electronic means.

In case the Notice is sent by e-mail or any other electronic means to the Directors and additionally, it is sent by speed post or by registered post or by courier to all or any of the Directors, pursuant to their request or otherwise, the additional two days need not be added.

Notice period in the Articles

The company may prescribe a longer Notice period through its Articles, in which case the Articles should be complied with.

However, the statutory Notice period of seven days cannot be reduced by the company in its Articles.

In case the Articles provide for a shorter period, SS-1 needs to be complied with and minimum seven days' Notice should be given.

Since no Notice of the original meeting was sent, none of the adjourned meetings were valid, and the business transacted therein was, therefore, bad. [In Re Consolidated Copper Minies Ltd (1889) 42 Ch D 160].

Notice for adjourned Meeting

Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and, unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date. If the date of the adjourned Meeting is decided at the Meeting, the Notice should be given forthwith. If the date of the adjourned Meeting is not decided at the Meeting, the Notice should be given not less than seven days before the adjourned Meeting. Thus, in case the date of the adjourned Meeting is not decided at the Meeting, such adjourned Meeting should be held only after a minimum period of seven days, thereby making it possible to comply with the above provision.

It is also applicable to Meetings, wherein the facility of participation through Electronic Mode is made available.

1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

The list of items of business to be transacted at a Meeting is known as the "Agenda". The Agenda draws attention to the relevant matters where deliberation is required. The Notes on Agenda explains each item of the Agenda which enables understanding of points for discussion by the Board.

If the Directors are to perform their duties effectively, actively contribute to the deliberations of the Board and take informed decisions, it is necessary that they receive adequate information sufficiently in advance of the Meeting so as to enable them to comprehend the matters to be dealt with, seek and obtain further information on those matters before the Meeting, if needed and give due attention thereto. This becomes all the

more important in the light of the increased accountability of the Directors laid down under sub–section (12) of Section 149 read with sub–section (60) of Section 2 of the Act.

Sending Agenda and Notes thereon in advance would also help the Directors to come to their decisions expeditiously thereby establishing a robust decision making process, irrespective of the nature and scale of operations of a company.

Keeping this in mind and also the requirement in the Secretarial Audit Report (Form No. MR-3) prescribed under the Act wherein the Secretarial Auditor is required to report whether the Agenda and the detailed Notes on Agenda have been sent at least seven days in advance to all Directors, paragraph of 1.3.7 of SS-1 lays down that the Agenda setting out the business to be transacted at the Meeting and the Notes thereon should be sent to all the Directors at least seven days before the Meeting.

For the purpose of computing the period of seven days, the date of the Meeting should be excluded but the date of sending Agenda and Notes thereon should be included.

Illustration

If the Meeting is proposed to be held on Friday, 14th November, the last date for sending the Agenda and Notes thereon would be Friday, 7th November.

The Agenda can be sent along with the Notice. In case the Notice is sent before the prescribed period and, if circumstances do not permit the sending of the Agenda along with the Notice, the Agenda should be sent at least seven days before the Meeting.

Sending of Notes on Agenda

The Agenda should be accompanied or followed by Notes thereon explaining the proposal in brief, in easily understandable language and setting out the points for decision of the Board.

Although there is no prohibition on sending the Agenda and Notes on Agenda separately, the condition that they should both be sent at least seven days prior to the Meeting should be adhered to, unless otherwise provided in SS-1.

Reading paragraphs 1.3.7 and 1.3.8 of SS-1 in conjunction, Notes on those items of business requiring approval at the Meeting should be given at least seven days before the Meeting. Where the Item of Business pertains to only taking note of / reviewing follow-up reports, statutory compliance reports etc., Notes thereon may be given at a shorter period than seven days.

Period in the Articles

The Articles of the company may prescribe a longer period for sending the Agenda and Notes thereto, in which case the Articles should be complied with.

However, the period of seven days cannot be reduced by the company in its Articles. In case the Articles provide for a shorter period, Agenda and Notes thereon should be given at least seven days in advance.

Means of sending Agenda and Notes on Agenda

Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by courier or by e-mail or by any other electronic means. These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.

In case the company sends the Agenda and Notes on Agenda by speed post or by registered post or by courier, an additional two days shall be added for the service of Agenda and Notes on Agenda.

Where a Director specifies a particular means of delivery of Agenda and Notes on Agenda, these papers shall be sent to him by such means.

The requirement of adding two days is applicable only if the Agenda and Notes on Agenda are sent to any of the Directors solely by speed post or by registered post or by courier and not by e-mail or any other electronic means.

In case the Agenda and Notes on Agenda is sent by e-mail or any other electronic means to the Directors and additionally, it is sent by speed post or by registered post or by courier to any or all the Directors, pursuant to their request or otherwise, additional two days need not be added.

Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.

For sending of Agenda and Notes on Agenda, the requirements laid down in paragraph 1.3.1 of SS-1 for sending Notice of the Meeting would be mutatis-mutandis applicable.

Supplementary Notes may be circulated at or before the Meeting

Supplementary Notes on any of the Agenda Items may be circulated at or prior to the Meeting but shall be taken up with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

Supplementary Notes on any of the Agenda Items may be circulated at or before the Meeting. No consent is required for sending the Supplementary Note, as above. However, requisite consent is required for taking up the said Supplementary Note for discussion at the Meeting.

Where the company has Independent Director(s) and the Independent Director(s)is/are not present at the Meeting or where there is no Independent Director in the company, such item may be taken up with the consent of the Chairman and the majority of the Directors present at the Meeting. No subsequent ratification of decision on such item by the Independent Directors or majority of Directors of the company would be needed in this case.

In any case, if Supplementary Notes are circulated seven or more days prior to the date of the Meeting, such consent is not required, unless the Articles provide otherwise.

Notes related to Unpublished Price Sensitive Information

Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.

"Shorter period of time" in this case means any period of less than seven days; it also includes tabling at the Meeting.

Majority of Directors for this purpose means majority of the total strength of the Board.

Exemption from seven days' period has been given in respect of notes on items of business which are in the nature of Unpublished Price Sensitive Information (UPSI), subject to certain conditions as stated above.

Where the company has Independent Director(s) and, if none of the Independent Directors consents to the giving of Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information(UPSI) at a shorter Notice, the said Notes should not be given at shorter Notice.

For this purpose,

"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel; and

(vi) material events in accordance with the listing agreement.[1]

The above exemption with respect to sending of Notes related to UPSI at a shorter period of time is applicable to listed companies.

In case of other companies, Notes pertaining to any of the items listed above may be circulated at a shorter period of time, subject to the compliance of paragraph 1.3.11 of SS-1.

General consent for giving Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information at a shorter Notice may be taken in the first Meeting of the Board held in each financial year and also whenever there is any change in Directors.

If an existing Director who has accorded such consent, ceases to be a Director during a Financial Year, no change in the Directors of the company can be said to have taken place in the context of this paragraph of SS-1. Similarly, when appointment of an Additional Director is confirmed at an Annual General Meeting, no change in the Directors of the company can be said to have taken place in the context of this paragraph of SS-1.

Consent from the new Director/s to circulate Agenda items which are in the nature of UPSI at a shorter Notice may be obtained on an individual basis.

If this consent or any other, obtained from the new Director/s affects the majority consent taken earlier, fresh consent should be taken from the Board.

[*1] Definition under SEBI (Prohibition of Insider Trading) Regulations, 2015

Illustration:

Assuming there are 9 Directors and 5 have given their general consent at the beginning of the financial year to give Notes on items of Agenda which are in the nature of UPSI at shorter Notice. If, out of these 5 who consented, 2 resign, it means that out of the remaining 7 Directors only 3 have given their consent. In such case, fresh consent is required.

However, if 2 new Directors are appointed in place of the resigned Directors, consent should be taken from these Directors on individual basis. If these 2 Directors give their consent, no fresh consent from the Board would be needed. In case, any of these 2 Directors do not give their consent, fresh consent would be needed from the Board.

Where general consent as above has not been taken, the requisite consent shall be taken before the concerned items are taken up for consideration at the Meeting. The fact of consent having been taken shall be recorded in the Minutes.

Order of discussing business at the Meeting

The Board should usually consider the items of the Agenda in the same order in which they are listed on the Agenda.

If some Directors wish to change the order, the Chairman may so permit. However, the Chairman should always exercise his discretion carefully, keeping in mind that there may be a Director who is unable to be present for the entire duration of the Meeting and may have arranged to attend the Meeting only for participating in a particular item of business. Therefore, frequent changes in the order of items of business on the Agenda at the Meeting should be avoided.

1.3.8 Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed.

Notes to set out the detailed points for discussion

The Notes on Agenda should set out the details of the proposal and relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal. In addition to this, the Notes on Agenda should also disclose the nature and extent of interest, if any, of any of the Directors of the company in the respective items of business, which the Director had earlier disclosed.

Draft Resolution

Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting.

Detailed Notes on each item on the Agendarequiring approval at the Meeting, accompanied by a draft Resolution, where necessary, would be a step towards ensuring informed decisions/ deliberations.

Resolutions drafted and circulated to Directors, in advance, along with the Agenda saves time at the Meeting, clarifies the subject matter, facilitates discussion, simplifies the preparation of Minutes of the Meeting and enables issuance of certified copies of Resolution, wherever required, after the Meeting and before the Minutes thereof are finalised.

Specimen Agenda and items of business

The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. *(Illustrative list is given in Annexure IA and 1B)*

There are certain items which shall be placed before the Board at its first Meeting.

"First Meeting" above means the first Meeting of the Board after the incorporation of the company.

Specimen Agenda for the First Board Meeting and for subsequent Board Meetings are given in Annexure III and IV respectively.

Drafting an Agenda

The practical aspects of drafting of an Agenda, Notes on Agenda and related aspects are given in Annexure V.

An item for some business which may arise before the Meeting, may be included while circulating the Agenda, by adding the words "if any" after the said item. For eg: To review the status of legal cases, if any; if there is no update on the legal cases at all, a nil report may be given.

In case during the course of a Board Meeting, any Agenda item containing a proposal is deferred for consideration in a subsequent Meeting and if there is any change in the said proposal, the Notes on Agenda of the new proposal should explain the modifications in the proposal since the Board was already provided with the Agenda of the earlier Meeting and has been informed of the earlier proposal.

It is a good practice to mark each document with the Agenda item number for ease of reference.

1.3.9 Each item of business to be taken up at the Meeting shall be serially numbered.

Numbering shall be in a manner which would enable ease of reference or cross-reference.

This paragraph of SS-1 requires every item on the Agenda to be numbered. Generally, as a matter of practice, a serial number is usually put against each item of business. This practice has been formalised through SS-1. If a company follows this practice, it will enable ease of reference. Suppose a Director wants to disclose his interest or concern, it would be very easy for him to refer to the serial number of the particular item of business; Suppose the Board wants to defer discussion on any item of business, it would be convenient to record the same by saying that the discussion on "Item No. -----" has been deferred.

While numbering, the company may choose to follow its existing system of numbering, if any, or any new system of numbering, which would be distinct and enable ease of reference or cross reference.

In any case, the company should follow a uniform and consistent system.

Illustrations:-

(i) Serially numbering irrespective of the number of the Meeting

Items to be discussed in any Meeting of the Board would be numbered 1, 2, 3, 4… and so on.

(ii) Serially numbering on the basis of the number of the Meeting as follows:

Items to be discussed in 12th Meeting of the Board would be numbered as 12.1, 12.2, 12.3, 12.4 etc…Items to be discussed in the 13th Meeting would be numbered as 13.1, 13.2, 13.3 and so on.

(iii) Continuous numbering across years/Meetings:

Suppose there are 8 items to be discussed in the first Meeting and 10 items in second Meeting. In such a case, the items of 1st Meeting will be numbered as item number 1-8 and the items in the second Meeting would be numbered 9-18 and so on…..

Here, a company may choose to either count and give continuous numbering from its incorporation or from Meetings held on or after 1st July, 2015.

1.3.10 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

The Act has no stipulation with respect to taking up for consideration at the Meeting any item of business not included in the Agenda circulated earlier. Drawing an analogy from the provisions with respect to shorter Notice, the above requirement has been stipulated.

Many a times, after the Agenda and Notes thereon have been dispatched, it may be necessary for an item of business to be transacted at a Meeting and in such cases, instead of convening another Meeting, the business could be transacted at the Meeting which has already been convened, provided the Chairman permits the same and the taking up of the same has the consent of a majority of the Directors present in the Meeting and such Directors shall include at least one Independent Director, if any. The Board of Directors can consider a business though it is not included in the Agenda for the meeting. [Kashinath Tapuriah v Incab Industries Ltd [1998] 93 Comp. Cas. 725 (Cal)]

However, the Act specifically provides for prior Notice in the case of some items of business, e.g. Notice should be given to all Directors of a Resolution to be moved for appointment of a person as Managing Director who is already the Managing Director or Manager of another company (Third proviso to sub-section (3) of Section 203 of the Act). Such items should be taken up only if prior Notice is given and not be taken up under the above clause.

In case of absence of Independent Directors, if any, at such Meeting, the Minutes shall be final only after at least one Independent Director, if any, ratifies the decision taken in respect of such item. In case the company does not have an Independent Director, the Minutes shall be final only on ratification of the decision taken in respect of such item by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

In case Independent Directors are present at the Meeting and if none of them consents to consideration of any item not included in the Agenda, then such item should not be taken up. If none of the Independent Directors are present at the Meeting and subsequently the decision taken at the Meeting in respect of any item not included in the Agenda is disapproved or not ratified by at least one Independent Director, the decision of the Board in respect of such item fails. It is therefore advisable that the company implements the

decision taken at the Board Meeting in respect of such item only after it is ratified by at least one Independent Director, if any.

In case the company does not have an Independent Director, ratification of the decisions taken in such Meeting should be done by the majority of Directors of the company. However, such ratification by majority is not required where the item was approved at the Meeting itself by a majority of Directors of the company.

Illustration:-

Company XYZ Ltd. has 9 Directors out of which 2 are Independent Directors. Following are the scenarios and its effect:

Scenarios:

1. An item not included in the Agenda is taken up at a Meeting and consent is obtained from majority of Directors, including an Independent Director.

Effect: No ratification necessary. Decision taken will be carried through.

2. An item not included in the Agenda is proposed to be taken up at a Meeting and consent is obtained from majority of Directors. However, none of the Independent Directors present at the Meeting consent to taking up such item at the Meeting.

Effect: Such item shall not be taken up at the Meeting.

3a. An item not included in the Agenda is taken up at the Meeting and no Independent Director is present at such Meeting.

Effect: Decision and Minutes shall be final only after ratification by at least one Independent Director.

b. In the above case, both Independent Directors refuse or fail to ratify the Minutes.

Effect: The decision fails.

c. In the above case, both the Independent Directors disapprove the decision taken by the majority at the Meeting.

Effect: The decision fails.

d. In the above case, one Independent Director approves the decision but the other disapproves the decision taken by the majority at the Meeting.

Effect: The decision taken will be carried through.

Additional item/s of Agenda may be introduced at a Meeting adjourned for want of Quorum by complying with this paragraph of SS-1.

1.3.11 To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

Notice, Agenda and Notes on Agenda should be given at least seven days before the Meeting, for the efficient conduct of business. However, to meet certain urgent business requirements, it may be necessary to call a Meeting at shorter Notice.

In such cases, a Meeting may be called at shorter Notice by complying with the above paragraph of SS-1.

In case of sending of shorter Notice, the Agenda and Notes thereon may also be sent at a shorter period of time by complying with the above paragraph of SS-1.

The manner for sending Notice the Agenda and Notes thereon explained in earlier paragraphs of SS-1 shall mutatis-mutandis be applicable for sending shorter Notice.

"Urgent business"

For the purpose of this paragraph, any matter, if it is urgent, may be taken up as "urgent business" by issuing a shorter Notice.

Additional content in such Notice

The fact that the Meeting is being held at a shorter Notice shall be stated in the Notice.

Holding a Meeting at shorter Notice is deviating from the conventional practice. Hence, this fact should be brought out in the Notice convening the Meeting. The reasons for convening the Meeting at shorter Notice may also be stated in the Notice, as a good governance practice.

Presence of Independent Director or ratification of decisions

If none of the Independent Directors are present at the Meeting and on the subsequent circulation of Minutes, none of the decisions or any of the decisions taken at such Meeting is disapproved or not ratified by at least one Independent Director, if any, such decision/s of the Board in respect of such item/s fail. The company should, therefore not implement decisions taken at such Board Meeting until they are ratified by at least one Independent Director, if any.

In case the company does not have an Independent Director, ratification of the decisions taken in such Meeting should be done by the majority of Directors of the company. However, such ratification by majority is not required where the item was approved at the Meeting itself by a majority of Directors of the company.

Illustration:-

Company XYZ Ltd. has 9 Directors out of which 2 are Independent Directors. Following are the scenarios and its effect:

Scenarios:

1. A Meeting is convened at a Shorter Notice and one Independent Director is present at the Meeting.

Effect: No ratification necessary. Decision taken will be carried through.

2.

a. A Meeting is convened at a shorter Notice and no Independent Director is present at such Meeting.

Effect: Decision and Minutes of the Meeting shall be final only after ratification by at least one Independent Director.

b. In the above case, subsequently both Independent Directors refuse or fail to ratify the Minutes.

Effect: The decision fails.

c. In the above case, subsequently both the Independent Directors disapprove the decision taken by the majority at the Meeting.

Effect: The decision fails.

d. In the above case, subsequently one Independent Director approves the decision but the other disapproves the decision taken by the majority at the Meeting.

Effect: The decision taken will be carried through.

2. Frequency of Meetings

2.1 Meetings of the Board

The Board shall meet at least once in every calendar quarter, with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, such that at least four Meetings are held in each Calendar Year.

The Act requires that at least four Meetings of the Board be held in each year with a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board. The provision of "holding meetings in every calendar quarter" has been introduced in the spirit of robust Board systems and procedures. Irrespective of whether a company is listed or not, the Board is responsible for various compliances under the Act and other laws applicable to the company; many of such compliances are quarterly in nature. It is therefore desirable that the Board monitors the operations of the company on a quarterly basis. Also, in view of the liability of the Directors under sub–section (12) of Section 149 of the Act, it is a good practice to have a Board Meeting every quarter. The provision of quarterly Meetings only spaces out the Meetings required to be held in a year and does not, in any case, increase the number of Meetings required to be held in a year as per the Act.

"Year" means "Calendar Year"

"Year" is not defined in the Act and so the definition under the General Clauses Act, 1897 is made applicable. Further, the stipulation in the Act in case of a One Person Company, Small Company or Dormant Company to hold at least one Meeting of the Board in each half of a Calendar Year also clarifies the intention of lawmakers to mean Calendar Year. Calendar Year has, therefore, been prescribed in SS-1 for reckoning minimum number of Meetings.

First Meeting after incorporation

The Board shall hold its first Meeting within thirty days of the date of incorporation of the company. It shall be sufficient if one Meeting is held in each of the remaining calendar quarters, subject to a maximum interval of one hundred and twenty days between any two consecutive Meetings of the Board, after the first Meeting.

