



**Private Circulation Only*

**Newsletter for September, 2017
By Amita Desai & Co.**



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Greetings and a warm welcome to our SeptemberMonth's edition of Newsletter!

We are pleased to share our Newsletter for the month of September 2017. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner.

We have tried to provide our analysis on revised Secretarial Standard-1 Article of the Month.

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,

Amita Desai & Team



MCA UPDATES:

A. CLARIFICATION FOR MEANING OF JOINT VENTURE FOR AVAILING EXEMPTION UNDER RULE 4 COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014 FROM THE APPOINTMENT OF INDEPENDENT DIRECTORS

MCA vide its notification dated July 5, 2017 had amended Rule 4 of the Companies (Appointment and Qualification of Directors) Rules 2014, relating to Independent Directors.

As per the aforesaid amended rule, an unlisted public Company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.

Now MCA vide its General Circular no. 9 dated September 05, 2017 has clarified that a **“Joint Venture” would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement.** Further the usage of the term shall be similar to the Accounting Standard.

The link of the above notification is as under:

http://www.mca.gov.in/Ministry/pdf/GeneralCircular_05092017.pdf

B. DELEGATIONS OF POWER BY CENTRAL GOVERNMENT TO REGIONAL DIRECTORS REGARDING SECTION 66 (2)

MCA vide its notification dated September 6, 2017 had issued notification whereby Central Government has delegated its powers and functions vested in it under sub-section (2) of section 66 of the Companies Act 2013, with respect to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmadabad, Hyderabad and Shillong.

As per Section 66 (2) of Companies Act, 2013 the National Company Law Tribunal (NCLT) shall give notice of every application made to it under sub-section (1) of section 66 for reduction of share capital to the Central Government and other regulatory authorities which may provide their representations or no objections for reduction. With the aforesaid notification now Central Government has delegated its power to Regional Directors.

The link of the above notification is as under:

http://www.mca.gov.in/Ministry/pdf/Delegationpowers_07092017.pdf

C. OBLIGATION TO COMPLY WITH INDIAN ACCOUNTING STANDARDS (IND AS) AND RULE 4 OF COMPANIES (INDIAN ACCOUNTING STANDARDS) RULES, 2015 BY PAYMENT BANKS, SMALL FINANCE BANKS WHICH ARE SUBSIDIARIES OF CORPORATES

MCA vide its notification dated March 30, 2016 had notified Companies (Indian Accounting Standards) rules, 2016 some stakeholder had sought clarifications from Ministry with regards to implementation of Ind AS wherein the holding Company has Payment Banks or Small Finance Banks as its subsidiaries.

The matter has been examined by the Ministry and it is clarified that the holding Company if it is covered by the corporate sector roadmap (phrase wise) for implementation of Ind AS shall follow the corporate sector roadmap and if the Company has got payment bank or small finance bank as its subsidiary then subsidiary company shall follow the banking sector road map prescribed vide RBI circular DBR.BP.BC.No.76/21.07.001/2015-16 dated February 11, 2016 on implementation of Ind AS read with Operating Guidelines for Payment Banks. However the payment Banks or Small Finance Banks shall provide the Ind AS financial data to its holding company for the purpose of consolidation.

The link of the above notification is as under:

http://www.mca.gov.in/Ministry/pdf/Notification_30032016.pdf

D. COMPANIES (ACCEPTANCE OF DEPOSITS) SECOND AMENDMENT RULES, 2017

MCA vide its notification dated September 19, 2017 has notified the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 wherein the existing proviso to Rule 3(3) relating to allowed limit of deposits applicable for a Specified IFSC Public Company and Private company is amended.

The term Specified IFSC Public Company is introduced in the proviso which means an unlisted public company which is licensed to operate by

- the Reserve Bank of India or ;
- the Securities and Exchange Board of India or;
- the Insurance Regulatory and Development Authority of India;

from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006.

The amendment also covers the exemption notification dated June 13, 2017 wherein **the limit of accepting deposit from members shall not apply to following classes of private companies, namely:**

- which is a **start-up Company**, for 5 years from the date of its incorporation;
OR
- which fulfils the following conditions, namely:
 - a) which **is not an associate or a subsidiary** of such other Company;
 - b) if the **borrowing of such Company from banks/Financial Institution/ any Body Corporate** is less than twice to its paid up share capital or ₹50 Cr rupees, whichever is lower; and
 - c) such a Company has **not defaulted in the repayment** of such borrowing subsisting at the time of accepting deposits under Section 73

Apart from the above exempted category Companies, Companies accepting deposits shall file the details of monies so accepted to the Registrar in **Form DPT-3**.

