

## **GUIDANCE NOTE ON MEETINGS OF THE BOARD OF DIRECTORS**

The "Secretarial Standard on Meetings of the Board of Directors" (**SS-1**), 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 SS-1 is mandatory in terms of sub-section (10) of Section 118 of the Companies Act, 2013 (Act). SS-1 applies to Meetings of the Board of Directors 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 and practical aspects in respect of the provisions contained in SS-1 to facilitate compliance thereof by the stakeholders.

### **BACKGROUND**

The Act empowers the Board 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 however, subject to the provisions contained in that behalf in the Act, other statutes, as well as the Memorandum and Articles of Association of the company or any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in 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 a Resolution passed at a General Meeting.

***Powers to be exercised at Board Meetings***

The Board of Directors of a company shall exercise certain powers on behalf of the company only by means of Resolutions passed at a Meeting of the Board and not by a Resolution passed by circulation. A list of powers of the Board to be exercised at the Board Meeting is given in ***Annexure IA***.

***Powers to be exercised by unanimous consent***

Certain powers of the Board shall be exercised by Resolutions passed at Meetings, with the consent of all the Directors present at the Meeting. A list of powers of the Board to be exercised by Unanimous Consent is given in ***Annexure IC***.

***Powers to be exercised subject to 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. A list of powers to be exercised subject to passing of Special Resolution at General Meeting is given in ***Annexure ID***.

***Powers to be exercised subject to other approvals***

There are several powers in the realm of day-to-day management of the company which the Board should exercise subject to the approval at the General Meeting or by the Central Government or by the National Company Law Tribunal (NCLT) / Company Law Board (CLB) or subject to the requirements of other Statutory Authorities 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 certain 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 powers is given in ***Annexure IF***.

Subject to the provisions of the Articles of the company, the Board may delegate any of its powers to Committees with or without such restrictions and limits as may be imposed. 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".

However, the Committee cannot further 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 Director(s) 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, etc.).

The authority to delegate any power to a Committee or any other person shall 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.

## **INTRODUCTION**

The fundamental principles with respect to Board Meetings are laid down in the Act. SS-1 facilitates compliance with these principles by endeavouring to provide further clarity where there is ambiguity and establishing benchmark standards to harmonise prevalent diverse practices. For the benefit of 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 the quantum and propensity for litigations or risk thereof is directly proportional to the degree of non-adherence to 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 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 in the company or in the 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 discharge such of the functions of the Company Secretary as given in SS-1.

SS-1 does not seek to substitute or supplant any existing laws. It strives to supplement such laws for promoting better corporate governance.

Therefore, in addition to SS-1, the requirements laid down under any other applicable laws, rules and regulations need to be complied with. However, in case of variations in any provision of the applicable laws and SS-1, the stricter provisions need to be complied with.

### **APPLICABILITY OF SS-1**

In terms of sub-section (10) of Section 118 of the Act, every company is required to observe SS-1.

SS-1 is thus applicable to the Meetings of the Board of all companies incorporated under the Act, including private and small companies, except One Person Companies (OPC) having only one Director on its Board and such other 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, and Companies governed by any Special Acts, 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 SS-1, then the provisions of such Special Acts 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 in compliance with requirements of a statute, 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 any 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***

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" 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 from the date of change or such date as the change to the Act specifies in this respect. 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 (MCA), Government of India, in exercise of its powers conferred by clauses (a) and (b) of sub-section (1) of Section 462 and in pursuance of sub-section (2) of the said Section of the Act has issued Notification Nos. G.S.R. 463(E), G.S.R. 464(E), G.S.R. 465(E), G.S.R. 466(E) dated 5<sup>th</sup> June, 2015 [hereinafter referred to as MCA Notification(s)] 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 incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956), respectively.

Accordingly, if due to the MCA Notification(s) referred to hereinabove or Notifications that may be issued in future, the provisions of SS-1 or any part thereof become inconsistent with any of the provisions of the Act, such 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 incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956) from the applicability of Section 118 of the Act, as a whole except that Minutes of Meetings of such a company may be recorded within thirty days of the conclusion of every Meeting where the Articles of Association provide for confirmation of Minutes by circulation. Consequently, SS-1 is not applicable to such companies. However, such companies may voluntarily comply with SS-1.

## SCOPE OF THE GUIDANCE NOTE

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

This Guidance Note elucidates, wherever necessary, the basis for setting a particular Standard, explains the procedural and practical aspects and gives illustrations. It also appropriately integrates the replies to various queries raised by the stakeholders on the particular Standard after the issuance of SS-1.

In this Guidance Note:

- Paragraph numbers (including sub-paragraph numbers and their further sub-divisions) refer to the corresponding paragraphs of SS-1
- Extracts from SS-1 have been set in Bold and Normal font as appearing in SS-1 respectively
- The Guidance text and analysis is set in italics.

Annexures, as appearing in SS-1, are bifurcated, renamed and/or 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 30th November, 2015 and the rules, circulars, clarifications etc. issued by the MCA until 30th November, 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 1<sup>st</sup> January and ends on 31<sup>st</sup> December.

“Chairman” means the Chairman of the Board or its Committee, as the case maybe, 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.

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 stated otherwise.*

*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. The Model Articles under the Act states 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 [Regulation 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.*

*As a best practice and a measure of good governance, the Director desirous of summoning a Meeting for any purpose should send his requisition in writing to convene such Meeting, alongwith 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*
- *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 clearly identifiable.*

*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, the Chairman/Managing Director/Whole-time Director, as the case may be, 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 in his absence, by any other person authorised by the Board in this behalf, he should forthwith place such requisition for the consideration 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 requisition to convene a Meeting is received by the Company Secretary or in his absence by any other person authorised by the Board in this behalf, from the Chairman himself or in his absence, from the Managing Director himself or in his absence, from the Whole-time Director himself, as the case may be, the Company Secretary or any other person authorised by the Board, should directly proceed to 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 behalf, should directly 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 stricter than what is stated in this paragraph of SS-1. In such cases, that provision in the Articles should be complied with.*

*For instance, 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 Articles should be complied with.*

***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 forthwith by the Company Secretary or the person authorised by the Board in this behalf, 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 or the person authorised by the Board in this behalf, if the Chairman/Managing Director/Whole-time Director, as the case may be, refuses to convene the Meeting as requisitioned, the Company Secretary or the person authorised by the Board in this behalf, should act in accordance with the provisions of the Articles in this regard.*

*In case the Articles are silent, the Company Secretary or the person authorised by the Board in this behalf 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 do 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 likely 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, 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. It would be advisable that the Director who proceeds to convene a Meeting on his own sends the Notice also to the Company Secretary, since it is duty of the Company Secretary to attend the Meeting.*

*It would be prudent for the Director(s) summoning / requisitioning the Meeting to attend such Meeting.*

*Where a Director proceeds to issue a Notice to call a Meeting for the same issues on the same date when a Meeting has already 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 (CLB)].*

*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 a Notice for a parallel Meeting on the same day, inform the Company Secretary or the person authorised by the Board in this behalf, and/or the Chairman/Managing Director/ Whole Time Director, as the case may be, 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 taking up of items not included in the Agenda in terms of paragraph 1.3.10 of SS-1 shall apply.*

**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”.*

*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 [Regulation 67(l) 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 should 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, this being the date from which SS-1 became effective.*

*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 should 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.*****Aspects to be considered while fixing the day / date***

*A Meeting may be convened on any 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 Board 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 would be needed and committing them to work on a National Holiday might result in contravention of relevant Central and State Labour and Employment Laws. Hence, keeping in line with the legislative intent, Meetings should not be convened on National Holidays.*

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

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

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

*This principle is equally applicable to Meetings adjourned otherwise than for want of Quorum.*

*Unless the Articles of the company provide otherwise, 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. 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 8th August 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. 15th August, at the same time and place. However, since 15th August is a National Holiday, the adjourned Meeting should be held on 16th August.*

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

***Aspects to be considered while fixing Time***

*A Meeting may be 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.*

*In case the Articles provide for a specific time at or during which the Meetings should be held, the Meetings should be held only at or during that time.*

***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. A Meeting may be held 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 Others (2008) 83 CLA 352 (CLB)].*

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 should 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 of the proceedings, the security and identification procedures and other requirements of law in this regard which enable participation through Electronic Mode and also enable safeguard 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, provided reasonable time gap is kept between the two Meetings.*

***A coincidental physical presence of Directors at one place***

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

**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 above mentioned 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. This 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).*

*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 or any other Mode which does not conform to the requirements of the relevant provisions of the Act 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 the absence of the Company Secretary, 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 on 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 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 may 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 is no prohibition on participation of the Company Secretary or the Auditors or the Invitees through Electronic Mode, except in case of restricted items.*

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 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 requisite 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. However, while allowing such participation, the Chairman should ensure the confidentiality of the matter.*

*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.*

*Explanation to this paragraph of SS-1 allows, at the discretion of the Chairman, 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, should neither be entitled to vote nor be counted for the purpose of Quorum in respect of such restricted items. Therefore, the concerned Director does not alter the result of the Resolution by merely participating in the discussion, 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.**

*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.*

*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 the 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(l)(g) of Companies (Specification of Definitions 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 (URL) for accessing such Notice.*

*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 Act read 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 or email ID.*

***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, 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, Notice of Meetings may be sent to him by facsimile or by e-mail or by any other electronic means. If the Director concerned has instructed the Notice to be sent to him by speed post or registered post or courier, the same should be sent to him by such specified means as well.*

***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 [Clause (f) of sub-section (5) 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 for a Meeting. This would ensure appropriate and timely delivery of Notice as well as aid in mitigating 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 Notice or proceedings / subject-matter covered directly by the Notice are pending, this proof should be maintained till complete disposal of the proceedings, including limitation period for any appeals.*

*The proof may be maintained in soft form.*

*If the Notice is sent by e-mail or any other electronic means, 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 of the Notice at the address of its delivery should be obtained as an acknowledgement,*

*which should then be maintained as proof of delivery of Notice. Companies may also maintain a record/register for this purpose where signature of the concerned Director or the recipient could be obtained.*

#### **Form of Notice**

*The Notice should preferably be sent on the letter-head of the company. Where it is not sent on the letter-head or where it is sent by e-mail or any other electronic means, there should be specified, 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 Identity 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 designated officer of the company 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 the Notice of a Meeting is not sent to all the Directors, Resolutions passed at such a Meeting are not valid [Parmeshwari Prasad Gupta v. Union of India 1973 AIR 2389].*

#### **Additional persons to whom Notice should be given**

*As provided in the fifth explanation to paragraph 1.3.7 of SS-1, where an Alternate Director has been appointed, Notice should also be given to the Original Director at the same time when Notice is given to such Alternate Director.*

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

#### **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.*

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

*Notice should be signed by the Company Secretary. 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.*

***Notice of Requisitioned Meeting***

*In the case of a requisitioned Meeting, it is advisable to mention in the Notice the fact that the Meeting is being convened on the requisition of a Director.*

**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, 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.

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

*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 [Clause 3(e) read with Clause 3(d) of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014].*

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.

*However, if the Director decides to participate by being present physically at a particular Meeting after giving the aforesaid confirmation, 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.

**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 on the dates for Meetings.*

*In all the above cases, Notice, Agenda and the Notes thereon 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 need not be excluded.*

**Illustration**

*If the Meeting is proposed to be held on 14th November, the last date for giving the Notice would be 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 not likely to be fully aware of the affairs of the company and may not be able to exercise the care and diligence that is expected of them.*

**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 speed post or by registered post or by courier is in line with Rule 35(6) of the Companies (Incorporation) Rules, 2014 which provides that in case of delivery of 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 facsimile or by e-mail or any other electronic means.*

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

#### ***Illustration***

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

- 1. In case Notice is being sent by facsimile or by e-mail or by any other electronic means to the Directors, Notice should be sent latest by 7th November.*
- 2. In case Notice is being sent by speed post or by registered post or by courier to the Directors, Notice should be sent latest by 5th November.*
- 3. In case any of the Director requests for Notice to be sent to him by courier and therefore, in addition to the Notice being sent by facsimile or by e-mail or by any other electronic means, the Notice is being sent to that particular Director or all Directors by courier, Notice should be sent latest by 7th November.*
- 4. In case any of the Director does not have an e-mail id and therefore the Notice is being sent to him solely by courier, Notice should be sent to all Directors latest by 5th November.*

#### ***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. The only exception to this is situations where the Articles provide for giving Notice at a shorter period of time in terms of paragraph 1.3.11 of SS-1.*

***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 a Meeting adjourned for want of Quorum or otherwise should be given to all Directors. This includes Directors who did not attend the Meeting on the originally convened date.*

*If the date of the Meeting adjourned otherwise than for want of Quorum is decided at the Meeting itself, the Notice should be given forthwith. If the date of the Meeting so adjourned is not decided at the Meeting, the Notice should be given not less than seven days before such adjourned Meeting. Thus, in case the date of the Meeting adjourned otherwise than for want of Quorum 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 explanation to this paragraph of SS-1.*

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

*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 Portuguese Consolidated Copper Mines Ltd (1889) 42 Ch D 160].*

**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 explain each item of the Agenda in an endeavour to provide an understanding of points for discussion by the Board. 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.*

*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. Such advance information through the Agenda enables 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. This would establish 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 on whether the Agenda and the detailed Notes on Agenda have been sent at least seven days in advance to all Directors, paragraph 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.*

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

*Although there is no prohibition on sending the Agenda and Notes on Agenda separately, they should be sent at least seven days prior to the Meeting, unless exempted 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 Notes thereon need not be given at least seven days before the Meeting.*

#### ***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. The only exception to this is where the Articles provide for sending Agenda and Notes thereon at a shorter period of time in terms of paragraph 1.3.11 of SS-1.*

#### ***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 are sent by e-mail or any other electronic means to the Directors and additionally, they are 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 shall be mutatis-mutandis applicable.*

#### ***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 and 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.<sup>1</sup>

*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.

*Consent to circulate Agenda items which are in the nature of UPSI at a shorter Notice from the new Directors appointed during a financial year may be obtained on an individual basis.*

*If this consent or dissent, obtained from the new Directors affect the consent taken earlier from majority of directors, fresh consent should be taken from the Board.*

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<sup>1</sup>. Definition under SEBI (Prohibition of Insider Trading) Regulations, 2015

***Illustration***

*Assume 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 1 new Director is appointed, consent from the new Director to circulate Agenda items which are in the nature of UPSI at a shorter Notice may be obtained individually.*

*If this Director gives his consent, no fresh consent from the Board would be needed. In case, this Director dissents or does not give his consent, fresh consent should be taken from the Board.*

*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.*

*Similarly, if an existing Director who has accorded consent to circulate Agenda items which are in the nature of UPSI at a shorter Notice ceases to be a Director during a financial year, fresh consent shall be needed from the Board, only if it affects the consent taken earlier from majority of directors.*

***Illustration***

*Assume 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.*

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.

***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, without obtaining any consent. 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. Subsequent ratification of the decision on such item by the Independent Directors or majority of Directors of the company would not be needed in this case.*

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

***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.*

**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, based on disclosures made by the Director earlier.*

***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 Agenda requiring 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 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.

*An illustrative list of such items is given in **Annexure I**. This list is bifurcated into: 1) Items which are required to be approved by the Board at its Meeting as prescribed under the Act and 2) Items of business to be placed before the Board at its Meeting illustrated in SS-1 in addition to those prescribed under the Act is given in **Annexure IA and IB** respectively.*

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

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

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

***Drafting an Agenda***

*The practical aspects of drafting 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.*

*If during the course of a Board Meeting, any Agenda item containing a proposal is deferred for consideration to a subsequent Meeting and 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 would 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. Similarly, if 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.*

*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 13<sup>th</sup> 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 1<sup>st</sup> Meeting will be numbered as item number 1-8 and the items in the second Meeting would be numbered 9-18 and so on.....*

*A company may choose to count and give continuous numbering either from its incorporation or from Meetings held on or after 1<sup>st</sup> July, 2015, this being the date from which SS-1 became effective.*

**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.*

*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. In such*

*cases, instead of convening another Meeting, the business could be taken up for consideration at the Meeting which has already been convened. For this, the Chairman would need to permit the same and a majority of the Directors including an Independent Director, if any, present in the Meeting would also need to consent.*

*Such Agenda item and Notes thereon may either be circulated to the Directors before the Meeting or tabled at the Meeting, but can only be taken up with the requisite consent as stipulated in this paragraph of SS-1.*

*However, the Act specifically provides for prior Notice in the case of some items of business. For instance, Specific Notice has to be given to all Directors then in India 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 Notice is given in terms of the Act and should not be taken up under this paragraph of SS-1.*

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.*

#### ***Illustration***

*Company XYZ Ltd. has 9 Directors out of which 3 are Independent Directors. An item not included in the Agenda is proposed to be taken up at a Meeting. Following are the scenarios and their effect:*

1. *Consent is obtained from majority of Directors present in the Meeting, which includes an Independent Director.*

*Effect: No ratification necessary. The decision taken would be carried through.*

2. *Consent is obtained from majority of Directors present in the Meeting. However, none of the Independent Directors present at the Meeting consents to taking up such item at the Meeting.*

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

3a. *No Independent Director is present at such Meeting.*

*Effect: The decision taken in respect of such item would be final only after ratification thereof by at least one Independent Director.*

b. *In the above case, all the Independent Directors abstain from ratifying or disapprove the decision taken by the majority at the Meeting in respect of such item.*

*Effect: The decision fails.*

c. *In the above case, one Independent Director approves the decision but the others disapprove the decision taken by the majority at the Meeting.*

*Effect: The decision taken would be carried through.*

*In case the company does not have an Independent Director, ratification of the decisions taken at 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 none are Independent Directors. 6 Directors are present at the Meeting. An item not included in the Agenda is proposed to be taken up at a Meeting. Following are the scenarios and their effect:*

1. *Consent for taking up such item is obtained from only 3 Directors present in the Meeting.*

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

2. *Consent for taking up such item is obtained from 4 Directors present at the Meeting, who also approve the item at the Meeting.*

*Effect: The decision taken in respect of such item would be final only after ratification thereof by at least 1 Director other than those present at the Meeting.*

3. *Consent for taking up such item is obtained from 5 Directors present at the Meeting, who also approve the item at the Meeting.*

*Effect: No ratification necessary. The decision taken would be carried through.*

*Additional items 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 this 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 this paragraph of SS-1.*

*The manner of sending the 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. As a*

*good governance practice, the reasons for convening the Meeting at shorter Notice may also be stated in the Notice.*

***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 atleast one Independent Director, if any, such decisions of the Board in respect of such items fail. The company should, therefore not implement decisions taken at such Board Meeting until they are ratified by atleast one Independent Director, if any.*

***Illustration***

*Company XYZ Ltd. has 9 Directors out of which 3 are Independent Directors. A Meeting is convened at a shorter Notice. Following are the scenarios and their effect:*

1. *One Independent Director is present at the Meeting.*

*Effect: No ratification necessary. Decision taken would be carried through.*

- 2.a. *No Independent Director is present at such Meeting.*

*Effect: The decisions taken at the Meeting and Minutes of the Meeting would be final only after ratification thereof by at least one Independent Director.*

- b. *In the above case, subsequently all Independent Directors abstain from ratifying the Minutes or disapprove the decision taken by the majority at the Meeting.*

*Effect: The decision fails.*

- c. *In the above case, subsequently one Independent Director approves the decision but the others disapprove the decision taken by the majority at the Meeting.*

*Effect: The decision taken would be carried through.*

*In case the company does not have an Independent Director, ratification of the decisions taken at 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 none are Independent Directors. A Meeting is convened at a shorter Notice. 6 Directors are present at the Meeting. Following are the scenarios and their effect:*

1. *5 Directors out of 6 Directors who are present at the Meeting approve the item(s) at the Meeting.*

*Effect: No ratification necessary. The decision taken would be carried through.*

- 2.a. *4 Directors out of 6 Directors who are present at the Meeting approve the item(s) at the Meeting.*

*Effect: The decisions taken at the Meeting and the Minutes thereof would be final only after ratification thereof by at least 1 Director other than those present at the Meeting.*

- b. *In the above case, subsequently, such number of Directors forming majority of Directors of the company fail to ratify the Minutes or disapprove the decisions taken by the majority at the Meeting.*

*Effect: The decision fails.*

**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 requirement of "holding meetings in every calendar quarter" has been introduced to instil 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 requirement 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, therefore 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 June, the first Meeting should be held within thirty days, say, it is held on 10th July. There is no need to hold a Meeting again in the July-September Quarter. It would be sufficient if one Board Meeting is held 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, a calendar of dates for Meetings to be held in a year in advance.*

***Provisions for a company incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956)***

*In case of a company incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956), this paragraph of SS-1 is applicable only to the extent that atleast one Meeting of the Board should be held within every six calendar months (MCA Notification No. G.S.R. 466(E) dated June 5, 2015).*

***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.

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

***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 but on or after 30th August 2015. If it holds the next Meeting on 30th July, 2015, it should hold at least one more Meeting on or after 30th August, 2015 but before 31st December, 2015.*

***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 would 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 accordingly.*

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 the 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 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 one hundred and twenty days should elapse between two Meetings [SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].*

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

## **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 to 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.

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

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

*In order to seek some clarification, opinion, views, etc., the Independent Directors may invite the Company Secretary or the Managing Director or any other officer of the company or a Company Secretary in Practice or any other expert to attend such a Meeting or a part thereof. If so invited, 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 attend such Meeting or 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, Quorum should 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 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.*

#### **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. he 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 Director should not be present during discussion and voting in respect of an item in which he is interested.*

***Exemptions available to private companies***

*In case of a private company, MCA Notification dated 5<sup>th</sup> June, 2015 states that sub-section (2) of Section 184 of the Act shall apply with the exception that the Interested Director may participate at such Board Meeting after disclosure of 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 in turn provides for disclosure of interest by an Interested Director and prohibits his participation in an item in which he is interested. [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015]*

*Thus, for the purpose of this paragraph of SS-1, in case of a private company, an Interested Director should be reckoned for Quorum in respect of an item in which he is interested after he has disclosed his interest. Further he can be present and participate, whether physically or through Electronic Mode, during the discussions on such item and is also entitled to vote thereon after such disclosure.*

***Definition of 'interest'***

For this purpose, a Director shall be treated as interested 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 are included under this clause. For example, 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 should be treated as interested in 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.*

*Mere common directorships are excluded from the purview of interest.*

**Illustration**

*In the above illustration, suppose Mr. A is also a Director (not a promoter) of PQR Ltd., but he does not hold any shares in PQR Ltd.*

*In a contract between XYZ Ltd. and PQR Ltd., Mr. A should not be treated as interested for that particular item in the Board Meeting of XYZ Ltd. since 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 being interested. The Alternate Director should 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 should, 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 should 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 on 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***

*An item where all or all but one of the Directors are interested cannot be transacted at a Board Meeting and in such a case the proper course of action is to have the matter decided at the General Meeting.*

*In the General Meeting, the voting entitlement of the Directors who are also members of the company should be determined in terms of the provisions related to transactions with Related Parties under Section 188 of the Act and the relevant provisions of the Secretarial Standard on General Meetings (SS-2) and not under this paragraph of SS-1.*

***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. 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, then he should not be counted for Quorum for such item of business [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].*

*For this purpose, Interested Directors participating through Electronic Mode should not be counted for Quorum as explained in paragraph 3.2 of SS-1.*

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.

### 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 incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956) shall be either eight members (of the Board) or one-fourth of the total strength of the Board, whichever is less, provided that the Quorum shall not be less than two Directors (In line with MCA Notification No. G.S.R. 466(E) dated June 5, 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.

#### **Illustration**

*If, out of a total strength of fifteen Directors as fixed by the company in General Meeting, four places are vacant, then the actual strength of the Board for the purpose of computing the Quorum should be eleven and not fifteen.*

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

#### **Illustration**

*In the above illustration, the Quorum should be 4 (i.e.  $1/3$  of 11= 3.67 and fraction rounded off to next one).*

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

*Any Invitee may 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 at the Meeting 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 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.

*This shall not apply to a private company (in line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015).*

*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.*

#### ***Stricter provisions should be followed***

*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.

*For example, the Articles may provide for the presence of the Nominee Director at all Meetings or may prescribe a Quorum of two-third of the total strength of the Board for Meetings of the Board. Such provisions should be adhered to.*

*A company may provide by its Articles 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)].*

#### ***Consequences of Meeting where Quorum is not present***

*If Quorum is not present within half-an-hour from the time appointed for the Meeting, or such further time as the Chairman may deem fit, the Meeting shall stand adjourned.*

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 Quorum is not present, the Meeting shall stand cancelled and a fresh Meeting should then be convened in order to transact the business within the time frame prescribed under paragraph 2.1.*

**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, it is necessary to have the minimum number of Directors as prescribed in the Articles for any business to be transacted by the Board at its Meeting. 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 (CLB)].*

### **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.**

*This paragraph of 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 any other law or the Articles or the Board while constituting the Committee or thereafter, may stipulate the Quorum for the Meetings of the Committee. Such stipulations should 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 either be two members or one third of the members of the Audit Committee whichever is greater, with at least two Independent Directors [SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015].*

*In case neither the Act nor any other law nor the Articles nor the Board has stipulated any Quorum for Meetings of a Committee, Quorum for the Meetings of such Committee should be all the members of the Committee.*

*Where there is no specific provision, it is incumbent that the whole of the Committee meets [Raj Kumar Gupta v. State of Bihar and Ors. AIR 1990 Pat 32]. In such a case, the Meetings of the Committee for the consideration of restricted items require presence of all its members physically and not through Electronic Mode. It is advisable that in the absence of law, the Articles or the Board should specify the Quorum, being not less than two for Meetings of the 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 not entitled 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 such 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 shall sign his name in a book to be kept for that purpose" [Regulation 65 of Table F of Schedule I to the Act].*

*In the absence of copy of the Notice convening the Board Meeting and the log book meant to record signatures of Directors attending the Meeting of the Board of Directors and any other proof to show that a Meeting was held, a Meeting of the Board of Directors cannot be accepted to be held [Dale & Carrington Investment (P) Ltd. v. P. K. Prathapan and Others (2004) (7) SC].*

*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 Meeting held was sham and to fabricate the petitioners [Navin R. Shah and Ors. v. Simshah Estates and Trading Co. P. Ltd. and Others (2005) 128 Comp. Cas. 55 (CLB)].*

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

*Here, a company may choose either count and give continuous numbering to the attendance register from its incorporation or from the Meetings held on or after 1st July, 2015, this being the date from which SS-1 became effective.*

#### ***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 at regular intervals.*

**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.**

*This paragraph of SS-1 lays down the contents of the attendance register. Attendance register should, inter-alia, contain the names and signatures of the Directors present, of the Company Secretary, who is in attendance and also of persons attending the Meeting by invitation.*

*The attendance register 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. This would enable recording of the same in the Minutes as required in paragraph 7.2.1.2 of SS-1.*

*This paragraph of SS-1 also clearly classifies the persons "present", "in attendance" and "Invitees" for the purpose of the Meeting.*

*It is duty of the Company Secretary to facilitate the convening and attend the Meetings of the Board and its Committees [Rule 10(2) of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]. The Act does not mandate as a part of his duty, any KMP other than the Company Secretary, to facilitate the convening and attend the Meetings of the Board or its Committees.*

*Thus, the main participants of the Meeting i.e. Directors should be treated as "present"; the Company Secretary, who is the person responsible for facilitating, convening the Meeting and attend the same as a part of his duty should be treated as "in attendance" and any other person other than the above two categories, including KMPs, should be treated as "Invitees" at the Meeting, for all purposes.*

*In case an Institution has appointed a Nominee Director on the Board of the company and such Nominee Director is unable to attend the Meeting, another person may be sent by the Institution to attend the specific Meeting. At times, foreign collaborators of the company may be invited to attend Meetings. All such persons attending the Meeting by invitation should be treated 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.*

*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 should then be treated as an "Invitee" at 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.**

*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 register.*

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

***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) Rules, 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 (b) above. [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.

*Corollary has been drawn from the provisions in the Act with respect to 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.

*Approval of the Board is not required for this purpose, since carrying the attendance register, on a temporary basis, to the place of Meeting of the Board or Committee does not amount to "Maintenance at a place other than the Registered Office of the company".*

**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 would enable the Statutory Auditors or the Secretarial Auditors or the Company Secretary in Practice to discharge their professional duties fairly.*

*Officers of the Registrar of Companies, or the Government, or the 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, should 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.**

*In terms of paragraph 4.1.3 of SS-1, the attendance of any of the Director participating through Electronic Mode in a Meeting is required to be recorded by the Chairman or the Company Secretary in the attendance register. Such recording amounts to authentication of such entry. Similarly, the attendance of Directors attending the Meeting physically is also required to be authenticated by the Company Secretary or the Chairman in the attendance register.*

*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. Authentication also becomes essential considering the significance of the attendance register as conclusive proof before the Courts/Tribunals, as also for audit and other purposes.*

**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 debenture-holders or any other security holders 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 financial 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 the recording therein may arise at anytime.*

*All such records destroyed after 1st July, 2015 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 SS-1.*

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

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.

*Custody, for the purpose of this paragraph of SS-1, should not be construed to mean physical custody. What this particular paragraph of SS-1 signifies is the responsibility cast upon the Company Secretary or any Director authorised by the Board for this purpose, as the case may be, similar to that with respect to the custody of the Minutes Book.*

*The Company Secretary or any Director authorised by the Board for this purpose, 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.*

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

**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 should commence from 25th June, 2014. Thus, if he does not attend any of the Meetings held upto end June 2015, he shall vacate the office.*

*The requirement of this paragraph of SS-1 with respect to vacation of office is only for attendance of a Director in the Board Meeting and not for the manner of attending the Board Meeting. Therefore, Board Meeting attended by a Director, whether physically or through Electronic Mode, shall be sufficient attendance for the purpose of this paragraph.*

*A Board Resolution need not be passed to show that office of Director has been vacated by a particular Director. Vacation of office is automatic as soon as a Director is found to have incurred disability as contemplated by clause (g) of sub-section (1) of Section 283 of the Companies Act, 1956 (corresponding to 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 at its next Meeting.*

***Proxies cannot be appointed to attend Board Meetings***

*The Act does not contain any 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.*

*The procedure for appointment and 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 [Regulation 70 (i) of Table F of Schedule I to the Act].*

*While appointing such person, the Board may stipulate a time period for the person to continue as Chairman of the Board. At the end of such period, the Board may 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 absence of such provision 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 should 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.*

*(First Proviso to sub-section (1) of Section 203 of the Act)*

*However, the above restrictions shall 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 (Second 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 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 [Regulation 70 of Table F of Schedule I to the Act].*

#### ***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 inter alia 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 items of business generally are transacted in the order in which the items appear in 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.*

***Interested Chairman should vacate the Chair***

If the Chairman is interested in any item of business, he shall, with the consent of the members 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 an Interested Director from participating 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 as in paragraph 3.2 above shall be applicable mutatis-mutandis to the Interested Chairman.*

*The aforesaid restriction relating to vacation of Chair in case the Chairman is interested in any item of business shall not apply to private companies (In line with MCA Notification No. G.S.R. 464(E) dated June 5, 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 communication 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;
- (e) ensure that no person other than the concerned Director is attending or has 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.

***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 the 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 is different from the original vote of the Chairman as a Director and it can be exercised only after the process of voting has been completed.*

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

*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 in the 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 may have a second or casting vote at his discretion.*

*The discretion whether or not to use his second or casting vote vests entirely with the Chairman.*

### **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 may appoint a Chairman for a Committee at the time of the constitution of the Committee.*

*If the Board has not 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 (Regulation 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, Quorum should be present, there should be a Chairman, issues should be decided by simple majority and, in case of equality of votes, the Chairman should 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 passing of a Resolution by circulation. All items of business may be considered for passing by circulation, except for certain items which are specified as not to be passed 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.**

*This paragraph lays down as to who shall decide whether or not the approval of the Board for a particular business be obtained by means of a Resolution by circulation. It is advisable that such decision be indicated in the note being sent alongwith 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 should be obtained by means of a Resolution by circulation.*

*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.**

*"Total number of Directors" above means the "total strength of the Board" which does 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***

*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 1/3<sup>rd</sup> stipulation as above, the total number of Directors should be taken as 9 and not 6 (9-3 Interested Directors). Thus, if 3 Directors (1/3<sup>rd</sup> of 9), (which number may include Interested Directors), require the Resolution under circulation to be decided at a Meeting, the Resolution by circulation should not be proceeded with.*

*However, this does not mean that Interested Directors shall 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.*

*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 only.*

**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 shall mutatis-mutandis be applicable for sending the 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 would be advisable to also 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. As such, it is necessary to put in the note being circulated with the proposed Resolution, the 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.

*A single note containing more than one Resolution may be circulated but the note should enable the signifying of the decision by a Director on 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, 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.*

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

*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.**

*For a Resolution under circulation 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 by at least 4 Directors (out of the 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 shall not be considered as passed until the stipulated last date has expired, or, if ahead of the said date, 2 more Directors have also signified their assent/dissent so that the possibility of 1/3<sup>d</sup> asking for a physical Meeting is no longer possible.*

### ***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 shall be mutatis-mutandis applicable.*

*The aforesaid restriction on the entitlement to vote of an Interested Director on Resolutions passed by circulation shall not apply to a private company (In line with MCA Notification No. G.S.R. 464(E) dated June 5, 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 should be distinct and enable ease of reference or cross-reference.*

#### ***Illustrations***

- (i) *Serially numbering on Calendar Year basis:*

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

- (ii) *Serially numbering on financial year basis:*

*"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 so on...*

*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.*

*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 hereafter)*

#### ***Effective date of the Resolution***

*Effective date of the Resolution passed by circulation shall 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.

*A scanned copy of the signed response may also be sent.*

*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.*

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 before voting on the Resolution (In line with MCA Exemption Notification dated 5<sup>th</sup> June, 2015).*

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.

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.

***Illustrations***

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

***Scenario I:***

- *3 Directors sent their assent to the proposed circular Resolution on 2nd May.*
- *1 Director sent a request on 4th May for convening a Meeting.*
- *2 Directors sent their assent for the Resolution on 5th May.*
- *1 Director sent his assent on 6th May*
- *1 Director sent his dissent on 6th May*
- *1 Director sent his assent on 7th May.*

***Effect:***

*In this case, the Resolution would be carried through since 7 Directors (forming majority) have assented. The date of passing shall be deemed to be 6th May since the eventuality of 1/3rd of the Directors requesting for a Meeting becomes improbable on 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 would be passed since 6 Directors (forming majority) have approved. The date for passing the Resolution shall be deemed to be 5th May since the eventuality of at least 3 Directors (i.e. 1/3rd of the Directors) requesting for a Meeting becomes improbable on that day.*

***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 should 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 would be carried through. The date of passing of Resolution shall be deemed to be 7th May since the eventuality of at least 3 Directors (i.e. 1/3rd of the Directors) requesting for a Meeting becomes improbable on this day and also assent of the 5th Director is received on the said day.*

**Scenario IV:**

- 5 Directors sent their assent on 2nd May.
- 1 Director asked to decide the matter at the Meeting on 3rd May.
- 1 Director sent his assent on 5th May.
- 1 Director asked to decide the matter at the Meeting on 6th May.
- 1 Director asked to decide the matter at the Meeting on 8th May.