Illustration:-

If a company is incorporated on 15th September, the first Meeting should be held within thirty days, say, it is held on 10th October. Thereafter, it shall be sufficient, if one Board Meeting is held in the January-March Quarter. There is no need to hold a Meeting again in the October-December Quarter.

Frequency of Meetings over and above what is prescribed

Several companies schedule their Meetings at regular intervals, often coinciding with the need to deal with matters such as periodic financial results. However, in accordance with the exigencies of business and the needs of the company, the Board may meet more frequently as and when required.

As a good governance practice, the Board may approve in advance, a calendar of dates for Meetings to be held in a year.

Provisions for One Person Company, Small Company and Dormant Company

Further, it shall be sufficient if a One Person Company, Small Company or Dormant Company holds one 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 ninety days.

For the purpose of this paragraph of SS-1, it shall be sufficient if a company with charitable objects etc. and not for profit incorporated under Section 8 of the Act holds one 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 ninety days (vide MCA's exemption notification dated 5th June, 2015).

Illustration:-

In case a small company holds the first Meeting of the Calendar Year 2015 on 1st June, 2015, it would be sufficient if it holds one more Meeting on any day before 31st December, 2015. However, if it holds the next Meeting on 30th July, 2015, it should hold at least one more Meeting after 30th August, 2015 but before 31st December, 2015.

If a One Person Company, Small Company or Dormant Company holds only 2 Meetings in a year then the gap between the two Meetings should be minimum 90 days. If more than 2 Meetings are held in a year where the gap between the 1st and the last Meeting in a year exceeds 90 days then it shall be sufficient compliance of the requirement.

Meetings adjourned for want of Quorum

Meeting adjourned for want of Quorum should also be conducted within the period stipulated in SS-1.

Illustration:-

The last date for holding a Meeting for the quarter ended June is 30th June. A company convenes its Meeting on 27th June, which is within the last date. However, the requisite Quorum is not present on the day and the Meetings stands automatically adjourned to 4th July, as per law. In such a case, there is a non compliance with respect to the provisions relating to frequency of the Meeting.

It may be noted that the flexibility granted under sub–section (2) of Section 288 of the Companies Act, 1956 regarding adjournment of a Board Meeting for want of Quorum not amounting to violation as to the requirement of the periodicity of holding Board Meetings is not available under the Companies Act, 2013. Hence, there will be a violation of Section 173 of the Act if the Meeting adjourned for want of Quorum is not conducted within the statutory period.

The company should therefore endeavor to schedule its Meetings appropriately.

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

Thus, in case of an adjourned Meeting, the gap of one hundred and twenty days or any other period for the purpose of fixing up the date of the next Meeting or for any other purpose should be counted from the date of original Meeting.

2.2 Meetings of Committees

Committees shall meet as often as necessary subject to the minimum number and frequency stipulated by the Board or as prescribed by any law or authority.

Frequency of Meetings of a Committee

Committees should meet as often as required and at least as often as stipulated by the Board while constituting the Committee. Guidelines, Rules and Regulations framed under the Act or by any statutory/regulatory authority may contain provisions for the frequency of Meetings of a Committee and such stipulations should be followed.

For example, the Audit Committee should meet at least four times in a year and not more than four months should elapse between two Meetings [SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[2]].

However, in accordance with the exigencies of business and the needs of the company, the Committees may meet more frequently.

2.3 Meeting of Independent Directors

Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.

The Act requires the Independent Directors of the company to hold at least one Meeting in a year, without the attendance of non-independent Directors and members of the management (Clause VII (1) of Schedule IV of the Act).

The meeting shall be held to review the performance of Non-Independent Directors and the Board as a whole; to review the performance of the Chairman and to assess the quality, quantity and timeliness of flow of information between the company management and the Board and its members that is necessary for the Board to effectively and reasonably perform their duties.

[2]Effective from 1st December 2015

Meeting of Independent Directors is not a Meeting of the Board or of a Committee of the Board. Therefore, provisions of SS-1 would not be applicable to such Meetings. A record of the proceedings of such a Meeting may be kept.

However, in the event the Board decides to form an 'Independent Directors Committee', all the provisions of SS-1 would apply to the Meetings of the said Committee.

The Company Secretary shall facilitate convening and holding of such meeting, if so desired by the Independent Directors.

If invited by the Independent Directors, the Company Secretary or the Managing Director or any other officer of the Company or a Company Secretary in practice or any other expert may be present at such a Meeting or in any part thereof.

3. Quorum

The Quorum for a Meeting is the minimum number of Directors whose presence is required to constitute a valid Meeting and who are competent to transact business and vote thereon.

3.1 Quorum shall be present throughout the Meeting.

In order that a Meeting may be properly constituted and the business be validly transacted, a Quorum shall be present.

Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

It is not sufficient if the Quorum is present at the commencement of the business. It is necessary that the Quorum is present at the time of transacting the business, i.e. at every stage of the Meeting and unless a Quorum is present at the time of transacting a particular item of business, the business transacted therein is void.

Rule 3 (5)(b) of the Companies (Meetings of Board and its Powers) Rules, 2014, with respect to Meetings through Electronic Mode, requires the Chairman to ensure that the

required Quorum is present throughout the Meeting. However, this is relevant to all Board Meetings.

3.2 A Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether physically or through Electronic Mode, during discussions and voting on such item.

An Interested Director should neither participate nor vote in respect of an item in which he is interested, nor should he be counted for Quorum in respect of such item. The Interested Director should not be present i.e. should leave the Meeting during the discussion and voting on the item in which he is interested.

As per Rule 15(2) of the Companies (Meetings of Board and its Powers) Rules, 2014, an Interested Director is not to be present during discussions and voting on the item in which he is interested if the item happens to be a related party transaction. To facilitate unbiased decision making in the spirit of good governance, Interested Directors should not be present during discussion and voting in respect of an item in which he is interested.

Exemptions available to private companies

In the case of a private company, MCA's Exemption Notification dated 5th June, 2015 states that sub–section (2) of Section 184 of the Act shall apply. However, an Interested Director may participate in the discussion as well as vote on the Resolution at a Board Meeting after disclosing his interest. For the purpose of Quorum, as per Explanation to sub–section (3) of Section 174 of the Act, an Interested Director means a Director covered under sub–section (2) of Section 184 of the Act which provides for disclosure of interest by an Interested Director and prohibits his participation in an item in which he is interested. Consequently, in case of a private company, an Interested Director should also be counted for Quorum.

Thus, for the purpose of this requirement of SS-1, in case of a private company, an Interested Director shall be reckoned for Quorum in respect of an item in which he is interested after he has disclosed such interest. Further he can be present, whether

physically or through Electronic Mode, during discussions on such item and is also entitled to vote thereon.

Definition of 'interest'

For this purpose, a Director shall be treated asinterested in a contract or arrangement entered into or proposed to be entered into by the company:

a) with the Director himself or his relative; or

Personal interests of Directors fall under this clause. Eg: In respect of an item for appointment of a Director or fixing his remuneration, the Director concerned should be treated as interested.

b) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or

Illustration:-

Mr. A is a Director of XYZ Ltd. He is not holding any Directorship in PQR Ltd., and holds more than two percent of the paid-up share capital of PQR Ltd.

In a contract between XYZ Ltd. and PQR Ltd. Mr. A will be treated as interested for that particular item in the Board Meeting of XYZ Ltd. Shareholding of more than 2% of the paid-up share capital of PQR Ltd. makes him an Interested Director in respect of that particular item in the Board Meeting of XYZ Ltd.

However, mere common Directorships are excluded from the purview of interest.

c) with a firm or other entity, if such Director or his relative is a partner, owner or Member, as the case may be, of that firm or other entity.

'Interest' in case of Alternate Director

In case an Alternate Director has been appointed and the Original Director is interested in a particular Resolution, the Alternate Director does not ipso facto become interested in that

particular Resolution by virtue of the Original Director is being interested. The Alternate Director would be treated as interested and not entitled to vote in the event that he is a relative of the Original Director or he himself is interested in any other manner in such Resolution.

Disclosure of interest by Interested Director

As stated, any Director of the company who is Interested in a matter being considered at the Meeting should disclose his interest.

Every Director shall, at the first Meeting of the Board in which he participates as a Director and thereafter at the first Meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board Meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals, which shall include his shareholding [Sub–section (1) of Section 184 of the Act read with Rule 9 of the Companies (Meetings of Board and its Powers) Rules, 2014]

An Interested Director should also disclose the nature of his concern or interest at the Meeting of the Board where the contract or arrangement in which he is interested as above is discussed.

Disclosure of interest, should be made by him, even if he himself or he along with other Directors holds less than two percent of the paid-up share capital of that body corporate. This is required for the purpose of reckoning the limit of two percent shareholding by all the Directors.

Effect of the contract or arrangement, if any of the above provisions are violated

If any Director fails to make the disclosure mentioned above or participates in the discussion on or votes on an item in which he is interested, then the concerned contract or arrangement entered into shall be voidable at the option of the company [Sub–section (3) of Section 184 of the Act].

In addition to the above, such Director shall be liable to vacate his office [Clauses (c) & (d) of sub–section (1) of Section 167 of the Act].

Course of action if all the Directors are interested

No Meeting can be conducted where all or all but one of the Directors are interested and in such a case the proper course of action is to have the matter decided in general meeting by the company.

In the general meeting, the entitlement to vote of the Directors who are also Shareholders should be determined in terms of provisions related to transactions with Related Party under Section 188 of the Act and Secretarial Standard-2 (SS-2).

3.3 Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.

All Directors participating through Electronic Mode in a Meeting should be counted for the purpose of reckoning Quorum. [Sub–section (1) of Section 174 of the Act read with Explanation to Rule 3(5)(a) of the Companies (Meetings of Board and its Powers) Rules, 2014]

However, under the provisions of the Act or any other law, if any Director participating through Electronic Mode is not to be counted for Quorum in respect of any item of business (the restricted items at present), then he should not be counted for Quorum for such item of business.

Any Director participating through Electronic Mode, in respect of restricted items, with the express permission of Chairman shall however, neither be entitled to vote nor be counted for the purpose of Quorum in respect of such restricted items.

The restricted items of business include approval of the annual financial statement, Board's Report, prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeover and in meetings of Audit Committee for the

consideration of annual financial statement including consolidated financial statement, if any, to be approved by the Board.

In addition to the above, Interested Directors participating through Electronic Mode should not be counted for Quorum as explained in paragraph 3.2 above.

3.4 Meetings of the Board

3.4.1 The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher.

For the purpose of this paragraph of SS-1, the Quorum for a Meeting of the Board of a company with charitable objects etc. and not for profit incorporated under Section 8 of the Act (erstwhile Section 25 of the Companies Act, 1956) shall be eight Directors or one-fourth of the total strength of the Board whichever is less, subject to a minimum of two Directors (vide MCA's exemption notification dated 5th June, 2015).

For the purpose of calculating the "total strength" and Quorum for a Meeting, the following should be noted:

1) Total strength, for this purpose, shall not include Directors whose places are vacant.

   In other words, only the number of Directors in office at the time of the Meeting of the Board, should be counted.

2) Any fraction contained in the above one-third shall be rounded off to the next one.

Illustration:- *If, out of a total strength of fifteen Directors as fixed by the company in general meeting, there are four vacancies, then the actual strength of the Board for the purpose of computing the Quorum will be eleven and not fifteen. The Quorum will be 1/3 of 11, i.e. 4.*

3) *Invitees should not be considered for counting of Quorum.*

In the case of companies where institutions have appointed Nominee Directors, if the Nominee Director is not able to attend the Meeting, another person is usually sent by the institutions to attend the specific Meeting. The foreign collaborators also, at times, may be invited to attend Meetings. Any Invitee should be allowed to attend a Meeting with the permission of the Chair but his presence should not be counted towards Quorum nor should he be allowed to vote on any item. He may, however, speak with the permission of the Chair.

4) *As explained in paragraph 3.3 above, a Director participating through Electronic Mode should be counted for the purpose of Quorum, unless he is to be excluded for any item.*

5) *As explained in paragraph 3.2 above, any Director of the company who is Interested in a matter being considered at the Meeting should not be counted for the purpose of determining the Quorum.*

   If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the Quorum during such item.

   In a situation where, the Quorum excluding the Interested Directors is less than two, the item may be considered in the general meeting of the members.

<u>*Stricter provisions should be followed*</u>

The Articles may provide for a higher Quorum than what is prescribed under the law.

Where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement.

It is vulnerable to the company, as may be provided by its Articles, to have a higher, but not a lower number or proportion to constitute a valid Quorum. [Amrit Kaur Puri v. Kapurthala Flour Oil & General Mills Co. P. Ltd., (1984) 56 Com Cases 194 (P&H)].

For example, the Articles may provide for the presence of the Nominee Director at all Meetings. Such provision should be adhered to.

Consequences of Meeting where Quorum is not present

From the time appointed for the Meeting, if Quorum is not present within half-an-hour, or such further time as the Chairman may deem fit, the Meeting shall stand adjourned. Sometimes, due to reasons beyond the control of the Board, a Meeting cannot commence at the scheduled time for commencement. Where the Chairman has arrived but a Quorum is not present, depending upon the circumstances, the Chairman may decide and inform the Directors that the Meeting stands adjourned for want of Quorum.

If a Meeting of the Board could not be held for want of Quorum, then, unless otherwise provided in the Articles, the Meeting shall automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is a National Holiday, to the next succeeding day which is not a National Holiday, at the same time and place.

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.

A Meeting can be adjourned only once for want of Quorum. If at the adjourned Meeting also no Quorum is present, the Meeting shall stand cancelled and a fresh Meeting should then be convened in order to transact the business.

The test to the validity of a Meeting due to absence of Quorum will have to be made by the aggrieved person, within a reasonable time, as may be permitted in the statute. [Plymoth Breweries v. Penwill, (1967) 111 SJ 715].

3.4.2 Where the number of Directors is reduced below the minimum 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.

The Articles may provide for a minimum number of Directors. In such cases, for any business required to be transacted by the Board at its Meeting, it is necessary to have the minimum number of Directors as prescribed in the Articles. Unless the minimum number of Directors prescribed by the Articles have been appointed, the Board is not considered to

be fully constituted and even if the requisite number of Directors to form a Quorum as per the Act is present, they cannot hold a valid Meeting. A Board that consists of Directors less in number than the minimum fixed by the Articles cannot exercise the functions of the Board. [Vishwanath Prasad Jalan v. Holyland Cinetone Ltd. (1939) 9 Comp. Cas. 324].

This would be so even if the number of Directors then in office is sufficient to constitute the Quorum. Directors may, in such a case, act for the limited purpose of calling a general meeting or for filling the vacancies for the purpose of increasing their number to at least the minimum [Sly, Spink & Co. In re. (1911) 2 Ch. 430].

Number of Directors falls below Quorum

If the number of Directors is reduced below the Quorum fixed by the Act for a Meeting of the Board, the continuing Directors may act for the purpose of increasing the number of Directors to that fixed for the Quorum or of summoning a general meeting of the company, and for no other purpose.

The Articles may provide for a higher Quorum than what is prescribed under the law. In such a case, it is necessary to have the Quorum as prescribed in the Articles for any business required to be transacted by the Board at its Meeting.

Accordingly, the above practice prescribed in SS-1 is also applicable in cases where the number of Directors is reduced below the Quorum fixed by the Articles i.e. in such cases, the continuing Directors may only act for the purpose of increasing the number of Directors to that fixed by the Articles for Quorum or for summoning a general meeting for this purpose.

All decisions taken at a Board Meeting of the Company of which the Board is not properly constituted, as required under the provisions of the Articles of Association of the Company, will be null and void even if the decisions taken at such Board Meeting are in the interests of the company. Only a decision for appointment of Director may be held to be valid. (Maharashtra Power Development Corporation Ltd. v. Dabhol Power Co. and Others [2003] 56 CLA 187).

3.5 Meetings of Committees

The presence of all the members of any Committee constituted by the Board is necessary to form the Quorum for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the Articles or by the Board.

The above paragraph of the SS-1 lays down the Quorum for Meetings of the Committees which is different from the Quorum for Meetings of the Board. The Act or the Articles or the Board while constituting the Committee may stipulate the Quorum for the Meetings of the Committee. Such stipulations should then be followed.

Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed.

For instance, one such requirement is that at a Meeting of the Audit Committee of a Listed company, the Quorum should be either two members or one third of the strength of the Audit Committee whichever is higher, but there should be a minimum of two independent Directors present. [SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[3]]

In case there is no stipulation for Quorum under any of the above, Quorum would be all the members of the Committee.

Where there is no specific provision, it is incumbent that the whole of the Committee meets [Re. Liverpool Household Stores Association Ltd. (1890) 59 L J Ch. 616].

In case neither the Board nor the Act nor any other law nor the Articles has stipulated any Quorum, the Meetings of the Committee for the consideration of restricted items would require presence of all its members physically and not through Electronic Mode.

Concept of Interest in case of Meetings of the Committee

The provisions with respect to the Interested Directors while determining the Quorum of the Board are applicable mutatis-mutandis to the meetings of Committees.

[3]Effective from 1st December 2015

It is therefore advisable that in the absence of law, the Articles or the Board should, while constituting various Committees specify the Quorum, being not less than two, for Meetings of such Committees. This becomes necessary to cover the eventuality of any member of the Committee, being interested in any item of business to be considered by such Committee, is unable to be counted for Quorum for such item.

4. Attendance at Meetings

4.1 Attendance registers

4.1.1 Every company shall maintain separate attendance registers for the Meetings of the Board and Meetings of the Committee.

Attendance register helps in keeping proper record of the Meeting.

Attendance register is a formal evidence of the presence of the persons signing the Register. Maintenance of attendance register is a good secretarial practice which helps in keeping proper record of the attendance in the Meeting, enables cross-verification and also protects the interest of individual Directors. It contains the signatures of the Directors who are present. The attendance register is also contemplated under the Model Articles which state that "every Director present at any Meeting of the Board or of a Committee should sign his name in a book to be kept for that purpose."[Article-65 of Table – F of Schedule I of the Act]

Every company has to maintain an attendance register for its Board Meetings to keep a record of the Directors who attended the Board Meeting [In Dale & Carrington Investment (P) Ltd v. P.K. Prathapan (2004) (7) SC].

The pages of the respective attendance registers shall be serially numbered.

Manner of maintaining attendance register

Attendance may be recorded on separate attendance sheets or in a bound book or register.

If an attendance register is maintained in loose-leaf form, it shall be bound periodically depending on the size and volume.

The attendance sheets or the register, as the case may be, if maintained in loose-leaf form, should be bound separately.

The period of binding the attendance register should coincide with one or more financial years of the company.

4.1.2 The attendance register shall contain the following particulars: serial number and date of the 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.

SS-1 clearly lays down the distinction between persons present, in attendance and Invitees.

It is the duty of the Company Secretary to attend the Meetings of the Board and its Committees [Rule 10(2) of Companies (Appointment and Remuneration of Managerial Personnel) Rules]. The Act does not mandate any other KMP (other than Directors) or other persons to attend the Meetings of the Board or its Committees. The Company Secretary should therefore be treated as "in attendance" at the Meeting and all other persons including KMPs, other than Directors and Company Secretary, attending the Meeting should be treated as "Invitees" at the Meeting for all purposes.

