

CLARIFICATION / GUIDANCE ON APPLICABILITY OF SS1 AND SS2 IN THE CONTEXT OF COVID-19.

Introduction:

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

- (i) Circulars bearing No. 1/32/2013-CL-V dated 19th March 2020 and bearing No. 11/2020 dated 24th March 2020 relaxing the various requirement for holding of board meetings;
- (ii) Circulars bearing No. 14/2020 dated 8th April 2020 and bearing No. 17/2020 dated 13th April 2020 allowing companies to hold Extraordinary General Meetings (“**EGMs**”) through video conferencing (“**VC**”) or through other audio-visual means (“**OAVM**”) complemented with e-voting facility/simplified voting through registered emails, without requiring the shareholders to physically assemble at a common venue.

Any relaxation granted by the MCA from the compliance of provisions of Board and General Meetings under the Act will automatically and consequentially apply to Secretarial Standards as the case may be and the relaxed provisions of the Act will prevail. Pursuant to the relaxations granted by the MCA under the aforesaid circulars, a few provisions of Secretarial Standards on Meetings of the Board of Directors (“**SS-1**”) and Secretarial Standards on General Meetings (“**SS-2**”) also stand relaxed. In light thereof, the Institute of Company Secretaries of India (“**ICSI**”) on 3rd April 2020 and 15th April 2020 has issued clarifications/guidance on applicability of SS1 and SS2 (“**Clarifications**”).

Facets of the Clarifications issued:

I. Clarifications in respect of SS-1

Sr. No.	Subject Matter	Position before relaxations granted by the MCA	Present Position in light of relaxations given by the MCA
1.	Holding of Board meetings under Section 173(2) of the Act read with Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014.	Paragraph 1.2.3 of SS-1 states that directors are not allowed to participate in such Board meetings through electronic modes i.e. physical presence of the directors is mandatory for certain restricted items.	Such meetings may now be conducted through VC or OAVM by duly ensuring compliance of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.
2.	Mode of delivery of Notice for Board meetings.	Paragraph 1.3.1 of SS-1 provides that the notice of such meeting to the director will be as per his preferred mode of delivery.	The company may choose an expedient mode of delivery in sending notices, including through e-mail to the concerned directors. Wherever references have been made to physical mode of delivery it would be sufficient compliance if notice, agenda and minutes etc. of board meetings and committee meetings are served through email.
3.	Mandatory requirement of holding meetings of the Board of the companies within the prescribed interval	Paragraph 2.1 of SS-1 provides that the maximum interval between 2 (Two) consecutive meetings should not exceed 120 (One Hundred and Twenty) days.	The gap between 2 (Two) consecutive meetings of the Board may extend to 180 (One Hundred and Eighty) days till the next 2 (Two) quarters, instead of 120 (One Hundred and Twenty) days.
4.	Meetings of Committees	Paragraph 2.2 of SS-2 requires that the members of the committee shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or authority or as stipulated by the Board.	For the Financial Year 2019-2020, if the members of the committee of a company are not able to hold such a meeting, the same shall not be viewed as a violation.
5.	Meeting of Independent Directors	Paragraph 2.3 of SS-1 requires the Independent Directors of the company to hold at least 1 (One) meeting in a Financial Year	For the Financial Year 2019-2020, if the Independent Directors of a company are not able to hold such a meeting, the same shall not be viewed as a violation.

6.	Manner of handling unsigned documents referred in Board meetings, however not a part of the notes/agenda of the meeting.	Paragraph 7.3.3 of SS-1 provides that wherever the decision of the Board is based on any unsigned documents (including reports or notes or presentations tabled or presented at the meeting), which were not part of the notes/agenda and are referred to in the Minutes of the meeting, shall be identified by initialling of such documents either by the Company Secretary or the Chairman.	If such a situation arises, while conducting a Board meeting through VC or OAVM, then the Company Secretary or the Chairman shall identify such documents by initialling them once the situation normalises.
7.	Manner of recording minutes of the Board meeting.	Paragraph 7.6.4 of SS-1 states that within 15 (Fifteen) days of signing of the Minutes, a copy of the said 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 the Directors, as on the date of the meeting.	Since all the meetings are now taking place through VC or OAVM, the company may not be able to record/print the final minutes in the Minutes book maintain for this purpose at the registered office of the company and get the same signed physically by the chairman. In such cases the company should record and acknowledge/ sign the minutes digitally by the chairman and the same can be recorded and signed physically once the situation normalises.