The link for the above notification is as follows:

<http://egazette.nic.in/WriteReadData/2017/179095.pdf>

E. RESTRICTION OF LAYERS OF A COMPANY

PROVISO TO THE DEFINITION OF SUBSIDIARY COMPANY

MCA vide its notification dated September 20, 2017 had appointed September 20, 2017 as the date on which **proviso to clause (87) of section 2 of the said Act shall come into force**. The relevant part of said clause (the proviso and explanation) read as under:

“Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

COMPANIES (RESTRICTION IN NUMBER OF LAYERS) RULES, 2017

MCA vide public notice dated June 28, 2017 had earlier issued notification proposing amendments to the Companies (Specification of Definitions Details) Rules, 2014 containing the restriction on layers of subsidiaries beyond prescribed number and had invited suggestions on the draft notification.

MCA vide notification dated September 20, 2017 has issued the Companies (Restriction on number of layers) Rules, 2017 wherein imposing a limit of 2 layers of subsidiaries which shall be effective from September 20, 2017.

On the notification becoming effective, no company shall have more than 2 layers of subsidiaries. However the layering concept shall be exempt in the following cases:

- A company may acquire a company incorporated outside India with subsidiaries beyond 2 layers as per the laws of such country;
- In computing the number of layers, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account

The following classes of **Companies are exempted** from the applicability of aforesaid rule:

- Banking companies
- Systematically Important NonBanking Financial Companies
- Insurance companies
- Government companies

Existing Company having more than 2 layers of subsidiaries as on September 20, 2017 is required to ensure the following:

- i) File a return in the form **CRL-1** with the Registrar of Companies **within 150 days** of September 20, 2017;
- ii) **Shall not have any additional layer of subsidiaries over and above the existing layers** on or after September 20, 2017; and
- iii) In case one or more layers of subsidiaries are reduced by such companies subsequent to the date of Notification, the number of layers permissible shall not be more than:
 - **Number of layers after such reduction; or**
 - **2 layer**

If any Company contravenes any provision of these rules:

- The Company and every officer of the Company who is in default shall be punishable with fine which may extend to Rs. 10,000/- and
- Where the default is a continuing one, further fine upto Rs.1000/- per day till the contravention continues.

The link for the above notification is as follows:

<http://egazette.nic.in/WriteReadData/2017/179105.pdf>

<http://egazette.nic.in/WriteReadData/2017/179104.pdf>

F. CLARIFICATION WITH RESPECT TO TIMELINE FOR FILING FORM DPT-3:

MCA vide notification September 19, 2017 has notified the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 wherein Form DPT-3 was prescribed to intimate the Registrar regarding the monies accepted via deposits.

However MCA on the basis of queries of Stakeholders regarding the timelines of applicability/ availability of new Form DPT-3 has clarified in their General Circular dated September 27, 2017 that the new form will be made available for E-filing after the month of November, 2017 and till the time new forms are made available the existing forms can be used.

The link for the above Circular is as follows:

http://www.mca.gov.in/Ministry/pdf/GeneralCircular11_27.09.2017.pdf

A. SEBI (INTERNATIONAL FINANCIAL SERVICES CENTRES) GUIDELINES, 2015 AMENDMENTS

SEBI vide its Circular dated August 31, 2017 has amended certain guidelines in SEBI (IFSC) Guidelines, 2015.

I. Credit rating requirement

Guideline 17

For debt securities listed on stock exchanges in IFSC, the credit rating shall be obtained either from a -

- a) credit rating agency registered with the Board or
- b) any other credit rating agency registered in a **Financial Action Task Force (FATF) member jurisdiction** (earlier it was any other credit rating agency registered in a foreign jurisdiction).

II. Agreement with depository or custodian

Guideline 18

An issuer of debt securities shall enter into an agreement with a depository or custodian, **registered in a Financial Action Task Force (FATF) member jurisdiction** (earlier it was eligible to operate in IFSC), for issue of the debt securities, for the purpose of holding safekeeping of such securities and also to facilitate transfer, redemption and other corporate actions in respect of such debt securities.