**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 the 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 the above case, sent his request on 9th May i.e. after the last date for response.*

**Effect:**

*The same should not be considered and the Resolution would be passed, since 6 Directors (forming majority) have approved. The deemed date of passing of Resolution shall be deemed to 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 Notification No. G.S.R. 464(E) dated June 5, 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.

*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.*

*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)].*

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

*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, 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 LJ 218 (Mad)]*

*Accordingly, when Minutes are duly drawn and signed, the contents of the Minutes are presumed to be true and the burden of proof lies on those who allege the contents to be not true.*

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**

#### **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 Companies Act, 2013) does not take effect and no such Meeting could be regarded as having been held [V.G. Balasundaram 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 and 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.*

***Timestamp***

*Timestamp is the most authentic way to assure existence of electronic documents, agreements, certificates or any other vital information in electronic form. The term 'Timestamp' is derived from rubber stamps used in offices to record when the document was received. However, in modern times, usage of the term has expanded to refer to digital date and time information attached to digital data. For example, computer files contain Timestamps that indicate when the file was last modified; digital cameras add Timestamps to the pictures they take, recording the date and time the picture was taken.*

*For the purpose of SS-1, Timestamp should be created with a 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 a digital signature is affixed, the date and time of signing should get recorded automatically. When an e-mail is received or sent, there should be a recording of the time by the system. All this should be recorded by a Secured Computer System.*

***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 a few Meetings in physical form and a 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) it 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 would facilitate the identification of the origin, destination, date and time of generation are available in the electronic record.*

*The Managing Director, Company Secretary or any other Director or officer of the company as the Board may decide, 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 and security of Minutes in electronic form should –*

- (a) provide adequate protection against unauthorised access, alteration or tampering of the 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 the Minutes 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 persons performing work of the company as may be authorised by the Board in this behalf; access may be given to the Auditor (s) and / or other persons as allowed in terms of the relevant paragraphs of SS-1.
- (k) ensure that any reproduction of the 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.

#### **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 safeguard the integrity of the Minutes, the pages of the Minutes Book should be consecutively numbered irrespective of break in the Minutes Book. Thus, where 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.*

*For the purpose of this paragraph of SS-1, a company may choose to give consecutive numbering from Meetings held on or after 1<sup>st</sup> July, 2015, this being the date from which SS-1 became effective.*

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 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 the Minutes Book.*

*It is with a view to maintain the integrity and evidentiary value of Minutes that a lot of safeguards have been introduced in SS-1 so that Minutes are 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 book, coinciding with the calendar year or financial year. This would facilitate proper maintenance and preservation of Minutes.*

***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 at such other place as may be approved by the Board.**

*Minutes of the Board and Committee Meetings may be kept at the Registered Office of the company or such other place as the Board may decide [Rule 25(1)(f) of the Companies (Management and Administration) Rules, 2014].*

*Minutes of the Board and Committee Meetings should be kept separately from the Minutes of General Meetings.*

## **7.2. Contents of Minutes**

### **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. 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 the Meeting which has been adjourned, the time at which such 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, physically or through electronic mode*

*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].*

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, if any, 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, should be treated as an Invitee to the Meeting and the name of such person should be included in the Minutes.*

*Besides the above, the 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 18<sup>th</sup> March, 2015 to Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014]. However, the Board may, if it so desires, take note of such appointments.*

### **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 any Director leaves before the close of the Meeting due to which 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.**

*Minutes should record the location from where the Directors participating through Electronic Mode participated in the Meeting.*

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

*The Minutes of such restricted items should record whether or not the Director participating through Electronic Mode participated, with the express permission of the Chairman, when such items were transacted. The fact that such Director did not vote on the items and was not counted for the Quorum in respect of such items should also be recorded.*

**(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.**

*The Minutes should record the mode of attendance of the Company Secretary and Invitees if they are participating in the Meeting through Electronic Mode.*

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

*Minutes of the preceding Meeting, including any adjourned Meeting, should 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 the 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 have taken 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 on 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.**

*This shall not apply to a private company (In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015).*

*Disclosure of Interest by the Interested Director should be recorded in the Minutes, even in case of private companies.*

- (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, 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 and listed out in Annexure IC;*

- (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 they are Directors, in terms of the provisions of sub-section (2) of Section 164 of the Act;*
- (f) *In case of demise or resignation or disqualification 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 summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.**

*Brief description of the discussions which 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. In cases where there is no statutory mandate to this effect, the decisions may be recorded in a narrative form.*

*For instance: If the Board approves a project, the decision of the Board may be mentioned with the following narrative since there is no statutory mandate in this case to record the decision in the form of Resolution:*

*"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**

*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. SS-1 seeks to harmonise such divergent practices by providing principles for recording of Minutes.*

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

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

#### **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.*

*Since the Notes on Agenda contain the background of the proposal in detail, the Minutes should contain only the summary of the proposal. 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.*

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 duly authorised by the Board or by the Chairman may attend and record the proceedings of the Meeting.*

The Chairman shall ensure that the proceedings of the Meeting are correctly recorded.

*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 at the conclusion of the discussion:*

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

*Minutes may record the above as follows:*

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

#### ***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 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 nature as 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 should 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.*

#### **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 initialling of 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 a letter of intent for an item/project 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.*

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

*It is further clarified that the documents, reports or notes included in the Agenda Notes circulated to the Directors prior to the Meeting do not need such initialling.*

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

**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 of such earlier Resolution should be given 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 Resolution, 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.

***Illustration***

*In case, the Meeting of a Committee is held on 1st July and the Meeting of the Board is held on 20th July, Minutes of the Meeting of the Committee should be entered in the Minutes Book on or before 31st July.*

*Say, the Minutes of this Meeting of the Committee are entered in the Minutes Book on 28th July. In such a case, the Minutes of such Meeting should be noted at the Meeting of the Board held immediately following 28th July.*

*If the Minutes of this Meeting of the Committee are entered in the Minutes Book on 15th July, the Minutes of such Meeting should be noted at the Meeting of the Board held immediately following 15th July i.e. 20th July.*

**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. This requirement does not pertain to the receipt of the draft Minutes 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 be deemed to have been received by 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 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, shall not affect his right to receive such Minutes.*

*The draft Minutes of a meeting should 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 a decision taken at a Meeting held at 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 shall 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.*

**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.

*The date of entry of the Minutes should be recorded on the last page of the respective Minutes. If the Minutes are maintained in electronic form, 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, would 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 on the Minutes.*

**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.*

*In case the Minutes are maintained in physical form, a photocopy of the signed Minutes should be taken and certified by the Company Secretary.*

*Certification is nothing but signing under the word "Certified" or in a similar manner to distinguish a mere copy from the original.*

*In case of Minutes maintained in electronic form, the same may be circulated to all Directors after it is digitally certified by the Company Secretary.*

*Where there is no Company Secretary, any Director who has been duly authorised by the Board or the Chairman should 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.*

*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 are mutatis-mutandis applicable for circulating a copy of the signed Minutes of that Meeting to the Director(s) so appointed or ceased.*

*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 the Directors 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.*

*If an Alternate Director is appointed, it is advisable to send the copy of the signed Minutes also to the Original Director for his information.*

### **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 should 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 would 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 paragraph of SS-1 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 on 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 giving the purpose for which such inspection is sought and to 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 shall 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.

*Unless a Member is or was a Director of the company, he is not entitled to inspect Minutes of Meetings of the 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 of 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 would enable 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 can inspect the Minutes Book during the course of inspection [Section 206-207 of the Act]. Officers of the Government/ Regulatory bodies, if so authorised by the Act or any other law, can also inspect the Minutes Book.*

#### ***Mode for Inspection and care to be taken***

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, extracts of Minutes can be given to third parties.*

*However, without waiting for these formalities, certified copies of the Resolutions can be issued even earlier, once a Resolution is passed. Provided, 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 third parties 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 situations 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 the 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 his knowledge of what had transpired at the Meeting.*

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 giving the purpose for which such extracts are sought and while delivering extracts of the Minutes, if thought fit, the company may insist on the person demanding the 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.*

*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 are 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.**

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 merger or 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 debenture-holders or any other security holders and annual return.*

*These papers explain in detail all the proposals made at the Board Meeting and hence would enable easy reference to the important decisions taken earlier alongwith 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 since the need to refer to these papers may arise at 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 should not be disposed of without the prior permission of the Central Government and before granting such permission, 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 1<sup>st</sup> July, 2015 requires the approval of the Board, even if such record pertains 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 SS-1.*

### **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 any Director who has been duly authorised for this purpose, as the case may be, should ensure that the Minutes books are under a proper locking system and no person has access to the Minutes without his permission. Minutes maintained in electronic form should also be kept under a 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 paragraph of SS-1 means the Board's Report referred to in Section 134 of the Act or the Report on 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, should contain the particulars of Meetings of the Board and its various Committees held during the financial year along with attendance details.*

*This paragraph requires the companies to disclose in their Annual Report and Annual Return, the following particulars:*

- *Number of Meetings held during the 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 were held during the financial year;*
- *The number of Meetings of the Board that each Director attended;*
- *The number of Meetings of the Committees that each Director attended.*

*In addition, Form No. MGT-7 (Format of Annual Return) prescribed by the MCA for this purpose requires all companies to disclose the total number of Directors on the date of each Meeting of the Board and Committees, the number of Directors attending each Meeting of the Board and the Committees and the percentage of Meeting-wise and Director-wise attendance.*

*Further, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 also require furnishing of such particulars as a matter of good corporate governance.*

*These disclosure requirements are for the benefit of the shareholders and assist them to obtain details about the attendance of Directors at Meetings.*

**Annexure I***(Refer Paragraph 1.3.8)***Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting**

## General Business Items

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

## Specific Items

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.
- Approving Remuneration of Managing Director, Whole-time Director and Manager.
- Appointment or Removal of Key Managerial Personnel.
- Appointment of a person as a Managing Director / Manager in more than one company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Purchase and Sale of subsidiaries/assets which are not in the normal course of business.
- Approve Payment to Director for loss of office.

- Items arising out of separate meeting of the Independent Directors if so decided by the Independent Directors.

#### Corporate Actions

- Authorise Buy Back of securities
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business.
- Takeover another company or acquiring controlling or substantial stake in another company.

#### Additional list of items in case of listed companies

- Approving Annual operating plans and budgets.
- Capital budgets and any updates.
- Information on remuneration of KMP.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
- 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.
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- 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.

- Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non-payment of dividend, delay in share transfer etc.

**Annexure IA***(Refer the head "Background" and Paragraph 1.3.8)***Powers of the Board to be exercised at Board Meetings as prescribed under the Act**

- (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 I 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. (Explanation II to sub-section (3) of Section 179 of the Act)*

- (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 18<sup>th</sup> 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)*

***Appoint a Director to fill a casual vacancy***

*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 Paragraphs 1.3.8 and 6.1.1)***Illustrative List of Items to be exercised at Board Meeting as given 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 required to take note of the specific list of laws applicable 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. Approving 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. Approving 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. Approving Capital budgets and any updates.
3. Approving / Noting Information on Remuneration of KMP.
4. Noting show cause, demand, prosecution notices and penalty notices which are materially important.

5. *Noting fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.*
6. *Noting any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.*
7. *Noting 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. *Noting details of any joint venture or collaboration agreement.*
9. *Noting transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.*
10. *Noting 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. *Noting Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.*
12. *Noting 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 "Background" and Paragraph 7.2.2.1)*

**Powers to 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 "Background")***Powers to be exercised subject to 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 restrictions would not however be applicable to a private company since MCA has vide its Notification dated 5<sup>th</sup> June, 2015 exempted private companies from the provisions of Section 180 of the Act.*

**Annexure IE***(Refer the head "Background")*

**Powers to be exercised 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 Statutory Authorities 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)*
- (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).*

- (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).*
- (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).*

*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 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 "Background")*

**Powers which may be 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.*

*(Sub-section (3) of Section 179 of the Act)*

**Annexure II***(Refer Paragraph 1.3.1)***Specimen Notice of a Board Meeting***NOTICE OF \_\_\_\_\_ (SERIAL NUMBER OF MEETING) BOARD MEETING**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.) at \_\_\_\_\_ (Venue)<sup>1</sup>. The Agenda of the business to be transacted at the Meeting is enclosed/will follow<sup>2</sup>.*

*The facility to participate through Electronic Mode is also made available by the company, the details of which are enclosed. In case you desire to participate through Electronic Mode, please send a confirmation in this regard to \_\_\_\_\_ (Name of Company Secretary/Chairman/other Authorised Person), email \_\_\_\_\_, Tel No. \_\_\_\_\_ within \_\_\_\_\_ days (time frame)<sup>3</sup> to enable making necessary arrangements.*

*Kindly make it convenient to attend the Meeting.*

*Yours faithfully,*

*(Signature)*

*(Name)*

*(Designation)*

*(Email, phone No.)*

*1. This should preferably be on the letter-head of the company. Where it is not sent on the letter-head or where it is sent by e-mail or any other electronic*

*means, there should be specified, 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.*

*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 indicated herein, 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 List of Items of Business for the Agenda for the first Meeting of the Board of Directors of the Company**

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 \_\_\_\_\_ (Number) Meeting of the Board of Directors of \_\_\_\_\_ (Company Name), 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 (if applicable);
- 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 authorise 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 authorise making applications/ availing long term loans from financial institutions/ banks and to authorise 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 authorise 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 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 forecast 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 annual financial statements, through the Audit Committee, where applicable;*
- 20.2 *To consider 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:*

*Item No. 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. \_\_\_\_\_**..... (NAME OF COMPANY)**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)"*

*None of the Directors are deemed to be concerned or interested in the Resolution.*

*\*Assent / Dissent / Require Meeting**Signature**Name**Date*

*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 or by e-mail at the address mentioned below so as to reach us on or before \_\_\_\_\_*

*Yours faithfully,**For \_\_\_\_\_ (Name of Company).**Company Secretary**e-mail id:**Address:**Contact No:*

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*\*Strike off whichever is not applicable*

**Annexure VII***(Refer Paragraph 7.3)***Specimen Minutes of the first Board Meeting**

*Minutes of the first Board Meeting of \_\_\_\_\_ (Company Name), 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 Chairman 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 his 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. Chairman and Vice-Chairman 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 Chairman for all Meetings of the Board as also for general meetings of the company. The Board also decided that Mr. .... be appointed as Vice-Chairman 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 Auditors 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, 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, 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 ..... (Qualification) 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 and passed 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 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. Authorisation to sign returns, forms, documents etc. filed with various regulatory authorities**

*Various returns, forms, documents etc. are required to be filed with various regulatory authorities including the Ministry of Corporate Affairs by the company from time-to-time. The Board passed the following resolution in this regard:*

**"RESOLVED THAT** ..... and ..... Director of the company be and is hereby authorised to sign on behalf of the company, various documents, forms, returns, etc. required to be filed with various regulatory authorities under the relevant statutory provisions."

**22. Next Board Meeting**

*It was decided to hold the next Board Meeting at..... a.m./p.m. on..... (Day), ..... (Date, Month and Year) at..... (Venue).*

**23. Conclusion of the Meeting**

*There being no other business, the Meeting concluded with a vote of thanks to the Chair.*

*Place .....*

*Date ..... Chairman .....*

*Chairman*

*Entered on*

**Annexure VIII***(Refer Paragraph 7.3)***Specimen Minutes of a subsequent Board Meeting**

*Minutes of the \_\_\_\_\_ Meeting of the Board of Directors of \_\_\_\_\_  
 (Company Name) held on \_\_\_\_\_ (Day), \_\_\_\_\_ (Date, Month and  
 Year), at \_\_\_\_\_ (Venue) from \_\_\_\_\_ (Time of Commencement) till  
 \_\_\_\_\_ (Time of Conclusion)*

**PRESENT**

A.B.	<i>Chairman</i>
C.D.	<i>Directors</i>
E.F.	
I.J.	
K.L.	<i>Managing Director</i>

**IN ATTENDANCE**

X.....	<i>Secretary</i>
--------	------------------

**INVITEES**

Y.....	<i>Chief Financial Officer</i>
Z.....	<i>Designation and Organisation</i>

**1. Chairman for the Meeting**

*Mr./Ms. .... was elected as the Chairman 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. Minutes of the Committee Meetings**

*The Minutes of the ..... Meeting of the ..... Committee held on ....., as circulated, were noted by the Board.*

**6. Resolution passed by circulation since the last Meeting.**

*The following Resolution was passed by circulation on ..... (date of passing of the Resolution) in terms of the provisions of Section 175 of the Companies Act, 2013.*

*"RESOLVED THAT.....*

*....."*

*Mr. ...., Director dissented on the Resolution.*

**7. Action Taken Report**

*The following action taken was noted by the Board:*

Item No.	Item	Action Taken
_____	_____	_____

**8. Register of Contracts**

*The Register of Contracts in which Directors are interested under Section 189 of the Companies Act, 2013 and the Rules thereunder was signed by all the Directors present.*

**9. 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
_____	_____	_____

*(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.*

**10. 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 FURTHER THAT** Mr. X, Secretary, be and is hereby authorised to take necessary action with regard to the aforesaid transfer of shares approved by the Board."

**11. 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:

**"RESOLVED THAT** 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."

**12. 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 passed the following resolution for opening a bank account for the purpose of payment of Interim Dividend :-

**"RESOLVED THAT** 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 FURTHER THAT** 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 FURTHER THAT** 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 FURTHER THAT** 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 FURTHER THAT** 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."

### 13. **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:

**"RESOLVED THAT** 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.*

**RESOLVED FURTHER THAT** two Directors shall form the Quorum for a Meeting of the said Committee."

**14. 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:*

**"RESOLVED THAT** 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 FURTHER THAT** 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 FURTHER THAT** 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."

**15. 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)*

## 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 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under this Act. [Sub-section (24) of Section 2 of the Companies Act, 2013].*

*"Company Secretary" means a person who is a member of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 [Clause (c) read with Clause (g) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980].*

- ***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 (56 of 1980). [Sub – section (25) of Section 2 of the Companies Act, 2013]*

*Save as otherwise provided in the Company Secretaries Act, 1980, a member of the Institute shall be "deemed to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognized professions as may be prescribed, he, in consideration of remuneration received or to be received,-*

- (a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or*
- (b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of companies; or*
- (c) offers to perform or performs such services as may be performed by –*
  - (i) an authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,*
  - (ii) a share transfer agent,*
  - (iii) an issue house,*
  - (iv) a share and stock broker,*
  - (v) a secretarial auditor or consultant,*
  - (vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development & Regulation) Act, 1951 (65 of 1951), the Companies Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or bye laws made by a recognized stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973 (46 of 1973), or under any other law for the time being in force,*

*(vii) issuing certificates on behalf of, or for the purposes of, a company; or*

*(d) holds himself out to the public as a Company Secretary in practice; or*

*(e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or*

*(f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;*

*and the words "to be in practice" with their grammatical variations and cognate expressions, shall be construed accordingly.*

*[Sub-section (2) of Section 2 of the Company Secretaries Act, 1980]*

**• 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]*

*"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. [Clause (t) of sub-section (1) of Section 2 of the Information Technology Act, 2000]*

- ***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;*

(iii) *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 (6) 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 [or his relative]<sup>2</sup> is a member or director;*

*(v) a public company in which a director or manager is a director [and]<sup>3</sup> 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]

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

(1) Father:

Provided that the term “Father” includes step-father.

(2) Mother:

Provided that the term “Mother” includes the step-mother.

(3) Son:

Provided that the term “Son” includes the step-son.

(4) Son’s wife.

(5) Daughter.

(6) Daughter’s husband.

(7) *Brother:*

*Provided that the term "Brother" includes the step-brother;*

(8) *Sister:*

*Provided that the term "Sister" includes the step-sister.*

*[Rule 4 of Companies (Specification of definitions details) Rules, 2014]*

• **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]*

**Securities include**

*(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*

*(ia) derivative;*

*(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;*

*(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(id) units or any other such instrument issued to the investors under any mutual fund scheme;*

*(ii) Government securities;*

*(iia) such other instruments as may be declared by the Central Government to be securities; and*

*(iii) rights or interest in securities;*

*[Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956]*

• **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; (and<sup>#</sup>*
- (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]*



## **GUIDANCE NOTE ON GENERAL MEETINGS**

The "Secretarial Standard on General Meetings (SS-2)", formulated by the Secretarial Standards Board (SSB) 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 accordance with Section 118(10) of the Companies Act, 2013 (the Act) read with ICSI Notification No. 1 (SS) of 2015 dated 23<sup>rd</sup> April, 2015 published in the Gazette of India Extraordinary Part III - Section 4. SS-2 applies to all types of General Meetings, in respect of which Notices are issued on or after 1<sup>st</sup> July, 2015.

SS-2 prescribes a set of principles for convening and conducting General Meetings and matters related thereto.

This Guidance Note sets out the explanations, procedures and practical aspects in respect of the provisions contained in SS-2 to facilitate compliance thereof by the stakeholders.

### **BACKGROUND**

The Act mandates holding of Meetings at specified intervals and also prescribes related procedural rules for the same. Such mandate is in recognition of the fact that Meetings play a vital role in the functioning and governance of a company. The primary purpose of a Meeting is to ensure that a company gives reasonable and fair opportunity to those entitled to participate in the Meeting to take decisions as per the prescribed procedures. A company, being an artificial person, can, in respect of matters to be decided at General Meeting, take such decisions through its Members by way of Resolutions passed at validly held Meetings. Meetings of Members are known as General Meetings and determining what constitutes such validly held Meeting is of utmost importance.

General Meetings can be broadly categorised as follows:

*(i) Annual General Meeting* - Every company is required to hold, during every Calendar Year, a Meeting of its Members called the Annual General Meeting. The importance of the Annual General Meeting arises out of the nature of business transacted at this Meeting. Broadly there are two types of business that are transacted at an Annual General Meeting – Ordinary Business and

Special Business. At an Annual General Meeting, consideration of financial statements & consolidated financial statements and reports of the Board of Directors and the auditors, declaration of dividend, appointment of Directors in place of those retiring and approval or ratification of appointment of the Auditors and fixing their remuneration are Ordinary Business. Any other item of business is referred to as Special Business and may also be transacted at an Annual General Meeting.

Annual General Meetings provide Members with an opportunity to collectively discuss the affairs of the company and to exercise their ultimate control over the management of the company. If a company defaults in any year in holding its Annual General Meeting, any Member of the company has a statutory right to approach the Company Law Board (CLB)/National Company Law Tribunal (Tribunal) to call or direct the company to call an Annual General Meeting.

(ii) *Extra-Ordinary General Meeting* - A company may also hold any other Meeting of its Members called an Extra-Ordinary General Meeting, as and when required or at the requisition of the Members. An Extra-Ordinary General Meeting is convened for transacting Special or Urgent business that may arise in between two Annual General Meetings. All business transacted at an Extra-Ordinary General Meeting are called Special Business.

(iii) *Meeting of a Class of Members* - Such Meetings are held to pass Resolutions which only bind the Members of the concerned class. Only Members of that class can attend such Meetings and speak as well as vote thereat, e.g. Meetings of holders of preference shares. Such Meetings are required to be convened when it is proposed to vary the rights of the holders of a particular class of shares. Provisions which govern General Meetings are *mutatis mutandis* applicable to such Meetings.

(iv) *Meetings of Debenture Holders, Creditors etc.* - Such Meetings are held to pass Resolutions which bind the debenture holders or creditors, as the case may be, of the company. The debenture holders or creditors, as the case may be, can attend such Meetings and speak as well as vote thereat. Provisions which govern General Meetings are *mutatis mutandis* applicable to such Meetings.

(v) *Other Meetings* - In addition to the abovementioned Meetings, a company may also hold Meetings of its Members, debenture holders or creditors under the directions of the Court or the CLB/Tribunal or any other authority.

Members of a company can exercise their powers and can bind the company when they act as a body at a validly convened and held Meeting. They should act collectively and not individually. A Member or shareholder, irrespective of his shareholding, cannot bind a company by his individual act.

## INTRODUCTION

The fundamental principles with respect to General Meetings are laid down in the Act. SS-2 facilitates compliance with these principles by endeavouring to provide further clarity where there is ambiguity or establishing benchmark standards to harmonise prevalent diverse practices. Complying with SS-2 ensures robust procedures and systems which protect the interests of the company and its stakeholders. Incidentally, it has been observed that the quantum and propensity for litigations or risk thereof is directly proportional to the degree of non adherence of proper procedures and the non-availability of proper records, especially in the case of small and private companies. The objective of SS-2 is to address such issues.

SS-2 requires the Company Secretary(ies) to over-see the vital process of facilitating and recording the decision making process in a company besides maintaining the integrity of the Meetings. Where there is no Company Secretary in the company or in 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 discharge such of the functions of the Company Secretary as given in SS-2.

SS-2 does not seek to substitute or supplant any existing laws. It strives to supplement such laws for promoting better corporate governance.

Therefore, in addition to SS-2, the requirements laid down under any other applicable laws, rules and regulations, need to be complied with. However, in case of variations in any provision of the applicable laws and SS-2, the stricter provisions need to be complied with.

## APPLICABILITY OF SS-2

In terms of sub-section (10) of Section 118 of the Act, every company is required to observe SS-2.

SS-2 is thus applicable to the General Meetings of all companies incorporated under the Act including private and small companies, except One Person Company (OPC) and such other class or classes of companies which are exempted by the Central Government through Notification.

### *Applicability to companies governed under Special Acts*

SS-2 is also applicable to Banking Companies, Insurance Companies, Companies engaged in generation or supply of electricity, Companies governed by any Special Acts, 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 SS-2, then the provisions of such Special Acts shall prevail.

***Applicability to the Meetings of class of Members, debenture holders and creditors***

The principles enunciated in SS-2 for General Meetings of Members are applicable *mutatis mutandis* to Meetings of class of Members, debentureholders and creditors.

A Meeting of Members or class of Members or debenture holders or creditors of a company under the directions of the Court or the CLB / Tribunal or any other prescribed authority shall be governed by SS-2 without prejudice to any rules, regulations and directions prescribed for and orders of, such courts, judicial forums and other authorities with respect to the conduct of such Meetings.

***Effect of subsequent changes in the Act***

SS-2 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 over the Secretarial Standards. Moreover, if any stipulation contained in SS-2 is derived from any provision of law 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 (MCA), Government of India, 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, vide Notifications No. G.S.R. 463(E), G.S.R. 464(E), G.S.R. 465(E) and G.S.R. 466(E) [(hereinafter referred to as MCA Notification(s)] dated 5<sup>th</sup> June, 2015, 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 incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956) respectively.

Accordingly, if due to the MCA Notification(s) referred to herein above or Notifications that may be issued in future, the provisions of the Standards 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 5<sup>th</sup> June, 2015 exempts Companies incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956) from the applicability of Section 118 of

the Act as a whole except that minutes of Meetings of such a company may be recorded within thirty days of the conclusion of every Meeting in case of companies where the Articles of Association provide for confirmation of minutes by circulation. Consequently, SS-2 is not applicable to companies incorporated under Section 8 of the Companies Act, 2013. However, such companies may voluntarily comply with SS-2.

### **SCOPE OF THE GUIDANCE NOTE**

This Guidance Note should be read in the context of SS-2.

It elucidates, wherever necessary, the basis for setting a particular Standard, explains the procedural and practical aspects and gives illustrations. It also integrates the replies to various queries raised by the stakeholders on the particular Standard after the issuance of SS-2.

In this Guidance Note:

- Paragraphs numbers (including sub-paragraph numbers and their further sub-divisions) refer to the corresponding paragraphs under SS-2
- Extracts from the SS-2 have been set in Bold and Normal font type as appearing in the SS-2 respectively.
- The Guidance text and analysis is set in *italics*.

This Guidance Note is prepared on the basis of the relevant provisions of the Act as amended up to 30<sup>th</sup> November, 2015 and the rules, circulars, clarifications etc. issued by the MCA until 30<sup>th</sup> November, 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.

“Agency” means agency approved or recognised by the Ministry of Corporate Affairs and appointed by the Board for providing and supervising electronic platform for voting.

“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 Gregorian calendar i.e. a period of one year which begins on January 1<sup>st</sup> and ends on 31<sup>st</sup> December.

“Chairman” means the Chairman of the Board or the Chairman appointed or elected for a Meeting.

“Maintenance” means keeping 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 necessary entries therein, the authentication of such entries and the preservation of such physical or electronic records.

“Meeting” or “General Meeting” or “Annual General Meeting” or “Extra-Ordinary General Meeting” means a duly convened, held and conducted Meeting of Members.

“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., 26<sup>th</sup> January, Independence Day, i.e., 15<sup>th</sup> August, Gandhi Jayanti, i.e., 2<sup>nd</sup> October and such other day as may be declared as National Holiday by the Central Government.

“Ordinary Business” means business to be transacted at an Annual General Meeting relating to (i) the consideration of financial statements, consolidated financial statements, if any, and the reports of the Board of Directors and Auditors; (ii) the declaration of any dividend; (iii) the appointment of Directors in the place of those retiring; and (iv) the appointment or ratification thereof and fixing of remuneration of the Auditors.

*Note: Annual Ratification is contemplated in law for ‘continuation of appointment’ of Auditors under Section 139(1) of the Act read with Rule 3(7) of the Companies (Audit and Auditors) Rules, 2014. It falls within the scope of ‘appointment’ and hence is an item of ‘ordinary business’ to be transacted at the Annual General Meeting.*

*‘Ratification of appointment of auditor’ is therefore logically included in the definition of the term ‘ordinary business’ herein.*

“Proxy” means an instrument in writing signed by a Member, authorising another person, whether a Member or not, to attend and vote on his behalf at a Meeting and also where the context so requires, the person so appointed by a Member.

“Quorum” means the minimum number of Members whose presence is necessary for holding of a Meeting.

“Remote e-voting” means the facility of casting votes by a member using an electronic voting system from a place other than venue of a general 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 unauthorised 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.

“Special Business” means business other than the Ordinary Business to be transacted at an Annual General Meeting and all business to be transacted at any other General Meeting.

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

“Voting by electronic means”, includes ‘remote e-voting’ and voting at the general Meeting through an electronic voting system which may be the same as used for remote e-voting.

“Voting by postal ballot” means voting by ballot, by post or by electronic means.

“Voting Right” means the right of a Member to vote on any matter at a Meeting of Members or by means of e-voting or postal or physical ballot.

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 imparting the singular include the plural and words imparting 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 -2****1. Convening a Meeting****1.1 Authority**

**A General Meeting shall be convened by or on the authority of the Board.**

*The authority to convene a General Meeting of the company shall either be with the Board itself or with a Director, Company Secretary, Manager or any other officer of the company under the authority of the Board.*

*A Director, Company Secretary, Manager or any other officer of the company shall not have the power to convene a General Meeting on his own.*

*In order to be a valid Meeting, the Notice of the Meeting should be given by a person duly authorised by the Board.*

*Notice of a General Meeting given by the Secretary without the sanction of the Directors or other proper authority is invalid, but such a Notice may be ratified by the Board of Directors before the Meeting [Hooper v. Kerr, Stuart & Co. (1900) 83 LT 729].*

*It may be noted that this proposition holds good as the approval of the Board is necessary for the issuance of the Notice including - the items of business to be transacted, text of Resolutions and explanatory statement contained in the Notice.*

***Necessity of properly constituted Board for calling a General Meeting***

*Unless the minimum number of Directors prescribed by the Act or the Articles, as the case may be, has been appointed, the Board is not considered to be fully constituted.*

*If a Board, not properly constituted in accordance with law, convenes a Meeting, such Meeting shall be irregular and the Resolutions passed thereat shall be invalid.*

*The continuing Directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing Directors or Director 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, but for no other purpose [Regulation 69 of Table F of Schedule I to the Act].*

The Board shall, every year, convene or authorise convening of a Meeting of its Members called the Annual General Meeting to transact items of Ordinary Business specifically required to be transacted at an Annual General Meeting

as well as Special Business, if any. If the Board fails to convene its Annual General Meeting in any year, any Member of the company may approach the prescribed authority, which may then direct the calling of the Annual General Meeting of the company.

*Section 96 of the Act requires that the Annual General Meeting should be held in each year. The term "Year" is not defined in the Act. Thus, the definition has to be construed as per the General Clauses Act, 1897. Accordingly, the 'Year' should be considered as Calendar Year.*

*In case of any default in holding the Annual General Meeting in any year, any Member of the company may approach the CLB/Tribunal for suitable directions.*

The Board may also, whenever it deems fit, call an Extra-ordinary General Meeting of the company.

*Every General Meeting other than an Annual General Meeting shall be called Extra-ordinary General Meeting.*

*If at any time the number of Directors required to form a Quorum are not within India, any Director or any two Members of the company may call an Extra-Ordinary General Meeting in the same manner, as nearly as possible, as that in which such a Meeting may be called by the Board [Regulation 43(iii) of Table F of Schedule I to the Act].*

The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition,

- (a) in the case of company having a share capital, not less than one-tenth of the paid-up share capital carrying Voting Rights or
- (b) in the case of a company not having share capital, not less than one-tenth of total voting power of the company,

call an Extra-ordinary General Meeting of the company.

*This applies only with respect to calling an Extra-ordinary General Meeting.*

*It may be noted that the phrase 'one-tenth of the paid-up share capital', implies that the total amount paid-up on shares held by requisitionists should not be less than one-tenth of the total amount paid-up on all the shares of the company which carry the right to vote.*

*A single shareholder may also file the requisition for convening the Meeting provided that he has the requisite voting rights or voting power as per Section 100 of the Act.*

*As the reference in Section 100 of the Act is to shares which carry voting rights,*

*holders of preference shares cannot join in requisitioning an Extra-Ordinary General Meeting, except for those matters in respect of which they are entitled to vote.*

*Section 100 does not distinguish between a requisitionist being a natural or an artificial person. Therefore, an artificial person may also submit the requisition with the company. Thus, in case a body corporate is a Member of another company, it can file the requisition for convening a Meeting if it holds the required voting rights or voting power.*

*Every Member of a company has a right to requisition an Extra-Ordinary General Meeting in accordance with the provisions of the Act. He cannot be restrained from requisitioning an Extra-Ordinary General Meeting and he is not bound to disclose the reasons for the Resolutions proposed to be moved at the Meeting [Life Insurance Corporation of India v. Escorts Ltd. and Others (1986) 59 Comp. Cas. 548 (SC)].*

*The requisition to call an Extra-Ordinary General Meeting should be in writing or through electronic means [Rule 17(1) of the Companies (Management and Administration) Rules, 2014].*

*The Board cannot reject a requisition as invalid, except when the requisitionists do not fulfill the eligibility criteria stipulated under Section 100 of the Act.*

*However, it has been held that the Board is within its rights to refuse to call and hold an Extra-Ordinary General Meeting on the requisition of Members where an order of injunction restraining the company from holding any Meeting is in force [A.D. Chaudhary v. Mysore Paper Mills Ltd. (1976) 46 Comp. Cas. 639 (Kar)].*

If, on receipt of a valid requisition having been made in this behalf, the Board, within twenty-one days from the date of such receipt, fails to call a Meeting on any day within forty-five days from the date of receipt of such requisition, the requisitionists may themselves call and hold the Meeting within three months from the date of requisition, in the same manner in which the Board should have called and held the Meeting.