II. Clarifications in respect of SS-2

Sr. No.	Subject Matter	Position before relaxations granted by the MCA	Present Position in light of relaxations given by the MCA
1.	Mode of delivery of Notice for General meetings.	Paragraph 1.2.2 of SS-2 states notice shall be sent to members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases: (a) if the company provides the facility of e-voting; or (b) if the item of business is being	In case of general meetings, instead of sending notices through physical mode of delivery, it would be sufficient compliance if such notices are sent only through e-mail to the members whose emails are registered with the company or with the depository participant/ depository subject to

		transacted through postal ballot.	<p>compliance of other requirements stated in the abovementioned MCA circulars.</p> <p><i>Please note the said relaxation will also be applicable for paragraphs 8.5 and 16.4.1 of SS-2, which deals with sending of notices in case of e-voting and postal ballot respectively.</i></p>
2.	Particulars of notice.	Paragraph 1.2.4 of SS-2 states that the notice shall specify the day, date, time and full address of the venue of the meeting including the route map.	The requirement of SS-2 to mention route map need not be stated in the notice of the meeting, if the meeting is convened in accordance with the aforesaid circulars of the MCA. However, the notice shall state the venue of the meeting and shall state further, that if the meeting is conducted through VC or OAVM, such meeting shall be deemed to be conducted at such venue.
3.	Inspection of documents.	As per paragraph 1.2.5 of SS-2, where reference is made to any document/agreement, the Memorandum of Association or Articles of Association, the relevant explanatory statement shall state that such documents are available for inspection in physical or in electronic form during specified business hours at the Registered Office of the company and copies thereof shall also be made available for inspection at the Head Office as well as Corporate Office of the company and also at the Meeting.	For the purposes of SS-2, it would suffice if such documents are available for inspection through e-mode and guidelines for such inspection are given in the notice.
4.	Documents to accompany the notice of the meeting.	Paragraph 1.2.10 of SS-2 states that notice shall be accompanied, by an attendance slip and a proxy form with clear instructions for filling, stamping, signing and/or depositing the proxy form.	Since proxy is not allowed, if a meeting is conducted through VC or OAVM, the requirement of attendance slip, and proxy form will not apply to meetings convened in accordance with the MCA Circular dated 8th April 2020.
5.	Quorum	Members need to be personally present at a	Since the meetings will be conducted through VC or

		Meeting to constitute the Quorum.	OAVM, the requirement of physical presence of the directors will not be required and it would be sufficient compliance if the meeting is held in accordance with the MCA Circular dated 8th April 2020.
6.	Appointment of Chairman	Paragraph 5.1 of SS-2 provides for the manner of appointment of the Chairman for general meetings.	In light of the circulars issued by the MCA in respect of holding EGMs through VC or OAVM, the manner of appointment of chairman for such meeting shall be in accordance with the circulars issued and not as laid down under paragraph 5.1 of SS-2.
7.	Postal Ballot Form	Paragraph 6.6.3 states that in case of postal ballot, the letter of appointment/ authorisation is to be submitted along with the physical ballot form.	For the purposes of SS-2, it would suffice if such appointment/authorisation letter and ballot form is submitted through e- mail.
8.	Manner of Voting	Paragraph 7.3 of SS-2 provides for voting by show of hands and paragraph 7.4 provides for voting by poll and the procedure to be followed.	In light of the circulars issued by the MCA in respect of holding EGMs through VC or OAVM, the manner of voting for such meeting shall be in accordance with the circulars issued and not as laid down in SS-2.
9.	Declaration of result	Paragraph 8.6.2 of SS-2 states that the result of the voting, with details of the number of votes cast for and against the resolution, invalid votes and whether the resolution has been carried or not should be displayed for at least 3 (Three) days on the notice board of the company at its Registered Office and its Head Office as well as Corporate Office, if any, if such office is situated elsewhere.	For the purposes of SS-2, it would suffice if the said result is declared and posted on the website of the company, if any. <i>Please note the said relaxation will also be applicable for Paragraph 9.5.2 and Paragraph 16.6.2 of SS-2, which deals with declaration of the result of poll and postal ballot respectively.</i>
10.	Particulars of notice in respect of results, where voting is through postal ballot.	Paragraph 16.4.3 of SS-2 provides that the notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced, the mode of declaration of such results	For the purposes of SS-2, where postal ballot is conducted in accordance with the circulars issued by the MCA, it will suffice if a link of the website where such result will be declared is given, instead of the venue.

		and the link of the website where such results will be displayed.	
11.	Postage Prepaid Reply Envelope in case of Postal Ballot	Paragraph 16.5.1 of SS-2 states that the postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.	No need to submit such postage prepaid reply envelope as all correspondences will be taken through emails.
12.	Minutes of the meeting	Paragraph 17.4.1 of SS-2 provides that the minutes of the meeting shall be entered in the Minutes book within 30 (Thirty) days from the date of conclusion of the meeting. Further, 17.5.1 of the SS-2 provides that such minutes must be signed by the Chairman/ Director within 30 (Thirty) days from the date of conclusion of the meeting.	Since all the meetings are now allowed to be held through VC or OAVM, the company may not be able to record/ print the final minutes in the Minutes book maintain for this purpose at the registered office of the company and get the same signed physically by the chairman. In such cases the company should record and acknowledge/ sign the minutes digitally by the chairman and the same can be recorded and signed physically once the situation normalises.

Conclusion:

In the current nationwide lockdown scenario and threat posed by COVID-19, the clarifications/ guidance provided by the ICSI will definitely ease the difficulties faced by the companies in conducting meetings (whether Board or otherwise) and further, help them to be compliant with the Act, the rules made thereunder and the Secretarial Standards.

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