Necessary disclosures regarding appointment of depository or custodian shall be made in the information memorandum.

III. Reporting of Financial Statements

Guideline 19

The entities issuing and/or listing their debt securities in IFSC shall prepare their statement of accounts in accordance with **IFRS/US GAAP or accounting standards as applicable to them in their place of incorporation**. In case an entity does not prepare its statement of accounts in accordance with IFRS/US GAAP, a quantitative summary of significant differences between national accounting standards and IFRS shall be prepared by such entity and incorporated in the relevant disclosure documents to be filed with the exchange. (earlier it was the issuer of debt securities in IFSC shall prepare its statement of accounts in accordance with Companies Act, 2013 as applicable in IFSC)

The link of the above notification is as under:

http://www.sebi.gov.in/legal/circulars/aug-2017/securities-and-exchange-board-of-india-international-financial-services-centres-guidelines-2015-amendments_35776.html

B. ACQUISITION OF 'CONTROL' UNDER SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

SEBI vide Press Release dated September 08, 2017 has informed us that as per a discussion paper which was issued on March 14, 2016 for public comments on certain proposals contained therein.

The Ministry of Corporate Affairs and few stakeholders are of the opinion that the change in the definition of 'control' may reduce the regulatory scope and may be prone to abuse and that the current definition of 'control' may not be changed and it would be more appropriate to take decisions on a case to case basis.

It is felt that any change or dilution in the definition of control would have far reaching consequences since a similar definition of 'control' is used in the Companies Act, 2013 and other laws.

The link of the above notification is as under:

http://www.sebi.gov.in/media/press-releases/sep-2017/acquisition-of-control-under-the-sebi-substantial-acquisition-of-shares-and-takeovers-regulations-2011_35891.html

C. SCHEMES OF ARRANGEMENT BY LISTED ENTITIES AND (II) RELAXATION UNDER SUB-RULE (7) OF RULE 19 OF THE SECURITIES CONTRACTS (REGULATION) RULES, 1957

There has been a circular dated 21st September, 2017 regarding:-

- Scheme of Arrangement by Listed Entities and
- Relaxation under Sub-rule (7) of Rule 19 of the Securities Contracts (Regulation) Rules, 1957 which states Requirements with respect to the listing of securities on a recognized stock exchange.

It has been provided in the circular that at least twenty five per cent of the post-scheme paid up share capital of the transferee entity seeking relaxation from Rule 19(2)(b) of SCRR shall comprise of shares allotted to the public shareholders in the transferor entity.

Provided that an entity which does not comply with the above requirement may satisfy the following conditions:

- i) The entity has a valuation in excess of Rs.1600 crore as per the valuation report;
- ii) The value of post-scheme shareholding of public shareholders of the listed entity in the transferee entity is not less than Rs.400 crore;
- iii) At least ten percent of the post-scheme paid up share capital of the transferee entity comprises of shares allotted to the public shareholders of the transferor entity and
- iv) The entity shall increase the public shareholding to at least 25% within a period of one year from the date of listing of its securities and an undertaking to this effect is incorporated in the scheme.

The Stock Exchanges are advised to bring the provisions of this circular to the notice of Listed Entities and also to display the same on their websites.

The link of the above notification is as under:

http://www.sebi.gov.in/legal/circulars/sep-2017/schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_36014.html

D. DEFERMENT OF IMPLEMENTATION OF CIRCULAR DATED AUGUST 04, 2017

SEBI vide Press Release dated September 29, 2017 has decided to defer implementation of SEBI circular no. CIR/CFD/CMD/93/2017 dated August 04, 2017 relating to disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions, debt securities, etc until further notice.

The link of the above notification is as under:

http://www.sebi.gov.in/media/press-releases/sep-2017/deferment-of-implementation-of-circular_36143.html

RBI UPDATES:

A. Circular – Investment by Foreign Portfolio Investors (FPI) in Government Securities Medium Term Framework

RBI issued a Circular dated September 28, 2017 in respect of Schedule 5 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

RBI has increased limit for investment by FPI for the quarter October- December 2017 by:-

- a) INR 80 billion in Central Government Securities and
- b) INR 62 billion in State Development Loans.