This classifies the mainstream participants of the Meeting as "present", the persons responsible to conduct the Meeting as a part of their duty as "in attendance" and any other person other than the above two categories as "Invitees".

Persons who are present in a Meeting merely to provide administrative assistance to an Invitee or Director or Company Secretary should neither be treated as "Invitees" nor as "in Attendance". The Chairman may use his discretion in recording the presence of such persons.

The attendance register/ sheet should also contain the capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company.

If a Committee deems it necessary, it may invite any other Director, who is not a member of the Committee, to attend the Meeting of the Committee for specific purpose. Such Director would then be treated as an "Invitee" in the Meeting for all purposes.

4.1.3 Every Director, Company Secretary who is in attendance and every Invitee who attends a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting.

Signing of the attendance sheet/ register will not only be evidence of the particular Director being present at the Meeting but also will facilitate the payment of sitting fees and accounting thereof by the company.

Each Director should sign the attendance register.

Additionally, the Company Secretary, who is in attendance at Board Meetings and persons attending a Meeting by invitation, should sign the attendance sheet or register.

Attendance of Directors participating through Electronic Mode

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors. For this purpose, at the commencement of the Meeting, the Chairman shall take a roll call. The Chairman or the Company Secretary shall request the Director participating through Electronic Mode to state his full name and location from where he is participating and shall record the same in the Minutes.

The requirement for roll call is in line with the requirement under Rule 3(4) and Rule 3(5) of the Companies (Meetings of Board and its Powers), 2014.

During the roll call, every Director participating through Electronic Mode should state, for the record, the following namely:

(a) name;

(b) the location from where he is participating;

(c) that he has received the Agenda and all the relevant material for the Meeting; and

(d) that no one other than the concerned Director is attending or having access to the proceedings of the Meeting at the location mentioned in clause (b). [Rule 3(4) of the Companies (Meetings of Board and its Powers) Rules, 2014]

The proceedings of such Meetings shall be recorded through any electronic recording mechanism and the details of the venue, date and time shall be mentioned.

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded by the Chairman or the Company Secretary in the Attendance Register and the Minutes of the Meeting.

Analogy has been drawn from the provisions in the Act with respect to the signing of statutory registers if Directors are participating through Electronic Mode. [Rule 3 (7) of the Companies (Meetings of Board and its Powers) Rules, 2014]

4.1.4 The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.

The attendance register should not be maintained at any place other than the Registered Office of the company, unless such Maintenance is approved by the Board.

The attendance register may be taken to any place where a Meeting of the Board or Committee is held.

For taking the attendance register to the place where a Meeting of the Board is held, approval of the Board is not needed.

4.1.5 The attendance register is open for inspection by the Directors.

The Company Secretary in Practice appointed by the company or the Secretarial Auditor or the Statutory Auditor of the company can also inspect the attendance register as he may consider necessary for the performance of his duties.

This Standard enables the Statutory Auditor or the Secretarial Auditor or the Company Secretary in Practice as the case may be to discharge their professional duties fairly.

Officers of the Registrar of Companies, or other Government, or regulatory bodies, if so authorised by the Act or any other law, can also inspect the attendance register during the course of an inspection.

While providing inspection of attendance register, the Company Secretary, or the official of the company authorised by the Company Secretary to facilitate inspection, shall take all precautions to ensure that the attendance register is not mutilated or in any way tampered with during the course of an inspection.

A Member of the company is not entitled to inspect the attendance register.

4.1.6 Entries in the attendance register shall be authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman by appending his signature to each page.

Authentication of the entries in the attendance register by the Company Secretary or the Chairman confirms the integrity of the information entered in the Attendance Register. This Standard has been introduced keeping in mind the significance of attendance register as a conclusive proof before the Court /Tribunals, in the auditing areas and such other arenas.

In the absence of any documentary proof to show that Notice of the Meetings was sent to the petitioners and that they were present in the Meeting, only by inclusion of their names in the Minutes which was signed by the respondent Chairman and no attendance register could be presented to substantiate these facts, it may be inferred that the Board Meeting held was sham and to fabricate the petitioners. [In Navin R. Shah and Ors. v. Simshah Estates and Trading Co. P. Ltd. and Ors.]

4.1.7 The attendance register shall be preserved for a period of at least eight financial years and may be destroyed thereafter with the approval of the Board.

The recording of attendance of Meetings through Electronic Mode shall be preserved for a period of at least eight financial years and may be destroyed thereafter with the approval of the Board.

Corollary has been drawn from Rule 15 of the Companies (Management and Administration) Rules, 2014 which prescribes a period of eight years for preservation of register of members etc. and annual return.

The period of eight financial years should be counted from the end of the financial year to which the last entry in the register pertains to.

Illustration:-

In case the attendance register contains the attendance record of a Meeting held on 5th May, 2010 as the first entry and 18th March, 2015 as the last entry, the attendance register should be preserved at least up to 31st March, 2023 i.e. for eight years from 31st March, 2015 since the last entry therein is 18th March, 2015.

Further, considering the importance of such records, prior approval of the Board is necessary for their destruction. This is because the Directors are responsible for devising and ensuring effective operation of proper and adequate Board systems, and the need to refer to or inspect this register and recording may arise anytime.

All such records destroyed after 1st July, 2015 would require the approval of the Board, even if such records pertain to a period prior to SS-1 coming into force.

It may be noted that the Board may authorise destruction of such records only after the expiry of the period specified in this paragraph of the SS-1.

4.1.8 The attendance register shall be kept in the custody of the Company Secretary.

Custody, for the purpose of this Standard, shall not be construed to mean physical custody. What this particular Standard signifies is the responsibility cast upon the Company Secretary, similar to that with respect to the custody of the Minutes Book. The Standard requires that the attendance register be kept in the custody of a responsible officer.

Even the recording of attendance of Meetings through Electronic Mode should be kept in safe custody as above.

Hence, the Company Secretary should take all precautions to ensure that the attendance register is under proper locking system, if applicable, and that no other person has access to the attendance register without his permission.

Where there is no Company Secretary, the attendance register shall be kept in the custody of any Director authorised by the Board for this purpose.

4.2 Leave of absence shall be granted to a Director only when a request for such leave has been received by the Company Secretary or by the Chairman.

Request for Leave of Absence may be oral or written. Any such request received should be mentioned at the Meeting by the Chairman of the Meeting or the Company Secretary and should be recorded in the Minutes of the Meeting.

The Minutes of the Meeting should clearly mention the names of the Directors present at the Meeting and those who have been granted leave of absence.

Vacation of office of Director

The office of a Director shall become vacant in case the Director absents himself from all the Meetings of the Board held during a period of twelve months with or without seeking leave of absence of the Board.

For the purpose of counting of Board Meetings held in the preceding twelve months, the counting should commence from the date of the first Board Meeting held immediately after the Meeting which the Director concerned last attended.

Illustration:

Suppose, the Board Meetings of a company were held on 28th March, 2014, 25th June, 2014, 20th September, 2014, 30th December, 2014 and 27th March, 2015. Director X attended the Meeting on 28th March, 2014 and did not attend any Meetings thereafter. In such a case, the count for Meetings of the Board held during a period of twelve months for the purpose of reckoning his vacation of office would commence from 25th June, 2014. Thus, if he does not attend any of the Meetings held upto end June 2015, he would vacate the office.

The requirement of clause (b) of sub–section (1) of Section 167 of the Act with respect to vacation of office is only for attendance of a Director in the Board Meeting; however this section does not deal with or regulate the manner of attending the Board Meeting. Therefore, the Board Meeting attended by any Director, whether physically or through Electronic Mode shall be sufficient attendance for the purpose of the said Section.

A Board Resolution to show that office of Director has been vacated by a particular Director need not be passed. Vacation of office is automatic as soon as a Director is found to have incurred disability as contemplated by Section 283(1)(g) of the Companies Act, 1956 (Clause (b) of sub–section (1) of Section 167 of the Act). [Bharat Bhushan v. H.B. Portfolio Leasing Ltd. [1992] 74 Comp. Cas. 20.]

As a matter of good governance, due intimation of such vacation should be sent to such Director forthwith and the Board may take note of such vacation in its next Meeting.

<u>Proxies cannot be appointed to attend Board Meetings</u>

The Act does not contain a provision conferring on the Directors the right to appoint a proxy to attend Board Meetings. A Director cannot appoint another person as his proxy to

attend a Board Meeting since the right to appoint a proxy is not a common law right and can only be given by statute.

5. Chairman

5.1 Meetings of the Board

5.1.1 The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.

The term "Chairman" is not defined in the Act. However, there is adequate elaboration through case laws:

Where a number of persons assemble and put a man in the chair, they devolve on him by agreement the conduct of that body and give him the whole power of regulating themselves individually, within reasonable bounds [Taylor v. Nesfield (1854) 3 E. & B. 724].

The procedure for appointment, powers and duties of a Chairman may be prescribed in the Articles of the company.

Appointment of Chairman

For a Meeting to be properly constituted, the Chairman of the Board or a validly elected person should be in the chair.

The Act does not provide for appointment of a Chairman of the Meeting but the Model Articles provide that the Board may elect a Chairman of its Meetings and determine the period for which he is to hold office.[Article 70 (i) of Table F of Schedule I of the Act]

While appointing such person, the Board may stipulate a time period for the person to continue as Chairman of the Board and at the end of such period, either re-appoint the person or appoint any other Director as Chairman of the Board.

It is considered a good practice for every company to have a Chairman who would be the Chairman for Meetings of the Board of Directors as well as general meetings of the company. Normally, the Directors elect one amongst themselves to be the Chairman of the

Board and he continues to act as such until he ceases to be a Director or until another Director is appointed as the Chairman.

The Chairman may be appointed in accordance with the relevant provision in the Articles. Companies may provide, in their Articles, for the appointment of a Vice-Chairman to act as Chairman in the absence of the Chairman. In the absence of such provisions in the Articles and in the absence of the Chairman, the Directors may elect one of themselves as a Chairman for the Meeting.

Managing Director/ Chief Executive Officer as the Chairman

An individual shall not be appointed or reappointed as the Chairman of the company, in pursuance of the Articles of the company, as well as the Managing Director or Chief Executive Officer of the company at the same time unless, –

(a) the Articles of the company provide otherwise; or

(b) the company does not carry on multiple businesses.

However, the above restrictions would not apply to such class of companies engaged in multiple businesses and which have appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government. (First Proviso to sub – section (1) of Section 203 of the Act). At present, public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more, decided on the basis of the latest audited balance sheet, have been exempted by the Central Government (S. O. 1913(E). dt. 25th July, 2014).

The office of Chairman ipso facto comes to an end when the Chairman ceases to be a Director. However, the converse is not the case, i.e. the Chairman can continue to be a Director after he ceases to be the Chairman. Where a company has the same person as Chairman and Managing Director, the person holding that office can cease to be the Chairman but may continue as Managing Director and, in case he ceases to be the Managing Director, he can continue to be the Chairman, as a Non-Executive Director, unless his contract specifies otherwise.

5.1.2 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 the chair and conduct the Meeting, unless otherwise provided in the Articles.

The main function of the Chairman is to preside over and conduct the Meeting in an orderly manner.

If no Chairman is elected by the Board, or if at any Meeting, the Chairman is not present within five minutes after the time appointed for holding the Meeting, the Directors present may choose one of their number to be Chairman of the Meeting[Clause 70 of Table F of Schedule I].

Duties of the Chairman

It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.

Responsibility of the Chairman

The Chairman is the person responsible for the actual conduct of proceedings of the Meeting which requires him to:

(i) ensure that only those items of business as have been set out in the Agenda or any other matter which the Board approves of are transacted and generally are transacted in the order in which the items appear on the Agenda.

(ii) regulate the proceedings of the Meeting and encourage deliberations and debate, secure the effective participation of all Directors, encourage all to make effective contribution and assess the sense of the Meeting.

(iii) decide all questions that arise at the Meeting on the validity or otherwise of Resolutions and the right to vote thereon, as also the right of certain persons to attend.

(iv) ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as he deems fit.

Interested Chairman should vacate the Chair

If the Chairman is interested in any item of business, he shall, with the consent of the Directors present, entrust the conduct of the proceedings in respect of such item to any Dis-interested Director and resume the Chair after that item of business has been transacted. The Chairman shall also not be present at the Meeting during discussions on such items.

The Act prohibits Interested Director to participate in the items in which he is interested. The ambit of this provision has been incorporated in SS-1 by requiring an Interested Chairman to entrust the Chair to a dis-interested Director during discussion on items in which he is interested.

This would encourage unbiased and fair decision making at the Meeting.

The provisions with respect to meaning of interest, disclosure of interest and prohibition on participation, voting and presence of the Interested Director explained in paragraph 3.2 above would be applicable mutatis-mutandis to the Interested Chairman.

The aforesaid restriction relating to vacation of Chair in case Chairman is interested in any item of business will not be applicable to private companies. (in line with MCA's exemption notification dated 5th June, 2015).

Responsibility of Chairman in case of Meeting through Electronic Mode

In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures. 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 abled, 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.

Where a Meeting is held through Electronic Mode, the Chairman of the Meeting and the Company Secretary, if any, should take due and reasonable care to-

(a) safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures;

b) ensure availability of proper equipment for Electronic Mode or facilities for providing transmission of the communications for effective participation of the Directors and other authorised participants at the Meeting;

(c) record proceedings and prepare the Minutes of the Meeting;

(d) store for safekeeping and marking the tape recording(s) or other Electronic recording mechanism as part of the records as prescribed in the Standard;

(e) ensure that no persons other than the concerned Director are attending or have access to the proceedings of the Meeting held through Electronic Mode ; and

(f) ensure that participants attending the Meeting through audio visual means are able to hear and see the other participants clearly during the course of the Meeting[Rule 3 (2) of the Companies (Meetings of Board and its Powers) Rules, 2014].

Chairman's right to casting vote

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

A second or casting vote is a deciding vote. Second or Casting vote is the vote of a Chairman of a Meeting which he can use in the event of a tie in voting, i.e. equality of votes in favour of or against a Resolution.

Second or casting vote to the Chairman is allowed by the Model Articles under the Act. [Article 68 (ii) and 73 (ii) of Table F].

In the event of equality of votes on a particular matter at a Meeting, the Chairman may cast a second or casting vote on such matter, subject to any provision to the contrary inthe Articles.

The Articles of the company may thus expressly prohibit exercise of second or casting vote by the Chairman, in which case, the Chairman shall not have a second or casting vote. In case the Articles are silent, the Chairman shall have a second or casting vote at his discretion.

The discretion to use or not to use his casting vote vests entirely with the Chairman.Where the Chairman chooses to exercise his vote, as a Director, he should do so before the voting is concluded. If the Chairman declines to exercise his second or casting vote and there is then an equality of votes, the Resolution is lost.

5.2 Meetings of Committees

A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.

The Board at the time of the constitution of the Committee may appoint its Chairman.

If the Board has not so appointed the Chairman, the Committee may elect a Chairman of its Meetings and if no such Chairman is elected, or if at any Meeting the Chairman is not present within five minutes after the time appointed for holding the Meeting, the members present may choose one of their members to be Chairman of the Meeting unless otherwise provided in the Articles. (Clause 72 of Table F of Schedule I to the Act)

The Company Secretary should be the Secretary to the Committee. It is the duty of the Company Secretary to facilitate the convening of Meetings of the Board and its Committees [Rule 10 (2) of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]

The provisions relating to Meetings of Committees are generally the same as those applicable to Board Meetings. For example, proper Notice of the Meeting should be given, a Quorum should be present, there should be a Chairman, issues will be decided by simple majority and, in case of equality of votes, the Chairman would have a second or casting vote, unless otherwise provided in the Articles.

The Chairman of a Committee or any other person authorised by him should apprise the Board of the decisions taken at the Meetings of the Committee.

6. Passing of Resolution by Circulation

The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

An exception to the general rule

Generally, Directors act or exercise their powers by means of Resolutions passed at Meetings, but it may not always be convenient to call a Meeting of the Board to discuss matters on account of urgency or for any other justifiable reason. To enable Directors to take decisions in such circumstances, Section 175 of the Act provides for a Resolution to be passed by circulation. All items of business, other than certain items which are specified as not to be passed by circulation, may be considered for passing by circulation.

6.1. Authority

6.1.1 The Chairman of the Board or in his absence, the Managing Director or in his absence, the Whole-time Director and where there is none, any Director

other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation.

The above paragraph lays down as to who shall decide whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation. It is advisable that such decision be indicated in the note being sent along with the Resolution proposed to be passed by circulation.

For the purpose of this paragraph of SS-1, in case of a private company, an Interested Director may also decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation (vide MCA Exemption Notification dated 5th June, 2015).

In addition to the items prescribed in the Act (given in Annexure IA), an illustrative list of items given under SS-1 that should not be passed by circulation is given in Annexure IB.

6.1.2 Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.

The above has been provided in the Proviso to sub–section (1) of Section 175 of the Act.

"Total number of Directors" above means the "total strength of the Board" which shall not include Directors whose places are vacant.

Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

Illustration:-

If a company has 9 Directors, out of which say, 3 Directors are interested in the Resolution. In such a case, for the purpose of reckoning the 1/3rd stipulation as above, the total number of Directors should be taken as 9 and not 6 (9-3 Interested Directors). Thus,

if 3 Directors (1/3rd of 9), (which number may include Interested Directors), require the Resolution under circulation to be decided at a Meeting, the Chairman shall do so.

However, this does not mean Interested Directors will be entitled to participate and vote when the said item of business is taken up at a Meeting of the Board.

6.2. Procedure

6.2.1 A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, individually to all the Directors including Interested Directors on the same day.

It is necessary to send the draft of the Resolution to be passed by circulation together with the necessary papers.

No Resolution should be deemed to have been duly passed by the Board or by a Committee thereof by circulation, unless the Resolution has been circulated in draft, together with the necessary papers, if any, to all the Directors, or members of the Committee, as the case may be. [Sub–section (1) of Section 175 of the Act]

The words "necessary papers" should be interpreted to mean all those papers that are necessary for the recipient to arrive at an informed decision in relation to the subject matter of the Resolution proposed to be passed by circulation.

It was found that the Director who had challenged the validity of a Resolution passed by circulation on the ground that necessary papers were not furnished to him had in his hand the legal opinion relating to issue of shares. It was held in this case that the circular Resolution cannot be held to have been vitiated on the ground that the necessary papers were not circulated along with the Resolution. [Mulammoottil Consumer Credit Ltd. v. E. R. Sreenivasan & Anr. [2007] 139 Comp. Cas. 347 (Ker)]

The draft Resolution together with all the necessary papers should be sent on the same day to all Directors including Interested Directors, Nominee Directors and Directors residing abroad.

If an Alternate Director is appointed, the draft should also be sent to the Original Director for information.

6.2.2 The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means.

The draft of the Resolution and the necessary papers shall be sent to the postal address or e-mail address registered by the Director with the company or in the absence of such details or any change thereto, any of the addresses appearing in the Director Identification Number (DIN) registration of the Director.

In case of Directors residing abroad, the draft Resolution and the necessary papers may be sent by e-mail or any other recognized electronic means.

Proof of sending and delivery of the draft of the Resolution and the necessary papers shall be maintained by the company.