*The Board should, within twenty-one days from the date of receipt of a valid requisition, call a Meeting on any day within forty-five days from the date of receipt of such requisition. In case the Board fails to call the General Meeting requisitioned by the Members, it can be called and convened by the requisitionists.*

*Rule 17(7) of the Companies (Management and Administration) Rules, 2014 provides that if the Meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of*

*members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition.*

*Where the Board has failed to convene the requisitioned Extra-Ordinary General Meeting and the requisitionists convene the Meeting, then it becomes the duty of the Board to provide the requisitionists with all the relevant information viz. registered email addresses of members, number of shares held by them etc. from the Register of Members.*

Explanatory statement need not be annexed to the Notice of an Extra-ordinary General Meeting convened by the requisitionists and the requisitionists may disclose the reasons for the Resolution(s) which they propose to move at the Meeting.

*There is, however, no bar on the addition of an Explanatory Note by the Board in order to elucidate its position, in any manner, with respect to the proposals contained in the requisition.*

Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

## **1.2 Notice**

**1.2.1. Notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.**

*Notice for convening the Meeting should be given in writing to every person entitled to such Notice.*

### *Form of Notice*

*The Notice should be in writing, though no form has been prescribed for this purpose. Oral intimation that it is proposed to have a general meeting is not a Notice at all and consequently if any Meeting is held, it will be invalid.*

### **Persons entitled to Notice**

*In terms of sub-section (3) of Section 101 of the Act, Notice of every Meeting of the company should be given to –*

- (a) every Member of the company, legal representative of any deceased Member or the assignee of an insolvent Member;*

(b) the Auditor or Auditors of the company; and

(c) every Director of the company.

*In terms of sub-section (55) of Section 2 of the Act, Member includes the holder of both equity and preference shares whose name is entered as a beneficial owner in the records of a depository. Accordingly, holders of equity shares as well as holders of preference shares are entitled to receive Notices of General Meetings and to attend the Meetings. Further, Section 101 of the Act does not qualify the term "Member" by a restrictive expression "entitled to vote". Accordingly, preference shareholders are entitled to receive Notices of, and to attend, General Meetings, even if they are not entitled to participate in the discussion or vote on any Resolution placed before the Meeting.*

*Further, the term Director includes all types of Directors in the company at the time of dispatching of Notices i.e. Whole Time Director, Independent Director, Nominee Director, Additional Director, Alternate Director, Woman Director etc.*

*In addition to the above, paragraph 1.2.1 of SS-2 requires Notice to be given to the following:*

(i) *Secretarial Auditor*

*In terms of paragraph 4.3 of SS-2, the Secretarial Auditor or his authorised representative is required to attend the AGM. In case of other General Meetings, Explanation to paragraph 4.3 states that the Chairman may invite the Secretarial Auditor or his authorised representative to attend, if he considers it necessary.*

*Notice of the General Meetings should therefore be sent to the Secretarial Auditors, as an invitation to attend or for information, as the case may be.*

(ii) *Debenture Trustees*

*Debenture Trustees have a fiduciary responsibility towards the debenture holders and in order to protect the interest of such debenture holders, the Debenture Trustees should be made aware about the developments in the company, by serving to them the Notice of the General Meeting, Notice of postal ballot and their accompanying documents.*

*The expression "Auditors" used in paragraph 1.2.1 of SS-2 includes auditors appointed for conducting cost audit pursuant to Section 148 of the Act.*

*It is also advisable to give notice to the Auditor(s) whose appointment is proposed at the General Meeting.*

*In case of buyback/delisting etc., the notice of General Meeting should also be served on such shareholders who have offered their shares to the company*

*and whose shares are in escrow account, till the same is accepted by the company.*

*The other recipients of the Notice may include—*

- (i) in the case of a listed company, the stock exchanges on which the shares or other securities of the company are listed;*
- (ii) financial institutions, pursuant to a covenant in the agreement entered into with them for availing financial assistance;*
- (iii) foreign collaborator/s, if the agreement with them provides for sending of such Notices;*
- (iv) holders of Stock Options of the company; and*
- (v) any other recipient to whom the company has agreed to give Notice (say, as per the terms of an agreement with any party).*

*In addition, a Court may direct issuance of Notice to some other persons such as Court-appointed Chairman or observers. In such case the Notice should be given accordingly.*

In the case of Members, Notice shall be given at the address registered with the company or depository. In the case of shares or other securities held jointly by two or more persons, the Notice shall be given to the person whose name appears first as per records of the company or the depository, as the case may be. In the case of any other person who is entitled to receive Notice, the same shall be given to such person at the address provided by him.

#### ***Notice to Member which is a body corporate***

*Sub-section (1) of Section 20 of the Act provides that a document may be served on a company at its Registered Office. Thus, Notice to a Member, which is a body corporate should be given at its Registered Office.*

#### ***Notice to representatives and assignees***

Where the company has received intimation of death of a Member, the Notice of Meeting shall be sent as under:

- (a) where securities are held singly, to the Nominee of the single holder;
- (b) where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;
- (c) where securities are held by more than one person jointly and all the

joint holders die, to the Nominee appointed by all the joint holders.

In the absence of a Nominee, the Notice shall be sent to the legal representative of the deceased Member.

*Shares of a deceased shareholder come under the authority of the legal representative. When the name of the person to whom shares of the deceased shareholder are transmitted gets entered in the Register of Members, the membership of the deceased shareholder stands terminated.*

*Where the joint shareholders have not appointed a nominee and where the legal representatives of each of the joint shareholders are different, the notice is to be forwarded to the legal representative of the first named shareholder.*

In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.

In case the Member is a company or body corporate which is being wound up, notice shall be sent to the liquidator.

#### ***Notice when Meeting is adjourned***

*When the Meeting is adjourned for thirty days or more, fresh Notice of the adjourned Meeting should be given in the manner specified. (This matter is discussed at length under the heading "Adjournment of Meetings").*

#### ***Irregular Notice***

*Some instances of irregular Notice are as under:*

- (1) *When the Notice of General Meeting is issued without authorisation by the Board*
- (2) *When the Notice is issued by an invalidly constituted Board*
- (3) *When the Appointment of a Director who has signed the Notice is void and the Notice gets issued even after discovery of invalidity*
- (4) *When the Notice is not in accordance with the Act.*

*A Meeting called and held without adequate notice and Resolutions passed at such Meetings will be invalid [Parmeshwari Prasad Gupta v the Union of India 1973 AIR 2389].*

*In situations where the company is unable to send Notice to a Member whose registered address is situated in enemy territory, on grounds of force majeure, there is no violation of the requirement relating to Notice. Further, if the right of some Members to receive Notice is suspended by operation of law, the*

*company can carry on its business without serving Notice on such Members [Re. Anglo International Bank (1943) Ch. 233 CA; (1943) 2 All ER 88].*

*Great care should be taken to ensure that notice of the Meeting is served on all the persons entitled to receive it. If non-receipt of notice by persons entitled to receive such notice is proved and the same is due to some default of the company, the proceedings of such General Meeting may be held invalid.*

#### ***Challenge to the validity of a Notice***

*Those who seek to challenge the validity of a Notice should act promptly.*

#### ***Effect of MCA Notifications***

*In case of a private company, the Articles may contain a provision as to the persons to whom the Notice shall be sent. In such a case, notwithstanding anything stated above, the Notice of General Meetings should be sent to such persons as specified in the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

*In the case of a Nidhi, the document may be served only on Members who hold shares of more than one thousand rupees in face value or more than one percent of the total paid-up share capital of the Nidhi, whichever is less. For other shareholders, document may be served by a public notice in a newspaper having vide circulation in the district where the Registered Office of the company is situated and publication of the same on the notice board of the company [In line with MCA Notification No. G.S.R. 465(E) dated June 5, 2015].*

**1.2.2 Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means. Electronic means' means any communication sent by a company through its authorised and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the Member.**

#### ***Mode of Issuing Notice:***

*Notice may be served by various modes, such as hand delivery, post, facsimile, e-mail or any other electronic means. Notice may even be sent through courier. However, if the Articles of the company prescribe the mode by which Notice has to be given, it should be given accordingly. Similarly, if any agreement to which the company is a party requires the company to deliver the Notice to any person including Joint Venture Partner/Investor in a specific manner, it should be given accordingly.*

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

*Further, where Notice is sent through e-mail, the subject line in such e-mail should state the name of the company, Notice of the type of Meeting, place and the date on which the Meeting is scheduled [Rule 18(3)(ii) of the Companies (Management and Administration) Rules, 2014].*

*If Notice is sent in the form of a non-editable attachment to e-mail, such attachment should be in the Portable Document Format (PDF) or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software [Rule 18(3)(iii) of the Companies (Management and Administration) Rules, 2014].*

The company shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the Notice has been sent and copy of such record and any Notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as "proof of sending".

*In cases where the Notice is sent by e-mail or any other electronic means, the proof of sending of the Notice is required to be maintained by the company.*

*Proof of sending 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.*

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

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

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

*Where a Member indicates to the company in advance that Notice shall be sent to him through a particular mode other than that prescribed above and as permitted under the Act, service of Notice would not be deemed to be effected unless the company serves the Notice in the manner specified by the Member. However, the Member should pay such fee for the particular*

*mode of delivery of notice, as may be determined by the company in its Annual General Meeting.*

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

*In terms of clause (8) of Rule 17 of the Companies (Management and Administration Rules), 2014, the Notice of the Meeting called by requisitionists should be given by speed post or registered post or through electronic means.*

#### ***Addresses for sending Notice by electronic means***

In case the Notice and accompanying documents are given by e-mail, these shall be sent at the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

*A company is required to provide an advance opportunity at least once in a financial year, to the Member to register his email address or to update a fresh email id with the company or get such details updated with the depository [Rule 18(3)(i) of the Companies (Management and Administration) Rules, 2014].*

*Notice of the General Meeting should contain a Note in this regard.*

If a Member does not provide an updated e-mail address, the company shall not be in default for non-receipt of such Notice by the Member.

In case of the Directors, Auditors, Secretarial Auditors and others, if any, the Notice and accompanying documents shall be sent at the e-mail addresses provided by them to the company, if being sent by electronic means.

#### ***Effect of MCA Notification***

*In case of a private company, the Articles may contain a provision as to the mode of sending Notice of General Meetings. In such a case, notwithstanding anything stated above, the Notice of General Meetings should be sent through such mode as specified in the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

#### **1.2.3 In case of companies having a website, the Notice shall be hosted on the website.**

*The Notice of the General Meeting of the company should be simultaneously placed on the website, if any, of the company and on the website as may be notified by the Central Government [Rule 18(3)(ix) of the Companies (Management and Administration) Rules, 2014].*

*Thus, if the company has a website, Notice is required to be hosted on the website.*

*Such Notice should remain on the website till the date of General Meeting.*

**1.2.4 Notice shall specify the day, date, time and full address of the venue of the Meeting.**

***Day/date and Time***

*The Notice should state explicitly the day, date, time and venue of the Meeting. In the absence of any of these particulars, the Meeting would be invalid. In a Notice where the day of the Meeting is incorrectly stated, i.e. where the day of the week does not match the date and month given, that Notice is bad in law.*

Meetings shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a National Holiday. A Meeting called by the requisitionists shall be convened only on a working day.

*A General Meeting can be held on any day, including a public holiday or on a Sunday, unless such day is a National Holiday.*

*Sub-section (2) of Section 96 of the Act requires the Annual General Meetings to be held during business hours on a day that is not a National Holiday. Explanation to Rule 17(2) of Companies (Management and Administration) Rules, 2014 prescribes that a Meeting called by the requisitionists should be convened only on a working day. Harmonising the two provisions above and for the convenience of Members, SS-2 requires that all General Meetings, including Extra-Ordinary General Meetings, should be held during business hours and on a day that is not a National Holiday.*

*Every Notice of a Meeting should state a specific time at which the Meeting is to commence, for example, 11:00 a.m.*

*Where the Notice of a General Meeting did not specify the hour of the Meeting, the Notice was invalid and any Resolution passed at such Meeting was also invalid [Prachi Insurance Co. Ltd. v. Chaudhary Madhusudan Das, (1964) 2 Comp LJ 157 (Orissa)].*

*The time mentioned in the Notice is the time for commencement of the Meeting. MCA has clarified that 'time' indicates only the hour of commencement of the Meeting [Letter of the then Department of Company Affairs, No.8/16(1)/61-PR dated 9-5-1961].*

*The company should start its Meeting during the business hours but it is not*

*necessary that the Meeting ends within the business hours; the Meeting may end even after the business hours.*

**Place**

Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark for easy location. In case of companies having a website, the route map shall be hosted along with the Notice on the website.

Every Notice of a Meeting should specify the place of the Meeting. The expression 'place' means the exact location or full postal address where the Meeting is to be held, so as to enable a person to locate the venue of the Meeting without any difficulty.

*The company cannot fix a place for a Meeting which is prohibited by the Articles of the company [Re: Aidqua Holdings (Mauritius) Inc v. Tamil Nadu Water Investment Co. Limited (2008) 142 com cases 497: (2008) 83 SCL 434 (CLB)].*

*Giving the route-map and prominent landmark in the Notice is a good practice benefitting the Members. Though e-voting is mandatory in case of certain companies, many Members may still prefer to attend the Meeting physically. Most of the times, it is observed that there is no fixed venue for General Meetings. The registered office of companies is also sometimes located in remote areas.*

*Providing a route map and prominent landmark would enable easy location of the venue by those who wish to attend the Meeting. The objective is to ensure that they are able to reach the venue at the appointed time without much difficulty.*

*Since the spirit of the Standard is to enable easy location, the route-map and prominent landmark may not be required, if the venue of the Meeting is generally known to its Members.*

**Illustration**

*Mr. X, Ms. Y (wife of Mr. X) and Mr. C (son of X & Y) are the Directors of XYZ Ltd. They are also the Members of XYZ Ltd. alongwith 4 other persons who are brothers and sisters of Mr. X. XYZ Ltd. proposes to hold the General Meeting at the residence of Mr. X.*

*In this case, since the residence of Mr. X is generally known to all Members of XYZ Ltd. and can be easily located, the route-map and prominent landmark may not be provided in the Notice.*

Annual General Meetings shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas other General Meetings may be held at any place within India. A Meeting called by the requisitionists shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

*Meetings can be held at any place within the postal limits or local limits of the city, town or village in which the Registered Office of the company is situated and where these two limits do not coincide, within the wider of the two limits [Circular of the then Department of Company Affairs - No. 1/1/80-CL-V, dt. 16/02/81].*

*Explanation to Rule 18 of the Companies (Management and Administration) Rules, 2014, prescribes that the Extra-Ordinary General Meeting should be held at a place within India. Thus, an Extra-Ordinary General Meeting should be held only in India though not necessarily within the city, town or village in which the Registered Office of the company is situated.*

Notice of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, shall prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and that a Proxy need not be a Member. In case of companies where Proxy shall be a Member under the Act, a statement to that effect shall appear in the Notice prominently.

*Where a Member cannot attend the Meeting in person, he is entitled to appoint a Proxy to attend on his behalf. Every Notice calling a Meeting should state that any Member entitled to attend and vote is entitled to appoint another person as a Proxy [Sub-section (1) of Section 105 of the Act].*

#### ***Effect of MCA Notification***

*A government company may convene its Annual General Meeting at its registered office or some other place within the city, town or village in which the registered office of the company is situated or such other place as the Central Government may approve in this behalf [In line with MCA Notification No. G.S.R. 463(E) dated June 5, 2015].*

*In case of companies incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956), the time, date and place of each Annual General Meeting may be decided upon before-hand by the Board of Directors having regard to the directions, if any, given in this*

*regard by the company in its General Meeting [In line with MCA Notification No. G.S.R. 466(E) dated June 5, 2015].*

*In case of a private company, the Articles may contain a provision as to matters which shall be contained in the Notice of General Meetings. In such a case, notwithstanding anything stated above, the Notice of General Meetings should contain matters in accordance with the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

**1.2.5 Notice shall clearly specify the nature of the Meeting and the business to be transacted thereat. In respect of items of Special Business, each such item shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon. In respect of items of Ordinary Business, Resolutions are not required to be stated in the Notice except where the Auditors or Directors to be appointed are other than the retiring Auditors or Directors, as the case may be.**

A Notice, in order to be valid, should clearly state the nature or type of Meeting i.e. Annual General Meeting or Extra-Ordinary General Meeting and the business to be transacted at such Meeting, and should give all material information so as to enable such items of business to be fully understood by the Members.

*In the case of an Annual General Meeting which is convened within the extended period as granted by the Registrar of Companies under the third proviso to sub-section (1) of Section 96 of the Act, the Notice convening such Annual General Meeting should include the following information:*

- (a) the fact that such an extension of time has been sought and the reasons therefor;*
- (b) whether the Meeting is being convened within the extended time;*
- (c) any other relevant information.*

***Nature of business to be transacted at a Meeting and types of Resolution***

*In the case of an Annual General Meeting, the business to be transacted at the Meeting should be divided into two parts – Ordinary Business and Special Business. All business other than Ordinary Business shall be Special Business. However, in case of an Extra-Ordinary General Meeting, all business shall be Special Business.*

*Each item of Special Business should be in the form of Resolution. The Resolutions are broadly of two types: Ordinary Resolutions and Special*

*Resolutions. Ordinary and Special Resolutions have been defined under Section 114 of the Act. Broadly, Ordinary Resolutions are required to be passed by simple majority, whereas Special Resolutions are required to be passed by three-fourth (3/4<sup>th</sup>) majority. In case of a Special Resolution, the Notice of the Meeting should state that a particular Resolution is proposed to be passed as a Special Resolution [Clause (a) of sub-section (2) of Section 114 of the Act].*

***Explanatory statement***

*The detailed particulars in respect of Ordinary Business may be given in the Notice itself or may be given in the Board's Report. In such cases, explanatory statement need not be given. For example, the item of business in relation to dividend may be stated in the Notice merely as "To declare a dividend", in which case, in the Board's Report, full details should be given regarding the rate/amount of dividend recommended by the Board of Directors.*

*In respect of Special Business, an explanatory statement should be annexed to the Notice of the Meeting [Sub-section (1) of Section 102 of the Act].*

*Such explanatory statement should be issued by the same person who has been authorised to issue the Notice and in the same manner in which he has issued the Notice.*

*The underlying objective behind Section 173 of the Companies Act, 1956 (corresponding to Section 102 of the Act) is that the shareholders may have before them all material facts so as to enable them to form a judgment on the item of business before them. Any fact which would influence their decision, one way or the other, would be a material fact under the Act and has to be set out in the explanatory statement attached to the Notice of the Meeting [Firestone Tyre and Rubber Co. v. Synthetics and Chemicals Ltd. (1971) 41 Comp Cas 377 (Bom)].*

*Material facts generally include the present facts which are necessary for the shareholders to know and which may affect the decision of the shareholders but do not include the reasons for which the company entered into the contract with such party [In Re. Laljibhai C. Kapadia v. Lalji B. Desai (1973) 43 Comp Cas 17 (Bom)].*

*Material facts have to be given, but not detailed explanations [East India Commercial Co. Pvt. Ltd. V. Raymon Engineering Works Limited AIR 1966 Cal 232].*

*In relation to a General Meeting called on the basis of a valid requisition, there is no duty on the part of the Board of Directors to furnish an explanatory statement even though any item of business proposed to be transacted at any such*

*General Meeting will be deemed to be a Special Business.*

*When the requisitionists are calling the Meeting, it is not necessary for them to annex the explanatory statement along with the Notice. It is not duty of the requisitionists to provide the explanatory statement also [LIC of India v. Escorts Ltd. (1986) 59 Comp. Cas 548 (SC)].*

*A Notice issued and explanatory statement attached to it can be condemned as tricky, if the same is likely to mislead shareholders or if there is an omission to state the facts which would enable shareholders to decide if they would attend Meeting or not [M. R. Goyal v. Usha Internationals Ltd. (1998) 93 Comp Cas 634 (Del)].*

*It is a duty cast on the management to disclose, in an explanatory note, all material facts relating to the Resolution coming up before the General Meeting so as to enable the shareholders to form a judgment on the business before them [Life Insurance Corporation of India v. Escorts Ltd. and others (1986) 59 Comp. Cas. 548 (SC)].*

*The explanatory statement accompanying the Notice is not to be read in isolation and has to be read along with the item included in the agenda of business to be transacted at the Meeting [Rajiv Nag v. Quality Assurance Institute (India) Ltd. (2002) 37 SCL 25 (Del)].*

*Where the notice is published in a newspaper by the company, such explanatory statement need not be published in the newspaper. It should be mentioned in the newspaper that the notice along with explanatory statement has been sent to the Members.*

#### ***Matters to be contained in the explanatory statement***

The nature of the concern or interest (financial or otherwise), if any, of the following persons, in any special item of business or in a proposed Resolution, shall be disclosed in the explanatory statement:

- (a) Directors and Manager,
- (b) Other Key Managerial Personnel; and
- (c) Relatives of the persons mentioned above.

*Material facts, including the nature of interest or concern of a Director, are questions of facts, and therefore, while preparing the explanatory statement, not only the information derived from records be stated but also sufficient enquiry should be made to understand the nature of such interest or concern of any Director and of any Key Managerial Personnel.*

In case any item of Special Business to be transacted at a Meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every Promoter, Director, Manager, and of every other Key Managerial Personnel of the first mentioned company shall, if the extent of such shareholding is not less than two percent of the paid-up share capital of that company, also be stated in the explanatory statement.

*If the shareholding in that other company, of the persons specified in this paragraph of SS-2, individually or collectively, exceeds or is equal to two percent, the extent of such shareholding should be disclosed in the explanatory statement.*

***Illustration***

*XYZ Ltd. proposes to enter into a contract with PQR Ltd. Mr. X and Mr. Y, who are promoters of XYZ Ltd. hold 1.5 % and 0.5% of the total paid-up share capital of PQR Ltd. respectively. In this case, the shareholding of both, Mr. X and Mr. Y should be disclosed in the explanatory statement of the Notice of General Meeting of XYZ Ltd., since the extent of their shareholding collectively is not less than two percent of the paid-up share capital of PQR Ltd.*

*For this purpose, the shareholding includes preference shares and shares with differential voting rights, if any.*

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

*This has been incorporated with the intent of wider coverage and for convenience of Members who visit such offices, and would also enhance disclosures on the part of the company.*

*Sometimes, the company may have a separate Head Office or Corporate Office located elsewhere than the Registered Office. In such cases, copies of the aforesaid documents, contracts, agreements, the Memorandum of Association or Articles of Association should also be made available for inspection at the Head Office and the Corporate Office for the benefit of those Members who may find it more convenient to visit these offices.*

*In such a case, the time during which and the place at which Members can inspect such documents should be mentioned in the explanatory statement. Such documents should be made available for inspection for not less than two hours during business hours.*

*The requirement of furnishing an explanatory statement cannot be dispensed with merely by giving an opportunity to Members to inspect the material documents at the registered office of the company [Circular of the then Department of Company Affairs-No. F12(59)-CI-VI/63, dated 17 October, 1963].*

In all cases relating to the appointment or re-appointment and/or fixation of remuneration of Directors including Managing Director or Executive Director or Whole-time Director or of Manager or variation of the terms of remuneration, details of each such Director or Manager, including age, qualifications, experience, terms and conditions of appointment or re-appointment along with details of remuneration sought to be paid and the remuneration last drawn by such person, if applicable, date of first appointment on the Board, shareholding in the company, relationship with other Directors, Manager and other Key Managerial Personnel of the company, the number of Meetings of the Board attended during the year and other Directorships, Membership/ Chairmanship of Committees of other Boards shall be given in the explanatory statement.

*If a Director, who retires by rotation, is not proposed to be re-appointed or is not interested in being re-appointed, such fact should be clearly stated in the Notice. Further, the Notice should also specify whether the company has decided to fill up the said vacancy or not. If the company has decided to fill up the vacancy, the person who is proposed to be appointed as a Director in the said vacancy should also be specified in the Notice.*

In case of appointment of Independent Directors, the justification for choosing the appointees for appointment as Independent Directors shall be disclosed and in case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.

*Schedule IV to the Act provides that, on the basis of the report of performance evaluation, it should be determined whether to extend or continue the term of appointment of the Independent Director.*

*Re-appointment of the independent Director would be recommended by the Board only when there is a positive evaluation by the Board. Therefore, performance evaluation report of Independent Director is important and the same or a summary thereof should be included in the explanatory statement.*

*Further, in the case of listed companies-detailed resume and particulars of*

*Directors proposed to be appointed /re-appointed at the General Meeting have to be given. The most appropriate place for giving such information is the explanatory statement.*

*In case major amendments are proposed in the Articles, the details thereof should be given in the explanatory statement.*

*All Resolutions and the explanatory statement should be framed in simple and intelligible language so as to enable Members to understand the meaning, scope and implications of the proposed items of business.*

*Where Notice is accompanied by the Annual Report and if the details required under this paragraph of SS-2 are given in the Annual Report, it would be sufficient if appropriate reference is drawn in the explanatory statement to the particular portion of the Annual Report.*

#### ***Validity of a Meeting held without explanatory statement***

*Wherever the Act requires certain specific items to be considered by the company and to explain these in the explanatory statement, the same should be included, failing which the Notice shall be invalid.*

*Moreover, non furnishing of an explanatory statement or furnishing of an inadequate explanatory statement may be fatal to the validity of the very Resolution passed, even though the Meeting might have otherwise been validly called and held.*

*In the interest of shareholders, all material facts concerning the transaction need to be placed before them so that they may, of their own capacity, arrive at a judgment without the influence of the management and therefore any contravention in this regard should lead to a nullification of proceedings [Sheth Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. (1974) 34 Comp Cas 777 (Guj)].*

*A minor defect arising out of absence of strict conformity with the provisions of Section 173 of the Companies Act, 1956 (corresponding to Section 102 of the Act) may, however, not render the Resolution null and void [Joseph Michael v. Travancore Rubber and Tea Co. Limited (1986) 59 Comp. Cas. 898].*

#### ***Effect of MCA Notification***

*In case of a private company, the Articles may contain a provision as to the matters which shall be contained in the Notice of General Meetings. In such a case, notwithstanding anything stated above, the notice of General Meetings should contain such matters as provided in the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

**1.2.6 Notice and accompanying documents shall be given at least twenty-one clear days in advance of the Meeting.**

*A General Meeting should be called by giving at least twenty-one clear days' Notice of the Meeting.*

***Manner of computation of twenty-one clear days***

For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted.

*The expression "twenty-one clear days", means that the date of service of Notice and the date of the Meeting are to be excluded when calculating the period of twenty-one days [N.V.R. Naggappa Chettair v. Madras Race Club (1949) 19 Comp Cas 175 (Mad)].*

*Further, fractions of days are not to be taken into account i.e. part of the day after the hour at which the Notice is posted cannot be combined with the part of the day before the Meeting commences, to form one day. In actual practice, the Notice period will amount to twenty-three days Notice. Each of these days should be a full or calendar day [Bharat Kumar Dilwali v. Bharat Carbon & Ribbon Mfg. Co. Ltd. (1973) 43 Comp. Cas. 197 (Del)].*

*Intervening holidays are counted within the period of Notice.*

***Illustration***

*If a Meeting is to be held on the 25<sup>th</sup> of a month, Notice should be given on or before 3<sup>rd</sup> of the same month i.e. at least twenty three days before the date of the Meeting.*

***Addition of two days for Notice Posted***

Further in case the company sends the Notice by post or courier, an additional two days shall be provided 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 by post, such service shall be deemed to have been effected in the case of a notice of a Meeting, at the expiration of forty eight hours after the letter containing the same is posted.*

***Illustration***

*If a Meeting is to be held on the 25<sup>th</sup> of a month, Notice should be posted on or before 7<sup>th</sup> of the same month i.e. at least twenty five days before the date of the Meeting.*

*"Posted" is taken to mean the delivery of the envelope to an authorised official of a post office or a courier agency, which need not necessarily be the post box or the post office or the courier agency office situated within the city where the Registered Office of the company is situated. When mail is posted in bulk for franking by the post office or the courier agency, it is not sufficient to rely merely on the date indicated on the seal impressed on the envelope; a certificate should be obtained.*

*Where Notices are posted on time, the fact that some Members received them late will not affect the validity of the Notice or the Meeting [Calcutta Chemicals Co. Ltd. v. Dhiren Chandra Roy (1985) 58 Com. Case 276 (Cal) and Maharaja Exports and Another v. Apparels Exports Promotion Council (1986) 60 Comp. Cas. 353].*

*The fact that Notice of a Meeting of shareholders to be held under directions of the Court for consideration of a scheme of amalgamation was delivered late to a shareholder owing to postal delay or omissions on the part of postal authorities would not invalidate the Meeting [Maknam Investments Ltd., In Re. (1996) 87 Comp. Cas. 689 (Cal.)], nor would the company be responsible for a necessary dependence on a third party agency for due services of notice [Somalingappa Shiva Putrappa Mugabasav v. Shree Renuka Sugars Ltd. (2002) 110 Comp. Cas. 37].*

*Though a Notice shall be deemed to be given at the expiry of forty-eight hours after the envelope containing the Notice was posted, in some circumstances (such as civil disturbance, curfew etc.), where the senders of the Notice know that the envelope has not been "received" by the post, this deeming provision is inoperative and not to be relied upon [Re. Thundercrest Ltd. (1995) 1 BCLC 117 (Ch D) and Bradman v. Trinity Estate Plc (1989) BCLC 33].*

#### ***Serving of Notice through advertisement***

*Where the Notice is also published in a newspaper, twenty-one clear days should be reckoned from the date on which such advertisement appears.*

*Such advertisement may also contain information regarding the days during which the Register of Members would remain closed or the date fixed as the record date, which is the last date by which changes in the status of Members are recorded by the company.*

#### ***Notice Period in the Articles***

*The Articles of the company may provide for a longer notice period in which case the Articles should be complied with. A longer notice period will be beneficial for the shareholders as they will get sufficient time to take the decisions regarding the General Meeting of the company.*

***Effect of MCA Notification***

*A company incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956) may call its General Meeting by giving not less than fourteen clear days' Notice [In line with MCA Notification No. G.S.R. 466(E) dated June 5, 2015].*

*In case of a private company, the Articles may contain a provision as to the Notice period of General Meetings. In such a case, notwithstanding anything stated above, the Notice of General Meetings should be issued in accordance with the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

*In case of Nidhis, in respect of Members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one percent of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of Section 136, if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated stating –*

- (i) the date, time and venue of Annual General Meeting;*
- (ii) that the financial statement with its enclosures can be inspected at the registered office of the company;*
- (iii) that the financial statement with enclosures are affixed at the Notice Board of the company; and*
- (iv) a Member is entitled to vote either in person or through Proxy*

*[In line with MCA Notification No. G.S.R. 465(E) dated June 5, 2015].*

***Special Notice***

In case a valid special notice under the Act has been received from Member(s), the company shall give Notice of the Resolution to all its Members at least seven days before the Meeting, exclusive of the day of dispatch of Notice and day of the Meeting, in the same manner as a Notice of any General Meeting is to be given.

*A Special Notice may be received by the company, signed, either individually or collectively, by such number of Members holding not less than one percent of total voting power or holding shares on which aggregate sum of not less than five lakh rupees has been paid up on the date of the notice (Rule 23(1) of the Companies (Management and Administration) Rules, 2014). In such a case, the item proposed by a Member should be transacted at the Meeting, although such item does not form part of the Notice of the Meeting.*

*Notice for such item received, if any, should be given by the company to its Members individually at least seven clear days before the Meeting.*

Where this is not practicable, the Notice shall be published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district, at least seven days before the Meeting, exclusive of the day of publication of the Notice and day of the Meeting. In case of companies having a website, such Notice shall also be hosted on the website.

**1.2.7 Notice and accompanying documents may be given at a shorter period of time if consent in writing is given thereto, by physical or electronic means, by not less than ninety-five per cent of the Members entitled to vote at such Meeting.**

The request for consenting to shorter Notice and accompanying documents shall be sent together with the Notice and the Meeting shall be held only if the consent is received prior to the date fixed for the Meeting from not less than ninety five per cent of the Members entitled to vote at such Meeting.

*Paragraph 1.2.7 of SS-2 and the explanation thereto should be read in conjunction. The consent, in writing, for shorter Notice and for sending the accompanying documents need not be taken from the Members prior to the sending of such Notice.*

*However, request for such consent should be sent together with such Notice and the requisite consent from the Members should be received before the date of the Meeting. Receiving the requisite consent from the Members is a good secretarial practice which would enable the company to make necessary arrangements. Only if such consent from the requisite majority is received, the General Meeting can be held at a shorter Notice.*

*A person holding a specific power of attorney may sign the consent of a Member entitled to receive notices, and such consent shall be deemed as the consent of Member concerned.*

***Consent of Members not attending the Meeting at shorter Notice cannot be implied.***

*Consent means 'consent of Members entitled to attend and vote' and not 'of Members entitled to vote and present' – it is not enough that the Members present at the Meeting indicated either expressly or impliedly that they consented to or acquiesced in shortening the period of Notice [N.V.R Nagappa Chettiar v. Madras Race Club [1949] 19 Comp. Cas. 175(Mad)].*

*The requirement is of consent by not less than 95% of the Members entitled to vote and not of the Members holding 95% of the share capital. i.e. If a company has 100 Members entitled to vote, consent should be obtained from 95 Members, irrespective of the shareholding of these Members.*

#### ***Effect of MCA Notification***

*In case of a private company, the Articles may contain a provision as to the calling of General Meetings at a shorter Notice. In such a case, notwithstanding anything stated above, the shorter Notice of General Meetings should be issued in accordance with the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

#### **1.2.8 No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given.**

Where the Members assemble for a Meeting but the Notice of such Meeting does not comply with the requirements prescribed in the Standard, no business should be transacted at such Meeting.

However, any accidental omission to give Notice to, or the non-receipt of such Notice by any Member or other person who is entitled to such Notice for any Meeting shall not invalidate the proceedings of the Meeting.