The revised limits are allotted as under:-

Limits for FPI investment in Government Securities							
							₹ Billion
Quarter Ending	Government securities			State Development Loans			Aggregate
	General	Long Term	Total	General	Long Term	Total	
Existing Limits	1877	543	2420	285	46	331	2751
December 31, 2017	1897	603	2500	300	93	393	2893

The revised limits are effective from October, 03, 2017.

- The link of the above notification is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11132&Mode=0>

Article of the Month of September



REVISED SECRETARIAL STANDARD -1 ON BOARD MEETING

Institute of Companies Secretaries of India (“ICSI”) had issued Secretarial Standard on Board Meeting (“SS-1”) which was effective from **01st June, 2015**. The revised Secretarial Standard have been issued by ICSI which shall be effective from **01st October, 2017**. Such revised Secretarial Standard has been issued to align the SS-1 with MCA notifications and Amendment as well as with Companies Act, 2013 (“the Act”).

Following are the **Key Changes** made in revised Secretarial Standard:

1. SCOPE:

The scope of the secretarial standard has been amended. In existing SS-1, the One Person Company having only one Director has been exempted from compliances of SS-1. In the revised version of SS-1, **Section 8 company** has also been given exemption from compliances of SS-1. However, Section 8 Company needs to comply with the provision of the Act with respect to Board Meeting.

Analysis: The purpose of the aforesaid revision is to align the scope of SS-1 with MCA exemption notification dated **05th June, 2015** for Section 8 Company. As per the exemption notification the Section 8 Companies are exempted from the Compliance of Section 118. Also, clarification is provided that the other provisions of the Act relating the Board Meeting would be applicable to the Section 8 Company.

2. DEFINITIONS:

- (a) **Committee:** Means a committee of Directors **mandatorily required to be constituted** by the Board **under the Act**.

Analysis: Earlier SS-1 refers to Committee means a committee of Directors constituted by the Board, however as per revised SS-1 Committee means only Committee mandatorily required to be constituted under the Act, which are (i) Audit Committee (ii) Nomination & Remuneration Committee (iii) Stakeholder relationship Committee and (iv) CSR Committee

- (b) **“National Holiday” means** 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.

Analysis: In the definition of National Holiday for providing better interpretation and to be more specific the word **“includes”** is replaced with the word **“means”**.

- (c) **Secretarial Auditor:** Means Company Secretary (“CS”) in practice or a **firm of company Secretary(ies) in Practice** appointed in pursuance of the Act to conduct the secretarial audit of the company.

Analysis: Earlier Firm of CS was not covered which is corrected now.

3. CONVENING A MEETING AND NOTICE OF THE MEETING:

- a) **Day**, date, time, mode, place and serial number shall be mention when convening a Meeting.

Analysis: Earlier day of the Meeting was not required to be mentioned in the Notice convening Board Meeting now in the revised SS-1 states that day should be mentioned in the Notice of the Meeting.

- b) The restriction of holding Board Meeting on National Holiday has been removed.

Analysis: As per revised SS-1 Board Meeting can be held on any day including National Holiday.

- c) The Notice of the Meeting shall clearly mention the venue, whether registered office or otherwise, of the meeting and the place of the Meeting wherein recording of the proceedings of the Meeting shall be made if conducted through electronic mode.

Analysis: The standard is reworded as Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise whether facility of participation through Electronic Mode is provided or not. Further all the recordings of the proceedings of the Meeting would, if conducted through Electronic Mode, shall be deemed to be made at such place.

- d) Meeting adjourned for want of Quorum shall also not be held on a National Holiday is deleted.

Analysis: As the provision is already covered under 3.4.1 (2nd last para), to avoid duplication the provision for is deleted from 1.2.2 para2.

- e) Any Director may participate in a Meeting through electronic mode. However, the Director(s) may not be allowed to participate in a Meeting if the Act or any other law prohibits such participation through electronic mode in respect of any business item.

The Directors shall not participate through electronic mode in certain restricted items of business. Restricted items of business includes:

- a. Approval of annual financial statement
- b. Board’s report
- c. Prospectus
- d. Matters related to amalgamation, merger, demerger, acquisition and takeover.

Similarly, in Meetings of Audit Committee consideration of annual financial statement including consolidated financial statement, participation through electronic mode is not allowed.

Analysis: Earlier Directors was allowed to participate with express permission of the Chairman. Now, the power of the Chairman to permit participation through electronic mode in restricted items has been withdrawn.