The provisions with respect to sending of Notice and proof of delivery as explained in paragraph 1.3.1 would mutatis-mutandis be applicable for sending draft of the Resolution and the necessary papers.

6.2.3 Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed. 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.

Notice and Agenda are not necessary for passing of a Resolution by circulation. However, necessary papers which explain the purpose of the Resolution should be sent along with the

draft Resolution to all the Directors or, in the case of a Committee, to all the members of the Committee.

It is a good practice to explain the reasons as to why approval is sought by circulation.

As explained in paragraph 6.1.2 above, if not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Resolution should be considered at a Meeting and cannot be passed by circulation, the Chairman should put the Resolution for being decided at a Meeting of the Board only. As such, it is necessary to put in the note being circulated with the proposed Resolution, a last date for receiving responses from the Director to the Resolutions proposed.

Each Resolution shall be separately explained.

The decision of the Directors shall be sought for each Resolution separately.

Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.

If the last date specified by the company for receiving response to the moving of a Resolution by circulation falls, let us say, on the 7th day from the date of sending the note containing the proposal, it should be understood that the Director concerned should respond to the same in such a way that his response reaches the Chairman or the Company Secretary or any other person appointed for that purpose on or before the expiry of the said time-limit of seven days.

Sometimes, even though a response is despatched before the expiry of seven days, it might not reach the company on time due to delay in delivery or for some other reasons. The company is not bound to wait until all responses are received. When the requisite majority of the Directors have assented or dissented to the Resolution or when one-third of the Directors have expressed their intention to have the business transacted at a regular Board

Meeting, the outcome of the proposal gets sealed and therefore after that stage is reached, there is no need for waiting any further.

Depending upon the necessity and urgency, the company may give seven days or less time for responding to the proposal.

E - mail or fax communication of response or sending a photographic image of the signed response to the company or Company Secretary or Chairman via some acceptable software fit for such communication or some other readable and reliable mode using a secured electronic device cannot be said be to invalid. When a Director, on the move, sends a message through his mobile phone for communicating such response, it cannot be said to be invalid merely because it is a message, provided the mobile number is that of the Director and it contains a reference to the subject matter of the proposal required to be approved through a Circular Resolution.

Illustration:-

In case the company is circulating the draft Resolution and necessary papers on 8th June, 2015 by speed post or by registered post or by courier, two additional days would be taken for the documents to reach the Director i.e. the documents would reach the Director on 10th June. Similarly, in case any of the Directors responds by speed post or by registered post or by courier on 12th June, 2015, two additional days would be taken for the documents to reach the company i.e. the documents would reach the company on 14th June. The company should take into account the above while fixing the last date of response and circulating the draft Resolution and necessary papers.

Similarly, the Note of the company should clearly specify whether the last date specified in the Note is the date by which the company should receive the response from the Directors or the last date for sending response by the Directors.

A suggested format for circulation is given in ***Annexure VI****.*

6.3. Approval

6.3.1 The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

Para 6.3.1 should be read in conjunction with Para 6.3.2.

For a circular Resolution to be passed, it should be approved by a majority of dis-interested Directors, who are entitled to vote.

Illustration:- *If there are 9 Directors of whom 2 are interested, the Resolution should be assented thereto by at least 4 Directors (out of 7 dis-interested Directors).*

As explained in paragraph 6.1.2 above, if not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Resolution should be considered at a Meeting and cannot be passed by circulation, even if a majority of the Directors approve it by circulation.

Illustration:- *If, out of the Board strength of 10 Directors, 6 Directors communicate their assent, the Resolution would not be considered as passed until the stipulated last date has expired, or, ahead of the said date, 2 more Directors have also signified their assent/dissent so that the possibility of 1/3rd asking for a physical Meeting is no longer possible.*

A dissent combined with a request for the Meeting from any of the Directors would be construed as a request for a Meeting from the Director. For example, the response of the Director may be "I can't approve the Resolution without a detailed discussion. As such, I am rejecting the circular Resolution". In such cases, the response of the Director would be construed as a request for a Meeting.

Requisite Majority

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote.

Prohibition on voting by Interested Director

An Interested Director shall not be entitled to vote. For this purpose, a Director shall be treated as interested in a contract or arrangement entered or proposed to be entered into by the company:

a) with the Director himself or his relative; or

b) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or

c) with a firm or other entity, if such Director or his relative is a partner, owner or Member, as the case may be, of that firm or other entity.

The concept of Interested Director at a Meeting is also applicable to the Resolution passed by circulation and the provisions of paragraph 3.2 above would be mutatis-mutandis applicable.

The aforesaid restriction relating to Interested Director not being able to vote on Resolutions passed by circulation will not be applicable to a private company (in line with MCA's Exemption Notification dated 5th June, 2015).

Numbering of Resolutions

Every such Resolution shall carry a serial number.

During e-filing, companies are required to quote Resolution numbers in certain cases. Numbering would facilitate the above and also enable ease of reference.

The company may choose to follow its existing system of numbering, if any or any new system of numbering, which would be distinct and enable ease of reference or cross-reference.

Illustrations-

(i) Serially numbering on Calendar Year basis as follows:

"Circular Resolution No. 1/2015", "2/2015", "3/2015" and so on….

(ii) Serially numbering on financial year basis as follows:

"Circular Resolution No." 1/2015-16", "2/2015-16", "3/2015-16" and so on…

(iii) Continuous numbering across years:

Circular Resolution No. 10, 11, 12 … and soon..

In any case, the company should follow a uniform and consistent system while numbering the Resolutions.

6.3.2 The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.

Paragraph 6.3.2 is intended to assist in reckoning the date on which a Resolution could be said to have been passed. In this regard, paragraph 6.3.2 introduces two dates and provides that the circular resolution could be taken as passed on one of those dates, whichever is earlier. The requirement of response, either in the form of assent or dissent, from more than two-third of the Directors has been prescribed to cover the eventuality of not less than one-third of the total number of Directors requiring the matter to be decided at a Meeting instead of by circulation.

Thus, reading paragraphs 6.3.1 and 6.3.2 in conjunction, if a majority of Directors have assented to the Resolution and if the eventuality of not less than one-third of the total

number of Directors requiring the matter to be decided at a Meeting becomes improbable on a date before the last date fixed for response, the Resolution shall be deemed to have been passed on that date. (As illustrated in Scenarios II and III below)

Effective date of the Resolution

Effective date of the Resolution passed by circulation would be the date on which the Resolution is deemed to be passed as reckoned above. However, in case the Resolution or the Note circulated specifies any other date to be the effective date, then such date shall be the effective date.

Manner of response from Directors

Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail or any other electronic means.

If the response is sent by the Director by e-mail or any other electronic means, such response need not be signed or followed by a physical signed copy of response.

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

If the response is received by e-mail or by any other electronic means, the date of receipt by the company of such response should be taken as the date of signing the Resolution.

If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the Resolution shall be considered as not passed.

In case not less than one-third of the Directors wish the matter to be discussed and decided at a Meeting, each of the concerned Directors shall communicate the same before the last date specified for the response.

In case the Director does not respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the Director has abstained from voting.

Disclosure of interest

In cases where the interest of a Director is yet to be communicated to the company, the concerned Director shall disclose his interest before the last date specified for the response and abstain from voting.

In cases where the interest of a Director is yet to be communicated to the company, it is desirable that the Interested Director should disclose his interest to the company forthwith.

Once the concerned Director discloses his interest as above, the company should forthwith inform the other Directors the fact of such Director being interested in the proposed Resolution. It is advisable to inform the interest of Director to other Directors through e-mail or other electronic means so that other Directors are swiftly informed and send their assent and dissent accordingly.

For the above purpose, in case of a private company, an Interested Director should disclose his interest latest by the last date specified for the response but he shall be entitled to vote on the Resolution (in line with MCA's exemption notification dated 5th June, 2015).

Illustrations:-

Company XYZ has 9 Directors. It circulated a Resolution on 1st May among the Directors and requested them to respond on or before 8thMay.

Scenario I:

- *3 Directors sent their assent to the proposed circular Resolution on 2ndMay.*
- *1 Director sent a request on 4thMay for convening a Meeting.*
- *2 Directors sent their assent for the Resolution on 5thMay.*
- *1 sent his assent on 6th May*

- *1 sent his dissent on 6th May*
- *1 Director sent his assent on 7th May.*

Effect:

In this case, the Resolution will be carried through since 7 Directors (forming majority) have assented. The date of passing shall be deemed to be 6th May since the responses, either in the form of assent or dissent have been received from the 7 Directors (forming more than two-third of the Directors) by that day.

Scenario II

- *5 Directors sent their assent to the proposed Resolution on 2nd May.*
- *1 Director sent a request on 4th May for convening a Meeting.*
- *2 Directors sent their dissent on 5th May.*
- *1 Director sent the assent on 6th May.*

Effect:

In this case, the Resolution will be passed since 6 Directors (forming majority) has approved. The date for passing the Resolution shall be deemed to be 5th May since that is the day when the fact that 1/3rd majority have not requested for Meeting is reckoned since 7 directors (forming more than 2/3rd) have responded.

Scenario III:

- *2 Directors sent their assent to the proposed circular Resolution on 1st May.*
- *2 Directors sent their dissent on 4th May.*
- *2 Directors sent their assent on 6th May.*
- *1 Director asked to decide the matter at the Meeting and communicated the same on 6th May.*
- *1 Director sent his assent on 7th May and*
- *1 Director did not respond till 8th May.*

Effect:

It would be presumed that one Director, who did not vote till the last date specified for sending assent or dissent, has abstained from voting.

5 Directors (forming majority of Directors) have assented and hence the Resolution will be carried through. The date of passing of Resolution shall be deemed to be 7th May since the eventuality of 1/3rd of the Directors requesting for a Meeting is nullified on this day.

Scenario IV:

- *5 Directors sent their assent on 2nd May.*
- *1 Director asked to decide the matter at the Meeting on 3th May.*
- *1 Director sent his assent on 5th May.*
- *1 more Director asked to decide the matter at the Meeting on 6th May.*
- *1 Director sent on 8th May request for deciding the same at the Meeting.*

Effect:

In this case, the matter should not be deemed to be passed by circulation even though 6 Directors (forming majority) have approved. It should be taken up at a Meeting since 3 Directors, forming 1/3rd of Directors sent their request for the same before the last date of passing of Resolution.

Scenario V:

The Director sending his request for Meeting on 8th May in above case, sent his request on 9th May i.e. after the last date for response.

Effect:

The same would not be considered and the Resolution would be passed, since 6 Directors (forming majority) have approved. The deemed date of passing of Resolution would be 8th May.

6.4. Recording

Resolutions passed by circulation shall be noted at the next Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

This is in line with Sub-section (2) of Section 175 of the Act, which requires a Resolution passed by circulation to be noted at a subsequent meeting of the Board or the Committee thereof, as the case may be, and recorded in the Minutes of such Meeting.

The text of the Resolution along with details of dissent and abstention should be recorded and taken note of in the next Meeting and should be recorded in the Minutes of such Meeting.

Minutes shall also record the fact that the Interested Director did not vote on the Resolution.

The above shall not apply to a private company (in line with MCA's exemption notification dated 5th June, 2015).

As a matter of good governance, if a Resolution by circulation is not passed due to lack of majority, or if it has to be taken up at a Meeting of the Board due to one-third of the directors requiring the same, either development should appropriately be recorded in the Minutes of the next Meeting, just as a particular Resolution which is not passed at a Board Meeting is also recorded in the Minutes.

6.5. Validity

Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.

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

7. Minutes

'Minutes' are the official recording of the proceedings of the Meeting and the business transacted at the Meeting.

Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

There is no restriction in law on the language of recording Minutes.

7.1. Maintenance of Minutes

Minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein. [Sub-section (7) of Section 118 of the Act]

If the Minutes are kept in the prescribed manner, until the contrary is proved, the Meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place.

As such Minutes of Meetings constitute a very important statutory record and serves as evidence of various matters, until the contrary is proved.

The Minutes to should be recorded in such a way that it enables any reader to understand what had transpired in the Meeting.

The only way to prove that the Resolution was passed at the Board Meeting of the company is that the Minutes Book in which the particular Resolution was recorded should be produced before the court, as that alone can form evidence of the fact that the Resolution was passed in the Board Meeting. [Escorts Ltd. v. Sai Auto (1991) 72 Com. Cases 483 (Del)]

Minutes of Meeting were rejected as evidence for not being maintained as per the requirements of the Act. [Marble City Hospitals and Research Centre (P.) ltd. V. Sarabjeet Singh Mokha [2010] 99 SCL 303 (MP)]

7.1.1 Minutes shall be recorded in books maintained for that purpose.

The Minutes of proceedings of each Meeting should be entered in the books maintained for that purpose. (Rule 25(1)(b) of the Companies (Management and Administration) Rules, 2014).

Where Minutes are not recorded in a proper book, statutory presumption under Section 195 of the Companies Act, 1956 [corresponding to Section 118 of the Act] does not arise. In such a case it was held that no such Meeting could be regarded as having been held [Balasundaram (V.G.) v. New Theatres Carnatic Talkies Pvt. Ltd. (1993) 77 Com. Cases 324 Mad].

7.1.2 A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.

Minutes Books should be distinctly kept and maintained for different Meetings such as Meetings of the Board or Meetings of various Committees of the Board [Rule 25(1)(a) of the Companies (Management and Administration) Rules, 2014]

7.1.3 Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company may maintain its Minutes in physical or in electronic form with Timestamp.

Every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its records in electronic form. [Rule 27 of the Companies (Management and Administration) Rules, 2014]. An explanation underneath the said rule states that the term "records" means any register, index, agreement, memorandum, Minutes or any other document required by the Act or the rules made thereunder to be kept by a company.

SS-1 clearly states that Minutes of Meetings may be maintained in electronic form. However SS-1 imposes a condition that when a company decides to keep the Minutes of its

Meetings in electronic form, it should be maintained with time stamp. The expression "time stamp" is a defined expression and it should be construed accordingly.

Consistency in the form of maintaining Minutes

Every company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

Companies should maintain the Minutes of all Meetings either in physical form or in electronic form. In other words, companies should not maintain Minutes of few Meetings in physical form and few Meetings in electronic form.

Maintenance of Minutes in electronic form

Where Minutes are maintained in electronic form, following requirements should be satisfied -

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, or in a format which can be demonstrated to represent accurately the information originally generated;

(c) the details which will facilitate the identification of the origin, destination, date and time of generation of such electronic record are available in the electronic record.

The Managing Director, Company Secretary or any other Director or officer of the company as the Board may authorize should be responsible for the Maintenance and security of Minutes in electronic form.[Rule 28(1) of the Companies (Management and Administration) Rules, 2014]. The Board may authorise any one of the above to maintain the Minutes Book whose duty and responsibility would be to maintain it securely.

The person who is responsible for the Maintenance of Minutes in electronic formshould -

(a) provide adequate protection against unauthorised access, alteration or tampering of Minutes;

(b) ensure against loss of the Minutes as a result of damage to, or failure of the media on which the Minutes are maintained;

(c) ensure that the signatory of electronic form does not repudiate the signed Minutes as not genuine;

(d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;

(e) ensure that the computer systems can discern invalid and altered Minutes;

(f) ensure that Minutes are accurate, accessible, and capable of being reproduced for reference later;

(g) ensure that the Minutes are at all times capable of being retrieved to a readable and printable form;

(h) ensure that Minutes are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;

(i) ensure that a backup is kept of the updated Minutes maintained in electronic form; such backup is authenticated and dated and is securely kept at such place as may be decided by the Board;

(j) limit the access to the Minutes to the Managing Director, Company Secretary or any other Director or officer or the Auditor(s) or other persons performing work of the company as may be authorised by the Board in this behalf or other persons in terms of SS-1;

(k) ensure that any reproduction of non-electronic original Minutes in electronic form is complete, authentic, true and legible when retrieved;

(l) arrange and index the Minutes in a way that permits easy location, access and retrieval of any particular record; and

(m) take necessary steps to ensure security, integrity and confidentiality of Minutes.

Timestamp

Time stamps should be created by the computer with its system integrated time to mark the creation or modification of a file. When a file is created, the system itself should note the time at which the file is created or modified. When digital signature is affixed, automatically the date and time of signing should get recorded. When an e-mail is received or sent, there should be a recording in the Secured Computer System. All these are time stamps and are in the chain of custody. Audit trails should always be left in secured computer environment to indicate the server, system, time and date of all actions that has been taken electronically.

7.1.4 The pages of the Minutes Books shall be consecutively numbered.

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

So as to facilitate easy retrieval of any decision/Resolution and additionally to provide for safeguards against tampering of Minutes, the pages of the Minutes Book should be consecutively numbered irrespective of break in the Minutes Book. Thus, in case a Minutes Book is full and a new Minutes Book is prepared, the numbering should continue from the number appearing on the last page of the previous Minutes Book.

This should also be followed irrespective of the number or year of Meeting.

In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

7.1.5 Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

The law essentially prohibits pasting of Minutes in the Minute Book and hence Minutes cannot be type-written and then pasted in bound Minute Book or in loose leaves. Minutes

should also not be printed on a piece of paper, whether on letter-head or any other paper, and pasted in Minutes book.

Pasted Minutes could not be regarded as evidence of what transpired at the Meeting. Such practices followed by the company could not cure the defect in the recording of the Minutes nor override the statutory provision [In Re Gluco Series P. Ltd.(1987) 61 Comp. Cas. 227 (Cal)].

It is with a view to maintain its integrity and evidentiary value, a lot of safeguards have been introduced in the Standard so that it is kept, maintained and preserved with requisite care and caution.

7.1.6 Minutes of the Board Meetings, 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.

Maintenance of minutes in loose-leaf form is not specifically provided under the Act. However, MCA has issued clarifications supporting the contention that Minutes kept in a loose-leaf form can be said to be in accordance with the provisions of the Act.

If Minutes are maintained in loose-leaf form, these should be bound in one or more than one year on financial year basis. This will facilitate proper Maintenance and preservation of Minutes.

The Resolutions passed at the Board or Committee Meeting which are typed in loose sheets and kept with various other documents are not considered as evidence. [Sathappa Textiles (P.) Ltd. V. CIT[2003] 126 Taxman 491]

Ensure security in case of Minutes maintained in loose leaves

There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.

This is to ensure security and effective control.

Further, if Minutes are kept in loose-leaf form, the company should:

1. *take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and*
2. *provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the records.*

7.1.7 Minutes of the Board Meeting shall be kept at the Registered Office of the company or such other place as may be approved by the Board.

The above requirement has been prescribed in line with Rule 25(1)(f) of the Companies (Management and Administration) Rules, 2014.

7.2. Contents of Minutes

Companies follow diverse practices with respect to recording of Minutes. Some companies record only the decisions while few companies record only the Resolutions that capture the decisions taken and some companies record the entire proceedings in the form of almost an exact transcript of what had transpired at the Meeting. The Guidance Note seeks to harmonise such divergent practices.