#### ***Accidental omission to give Notice***

*"Accidental omission" means omission which is neither designed nor deliberate and implies absence of intention [Maharaja Exports and Another v. Apparels Exports Promotion Council (1986) 60 Comp. Cas. 353].*

*In the absence of mala fide intention or negligence, the non-receipt of Notice by any Member will not affect the validity of the Meeting.*

*The onus is on the company to prove that the omission to give notice to the shareholder was accidental.*

#### ***Non-accidental omission to give Notice***

*An omission which arises from an error as to legal position cannot be classified as accidental.*

*Failure to give Notice of a General Meeting to the unpaid vendors of shares (viz. those who have transferred the shares for a price but the price has not yet been paid), who remained on the Register of Members, on the erroneous belief of the Directors that the vendors were no longer Members is wrong in law and the resulting failure to give Notice is not "accidental" [Musselwhite v. C.H. Musselwhite & Son Limited (1962) 32 Comp. Cas. 804].*

*Where large blocks of shareholders were inadvertently omitted to be notified about the General Meeting, the advantage of the provisions of Section 172 of the Companies Act, 1956 (corresponding to Section 101 of the Act) could not be taken. The onus of proof lies on those who claim the omission was accidental [POW Services Ltd. v. Clare (1995) 2 BCAC 435 at 450].*

*If a Meeting is held without service of Notice to majority shareholders, the Meeting would be invalid [Martin Castelino v. Alpha Omega Shipmanagement (P) Ltd. (2001) 33 SCL 210].*

**1.2.9 No items of business other than those specified in the Notice and those specifically permitted under the Act shall be taken up at the Meeting.**

*Notice of the Meeting should contain a list of items of business to be transacted thereat together with Resolutions relating to Special Business so as to ensure that Members get proper time to form their judgment on whether to vote for or against the proposed Resolution. The transaction of an item of business which has not been properly notified or which is substantially different from that notified is invalid [Cf. Henderson v. Bank of Australasia (1890) 45 Ch D 330].*

However, this will not invalidate the transaction of other items of business for which proper Notice has been given.

A Resolution shall be valid only if it is passed in respect of an item of business contained in the Notice convening the Meeting or it is specifically permitted under the Act.

*Apart from the items of business contained in the Notice convening the Meeting, there are specific items permitted under the Act, which may be taken up for consideration at the Meeting.*

Items specifically permitted under the Act which may be taken up for consideration at the Meeting are:

- (a) Proposed Resolutions, the Notice of which has been given by Members;
- (b) Resolutions requiring Special Notice, if received with the intention to move;
- (c) Candidature for Directorship, if any such Notice has been received.

Where special notice is required of any Resolution and notice of the intention to move such Resolution is received by the company from the prescribed number of Members, such item of business shall be placed for consideration at the Meeting after giving Notice of the Resolution to Members in the manner prescribed under the Act.

Any amendment to the Notice, including the addition of any item of business, can be made provided the Notice of amendment is given to all persons entitled to receive the Notice of the Meeting at least twenty one clear days before the Meeting.

*Amendment to the Notice, if any, including the addition of any item of business, should be made at least twenty-one clear days before the Meeting.*

*Any amendment to the Notice, including the addition of any item of business, may be made at a shorter notice only after complying with the provisions of paragraph 1.2.7 of SS-2.*

*However, where e-voting is provided, any such amendment to the Notice can be made only by issuing a fresh Notice at least twenty-one clear days in advance.*

*The Notice of any amendment, including the addition of any item of business, should be sent individually by any mode specified for sending Notice and not be given through advertisement.*

Any printing or typographical errors or grammatical or clerical mistakes identified in the Notice or the accounts, reports and statements attached thereto, may be rectified and intimated to the Members in the form of an erratum. Such erratum may be circulated to Members at the General Meeting itself. However, if such errors are on the text of Resolutions proposed, it is necessary to notify the Members as soon as they are discovered and no corrections should be made to the text of the Resolutions after commencement of voting including e-voting.

*When the Meeting is being called by the requisitionists and the agenda for such Meeting is made by the requisitionists themselves, the Directors may, if they deem fit, add to the items of agenda, any business to be discussed at such Meeting. The consent for inclusion of such additional item at a shorter notice should be obtained in the manner as specified in paragraph 1.2.7.*

**1.2.10 Notice shall be accompanied, by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.**

*The Notice of the Meeting should be accompanied by an attendance slip. A specimen of the Attendance Slip is placed at **Annexure I**. In case, a company has the practice of maintaining an attendance register containing signatures of Members attending the General Meeting, the same would be sufficient compliance for the purpose of sending "attendance slip" in accordance with this paragraph.*

*The Notice of the General Meeting should also be accompanied by a Proxy form, so as to enable the Member to appoint a Proxy. The Proxy form should indicate the time limit within which proxies are to be deposited, the procedural requirement of stamping and signing of proxies and should also specify clearly the instructions for filling up the Proxy form.*

*In case of companies incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956), where Proxy should be a Member, a statement to that effect should appear in the Notice prominently.*

#### **Notes to Notice**

*Notes are an integral part of the Notice of General Meetings. Notes to the Notice should be given immediately after the information pertaining to the business to be transacted under the heads of Ordinary Business and Special Business. They may inter-alia contain the following information:*

- (a) Information to Members about their right to appoint Proxy and informing them to lodge proxies not less than forty-eight hours before the time fixed for the Meeting.*
- (b) Intimation that an explanatory statement pursuant to sub-section (1) of Section 102 of the Act is annexed to the Notice.*
- (c) Dates of closure of Register of Members and Share Transfer Books.*
- (d) Information about nomination facility available to Members.*
- (e) Intimation that dividend, if declared, would be paid within thirty days from the date of declaration to Members whose names appear as beneficial owners with depositories or in the Register of Members as on the date specified for the purpose.*
- (f) Request to Members to claim any dividend due to them but remaining unclaimed or unpaid.*
- (g) Request to Members to furnish details such as Bank Account No., name of the Bank, Branch, IFSC Code and Place with PIN Code No. where the account is maintained to prevent fraudulent encashment of dividend warrants.*
- (h) Details of ECS/NEFT/RTGS/other similar electronic transfer facility available, if any, for Members.*
- (i) Address of share transfer agents whom Members may contact in case of any change of address or queries relating to their shares.*

- (i) Request to Members holding multiple folios to get their holdings consolidated.
- (k) Intimation regarding the availability of statutory registers or other documents referred to in the Notice/explanatory statement for inspection by Members.
- (l) Request to Members to bring to the Meeting the attendance slip along with their copy of the Annual Report, if sent in physical form.
- (m) Request to Members holding shares in dematerialised form to bring their Client ID and DP ID numbers for easy identification for attendance at the Meeting.
- (n) Instructions for Remote e-voting, period for Remote e-voting, the manner in which the company would provide voting facility at the Meeting, etc.
- (o) In case of any Resolution to be passed through postal ballot, the details of the procedure of such postal ballot and the fact that the company is providing the e-voting facility to the shareholders.
- (p) Request to Members to register/ update their e-mail IDs with the Company/ Depository, so that the notice and related documents can be served to Members on their e-mail IDs.

**An illustrative list of documents to be sent along with the Notice of General Meeting is given below:**

1. Explanatory statement to the Notice.
2. Proxy Form and instructions on e-voting, if any.
3. Attendance Slip.
4. Request for consenting to shorter Notice, if any.
5. Supporting documents (like Articles of Association) in connection with the agenda items in the Notice.

Specimen Notices of Annual General Meeting and Extra-Ordinary General Meeting are placed at **Annexure II and III** respectively.

A specimen of Newspaper Advertisement of the Notice of a General Meeting is placed at **Annexure IV**.

**1.2.11 A Meeting convened upon due Notice shall not be postponed or cancelled.**

Once a General Meeting has been convened upon due Notice, it should not be postponed or cancelled.

*In construing the above stipulation, it is necessary to keep in mind the maxim *Ex Non Cogit Impossibilia*. In other words, law does not require anything which is impossible to be done. Much would depend upon the facts and circumstances of each case.*

If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may reconvene the Meeting, to transact the same business as specified in the original Notice, after giving not less than three days intimation to the Members. The intimation shall be either sent individually in the manner stated in this Standard or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

*No Meeting should be postponed merely for the reason that it would be inconvenient to hold the Meeting at the stated time and place. Postponement should be resorted to only if it is impossible to hold the Meeting, e.g. there is a curfew in the city or there is a threat to life and property. To cover such eventualities, the Board has the power to postpone the Meeting.*

*The fact of postponement should, as far as possible, be communicated to Members without any delay by newspaper advertisements and e-mails. Further, the company should also post the announcement on its website. Such intimation of postponement may also refer to the Members' right to appoint a Proxy.*

*Further, there should be someone at the venue, if possible, to inform the Members of the postponement, in case some Members do turn up at the venue without knowledge of the postponement of the Meeting.*

*Force majeure would also include destruction of the proposed venue. In such situations, the company may choose an alternative venue for the Meeting and inform the Members as early as possible, in writing and by newspaper advertisement. If any such event takes place on the day of the Meeting, the company may, with the consent of the Members who come to the venue, change the venue and time of the Meeting and enable them to reach the changed venue of the Meeting.*

*If, for any reason a General Meeting is postponed, it is not necessary to postpone the period for Remote e-voting. However, the result of Remote e-voting cannot be announced until such Meeting is actually held.*

*Specimens of Notice of Postponed Annual General Meeting and Notice in Newspapers of postponement of Annual General Meeting are placed at Annexure V and VI respectively.*

## **2. Frequency of Meetings**

### **2.1 Annual General Meeting**

**Every company shall, in each Calendar Year, hold a General Meeting called the Annual General Meeting.**

Every company shall hold its first Annual General Meeting within nine months from the date of closing of the first financial year of the company and thereafter in each Calendar Year within six months of the close of the financial year, with an interval of not more than fifteen months between two successive Annual General Meetings. The aforesaid period of six months or interval of fifteen months may be extended by a period not exceeding three months with the prior approval of the Registrar of Companies, in case of any Annual General Meeting other than the first Annual General Meeting.

*Sub-section (1) of Section 96 of the Act requires that the subsequent Annual General Meeting should be held on the earliest of the following dates:*

- (a) fifteen months from the date of the last Annual General Meeting; or*
- (b) the last day of the calendar year; or*
- (c) six months from the close of the financial year.*

*If a statute enjoins that the Meeting is to be held within a specified period, it follows by necessary implication that it must be completed within the said period. If financial statements are not ready to be laid at the concerned Annual General Meeting, it shall be open to the company to adjourn the Annual General Meeting to a subsequent date when the financial statements would be ready for consideration. The adjourned Meeting must be held within the maximum time limit allowed under the Act [Bejoy Kumar Karnani and Another v. Assistant Registrar of Companies and Another (1985) 58 Comp. Cas. 293 (Cal)].*

*The fact that the company was not functioning [Madan Gopal Dey v. State of West Bengal AIR 1968 Cal 790] or that the management of the Company was taken over by the Government [Hindustan Co-operative Insurance Society Ltd. Re., (1961) 31 Com Cases 193] is no excuse for not holding the Annual General Meeting.*

*Hence, the company has to convene and hold a Meeting in each calendar year with a maximum gap of fifteen months between two Annual General Meetings.*

If a company holds its first Annual General Meeting, as aforesaid, it shall not be necessary for the company to hold any Annual General Meeting in the Calendar Year of its incorporation.

**Illustration**

*Say, a company was incorporated on 10<sup>th</sup> December 2014, "financial year" of that company would end on 31<sup>st</sup> March 2015 in view of sub-section (4) of Section 2 of the Act and therefore the last date for holding the first Annual General Meeting would be 31<sup>st</sup> December 2015 (9 months from 31<sup>st</sup> March 2015).*

*On the other hand, if a company was incorporated on 10<sup>th</sup> April 2015, its first financial year would end on 31<sup>st</sup> March 2016 only and therefore, the last date for holding the first Annual General Meeting will be 31<sup>st</sup> December 2016. In this manner, almost 21 months elapse between the date of incorporation and date of first Annual General Meeting. In this case, the company need not hold any Annual General Meeting in the year of its incorporation i.e. 2015.*

*The Notice of an Annual General Meeting should state that the Meeting is an 'Annual General Meeting'. An Annual General Meeting is held apart from and in addition to any other General Meeting that a company may hold.*

*An adjourned Meeting is a continuation of the original Meeting. Hence, where a Meeting called and held on a day in one year is adjourned to a date in the next year, and held on that date, such adjourned Meeting held on the latter date is not a different Meeting in so far as it relates to the next year. In other words, another Annual General Meeting has to be held in the next calendar year.*

*Where a Meeting called on 30<sup>th</sup> December was adjourned to 31<sup>st</sup> March in the next year, and the next Meeting was held on 28<sup>th</sup> January of the following year, Section 166 of the Companies Act, 1956 (corresponding to Section 96 of the Act) was not complied with, i.e. an Annual General Meeting was not held in 'each year' and the company was convicted of an offence [Sree Meenakshi Mills Co. Ltd. v. Assistant Registrar, Madurai (1938) 8 Comp. Cas. 175 (Mad)].*

**Power of the Registrar to extend time for holding Annual General Meeting**

*The Registrar of Companies may extend the time for holding an Annual General Meeting, other than the first Annual General Meeting, "for any special reason" by a period not exceeding three months, if it cannot be held within the prescribed time limit [Third proviso of sub-section (1) of Section 96 of the Act]. Therefore, if in any year a company cannot hold its Annual General Meeting within the period stipulated in Subsection (1) of Section 96 of the Act, it may hold the Meeting within the next three months with the permission of the Registrar of Companies. In such a case, the gap between two Annual General Meetings may be more than the period of fifteen months stipulated under sub-section (1)*

*of Section 96 of the Act. However, in such a case it should be ensured that the concerned Annual General Meeting is actually held on or before the extended time limit and the notice should specify the fact of extension of time for holding the Annual General Meeting.*

*No extension of time can be granted by the Registrar beyond three months.*

*Delay in completion of audit of the financial statements of the company does not ordinarily constitute a "special reason" justifying the extension of time for holding the Annual General Meeting.*

#### ***Default in holding Annual General Meeting***

*If a company defaults in holding an Annual General Meeting, any Member may apply to the CLB/Tribunal which may notwithstanding anything contained in the Act or Articles of the Company, call or direct the calling of the Meeting and give such ancillary or consequential directions as it may consider expedient in relation to the calling, holding and conduct of the Meeting. The CLB/Tribunal may direct the convening of the Annual General Meeting only if it is convinced that the management has been unwilling to convene such a Meeting or it was not practicable for the management to do so [Section 97 of the Act].*

*The power of the CLB/Tribunal cannot be invoked unless there is, in the first place, a default on the part of the Board of Directors to call and hold the Annual General Meeting. To invoke such power, the last date by which the Notice should have been given by the Board ought to have expired. This right is available only to a Member of the company and the Company, by itself, cannot make such an application to the CLB/Tribunal.*

*In such cases, the CLB/Tribunal may direct that one Member present in person or by Proxy shall be deemed to constitute the Meeting. A Meeting held in pursuance of such order will be deemed to be an Annual General Meeting of the company. However, the CLB/Tribunal cannot issue directions or instructions in regard to an Annual General Meeting duly convened by the company. It can do so only in respect of Meetings convened on its orders [Shankar Sundaram v. Amalgamations Private Limited (2002) CLC 701]. If, at the time an Annual General Meeting is due to be held, there is only one Member [the other(s) having died], no offence is committed if the Annual General Meeting is not held because of the insufficiency of number of Members [State of Kerala v. West Coast Planter's Agencies Ltd. (1958) 28 Comp. Cas. 13].*

## 2.2 Extra-Ordinary General Meeting

**Items of business other than Ordinary Business may be considered at an Extra-Ordinary General Meeting or by means of a postal ballot, if thought fit by the Board.**

*General Meetings, other than an Annual General Meeting, are called Extra-Ordinary General Meetings. The company may provide for such Meetings in their Articles in order to deal with matters which have to be decided before the next Annual General Meeting.*

*The Board of Directors, if they deem fit, may pass any Resolution through postal ballot, instead of convening an Extra-Ordinary General Meeting, in accordance with the requirement of the Act.*

### ***Calling of an Extra-Ordinary General Meeting on Requisition***

*As already explained under paragraph 1.1, the Board should, within twenty-one days from the date of receipt of a valid Requisition in regard to any matter, proceed to call a Meeting for the consideration of those matters on a day not later than forty-five days from the date of receipt of such requisition. If the Board fails to do so, the Meeting may be called and held by the requisitionists themselves within three months from the date of deposit of such requisition.*

*A specimen of Notice by requisitionists convening an Extra-Ordinary General Meeting is placed at **Annexure VII** and a specimen of the Notice to be given by a company to its Members on receipt of a requisition for a Meeting is placed at **Annexure VIII**. A specimen of board Resolution calling the Extra-Ordinary General Meeting as per the requisition is placed at **Annexure IX**.*

### ***Calling of Extra-Ordinary General Meeting by CLB/Tribunal***

*If, for any reason, it is impracticable to call a Meeting of the company other than an Annual General Meeting, the CLB/Tribunal may direct the calling of the Meeting on its own motion or on an application of any Director or on an application of any Member entitled to vote at the Meeting [Section 98 of the Act]. For this purpose, the CLB/Tribunal may give directions in respect of the place, date and manner in which the Meeting is to be held and conducted.*

*The term practicability is not defined in the Act, thus, the same shall vary in each case. However, it is construed that a case can be termed as impracticable only in the event that it is impossible to convene the Meeting by the company due to reasons which are beyond the control of the management.*

### 3. Quorum

#### 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 of Members should be present.*

*Presence of a Quorum is very important for the purpose of conducting, convening and holding the Meeting in a proper manner.*

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

*A Quorum should be present when the questions brought before the Meeting are being decided. The mere presence of Quorum at the beginning of the Meeting is not sufficient.*

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

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

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

*The Articles of a private company can provide for a higher Quorum but it cannot reduce the number of Members required to constitute the Quorum.*

#### **Personal presence necessary to constitute Quorum**

Members need to be personally present at a Meeting to constitute the Quorum.

*Only those Members who are present in person should be reckoned for ascertaining the Quorum.*

Proxies shall be excluded for determining the Quorum.

*A Proxy cannot be considered as a Member personally present and hence excluded for determining Quorum. However, the following persons attending a Meeting would be considered as Members personally present; and hence included to constitute Quorum:*

- (a) a representative appointed under Section 113 of the Act to attend a Meeting on behalf of a body corporate;*
- (b) a representative appointed under Section 112 of the Act to attend a Meeting on behalf of the President of India or Governor of a State.*
- (c) a donee of a Power-of-Attorney could be presumed to be personally present if the power-of-attorney authorises such donee to attend and vote at General Meetings of companies of which the donor of the power-of-attorney is a Member.*

*In no other case, a person attending a Meeting as a representative of a Member shall be regarded as a Member personally present.*

***Donee of a general power of attorney not deemed as Proxy***

*If any Member of a company has given a general power-of-attorney in favour of some other person to make investments on his behalf and to attend to all matters incidental and consequential thereto including attending General Meetings of companies in which investments are so made and if at General Meetings of such companies, the donee is present, then it would be deemed, by virtue of the provisions of Section 3 of the Powers-of-Attorney Act, 1882, that the donor is personally present and the donee will not be deemed to be a Proxy of the donor [Cf. Tata Iron & Steel Co. Ltd., In Re., AIR 1928 Bom. 80].*

***Reckoning of Preference Shareholders and Joint Shareholders for Quorum***

*If any business to be transacted at a General Meeting does not include any item or Resolution which directly affects the rights of the preference shareholders, their presence should not be taken into account for the purpose of determining the Quorum. Where a Resolution is put to vote at the General Meeting by which the rights of preference shareholders are directly affected, their presence should be taken into account for the purpose of the Quorum and voting on the Resolution.*

*All joint shareholders are entitled to attend the General Meetings. However, for the purpose of ascertaining Quorum and for voting purposes, joint holders will be counted only as one Member since only one of them is entitled to vote.*

***Consequences of Meeting without proper Quorum***

*A General Meeting at which less than the number of Members prescribed for a Quorum is present, is not a Meeting at all for want of the required Quorum.*

*The absence of a Quorum cannot be waived, and any business transacted at a Meeting where a Quorum is absent is deemed void.*

*However, if all the Members of the company are present in person, the proceedings will be valid even if the Quorum required by the Articles is more than the total number of Members.*

***Illustration***

*Consider a company where the number of Members was originally large, say 500, and the Quorum fixed by the Articles was 100 Members present. Subsequently, 450 Members sold their shares which were acquired by some of the remaining 50 Members. Here, proceedings will be valid if all Members are present in person. In the given case, if less than 50 Members are present, there shall be no Quorum.*

*If within half an hour from the time fixed for holding the Meeting a Quorum is not present, the Meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine. If at the adjourned Meeting within half an hour from the time appointed for the Meeting the Quorum is not present, the Members present shall form a Quorum [Sub-section (2) and (3) of Section 103 of the Act]. From the use of the words 'Members present', and the fact that there cannot be a Meeting unless at least two persons are present, it follows that at least two Members should be present even at the adjourned Meeting. If a Meeting has been called on the requisition of Members and there is no Quorum for half an hour, the Meeting shall stand dissolved (These aspects of Quorum have been further dealt with under the heading 'Adjournment of Meetings').*

*The Act provides that the Quorum shall be present at the Meeting within half an hour. If the Members want to wait for the Quorum for more than half an hour, they can do so, as it is not prohibited in the Act. Waiting for a longer time does not destroy the essence of law. The time of half an hour is recommendatory in nature and not mandatory [Janaki Printers Private Limited v. Nadar Press Ltd. and Others (2001) 103 Comp Cas 546 (CLB)].*

*The requisite Quorum at the Meeting is required even if some Members have already cast their votes through e-voting facility.*

***One-Man Meeting***

*It has been clarified by the Department of Company Affairs [now Ministry of Corporate Affairs] that a single Member present cannot, by himself, constitute a Quorum [Circulars and Clarifications Co. Law & SEBI, P1 198 vide File No.8/16/(I)/61-PR]. Such general rule against a one-man Meeting has also been settled through judicial decisions.*

*There are, however, some exceptions to this general rule which permit a Meeting to be constituted of only one Member. These are:*

- *Where a person holds all the shares of a class, that person may constitute a class Meeting.*
- *Where default is made in holding an Annual General Meeting in accordance with Section 96 of the Act, the CLB/Tribunal while ordering the convening of the Meeting, may direct that one Member present in person or by proxy will constitute the Quorum [Proviso to sub-section (I) of Section 97 of the Act].*
- *Where it is impracticable to call a Meeting in the manner prescribed by the Act or the Articles, the CLB/Tribunal may order a Meeting to be held and direct that one Member present in person or by Proxy shall be deemed to constitute a Meeting [Proviso to sub-section (I) of Section 98 of the Act].*

***3.2 A duly authorised representative of a body corporate or the representative of the President of India or the Governor of a State is deemed to be a Member personally present and enjoys all the rights of a Member present in person.***

One person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member for the purpose of Quorum.

*A person who represents two different bodies is supposed to act in accordance with the instructions of his principals. Therefore, such representative theoretically carries with him two sets of opinions on the Resolutions.*

*If two or more bodies corporate, who are Members of a company, are represented by a single individual, each of the bodies corporate should be treated as personally present through that individual representing such bodies corporate. For instance, if a representative represents three bodies corporate, his presence should be counted as three Members being present in person for purpose of Quorum [Maclead (Neill) & Sons Ltd, Petitioners, 1967 Scottish Law Times 46].*

However, to constitute a Meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than 1000 Members with a Quorum requirement of five Members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more Member is personally present.

*Say, in case of a company, where the Quorum requirement is five Members, a single authorised representative of five bodies corporate cannot form Quorum by himself if no other individual is personally present at the Meeting. However, he can form a Quorum if at least one more Member is personally present at the Meeting.*

*This is so because a single Member present cannot by himself constitute a Meeting. There are a number of decisions by which it is now firmly settled that as a general rule a single person cannot constitute a Meeting. Few such cases include Sharp v. Dawes (1876) 2 QBD 26 (CA), Awadhoot v. State of Maharashtra AIR 1978 Bom 28 etc.*

Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be, counted for the purpose of Quorum.

A Member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.

The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot.

#### **4. Presence of Directors and Auditors**

##### **4.1 Directors**

###### **4.1.1 If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.**

*The Directors of the company act on behalf of the Members and therefore have fiduciary responsibilities towards them. They are individually as well as collectively responsible for the over-all management of the company. General Meetings provide a forum to the Members to review the manner in which the Directors manage the company while also giving the Directors an opportunity to apprise the Members about the affairs of the company and to listen their views and suggestions.*

*All the Directors are, therefore, expected to attend the General Meetings of the company. In case any Director is unable to attend the Meeting, the Chairman should explain the absence of such Director at the Meeting. Such absence is, however, not wrong in law.*

The Chairman of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee, or any other Member of any such Committee authorised by the Chairman of the Committee to attend on his behalf, shall attend the General Meeting.

*While all Directors are expected to attend the General Meetings of the company, the Chairmen of the Audit Committee, Nomination and Remuneration Committee and the Stakeholders Relationship Committee are specifically required by this paragraph of SS-2, to attend the General Meeting of the company. Flexibility has however been given to the Chairman of these Committees to authorise any other Member of the Committee to attend the General Meeting on his behalf, in case he is unable to be present at the Meeting (In line with Section 178(7) of the Act).*

*This Standard has been introduced as a good governance practice to ensure that at least one Member of the above mentioned Committees is present at the General Meeting in order to address the Members' queries, if any, concerning their respective Committees.*

#### **4.1.2 Directors who attend the General Meetings of the company and the Company Secretary shall be seated with the Chairman.**

The Company Secretary shall assist the Chairman in conducting the Meeting.

*Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 clearly provides that it is the duty of the Company Secretary to facilitate the convening of Meetings and to attend Board, Committee and General Meetings and maintain their Minutes. Further, it is duty of the Company Secretary to render assistance to the Chairman in conduct of the Meeting.*

*It is in this context that the above paragraph 4.1.2 of SS-2 requires the Company Secretary and directors to be seated with the Chairman.*

*The following are some of the illustrative situations under which assistance can be rendered by the Company Secretary:*

- *To enable the Chairman to identify that requisite Quorum is present at the Meeting*
- *To enable the Chairman to ascertain the votes cast on each Resolution put to vote by show of hands*
- *To assist the Chairman in co-ordinating with the Members present at the Meeting and answering their queries*

- *To facilitate voting at the Meeting, electronically or otherwise*
- *To analyse the result of Remote e-voting and facilitate declaration thereof*
- *To maintain the decorum of the Meeting etc.*

#### 4.2 Auditors

**The Auditors, unless exempted by the company, shall, either by themselves or through their authorised representative, attend the General Meetings of the company and shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors.**

*Auditors or their authorised representative should attend the General Meetings to reply to any query that may be raised or provide any explanation that may be sought by the Members in relation to any part of the business which concerns them or to any reservations, qualifications or adverse remarks made by them in the Auditor's Report.*

The authorised representative who attends the General Meeting of the company shall also be qualified to be an Auditor.

*The authorised representative of the Auditor attending the General Meeting on behalf of the Auditor should be a person who is a member of the Institute of Chartered Accountants of India (ICAI) and eligible for appointment as auditor of the company.*

#### 4.3 Secretarial Auditor

**The Secretarial Auditor, unless exempted by the company shall, either by himself or through his authorised representative, attend the Annual General Meeting and shall have the right to be heard at such Meeting on that part of the business which concerns him as Secretarial Auditor.**

Unless exempted by the company, the Secretarial Auditor for the last financial year whose Secretarial Audit Report has been annexed to the Board Report, is required to attend, either by himself or through his authorised representative, the Annual General Meeting. The Secretarial Auditor shall have the right to be heard at such Meetings on that part of the business which concerns him as Secretarial Auditor.

*Secretarial Auditor or his authorised representative should attend the Annual General Meeting to reply to any query that may be raised or provide any explanation that may be sought by the Members in relation to any part of the business which concerns him or to any reservations, qualifications or adverse*

*remarks made by him in the Secretarial Audit Report or to the compliance and governance aspects of the company.*

*It is advisable that the Secretarial Auditor appointed for the current financial year in which Annual General Meeting is being held also attends such Annual General Meeting.*

The Chairman may invite the Secretarial Auditor or his authorised representative to attend any other General Meeting, if he considers it necessary.

The authorised representative who attends the General Meeting of the company shall also be qualified to be a Secretarial Auditor.

*The authorised representative of the Secretarial Auditor attending the General Meeting on behalf of the Secretarial Auditor should be a person who is a member of the Institute of Company Secretaries of India (ICSI) and eligible for appointment as Secretarial Auditor of the company.*

## 5. Chairman

### 5.1 Appointment

**The Chairman of the Board shall take the chair and conduct the Meeting. If the Chairman is not present within fifteen Minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.**

*The Chairman of the company, if any, should be the Chairman of the Board. It is not necessary to pass a Resolution, either at a Board Meeting or a General Meeting, in order to authorise the Chairman of the Board to preside over all General Meetings. Unless otherwise provided in the Articles, the provisions below should be complied with:*

- *The Chairman of the Board should preside over the General Meetings, and therefore the Chairman of the Board, if present, should take the chair.*
- *If there is no Chairman of the Board or if such Chairman of the Board is not present within fifteen minutes after the time appointed for holding the Meeting or if he declines to take the chair, the Directors present should elect any one among themselves to chair such Meeting.*

- *If there is only one Director present at a Meeting and he is willing to act as Chairman, he may chair the Meeting with the consent of the Members present.*
- *If no Director is present within fifteen minutes or if none of the Directors is willing to take the chair, the Members present should elect any one among themselves to chair the Meeting.*

*The election of the Chairman, as aforesaid, should in the first instance be made by a show of hands. The person elected as Chairman on a show of hands should preside over the Meeting and commence the proceedings of the Meeting.*

#### ***Articles to be complied with***

*If the Articles contain a provision as to who should be the Chairman of the Meeting and the procedure for the election of the Chairman, the same should be complied with.*

#### ***Effect of MCA Notification***

*In case of a private company, the Articles may contain a provision as to the election of the Chairman of General Meetings. In such a case, notwithstanding anything stated above, the election of the Chairman should be done as provided in the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

#### ***Demand for poll on the election of Chairman***

If a poll is demanded on the election of the Chairman, it shall be taken forthwith in accordance with the provisions of the Act and the Chairman elected on a show of hands shall continue to be the Chairman of the Meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the Meeting.

#### ***Chairman of the adjourned Meeting***

*Since an adjourned Meeting is a continuation of the original Meeting, the Chairman of the original Meeting should be the Chairman of the adjourned Meeting unless he is unable or unwilling to act as such or is validly removed as Chairman at the Meeting. In such case, the procedure of election of Chairman should be followed to elect a new Chairman to preside at the Meeting. If the Chairman of the Board was not present to chair the original Meeting but is*

*present at the adjourned Meeting, then he should take the chair at the adjourned Meeting.*

***Duty of the Chairman***

The Chairman shall ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business. The Chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in the Notice is transacted. The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act.

*It is the duty of the Chairman to preserve order at the Meeting and to conduct the proceedings in a proper manner.*

**5.2 The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.**

*Even though Resolutions forming part of "Special Business" are accompanied by an explanatory note, the Chairman should, at the Meeting, explain the objective and implications of each such Resolution in simple language for the convenience of Members present at the Meeting so that they may make informed decisions after understanding the meaning, scope and implications of the concerned items of business. For this purpose, the Chairman may take the assistance of the Company Secretary or any other Director or officer of the company in order to do so, if required.*

*Chairman may explain developments if any subsequent to the posting of Notice if such developments constitute a material fact. Any omission to state a material fact in the Statement of Material Facts which gets noticed subsequently could also be explained at the Meeting.*

The Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.

*The Chairman should provide an opportunity to Members to raise questions relating to the agenda items and ensure that Members who have sought any clarifications, information or explanations, are given an effective and timely response.*

*The Chairman should act fairly and allow all Members who wish to speak on a motion to have a reasonable opportunity to do so, even if there appears to be clear majority who have already made up their mind on the agenda item. The Chairman has no right to prevent discussion upon a matter which is included*

*in the Notice convening a Meeting [S.Rm.S.T. Narayana Chettiar v. The Kaleeswarar Mills Ltd. (1951) 21 Comp. Cas. 351 (Mad)].*

*The Chairman can, however, restrict repetitive questions and limit the amount of debate permitted on each Resolution. For this purpose, the company may invite Members to submit questions in advance. The company may select the common questions and provide a comprehensive answer for each of these at the General Meeting.*

*For the purpose of answering any question, the Chairman may consult the Company Secretary, key managerial personnel or other officers of the company, the Auditors, Secretarial Auditors, etc.*

**5.3 In case of public companies, the Chairman shall not propose any Resolution in which he is deemed to be concerned or interested nor shall he conduct the proceedings for that item of business.**

*The Chairman is expected to act in good faith and in an impartial manner and not to put his own interests ahead of or in conflict with those of the company. In line with this principle, in case of public companies, the Chairman should neither propose, any Resolution in which he is deemed to be concerned or interested nor conduct the proceedings for such item of business.*

If the Chairman is interested in any item of business, without prejudice to his Voting Rights on Resolutions, he shall entrust the conduct of the proceedings in respect of such item to any Dis-Interested Director or to a Member, with the consent of the Members present, and resume the Chair after that item of business has been transacted.

## 6. Proxies

### 6.1 Right to Appoint

**A Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and a Proxy need not be a Member.**

*A Proxy may be described as the agent appointed by a Member to act on his behalf at the Meeting [Lord Hansworth in Cousins v. International Brick Co. Ltd. (1932) 2 Comp. Cas. 108 (CA)].*

*Every Member has a right to appoint any person as a Proxy to attend and vote at a General Meeting [Sub-section (1) of Section 105 of the Act].*

However, a Proxy shall be a Member in case of companies with charitable objects etc. and not for profit registered under the specified provisions of the Act.

*Members of certain class or classes of companies as may be specified by the Central Government shall not be entitled to appoint any other person as a proxy [Third Proviso to sub-section (1) of Section 105 of the Act].*

Accordingly, in case of companies incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of Companies Act, 1956), the Member is not entitled to appoint any other person as his Proxy unless such other person is also a Member of such company [Rule 19(1) of the Companies (Management and Administration) Rules, 2014].

*Thus, a Proxy need not be a Member of the company, except in the case of companies incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of Companies Act, 1956).*

#### **Number of Proxies**

*A Member may name one or more "alternate" individuals to be appointed as his Proxy to act as substitutes when the first named Proxy holder cannot attend the Meeting.*

A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

*A single person cannot be appointed as a proxy on behalf of:*

- (i) more than fifty Members and/or*
- (ii) Members holding more than ten percent of the total share capital of the company carrying voting rights.*

#### **Illustration**

*Say, 32 Members holding not more than ten percent of the total share capital appoint a single person as Proxy and one more Member (i.e. 33<sup>rd</sup> Member) also appoints the same person as Proxy. Here, by the addition of the 33<sup>rd</sup> member, if the shareholding exceeds the said threshold of ten percent of total share capital, the Proxy can act only for the 32 members.*

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder.