- f) **Notice, Agenda and Notes on Agenda of the Board Meeting shall not be sent by Courier.**
- g) **If Meeting called at a shorter Notice, the Company may choose the expedient mode of sending the Notice, Agenda and Notes on Agenda.**
- h) The Company shall maintain the proof of sending Notice, Agenda and Notes on Agenda and its delivery for such period as decided by the Board or for minimum 3 years from the date of the Meeting.
- i) The Notice shall mention the option available to Directors to participate through electronic mode. However, the Director may intimate his intention to participate through electronic mode at the beginning of the Calendar Year which shall be valid for such Calendar Year.

Analysis: As per the revised SS-1 the notice shall state that option available to Director for participating in Board Meeting through electronic Mode. Further the Director may also intimate his intention to participate through electronic mode at the beginning of the Calendar Year which shall be valid for such Calendar Year.

- j) The draft of Resolution requiring approval of the Board shall be either set out in the note or placed at the Meeting. **However, any other decision taken at the Meeting may also be recorded in the Minutes in the form of Resolution**

Analysis: Any other decision taken at the Board Meeting which was not in agenda item and notes to agenda and was also not placed at the Meeting may also be recorded in the Minutes in the form of Resolution.

- k) If any item is not included in Agenda may be taken up for consideration with the permission of the Chairman and with the consent of majority of Directors present in the Meeting. Such decision shall be final only when it is **ratified with the consent of majority of Directors**, unless such item was approved with the majority of Directors.

Analysis: Earlier any item not mentioned in the Agenda shall be taken where there is at least one Independent Director, if any. Now consent of Independent Director is not required for any item not mentioned in the Agenda.

4. FREQUENCY AND QUORUM OF THE MEETING:

- a) The Company shall hold **at least 4 Board Meetings in a Calendar Year with a maximum gap between 2 Meetings not exceeding 120 days.**

Analysis: Earlier it was mandatory to hold Board Meeting in every Calendar quarter which is now removed, in alignment with the Act.

- b) **The Company shall hold its first Board Meeting within 30 days of its incorporation and subsequent Meeting shall be held with a maximum gap of 120 days.**

Analysis: Earlier “Board” word was used in the SS-1 however in the revised SS-1 “Company” is used, in alignment with the section 173 (1) of the Act for convening of first Board Meeting.

- c) The **Company Secretary, wherever appointed**, shall hold and convene Meeting of Independent Directors if desired by the Independent Directors.

Analysis: If CS is not appointed by Company than Meeting of Independent Directors may not be required to be held and convene by CS.

- d) A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested however in case of Private Company **the Director may participate in an interested item after giving disclosure of his interest.**

Analysis: The purpose of the aforesaid revision is to align the SS-1 with MCA exemption notification dated **05th June, 2015 for Private Company.**

- e) **A Director shall be treated as interested in a contract** or arrangement entered into or proposed to be entered into by the company:

- I. with anybody corporate, if such Director, along with other Directors holds more than 2 % 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
- II. with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.

Analysis: To align with Section 184(2) of the Act, amendment has been made. Director shall be not be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company with the Director himself or his relative as the provision is omitted.

- f) **In case of related party transaction, interested Director shall not be present either physically or through electronic mode during discussion and voting on such item.**

Analysis: In compliance with the Act the aforesaid para is inserted with respect to related party transactions.

5. ATTENDANCE REGISTER:

- a) **As per revised SS-1 Separate attendance registers are not required to be maintained for Board Meetings and Committee Meetings.**
- b) **If an attendance register is maintained in loose-leaf form, it shall be bound periodically, at least once in every 3 years.**

- c) The Directors participating through electronic mode shall be deemed to have signed their attendance register when their attendance is recorded and authenticated by the Company Secretary or by the Chairman or any other Director present at the Meeting, if so authorised by the Chairman in case there is no Company Secretary and shall also be recorded in the Minutes about their participation.

Analysis: Clarity is provided with respect to signing of attendance register by Director participating in the Board Meeting through electronic mode.

- d) The Director may inspect the attendance register of the Meeting held during his Directorship, even after he ceases to be a Director.

Analysis: To bring more clarity as to the Right of inspection of Attendance Register by a Director who ceased from Directorship in the Company.