7.2.1 General Contents

7.2.1.1 Minutes shall state, at the beginning 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 should state at the beginning the following:

1. *The name of the company*
2. *The type of Meeting (Board Meeting, Committee Meeting, etc.)*
3. *The serial number, day, date and venue of the Meeting*
4. *The time of commencement as well as the time of conclusion of the Meeting*

The requirement of recording the time of conclusion of the Meeting is relevant for listed companies in the light of the requirements under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[4]*. However, since SS-1 promotes good corporate practices, this requirement has been extended to other companies as well. This would also help the Minutes to be complete in all aspects.*

Adjourned Meeting

In case a Meeting is adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting.

In respect of 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.

The Minutes of the adjourned Meeting should be prepared separately and in the same manner as the Minutes of the original Meeting, and the fact that the Meeting is an adjourned Meeting should be specified in such Minutes.

For the purpose of recording the time of conclusion of a Meeting which has been adjourned, the time at which the Meeting was adjourned should be recorded.

7.2.1.2 Minutes shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees, if any, including Invitees for specific items.

Minutes should record the names of the following:

1. *the Directors present,*

   The Minutes should disclose the particulars of the Directors who attended the Meeting through Electronic Mode. [Sub-Rule 11(b) of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014]

[4] Effective from 1st December 2015

Minutes should also record the names of Directors who attended the Meeting through Electronic Mode.

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.

The term "any other logical manner" should be liberally construed as the manner in which company deems it appropriate to record the names of Directors present with some logic behind e.g. designation, seniority etc. of the directors.

2. *the Company Secretary in attendance, and*

3. *the Invitees, if any, including Invitees for specific items*

The capacity in which an Invitee attends the Meeting and where applicable, the name of the entity such Invitee represents and the relation, if any, of that entity to the company shall also be recorded.

If an Invitee is present only during the discussion on a particular item of business, such fact should also be mentioned in the Minutes.

Any officer of the company who attends the Meeting, other than the Company Secretary, shall be Invitees to the Meeting and the name(s) of such person(s) should be included in the Minutes.

Besides the above, Minutes should also record the following:

1. *The name of the Director who took the Chair.*
2. *The precise nature of actual business transacted and what was formally proposed and ultimately decided upon.*
3. *Vote of thanks.*

7.2.1.3 Minutes shall contain a record of all appointments made at the Meeting.

This paragraph requires the Minutes to record all appointments approved by the Board. For example: Appointment of Directors, KMPs etc.

The fact that the Board had taken note of all such appointments should be mentioned in the Minutes

Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, First Auditors, Key Managerial Personnel, Secretarial Auditors, Internal Auditors and Cost Auditors, shall be deemed to have been duly approved by the Board.

All appointments made one level below Key Managerial Personnel shall be noted by the Board.

Appointments made one level below the KMPs are no longer required to be noted by the Board [Amendment dated 18th March, 2015 to Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014].

7.2.2 Specific Contents

7.2.2.1 Minutes shall inter-alia contain:

(a) Record of election, if any, of the Chairman of the Meeting.

The election, if any, of the Chairman of the Meeting as provided in paragraph 5 of SS-1, should be recorded in the Minutes.

(b) Record of presence of Quorum

If at the commencement of the Meeting, Quorum is present, but subsequently if any Director leaves before the close of the Meeting and the Quorum requirement is not met for businesses taken up thereafter, then the Meeting should be adjourned and a statement to that effect should be recorded in the Minutes.

(c) The names of Directors who sought and were granted leave of absence.

(d) The mode of attendance of every Director whether physically or through Electronic Mode.

In case all Directors are present physically, the Minutes need not specially record the mode of attendance but the Minutes should record the mode of attendance of Directors who participated in the Meeting through Electronic Mode.

(e) In case of a Director participating through Electronic Mode, his particulars, the location from where and the Agenda items in which he participated.

SS-1 prescribes a list of restricted items where a Director cannot participate through Electronic Mode.

The Minutes on such restricted items should record whether or not the Director participating through Electronic Mode participated while transacting such items with the express permission of the Chairman.

(f) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.

(g) Noting of the Minutes of the preceding Meeting.

Minutes of the preceding Meeting, including any adjourned Meeting, should also be noted.

(h) Noting the Minutes of the Meetings of the Committees.

Minutes of a Board Meeting should contain a noting of the Minutes of the Meetings of all its Committees which have been entered in the Minutes Book of respective Committees and which have not yet been noted by the Board.

This is a good governance practice which would ensure that the Board remains intimated about the deliberations and discussions that take place at Committee Meetings.

(i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.

If any Director of the Board dissents or abstains from voting on any of the Resolution passed by circulation, then such dissent or abstention should be recorded in the Minutes.

(j) The fact that an Interested Director was not present during the discussion and did not vote.

Disclosure of Interest by the Interested Director should also be recorded in the Minutes.

The abovementioned procedural compliance shall not apply to a private company (In line with MCA's exemption notification dated 5th June, 2015).

(k) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.

(l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.

In the event where a particular Director leaves the Meeting early, the fact of his so leaving should be incorporated in the Minutes. Likewise, if a particular Director joins the Meeting after its commencement, this fact should also be recorded in the Minutes.

(m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.

Names of Directors who abstained from voting and names of those dissenting should also be mentioned in the Minutes.

(n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice and the transacting of any item other than those included in the Agenda.

If the Independent Director does not ratify the decision taken at the Meeting held at a shorter Notice or if he abstains from such ratification, a statement to that effect should be recorded in the Minutes.

(o) The time of commencement and conclusion of the Meeting.

In addition to what is stated above, the following should also be recorded in the Minutes, to the extent applicable:

a. the fact that the Notices given by Directors disclosing their Directorships and shareholding in other companies, bodies corporate, firms, or other association of individuals as per Section 184 of the Act and their shareholdings in the company/ holding / subsidiary / associate company as per Section 170 of the Act, were read and noted;

b. the fact of unanimity of decisions of dis-interested Directors as contemplated by Sections 203 and 186 of the Act;

c. the fact that the register of contracts with related parties and contracts and bodies etc. in which Directors are interested was placed before the Meeting and was signed by all the Directors present thereat (Section 189 of the Act);

d. Noting of declaration of independence by Independent Directors [Sub – section (7) of Section 149 of the Act];

e. Noting of declaration that none of the Directors are disqualified to be appointed / continuing as a Director of the company or are disqualified to act as a

Director on the basis of non-compliance by other companies on the Board(s) of which he is a Director, in terms of the provisions of sub – section (2) of Section 164 of the Act;

f. In case of demise of any Director, details of such Director and noting of vacation of his office.

g. In case a resolution placed before the Board is *rejected or withdrawn, the fact of it so having been rejected or withdrawn.*

As already stated, if a Resolution by circulation is not passed due to lack of majority, or if it has to be taken up at a Meeting of the Board due to one-third of the directors requiring the same, this fact should appropriately be recorded in the Minutes of the next Meeting, as a matter of good governance.

If a Meeting has been called in pursuance of a request by a Director, such fact should also be recorded in the Minutes.

7.2.2.2. Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summary of the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.

Description in brief of the discussions that took place should be recorded in the Minutes, as evidence of the fact that the Board has considered and deliberated the matter before taking any decision on the same.

The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.

The decisions of the Board should be recorded in the form of Resolutions, where it is statutorily or otherwise required. Only in cases where there is no statutory mandate to this effect, the decisions can be recorded in a narrative form.

For instance: If the Board approves a project, the decision of the Board may be mentioned in the following manner:

"Project XYZ was approved by the Board after a thorough discussion."

Where a Resolution was passed pursuant to the Chairman of the Meeting exercising his second or casting vote, the Minutes shall record such fact.

The Article, if any, referring to the casting vote by the Chairman should also be recorded in the Minutes.

7.3 Recording of Minutes

Since it is important to draft the Minutes in an impartial and transparent manner, it would be a good practice for the Company Secretary to take down detailed notes and for the Chairman, at the conclusion of each discussion, to summarise the deliberations and pronounce the decision at the Meeting itself.

For instance, the Chairman may state:

"Since the majority of Directors felt that the Project XYZ Ltd. is not financially viable due to high material cost, the Resolution was rejected by the Board."

7.3.1 Minutes shall contain a fair and correct summary of the proceedings of the Meeting.

Minutes are not an exhaustive record of everything said at a Meeting. Minutes should record the decisions of the Board, with a narrative to put them in context. They should not attempt to record all reasons for decisions taken, i.e. all arguments put forth for and against a particular Resolution. There is also no need to record the details of voting.

Though the Notes on Agenda contain the background of the proposal in detail, the Minutes should contain only the summary of this. It is not required that whatever is contained in the Notes on Agenda be reproduced verbatim; however, the crux of the matter should be captured in the Minutes.

Where the Chairman or any other Director such as the Managing Director gave an introduction or explanation or presentation on a subject, the Minutes should contain a brief account of what has been stated and what others enquired.

The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person duly authorised by the Board or by the Chairman in this behalf shall record the proceedings.

*In case a Company Secretary is unable to attend a Meeting or in the absence of the Company Secretary, any other person may be duly authorised by the Board or by the Chairman to attend and record the proceedings of the Meeting.*The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

Chairman's discretion

The Chairman has absolute discretion to exclude from the Minutes, matters which in his opinion are or could reasonably be regarded as defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company.

The Chairman settles the draft of the Minutes and has the responsibility to ensure that the Minutes contain a fair and accurate summary of the proceedings at the Meeting. The word "fair" signifies the need to record matters as transpired at the Meeting without any bias. While doing so, he has absolute discretion to exclude matters of the type specified above. When draft Minutes are circulated to the Directors, they may revert to the Chairman directly or through the Company Secretary with their suggestions, comments and observations. The Chairman may consider such suggestions, comments and observations objectively in the light of the proceedings that transpired at the Meeting and settle the draft of the Minutes.

The burden of proof is on the person who questions the correctness of the proceedings of a Meeting as recorded in the Minutes. If the Minutes of the Meeting are not recorded or signed within the period prescribed under the statute then it would be presumed that the Minutes have not been properly kept and hence such Minutes cannot be produced as evidence. [B Sivaraman and Others v. Egmore Benefit Society Ltd. (1992) 2 Comp L J 218 (Mad)].

7.3.2 Minutes shall be written in clear, concise and plain language.

Minutes need not be an exact transcript of the proceedings at the Meeting.

Minutes should be written in simple language and should contain a brief synopsis of the discussions along with the decisions taken at the Meeting.

Minutes should record the essential elements of the Meeting, i.e., narration which is fundamental to understand the proceedings at the Meeting and the complete text of all the Resolutions.

In case any Director requires his views or opinion on a particular item to be recorded verbatim in the Minutes, the decision of the Chairman whether or not to do so shall be final.

Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense.

7.3.3 Any document, report or notes placed before the Board and referred to in the Minutes shall be identified by initialling of such document, report or notes by the Company Secretary or the Chairman.

Wherever any approval of the Board is taken on the basis of certain papers laid before the Board, proper identification shall be made by initialing such papers by the Company Secretary or the Chairman and a reference thereto shall be made in the Minutes.

Initialling would help in authentication of documents placed before the Board on the basis of which the Board has given any approval.

For instance, if the letter of intent was shown to the Board, the fact that such a document was circulated for the perusal of the Directors should be mentioned in the Minutes and such letter should be initialled by the Company Secretary or the Chairman.

It is, however, clarified thatdocuments, reports or notes included in the Agenda Notes circulated to the Directors prior to the Meeting do not need such initialling.

Further, only unsigned documents, reports or notes, placed before the Board, in respect of items requiring approval of the Board, need to be so initialled. Thus, certain papers placed for noting and/or papers which have been signed by the Chairman, Director or any other official of the company need not be initialled again.

The authenticated papers should be retained for the same period as the Agenda and Notes thereon are kept and maintained.

Specimen Minutes of the first and subsequent Board Meetings are given in ***Annexure VII*** *and* ***VIII*** *respectively.*

7.3.4 Where any earlier Resolution (s) or decision is superseded or modified, Minutes shall contain a reference to such earlier Resolution (s) or decision.

In case a Resolution passed at an earlier Meeting is being modified or superseded in any subsequent Meeting, reference should be given to such earlier Resolution in the Minutes.

This would enable cross referencing of any important decisions taken earlier. If the earlier Resolution which has subsequently been superseded or modified or cancelled had been communicated to any other party, such party should forthwith be informed of the subsequent decision, wherever applicable.

7.3.5 Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

It is necessary to note the fact that Minutes of an earlier Meeting have been entered in the Minutes Book and they have been taken on record. Considering that Minutes of a Meeting are finalised and entered in the Minutes Book after seeking comments from Directors, the question of approval of such Minutes at the next Board Meeting does not arise. Hence, at the subsequent Board Meeting, the Directors should only note the Minutes finalised by the Chairman and entered in the Minutes Book.

Minutes of Committee Meeting

Minutes of the Meetings of any Committee shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.

7.4. Finalisation of Minutes

Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee for their comments.

The above requirement has been introduced in line with Rule 3(12) of the Companies (Meetings of Board and its Powers) Rules, 2014, which requires the draft Minutes of the Meetings held through Electronic Mode to be circulated to the Directors within fifteen days. This requirement has been extended to physical Meetings also since it is a good practice.

Means of sending draft Minutes

Where a Director specifies a particular means of delivery of draft Minutes, these shall be sent to him by such means.

If the draft Minutes are sent by speed post or by registered post or by courier, an additional two days may be added for delivery of the draft Minutes.

The requirement is to circulate the draft Minutes within fifteen days and not that the draft Minutes should be received by the Directors within fifteen days.

Illustration:-

If the Meeting is held on 1st September, 2015, the Minutes should be circulated latest by 15th September, 2015. The Minutes can also be sent by speed post or by registered post or by courier, in which case the Minutes would reach the Directors by 17th September, 2015.

Proof of sending draft Minutes and its delivery shall be maintained by the company.

The provisions regarding proof of sending and delivery of Notice as explained in paragraph 1.3.1 of SS-1 shall mutatis-mutandis be applicable here also.

To whom should the draft Minutes be sent?

The draft Minutes should be sent to the Directors or members of the Committee, as the case may be, who were present at the Meeting, either physically or through Electronic Mode to ensure accurate recording of decisions taken at the Meeting and to obviate the possibility of misstatements or errors.

The draft Minutes should also be sent to those Directors who were not present at the Meeting for information and comments thereon, if any. This is because all the Directors are equally responsible for the decisions taken at any Board Meeting, whether or not they attended the Meeting.

As a good governance practice, the draft Minutes of a Meeting in which a particular person has been appointed as Director should be sent to such newly appointed Director, irrespective of whether he attended such Meeting or not, since he is also responsible for the decisions of the Board from the date of his appointment as a Director.

A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.

The fact that the Director has vacated his office, by any reason whatsoever, will not affect his right to receive such Minutes.

The draft Minutes of a meeting would be made available to such Director even if the cessation of Directorship has taken place during the Meeting concerned.

Time limit for response

The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.

Discretion of the Chairman

If any Director communicates his comments after the expiry of the said period of seven days, the Chairman shall have the discretion to consider such comments.

Effect in the event of no response

In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such Director.

However, where an Independent Director is required to ratify any decision taken at a Meeting held at a shorter Notice or a decision taken on any item of business not included in the Agenda and such Director abstains from ratifying or does not ratify the decision, then in such a case, the decision taken / draft Minutes will not be presumed to be approved by such Director.

7.5. Entry in the Minutes Book

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

The Minutes of proceedings of each Meeting should be entered in the books maintained for that purpose within thirty days of the conclusion of the Meeting (Rule 25(1)(b)(i) of the Companies (Management and Administration) Rules, 2014).

In case a Meeting is adjourned, the Minutes in respect of the original Meeting as well as the adjourned Meeting shall be entered in the Minutes Book within thirty days from the date of the respective Meetings.

The Minutes of an adjourned Meeting, should be entered in the Minutes book within thirty days of the conclusion of the adjourned Meeting, since an adjourned Meeting is only a continuation of the original Meeting.

7.5.2 The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.

Where there is no Company Secretary, it shall be entered by any other person duly authorised by the Board or by the Chairman.

This may be done by making a note on the first or last page of the respective Minutes. If the Minutes are maintained in electronic form then the date of entry should be captured in Timestamp.

7.5.3 Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting in which such Minutes are sought to be altered.

The pasting of Minutes or corrections or modification in the text of Minutes duly entered in the Minutes Book and signed by the Chairman will tantamount to alteration of Minutes.

Modification of Resolutions passed by the Board

A Resolution passed by the Board cannot be subsequently modified or altered, unless the Resolution is superseded, modified or altered by the Board by means of another Resolution duly passed.

7.6. Signing and Dating of Minutes

7.6.1 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.

Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before the next Meeting is held or by the Chairman of the next Meeting at the next Meeting.

Although Minutes may be signed by the Chairman of the next Meeting, the Minutes of a Meeting should be finalised by the Chairman of that Meeting, so that the Minutes may be entered in the Minutes Book within the specified time limit of thirty days.

Minutes of a Meeting may be signed by the Chairman of that Meeting or by the Chairman of the next Meeting, as the actual act of signing (as distinct from mere 'entering') could take place beyond a period of thirty days if the succeeding Meeting is held after a period of thirty days from the date of the earlier Meeting. However, it is not obligatory to wait for the next Meeting in order to have the Minutes of the previous Meeting signed. Such Minutes may be signed by the Chairman of the Meeting at any time before the next Meeting is held.

7.6.2 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.

Each page of the Minutes of a Meeting of the Board or a Committee thereof should be initialled or signed and the last page should be dated and signed by the Chairman of the said Meeting or the Chairman of the next Meeting.[Rule 25(1)(d) (i) of the Companies (Management and Administration) Rules, 2014]

The place for this purpose should be the city where the Minutes are being signed. The date on which the Minutes are signed should be appended to the signature.

Any blank space in a page between the conclusion of the Minutes and signature of the Chairman shall be scored out.

The Minutes should be recorded on consecutive pages of the Minutes Book. No blank space should be left in between the Minutes.

If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.

Scanned signature of the Chairman cannot be affixed.

When the Minutes are signed electronically, the place of signing of the Minutes should be mentioned in the Minutes. Such an addition will not be construed as a modification of the draft Minutes circulated to the Directors.

7.6.3 Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard.

As stated in paragraph 7.5.3 of SS-1, any alteration in the Minutes, as entered, should be made only by way of an express approval of the Board at its subsequent Meeting in which such Minutes are sought to be altered.

Similarly, a Resolution passed by the Board cannot be subsequently modified or altered, unless the Resolution is superseded, modified or altered by the Board by means of another Resolution duly passed.

7.6.4 A copy of the signed Minutes certified by the Company Secretary or where there is no Company Secretary, by any Director authorised by the Board shall be circulated to all Directors within fifteen days after these are signed.

This paragraph contains the procedure with respect to issuing a copy of the signed Minutes to the Directors. It provides that every copy should be certified by the Company Secretary. Certification is nothing but taking a print out or photocopy of the Minutes and signing under the word "Certified" or in a similar manner to distinguish a mere copy from the original.

Where there is no Company Secretary, any Director who has been duly authorised by the Board or the Chairman could certify and send the Minutes to the Directors for their reference and record.

There is no restriction on the certification of a copy of the signed Minutes by a Director who was not present at such Meeting. Such Director should however ensure that what he certifies is the copy of the Minutes signed by the Chairman.