If a Proxy is appointed for more than fifty Members, he shall choose any fifty Members and confirm the same to the company before the commencement of

specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty proxies received as valid.

*A Proxy should be in favour of an individual.*

***Competence of an Artificial Person to appoint a Proxy***

*A Proxy may be appointed by both natural and artificial persons competent in law to act as principals.*

*The Proxy holder should have the legal capacity to act as an agent. A Proxy, when it refers to the person appointed as a Proxy, should always be a natural person. The words "to attend" and "to vote" implicitly make it clear that such acts can be done only by a natural person. Section 113 of the Act makes it clear that a body corporate can appoint an authorised representative to attend and vote including the right to vote by Proxy and the words "as that body could exercise if it were an individual Member, creditor or holder of debentures of that company" makes it clear that the act of attending and voting at General Meetings has to be done only by individuals who are natural persons.*

***Appointment of Proxy by a Preference Shareholder***

*Where a preference shareholder has a right to vote on a particular Resolution, he has the right to appoint a Proxy to vote on the said Resolution. Further, the same person may be appointed as Proxy by more than one preference shareholder and, in such a case, if one Preference shareholder instructs the Proxy to vote in one way while another Preference shareholder instructs the Proxy to vote in a different way, the Proxy shall act in accordance with such instructions.*

***Appointment of Proxy by a Member who has already voted through Remote e-voting***

*A Member who has already cast his vote through Remote e-voting may appoint a Proxy to attend the Meeting instead of himself, but such Proxy will not be able to cast his vote at the Meeting.*

***Appointment of Proxy in case of a company not having a share capital***

*In the case of a company not having share capital, the Articles may contain a provision stating that a Proxy has no right to speak and that a Proxy need not be a Member and also that a Proxy cannot vote, except on a poll.*

*Unless otherwise provided in the Articles, sub-section (1) of the Section 105 of the Act shall not apply in case of a company not having a share capital.*

*While the provisions for appointment of Proxy apply in relation to companies that have share capital, even companies that do not have share capital may make such provision through their Articles.*

### ***Right of a Proxy***

*First proviso under sub-section (1) of Section 105 of the Act says that a Proxy has no right to speak and is not entitled to vote except on a poll.*

### ***Effect of MCA Notification***

*In case of a private company, the Articles may contain provisions as to various aspects of Proxies. In such a case, notwithstanding anything stated below, the Articles should be complied with [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

## **6.2 Form of Proxy**

### **6.2.1 An instrument appointing a Proxy shall be either in the Form specified in the Articles or in the Form set out in the Act.**

The instrument of Proxy shall be signed by the appointer or his attorney duly authorised in writing, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

*The Proxy form should be in writing [Clause (a) of sub-section (6) of Section 105 of the Act].*

*An instrument appointing a Proxy should be in Form No. MGT-11 [Rule 19 of the Companies (Management and Administration) Rules, 2014].*

*If an instrument appointing a Proxy, is in Form No. MGT-11, it shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the Articles of a company [Sub-section (7) of Section 105 of the Act].*

*This means that the Articles may prescribe any other requirement or format for the "Proxy form" and the Member may be advised to submit the Proxy on such form. However, if any Member uses Form No. MGT-11 and deposits the same with the company, it should be accepted by the company.*

### **6.2.2 An instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof.**

*A Proxy given for the original Meeting is also valid for the adjourned Meeting.*

### 6.3 Stamping of Proxies

**An instrument of Proxy is valid only if it is properly stamped as per the applicable law. Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are invalid**

*The Indian Stamp Act, 1899 requires certain instruments to be stamped. If the instrument is not stamped in accordance with the Indian Stamp Act, 1899, the corresponding penalty, as mandated by the Act, would be levied.*

*An instrument of proxy is invalid, if it is not properly stamped as per the relevant law related to stamping of various instruments. The Proxy should be stamped before it is acted upon. A Proxy cannot be said to have been duly stamped and executed if the stamp has been affixed over the signature of the Member.*

*Stamp duty on Proxies is uniform throughout the country [Article 246(1) of the Constitution of India, read with Entry 91 of List I of Schedule VII], and hence it is immaterial whether or not the stamp affixed on the Proxy form bears the name of a State. Similarly, a Proxy executed by a Member in one State, though having the stamp of another State affixed on it, is valid [Firestone Tyre & Rubber Co. v. Synthetics and Chemicals (1971) 41 Comp. Cas. 377].*

*Though under Section 18 of the Indian Stamp Act, 1899, an instrument other than bills and notes executed outside India can be stamped in accordance with the duty payable under the Indian Stamp Act, 1899 within three months from the date of its receipt in India, a Proxy executed outside India or within India must be stamped prior to depositing the same with the company.*

*A vote cast on an unstamped Proxy is invalid [In Re. Tata Iron and Steel Co. Ltd. AIR 1928 Bom 80].*

### 6.4 Execution of Proxies

#### 6.4.1 The Proxy-holder shall prove his identity at the time of attending the Meeting.

*Proper details of name and folio number of the Member should be entered on the Proxy form in order to facilitate related identification.*

*The Proxy-holder should also sign the Proxy form so as to enable the company to verify that only such person as has been appointed by the Member, is attending the Meeting and exercising rights on behalf of the Member. In addition, photo-identification of such Proxy-holder may also be done by the company.*

**6.4.2 An authorised representative of a body corporate or of the President of India or of the Governor of a State, holding shares in a Company, may appoint a Proxy under his signature.**

*The President of India or the Governor of a State, if he is a Member of a company, may appoint such person as he thinks fit to act as his representative at any Meeting of the company [Sub-section (1) of Section 112 of the Act]. Such a person appointed for this purpose shall be deemed to be a Member of such company and is entitled to exercise the same rights and powers as a Member including right to vote by Proxy.*

*A Member of a company who is a body corporate may authorise by Resolution of its Board, or other governing body, such person as it thinks fit to act as its representative at any Meeting of such company [Section 113 of the Act]. Such a person appointed as a representative is entitled to exercise the same rights and powers of a Member, including the right to vote by Proxy.*

**6.5 Proxies in Blank and Incomplete Proxies**

*In case there is any objection to the validity of a Proxy, the Chairman is entitled to take a decision on that question.*

***Authority of Chairman on validity of Proxy***

*Without prejudice to the above statutory requirements, the Chairman shall be the final authority to decide on the validity of the Proxy.*

*It is for the Chairman to decide the validity of the proxies and his decision in this regard will stand unless the contrary is proved [Dawson v. Hormasji AIR 1932 Rang 154]. The validity of the Proxies cannot be decided by scrutinisers.*

**6.5.1 A Proxy form which does not state the name of the Proxy shall not be considered valid.**

The executor of the Proxy should state the name of the Proxy in the form. A Proxy form, though duly signed, should not be acted upon unless it bears the name of the Proxy.

**6.5.2 Undated Proxy shall not be considered valid.**

*A space should be provided in the Proxy form for dating such form and, if the date is not inserted, the Proxy should be deemed to be invalid, even if it is otherwise complete in all aspects and has been received within the prescribed time.*

**6.5.3 If a Company receives multiple Proxies for the same holdings of a Member, the Proxy which is dated last shall be considered valid; if they are not dated or bear the same date without specific mention of time, all such multiple Proxies shall be treated as invalid.**

***Illustration***

*Assume that the General Meeting of a company is scheduled on 22<sup>nd</sup> September, 2015 and company has received 4 proxies for the same holdings of a Member dated with 5<sup>th</sup>, 12<sup>th</sup>, 10<sup>th</sup> and 20<sup>th</sup> September, 2015. The proxy dated last should be considered valid i.e. 20<sup>th</sup>. However, if the proxies received are not dated or bear the same date without mention of time, all proxies should be treated as invalid.*

**6.6 Deposit of Proxies**

**6.6.1 Proxies shall be deposited with the Company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.**

*The above time limit of forty-eight hours affords the company an opportunity to scrutinise proxies and for the Chairman to be advised on the validity thereof. It also facilitates the taking of a poll, if any, as the company would be able to compile the list of proxies lodged in favor of the various appointees with the total number of votes which they represent, which in turn would facilitate the processes of checking of proxies, polling, counting of votes, etc.*

*There is nothing in law to exclude Sundays in the computation of the forty-eight hours and a Proxy delivered on a Sunday for a Meeting to be held forty-eight hours later, on Tuesday, would be valid provided the receipt of the Proxy at the time stated could be determined [K.P. Chackochan v. Federal Bank (1989) 66 Comp. Cas. 953 (Ker)].*

*The actual time of receipt of Proxy should be considered for determining its validity irrespective of when the form was posted.*

*Any provision in the Articles of a company which specifies or requires a longer period for deposit of Proxy than forty-eight hours before a Meeting of the company shall have effect as if a period of forty-eight hours had been specified in or required for such deposit.*

**6.6.2 If the Articles so provide, a Member who has not appointed a Proxy to attend and vote on his behalf at a Meeting may appoint a Proxy for any adjourned Meeting, not later than forty-eight hours before the time of such adjourned Meeting.**

*A Proxy may be appointed for an adjourned Meeting though the Member had himself attended the original Meeting.*

**6.7 Revocation of Proxies**

*A Proxy is in the same position as an agent and his authority to act may be revoked in the same manner as that of an agent. Such authority continues unless it is revoked.*

*The relationship between a shareholder and his Proxy is similar to that of principal and agent. A Proxy can, any time, be revoked by the shareholder [S. Rm. S.T. Narayana Chettiar v. Kaleeswarar Mills Ltd. AIR 1952 Mad 515].*

*The revocation of Proxy can be divided into two categories:*

*(i) Implied revocation - when the Proxy is revoked by operation of law, it is termed as implied revocation. In this case it is not necessary for a Member to give an express notice of revocation to the company.*

*A few examples are as follows:*

- *When the Member has appointed a Proxy and he comes to attend the Meeting himself, such Proxy stands revoked impliedly [Paragraph 6.7.4 of SS-2].*
- *If the Member appoints another Proxy, the previous Proxy shall be revoked. A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy [Paragraph 6.7.2 of SS-2].*
- *If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting [Paragraph 6.7.1 of SS-2].*

*(ii) Express revocation- when the Member expressly gives the notice to revocation of proxy to the company.*

**6.7.1 If a Proxy had been appointed for the original Meeting and such Meeting is adjourned, any Proxy given for the adjourned Meeting revokes the Proxy given for the original Meeting.**

**6.7.2 A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy.**

*If a Member has given a Proxy and then, at a later date, gives another Proxy*

*which is valid in all respects, the Proxy given earlier is automatically revoked. However, where one Proxy was lodged before and the other after the expiry of the date fixed for lodging proxies, the former would be accepted and the second would be rejected.*

**6.7.3 A Proxy is valid until written notice of revocation has been received by the Company before the commencement of the Meeting or adjourned Meeting, as the case may be.**

*Except in case of implied revocation, a Proxy is not revoked unless the written notice to that effect is received by the company before the commencement of the Meeting or the adjourned or postponed Meeting, as the case may be.*

*Revocation of Proxies cannot be assumed and written notice of revocation is necessary [Swadeshi Polytex Ltd. v. V.K. Goel (1988) 63 Com Cases 688 (Del)].*

*The vote given by a Proxy is valid notwithstanding its revocation provided no intimation in writing of the revocation is received by the company or by the Chairman of the Meeting before the vote is cast [K.P. Chackochan v. Federal Bank (1989) 66 Comp. Cas. 953 (Ker)].*

*A vote given in accordance with the terms of an instrument of Proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the Proxy or of the authority under which the Proxy was executed or the transfer of the shares in respect of which the Proxy is given. Provided that no intimation in writing of such death, insanity, revocation or transfer should have been received by the Company at its office before the commencement of the Meeting or adjourned Meeting at which the Proxy is used [Regulation 59 of Table F to Schedule I to the Act].*

*However, if intimation of the death or insanity of the Member has been given to the Company, a Proxy appointed by such Member will be revoked.*

An undated Notice of revocation of Proxy shall not be accepted. A notice of revocation shall be signed by the same Member (s) who had signed the Proxy, in the case of joint Membership.

A Proxy need not be informed of the revocation of the Proxy issued by the Member.

**6.7.4 When a Member appoints a Proxy and both the Member and Proxy attend the Meeting, the Proxy stands automatically revoked.**

*The right of a Member to vote in person supersedes rights conferred by the grant of a Proxy to a Proxy-holder. Mere presence of the Member will revoke the Proxy.*

*It may be noted that the Member concerned should sign the attendance register or deliver the attendance slip.*

#### **6.8 Inspection of Proxies**

*Before keeping open the proxies for inspection by Members, the Chairman should decide on the validity or otherwise of the proxies lodged. If any objection is raised after inspection by a Member, the Chairman may revise his decision.*

##### **6.8.1 Requisitions, if any, for inspection of Proxies shall be received in writing from a Member entitled to vote on any Resolution at least three days before the commencement of the Meeting.**

*Once a Proxy form has been deposited, it should be open to the inspection of all persons entitled to vote. The right of inspection is a necessary corollary to the right to challenge the vote of any other Member. The object of inspection is to enable Members to scrutinise the proxies filed and raise objections to the validity of any of them.*

*The manner of inspection may be subject to restrictions.*

##### **6.8.2 Proxies shall be made available for inspection during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.**

*Every Member entitled to vote on any Resolution at a General Meeting is entitled to inspect the proxies lodged with the company. The inspection should be allowed during the period starting twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting.*

Inspection shall be allowed between 9 a.m. and 6 p.m. during such period.

##### **6.8.3 A fresh requisition, conforming to the above requirements, shall be given for inspection of Proxies in case the original Meeting is adjourned.**

*As deposit of proxies is allowed even before the adjourned Meeting, a fresh requisition for inspection of proxies should be filed in case the original Meeting is adjourned.*

#### **6.9 Record of Proxies**

##### **6.9.1 All Proxies received by the company shall be recorded chronologically in a register kept for that purpose.**

*All proxies received by the company, irrespective of whether they are valid or not, should be recorded.*

*As a good secretarial practice, the time of receipt may also be mentioned in the register and on the Proxy itself.*

**6.9.2 In case any Proxy entered in the register is rejected, the reasons therefor shall be entered in the remarks column.**

*If for any reason, a Proxy is rejected, the fact of and the reasons for such rejection should be recorded on the Proxy itself and in the Register of Proxies.*

## **7. Voting**

*Voting is a method by which the Meeting decides whether it approves or disapproves the Resolution. It is a procedure which enables the Chairman to ascertain the true sense of the Meeting on any Resolution put before it.*

*Only those Members entitled to vote either in person or, where permissible, through authorised representative or Proxy, can participate in the voting process. The voting process may be through show of hands, ballot process, e-voting or voting by post in a postal ballot. In order to be entitled to vote, the Member concerned should be holding shares entitled to voting rights as on the cut-off date or record date or any other date as the company would have specified in the Notice of General Meeting. In certain cases, for instance, where Regulation 55 of Table F of Schedule I to the Act applies, a Member will not be entitled to vote at any General Meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.*

### **7.1 Proposing a Resolution**

**Every Resolution shall be proposed by a Member and seconded by another Member.**

*This Standard is relevant for a company which has not provided e-voting facility to its Members and takes up the Resolution for consideration at the Meeting directly.*

*In the case of a company which has provided e-voting facility, voting commences much before a physically convened General Meeting is held. In such cases, it is not necessary to follow this conventional practice which causes no harm if practiced. The Chairman shall have the discretion in requiring proposing or seconding of the Resolution, while considering the same at the Meeting.*

*A Proxy cannot speak and therefore he cannot propose or second a Resolution. However, the position of an authorised representative of a body corporate is different as discussed under paragraph 3.1 and 3.2 above and such a person is entitled to propose and second a Resolution.*

## 7.2 E-voting

**7.2.1 Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights.**

Every company having its equity shares listed on a recognised stock exchange should provide e-voting facility to its Members to exercise their voting rights. However, pursuant to Rule 20 of Companies (Management and Administration) Amendment Rules, 2015, the companies referred to in Chapter XB (companies listed on SME Exchange) or Chapter XC (companies listed on Institutional trading platform) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 are exempt from providing e-voting facility.

Other companies presently prescribed are companies having not less than one thousand Members.

*In terms of Rule 20(2) of Companies (Management and Administration) Amendment Rules, 2015, companies having not less than one thousand Members should provide e-voting facility to their Members to exercise their Voting Rights.*

The facility of Remote e-voting does not dispense with the requirement of holding a General Meeting by the company.

*It is mandatory to have a physical General Meeting in view of the fact that e-voting is only a facility and it is not mandatory for the Members to use the same. Members may still prefer to attend the Meeting and exercise their voting rights at such Meeting.*

*Therefore, a Meeting should be called and held in the normal way with the fulfillment of all attendant factors such as a Quorum. In case the Quorum is not present at the Meeting, such Meeting shall stand adjourned as per the applicable provisions for want of Quorum and the fate of the Resolutions put before such a Meeting would be decided at the adjourned Meeting.*

*If at adjourned Meeting also a Quorum is not present, the Members present shall be the Quorum [Sub-section (3) of Section 103 of the Act]. It means even if two Members are present, the Meeting will be valid.*

*At an adjourned General Meeting, if only one Member is present, such adjourned General Meeting shall stand cancelled for want of a minimum of two members to constitute a Meeting and the Resolution would fail, even if Remote e-voting has taken place.*

### 7.2.2 Voting at the Meeting

**Every Company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting.**

Ballot process may be carried out by distributing ballot/poll slips or by making arrangement for voting through computer or secure electronic systems.

*Voting at the Meeting should be made available for Members through a ballot process, which may be carried out by distributing ballot papers/poll slips or by making arrangement for voting through computer or secure electronic systems.*

*Voting through a ballot process at the Meeting is different from Demand for poll under Section 109 of the Act and paragraph 9 of SS-2.*

*The company may provide the same electronic voting system for the ballot process as used during Remote e-voting. In such cases, the said facility should be in operation till all the Resolutions are considered and voted upon in the Meeting and may be used for voting only by the Members attending the Meeting in person or through Proxy, and who have not exercised their right to vote through Remote e-voting [Proviso to clause (viii) of sub-rule (4) of Rule 20 of Companies (Management and Administration) Amendment Rules, 2015].*

*It is not necessary for a Quorum to be present while the ballot process is being conducted or when the scrutiniser is doing his job or when the result is announced. However, such a Quorum should be present at the time of announcement by the Chairman of the commencement of ballot process.*

Any Member, who has already exercised his votes through Remote e-voting, may attend the Meeting but is prohibited to vote at the Meeting and his vote, if any, cast at the Meeting shall be treated as invalid.

A Proxy can vote in the ballot process.

### 7.3 Show of Hands

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

*A Resolution, in the first instance, should be put to vote on a show of hands. In such case, each Member present in person has only one vote regardless of the number of shares held by him.*

*A Resolution put to vote at the General Meeting should be decided on show of hands provided no poll is demanded under Section 109 of the Act, or no facility of Remote e-voting is provided [Sub-section (1) of Section 107 of the Act].*

*In view of the provisions of Section 107 of the Act, voting by show of hands is not permitted in cases where Rule 20 of Companies (Management and Administration) Rules, 2014 as amended by the Companies (Management and Administration) Amendment Rules, 2015 is applicable. Rule 20 deals with voting through electronic means.*

*In Remote e-voting, the voting rights of a Member are determined on the basis of his share in the paid up equity share capital or on the basis of his share in the paid up preference share capital as the case may be and he need not necessarily use all his votes in favour or against and may use some votes in favour and some against the same Resolution. However, in a voting by show of hands, every Member shall have only one vote. Therefore, the practice of voting by show of hands is incompatible with Remote e-voting [Vide MCA Circular No. 20/2014 dated 17th June, 2014].*

A Proxy cannot vote on a show of hands.

*Proxies are not entitled to vote when a Resolution is put to vote on a show of hands.*

*Representatives of bodies corporate, or of the President of India or of Governors of States, holders of powers of attorney, guardians of minors and Kartas of HUFs should be treated as Members personally present for the purposes of voting on show of hands [Section 112 & Section 113 of the Act].*

#### ***Procedure for voting on show of hands***

*When the Chairman puts a Resolution to vote on a show of hands, he should first request those Members who are in favour of the Resolution to raise their hands. Thereafter, he should request those Members who are against the Resolution to raise their hands.*

*On counting—*

- (a) *in the case of an Ordinary Resolution, if the number of hands raised in favour of the Resolution exceeds the number of hands raised against, the Resolution can be said to have been passed.*
- (b) *in the case of a Special Resolution, if the number of hands raised in favour of the Resolution is at least three times the number of hands raised against the Resolution, the Special Resolution can be said to have been passed.*

*The Chairman should ascertain if the Resolution has been carried through with the requisite majority of votes in favour of the Resolution. In case of any doubt, he should order a poll to ascertain the same.*

*On completion of voting on a show of hands, the Chairman should declare the result by announcing that the Resolution has been passed by the requisite majority or that such Resolution has not been passed.*

*The result of voting so declared by the Chairman should subsequently be recorded in the Minutes of the Meeting and such record shall be conclusive evidence of the fact that the Resolution has been passed or not, and no further proof of the number of votes cast for or against the Resolution should be necessary.*

*When voting takes place by show of hands, declaration by the Chairman as to the result of voting is conclusive evidence that the Resolution was passed or not passed as the case may be [E.D. Sasoon United Mills, Re AIR 1929 Bom 38].*

*However, this may not be so in the following two cases:*

- (a) when a poll is demanded [Anthony v. Seger (1789) 1 HAG CON 13]; and
- (b) when the declaration is without taking a count of the number or proportion of the votes recorded in favour or against the Resolution [Dhakeshwari Cotton Mills Ltd. v. Nil Kamal Chakravarthy and Others (1937) 7 Com Cases 417].

*If Members or Proxy holders having requisite percentage of shareholding/voting power, as the case may be, demand a poll, it becomes the duty of the Chairman to order a poll.*

*Any objection as to the result declared on show of hands, should be made at once, i.e. the Chairman's ruling that a Resolution has been carried on show of hands should be challenged at that very time. It cannot be challenged subsequently [Arnot v. United African Lands Ltd. (1901) 1 Ch 518 (CA)].*

#### ***Effect of MCA Notification***

*In case of a private company, the Articles may contain a provision as to the voting by show of hands at the General Meetings. In such a case, notwithstanding anything stated above, the Articles should be complied with [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

#### **7.4 Poll**

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

*Before or on the declaration of the result of the voting on any Resolution put to vote on a show of hands, a poll should be ordered to be taken by the Chairman on a demand made in that behalf, –*

- (a) *in the case a company having a share capital, by the Members present in person or by Proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than rupees five lakh has been paid up; and*
- (b) *in the case of any other company, by any Member or Members present in person or by Proxy, where allowed, and having not less than one-tenth of the total voting power.*

A poll demanded should be taken within forty eight hours from the time when demand was made, except on the question of adjournment of the Meeting or appointment of Chairman which should be taken forthwith [Sub-sections (3) and (4) of Section 109 of the Act].

*A poll can be demanded even before declaration of result of voting on a show of hands. A specimen of a demand for poll is placed at **Annexure X**.*

*In case of demand for poll, the Chairman should act bona fide and ascertain the wishes of the Members [Second Consolidated Trust Ltd. v. Ceylon Amalgamated Tea and Rubber Estates Ltd (1943) 2 All ER 567].*

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

*The Chairman may, on his own motion, order a poll before or on the declaration of the result of voting on a show of hands [Sub-section (1) of Section 109 of the Act].*

Poll in such cases shall be through a Ballot process.

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

#### ***Effect of MCA Notification***

*In case of a private company, the Articles may contain a provision as to the demand for poll at the General Meetings. In such a case, notwithstanding anything stated above, the poll should be conducted as provided in the Articles [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

#### **7.5 Voting Rights**

**7.5.1 Every Member holding equity shares and, in certain cases as prescribed in the Act, every Member holding preference shares, shall be entitled to vote on a Resolution.**

*Whether it is a Meeting called under the authority of the Board or in pursuance of a requisition of eligible Members, only those persons who are entitled to vote on a Resolution should vote.*

Every Member entitled to vote on a Resolution and present in person shall, on a show of hands, have only one vote irrespective of the number of shares held by him.

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

*In e-voting or ballot process at the General Meeting, the number of votes cast in favour or against should be reckoned on the basis of the Member's share in the paid-up capital of the company, and the Chairman of the Meeting should regulate the Meeting accordingly.*

*A company may, if so authorised by its Articles, accept from any Member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up. A Member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him on any shares held by him until that amount has been called up [Section 50 of the Act].*

***Entitlement to vote:***

***Equity Shareholders***

*One of the basic rights of a Member is to attend and vote at General Meetings of the company and normally anyone whose name is borne on the Register of Members of the Company on the date of the General Meeting is entitled to attend the Meeting and vote, irrespective of when he became a Member.*

*Thus, every Member whose name appears on the Register of Members on the day of the General Meeting has the right to attend and vote at the General Meeting.*

*However, this position will not hold good in cases where Remote e-voting facility has been provided.*

*In cases where facility of Remote e-voting has been provided, only those Members whose names are recorded in the Register of Members of the company as on the cut-off date will be entitled to vote at the Meeting.*

*Cut-off date means a date not earlier than seven days before the date of General Meeting for determining the eligibility to vote by electronic means or in the General Meeting [Rule 20 of the Companies (Management and Administration) Amendment Rules, 2015].*

*If conversion of debenture into shares has taken place prior to the cut off date, such shareholders are entitled to attend and vote on the Resolution placed*

*before a General Meeting. However, if conversion has taken place after the cutoff date but before the General Meeting, such shareholders may attend the Meeting with the right to speak but without any voting rights in case of e-voting.*

*In cases where the identity of a Member is established to the satisfaction of the company/scrutiniser(s), his right to attend and to vote cannot be denied on grounds of non-availability of specimen signatures or difference in signature [In Re. United Western Bank Ltd. (2002) 38 SCL (34) CLB].*

### ***Preference Shareholders***

*A preference shareholder has a right to vote only in the following cases:*

1. *On Resolutions placed before the company which directly affect the rights attached to his preference shares;*
2. *On any Resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital.*
3. *On all Resolutions if dividend on the preference shares has not been paid for a period of two years or more [Second proviso to sub-section (2) of Section 47 of the Act]. If dividend default as aforesaid pertains only to a class of preference shares, it is only the holders of such class of preference shares who will have voting shares as aforesaid on all Resolutions placed before the company.*

*While under the Companies Act, 1956 there was a difference between cumulative preference shares and non-cumulative preference shares with respect to voting rights, there is no such distinction between those two types of preference shares under the Act.*

*The voting rights of a preference shareholder on a poll should be in proportion to his shares in the paid-up preference share capital of the company.*

*Where the preference shareholders are entitled to vote, the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares [First Proviso to the Section 47 (2) of the Act].*

### ***Joint-holders***

*Unless otherwise provided in the Articles, any one of two or more joint holders may vote at a Meeting either personally or by Proxy in respect of such shares as if he was solely entitled thereto and if more than one of such joint holders is*

*present personally or by Proxy or by attorney, then that one of such persons so present whose name stands first or higher on the Register of Members in respect of such shares shall alone be entitled to vote in respect thereof. However, any other joint holder shall be entitled to be present at the Meeting.*

*In the case of joint shareholding, vote of the senior, whether in person or by Proxy, should be accepted to the exclusion of the votes of the other joint holders. For this purpose seniority will be determined by the order in which the names stand in the Register of Members [Regulation 52 of Table F of Schedule I to the Act].*

#### ***Calls in arrears***

*The Articles of the company may provide that no Member shall exercise any voting rights in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the company has exercised any right of lien [Sub-section (1) of Section 106 of the Act].*

#### ***Persons of unsound mind***

*A Member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by Proxy [Regulation 53 of Table F of Schedule I to the Act].*

#### ***Minors***

*Minors are entitled to vote at Meetings, both on a show of hands and on a poll through their guardians only.*

#### ***Insolvent Member***

*An insolvent Member is entitled to exercise his voting rights, which are attributed to his status as a Member, so long as his name remains on the Register of Members of the company as a Member.*

#### ***Hindu Undivided Family***

*A Hindu Undivided Family [HUF], in respect of shares held by it, can participate in the voting process through its Karta or any other adult Member of the HUF duly authorised by the Karta.*

***Bodies corporate/President of India/Governors of States***

*Bodies corporate or the President of India and Governors of States can participate in the voting process by representatives appointed by them or through the proxies of such representatives [Section(s) 112 and 113 of the Act].*

***Effect of MCA Notification***

*Private companies are exempted from Section 43 and Section 47 of the Act, where the Memorandum or Articles so provide [MCA's Notification No. 464(E) dated June 5, 2015]. Therefore private companies may make different provision in the Articles as far as kinds of share capital and voting rights are concerned. In such cases, notwithstanding anything stated above, the voting rights shall be reckoned in accordance with the Articles.*

*In case of Nidhis, no member shall exercise voting rights on poll in excess of five per cent of total voting rights of equity shareholders [MCA Notification No. 465(E) dated June 5, 2015].*

***7.5.2 A Member who is a related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.***

*Specific related party transactions provided in Section 188 of the Act read with the Rule 15(3) of the Companies (Meetings of the Board and its Powers) Rules, 2014, which are not in the ordinary course of business or not on an arm's length basis, would need specific approval of Members at a General Meeting.*

*Where any Member is a related party, such a Member is not entitled to vote on the Resolution relating to such contract or arrangement provided such Member is a related party in the context of the contract or arrangement that is being specifically approved at the General Meeting.*

*Listed companies, however, have to follow the requirements of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and such requirements are in addition to and not in derogation of the above provisions.*

***Exemptions***

*Transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Act will not attract the requirements of Section 188 of the Act [General Circular No. 30/2014 dated 17<sup>th</sup> July 2014].*

*Wholly Owned Subsidiary has been exempted from the requirement of passing the said Resolution at its General Meeting in case of a transaction entered into*

*with its holding company [Vide Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014 dated 14th August 2014].*

*Such transactions therefore will not attract the requirements of this paragraph of SS-2.*

***Chairman – A related party***

*If the Chairman is a related party in respect of a Resolution relating to approval of a contract or arrangement, he should entrust the conduct of the proceedings in respect of such item to any dis-interested Director or to a Member, with the consent of the other Members present, and resume the chair after that item of business in which he is a related party has been transacted.*

***Effect of MCA Notification***

*This paragraph of SS-2 shall not apply to a private company. Accordingly, a Member who is a related party may vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party [In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015].*

*The requirement of obtaining prior approval of the Members in case of related party transactions and the restriction on the right of related parties to vote on such Resolution shall not apply to:*

- (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company;*
- (b) a Government company, other than a listed government company, in respect of contracts or arrangements other than those with any other Government company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, before entering into such contract or arrangement.*

*[MCA Notification No. G.S.R. 463(E) dated June 5, 2015]*

*Accordingly, this paragraph of SS-2 will not be applicable in the above cases.*

**7.6 Second or Casting Vote**

**Unless otherwise provided in the Articles, in the event of equality of votes, whether on show of hands or electronically or on a poll, the Chairman of the Meeting 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 is different from the original vote of the Chairman as a Director and it can be exercised only after the process of voting has been completed.*

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

*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 in the Articles.*

*Thus, the Articles of the company may 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 may use his discretion to have a second or casting vote.*

*The discretion to use or not to use his casting vote vests entirely with the Chairman. If the Chairman declines to exercise his second or casting vote and there is then an equality of votes, the Resolution is lost.*

Where the Chairman chooses to exercise his vote as a member, he should do so before the voting is concluded.

Where the Chairman has entrusted the conduct of proceedings in respect of an item in which he is interested to any Dis-interested Director or to a Member, a person who so takes the chair shall have a second or casting vote.

## **8. Conduct of e-voting**

*This paragraph of SS-2 would be applicable to those companies which have to provide the facility of Remote e-voting to their Members and to all those companies that may provide such facility voluntarily.*

### **8.1 Every Company that is required or opts to provide e-voting facility to its Members shall comply with the provisions in this regard.**

*Every company, other than a company referred to in Chapter XB (companies listed on SME Exchange) or Chapter XC (Companies listed on Institutional trading platform) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, having its equity shares listed on a recognised stock exchange or a company having not less than one thousand Members, should provide to its Members facility to exercise their right to vote on Resolutions proposed to be considered at General Meetings by electronic means [Rule 20(2) of the Companies (Management and Administration) Amendment Rules, 2015].*

*Once a company voluntarily opts for e-voting, it should comply with the e-voting rules under the Act and SS-2.*

**8.2 Every Company providing e-voting facility shall offer such facility to all Members, irrespective of whether they hold shares in physical form or in dematerialised form.**

**8.3. The facility for Remote e-voting shall remain open for not less than three days.**

The voting period shall close at 5 p.m. on the day preceding the date of the General Meeting.

*Once the vote on a Resolution is cast by the Member, he should not be allowed to change it subsequently or cast the vote again.*

#### **8.4 Board Approval**

**The Board shall:**

**(a) appoint one or more scrutinisers for e-voting or the ballot process;**

The scrutiniser(s) may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, or an Advocate or any other person of repute who is not in the employment of the company and who can, in the opinion of the Board, scrutinise the e-voting process or the ballot process, as the case may be, in a fair and transparent manner.

The scrutiniser (s) so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

Prior consent to act as a scrutiniser(s) shall be obtained from the scrutiniser(s) and placed before the Board for noting.

*The scrutiniser should be willing to be appointed and be available for the purpose of ascertaining the requisite majority [Rule 20(4)(x) of the Companies (Management and Administration) Amendment Rules, 2015].*

**(b) appoint an Agency;**

*An Agency should be appointed for providing and supervising the electronic platform for e-voting.*

**(c) decide the cut-off date for the purpose of reckoning the names of Members who are entitled to Voting Rights;**

The cut-off date for determining the Members who are entitled to vote through

Remote e-voting or voting at the Meeting shall be a date not earlier than seven days prior to the date fixed for the Meeting.

Only Members as on the cut-off date, who have not exercised their Voting Rights through Remote e-voting, shall be entitled to vote at the Meeting.

**(d) authorise the Chairman or in his absence, any other Director to receive the scrutiniser's register, report on e-voting and other related papers with requisite details.**

The scrutiniser(s) is required to submit his report within a period of three days from the date of the Meeting.

The Chairman or any other director so authorized shall countersign the scrutiniser's report so received.