- e) **The attendance register shall be preserved for at least 8 Financial Years from the date of last entry made therein.**

Analysis: For clarification purpose the words “from the date of last entry made therein” is inserted

- f) The attendance register shall be in the custody of CS and in case there is no CS, it shall be in the custody of any other person authorised by the Board.

6. LEAVE OF ABSENCE:

Leave of absence shall be communicated to the CS of Company or to the Chairman or any other person authorised to issue Notices of the Meeting.

Analysis: Earlier request for Leave of absence was to be received by CS or the Chairman. Now amendment provides relaxation to communicate leave of absence to any other person authorised by the Board also.

7. CHAIRMAN:

- a) If the Chairman of the Board is interested in any item of Business he shall entrust the conduct of the proceeding with respect to such item to any Director with the consent of majority of Directors and shall resume the chair after transacting such item. In case of Private Company, after giving disclosure of his interest, may chair and participate during such transaction.

Analysis: The purpose of the aforesaid revision is to align the SS-1 with MCA exemption notification dated 05th June, 2015 for Private Company.

- b) In case some of the Directors participate through Electronic Mode, the Chairman and the Company Secretary shall **take due and reasonable care** to safeguard the integrity of the Meeting by ensuring sufficient security and identification procedures **to record proceedings and safe keeping of the recordings.**

- c) **In case of related party transaction, the Chairman shall not be present whether physically or through electronic mode during discussion and voting on such item.**

Analysis: Earlier there was no clarity with respect to presence of interested Chairman and voting on related party transaction which is now being clarified.

- d) **The Chairman shall ensure that the required Quorum is present throughout the Meeting and shall discuss the summary of the decision taken at the end of each item.**

Analysis: The purpose of the aforesaid new insertion is to align the SS-1 with Rule 3(5) (b) and Rule 3 (11) (a) of Companies (Meetings of Board and its Powers) Rules, 2014.

8. RESOLUTION BY CIRCULATION:

- a) Before the Draft resolution is circulated, the Chairman or in his absence the Managing Director or in their absence any non- interested Director, shall decide whether approval of the Board shall be obtained by means of passing resolution by circulation.

Analysis: Earlier specifically whole time director was also allowed to decide whether approval of the Board shall be obtained by means of passing resolution by circulation which is now removed as the Director includes Whole Time Directors.

- b) Proof of sending and delivery of the draft of the Resolution and the necessary papers shall be maintained by the Company **for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.**

Analysis: Earlier period was not specified for maintaining the proof of sending and its delivery which is now specified.

- c) **If the draft resolution has been sent by courier or by registered post or by speed post, additional 2 days shall be added for the service of the draft resolution.**

Analysis: With the aforesaid insertion, it can be understood that draft resolution by circulation would be send by **courier or by registered post or by speed post.**

- d) **For the purpose of resolution by circulation also Director shall be treated as interested in a contract** or arrangement entered into or proposed to be entered into by the company:

- I. with anybody corporate, if such Director, along with other Directors holds more than 2 % 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
- II. with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.

Analysis: To align with Section 184(2) of the Act, amendment has been made. Director shall be not be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company **with the Director himself or his relative** as the provision for the same is **omitted**.

e) Resolution shall deemed to have been passed on the earlier of –

a. last date specified for giving their assent or dissent_ or

b. **majority of the Director** give their assent, provided the Directors who have not responded along with other the **Directors who have expressed their desire that such resolution shall be taken at the meeting, shall not be more than one third** of the total the Directors shall be effective from that date if no other date being specified in the resolution.

Analysis: In revised SS-1, more clarity is given as to when the resolution shall be deemed to have been passed.

9. **MINUTES OF MEETING:**

a) **A Company may maintain its Minutes in physical or in electronic form**

Analysis: Earlier Company was allowed to maintain its Minutes in physical or electronic form but with time stamp. **Now requirement of time stamp is removed considering the practical difficulties.**

b) **In respect of Meeting adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.**

Analysis: With respect to Minutes of adjourned meeting the **provision is covered under Para 7.5.1 of SS-1 hence deleted to avoid duplication.**

Further with regards to statement for adjournment of original meeting which shall be given by **Chairman or in his absence, by any other Director present at the Meeting is altered for clarification purpose.**

c) **All appointments made one level below Key Managerial Personnel shall not require to be noted in the Minutes.**

Analysis: The purpose of the aforesaid revision is to align the provision relating to taking note of appointment of **one level below Key Managerial Personnel** of SS-1 with MCA notification dated **18th March, 2015 where by Rule (8) (3) was omitted.**

d) **Para relating to Specific Contents of the Minutes is re-drafted for the purpose of better interpretation and to bring more clarity.**

e) Decision based on any unsigned document including reports or notes or presentation tabled which were not forming part of the Notes on Agenda and are referred to in the Minutes of the Meeting shall be identified by initialing on such documents by the Company Secretary or the Chairman.