Further, the provisions with respect to sending of draft Minutes of a Meeting in which a person is appointed as a Director or a Director ceases to be a Director should be made applicable mutatis-mutandis for circulating a copy of the signed Minutes of that Meeting.

The requirement of circulating a copy of the signed Minutes has been introduced with the aim of protecting the interests of individual Directors, including Independent Directors, by requiring the provision of proper and adequate information in a transparent manner, especially in the light of the increased accountability of the Directors, including Independent Directors and Non- Executive Directors laid down under sub – section (12) of Section 149 read with sub – section (60) of Section 2 of the Act.

Circulation of a copy of the signed Minutes would be a safeguard for a Director as final approved and signed copies of the Minutes would be available with them as a handy record for future reference which would enable them to discharge their responsibilities and duties diligently.

7.7. Inspection and Extracts of Minutes

7.7.1 The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors.

Minutes shall be open for inspection by any Director at the registered office of the company or at such other place in India during business hours. [Sub – section (3) of Section 128 read with sub – section (12) of Section 2 of the Act]

Additionally, by virtue of any agreement or the Articles, any other person may be permitted to seek and obtain such information or such inspection rights.

A Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship.

A Director of a company may need to inspect or receive copies of the Minutes of the Meetings held before the period of his Directorship since the decisions taken earlier may have implications on the current decisions to be taken. Furthermore, it will help him to understand the company better and to shape his thoughts so as to take part in the Meetings constructively and effectively.

A Director is entitled to inspect the Minutes of the Meetings held during the period of his Directorship, even after he ceases to be a Director.

This Standard aims to protect the interest of individual Directors, including Independent Directors, by requiring the provision of proper and adequate information in a transparent manner, especially in the light of the increased accountability of Independent Directors under the Act.

Often a Director, upon ceasing to be a Director of the company may be in need of Minutes of Meetings of the Board and also of the Committees of the Board which he had served for the sake of his own protection in case of any legal proceedings such as oppression and mismanagement matters, class action suits, misfeasance proceedings, criminal prosecutions, etc.

In order to protect the interest of the company, a system may be introduced requiring a person ceasing to be a Director who desires to inspect the Minutes Book, to submit a formal application in writing and furnish a non-disclosure undertaking to ensure that he is bound by obligations of confidentiality.The provisions with respect to sending of draft Minutes of a Meeting in which a person is appointed as a Director or a person ceases to be a Director would mutatis-mutandis be applicable for inspection of Minutes of that Meeting.

Entitlement of Members

A Member of the company is not entitled to inspect the Minutes of Meetings of the Board.

The Act empowers the members to inspect and take copies of Minutes of general meetings only. [Section 119 of the Act].

Unless a Member is or was a Director of the company, he is not entitled to inspect Minutes of Meetings of Board. However, this paragraph of SS-1 does not come in the way of the Articles of a company containing a provision enabling Members to have inspection rights to Minutes Books, Books of Account and other Books and Papers. In closely held companies and in joint venture companies, such rights are usually incorporated in the Articles and in such cases, a Member may be entitled to inspect or take copies or extracts of Minutes of Meetings of Board.

A contractual right of inspection, just as a statutory right of inspection, can be exercised whatever the motive or interest of a person may be [Rameshwar Lal Nath v. Calcutta Wheat & Seed Association Limited (1938) 8. Comp. Cas. 78].

Others entitled for inspection

The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.

This Standard enables the Statutory Auditor or the Secretarial Auditor or the Company Secretary in Practice as the case may be to discharge their professional duties fairly. .

Officers of the Registrar of Companies, or other Government, or regulatory bodies, if so authorised by the Act or any other law, can also inspect the Minutes during the course of an inspection.

Mode for Inspection

Inspection of Minutes Book may be provided in physical or in electronic form.

While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.

7.7.2 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.

Only after the Minutes have been entered in the Minutes Book, can extracts of Minutes be given to outsiders.

However without waiting for these formalities, certified copies of the Resolutions can always be issued even earlier, once a Resolution is passed. However, certified copies of Resolutions can be given only when the text of a Resolution proposed to be passed at a Meeting had been placed before the Meeting. Many a times, it might be necessary to furnish certified copies of Resolutions or file the same with authorities for various purposes. Therefore, when the Notes on Agenda are prepared, if an item is of such nature as would require a certified copy to be given to outsiders immediately after the passing of the Resolution, the text of the Resolution should be included in the Notes on Agenda or tabled at the Meeting so that certified copies can be issued at any time after the Resolution is passed.

Such a necessity may arise in the case of Resolutions passed for opening of bank accounts, taking loans from financial institutions, etc. where the bank account cannot be opened/operated or the financial assistance cannot be availed of without furnishing a certified copy of the Resolution.

A company can implement Resolutions passed at Meetings of the Board or Committee thereof without waiting for noting of the concerned Minutes at the next Meeting of the Board or the Committee, as the case may be.

A copy of the Board Resolution may be certified by the Company Secretary or Chairman or by any Director. There is no restriction on the certification of a Board Resolution by a Director who was not present at the Meeting where such a Resolution was passed. Such Director should however ensure that what he certifies is based on what had actually

transpired at the Meeting. Therefore, it would be advisable in such cases to certify the Resolution only after the Minutes are finalised.

A Director is entitled to receive, a copy of the Minutes of a Meeting held before the period of his Directorship.

A Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

A Director is entitled to demand an extract of the Minutes of Meetings for any period prior to his appointment as a Director. However after he ceases to be a Director, he can demand extracts of Minutes only for the period during which he was a Director. He cannot demand extracts of Minutes of Meetings held prior to his induction as a Director nor in relation to Meetings held during the period after he ceases to be a Director. The company may introduce proper systems for streamlining such requests and every such request by a person ceasing to be a Director should preferably be in writing and while delivering extracts of the Minutes, if thought fit, the company may insist on the person demanding extracts to execute a non-disclosure undertaking to ensure that he is bound to maintain confidentiality.

Notwithstanding the above, Directors of the company have a duty to maintain confidentiality of any information relating to the company.

Further, the provisions with respect to sending of draft Minutes of a Meeting in which a person is appointed as a Director or a Director ceases to be a Director should be made mutatis-mutandis applicable for giving extracts of the Minutes of that Meeting.

Extracts of the duly signed Minutes may be provided in physical or electronic form.

8. Preservation of Minutes and other Records

8.1 Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.

This paragraph underscores the need to preserve the Minutes of Meetings permanently.

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

The preservation of Minutes of the merged or amalgamated company would ensure easy reference to any important decisions taken prior to the amalgamation.

8.2 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.

Copies of the Notice calling the Meeting and other papers, documents, agreements, approvals, etc. related to the business transacted at the Meeting should be retained at least for as long as the related subject remains relevant or for eight Financial Years, whichever is later.

Corollary has been drawn from Rule 15 of the Companies (Management and Administration) Rules, 2014 which prescribes a period of eight years for preservation of register of members etc. and annual return.

Unlike Minutes, these papers explain in detail all the proposals and hence would enable easy reference to the important decisions taken earlier along with the rationale for the decisions. Therefore, considering the importance of these papers, prior approval of the Board is necessary for their destruction. This is also because the Directors are responsible for devising and ensuring effective operation of proper and adequate Board systems, and the need to refer to these papers may arise anytime.

Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company, shall be preserved

in good order in physical or 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 and permission of the Central Government, where applicable.

The permission of the Central Government for destroying such records has been prescribed in line with the provisions of Section 239 of the Act, which provides that the books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Any record destroyed after 1st July, 2015 shall require the approval of the Board, even if such records pertain to a period prior to the applicability of SS-1.

It may be noted that the Board may authorise destruction of such records only after the expiry of the period specified in this Paragraph of the SS-2.

8.3 Minutes Books shall be kept in the custody of the Company Secretary.

Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.

The Company Secretary or as the case may be, any Director who has been duly authorised for this purpose should ensure that the Minutes books are under proper locking system and no person has access to the Minutes without his permission. Minutes maintained in electronic form should also be kept under proper security system.

9. Disclosure

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.

The expression "Annual Report" for the purpose of this Standard shall mean the Board's Report referred to in Section 134 of the Actor the Report of Corporate Governance in case of listed companies. The expression "Annual Return" should be understood within the meaning of Section 92 of the Act.

Every company should file with the Registrar of Companies, at the end of every financial year, an Annual Return, which inter alia, contains particulars of Meetings of members or a class thereof, the Board and its various Committees along with attendance details. Further, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[5] also requires furnishing such particulars as a matter of corporate governance.

This paragraph of the Standard requires all companies to which the Standard is applicable to make a disclosure in their Annual Report and Annual Return the following particulars:

- *Number of Meetings held during a Financial Year, viz., the year under review.*
- *Dates on which Meetings of Board were held during the Financial Year;*
- *Dates on which Meetings of Committees of Directors were held during the Financial Year;*
- *The number of Meetings of the Board as well as the number of Meetings of Committees of Directors, each Director has attended.*

The disclosure requirements specified in the Standard is for the benefit of the shareholders. It assists the shareholders to obtain details about attendance of Directors at Meetings.

[5]Effective from 1st December 2015

ANNEXURE IA

(Refer the head "Powers of the Board" and Paragraph 1.3.8)

POWERS OF THE BOARD TO BE EXERCISED AT BOARD MEETINGS

(a) To make calls on shareholders in respect of money unpaid on their shares;

(b) To authorise buy-back of securities under Section 68 of the Act;

(c) To issue securities, including debentures, whether in or outside India;

(d) to borrow monies;

The above clause shall not apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act (Explanation 1 to sub – section (3) of Section 179 of the Act)

In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(e) to invest the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans;

(g) to approve financial statement and the Board's report;

(h) to diversify the business of the company;

(i) to approve amalgamation, merger or reconstruction;

(j) to take over a company or acquire a controlling or substantial stake in another company;

(k) any other matter which may be prescribed, which at present are as follows:

(1) to make political contributions;

(2) to appoint or remove key managerial personnel (KMP);

(3) to appoint internal auditors and Secretarial Auditor;

(Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with amendment thereto dated 18th March, 2015)

The acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of Section 179 (Second Proviso to sub – section (3) of Section 179 of the Act).

<u>Appoint a Director to fill a casual vacancy</u>

In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

(Sub-section (4) of Section 161 of the Act)

ANNEXURE IB

(Refer the head "Powers of the Board" and Paragraph 1.3.8)

ILLUSTRATIVE LIST IN SS-1 IN ADDITION TO THOSE PRESCRIBED UNDER THE ACT

General Business Items

1. *Noting Minutes of Meetings of Audit Committee and other Committees*
2. *Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.*
3. *Specifying list of laws applicable specifically to the company.*

   The Board is only required to take note of the list of laws applicable specifically to the company. For example, Banking Regulation Act, 1949 in case of banking companies.

Specific Items

1. *Approving Remuneration of Managing Director, Whole-time Director and Manager*
2. *Appointment of a person as a Managing Director / Manager in more than one company.*
3. *According sanction for transactions with Related Party which are not in the ordinary course of business or which are not on arm's length basis.*
4. *Purchase and sale of material investments, subsidiaries/ assets or which are not in the normal course of business.*
5. *Approving payment to Director for loss of office*
6. *Items arising out of separate Meeting of the Independent Directors if so decided by the Independent Directors.*

Additional list of items in case of listed companies

1. *Approving Annual operating plans and budgets*
2. *Capital budgets and any updates*
3. *Information on Remuneration of KMP.*
4. *Show cause, demand, prosecution notices and penalty notices which are materially important*
5. *Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems*
6. *Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.*
7. *Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company*
8. *Details of any joint venture or collaboration agreement*
9. *Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property*
10. *Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.*
11. *Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material*
12. *Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.*

ANNEXURE IC

(Refer the head "Powers of the Board")

POWERS WHICH MUST BE EXERCISED BY UNANIMOUS CONSENT

(a) *power to appoint or employ a person as its Managing Director under Section 203 of the Act if he is the Managing Director or Manager of one and not more than one other company;*

(b) *power to invest or to give loans or guarantee or security under Section 186(5) of the Act.*

ANNEXURE ID

(Refer the head "Powers of the Board")

POWERS EXERCISABLE BY PASSING OF SPECIAL RESOLUTION AT GENERAL MEETING

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or, where the company owns more than one undertaking, of the whole or substantially the whole of any such undertaking

Explanation. – For the purposes of this clause, –

(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent of the total income of the company during the previous financial year;

(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

Nothing in clause (a) above shall affect the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as referred to therein, in good faith; or the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

Any special resolution conveying consent of the company as aforesaid may stipulate such conditions as may be specified therein including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction. However, conditions so stipulated shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the applicable provisions contained in the Act.

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation ;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves apart from temporary loans obtained from company's bankers in the ordinary course of business.

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

Special resolution under this clause shall specify the total amount upto which monies may be borrowed by the Board of Directors.

Explanation. – For the purposes of this clause, -

the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

No debt incurred by a company in excess of the limit imposed by clause (c) above shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

(d) to remit or give time for the repayment of , any debt due from a Director [Section 180 of the Act].

The above restriction shall however not apply to a private company since MCA has vide its notification dated 5th June, 2015 exempted private companies from the provisions of Section 180 of the Act.

ANNEXURE IE

(Refer the head "Powers of the Board")

POWERS EXERCISABLE SUBJECT TO APPROVALS OF THE GENERAL MEETING OR THE CENTRAL GOVERNMENT OR THE NATIONAL COMPANY LAW TRIBUNAL OR COMPANY LAW BOARD OR THE REQUIREMENTS OF OTHER STATUTES AND REGULATORS

(i) to appoint a Managing Director, Whole-time Director or Manager and pay Remuneration to such person in case such appointment or remuneration is at variance to the conditions specified in Schedule V; (General Meeting and Central Government approval) [Sub–section (4) of Section 196 of the Act]

(ii) to make contributions to bona fide charitable and other funds in excess of the limit of 5% of the average net profits for the immediately preceding three financial years; (General Meeting approval) (Section 181)

(iii) to give any loan or any guarantee or provide security in connection with a loan to any other body corporate or person and acquire by way of subscription, purchase or otherwise, the securities of any other body corporate in excess of the limits laid down for the said purposes for the Board of Directors (Section 186); (General Meeting approval by special resolution)

(iv) In case of a public company, in the absence or inadequacy of profits of a company in any financial year, to pay Remuneration to its managerial personnel in excess of the limits set out in Clause A and B of section II of Part II of Schedule V appended to the Act; (Central Government approval) (Section 197).

(v) In case of listed companies, disposal of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary except in cases where such divestment is made under a scheme of arrangement

duly approved by Court/ Tribunal. (Previous approval of Shareholders in general meeting by way of Special Resolution) (SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[6])

(vi) In case of listed companies, to pay Remuneration (apart from sitting fees) to non-executive Directors, including independent Directors, (Previous approval of shareholders in general meeting) (SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[7]).

(vii) In case of listed companies, to sell, dispose and lease assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal (Prior approval of shareholders by way of special resolution) (SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[8]).

(viii) In case of listed companies, all material Related Party Transactions shall require approval of the shareholders through ordinary resolution and all the related parties shall abstain from voting on such resolutions (SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[9]).

The above clause is not applicable in case related party transactions entered are between:

a) Two government companies

b) 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. Similarly, in case of insurance

[6]Effective from 1st December 2015
[7]Effective from 1st December 2015
[8]Effective from 1st December 2015
[9]Effective from 1st December 2015

companies and banking companies, approval of IRDA and RBI respectively is required for certain items in accordance with their extant rules.

ANNEXURE IF

(Refer the head "Powers of the Board" and Paragraph 1.3.8)

POWERS WHICH MAY DELEGATED BY THE BOARD

(a) to borrow monies;

(b) to invest the funds of the company;

(c) to grant loans or give guarantee or provide security in respect of loans;

Powers delegated by the Board should prescribe the limits in respect of:

i. *the total amount outstanding at any one time upto which moneys may be borrowed by the delegate;*

ii. *the total amount outstanding upto which the funds may be invested and the nature of investments which may be made by the delegate; and*

iii. *the total amount outstanding upto which loans may be made by the delegate, together with the purposes and the maximum amount in respect of each individual case.*

ANNEXURE II

(Refer Paragraph 1.3.1)

NOTICE OF _____ *(serial number of Meeting)* ***BOARD MEETING***[1]

*Mr.*_____

Director,

New Delhi.

Dear Sir,

NOTICE is hereby given that the _____ (serial number of Meeting) Meeting of the Board of Directors of the company will be held on _____ (day of the week), the _____(date) _____ (month)_____(year)at_____(a.m./p.m.) _____(Venue)[2]. The Agenda of the business to be transacted at the Meeting is enclosed/will follow[3].

The facility to participate through Electronic Mode is also made available by the company, the details of which are enclosed. Directors who desire to participate through Electronic Mode may send their confirmation in this regard to _____ (Name of Company Secretary/Chairman/other Authorised Person)), email _____, Tel No. _____ within _____ days (time frame)[4] to enable making necessary arrangements.

Kindly make it convenient to attend the Meeting.

Yours faithfully,

(Signature)

(Name)

(Designation)

(Email, phone no.,):

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1. This should preferably be on the letter-head of the company, except where it is sent by e-mail or any other electronic means in which case there must be, whether as a header or footer, the name of the company and complete address of its registered office together with all its particulars such as Corporate Identification Number (CIN) as required under Section 12 of the Act, date of Notice, authority and name and designation of the person who is issuing the Notice and if necessary the phone number of the Company Secretary or any other senior officer who could be contacted by the Directors for any clarifications or arrangements.

2. If the Meeting is at a venue other than the Registered Office / Corporate Office of the company, detailed location of such venue should be given.

3. The Agenda, together with the notes thereon, may either be sent alongwith the Notice or may follow at a later date.

4. In the absence of an advance communication or confirmation, as above, from the Director regarding his participation through Electronic Mode, it shall be assumed that he will attend the Meeting physically.

ANNEXURE III

(Refer Paragraph 1.3.8)

ILLUSTRATIVE AGENDA OF THE FIRST MEETING OF THE BOARD OF DIRECTORS OF_____COMPANY LIMITED, TO BE HELD ON _____(DAY), _____(DATE, MONTH AND YEAR) AT _____(TIME) AT _____ (VENUE).

1. *To appoint the Chairman of the Meeting.*
2. *To grant leave of absence, if any*
3. *To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.*
4. *To take note of the Memorandum and Articles of Association of the company, as registered.*
5. *To note the situation of the Registered Office of the company and ratify the registered document of title of premises of the registered office in the name of the company or a Notarised copy of lease / rent agreement in the name of the company.*
6. *To note the first Directors of the company.*
7. *To read and record the Notices of disclosure of interest given by the first Directors.*
8. *To consider appointment of Additional Directors.*
9. *To consider appointment of the Chairman of the Board.*
10. *To consider constitution of Board Committees and approve their terms of reference.*
11. *To consider appointment of the First Auditors.*
12. *To adopt the Common Seal of the company, if any.*
13. *To appoint Bankers and to open bank accounts of the company.*
14. *To approve entering into agreements with depositories for issue of shares in dematerialised form and authorising Directors to execute the said agreements on behalf of the company.*

15. *To authorise printing of share certificates and correspondence with the depositories, if any.*
16. *To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.*
17. *To approve and ratify preliminary expenses and preliminary agreements.*
18. *To approve the appointment of Key Managerial Personnel, if applicable, and other senior officers.*

ANNEXURE IV

(Refer Paragraph 1.3.8)

ILLUSTRATIVE AGENDA OF A MEETING OTHER THAN THE FIRST MEETING OF THE BOARD OF DIRECTORS

AGENDA FOR THE MEETING OF THE BOARD OF DIRECTORS OF COMPANY LIMITED, TO BE HELD ON _____ (DAY), _____ (DATE, MONTH AND YEAR), AT ___(TIME), AT ___(VENUE).