*Since the scrutiniser's report and related papers are important documents, authority to receive and countersign the same has been given to the Chairman or any other Director authorised by the Board. The idea is also to bring in uniformity between the provisions of e-voting, poll and postal ballot in the Act as far as receiving and countersigning of the scrutiniser's report are concerned.*

### **8.5 Notice**

**8.5.1 Notice of the Meeting, wherein the facility of e-voting is provided, shall be sent either by registered post or speed post or by courier or by e-mail or by any other electronic means.**

*The Notice in case of e-voting should not be served through hand delivery or ordinary post.*

*The provisions of sending Notice covered in paragraph 1.2.2 of SS-2 shall be mutatis-mutandis applicable for the purpose of sending Notice, wherein the facility of e-voting is provided.*

An advertisement containing prescribed details shall be published, immediately on completion of despatch of notices for Meeting but atleast twenty one days before the date of the General Meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district and at least once in English language in an English newspaper, having country-wide circulation, and specifying therein, *inter-alia* the following matters, namely:-

- (a) A statement to the effect that the business may be transacted by e-voting;

- (b) The date and time of commencement of remote e-voting;
- (c) The date and time of end of Remote e-voting;
- (d) The cut-off date as on which the right of voting of the Members shall be reckoned;
- (e) The manner in which persons who have acquired shares and become Members after the despatch of Notice may obtain the login ID and password;
- (f) The manner in which company shall provide for voting by Members present at the Meeting;
- (g) The statement that
  - (i) Remote e-voting shall not be allowed beyond the said date and time;
  - (ii) a Member may participate in the General Meeting even after exercising his right to vote through Remote e-voting but shall not be entitled to vote again; and
  - (iii) a Member as on the cut-off date shall only be entitled for availing the Remote e-voting facility or vote, as the case may be, in the General Meeting;
- (h) website address of the company, in case of companies having a website and Agency where Notice is displayed; and
  - (i) Name, designation, address, e-mail ID and phone number of the person responsible to address the grievances connected with the e-voting.

Advertisement shall also be placed on the website of the company, in case of companies having a website and of the Agency.

*The advertisement on Remote e-voting should remain on the website of the company and of the Agency, till the date of the General Meeting.*

#### ***Effect of MCA Notification***

*In the case of Nidhis, the Notice may be served only on Members who hold shares of more than one thousand rupees in face value or more than one percent of the total paid-up share capital of the company, whichever is less. For other shareholders, notice may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and also be placed on the notice board of the company [In line with MCA Notification No. G.S.R. 465(E) dated June 5, 2015].*

**8.5.2 Notice shall also be placed on the website of the Company, in case of companies having a website, and of the Agency.**

Such Notice shall remain on the website till the date of General Meeting.

**8.5.3 Notice shall inform the Members about procedure of Remote e-voting, availability of such facility and provide necessary information thereof to enable them to access such facility.**

Notice shall clearly state that the company is providing e-voting facility and that the business may be transacted through such voting.

Notice shall describe clearly the Remote e-voting procedure and the procedure of voting at the General Meeting by Members who do not vote by Remote e-voting.

The Notice of the Meeting should clearly state that the facility for voting, either through electronic voting system or ballot or polling paper, is being made available at the Meeting and that Members attending the Meeting, who have not already cast their vote by Remote e-voting, shall only be able to exercise their voting right at the Meeting.

Notice shall also clearly specify the date and time of commencement and end of Remote e-voting and contain a statement that at the end of Remote e-voting period, the facility shall forthwith be blocked.

Notice shall also contain contact details of the official responsible to address the grievances connected with voting by electronic means.

Notice shall clearly specify that any Member, who has voted by Remote e-voting, cannot vote at the Meeting.

Notice shall also specify the mode of declaration of the results of e-voting.

Notice shall also clearly mention the cut-off date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on the cut-off date should treat this Notice for information purposes only.

Notice shall provide the details about the login ID and the process and manner for generating or receiving the password and for casting of vote in a secure manner.

**8.6 Declaration of results**

**8.6.1 Based on the scrutiniser's report received on Remote e-voting and voting at the Meeting, the Chairman or any other Director so authorised shall countersign the scrutiniser's report and declare the result of the voting**

**forthwith with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.**

*The manner in which Members have cast their votes, that is, affirming or negating the Resolution or otherwise, should not be available to the Chairman, scrutineer or any other person till the votes are cast in the Meeting or voting at the Meeting ends. The purpose of the requirement to maintain such confidentiality is to ensure that no one is influenced by the manner in which votes have been cast by those who have voted already.*

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

*Results of the voting should be displayed at the Registered Office of the company. Such results should also be displayed at the Head Office as well as the Corporate Office of the Company, if such offices are situated elsewhere i.e. at places other than the Registered Office.*

*Placing of voting result on the website as well as on the Notice Boards at the Registered Office/ Head Office/ Corporate Office of the company is being provided for wider coverage and for convenience of the Members who may visit such offices.*

*In case of companies whose equity shares are listed on a recognised stock exchange, the company should, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed [Rule 20(4)(xvi) of the Companies (Management and Administration) Amendment Rules, 2015].*

**8.6.3 The Resolution, if passed by a requisite majority, shall be deemed to have been passed on the date of the relevant General Meeting.**

*For the purpose of this paragraph, the requisite number of votes should be the votes required to pass the Resolution as an 'Ordinary Resolution' or a 'Special Resolution', as the case may be, under Section 114 of the Act.*

*Such majority would be determined after the voting at the relevant General Meeting is over.*

### **8.7 Custody of scrutinisers' register, report and other related papers**

*The register and all other papers relating to voting by electronic means should remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the Minutes and thereafter, the scrutiniser should hand over the register and other related papers to the company [Rule 20(4)(xv) of the Companies (Management and Administration) Amendment Rules, 2015].*

**The scrutinisers' register, report and other related papers received from the scrutiniser(s) shall be kept in the custody of the Company Secretary or any other person authorised by the Board for this purpose.**

### **9. Conduct of Poll**

**9.1 When a poll is demanded on any Resolution, the Chairman shall get the validity of the demand verified and, if the demand is valid, shall order the poll forthwith if it is demanded on the question of appointment of the Chairman or adjournment of the Meeting and, in any other case, within forty-eight hours of the demand for poll.**

*A poll when validly demanded should be taken, even if the Chairman had refused to grant the poll. [M.K. Srinivasan and Others v. W. S. Subrahmanya Aiyar and Others (1932) 2 Comp. Cas. 147].*

*Where the Chairman refused to order a poll even after a valid demand for poll had been made, the business on the agenda for which the poll was demanded and which was carried through by show of hands becomes invalid [Namita Gupta v. Cachar Native Joint Stock Co. Ltd. (1999) 98Comp. Cas. 655 (CLB)].*

*If a valid demand for poll is refused by the Chairman, the Meeting should either be re-convened or a new Meeting should be convened to hold the poll or to consider the item in respect of which the valid demand for poll was not granted, as the case may be.*

*The result of the poll is deemed to be the decision of the Meeting on the Resolution on which the poll was taken [Sub-section (7) of Section 109 of the Act].*

*Once a valid demand for a poll has been received, those who have made the demand may withdraw it at any time. However, such withdrawal should be made before the declaration of the results of the poll [Sub-section (2) of Section 109 of the Act].*

*Any business, other than that upon which a poll is demanded, can be proceeded with, pending taking of the poll.*

*Where Resolutions are put to vote through Remote e-voting, poll cannot be*

*demanded on any Resolutions, other than for adjournment of the Meeting or election of Chairman of the Meeting.*

**9.2 In the case of a poll, which is not taken forthwith, the Chairman shall announce the date, venue and time of taking the poll to enable Members to have adequate and convenient opportunity to exercise their vote. The Chairman may permit any Member who so desires to be present at the time of counting of votes.**

*The Chairman has the power to fix and announce the date, time and place of taking the poll and should exercise this power impartially and reasonably so as to ensure that all the Members of the company who wish to exercise their vote have the opportunity to do so. The Chairman should, while deciding the time and place of the poll, take into account the specific circumstances, the nature and importance of the items of business to be put to vote and the reasons for the demand for a poll.*

*However, the date on which poll will take place should not be a National Holiday.*

*The Meeting will be deemed to conclude when voting by way of poll is completed.*

If the date, venue and time of taking the poll cannot be announced at the Meeting, the Chairman shall inform the Members, the modes and the time of such communication, which shall in any case be within twenty four hours of closure of the Meeting.

A Member who did not attend the Meeting can participate and vote in the poll in such cases.

*Any mode of communication viz. public notice, advertisement through newspaper, website of the company, e-mail etc. may be used for informing the Members regarding the poll.*

*A specimen of the announcements to be made by the Chairman in connection with a poll is placed at **Annexure XI** and the checklist for poll is placed at **Annexure XII**.*

**9.3 Each Resolution put to vote by poll shall be put to vote separately.**

One ballot paper may be used for more than one item.

*Each Resolution on which a poll is demanded should be put to vote separately and the result announced should specify the number of votes that are casted in favor of and against each Resolution. All the Resolutions may, however, be included in one polling paper, to be separately marked by the voters.*

*Form No. MGT-12 prescribed by MCA contains the form in which the polling paper should be prepared.*

#### **9.4 Appointment of scrutinisers**

**The Chairman shall appoint such number of scrutinisers, as he deems necessary, who may include a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company, to ensure that the scrutiny of the votes cast on a poll is done in a fair and transparent manner.**

*Scrutiny of votes cast on a poll envisages detailed examination of the relevant records and calls for comprehensive knowledge and competence to deal with the intricacies and technicalities involved. These matters require professional knowledge, efficiency, fairness and transparency.*

*There is no bar on appointing any number of scrutinisers if the volume of work involved warrants such appointments. The Chairman should use his discretion in this regard and appoint such number of scrutinisers, as he deems necessary.*

At least one of the scrutinisers shall be a Member who is present at the Meeting, provided such a Member is available and willing to be appointed.

*In case more than one Scrutiniser is appointed, at least one of them should be a Member, provided such a Member is available and willing to be appointed.*

*The same scrutiniser (s) appointed for remote e-voting and the ballot process at the Meeting may be appointed for poll.*

*At any time before the result of the poll is declared, the Chairman has the power, if circumstances warrant, to remove the scrutiniser from office. However, the Chairman should not exercise such power capriciously. The Chairman also has the power to fill the vacancy in the office of scrutiniser arising from such removal or from any other cause.*

#### **9.5 Declaration of results**

**9.5.1 Based on the scrutiniser's report, the Chairman shall declare the result of the poll within two days of the submission of report by the scrutiniser, with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not.**

The Scrutiniser shall submit his Report to the Chairman who shall counter-sign the same. In case Chairman is not available, for such purpose, the report by

the scrutiniser shall be submitted to any Director who is authorised by the Board to receive such report, who shall countersign the scrutiniser's report on behalf of the Chairman.

*Since the scrutiniser's report and related papers are important documents, authority to receive and countersign the same has been given to the Chairman or any other Director authorised by the Board. The idea is also to bring in uniformity between the provisions of e-voting, poll and postal ballot in the Act as far as receiving and countersigning of the scrutiniser's report are concerned.*

*The scrutiniser should submit the report on the poll in Form No. MGT.13 within seven days from the date the poll is taken. The report should be signed by the scrutiniser and, in case there is more than one scrutiniser by all the scrutinisers.*

The result shall be announced by the Chairman or any other person authorised by the Chairman in writing for this purpose.

*Where the poll has been conducted forthwith, the Chairman may declare the result orally at the Meeting.*

The Chairman of the Meeting shall have the power to regulate the manner in which the poll shall be taken and shall ensure that the poll is scrutinised in the manner prescribed under the Act.

**9.5.2 The result of the poll with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not shall be displayed 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, and in case of public companies having a website, shall also be placed on the website.**

*Results of the voting should be displayed in the Registered Office of the company. Such results should also be displayed at the Head Office as well as Corporate Office, if such offices are situated elsewhere i.e. other than where the Registered Office is situated.*

*Placing of voting result on the website as well as on the Notice Boards at the Registered Office/ Head Office/ Corporate Office of the company is required with the intent of wider coverage and for convenience of the Members who may visit such offices.*

**9.5.3 The result of the poll shall be deemed to be the decision of the Meeting on the Resolution on which the poll was taken.**

*The result of poll once declared shall be final. The decision as declared by the Chairman should be recorded in the Minutes of the Meeting.*

*Specimens of the polling record and the announcement of the result of poll are placed at Annexure XIII and XIV respectively.*

#### **10. Prohibition on Withdrawal of Resolutions**

**Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn. However, any Resolution proposed for consideration through e-voting shall not be withdrawn.**

*A proposed Resolution likely to affect the market price of the securities of the company should not be withdrawn once Notice has been issued. This is because the subsequent withdrawal of such Resolutions may result in movements in the market price of the securities of the company and may be used for unfair gains. For example, Resolutions for issue of bonus shares or rights shares or for buy-back of securities may have an impact on the share price and the subsequent withdrawal of any such Resolution would adversely affect those who may have taken any investment decisions based on such information. Such Resolution should therefore, not be withdrawn.*

*Companies offering the facility of Remote e-voting should not withdraw any Resolution once Notice has been issued [Rule 20(4)(xviii) of the Companies (Management and Administration) Rules, 2015].*

#### **11. Rescinding of Resolutions**

**A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.**

*A Resolution rescinding an earlier Resolution should be passed in the same manner in which the Resolution in question was passed, e.g. a Resolution passed as a Special Resolution should be rescinded only by a Special Resolution and a Resolution passed by voting through postal ballot should be rescinded only by a Resolution passed by voting through postal ballot.*

*Notice of such subsequent Meeting where the rescinding of a Resolution passed earlier is proposed should specify the intention to rescind such Resolution.*

*Similarly, the Board should recommend to the General Meeting, rescinding of the Resolution prior to such subsequent Meeting.*

#### **12. Modifications to Resolutions**

**Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.**

No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman.

*Members present at a Meeting have a right to make modifications to a Resolution provided that the modification is within the scope of the Notice and the explanatory statement. However, the proposed modification should not be so fundamental so as to destroy the intent of the original Resolution or to alter its effect to a major degree, qualitatively or quantitatively. Similarly, a modification which adds onerous conditions to a Resolution would not be admissible.*

*The Chairman has no right to refuse to put before the Meeting an amendment arising on an Ordinary Resolution which is contained in the Notice. If the Chairman improperly refuses to submit an amendment to the Meeting, the Ordinary Resolution actually carried will be invalidated [Henderson v. Bank of Australasia (1890) 45 Ch D 330 (CA)].*

No modification shall be made to any Resolution which has already been put to vote by Remote e-voting before the Meeting.

*Subject to the limitations mentioned above, Resolutions other than those proposed through postal ballot or Remote e-voting may be modified by the majority of the Members present at the Meeting. However, shareholders do not have power to increase the rate of the proposed dividend at the Meeting.*

#### **Procedure**

*The modification to a Resolution may be moved at any time after discussion on the original Resolution has been called up, or during such discussion, but before the original Resolution is voted upon.*

*In case two or more amendments are moved to a Resolution, the amendments should be put to vote in the same order in which they were moved. Where the amendments are accepted, they should be incorporated in the substantive or main Resolution which then should be put to vote.*

#### **13. Reading of Reports**

**13.1 The qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Auditor's Report shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.**

*The Chairman has to ensure that before any voting takes place at the Annual General Meeting, the qualifications, observations or comments or other remarks given in the Auditors' report are read out. Simultaneously, he has to ensure that the explanations or comments given by the Board in its report on such qualifications, observations or comments or other remarks of the Auditor are also read at the Annual General Meeting.*

*It is not necessary that the Auditors themselves read out the Auditor's Report.*

**13.2 The qualifications, observations or comments or other remarks if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.**

*The Chairman has to ensure that before any voting takes place at the Annual General Meeting, the qualifications, observations or comments or other remarks given in the Secretarial Auditors' Report are read out. Simultaneously, he has to ensure that the explanations or comments given by the Board in its report on such qualifications, observations or comments or other remarks of the Secretarial Auditor are also read at the Annual General Meeting.*

*This would enable the Members to know about the compliance and governance aspects in the company and would enhance transparency.*

*It is not necessary that the Secretarial Auditors themselves read out the Secretarial Auditor's Report.*

#### **14. Distribution of Gifts**

**No gifts, gift coupons, or cash in lieu of gifts shall be distributed to Members at or in connection with the Meeting.**

*No gifts, gift coupons, food coupons etc. or cash in lieu of gifts should be distributed to the Members at the Meeting or in connection with the Meeting. This is because such practice is discriminatory and favours only those Members who attend the Meeting.*

*Further, any item or offer distributed with the intent to influence the decision of the Members shall tantamount to distribution of gifts and should not be practiced.*

*However, offering, as a matter of courtesy, any food, snacks and beverages, including packed food, at the venue of the Meeting, in the form of refreshments to Members or Proxies who attend the Meeting physically would not amount to offering of gifts.*

*Further, discount coupons or gift coupons which may be given by the company with respect to its products or services, to all the Members, whether attending*

*the Meeting or not, would not amount to gift/coupon for the purpose of this paragraph.*

### **15. Adjournment of Meetings**

**15.1 A duly convened Meeting shall not be adjourned unless circumstances so warrant. The Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.**

Meetings shall stand adjourned for want of requisite Quorum.

The Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete its business.

*Adjournment means to defer or suspend the Meeting to a future time, either at an appointed date or indefinitely or as decided by the Members present at the scheduled Meeting.*

*A Meeting shall stand automatically adjourned for want of requisite Quorum as per the applicable provisions of the Act. The Chairman may adjourn a Meeting, at which a Quorum is present in the following circumstances:*

- (a) *With the consent of the Members, when circumstances warrant, or*
- (b) *In the event of disorder or like causes, or*
- (c) *Where so directed by a majority of the Members.*

*The Chairman of a Meeting has an inherent power to adjourn the meeting in the event of disorder or like causes, if he acts bona fide and if the adjournment was necessary for restoration of order.*

*The Chairman has the right to make a bona fide adjournment whilst a poll or other business is proceeding, if circumstances of violent interruption make it unsafe or seriously difficult for the Members to tender their votes. The question will turn upon the intention and effect of the adjournment; if the intention and effect were to interrupt or delay the business, such an adjournment would be illegal; if, on the contrary, the intention and effect were to forward or facilitate it and no injurious effects would result, such an adjournment would generally be supported [United Bank of India Ltd. v. United India Credit and Development Corporation Ltd. (1977) 47 Comp. Cas. 689 (Cal)].*

#### ***Demand of poll for adjournment of a Meeting***

*A poll may be demanded for adjournment of a Meeting [Sub-section (3) of Section 109 of the Act].*

***Other aspects related to adjournment***

*For a valid adjournment of a General Meeting, the holding of the Meeting at its scheduled time is necessary. The Meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned Meeting.*

**15.2 If a Meeting is adjourned *sine-die* or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions contained hereinabove relating to Notice.**

*An adjourned Meeting is merely a continuation of the original Meeting and, instead of sending a fresh Notice for the Meeting adjourned *sine-die* or for a period of thirty days or more, the Notice of the original Meeting may be sent, under cover of an intimation specifying the day, date, time and place of the adjourned Meeting. The intimation should clarify that certain items of business had been transacted at the original Meeting, state the reasons for adjournment and list the remaining items of business to be transacted at the adjourned Meeting. The relevant explanatory statement in respect of such remaining items of business should also be given.*

*The Notice of adjourned Meeting should also be hosted at the website of the company, if any.*

**15.3 If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.**

*An adjourned Meeting is merely a continuation of the original Meeting and, unless the Articles provide otherwise, a fresh Notice of the Meeting adjourned for a period of less than thirty days is not necessary to be sent individually. However, an announcement in the newspapers as stated in this paragraph regarding the adjournment of the Meeting, giving details of the day, date, time and place and the business to be transacted at the adjourned Meeting should be given. Such announcement should also be placed on the website, if any, of the company.*

**15.4 If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a**

**National Holiday, or at such other time and place as may be determined by the Board.**

If a Meeting is adjourned for want of a Quorum to the same day on the next week, at the same time and place or with a change of day, time or place, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

*The provisions with respect to National Holiday explained in paragraph 1.2.4 of this Guidance Note shall mutatis-mutandis be applicable in this regard.*

**15.5 If, within half an hour from the time appointed for holding a Meeting called by requisitionists, a Quorum is not present, the Meeting shall stand cancelled.**

*Since, a Meeting by requisitionists had been called by the Members themselves, it will not be adjourned for want of Quorum but shall stand cancelled.*

**15.6 At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.**

Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

*If any new business has to be transacted, a fresh Meeting should be duly convened for the purpose of transacting such new business.*

**16. Passing of Resolutions by postal ballot**

**16.1 Every company, except a company having less than or equal to two hundred Members, shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting.**

A list of items of businesses requiring to be transacted only by means of a postal ballot is given at **Annexure XV**.

The Board may however opt to transact any other item of special business, not being any business in respect of which Directors or auditors have a right to be heard at the Meeting, by means of postal ballot.

Ordinary business shall not be transacted by means of a postal ballot.

*Postal ballot cannot be conducted in respect of ordinary business and/or matters where the Directors, Auditors, etc. have a right of being heard at the Meeting.*

**16.2 Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies which are required to provide e-voting facility shall provide such facility to its Members in respect of those items, which are required to be transacted through postal ballot.**

*Pursuant to Rule 20 of the Companies (Management and Administration) Amendment Rules, 2015, the companies referred to in Chapter XB (companies listed on SME Exchange) or Chapter XC (companies listed on Institutional Trading Platform) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as the case may be, are exempt from providing remote e-voting facility.*

Other companies presently prescribed are companies having not less than one thousand Members.

*Where the item of business is one for which the company concerned should provide a postal ballot process for passing Resolutions, the question of calling and holding a General Meeting does not arise. The difference between e-voting facility and postal ballot facility lies in the items of business to be transacted at a General Meeting requiring the passing of Resolutions by Members of a company and in respect of certain matters where companies have to offer postal ballot facility to its Members as a mandatory requirement of the Act. In respect of matters required to be transacted through Postal Ballot only, even though companies should offer e-voting facility, the requirement to provide postal ballot facility is mandatory and cannot be done away with.*

### **16.3 Board Approval**

**The Board shall:**

- (a) identify the businesses to be transacted through postal ballot;**
- (b) approve the Notice of postal ballot incorporating proposed Resolution(s) and explanatory statement thereto;**
- (c) authorise the Company Secretary or where there is no Company Secretary, any Director of the company to conduct postal ballot process and sign and send the Notice along with other documents;**

**(d) appoint one scrutiniser for the postal ballot.**

The scrutiniser may be a Company Secretary in Practice, a Chartered Accountant in Practice, a Cost Accountant in Practice, an Advocate or any other person of repute who is not in the employment of the company and, who can in the opinion of the Board, scrutinise the postal ballot process in a fair and transparent manner.

The scrutiniser shall however not be an officer or employee of the company.

The scrutiniser so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

Prior Consent to act as a scrutiniser shall be obtained from the scrutiniser and placed before the Board for noting.

*The scrutiniser should be willing to be appointed and be available for the purpose of ascertaining the requisite majority.*

**(e) appoint an Agency in respect of e-voting for the postal ballot;**

*An Agency should be appointed by the Board which can handle the whole process of postal ballot through e-voting.*

**(f) decide the record date for reckoning Voting Rights and ascertaining those Members to whom the Notice and postal ballot forms shall be sent.**

Only Members as of the record date shall be entitled to vote on the proposed Resolution by postal ballot.

**(g) decide on the calendar of events.**

*An illustrative calendar of events is given in Annexure XVI.*

**(h) authorise the Chairman or in his absence, any other Director to receive the scrutiniser's register, report on postal ballot and other related papers with requisite details.**

*Since the scrutiniser's report and related papers are important documents, authority to receive the same has been given to the Chairman or any other Director authorised by the Board.*

*The intention is also to bring in uniformity between the provisions of e-voting, poll and postal ballot as far as receiving of the scrutiniser's report is concerned.*

The scrutiniser is required to submit his report within seven days from the last date of receipt of postal ballot forms.

#### **16.4 Notice**

**16.4.1 Notice of the postal ballot shall be given in writing to every Member of the company. Such Notice shall be sent either by registered post or speed post, or by courier or by e-mail or by any other electronic means at the address registered with the company.**

The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same.

In case the Notice and accompanying documents are sent to Members by e-mail, these shall be sent to the Members' e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.

*The provisions with respect to sending of Notice explained in paragraph 1.2.1 and paragraph 1.2.2 above shall mutatis-mutandis be applicable in this regard.*

An advertisement containing prescribed details shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the Notice and the ballot papers.

*In cases where e-voting facility is provided, the Notice should be published in an English newspaper having country-wide circulation; whereas in other cases, such Notice should be published in the English newspaper having a wide circulation in the district in which the registered office of the company is situated.*

*If the company accidentally omits to send the Notice to a Member or if a Member does not receive the Notice sent to him, this will not invalidate the Resolution passed or the result of the postal ballot.*

**16.4.2 In case of companies having a website, Notice of the postal ballot shall also be placed on the website.**

Such Notice shall remain on the website till the last date for receipt of the postal ballot forms from the Members.

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

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

*It is a general practice to give the information about the date, time and venue of declaration of result of postal ballot.*

*A company may even declare the result at its registered office, corporate office and head office and put it on the company website.*

**16.4.4 Notice of the postal ballot shall inform the Members about availability of e-voting facility, if any, and provide necessary information thereof to enable them to access such facility.**

In case the facility of e-voting has been made available, the provisions relating to conduct of e-voting shall apply, *mutatis mutandis*, as far as applicable.

Notice shall describe clearly the e-voting procedure.

Notice should also mention the Internet link of e-voting platform.

Notice shall also clearly specify the date and time of commencement and end of e-voting, if any and contain a statement that voting shall not be allowed beyond the said date and time. Notice shall also contain contact details of the official responsible to address the grievances connected with the e-voting for postal ballot.

The Notice should request the Members to send their assent or dissent in writing on the postal ballot paper or vote through electronic means within a period of thirty days from the date of dispatch of such Notice.

Notice shall clearly specify that any Member cannot vote both by post and e-voting and if he votes both by post and e-voting, his vote by post shall be treated as invalid.

The advertisement shall, *inter alia*, state the following matters:

- (a) a statement to the effect that the business is to be transacted by postal ballot which may include voting by electronic means;
- (b) the date of completion of dispatch of Notices;
- (c) the date of commencement of voting (postal and e-voting);
- (d) the date of end of voting (postal and e-voting);
- (e) the statement that any postal ballot form received from the Member after thirty days from the date of dispatch of Notice will not be valid;
- (f) a statement to the effect that Member who has not received postal

ballot form may apply to the company and obtain a duplicate thereof;

- (g) contact details of the person responsible to address the queries/grievances connected with the voting by postal ballot including voting by electronic means, if any; and
- (h) day, date, time and venue of declaration of results and the link of the website where such results will be displayed.

Notice and the advertisement shall clearly mention the record date as on which the right of voting of the Members shall be reckoned and state that a person who is not a Member as on the record date should treat this Notice for information purposes only.

**16.4.5 Each item proposed to be passed through postal ballot shall be in the form of a Resolution and shall be accompanied by an explanatory statement which shall set out all such facts as would enable a Member to understand the meaning, scope and implications of the item of business and to take a decision thereon.**

*The Resolution and the explanatory statement should be framed in simple and intelligible language so as to enable the Members to understand the meaning, scope and implications of the proposed items of business. The nature of interest in the proposed Resolution and the extent of shareholding, if any, of Directors and KMPs should be disclosed in the explanatory statement. Where reference is made to any document, contract, agreement or the Memorandum and Articles of Association, the relevant explanatory statement should state that such documents are available for inspection as per the provisions of the Act.*

#### **16.5 Postal ballot forms**

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

A single postal ballot Form may provide for multiple items of business to be transacted.

**16.5.2 The postal ballot form shall contain instructions as to the manner in which the form is to be completed, assent or dissent is to be recorded and its return to the scrutiniser.**

The postal ballot form may specify instances in which such Form shall be treated as invalid or rejected and procedure for issue of duplicate postal ballot Forms.

**16.5.3 A postal ballot form shall be considered invalid if:**

- (a) A form other than one issued by the company has been used;**

- (b) It has not been signed by or on behalf of the Member;
- (c) Signature on the postal ballot form doesn't match the specimen signatures with the company
- (d) It is not possible to determine without any doubt the assent or dissent of the Member;
- (e) Neither assent nor dissent is mentioned;
- (f) Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Member;
- (g) The envelope containing the postal ballot form is received after the last date prescribed;  
*The assent or dissent received after the last day specified for receipt of duly completed postal ballot forms should be treated as if reply from the Member has not been received.*
- (h) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specific authority;
- (i) It is received from a Member who is in arrears of payment of calls;
- (j) It is defaced or mutilated in such a way that its identity as a genuine form cannot be established;
- (k) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.

Any extraneous paper enclosed in the envelope together with a valid and correctly filled in postal ballot form will not impair the validity of the postal ballot form. Any comment or observation made by the Member on the postal ballot form, apart from the vote exercised by him, should not be considered for determining the validity of the postal ballot form.

*In case any Member votes both by post and e-voting, his vote by post should be treated as invalid.*

A postal ballot form which is otherwise complete in all respects and is lodged within the prescribed time limit but is undated shall be considered valid.

*In case there are two items of business to be transacted by Resolutions to be passed through postal ballot, if a Member has given assent or dissent for one item and not for the other, the postal ballot form should be treated as valid for the item for which the decision has been conveyed and invalid for the item for which no decision is indicated.*

**16.6 Declaration of results**

**16.6.1 Based on the scrutiniser's report, the Chairman or any other Director authorised by him shall declare the result of the postal ballot on the date, time and venue specified in the Notice, with details of the number of votes cast for and against the Resolution, invalid votes and the final result as to whether the Resolution has been carried or not.**

The scrutiniser shall submit his report to the Chairman who shall countersign the same. In case Chairman is not available, for such purpose, the report by the scrutiniser shall be submitted to any other Director who is authorised by the Board to receive such report, who shall countersign the scrutiniser's report on behalf of the Chairman.

*The result should be announced by the Chairman or any director or any other person authorised by the Chairman for this purpose.*

**16.6.2 The result of the voting with details of the number of votes cast for and against the Resolution, invalid votes and whether the Resolution has been carried or not, along with the scrutiniser's report shall be displayed 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, and also be placed on the website of the company, in case of companies having a website.**

*Results of the voting should be displayed in the Registered Office of the company. Such results should also be displayed at the Head Office as well as the Corporate Office, if such offices are situated elsewhere i.e. other than where the Registered Office is situated.*

*Placing of voting result on the website as well as on the Notice Boards at the Registered Office/ Head Office/ Corporate Office of the company is prescribed with the intent of wider coverage and for convenience of the Members who may visit such offices.*

**16.6.3 The Resolution, if passed by requisite majority, shall be deemed to have been passed on the last date specified by the company for receipt of duly completed postal ballot forms or e-voting.**

*There is no General Meeting conducted in case of postal ballot and therefore the deemed date of passing of the Resolution shall be the last date specified by the company for receipt of duly completed postal ballot forms or e-voting.*

**16.7 Custody of scrutiniser's registers, report and other related papers**

*The postal ballot and all other papers relating to postal ballot including voting*

*by electronic means, should be under the safe custody of the scrutiniser till the Chairman considers, approves and signs the Minutes and thereafter, the scrutiniser should return the ballot papers and other related papers or register to the company who should preserve such ballot papers and other related papers or register safely [Rule 22(1) of the Companies (Management and Administration) Rules, 2014].*

**The postal ballot forms, other related papers, register and scrutiniser's report received from the scrutiniser shall be kept in the custody of the Company Secretary or any other person authorised by the Board for this purpose.**

#### **16.8 Rescinding the Resolution**

**A Resolution passed by postal ballot shall not be rescinded otherwise than by a Resolution passed subsequently through postal ballot.**

*A Resolution passed by postal ballot can be rescinded only by a Resolution passed subsequently through postal ballot.*

*Similarly, a Resolution rescinding the earlier Resolution should be passed in the same manner in which the Resolution in question was passed, e.g. a Resolution passed as a Special Resolution should be rescinded only by a Special Resolution.*

*Notice of such subsequent postal ballot where the rescinding of a Resolution passed earlier through postal ballot is proposed should specify the intention to rescind such Resolution.*

#### **16.9 Modification to the Resolution**

**No amendment or modification shall be made to any Resolution circulated to the Members for passing by means of postal ballot.**

### **17. 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 Meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein.*

*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.*

*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)].*

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

*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, 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)].*

*Accordingly, when Minutes are duly drawn and signed, the contents of Minutes are presumed to be true and the burden of proof lies on those who allege the contents to be not true, to prove the fact.*

*The presumptions referred above, in regard to Minutes of Extra-Ordinary General Meetings convened on the requisition of Members are not applicable [Bhankerpur Simbhaoli Beverages P. Ltd. v. Sarobjit Singh (1996) 86 Comp. Cas. 842 (P&H)].*

Minutes help in understanding the deliberations and decisions taken at the Meeting.

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

### **17.1 Maintenance of Minutes**

#### **17.1.1 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)(i) of the Companies (Management and Administration) Rules, 2014].*

*Where Minutes are recorded in a proper book which is not a Minutes Book as per law, the statutory presumption under Section 195 of the Companies Act, 1956 (corresponding to Section 118 of the Companies Act, 2013) and no such Meeting could be regarded as having been held [V. G. Balasundaram v. New Theatres Carnatic Talkies Pvt. Ltd. (1993) 77 Com. Cases 324 (Mad)].*

#### **17.1.2 A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act.**

*A distinct Minutes Book should be maintained for each type of Meeting namely:-*

- (i) General Meetings of the Members;*
- (ii) Meetings of the Creditors;*
- (iii) Meetings of the Debenture Holders; and*

*(iv) Meetings of class of Members.*

Resolutions passed by postal ballot shall be recorded in the Minutes book of General Meetings.

**17.1.3 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(1) 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 there under to be kept by a company.*

*This paragraph of SS-2 clearly states that Minutes of Meetings may be maintained in electronic form with Timestamp.*

***Timestamp***

*Timestamp is the most authentic way to assure existence of electronic documents, agreements, certificates or any other vital information in electronic form. The term 'Timestamp' is derived from rubber stamps used in offices to record when the document was received. However, in modern times, usage of the term has expanded to refer to digital date and time information attached to digital data. For example, computer files contain Timestamps that indicate when the file was last modified; digital cameras add Timestamps to the pictures they take, recording the date and time the picture was taken.*

*For the purpose of SS-2, Timestamp should be created with a 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, the date and time of signing should get recorded automatically. When an e-mail is received or sent, there should be a recording of the time by the system. All this should be recorded by a Secured Computer System.*

***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, the companies should not maintain Minutes of few Meetings in physical form and few in electronic form. Companies should follow a uniform and consistent form of maintaining the Minutes.*

***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) it 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 would facilitate the identification of the origin, destination, date and time of generation are available in the electronic record.*

*The Managing Director, Company Secretary or any other Director or officer of the company as the Board may decide should be responsible for the Maintenance and security of Minutes in electronic form [Rule 28(1) of 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 and security of Minutes in electronic form should -*

- (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 Minutes 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 persons performing work of the company as may be authorised by the Board in this behalf;

Access may be given to the Auditor (s) and / or other persons as allowed in terms of relevant paragraphs of SS-2.

- (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.

#### **17.1.4 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 safeguard the integrity of the 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 started, 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.*

*For the purpose of this paragraph of SS-2, a company may choose to give*

*consecutive numbering from Meetings held on or after 1<sup>st</sup> July, 2015, this being the date from which SS-2 became effective.*

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.