Analysis: Only unsigned documents which were **presented at the Meeting and which were not part of the Notes on Agenda** shall be initialed.

- f) Any earlier resolution passed or decision is superseded or modified, Minutes shall contain **specific** reference and **also state that the Resolution is in supersession of all earlier resolution in this regard.**

Analysis: Clarification has been provided with respect to supersession of all earlier resolution and specific reference shall be made of the earlier resolution.

- g) Draft minutes shall be circulated to all the members of the Board or committee, **as on the date of the Meeting,** for their comments.

Analysis: For better understanding and to avoid confusion with respect circulation of draft minutes in case of resignation/ appointment of any director between the date of Meeting and circulation of meeting.

- h) With respect to circulation of draft minutes, if the draft Minutes are sent by speed post or by registered post or by courier, an **additional 2 days are not required** to be added as standard specifically provides for 15 days.

- i) **The Company shall maintain the proof of sending the draft Minutes and its delivery for such period as decided by the Board or for minimum 3 years from the date of the Meeting.**

- j) If any Directors gives his comments after the expiry of 7 days, the Chairman, **if so authorize by the Board,** shall have the discretion to consider the same.

Analysis: The words “**if so authorize by the Board**” are added to mean that Chairman should be specifically authorised by the Board to consider the comments on draft Minutes received from any Director after the expiry of 7 days.

- k) Alteration in Minutes shall be done by approval of the Board in the subsequent Meeting and **the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting.**

- l) Within 15 days, signed copy of Minutes certified by CS or if there is no CS by any Director if authorized by the Board, shall be circulated to all the Directors **as on the date of Meeting and appointed thereafter except to those Directors who have waived their right to receive the same, either in writing or recorded in the Minutes.**

Analysis: In revised SS-1, relaxation has been given from circulating the signed minutes to those directors who have waived their right to receive the same and clarity is provided with respect to Directors entitled to receive the final minutes.

- m) **Proof of sending and delivery of Minutes shall be maintained** by the Company for such period as decided by the Board which shall not be less than 3 years from the date of Meeting.

Analysis: The aforesaid para is newly inserted to maintain uniformity with respected to maintenance of proof of circulation final Minutes.

10. DISCLOSURES:

The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards

Analysis: Earlier the Annual Report and Annual Return of a company was required to 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, **now only statement with respect to compliance of Secretarial Standard is required to be included in Board Report.**

11. ANNEXURE A

Illustrative list of items of business which **shall not be passed by circulation** and shall be placed before the Board at its Meeting is altered as follows:

- a) In case of a public company, the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company

Analysis: **The aforesaid new transaction is inserted which shall transacted at the Meeting of Board.**

- b) Sale of subsidiaries

Analysis: Sale of subsidiaries is separately included for better interpretation.

- c) Purchase and Sale of material tangible/intangible assets which are not in the normal ordinary course of business.

Analysis: Purchase and Sale of **tangible/ intangible** assets which are in the **ordinary** course of business and are not material may be transacted through circular resolution.

12. ANNEXURE B

Illustrative list of items of business for the Agenda for the First Meeting of the Board of the company is altered as follows:

- a) To adopt the Common Seal of the company, **if any**

Analysis: The Common Seal is not mandatorily required to be included in First Meeting in line with the Companies (Amendment) Act, 2015

- b) To authorise Director(s) of the Company to file a declaration with the ROC for commencement of business.- Omitted

Analysis: The above point is deleted as per the Companies (Amendment) Act, 2015

- Link for the comparative analysis SS-1:
https://www.icsi.edu/webmodules/ComparativeAnalysis_Amendments_SS1.pdf
- Link for the revised SS-1 https://www.icsi.edu/webmodules/Final_SS-1.pdf

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