1. Attendance and Minutes

1.1 To elect a Chairman of the Meeting (in case there is no permanent Chairman of the Board);

1.2 To grant leave of absence to Directors not present at the Meeting;

1.3 To note the Minutes of the previous Meeting;

1.4 To note the action taken in respect of the earlier decisions of the Board;

1.5 To note Resolutions passed by circulation since the last Meeting, if any;

1.6 To note minutes of Meetings of Board Committee(s);

1.7 To note certificate of compliance.

2. Directors (including, where applicable, Alternate Directors)

2.1 To read and take note of the disclosure of interests by Directors;

2.2 To read and take note of disclosure of shareholdings of Directors in the company and its holding / subsidiary / associate company;

2.3 To read and take note of declarations by Independent Directors that they meet the criteria of independence laid down in the Act;

2.4 To sign the register of contracts;

2.5 To give consent to a contract, wherever applicable in which a Director/s is/are interested ;

2.6 To consider appointment(s) and fixation of Remuneration(s) of key managerial

personnel, through the Nomination and Remuneration Committee, where applicable;

2.7 *To consider and to give consent for the appointment of a Managing Director/Manager who is already a Managing Director/Manager of another company, through the Nomination and Remuneration Committee, where applicable;*

2.8 *To take note of nomination of Director(s) made by financial institution(s)/ BIFR/ Central Government/bank(s);*

2.9 *To recommend for the approval of Members, appointment of Independent Directors, through the Nomination and Remuneration Committee, where applicable;*

2.10 *To appoint Additional Directors(s), through the Nomination and Remuneration Committee, where applicable;*

2.11 *To appoint a Director to fill the casual vacancy of a Director, through the Nomination and Remuneration Committee, where applicable;*

2.12 *To accept/ take note of resignation(s) of Director(s)/ withdrawal of nominee Director(s);*

2.13 *To consider commission for Non-Executive Directors;*

2.14 *To delegate powers to Managing/ Whole-time Directors or to Committees constituted by the Board.*

3. Related party transactions

3.1 *To approve transactions with Related Party which are not in the ordinary course of business or which are not on arm's length basis, through the Audit Committee, where applicable;*

3.2 *To recommend for the approval of the Members, transactions with Related Party beyond the prescribed threshold limits and which are either entered not in the ordinary course of business or not on arm's length basis, through the Audit Committee, where applicable.*

4. Shares

4.1 To authorize printing of new share certificates;

*4.2 To approve transfer/ transmission/ transposition of shares;**

*4.3 To authorise issue of duplicate share certificates;**

*4.4 To authorise issue of share certificates without surrender of letters of allotment;**

4.5 To refuse to register transfer of shares;

4.6 To consider the position of dematerialized and rematerialized shares and the beneficial owners.

**unless delegated to a Committee.*

5. Share Capital

5.1 To make allotment of shares;

5.2 To make calls on shares;

5.3 To forfeit shares;

5.4 To issue bonus shares;

5.5 To issue rights shares;

5.6 To make fresh issue of share capital;

5.7 To authorise buy-back of shares.

6. Debentures, Loans and Public Deposits

6.1 To consider matters relating to issue of debentures including appointment of Debenture Trustees;

6.2 To borrow money otherwise than on debentures and by way of Commercial Paper, Certificate of Deposit, etc.;

6.3 To approve raising of money through public deposits.

6.4 To approve the text of the advertisement for acceptance of public deposits and to sign the same.

7. Long term loans from financial institutions/ banks

7.1 To authorize making applications/ availing long term loans from financial institutions/ banks and to authorize officers to accept modifications, approve

the terms and conditions of loans, execute loan and other agreements and to affix the Common Seal of the company on documents;

7.2 To accept terms contained in the letter of intent of financial institutions/ banks;

7.3 To authorize execution of hypothecation agreements and to create charges on the company's assets;

7.4 To note the statement of total borrowings/ indebtedness of the company.

In case of availing of loans/ financial assistance from banks/ financial institutions, the draft Resolutions are generally provided by the banks/ financial institutions, which may be modified as appropriate and circulated to the Directors along with the related item of the Agenda.

8. Banking Facilities

8.1 To open/ operate/ close bank accounts;

8.2 To delegate the authority to avail bank loans;

8.3 To renew/ enhance banking facilities including bank overdraft;

8.4 To open special/ separate banks accounts for dividend, deposits and unpaid amounts thereof.

9. Investments, Loans and Guarantees

9.1 To consider investment in shares / debentures of subsidiary companies or other bodies corporate;

9.2 To consider other investments;

9.3 To make loans to other persons;

9.4 To consider placing inter-corporate deposits;

9.5 To consider giving guarantees for loans to other bodies corporate or security in connection with such loans.

10. Review of Operations

10.1 To review operations;

10.2 To consider periodic performance report of the company;

Brief notes on the working of the company or its units or branches should contain figures comparable with the figures for the corresponding period of the previous year and that of the budget or fore cast for that period.

***11. Payment of interim dividend**.*

11.1 To consider payment of interim dividend

12. Projects

12.1 To take note of the progress of implementation of modernization/ new project(s) in hand;

12.2 To consider expansion/ diversification.

13. Capital Expenditure

13.1 To sanction capital expenditure for purchasing/ replacing machinery and other fixed assets;

13.2 To approve sale of old machinery/ other fixed assets of the company.

14. Revenue Expenditure

14.1 To approve mandatory CSR expenditure of the company, through the CSR Committee;

14.2 To approve donations including contributions to political parties;

14.3 To sanction grants to public welfare institutions;

14.4 To sanction staff welfare grants and other revenue expenditure;

14.5 To approve writing off bad debts.

***15. Auditors, etc**.*

15.1 To appoint an Auditor to fill a casual vacancy in the office of the Auditor,

through the Audit Committee, where applicable;

15.2 To appoint a Cost Auditor, through the Audit Committee, where applicable;

15.3 To appoint a Secretarial Auditor.

16. Personnel

16.1 To appoint, accept the resignation of, promote or transfer any senior officer of the company;

16.2 To approve/ amend rules relating to employment/ employee welfare schemes, and provident fund/ superannuation/ gratuity schemes of the company;

16.3 To sanction loan limits for officers and staff or personal exigencies or for purchase of a vehicle, land, house, etc.;

16.4 To formulate personnel policies.

17. Legal Matters

17.1 To note and to give directions on significant matters;

17.2 To consider amendment to Memorandum/ Articles of association;

17.3 To consider and take note of the status of pending litigations by and against the company;

18. To approve agreements

Restructuring

18.1 To consider merger/ demerger/ amalgamation;

18.2 To consider formation of joint ventures;

18.3 To consider subsidiarization/ desubsidiarization of other companies.

19. Delegation of Authority

19.1 To nominate occupier/ factory manager under Factories Act; an owner under Mines Act or Directors / representatives under the Legal Metrology Act;

19.2 To delegate powers to representative to attend general meetings of companies in which the company has investments;

19.3 To delegate powers to approve transfer, transmission, issue of duplicate share certificates/ allotment letters, etc.;

19.4 To delegate authority with regard to signing of contracts, deeds and other documents; execution of indemnities, guarantees and counter-guarantees; filing, withdrawing or compromising legal suits;

19.5 To delegate authority with regard to registration, filing of statutory returns, declarations, etc. (in the physical or Electronic Mode) under company law, central excise, sales tax, customs and other laws;

19.6 To delegate powers in respect of the employees of the company including matters relating to appointments, confirmations, discharge, dismissal, acceptance of resignations, granting of increments and promotions, taking disciplinary actions, sanctioning of leave, travel bills and welfare expenses, etc.;

19.7 To delegate powers to grant advances to contractors, suppliers, agents, etc.;

19.8 To delegate powers relating to purchase/construction and sale of stores, spare parts, raw materials, fuel and packing materials; fixed assets; shares or debentures of companies; government securities; and to fix limits up to which executives can authorise or sanction payments; operating of bank accounts etc.;

19.9 To delegate powers to engage consultants, retainers, contractors, etc.;

19.10 To delegate powers to provide financial assistance to employees, etc. for personal exigencies or for purchase of a vehicle, house, etc.;

19.11 To delegate powers to allow rebates/ discounts on sales; to incur expenditure on advertisements, to settle claims, to sanction donations, etc.

20. Annual Financial Statements

20.1 To consider approval of annual financial statements, through the Audit Committee, where applicable;

20.2 To consider approval of consolidated financial statements, if applicable, through the Audit Committee, where applicable;

20.3 To consider recommending dividend to shareholders;

20.4 To approve appropriation of profits and transfers to reserves;

20.5 To take note of the Auditors' report;

21. Annual General Meeting

21.1 To appoint an agency and a scrutiniser for conduct of e-voting in connection with the resolutions proposed at the Annual General Meeting;

21.2 To approve the Report of the Board of Directors;

21.3 To ascertain the Directors retiring by rotation;

21.4 To convene the Annual General Meeting;

21.5 To close the register of members and decide the record date / book closure period;

21.6 To recommend for the approval / ratification of the Members, appointment and remuneration of Auditors;

21.7 To recommend for the ratification of the Members, remuneration of the Cost Auditors;

21.8 To consider other matters requiring shareholders' approval;

21.9 To approve the Notice of the general meeting and authorise the Company Secretary to issue the Notice to the Members and all other persons and to take all action as may be necessary in this regard.

22. Miscellaneous matters

22.1 To consider matters arising out of the Minutes of the previous Meeting;

22.2 To fix the date and venue of the next Meeting;

22.3 Any other matter with the permission of the Chair.

ANNEXURE V

(Refer Paragraph 1.3.8)

DRAFTING OF AGENDA, NOTES ON AGENDA AND RELATED MATTERS - PRACTICAL ASPECTS

1. *While preparing the Agenda and notes thereon, good drafting is of the essence. Important or non-routine items of the Agenda have to be written with special care, employing not only good drafting skills but also an understanding of commercial considerations and the business environment. For the purpose :*
   - *(a) Divide the Agenda into two parts: - the first part containing usual or routine items and the second part containing other items which can further be bifurcated as (i) items for approval; and (ii) items for information/noting.*
   - *(b) For each item of the Agenda an explanatory note should be provided. The explanatory note should give sufficient details of the proposal, including the proposed Resolution, if any, references to the provisions of the Companies Act and other applicable laws, the Memorandum and Articles of Association, other relevant documents, decisions of previous Board or general meetings, as necessary. The explanatory note may be drafted under the following heads :*
     - *(i) Background (or Introduction);*
     - *(ii) Proposal, with recommendations of the management;*
     - *(iii) Provisions of Law;*
     - *(iv) Decision(s) to be taken ; and*
     - *(v) Interest, if any, of any Directors.*
2. *As a good governance practice, the agenda item should be initiated by the concerned Department (Head of Department or other authorised person) and approved by the competent authority as may be decided by the Board.*
3. *The Company Secretary should refer to the Agenda of previous Meetings, to see*

whether any items had been deferred and should consider whether such items are to be included for discussion at the ensuing Meeting.

4. *The Company Secretary should also refer to the Minutes of the Meeting held during the corresponding period of the previous year to see whether there are any recurring periodic items (e.g. interim/final dividend, quarterly results). The Company Secretary should finalise the Agenda in consultation with the Chairman or in his absence the Managing Director or in his absence the Whole-time Director.*
5. *Notes on policy matters should present clear-cut issues in order to facilitate due deliberations and precise decisions at the Meeting.*
6. *The Company Secretary should keep, in addition to a record of matters to be discussed, a separate folder of all such correspondence, notes and documents which need to be dealt with at the Meeting. In preparing the Agenda, the Company Secretary should refer to this folder to ensure that all items which require the decision of the Board are included in the Agenda.*
7. *A separate Agenda item number should be given for items which are brought forward for discussion from a previous Meeting rather than placing them under the omnibus Agenda items. For example:*

   ItemNo.9. DISINVESTMENT MANDATE

   To note the appointment of the company as advisors for the disinvestment process of ABC Limited.

   (Refer to Item No. 18 of the minutes of the Meeting held on.....).

ANNEXURE VI

(Refer Paragraph 6.2.3)

Resolution No. 1/2015

ABC Ltd.....

To,

Mr. ..... (Director)

Dear Sir,

Resolution by circulation

The following Resolution is intended to be passed by circulation as per the provisions of Section 175 of the Companies Act, 2013. A note explaining the urgency and necessity for passing the said Resolution by circulation and the supporting papers (if any) are enclosed.

*"**RESOLVED THAT**..... (Resolution intended to be passed is to be reproduced)*

**Assent/Dissent / Require Meeting*

Signature Name Date

**Strike off whichever is not applicable*

Kindly indicate your response to the aforesaid Resolution by appending your signature and the date of signing in the space provided beneath the Resolution and return one copy to the undersigned on or before_____.

Yours faithfully,

For ABC Ltd.

Company Secretary

ANNEXUREVII

(Refer Paragraph 7.3.3)

MINUTES OF THE FIRST BOARD MEETING OF _____, HELD ON _____ (DAY), _____ (DATE, MONTH AND YEAR) AT (VENUE) FROM _____ (TIME OF COMMENCEMENT) TILL _____ (TIME OF CONCLUSION)

Present:

1……. (in the Chair)

2…….

3…….

4…….

In attendance:

……

Company Secretary

1. Chairman for the Meeting

Mr…….. ……..was elected as the Chairperson for the Meeting.

2. Quorum

The business before the Meeting was taken up after having established that the requisite Quorum was present.

3. Leave of absence

Leave of absence was granted to Mr./ Ms. X who expressed his inability to attend the Meeting owing to their pre-occupation.

4. Certificate of Incorporation of the company

The Board was informed that the company has been incorporated on …… and the Directors noted the Certificate of Incorporation No……. of ……., dated

……..... issued by the Registrar of Companies,……....

5. Memorandum and Articles of Association

A printed copy of the Memorandum and Articles of Association of the company as registered with the Registrar of Companies,…….was placed before the Meeting and noted by the Board.

6. Registered Office

The Board noted that the Registered Office of the company will be at ……..., the intimation of which has already been given to the Registrar of Companies,…….

7. First Directors

The Board noted that in terms of Article ____ of the Articles of Association of the company, Mr……., Mr…..……and Mr…… are the first Directors of the company.

8. Notices of disclosure of interest by the Directors

Notices of interest under Section 184(1) of the Companies Act, 2013 received from Mr……., Mr……. and Mr……., Directors of the company, on ……., were tabled and the contents thereof were read and noted by the Board.

9. Appointment of Additional Directors

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Chairman proposed that Mr. ……..…. having DIN …….. and Mr…….. having DIN …… be appointed Additional Directors of the company in terms of Section 161 of the Companies Act, 2013. Brief profiles of Mr. ……..…. and Mr…….. along with their consents to act as Directors, if appointed, were tabled.

The Board agreed with the same and passed the following resolutions:

a. *"**RESOLVED THAT**, pursuant to the provisions of Section 161 of the Companies Act, 2013 and Companies (Appointment and Qualification of Directors) Rules 2014 and any other applicable provisions read with Article _____ of the Articles of Association of the company, Mr.……....be and is hereby appointed as Additional Director of the company to hold office from the date of this Meeting till the first Annual General Meeting of the company."*

*"**RESOLVED FURTHER THAT**……., Director/Company Secretary be and is hereby authorised to sign and file necessary forms/documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."*

b. *"**RESOLVED THAT**, pursuant to the provisions of Section 161 of the Companies Act, 2013, and Companies (Appointment and Qualification of Directors) Rules 2014 and any other applicable provisions read with Article _____ of the Articles of Association of the company, Mr.……..... be and is hereby appointed as Additional Director of the company to hold office from the date of this Meeting till the first Annual General Meeting of the company."*

*"**RESOLVED FURTHER THAT**……., Director/Company Secretary be and is hereby authorised to sign and file necessary forms/documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."*

10. Chairperson and Vice-Chairperson of the Board

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Board, after discussion, decided that Mr. ……. be appointed as Chairman of the Board, who would be the Chairperson for all Meetings of the Board as also for general meetings of the company. The Board also decided that Mr. ……. be

appointed as Vice-Chairperson of the Board.

The Board thereafter passed the following resolution:

*"**RESOLVED THAT** until otherwise decided by the Board, Mr.…… be and is hereby elected as the Chairman of the Board of Directors of the company."*

*"**RESOLVED FURTHER THAT**, until otherwise decided by the Board, Mr.…… be and is hereby elected as the Vice-Chairman of the Board of Directors of the company."*

11. Board Committees

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Board approved constitution of the following Board Committees, as required in terms of Sections 177 and 178 of the Companies Act, 2013, with the members as detailed below:

(a) Audit Committee

……

(b) Nomination and Remuneration Committee

……

(c) Stakeholders Relationship Committee

…….

(d) CSR Committee

……

The Board also approved the Terms of Reference of the Audit Committee, the Nomination and Remuneration Committee, the Stakeholders Relationship Committee and the CSR Committee, as tabled, copies of which were initialled by the Chairman for the purpose of identification.

12. Appointment of First Auditors

Reference was made to Mr. …….'s note dated …….. on the subject, as

circulated.

The Chairman stated that pursuant to Section 139 of the Companies Act, 2013, First Auditors are to be appointed within thirty days from the registration of the company. For this purpose, Messrs. ……....., Chartered Accountants,……....., had been approached to act as the first Auditors of the company. A letter received from Messrs. ……....., conveying their consent was placed before the Directors.

The Board, after discussion passed the following resolution:

*"**RESOLVED THAT** Messrs. ....., Chartered Accountants, …., ..., be and are hereby appointed pursuant to Section 139(6) of the Companies Act, 2013, as the first Auditors of the company at such remuneration as may be fixed by the Board in consultation with the Auditor to hold office from the date of this Meeting till the conclusion of the first Annual General Meeting of the company."*

*"**RESOLVED FURTHER THAT** the Director/Company Secretary be and is hereby authorised to make the necessary filings with the Statutory Authorities".*

[Not applicable to Government companies or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments - in such cases appointment of auditors to be made by Comptroller and Auditor General].