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

*The law prohibits pasting of Minutes in the Minutes Book and hence Minutes cannot be type-written and then pasted in bound Minutes Book or in loose leaves. Minutes should also not be printed on a piece of paper, whether on letterhead or other paper, and pasted in Minutes Book.*

*It is with a view to maintain the integrity and evidentiary value of Minutes that a lot of safeguards have been introduced in SS-2 so that Minutes are kept, maintained and preserved with requisite care and caution.*

**17.1.6 Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume.**

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 book, coinciding with the calendar year or financial year. This would facilitate proper Maintenance and preservation of Minutes.*

***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.*

**17.1.7 Minutes Books shall be kept at the Registered Office of the company or at such other place, as may be approved by the Board.**

*Minutes of the General Meetings should be kept at the Registered Office of the company or at such other place as may be approved by the Board [Rule 25 (1) (e) of the Companies (Management and Administration) Rules, 2014].*

**17.2 Contents of Minutes**

**17.2.1 General Contents**

**17.2.1.1 Minutes shall state, at the beginning 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 (Annual General Meeting, Extra-Ordinary General Meeting, etc.)*
3. *The day, date and venue of the Meeting*
4. *The time of commencement as well as the time of conclusion of the Meeting*

*In Form No. MGT 15, being the form for reporting by the listed companies about the Annual General Meeting, there is a requirement to mention the time of conclusion of the Meeting. However, since SS-2 promotes good corporate practices, this requirement has been extended to other companies and other General Meetings as well. Recording the time of conclusion of the Meeting would also help the Minutes to be complete in all aspects.*

***Adjourned Meetings***

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 one should be specified in such Minutes by the Chairman or any Director present at the Meeting.*

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

**17.2.1.2 Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.**

*Minutes should record the names of the following:*

1. *the Directors present,*

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 the company deems it appropriate to record the names of Directors present with some logic behind it e.g. designation, seniority etc. of the Directors.*

2. *the Company Secretary, if any, present.*

*Besides the above, Minutes should also record the following:*

1. *The name of the Director who took the Chair.*
2. *Vote of thanks.*

**17.2.2 Specific Contents**

**17.2.2.1 Minutes shall, *inter alia*, contain:**

**(a) The 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-2, should be recorded in the Minutes.*

**(b) The fact that certain registers, documents, the Auditor's Report and Secretarial Audit Report, as prescribed under the Act were available for inspection.**

**(c) The Record of presence of Quorum.**

*If at the commencement of the Meeting, the Quorum is present, but subsequently if some Members leave before the close of the Meeting, due to which the Quorum requirement is not met for businesses taken up thereafter, the Meeting should be adjourned and a statement to that effect should be recorded in the Minutes.*

**(d) The number of Members present in person including representatives.**

The Minutes should record the number of Members who attended the Meeting in person including authorised representatives.

**(e) The number of proxies and the number of shares represented by them.****(f) The presence of the Chairmen of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee or their authorised representatives.****(g) The presence if any, of the Secretarial Auditor, the Auditors, or their authorised representatives, the Court/Tribunal appointed observers or scrutinisers.****(h) Summary of the opening remarks of the Chairman.**

**(i) Reading of qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the company, as mentioned in the report of the Auditors.**

**(j) Reading of qualifications, observations or comments or other remarks as mentioned in the report of the Secretarial Auditor.**

**(k) Summary of the clarifications provided on various Agenda Items.**

**(l) In respect of each Resolution, the type of the Resolution, the names of the persons who proposed and seconded and the majority with which such Resolution was passed.**

Where a motion is moved to modify a proposed Resolution, the result of voting on such motion shall be mentioned. If a Resolution proposed undergoes modification pursuant to a motion by shareholders, the Minutes shall contain the details of voting for the modified Resolution.

**(m) In the case of poll, the names of scrutineers appointed and the number of votes cast in favour and against the Resolution and invalid votes.**

**(n) If the Chairman vacates the Chair in respect of any specific item, the fact that he did so and in his place some other Director or Member took the Chair.**

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

**17.2.2.2 In respect of Resolutions passed by e-voting or postal ballot, a brief report on the e-voting or postal ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutineer's report shall be recorded in the Minutes Book and signed by the Chairman or**

**in the event of death or inability of the Chairman, by any Director duly authorised by the Board for the purpose, within thirty days from the date of passing of Resolution by e-voting or postal ballot.**

*In case of every Resolution passed by postal ballot, a brief report on the postal ballot conducted including the Resolution proposed, the result of the voting thereon and the summary of the scrutiniser's report should be entered in the Minutes Book of General Meetings along with the date of such entry within thirty days from the date of passing of Resolution [Rule 25(1)(b)(ii) of the Companies (Management and Administration) Rules, 2014].*

*A specimen report of postal ballot is placed at **Annexure XVII**.*

*Where the Minutes have been kept in accordance with the Act, until the contrary is proved, the Resolutions passed by postal ballot shall be deemed to have been duly passed.*

### **17.3. Recording of Minutes**

*Companies follow diverse practices with respect to recording of Minutes. Some companies record only the decisions while some 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. SS-2 seeks to harmonise such divergent practices by providing principles for recording of Minutes.*

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

Specimens of the Minutes of an Annual General Meeting and Extra-Ordinary General Meeting are placed at **Annexure XVIII and XIX** respectively.

#### **17.3.1 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 not attempt to record all reasons for decisions taken, i.e. all arguments put forth for and against a particular Resolution.*

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

#### **17.3.2 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.*

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

#### **17.3.3 Each item of business taken up at the Meeting shall be numbered.**

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

*While numbering, the company may choose to follow any system of numbering.*

##### ***Illustrations***

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

*Items to be discussed in the General Meeting would be numbered 1, 2, 3, 4... and so on and so forth.*

*(ii) Serial numbering on Meeting-to-Meeting basis as follows:*

*Items to be discussed in first Meeting of XYZ Company would be numbered as 1.1, 1.2, 1.3, 1.4 etc... Items to be discussed in the 2<sup>nd</sup>*

*Meeting would be numbered as 2.1, 2.2, 2.3 and so on and so forth.*

*(iii) Continuous numbering irrespective of year/Meeting:*

*Suppose there are 8 items to be discussed in the first Meeting and 10 items in the second Meeting. In such a case, the items of the 1<sup>st</sup> Meeting would be numbered as item numbers 1-8 and the items of the second Meeting would be numbered from 9-18 and so on.*

*A company should follow a uniform pattern of numbering for every item of business.*

#### **17.4. Entry in the Minutes Book**

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

*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.*

##### **17.4.2 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 authorised by the Board or the Chairman.

*The date of entry of the Minutes should be recorded on the last page of the respective Minutes. If the Minutes are maintained in electronic form, the date of entry should be captured in Timestamp.*

##### **17.4.3 Minutes, once entered in the Minutes Book, shall not 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 would tantamount to alteration of Minutes.*

### **17.5. Signing and Dating of Minutes**

**17.5.1 Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.**

*While the Minutes of Meetings of the Board have to be entered within thirty days, Minutes of every General Meeting should not only be entered but also be signed within thirty days from the date of the conclusion of the Meeting.*

*The Minutes of an adjourned Meeting should also be signed within thirty days of the conclusion of the adjourned Meeting, since an adjourned Meeting is only a continuation of the original Meeting.*

*A cursory perusal of Section 195 of the Companies Act, 1956 (corresponding to Section 118 of the Act) regarding the presumption to be drawn where Minutes of the company are duly drawn and signed, clearly proves that the presumption arising in this Section is a rebuttable one by adducing contrary evidence. It is therefore, important to ensure that the Minutes are signed and kept as stated above in order to have the benefit of the statutory presumption that such Minutes constitute evidence of the proceedings recorded therein.*

*If the Minutes are not recorded or signed within the prescribed period, it is to be presumed that they have not been properly kept and hence will not be admissible in evidence [B Sivaraman and Others v. Egmore Benefit Society Ltd. (1992) 2 Comp L J 218 (Mad)].*

*The authorisation to sign the Minutes in the event of death or inability of the Chairman, may be given at a Meeting of the Board or by a Resolution passed by circulation.*

**17.5.2 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 should be initialled or signed and the last page of the Minutes or report in Minutes Books should be dated and signed by the Chairman of the same Meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a Director duly authorised by the Board for the purpose [Rule 25(1)(d)(ii) of the Companies (Management and Administration) Rules, 2014].*

*The place for this purpose should be the city or town 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 to the Minutes.*

#### **17.6. Inspection and Extracts of Minutes**

##### **17.6.1 Directors and Members are entitled to inspect the Minutes of all General Meetings including Resolutions passed by postal ballot.**

Minutes of all General Meetings shall be open for inspection by any Member during business hours of the company, without charge, subject to such reasonable restrictions as the company may, by its Articles or in General Meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection.

*The Act empowers only the Members to inspect and take copies of Minutes of General Meetings [Section 119 of the Act].*

*The right of inspection cannot be denied whatever be the motive of the Member [Rameshwarlal Nath v. Calcutta Wheat and Seed Association Ltd. (1938) 8 Comp. Cas. 78 (Cal)].*

*Besides Members, the Directors of the company are also entitled to inspect the Minutes of General Meetings in accordance with this paragraph of SS-2.*

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 would enable the Statutory Auditor or the Internal Auditor or the Secretarial Auditor or the Company Secretary in Practice or the Cost Auditor, as the case may be, to discharge their professional duties fairly.*

*Officers of the Registrar of Companies can inspect the Minutes Book during the course of inspection [Section 206 and 207 of the Act]. Officers of the Government/Regulatory bodies, if so authorised by the Act or any other law, can also inspect the Minutes Book.*

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.

**17.6.2 Extract of the Minutes shall be given only after the Minutes have been duly signed. However, any Resolution passed at a Meeting may be issued even pending signing of the Minutes provided the same is certified by the Chairman or any Director or the Company Secretary.**

*Only after the Minutes have been signed, any extract of Minutes can be given to third parties.*

*However without waiting for these formalities, certified copies of the Resolutions can always be issued even earlier once a Resolution is passed provided the same is certified by the Chairman or any Director or the Company Secretary.*

*Many a times, it might be necessary to furnish certified copies of Resolutions or file the same with authorities for various purposes. Other than "Ordinary Business", it is usual to give a text of the Resolution proposed to be passed in respect of every item forming part of the "Special Business" as set out in the Notice of a General Meeting. Therefore, when a Resolution is passed at a General Meeting, a certified extract of such Resolution can be given without waiting for the Minutes to be signed.*

When a Member requests in writing for a copy of any Minutes, which he is entitled to inspect, the company shall furnish the same within seven working days of receipt of his request, subject to payment of such fee as may be specified in the Articles of the company. In case a Member requests for the copy of the Minutes in electronic form, in respect of any previous General Meetings held during a period immediately preceding three financial years, the company shall furnish the same on payment of such fee as prescribed under the Act.

The company should furnish copies of Minutes on payment of fees as prescribed in the Articles but not exceeding ten rupees per page or part of any page. However, the soft copy of Minutes of previous General Meeting held during immediately preceding three financial years be furnished at free of cost [Rule 26 of the Companies (Management and Administration) Rules, 2014].

Copies of the Minutes or the extracts thereof as requisitioned by the Member, duly certified by the Company Secretary or where there is no Company Secretary, an officer duly authorised by the Board in this behalf, may be provided in physical or electronic form.

**18. Preservation of Minutes and other Records****18.1 Minutes of all Meetings shall be preserved permanently in physical or electronic form with Timestamp.**

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 amalgamation.*

**18.2 Office copies of Notices, scrutiniser's report, and 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, scrutiniser's report 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 the register of debenture holders or any other security holders etc. and the annual return.*

*Unlike Minutes, these papers explain in detail all the proposals, voting process, results etc. 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 systems, and the need to refer to these papers may arise anytime.*

Office copies of Notices, scrutiniser's report, and 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 should 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 1<sup>st</sup> July, 2015 requires the approval of the Board, even if such record pertains to a period prior to the applicability of SS-2.*

*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 SS-2.*

### **18.3 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 where there is no Company Secretary, any Director who has been duly authorised for this purpose, should ensure that the Minutes Books are under a proper locking system and that no person has access to the Minutes without his permission. Minutes maintained in electronic form should also be kept under a proper security system.*

### **19. Report on Annual General Meeting**

**Every listed Company shall prepare a report on Annual General Meeting in the prescribed form, including a confirmation that the Meeting was convened, held and conducted as per the provisions of the Act.**

*In case of a listed company, the report on Annual General Meeting should be prepared in addition to the Minutes of the Annual General Meeting [In line with Section 121 of the Act].*

Such report which shall be a fair and correct summary of the proceedings of the Meeting shall contain:

- (a) the day, date, time and venue of the Annual General Meeting;
- (b) confirmation with respect to appointment of Chairman of the Meeting;
- (c) number of Members attending the Meeting;
- (d) confirmation of Quorum;

- (e) confirmation with respect to compliance of the Act and Standards with respect to calling, convening and conducting the Meeting;
- (f) business transacted at the Meeting and result thereof with a brief summary of the discussions;
- (g) particulars with respect to any adjournment, postponement of Meeting, change in venue; and
- (h) any other points relevant for inclusion in the report.

It shall be signed and dated by the Chairman of the Meeting or in case of his inability to sign, by any two Directors of the company, one of whom shall be the Managing Director, if there is one and Company Secretary.

*Considering that Form No. MGT-15 prescribed by the MCA for this purpose requires all the aforesaid details to be filled in the Form itself and requires this Form to be digitally signed by the Chairman, it shall be sufficient if Form No. MGT-15 is digitally signed by the Chairman of the Meeting.*

Such report shall be filed with the Registrar of Companies within thirty days of the conclusion of the Annual General Meeting.

## **20. Disclosure**

**The Annual Return of a Company shall disclose the date of Annual General Meeting held during the financial year.**

*The expression "Annual Return" for the purpose of this paragraph of SS-2 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, should contain particulars of Meetings of Members or a class thereof.*

*This paragraph of SS-2 requires the companies to make a disclosure in their Annual Return, of the date of Annual General Meeting held during the year.*

*In addition, Form No. MGT-7 (Format of Annual Return) prescribed by MCA for this purpose requires all companies to disclose the dates of all General Meetings held during the financial year, total number of Members entitled to attend the Meeting, and number of Members who attended the Meeting along with their total shareholding.*

**Annexure I***(Refer Paragraph 1.2.10)***Attendance Slip***Name of the Company* .....*Registered Address* .....*CIN -* ..... *Email-* ..... *Telephone:* .....  
*Website:* .....**ATTENDANCE SLIP***..... (Meeting Number) ..... (Date)*

<i>Folio No. / DP ID Client ID No.</i>	
<i>Name of First named Member/Proxy/ Authorised Representative</i>	
<i>Name of Joint Member(s), if any:</i>	
<i>No. of Shares held</i>	

*I/we certify that I/we am/are member(s)/proxy for the member(s) of the Company.*

*I/we hereby record my/our presence at the .....(Meeting number)  
Annual General Meeting of the Company being held on .....(Day & Date) at .....(time) at .....(Venue address).*

*.....  
Signature of First holder/Proxy/Authorised Representative*

*Signature of 1st Joint holder*

*Signature of 2nd Joint holder*

*Note (s) : 1. Please sign this attendance slip and hand it over at the Attendance Verification Counter at the MEETING VENUE.*

*2. Only shareholders of the Company and/or their Proxy will be allowed to attend the Meeting.*

**Annexure II***(Refer Paragraph 1.2.10)***Specimen Notice on Annual General Meeting***Name of the Company .....**Registered Address .....**CIN - ..... Email- ..... Telephone: .....**Website: .....***NOTICE OF ..... (Meeting Number) ANNUAL GENERAL MEETING**

*NOTICE is hereby given that the ..... (Meeting Number) Annual General Meeting of the Members of ..... (Name of the Company) will be held on ..... (day), the ..... (date), 20...., at ..... am/p.m. at ..... (address) to transact the following business:*

**Ordinary Business:**

1. *To receive, consider and adopt the standalone and consolidated Financial Statements of the Company for the financial year ended 31<sup>st</sup> March, ..... and the Reports of the Board of Directors and the Auditors.*
2. *To declare dividend for the financial year ended 31<sup>st</sup> March, .....*
3. *To appoint a Director in place of Mr. ..... (DIN .....), who retires by rotation and being eligible, offers himself for reappointment.*
4. *To appoint a Director in place of Mr. ..... (DIN .....), who retires by rotation and being eligible, offers himself for reappointment.*
5. *To appoint a Director in place of Mr. ..... (DIN .....), who retires by rotation and being eligible, offers himself for reappointment.*
6. *To appoint Statutory Auditors and to determine their remuneration. For this purpose, to consider and if deemed fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:*

*"RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s. ...., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the ..... Annual General Meeting of the Company*

*(subject to ratification of their appointment at every AGM), at a remuneration of Rs. ..../- (Rupees ..... only) for the year ..... and Rs. ..../- (Rupees ..... only) per year for the subsequent ..... years plus reimbursement of out of pocket expenses and service tax, as applicable."*

*"RESOLVED FURTHER THAT the Board of Directors of the Company (including a Committee thereof), be and is hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient to give effect to this Resolution."*

Or

*"RESOLVED THAT pursuant to the provisions of Section 139, 142 and other applicable provisions, if any, of the Companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014 (including any statutory modification(s) or re-enactment thereof, for the time being in force), M/s. ...., Chartered Accountants (Registration No. ....), who were appointed as Statutory Auditors of the Company at ..... Annual General Meeting to hold office up to the conclusion of ..... Annual General Meeting and have confirmed their eligibility to be appointed as Auditors in terms of the provisions of Section 141 of the Act and the relevant Rules and have offered themselves for re-appointment, be and are hereby re-appointed as the Statutory Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the next Annual General Meeting of the Company at such remuneration plus service tax, out-of-pocket, travelling and living expenses, etc., as may be mutually agreed between the Board of Directors of the Company and the said Auditors."*

*"RESOLVED FURTHER THAT the Board of Directors of the Company (including a Committee thereof), be and is hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient to give effect to this Resolution."*

OR

*Approval of Remuneration of Statutory Auditors appointed by CAG*

*To consider and if deemed fit, to pass the following Resolution as a Special Resolution:*

*"RESOLVED that pursuant to Section 142 of the Companies Act 2013, and other applicable provisions, if any, of the Companies Act, 2013, the remuneration of the Statutory Auditors appointed by Comptroller & Auditor General of India (C & AG) under Section 139(5) of the said Act, be and is hereby fixed at Rs. ..../- for the year 201....-1....."*

**Special Business:**

7. To appoint Mr. ..... as Director.

To consider, and if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

*"RESOLVED THAT pursuant to the provisions of Section 152 and other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Qualification of Directors) Rules, 2014, Mr. ..... (DIN .....), who was appointed as an Additional Director of the Company with effect from ..... 20..... by the Board of Directors of the Company pursuant to Section 161(1) of the Companies Act, 2013 and the Articles of Association of the Company and who holds office upto the date of this Annual General Meeting, and being eligible, offer himself for appointment and in respect of whom the Company has received a notice in writing under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr. ..... for the office of Director, be and is hereby appointed with effect from the date of this Meeting as a Director of the Company, liable to retire by rotation."*

*By Order of the Board of Directors*

*For.....*

*.....(Signature)*

*Place : .....(Name)*

*Date : ..... 20.... Company Secretary*

*Notes :*

**1. The explanatory statement setting out the material facts pursuant to Section 102 of the Companies Act, 2013, relating to special business to be transacted at the Meeting is annexed.**

**2. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company.**

**3. Proxies, in order to be effective, must be received in the enclosed Proxy Form at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.**

**4. A person can act as a proxy on behalf of Members not exceeding 50 and holding in the aggregate not more than ten percent of the total share capital of the Company carrying voting rights. A Member holding more than ten percent**

*of total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as a proxy for any other person or shareholder.*

*5. A Corporate Member intending to send its authorised representatives to attend the Meeting in terms of Section 113 of the Companies Act, 2013 is requested to send to the Company a certified copy of the Board Resolution authorizing such representative to attend and vote on its behalf at the Meeting.*

*6. Members/Proxies/Authorised Representatives are requested to bring the attendance slips duly filled in for attending the Meeting. Members who hold shares in dematerialised form are requested to write their client ID and DP ID numbers and those who hold shares in physical form are requested to write their Folio Number in the attendance slip for attending the Meeting.*

*7. During the period beginning 24 hours before the time fixed for the commencement of Meeting and ending with the conclusion of the Meeting, a Member would be entitled to inspect the proxies lodged at any time during the business hours of the Company. All documents referred to in the Notice and accompanying explanatory statement are open for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Annual General Meeting and at the venue of the Meeting for the duration of the Meeting.*

*8. Route-map to the venue of the Meeting is provided at the end of the Notice / Page no. ..... of the Annual Report.*

*9. The Register of Members and the Share Transfer Books of the Company will remain closed from ..... to ..... (both days inclusive).*

*10. The dividend on shares as recommended by the Board, if approved at the Annual General Meeting, will be paid within thirty days from the date of declaration to those Members or their mandatees whose names appear:*

*(a) as Members in the Register of Members of the Company on .....  
and*

*(a) as beneficial owners on that date as per the lists to be furnished by ..... in respect of shares held in electronic form.*

*11. Unclaimed / Unpaid Dividend:*

*Pursuant to Section 205A of the Companies Act, 1956 (Section 124 of the Companies Act, 2013, once notified), dividend for the financial year ended 31st March, ..... which remains unclaimed for a period of seven years, become due for transfer on ..... (date) to the Investor Education and Protection*

*Fund of the Central Government. Members who have not claimed their dividend for the above mentioned year are requested to make their claim to the Share Department of the Company at the Registered Office of the Company or to the Registrar & Share Transfer Agents of the Company at ..... (address) as early as possible but not later than ..... (date).*

*11. The Company has already transferred unclaimed dividend declared for the financial year ended 31st March, ..... and earlier periods to the Investor Education and Protection Fund. Members who have so far not claimed or collected their dividends for the said period may claim their dividend from the Registrar of Companies, ..... by submitting an application in the prescribed form.*

*12. The Securities and Exchange Board of India (SEBI) has mandated the submission of Permanent Account Number (PAN) by every participant in securities market. Members holding shares in electronic form are, therefore, requested to submit the PAN to their Depository Participants with whom they are maintaining their demat accounts. Members holding shares in physical form can submit their PAN details to the Company.*

*13. Electronic copy of the Annual Report is being sent to all the Members whose email IDs are registered with the Company/Depository Participant(s) for communication purposes unless any Member has requested for a hard copy of the same. For Members who have not registered their email address, physical copy of the Annual Report is being sent in the permitted mode. In case you wish to get a physical copy of the Annual Report, you may send your request to ..... (email) mentioning your folio/DP ID and Client ID. Annual Reports is also available in the Financials section on the website of the Company at www.....com.*

*14. Members holding shares in physical mode are requested to register their email IDs with the Registrar & Share Transfer Agents of the Company and Members holding shares in demat mode are requested to register their email ID's with their respective DP in case the same is still not registered. Members are also requested to notify any change in their email ID or bank mandates or address to the Company and always quote their Folio Number or DP ID and Client ID Numbers in all correspondence with the Company. In respect of holding in electronic form, Members are requested to notify any change of email ID or bank mandates or address to their Depository Participants.*

*15. Members holding shares in electronic form may please note that their bank details as furnished to the respective Depositories will be printed on their dividend warrants as per the applicable regulations. The Company will not*

*entertain any direct request from such Members for deletion or change of such bank details. Instructions, if any, already given by Members in respect of shares held in physical form will not be automatically applicable to the dividend paid on shares in electronic form.*

*16. Any query relating to financial statements must be sent to the Company's Registered Office at least seven days before the date of the Meeting.*

*17. With a view to serving the Members better and for administrative convenience, an attempt would be made to consolidate multiple folios. Members who hold shares in identical names and in the same order of names in more than one folio are requested to write to the Company to consolidate their holdings in one folio.*

*18. Members who still hold share certificates in physical form are advised to dematerialise their shareholding to avail the benefits of dematerialisation, which include easy liquidity, since trading is permitted in dematerialised form only, electronic transfer, savings in stamp duty and elimination of any possibility of loss of documents and bad deliveries.*

*19. Members can avail of the nomination facility by filing Form SH-13, as prescribed under Section 72 of the Companies Act, 2013 and Rule 19(1) of the Companies (Share Capital and Debentures) Rules, 2014, with the Company. Blank forms will be supplied on request.*

*20. In accordance with the provisions of Article .....of the Articles of Association of the Company, Mr. ...., Mr. .... and Mr. .... will retire by rotation at the Annual General Meeting and, being eligible, offer themselves for re-election. Further, Mr. .... was appointed as an Additional Director and retires at the Annual General Meeting and the Company has received a notice for his appointment at the Annual General Meeting. Pursuant to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, additional information in respect of Directors seeking election, those retiring by rotation and seeking reappointment at the Annual General Meeting is given elsewhere in the Annual Report.*

*21. Voting through electronic means*

*In compliance with provisions of Section 108 of the Companies Act, 2013 and Rule 20 of the Companies (Management and Administration) Rules, 2014, the Company is pleased to provide members the facility of exercising their right to vote electronically on the items mentioned in this Notice. The Company has appointed Mr. .... as scrutinizer for conducting the e-voting process in a fair and transparent manner.*

*The voting period begins on ..... , ..... , 201.... at 10:01 hrs. and will end on ..... , ..... , 201.... at 17:00 hrs. During this period shareholders' of the Company, holding shares either in physical form or in dematerialised form, as on the cut-off date of ..... , 201..., may cast their vote electronically. The e-voting module shall be disabled for voting thereafter.*

*The Company has signed an agreement with ..... (agency) for facilitating e-voting to enable the Shareholders to cast their vote electronically. The instructions for shareholders voting electronically are given at page no. ..... of the Annual Report.*

*22. The Results shall be declared on or after the Annual General Meeting of the Company and shall be deemed to be passed on the date of Annual General Meeting. The results alongwith the Scrutinizer's Report shall be placed on the website of the Company ..... within 2 days of passing of the resolutions at the Annual General Meeting of the Company and shall be communicated to ..... (Stock Exchange).*

#### **EXPLANATORY STATEMENT**

*As required by Section 102 of the Companies Act, 2013, the following explanatory statement sets out all material facts relating to the business mentioned under Item No. 7 of the accompanying Notice dated .....*

##### *Item No. 7*

*Mr. ..... who was appointed as an Additional Director of the Company under Section 161(1) of the Companies Act, 2013 effective ..... , ..... holds office up to the date of this Annual General Meeting, and is eligible for appointment as Director of the Company.*

*The Company has received notice under Section 160 of the Companies Act, 2013 from a Member signifying her intention to propose the candidature of Mr. ..... for the office of Director.*

*A brief profile of Mr. ..... , as required to be given pursuant to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, has been given elsewhere in this Notice.*

*Mr. ..... is not a Director of any other public limited company in India. He is a Member of the Audit Committee and the Investment Committee of ..... He does not hold any share in the Company and is not related to any Director or Key Managerial Personnel of the Company in any way.*

*The Board of Directors considers it in the interest of the Company to appoint Mr. ..... as a Director.*

*By Order of the Board of Directors*

*For.....*

.....*(Signature)*

*Place : .....* .....

*Date : ..... 20....* *.....(Name)*

*Company Secretary*

**Annexure III***(Refer Paragraph 1.2.10)***Notice of Extra-ordinary General Meeting***Name of the Company .....**Registered Address .....**CIN - ..... Email- ..... Telephone: .....  
Website: .....***NOTICE OF****EXTRA-ORDINARY GENERAL MEETING**

*NOTICE is hereby given that an Extra-Ordinary General Meeting of the Members of ..... (name of Company) will be held on ..... (day), ..... (date) at ..... a.m./p.m. at ..... (address) to transact the following special business:*

*1. Shifting of Registered Office*

*To consider and, if thought fit, to pass the following Resolution as a Special Resolution:*

*"RESOLVED that pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from the ..... (Name of State) to the ..... (Name of State)."*

*RESOLVED FURTHER that Clause - II of the Memorandum of Association of the Company be altered by substitution of the words ..... in place of the words .....*

*RESOLVED FURTHER that the Board of Directors of the Company be and is hereby authorised to file the necessary petition(s) before the Regional Director, ..... Region for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, including compliance of directions, if any, of the concerned authorities."*

*2. Appointment of Mr. ..... as Director*

*To consider and, if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:*

*"RESOLVED that pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and the rules made there under read with Schedule IV to the Companies Act, 2013, approval of the Company be and is hereby accorded for appointment of Mr. ..... (DIN No.....), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to ..... AND THAT by virtue of sub-section (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation."*

*By Order of the Board of Directors*

*For .....*

*.....(Signature)*

*Place : .....(Name)*

*Date : ..... Company Secretary*

*Notes :*

- 1. The explanatory statement setting out the material facts pursuant to Section 102 of the Companies Act, 2013, relating to special business to be transacted at the Meeting is annexed.*
- 2. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company.*
- 3. Proxies, in order to be effective, must be received in the enclosed Proxy Form at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.***
- 4. A person can act as a proxy on behalf of Members not exceeding 50 and holding in the aggregate not more than ten percent of the total share capital of the Company carrying voting rights. A Member holding more than ten percent of total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as a proxy for any other person or shareholder.*
- 5. A Corporate Member intending to send its authorised representatives to attend the Meeting in terms of Section 113 of the Companies Act, 2013 is requested to send to the company a certified copy of the Board Resolution authorizing such representative to attend and vote on its behalf at the Meeting.*

6. *Members/Proxies/Authorised Representatives are requested to bring the attendance slips duly filled in for attending the Meeting. Members who hold shares in dematerialised form are requested to write their client ID and DP ID numbers and those who hold shares in physical form are requested to write their Folio Number in the attendance slip for attending the Meeting.*

7. *During the period beginning 24 hours before the time fixed for the commencement of Meeting and ending with the conclusion of the Meeting, a Member would be entitled to inspect the proxies lodged at any time during the business hours of the company. All documents referred to in the Notice and accompanying explanatory statement are open for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Annual General Meeting and at the venue of the Meeting for the duration of the Meeting.*

8. *Route-map to the venue of the Meeting is provided at the end of the Notice.*

9. *In compliance with provisions of Section 108 of the Companies Act, 2013 and Rule 20 of the Companies (Management and Administration) Rules, 2014, the Company is pleased to provide members the facility of exercising their right to vote electronically on the items mentioned in this Notice. The Company has appointed Mr. ..... as scrutinizer for conducting the e-voting process in a fair and transparent manner.*

*The voting period begins on ....., 201... at 10:01 hrs. and will end on ....., 201... at 17:00 hrs. During this period shareholders' of the Company, holding shares either in physical form or in dematerialised form, as on the cut-off date of ....., 201..., may cast their vote electronically. The e-voting module shall be disabled for voting thereafter.*

*The Company has signed an agreement with .....(agency) for facilitating e-voting to enable the Shareholders to cast their vote electronically. The instructions for shareholders voting electronically are given at the end of the Notice.*

#### **EXPLANATORY STATEMENT**

*As required by Section 102 of the Companies Act, 2013, the explanatory statement sets out all material facts relating to the business mentioned under Item Nos. 1 & 2 of the accompanying Notice dated .....*

#### **Item No. 1**

*The Registered Office of the Company has been situated in .....since the incorporation of the Company. The business of the Company has increased*

*manifold since incorporation and it is expected that such growth trends will be maintained in future.*

*The employee strength of the Company has also increased manifold and the Company needs an area of around 50,000 square feet to accommodate the entire staff and to carry out its growing business activities efficiently. However, expansion at the present location is not possible and prevailing rents in..... render it unviable to look for additional premises in the vicinity of the Registered Office.*

*The Board of Directors has identified suitable premises at .....in the State of ....., not very far from the present Registered Office. Acquiring such premises, situated close to ....., is advantageous for the Company to carry on its business more conveniently, economically and efficiently.*

*In view of these advantages, the Board of Directors has decided to shift the Registered Office of the Company from ..... (Name of State) to the ..... (Name of State) subject to necessary approvals.*

*In terms of Section 13 of the Companies Act, 2013, approval of the shareholders and the Regional Director is required for the purpose of shifting the registered office of the Company from one state to another state.*

*A copy of the Memorandum of Association is available for inspection at the Registered Office of the Company on all working days of the Company between 11:00 a.m. and 1:00 p.m. upto the date of the Meeting and at the venue of the Meeting for the duration of the Meeting.*

*The Board commends the passing of the Resolution at Item No.1 as a Special Resolution.*

*None of the Directors and Key Managerial Personnel of the Company or their relatives is concerned or interested in the proposed Resolution.*

#### **Item No. 2**

*Mr. ..... is an Independent Director of the Company, whose period of office is liable to be determination by rotation of Directors under the erstwhile applicable provisions of the Companies Act, 1956. He joined the Board in May 2010.*

*The Companies Act, 2013 came into force with effect from 1<sup>st</sup> April, 2014. Section 149 of the Companies Act, 2013, provides that every listed public company shall have at least one third of the total number of Directors as Independent Directors. An Independent Director can be appointed for any period up to 5 years but can be reappointed for another term of not more than 5 years by passing a Special Resolution. The provisions relating to retirement of Directors by rotation shall not apply to the appointment of Independent Director.*

*The Board has undertaken due diligence to determine the eligibility of Mr. .... for appointment as an Independent Director on the Board, based upon his qualification, expertise, track record integrity etc. and recommends the appointment of Mr. .... to the shareholders for a period of three years, i.e. up to .....*

*Mr. .... will not be liable to retire by rotation during this period.*

*Other than Mr. ...., none of the Directors or Key Managerial Personnel of the Company or their relatives is concerned or interested in the proposed Resolution.*

*A brief profile of Mr. .... is given below.*

*By Order of the Board of Directors*

*For .....*

*.....(Signature)*

*Place : .....(Name)*

*Date : .....20.... Company Secretary*

**Annexure IV***(Refer Paragraph 1.2.10)***Notice in Newspapers of Annual General Meeting***Name of the Company* .....*Registered Address* .....*CIN - ..... Email- ..... Telephone: .....  
Website: .....*

*NOTICE is hereby given that the ..... Annual General Meeting of the Company is scheduled to be held on ..... (day) ..... (date) at ..... a.m. /p.m. at the registered office of the company situated at ..... (address).*

*Notice of the Meeting setting out the Resolutions proposed to be transacted thereat and the Audited financial statements for the year ended at March 31, 201....., Auditors' Report and Report of the Board of Directors for the year ended on that date, have also been dispatched to the Members. Notice and the said documents are available at the Company's website ..... and copies of said documents are also available for inspection at the registered office of the Company on all working days during the business hours up to the date of Annual General Meeting. The Company has completed dispatch of Annual Report on ..... 201....*

*Pursuant to the provisions of Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, your Company is pleased to provide remote e-voting facility to its Members to exercise their right to vote on the Resolutions proposed to be transacted at the ..... (Number) Annual General Meeting. The Company has arranged remote e-voting facility through ..... (agency) at ..... (website) Notice of the Annual General Meeting is also available at the ..... (agency's) website.*

*A Member whose name appears in the register of members as on cutoff date i.e. ..... 201... only shall be entitled to avail the facility of remote e-voting as well as voting through physical ballot at the Meeting. Members who cast their vote through remote e-voting may attend the Meeting but shall not be entitled to cast their vote again.*

*Any person who becomes Member of the Company after dispatch of the Notice of the Meeting and holding shares on ..... 201.., if already registered with ..... (agency), can use his/her existing user ID and password otherwise*

*follow the detailed procedure mentioned in Notice of Meeting available at Company's website www.....com or may obtain the login ID and password by sending a request at ..... (email ID of agency) or to the Company's Registrar, M/s ..... at .....@.....com latest by ..... p.m. of ..... 201....*

*Remote e-voting facility shall commence on ..... 201.... at 10:00 hrs. and will end on ..... 201... at 17:00 hrs.. The remote e-voting will be disabled by ..... (agency) after the said date and time.*

*The Company has appointed Mr. ...., Practising Company Secretary as the scrutiniser to scrutinise the e-voting process in fair and transparent manner.*

*In case of any queries/grievances relating to e-voting process, the Members may contact at ..... (email ID of agency), Tel: ..... or M/s. ....RTA address) at .....@.....com, Tel: 011-..... or at the .....@.....com, Tel: +91 .....*

*Please keep your most updated email ID registered with the company/your Depository Participant to receive timely communications.*

*By Order of the Board of Directors*

*For.....*

*.....(Signature)*

*Place: ..... .....(Name)*

*Date: ..... 20.... Company Secretary*

**Annexure V***(Refer Paragraph 1.2.11)***Notice of postponed Annual General Meeting***Name of the Company.....**Registered Office : .....*

*Members are hereby informed that, due to unforeseen and unavoidable circumstances, the ..... Annual General Meeting of the Company, which was scheduled on ....., will now be held on ....., at .....p.m. at the Registered Office of the Company, to consider the business mentioned in the Notice dated ..... which had been sent to Members in connection with the Meeting originally scheduled to have been held on .....*

*A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.*

*By Order of the Board of Directors**For .....**.....(Signature)**Place : .....(Name)**Date : .....(Name) Company Secretary**Note :**Members may please immediately intimate any change in their address.*

**Annexure VI***(Refer Paragraph 1.2.11)***Notice in Newspapers of postponement of  
Annual General Meeting***Name of the Company: .....**Registered Office : .....***NOTICE****POSTPONEMENT OF ANNUAL GENERAL MEETING**

*Members are hereby informed that, due to the unforeseen and unavoidable circumstances, it has not been possible for the Company to convene the ..... Annual General Meeting of the Company, which was scheduled to be held on ..... 20.....*

*Accordingly, the Board of Directors of the Company has decided to postpone the said Annual General Meeting, which now is convened on ..... 20.... Notice and other documents, if any, relevant to the re-convened Meeting will be dispatched to Members shortly.*

*A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.*

*By Order of the Board of Directors**For .....**.....(Signature)**Place : .....(Name)**Date : ..... Company Secretary**Note :**Members may please immediately intimate any change in their address.*

**Annexure VII***(Refer Paragraph 2.2)*

**Notice by requisitionists  
convening an Extra-ordinary General Meeting**

*NOTICE is hereby given that the persons named below, who are Members of ..... (Name of the Company), having its Registered Office at ..... , and who have requisitioned the convening of an Extra-Ordinary General Meeting of the Company, hereby, in exercise of the powers and rights conferred by Section 100 of the Companies Act, 2013, give Notice that the said requisitioned Meeting shall be held on ..... day, the ..... 20....., at ..... a.m./p.m. at ..... (address) to consider the following proposal:*

*State the proposal*

*{OR*

*for considering and, if thought fit, passing the following Ordinary/ Special Resolution:*

*Reproduce the Resolution}*

*Names of requisitionists:*

1. .....
2. .....
3. .....
4. .....