13. Common Seal of the company (not mandatory)

The Chairman tabled a Seal bearing the company's name, CIN and the address of the registered office to be adopted as the Common Seal of the company, and the following Resolution was passed:

*"**RESOLVED THAT** the Common Seal of the company, the impression of which appears in the margin against this Resolution, be and is hereby adopted as the Common Seal of the company."*

14. Appointment of Chief Executive Officer of the company

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Chairman informed the Board that for promotion, development and expansion of the company's business, it is necessary to appoint a whole – time Chief Executive Officer. He advised the Board that it is proposed to appoint Mr. ..... who has vast industry experience as the Chief Executive Officer of the company; Mr……. has given his consent to act as Chief Executive Officer, if appointed. The Board agreed with the same and passed the following resolution:

*"**RESOLVED THAT** pursuant to Section 203 of the Companies Act, 2013, and related Rules and regulations made thereunder, Mr..... be and is hereby appointed as the Chief Executive Officer of the company, on the terms and conditions set out in the draft agreement/ appointment letter, placed on the table, a copy of which was initialled by the Chairman for the purpose of identification."*

*"**RESOLVED FURTHER THAT** Mr. ……., Chief Executive Officer, do perform such functions and duties specified in the agreement/ appointment letter and as assigned to him by the Board from time to time."*

*"**RESOLVED FURTHER THAT** _____, Director/Company Secretary be and is hereby authorised to sign and file the necessary forms/documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."*

15. Appointment of Company Secretary

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Chairman advised the Board that it is proposed to appoint Mr. ……., who holds the prescribed qualifications as Company Secretary of the company; Mr……. has given his consent to act as Company Secretary, if appointed. The Board agreed with the same and passed the following resolution:

*"**RESOLVED THAT**pursuant to Section 203 of the Companies Act, 2013, and related Rules and Regulations framed thereunder, Mr……., holding the prescribed qualification under Section 2(24) of the Companies Act, 2013, be and is hereby appointed as Company Secretary of the company, on the terms specified in the draft agreement/ appointment letter, placed on the table, a copy of which was initialled by the Chairman for the purpose of identification."*

*"**RESOLVED FURTHER THAT** Mr. ……., Company Secretary, do perform the duties which are required to be performed by a secretary under the Companies Act, 2013 and any other duties assigned to him by the Board or the Chief Executive Officer."*

*"**RESOLVED FURTHER THAT** ……., Director be and is hereby authorised to sign and file the necessary forms/documents with the Registrar of companies and make entries, as appropriate, in the registers of the company."*

16. Appointment of Chief Financial Officer

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Chairman advised the Board that it is proposed to appoint Mr..... who is a qualified Chartered Accountant as the Chief Financial Officer of the company; Mr……. has given his consent to act as Chief Financial Officer, if appointed. The Board agreed with the same and passed the following resolution:

*"**RESOLVED THAT** pursuant to Section 203 of the Companies Act, 2013, and related Rules and Regulations framed thereunder, Mr. ..... be and is hereby appointed as Chief Financial Officer of the company, on the terms specified in the draft agreement/ appointment letter, placed on the table, a copy of which was initialled by the Chairman for the purpose of identification."*

*"**RESOLVED FURTHER THAT** Mr. ……., Chief Financial Officer, do perform the functions which are required to be performed by a Chief Financial Officer*

under the Companies Act, 2013 and any other duties assigned to him by the Board or the Chief Executive Officer."

*"**RESOLVED FURTHER THAT** ……., Director/Company Secretary be and is hereby authorised to sign and file the necessary forms/documents with the Registrar of Companies and make entries, as appropriate, in the registers of the company."*

17. Appointment of bankers and opening Bank A/c with ….. Bank

The Chairman informed the Board that it is proposed to open a current account in the name of the company with .....Bank. The Board agreed with the same andpassed the following resolution:

*"**RESOLVED THAT** a current account be opened in the name of …….. Limited with the …..... Bank, ……..., and that the Bank be instructed to honor all cheques, bills of exchange, promissory notes or other orders which may be drawn by/ accepted/ made on behalf of the company and to act on any instructions so given relating to the account, whether the same be overdrawn or not, relating to the transactions of the company and that any two of the following Directors/officers of the company, jointly, namely:*

1. *Mr...Director*
2. *Mr...Director*
3. *Mr ...Chief Financial Officer*
4. *Mr ...Company Secretary*

be and are hereby authorised to sign on behalf of the company, cheques or any other instruments/ documents drawn on or in relation to the said account and the said signatures shall be sufficient authority and shall bind the company in all transactions between the Bank and the company."

18. Printing of Share Certificates

Reference was made to Mr. …….'s note dated …….. on the subject, as

circulated.

The Chairman informed the Board that it would be necessary to print share certificates for allotment of shares to the subscribers to the Memorandum of Association as well as for any further issue of capital. A format of the share certificate in Form SH-1 in terms of Rule 5 of the Companies (Share Capital and Debentures) Rules, 2014 was placed on the table and the Board passed the following resolution:

*"**RESOLVED THAT** 1,00,000 equity share certificates of the company be printed, in the format placed before the Meeting and initialled by the Chairman for the purpose of identification, and that the certificates bear serial Nos. 1 to 1,00,000."*

*"**RESOLVED FURTHER THAT** the aforesaid blank share certificates be kept in safe custody with Mr……., Company Secretary."*

19. Issue of Share Certificates to the subscribers

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Chairman informed the Board that Mr……., Mr…….. and Mr. ……..., who are subscribers to the Memorandum of Association of the company, had each agreed to take and have taken_____ (_____) equity shares in the company. He further informed the Board that pursuant to Section 2(55) of the Companies Act, 2013, the names of the said subscribers to the Memorandum of Association have been entered in the Register of Members and that equity share certificates are required to be issued to them. The Board agreed with the same and passed the following resolution:

*"**RESOLVED THAT** Mr……., Mr……. and Mr. ……..., the subscribers to the Memorandum of Association of the company who had agreed to take and have taken_____ (_____) equity shares each of the company, be issued equity share certificates under the Common Seal of the company and that Mr……. and Mr……..., Directors of the company, and Mr……..., Company*

Secretary, be and are hereby authorised to sign the said certificates."

20. Statement of Preliminary Expenses and Preliminary Agreements

The Chairman placed before the Meeting a statement of expenses incurred in connection with the formation of the company and a copy of agreements entered into before the formation of the company. The Board approved the same and passed the following resolution:

*"**RESOLVED THAT** preliminary expenses of Rs……incurred in connection with the incorporation of the company and the preliminary agreements entered be and are hereby approved and confirmed as per the statement submitted by the Chairman."*

*"**RESOLVED FURTHER THAT** the preliminary expenses of Rs…….. incurred by Mr……..., Director of the company, be reimbursed to the said Mr……. out of the funds of the company."*

21. Next Board Meeting

It was decided to hold the next Board Meeting at……..... a.m./ p.m. on……. (Day), …….. (Date, Month and Year) and…….. (Venue).

22. Conclusion of the Meeting

There being no other business, the Meeting concluded with a vote of thanks to the Chair.

Place ……

Date ....……

Chairman

Entered on

ANNEXURE VIII

(Refer Paragraph 7.3.3)

MINUTES OF A SUBSEQUENT BOARD MEETING

MINUTES OF THE _____ MEETING OF THE BOARD OF DIRECTORS OF _____ LIMITED HELD ON _____ (DAY), _____ (DATE, MONTH AND YEAR), AT _____ (VENUE) FROM _____ (TIME OF COMMENCEMENT) TILL _____ (TIME OF CONCLUSION)

PRESENT

A.B.	*Chairman*
C.D.	*Directors*
E.F.	
G.H.	
I.J.	
K.L.	*Managing Director*

INATTENDANCE

X.	*.....*	*Secretary*

INVITEES

Y.	*.....*	*Chief Financial Officer*
Z.	*…….*	*Designation and Organisation*

1. ***Chairperson for the Meeting***

Mr/Ms…….was elected as the Chairperson for the Meeting.

2. ***Leave of absence***

Leave of absence from attending the Meeting was granted to Mr. M.N. and Mr. O.P.

who expressed their inability to attend the Meeting owing to their preoccupation.

3. ***Quorum***

The business before the Meeting was taken up after having established that the requisite quorum was present.

4. ***Minutes of the previous Board Meeting***

The Minutes of the ……. Meeting of the Board of Directors of the company held on ……., as circulated, were noted by the Board and signed by the Chairman.

5. ***Action Taken Report***

The following action taken was noted by the Board:

Item No.	***Item***	***Action Taken***
------	***----***	***----***

6. ***Register of Contracts***

The Register of Contracts with related parties and contracts and bodies etc. in which Directors are interested under Section 189 of the Companies Act, 2013 and the Rules thereunder was signed by all the Directors present.

7. ***Notices of Disclosure of Interest of Directors***

(a) The following Notices received from the Directors of the company, notifying their interest in other bodies corporate pursuant to the provisions of Section 184 of the Companies Act, 2013, were read and recorded:

Name of the Director	*Nature of Interest*	*Date of Notice*

Mr. C.D. Appointed as a Member of the (date, month, year)..... Committee of ..... Limited with effect from (date, month, year).

Mr. E.F. .....Resigned as a Director of (date, month, year) .....Limited with effect from ..... (date, month, year).

(b) A Notice dated ..... received from Mr. I.J. pursuant to the provisions of Section 170 of the Companies Act, 2013, disclosing his shareholding and the shareholding of Mrs. I.J. in the company was read and recorded.

8. ***Share Transfers***

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Share Transfer Register of the company was also placed before the Meeting.

The Board, after discussion, passed the following resolution:

*"**RESOLVED THAT** Share Transfers Nos ..... to ..... (both inclusive) consisting of ..... Equity shares of the company, be approved and the names of the transferees be entered in the Register of Members.*

***RESOLVED FURTHERTHAT** Mr. X, Secretary, be and is hereby authorised to take necessary action with regard to the aforesaid transfer of shares approved by the Board."*

9. ***Interim Dividend***

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The payment of Interim Dividend for the year ending ..... was considered on the basis of the unaudited Financial Statements of the company for the period from …….. to ……., as annexed to the note under reference. The Directors opined that there were adequate profits to permit payment of Interim

Dividend.

The Board, after discussion, passed the following resolution:

*"**RESOLVEDTHAT** an Interim Dividend of Rupee one per equity share absorbing Rs. 10,00,000, be paid on the ..... (date), out of the profits of the company for the year ending ....., on 10,00,000 equity shares, to those equity shareholders whose names appear in the Register of Members of the company on the ..... of ....., and that the transfer books and the Register of Members be closed from the ..... of ..... to the ..... of ....., both days inclusive, for the purpose of payment of such dividend."*

10. ***Opening of a Bank Account for payment of Interim Dividend***

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Board thereafter passed the following resolution for opening a bank account for the purpose of payment of Interim Dividend :-

*"**RESOLVEDTHAT** a Bank Account be opened in the name and style of '……Limited - Interim Dividend ……..' (Bank Account) with the ……. for payment of Interim Dividend for the financial year ……..*

***RESOLVED FURTHERTHAT** the said Bank be and is hereby authorised to honour cheques / bank advices etc. drawn, accepted or made on behalf of the company and to act on any instruction(s) so given concerning the said Account by any two of the following signatories:-*

……

***RESOLVED FURTHERTHAT** the said Bank be and is hereby authorised to change the name and style of the Bank Account to '……. Limited - Unpaid Interim Dividend ……' on and from …….*

***RESOLVED FURTHERTHAT** the authorised signatories be and are hereby*

authorised, in the manner stated above, to give instructions to the said Bank to close the Bank Account on disbursement of the Interim Dividend.

***RESOLVED FURTHERTHAT** the authorised signatories be and are hereby authorised, in the manner stated above, to sign and execute such documents, letters etc., as may be required by the said Bank."*

11. ***Constitution of Share Transfer Committee***

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Chairman informed the Board that with the increasing number of share transfers, it was impractical to wait for Board Meetings to approve such transfers. He suggested that a Committee be constituted for this purpose. The Board agreed with the same and passed the following resolution:

*"**RESOLVEDTHAT** a Committee of Directors named the 'Share Transfer Committee', consisting of Mr. C.D., Mr. G.H., and Mr. K.L. be and is hereby constituted to approve registration of transfer of shares received by the company and further to:*

1. *Approve and register transmission of shares.*
2. *sub-divide, consolidate and issue share certificates in relation thereto.*
3. *Issue share certificates in place of those which are damaged, or in which the space for endorsement has been exhausted, provided the original certificates are surrendered to the company.*
4. *Authorise affixation of the Common Seal of the company on such share certificates.*

***RESOLVED FURTHERTHAT** two Directors shall form the Quorum for a Meeting of the said Committee."*

12. ***Availing Credit facilities from ……. Bank***

Reference was made to Mr. …….'s note dated …….. on the subject, as circulated.

The Chairman informed the Board that the company had approached ..... Bank for a loan facility of Rs. 25,00,00,000/- (Rupees Twenty Five Crores only). The Bank had sanctioned the facility vide its sanction letter dated .....; a copy of the said letter was placed before the Board. After discussion, the Board passed the following resolution:

*"**RESOLVEDTHAT** approval of the Board be and is hereby accorded to avail Demand Loan facility of Rs. 25,00,00,000/- (Rupees Twenty Five Crores only) sanctioned by..... Bank, (address) as per the terms and conditions specified by the Bank vide its letter dated ..... placed before the Board and initialled by the Chairman for the purpose of identification.*

***RESOLVED FURTHERTHAT** Mr. A.B., Chairman of the company, be and is hereby authorised to execute the necessary documents in favour of .....Bank, to avail the aforesaid Demand Loan facility.*

***RESOLVED FURTHERTHAT** the Common Seal of the company be affixed on the said documents in the presence of any two Directors of the company and the Company Secretary, in terms of the Articles of Association of the company.*

***RESOLVED FURTHERTHAT** the Company Secretary be and is hereby authorised to file the necessary forms with the Registrar of Companies for the purpose of creation of charge, and also forward a copy of this resolution to..... Bank."*

13. ***Conclusion of the Meeting***

There being no other business, the Meeting concluded with a vote of thanks to the Chair.

Date..... *.....Chairman*

Place …….

Entered on

(to be initialled by the Company Secretary)

NOTE TO ANNEXURE VIII

WHILE PREPARING MINUTES OF THE MEETINGS, MENTION MUST BE MADE OF:

a) The names of the Directors present at the Meeting;

b) the names of Invitees and Company Secretary in attendance;

c) The names of the Directors who were absent (indicating separately the names of Directors who have sought leave of absence and who have not);

d) The fact that the Register of contracts with related parties and contracts and bodies etc. in which Directors are interested was placed before the Meeting and the said Register was signed by all the Directors present thereat;

e) That Notices given by Directors disclosing their Directorships in other companies as per Section 184 of the Act were read and noted;

f) that Notices given by Directors disclosing their shareholding in the company, holding / subsidiary / associate company, under Section 170 of the Act were read and noted;

g) the appointments of officers made at the Meeting;

h) the fact of unanimity of decisions of dis-interested Directors as contemplated by Sections 203 and 186;

i) that interested Director(s) did not take part in the discussion of or vote on the items in which he/they was/were interested; the interested Directors were also not present at the Meeting during discussions on such items.

GLOSSARY

- *Board –*

"Board of Directors" or "the Board", in relation to a company, means the collective body of the directors of the company. [Sub – section (10) of Section 2 of the Companies Act, 2013]

- *Body Corporate –*

  "body corporate" or "corporation" includes a company incorporated outside India, but does not include –

  (i) a co-operative society registered under any law relating to co-operative societies; and

  (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

[Sub – section (11) of Section 2 of the Companies Act, 2013]

- *Chief Executive Officer -*

  "Chief Executive Officer" means an officer of a company, who has been designated as such by it;

[Sub – section (18) of Section 2 of the Companies Act, 2013]

- *Company-*

"company" means a company incorporated under this Act or under any previous company law. [Sub – section (20) of Section 2 of the Companies Act, 2013]

- *Company Secretary –*

"Company Secretary" or "secretary" means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 who is appointed by a

company to perform the functions of a company secretary under this Act and includes additional Company Secretary, assistant Company Secretary, deputy Company Secretary or any other person having qualification to act as Company Secretary reporting to the Company Secretary of the company. [Sub – section (24) of Section 2 of the Companies Act, 2013]

- *Company secretary in practice-*

"Company Secretary in practice" means a Company Secretary who is deemed to be in practice under Sub-section (2) of Section 2 of the Company Secretaries Act, 1980. [Sub – section (25) of Section 2 of the Companies Act, 2013]

- *Debenture-*

  "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not; [Sub – section (30) of Section 2 of the Companies Act, 2013]

- *Director-*

"director" means a director appointed to the Board of a company. [Sub – section (34) of Section 2 of the Companies Act, 2013]

- *Director Identification Number (DIN) –*

"Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company;

Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:

Provided further that "Director Identification Number" (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 (6 of 2009) and the rules made thereunder. [Rule 2(1)(e) of Companies (Specification of definitions details) Rules, 2014]

- *Electronic record-*

"electronic record" means the electronic record as defined under clause (t) of Sub-Section (1) of Section 2 of the Information Technology Act, 2000. [Rule 2(1)(i) of Companies (Specification of definitions details) Rules, 2014]

- *Independent director-*

An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director –

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives –

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of –

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate

company or that holds two per cent or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed. [Sub-section (5) of Section 149 of the Companies Act, 2013]

- *Key Managerial Personnel-*

"key managerial personnel", in relation to a company, means –

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the Company Secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed. [Sub – section (51) of Section 2 of the Companies Act, 2013]

- *Listed Company-*

"listed company" means a company which has any of its securities listed on any recognized stock exchange. [Sub – section (52) of Section 2 of the Companies Act, 2013].

- *Manager-*

"Manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not. [Sub – section (53) of Section 2 of the Companies Act, 2013]

- *Managing Director-*

"Managing Director" means a director who, by virtue of the Articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called. [Sub – section (54) of Section 2 of the Companies Act, 2013]

- *Memorandum-*

"Memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act. [Sub – section (56) of Section 2 of the Companies Act, 2013]

- *Officer-*

"officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act. [Sub – section (59) of Section 2 of the Companies Act, 2013]

- *One Person Company-*

"One Person Company" means a company which has only one person as a member. [Sub – section (62) of Section 2 of the Companies Act, 2013].

- *Promoter-*

"promoter" means a person –

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity. [Sub – section (69) of Section 2 of the Companies Act, 2013]

- *Prospectus-*

"prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in Section 32 or shelf prospectus referred to in Section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate. [Sub – section (70) of Section 2 of the Companies Act, 2013]

- *Registrar or Registrar of Companies-*

"Registrar" or "Registrar of Companies" means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act. [Sub – section (75) of Section 2 of the Companies Act, 2013]

- *Related party-*

"Related Party", with reference to a company, means –

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager is a member or director;

(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is –

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed. [Sub – section (76) of Section 2 of the Companies Act, 2013]

- *Relative-*

''relative'', with reference to any person, means any one who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed. [Sub – section (77) of Section 2 of the Companies Act, 2013 and Rule 4 of Companies (Specification of definitions details) Rules, 2014.]

- *Secretarial Auditor*

"Secretarial Auditor" includes firm of company secretaries appointed to conduct secretarial audit

- *Securities –*

"securities" means the securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956. [Sub – section (81) of Section 2 of the Companies Act, 2013]

- *Section-*

"Section" means section of the Act.

- *Share-*

"share" means a share in the share capital of a company and includes stock. [Sub – section (84) of Section 2 of the Companies Act, 2013]

- *Small company -*

"small company" means a company, other than a public company, –

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to –

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

[Sub – section (85) of Section 2 of the Companies Act, 2013]