*Note :*

*A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.*

**Annexure VIII***(Refer Paragraph 2.2)***Notice of an Extra-ordinary General Meeting called  
on the Requisition of Members****NOTICE***Name of the Company: .....**CIN: .....**Registered Office : .....*

*NOTICE is hereby given that, pursuant to a valid requisition under Section 100 of the Companies Act, 2013, lodged at the Registered Office of the Company by the Members whose names are annexed hereto, an Extra-Ordinary General Meeting of the Members of the Company will be held on ....., the .....20..., at a.m./p.m. at the Registered Office of the Company to consider the following proposal put forth by the requisitionists:*

*"RESOLVED that.....*  
 .....  
 .....  
 ....."

*The Board of Directors has considered the abovementioned Resolution in its Meeting held on .....20... and submits the following observations thereon for the consideration of the Members:*

.....  
 .....

*{after stating the observations, it should also be stated whether the Board supports or does not support the proposal of the requisitionists contained in the aforesaid Resolution.}*

*By Order of the Board of Directors*

*For .....*

.....*(Signature)*

*Place : .....(Name)*

*Date : ..... 20.... Company Secretary*

*Notes :*

1. *A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company. Proxies, in order to be effective, should be duly completed, stamped (if applicable) and signed and must be received at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.*
2. *The requisition dated ..... referred to above, signed by the requisite number of Members in terms of Section 100 of the Companies Act, 2013, and all documents referred to in the Notice are available for inspection by any Member at the Registered Office of the Company on any working day of the Company between the hours of 11:00 a.m. and 1:00 p.m. upto the date of this Extra-Ordinary General Meeting and at the venue of the Meeting for the duration of the Meeting.*
3. *Route-map to the venue of the Meeting is enclosed.*

**Annexure IX***(Refer Paragraph 2.2)***Specimen Board Resolution for convening  
Extra-ordinary General Meeting on Requisition**

*"RESOLVED THAT pursuant to the provisions of Section 100 and other applicable provisions of the Companies Act, 2013 and rules thereunder and as per the requisition received from the Members, the Board of Directors hereby authorises calling of an Extra-Ordinary General Meeting (EGM) of the Members on .....(date) at .....(time) at .....(venue)."*

*RESOLVED FURTHER THAT the draft notice of the EGM, the explanatory statement and other ancillary documents in connection with the EGM, as placed before the Board, be and are hereby approved.*

*RESOLVED FURTHER THAT any one of the Directors and the Company Secretary of the Company be and are hereby authorised to sign and execute the notice and other relevant documents in connection with the EGM and circulate them to the Members of the Company and do all such acts, deeds and things as may be necessary in connection with calling and convening of EGM including appointing scrutinisers and e-voting agencies, if required."*

**Annexure X***(Refer Paragraph 7.4)***Demand for Poll***Dated: .....**To*

*The Chairman of the ..... Annual General Meeting of ..... (Name of the Company) being held on ...day, ..... 20... at ..... a.m. /p.m. at..... (address).*

*We the undersigned, being the holders of an aggregate of ..... equity shares of Rs.10/Re.1/- each of the Company, as per the details set out below against our respective names, demand that, pursuant to the provisions of Section 109 of the Companies Act, 2013, a poll be taken in respect of the Resolution proposed at Item No. ..... of the Notice dated ..... 20..... of the ..... Annual General Meeting of the Company on which the voting is yet to be taken on a show of hands.*

*{OR*

*on which voting on a show of hands has been taken but the result thereof is yet to be announced*

*OR*

*which was declared carried on voting by show of hands.}*

<i>Sr. No.</i>	<i>Name of Member</i>	<i>Folio No./ Client ID No.</i>	<i>No. of shares held</i>	<i>Signature of Members</i>

**Annexure XI***(Refer Paragraph 9.2)***Announcements by the Chairman of the Meeting  
in connection with a Poll****1. Immediately after a Poll is demanded:**

*"I request you to make your demand on the Poll Demand Sheet so that the same can be verified to ascertain the validity of the demand in terms of the Companies Act, 2013, and the Articles of Association of the Company."*

**2. After verification of the demand and if the demand is found to be validly made:**

*"I now order that the Poll on the Resolution in respect of Item No. .... of the Notice, on the subject of ..... be taken and I appoint Mr ..... and Mr ..... as the Scrutinisers.*

*The Poll will commence half an hour after the transaction of all the items on the Agenda for the Meeting.*

*The Poll will be held in a part of this Hall and will continue for half an hour or till all the Members or their valid Proxies or Authorised Representatives present and willing to cast their votes, have cast their votes, whichever is earlier.*

*I authorise the Scrutinisers to issue the Poll papers to Members/Proxies/ Authorised Representatives and to advise them about the procedure to be followed; and to declare the Poll as closed on conclusion thereof, after ensuring that all the Members/Proxies/Authorised Representatives present have been provided the opportunity to vote. In terms of the provisions of the Articles of Association of the Company, a Member who is in arrears of moneys payable on the shares allotted to him is not entitled to vote. The Scrutinisers can take the assistance as may be required of the officers or employees of the Company in the conduct of the poll. I request you all to extend your co-operation in the conduct of the poll.*

*The details of the result of the poll would be displayed on the notice board at the Registered Office of the Company not later than 11:00 a.m. on ..... It would also be put up on the website of the Company ..... under the head ..... "*

**Annexure XII***(Refer Paragraph 9.2)***Checklist for Poll**

<i>Sr. No.</i>	<i>Relevant Section of the Companies Act, 2013</i>	<i>Provisions</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.		<i>Resolutions, as appearing in the Notice, to be proposed and seconded.</i>
2.	109	<i>Poll may be ordered by the Chairman or demanded by Member(s) (as in 3 below) before or on the declaration of the result of the voting by show of hands on a Resolution.</i>
3.	109	<i>Poll may be demanded by any Member(s) present in person or by Proxy holding shares :</i> <i>(i) of 1/10 of the total voting power, or</i> <i>(ii) on which an aggregate sum of not less than five lakh rupees has been paid up</i>
4.	109	<i>The demand for a poll may be withdrawn at any time by the person(s) who made the demand.</i>
5.	109	<i>Poll shall be taken immediately if demanded on a question of adjournment of the Meeting or on the election of the Chairman (Section 104); otherwise within forty-eight hours from the time it is demanded on any other question.</i>
6.		<i>Each Resolution should be put to poll separately and polling papers shall be distributed to all Members and to proxies attending the Meeting. Thereafter, polling/ballot papers shall be deposited in a ballot box by the Members/proxies.</i>
7.	105	<i>A Member present in person or by Proxy shall be entitled to vote only on a poll.</i>

		<i>If any Member present in person or by Proxy has more than one vote, such Member has the option to use his votes in different ways.</i>
8.	109	<i>The Chairman shall appoint such number of Scrutinisers as he deems necessary to scrutinise the votes given on a poll and to report to him.</i>
9.	109	<i>If more than one Scrutiniser is appointed, one of the Scrutinisers should be a Member attending the Meeting, other than an officer or employee of the Company.</i>  <i>The Chairman has the power, at any time before the result of the poll is declared, to remove a scrutiniser(s) and fill the vacancy / vacancies.</i>
10.		<i>(i) The demand for a poll, except on the question of the election of the Chairman or of any adjournment, shall not prevent the continuance of a Meeting for the transaction of any business other than the question on which a poll has been demanded.</i>  <i>(ii) In case of equality of votes, the Chairman shall have a second or casting vote (in addition to his vote as a Member).</i>
11.		<i>Votes shall be counted by the Scrutinisers.</i>
12.		<i>The results of poll shall be entered in a polling register showing the votes for and against each Resolution, which shall be signed by the Scrutinisers, and shall be deemed to be the decision of the Meeting.</i>
13.	109	<i>The Chairman shall regulate the manner of Poll and declare the results, after completion of the procedures listed in 6 to 12 above.</i>

*Notes :*

- (a) *The Meeting is deemed to continue until the poll has been taken. Appointing a later day for taking / completing the poll is not an adjournment.*
- (b) *A voter may vote at the poll even though not present when the poll was demanded.*

*(c) Members in arrears of payment of allotment money or calls cannot vote.*

*(d) Every Member entitled to vote at a Meeting, or on any Resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the Meeting and ending with the conclusion of the Meeting, to inspect the proxies, at any time during the business hours of the Company, provided not less than three days notice in writing of the intention so to inspect is given to the Company.*

**Annexure XIII***(Refer Paragraph 9.5.3)***Polling Record***Name of the Company : .....**Registered Office : .....***POLLING RECORD***Date of Meeting .....**Item No. of the Notice dated ..... of the Meeting on which the poll was held : .....**Subject matter on which the poll was held: .....*

S. No.	Particulars	Details
1.	<i>Name of the Member</i>	
2.	<i>Address</i>	
3.	<i>Registered folio No. / *Client ID No. (*Applicable to investors holding shares in dematerialised form)</i>	
4.	<i>Class of Shares (Whether shares have differential voting rights)</i>	
5.	<i>No. of shares held</i>	
6.	<i>Nominal Value of Shares</i>	

No.	Item No.	Assent	Dissent
1.			

*Date: ..... Initials of Scrutinisers: ..... {each page should be initialed by the Scrutinisers and they should sign the last page in full}*

**Annexure XIV***(Refer Paragraph 9.5.3)***Announcement on the Notice Board of the Company of the  
Result of the Poll***Name of the Company* .....*Registered Office* : .....*RESULT OF THE POLL HELD AT THE ..... MEETING OF THE COMPANY HELD  
ON .....**Item No. ..... of the Notice dated ..... Subject: .....**Total number of votes cast : .....**Invalid votes : .....**Total number of valid votes : .....**Number of votes cast FOR the Resolution : .....**Number of votes cast AGAINST the Resolution : .....**Result : .....**Place* : .....*CHAIRMAN**Date* : .....*Time* : .....

**Annexure XV***(Refer Paragraph 16.1)***Items of Business which shall be passed  
only by Postal Ballot**

1. Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum.
2. Alteration of articles of association in relation to insertion or removal of provisions which are required to be included in the articles of a company in order to constitute it a private company.
3. Change in place of registered office outside the local limits of any city, town or village.
4. Change in objects for which a company has raised money from public through prospectus and still has any unutilised amount out of the money so raised.
5. Issue of shares with differential rights as to voting or dividend or otherwise.
6. Variation in the rights attached to a class of shares or debentures or other securities.
7. Buy-back of shares by a company.
8. Appointment of a Director elected by small shareholders.
9. Sale of the whole or substantially the whole of an undertaking of a company or where the company owns more than one undertaking, of whole or substantially the whole of any of such undertakings.
10. Giving loans or extending guarantee or providing security in excess of the limit specified.
11. Any other Resolution prescribed under any applicable law, rules or regulations.

**Annexure XVI***(Refer Paragraph 16.3)***An Illustrative Calendar of Events**

<i>A</i>	<i>Date on which the Scrutiniser &amp; Agency are identified</i>	<i>Before 1<sup>st</sup> May</i>
<i>B</i>	<i>Date of Board Resolution</i>	<i>1<sup>st</sup> May</i>
<i>C</i>	<i>Date of appointment of the Scrutiniser and Agency (Appointed at Board Meeting or by Resolution passed by circulation)</i>	<i>1<sup>st</sup> May</i>
<i>D</i>	<i>Cut-off date (Decided at the Board Meeting)</i>	<i>24<sup>th</sup> May</i>
<i>E</i>	<i>Date of dispatch of Notice along with postal ballot forms and PIN MAILERS</i>	<i>3<sup>rd</sup> June</i>
<i>F</i>	<i>Date of commencement of Voting</i>	<i>3<sup>rd</sup> June</i>
<i>G</i>	<i>Date of publishing the advertisement in newspapers as specified</i>	<i>3<sup>rd</sup> June</i>
<i>H</i>	<i>Last date for receiving postal ballot forms by the Scrutiniser / Last date of Voting by electronic means (Thirty days from the date of dispatch)</i>	<i>1<sup>st</sup> July</i>
<i>I</i>	<i>Last date of submission of the Report by the Scrutiniser</i>	<i>8<sup>th</sup> July</i>
<i>J</i>	<i>Date of declaration of the result by the Chairman or any other Director authorised by the Board (the same date as has been mentioned in the Notice)</i>	<i>9<sup>th</sup> July</i>
<i>K</i>	<i>Date on which Resolution will be deemed to be passed</i>	<i>1<sup>st</sup> July</i>
<i>L</i>	<i>Last date for recording the report in the Minutes Book of General Meetings</i>	<i>31<sup>st</sup> July</i>

**Annexure XVII***(Refer Paragraph 17.2.2.2)**RESOLUTIONS PASSED BY POSTAL BALLOT ON .....**Name of the Company.....*

*The Company had, on ..... dispatched to all the Shareholders, Notice dated ..... under Section 110 of the Companies Act, 2013, for obtaining the consent of the Shareholders to the following Ordinary Resolution by means of postal ballot :*

*"RESOLVED that the consent of the Company be and is hereby accorded pursuant to Section 180(1)(a) and other applicable provisions of the Companies Act, 2013, to the Board of Directors of the Company (the Board) to sell, lease or otherwise dispose of at such consideration and with effect from such date as the Board may think fit, the whole or substantially the whole of the undertaking of the Company at ..... engaged in the business of manufacture of .....*

*RESOLVED FURTHER that the Board be and is hereby authorised to do or cause to be done all such acts, deeds and other things as may be required or considered necessary or incidental thereto for giving effect the aforesaid Resolution".*

*The dispatch of Notices and accompanying documents were completed on ..... (date) to all Members appearing in the records of the Company as on ..... (cut-off date). Mr. ..... was appointed as Scrutiniser on ..... (date) and ..... (name of the Agency) was appointed as an Agency on ..... (date) for providing and supervising electronic platform for e-voting.*

*It was mentioned in the said Notice dated ..... that the postal ballot forms sent therewith should be returned by the Shareholders duly completed so as to reach the Scrutiniser on or before ..... The Notice also indicated the date of commencement of e-voting as ..... (Day) ..... (Date) and the last date of e-voting as ..... (Day) ..... (Date) alongwith the process and manner of voting by electronic means. The Scrutiniser was required to submit his report to the Chairman after completion of the Scrutiny.*

*Mr. ..... (Scrutiniser) carried out the scrutiny of all the postal ballot forms and electronic votes received upto the close of working hours on ..... He submitted his Report dated ..... on ..... (date) and the Chairman accepted the said Report.*

*The following is the result of the postal ballot as per the Scrutiniser's Report:*

<i>Number of valid postal ballot forms received</i>	
<i>Number of valid votes cast by electronic means</i>	
<i>Votes in favour of the Resolution including votes cast by electronic means</i>	
<i>Votes against the Resolution including votes cast by electronic means</i>	
<i>Number of invalid postal ballot forms received</i>	
<i>Number of invalid votes by electronic means</i>	

*In view of the foregoing, the Ordinary Resolution set out in the Notice dated ..... has been therefore duly approved/not approved by the requisite majority of the Shareholders.*

*Place :.....* .....  
*Date :.....*

*Chairman*

**Annexure XVIII***(Refer Paragraph 17.3)***Specimen Minutes of Annual General Meeting**

*MINUTES OF THE PROCEEDINGS OF THE ..... (Number of Meeting)  
 ANNUAL GENERAL MEETING OF ..... (Name of the Meeting) HELD ON  
 ..... (day), ..... (date) 20... FROM ..... TO .....  
 A.M/ P.M. AT ..... (address).*

*The following were present:*

1. *Mr. W* *(in the Chair)*
2. *Mr. B* *(Director and Member)*
3. *Mr. C* *(Director)*
4. *Mr. D* *(Director and Member)*
5. *Mr. E* *(Director and Chairman of Audit Committee)*
6. *Mr. F* *(Company Secretary)*
7. ..... *(Members present in person) [state number]*
8. ..... *representing ..... shares (Members present by Proxy) [state number]*

*Mr. G, Partner of M/s....., Chartered Accountants, Auditors of the Company, was present.*

*Mr. H, Practising Company Secretary, Secretarial Auditor of the Company, was also present.*

**CHAIRMAN**

*In accordance with Article ..... of the Articles of Association, Mr. W, Chairman of the Board of Directors, took the Chair.*

*{OR*

*Mr. B was elected Chairman of the Meeting, in terms of Article ..... of the Articles of Association of the Company}.*

*The Chairman welcomed the Members and introduced the Directors seated on the dais.*

*The Chairman stated that Mr..... and Mr..... Directors, could not attend the Meeting due to..... (explain the reason for absence).*

*Quorum was present at the commencement of the Meeting as well as at the time of consideration of each item of business.*

*The following documents / Registers of the Company remained open and accessible for inspection during the continuance of the AGM:*

- (a) Financial Statements for the financial year ended 31st March, ..... including the Consolidated Financial Statements for the said financial year, and the Reports of the Board of Directors and the Auditors.*
- (b) Register of Directors and Key Managerial Personnel and their shareholding.*

*Register of Contracts or Arrangements in which Directors are interested.*

*With the consent of the Members present, the Notice convening the Annual General Meeting of the Company was taken as read.*

*The Chairman delivered his speech.*

*The business of the Meeting as per the Notice thereof was thereafter taken up item wise.*

### **1. Adoption of Consolidated and Standalone Financial Statements**

*The Chairman requested Mr. ..... to read the Ordinary Resolution for the adoption of the Financial Statements for the year ended 31st March, 20..... and Mr. ..... read out the Ordinary Resolution as follows:*

*"RESOLVED that the Financial Statements of the Company for the year ended 31<sup>st</sup> March, 20....., including Consolidated Financial Statements for the said financial year, along with the Reports of the Board of Directors and the Auditors, as circulated to the Members and laid before the Meeting, be and are hereby approved and adopted."*

*After the above Resolution was proposed and seconded, but before it was put to vote, the Chairman invited Members (other than those present by Proxy) to make observations and comments, if any, on the Report and financial statements, as well as on the other Resolutions set out in the Notice convening the Meeting.*

*Some Members made their observations and comments and raised queries on the Annual Report and Financial Statements and other items set out in the Notice and the Chairman answered their queries.*

*Before putting the Resolution to vote, the Chairman reminded the Meeting that Proxies were not eligible to vote on a show of hands. Thereafter, the Chairman put the Resolution for the adoption of the Financial Statements, Consolidated Financial Statements and the Reports thereon to vote as an Ordinary Resolution.*

*On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried by the requisite majority.*

**2. Declaration of Dividend**

*Mr. .... read out the following Resolution:*

*"RESOLVED that the dividend @ Rs. .... on the equity shares of Rs. 10/Re. 1/- each, fully paid-up, be and is hereby declared for payment, to those Members whose names appear on the Company's Register of Members on ..... 20..."*

*The Resolution was proposed by Mr. .... and seconded by Mr. ...., and was put to vote as an Ordinary Resolution.*

*On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.*

**3. Appointment of Director**

*Proposed by : Mr. ....*

*Seconded by : Mr. ....*

*The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:*

*"RESOLVED that pursuant to Section 152 of the Companies Act, 2013, Mr. A, who retires by rotation and, being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company liable to retire by rotation."*

*On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.*

**4. Appointment of Director**

*Proposed by : Mr. ....*

*Seconded by : Mr. ....*

*The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:*

*"RESOLVED that pursuant to Section 152 of the Companies Act, 2013, Mr. B, who retires by rotation and, being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company liable to retire by rotation."*

*On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.*

**5. Appointment of Director**

Proposed by : Mr. ....

Seconded by : Mr. ....

*The following Resolution having been proposed and seconded by the aforementioned two Members, was put to the vote as an Ordinary Resolution:*

*"RESOLVED that, pursuant to Section 152 of the Companies Act, 2013, Mr. C, who retires by rotation and, being eligible for re-appointment, offers himself for re-appointment, be and is hereby re-appointed as a Director of the Company liable to retire by rotation."*

*On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.*

**6. Appointment of Auditors**

Proposed by : Mr. ....

Seconded by : Mr. ....

*The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:*

*"RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s....., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the ..... Annual General Meeting of the Company (subject to ratification of their appointment at every AGM), at a remuneration of Rs. ..../- (Rupees ..... only) for the year ..... and Rs. ..../- (Rupees ..... only) per year for the subsequent ..... years plus reimbursement of out of pocket expenses and service tax, as applicable."*

*On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.*

**7. Appointment of Director**

Proposed by : Mr. ....

Seconded by : Mr. ....

*The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as an Ordinary Resolution:*

*"RESOLVED THAT pursuant to the provisions of Section 152 and other applicable provisions of the Companies Act, 2013 read with the Companies (Appointment and Qualification of Directors) Rules, 2014, Mr. .... (DIN .....), who was appointed as an Additional Director of the Company with effect from ..... 20..... by the Board of Directors of the Company pursuant to Section 161(1) of the Companies Act, 2013 and the Articles of Association of the Company and who holds office upto the date of this Annual General Meeting, and being eligible, offer himself for appointment and in respect of whom the Company has received a notice in writing under Section 160 of the Companies Act, 2013 from a member signifying his intention to propose the candidature of Mr. ..... for the office of Director, be and is hereby appointed as a Director of the Company, liable to retire by rotation with effect from the date of this Meeting."*

*On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.*

**8. Delisting of Securities – Special Resolution**

*Proposed by : Mr. .....*

*Seconded by : Mr. .....*

*The following Resolution having been proposed and seconded by the aforementioned two Members, was put to vote as a Special Resolution:*

*"RESOLVED that, subject to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange of Board of India Act, 1992, and the rules framed thereunder and other applicable laws, rules and regulations and guidelines and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions as may be prescribed by the Securities and Exchange Board of India and Stock Exchanges while granting such approvals, permissions and sanctions, which may be agreed to by the Board of Directors of the Company, which expression shall be deemed to include any Committee of the Board for the time being, exercising the powers conferred by the Board, the consent of the Company be and is hereby accorded to the Board to voluntarily de-list the equity shares of the Company from ..... (name of stock exchanges).*

*"RESOLVED FURTHER that the Board be and is hereby authorised to do all acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above Resolution."*

*On a show of hands, the Chairman declared the aforesaid Special Resolution carried with the requisite majority.*

**CLOSE OF THE MEETING**

*There being no other business to transact, the Meeting closed with a vote of thanks to the Chair.*

*Date : .....*

*Place: ..... CHAIRMAN*

*Under each item before proposal and seconding of the Resolutions, we should record as follows: "The objective and implications of the Resolution were explained by the Chairman (or at the request of the Chairman by Mr..... (designation)"*

*The Chairman informed that there were no qualifications, observations or comments or other remarks, if any, mentioned in the Auditor's Report or in the Secretarial Auditor's Report.*

*OR*

*The Chairman asked the auditors to read the qualifications\*/, observations\*/ comments\*/ other remarks\*, mentioned in the Auditor's\* / Secretarial Auditor's\* Report.*

*Attention of the Members present was drawn to the explanations / comments given by the Board of Directors in their report at page.....para.....*

*\*as may be relevant or applicable.*

**Annexure XIX***(Refer Paragraph 17.3)***Specimen Minutes of Extra-ordinary General Meeting**

*MINUTES OF THE PROCEEDINGS OF THE EXTRA-ORDINARY GENERAL MEETING  
OF ..... (Name of the Company) HELD ON ..... (day), .....  
(date) 20..... FROM ..... TO ..... A.M./P.M. AT  
.....(address)*

*The following were present:*

1.	Mr. A	<i>(in the Chair)</i>
2.	Mr. B	<i>(Director and Member)</i>
3.	Mr. C	<i>(Director)</i>
4.	Mr. F	<i>(Company Secretary)</i>
5.	.....	<i>(Members present in person) {state number}</i>
6.	.....	<i>(Members present by Proxy) {state number}</i>

*Mr. G, Partner of M/s....., Chartered Accountants, Auditors of the Company, was present.*

**CHAIRMAN**

*In accordance with Article ..... of the Articles of Association, Mr. A, Chairman of the Board of Directors, took the Chair.*

*{OR:*

*Mr. B was elected Chairman of the Meeting, in terms of Article ..... of the Articles of Association of the Company}*

*The Chairman welcomed the Members and introduced the Directors seated on the Dias.*

*The Chairman stated that Mr. ..... and Mr. ..... Directors, could not attend the Meeting due to..... (explain the reason for absence).*

*Quorum was present at the commencement of the Meeting as well as at the time of consideration of each item of business.*

*With the consent of the Members present, the Notice convening the Extra-Ordinary General Meeting of the Company was taken as read.*

*The business of the Meeting, as per the Notice thereof, was thereafter taken up item-wise.*

**1. Shifting of the Registered Office**

*Proposed by : Mr. ....*

*Seconded by : Mr. ....*

*The following Resolution having been proposed and seconded by the aforementioned two Members was put to vote as a Special Resolution:*

*"RESOLVED that pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013, and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from the ..... (Name of State) to the ..... (Name of State)."*

*"RESOLVED FURTHER that Clause - II of the Memorandum of Association of the Company be altered by substitution of the word....."*

*"RESOLVED FURTHER that the Board of Directors of the Company be and is hereby authorised to file the necessary petition(s) before the Regional Director, ..... Region for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid and to carry out all other acts and deeds as are necessary in connection therewith, including compliance of directions, if any, of the concerned authorities."*

*The Chairman enquired if there were any clarifications required on the same. Since none of the Members required any clarification, the Special Resolution was put to vote and on a show of hands declared carried by the requisite majority.*

**2. Appointment of Independent Director**

*Proposed by : Mr. ....*

*Seconded by : Mr. ....*

*The following Resolution having been proposed and seconded respectively by the aforementioned Members was put to vote as an Ordinary Resolution:*

*"RESOLVED that pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and the rules made there under read with Schedule IV to the Companies Act, 2013, approval of the Company be and is hereby accorded for appointment of Mr. E (DIN No.....), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to ..... AND THAT by virtue of sub-section (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation."*

*The Chairman enquired from the Members present if there were any clarifications required on the same. Since none of the Members required any clarification, the Ordinary Resolution was put to vote and on a show of hands declared carried by the requisite majority.*

**CLOSE OF THE MEETING**

*There being no other business to transact the Meeting closed with a vote of thanks to the Chair.*

*Date : .....*

*Place: .....* **CHAIRMAN**

## GLOSSARY

- “Alter” or “alteration” includes the making of additions, omissions and substitutions [Sub-section (3) of section 2 of Companies Act, 2013]
- “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]
- “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” 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. [Sub-section (24) of the Section 2 of the Companies Act, 2013]
- “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]
- “Court” means –
  - (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);
  - (ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

- (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;
- (iv) the Special Court established under section 435;
- (v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law. [Sub-section (29) of Section 2 of the Companies Act, 2013]
- “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]
- “Depository” means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996. [Sub-section (32) of Section 2 of the Companies Act, 2013]
- “Director” means a director appointed to the Board of a company. [Sub-section (34) of Section 2 of the Companies Act, 2013]
- “Electronic record” means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. [Clause (f) of sub-section (1) of Section 2 of the Information Technology Act, 2000]
- “Financial statement” in relation to a company, includes—
  - (i) a balance sheet as at the end of the financial year;
  - (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
  - (iii) cash flow statement for the financial year;
  - (iv) a statement of changes in equity, if applicable; and
  - (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement. [Sub-section (40) of Section 2 of the Companies Act, 2013]
- “Financial year”, in relation to any company or body corporate, means

*the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up. [Sub-section (41) of Section 2 of the Companies Act, 2013]*

- “*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 organisation 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 (6) of Section 149 of the Companies Act, 2013]

- "Listed company" means a company which has any of its securities listed on any recognised stock exchange. [Sub-section (52) of Section 2 of the Companies Act, 2013]
- "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.

*Explanation. – For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;*

[Sub-section (54) of Section 2 of the Companies Act, 2013]

- "Member", in relation to a company, means –
  - (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

- (iii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iv) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository. [Sub-section (55) of Section 2 of the Companies Act, 2013]
- “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]
- “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly. [Sub-section (58) of Section 2 of the Companies Act, 2013]
- “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].
- “Ordinary Resolution” means a Resolution when, at a General Meeting of which the Notice required under the Act has been duly given, the votes cast (whether on a show of hands or on a poll or on e-voting) in favour of the Resolution (including the casting vote, if any, of the Chairman) exceed the votes, if any, cast against the Resolution by Members entitled to vote thereon either in person or, where proxies are allowed, by Proxy. [In line with Section 114 of the Act]
- “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]

- “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”, 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 [or his relative] is a member or director;
  - (v) a public company in which a director or manager is a director [and] 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 and Rule 3 of Companies (Specification of definitions details) Rules, 2014]
- “Relative”, with reference to any person, means anyone 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]*

*A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-*

*(1) Father:*

*Provided that the term "Father" includes step-father.*

*(2) Mother:*

*Provided that the term "Mother" includes the step-mother.*

*(3) Son:*

*Provided that the term "Son" includes the step-son.*

*(4) Son's wife.*

*(5) Daughter.*

*(6) Daughter's husband.*

*(7) Brother:*

*Provided that the term "Brother" includes the step-brother;*

*(8) Sister:*

*Provided that the term "Sister" includes the step-sister.*

*[Rule 4 of Companies (Specification of definitions details) Rules, 2014]*

- *"Remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961 [Sub-section (78) of Section 2 of the Companies Act, 2013]*
- *"Schedule" means a Schedule annexed to this Act [Sub-section (79) of Section 2 of the Companies Act, 2013]*
- *"Section" means section of the Companies Act, 2013.*
- *"Securities" include –*

*(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*

- (ia) derivative;
- (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (ic) security receipt as defined in clause (zg) of section 2 of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*;
- (id) units or any other such instrument issued to the investors under any mutual fund scheme;
- (ii) Government securities;
- (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iia) rights or interest in securities;

*[Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956]*

- “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]
- “Special Resolution” means a Resolution in respect of which (a) the intention to propose the Resolution as a Special Resolution has been duly specified in the Notice calling the Meeting or other intimation of the Resolution has been given to the Members; (b) the Notice of the Meeting required under the Act has been duly given; and (c) the votes cast in favour of the Resolution (whether on a show of hands or on a poll or on e-voting) are not less than three times the number of the votes, if any, cast against the Resolution by Members entitled to vote thereon either in person or, where proxies are allowed, by Proxy. [In line with Section 114 of the Act]
- “Total Share Capital”, for the purposes of clause (6) and clause (87) of section 2, means the aggregate of the -
  - (a) paid-up equity share capital; and
  - (b) convertible preference share capital

*[Rule 2(1)(r) of Companies (Specification of Definitions Details) Rules, 2014]*

- “total voting power”, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a

*Meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the Meeting and cast their votes; [Sub-section (89) of Section 2 of the Companies Act, 2013]*

- *"Tribunal" means the National Company Law Tribunal constituted under section 408 [Sub-section (90) of Section 2 of the Companies Act, 2013]*
- *"Voting right" means the right of a member of a company to vote in any Meeting of the company or by means of postal ballot [Sub-section (93) of Section 2 of the Companies Act, 2013].*
- *"Whole-time director" includes a director in the whole-time employment of the company [Sub-section (94) of Section 2 of the Companies Act, 2013]*

