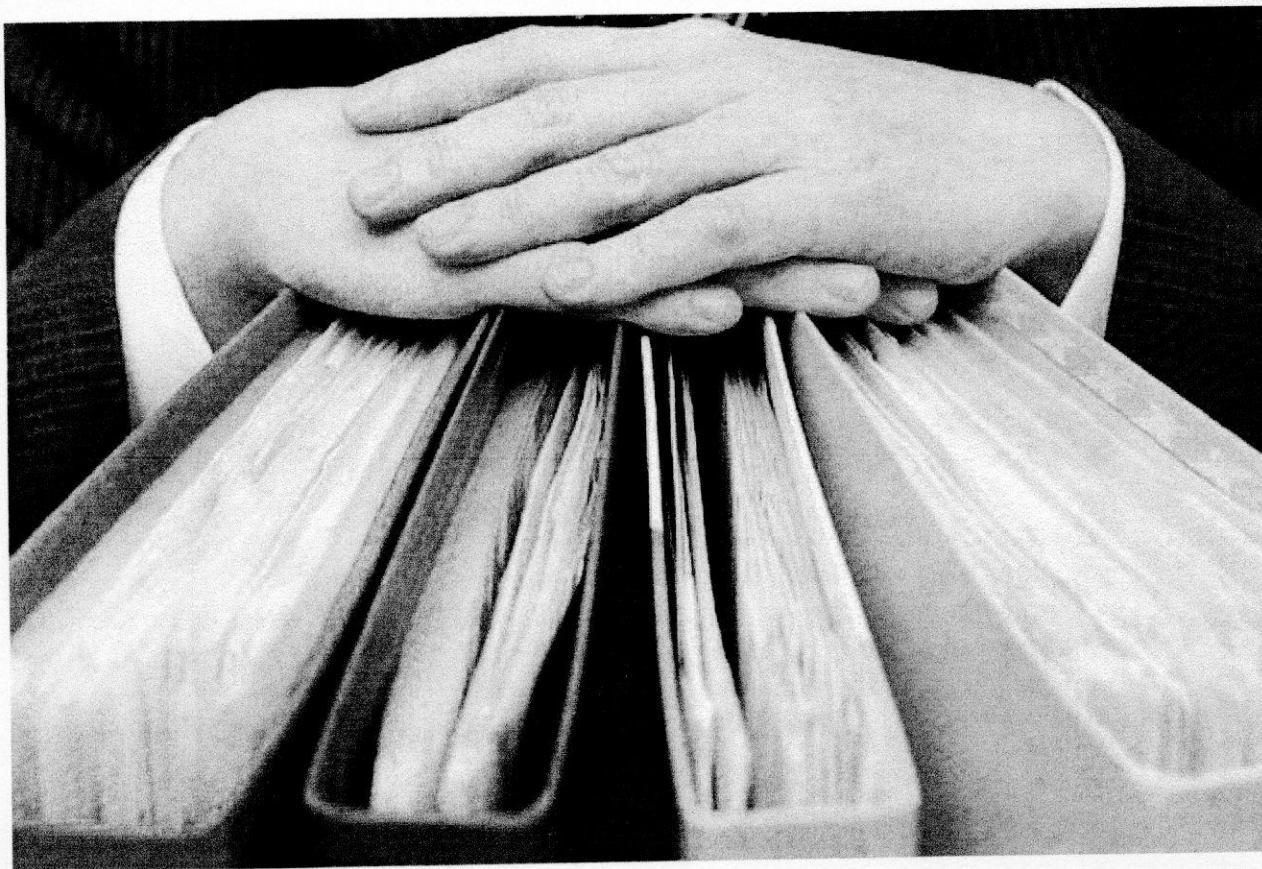


Overview of the Secretarial Standard

CS Gaurav. N. Pingle & CS Pranav. S. Asni



Synopsis : Under the Companies Act, 2013, the Secretarial Standards with respect to board meetings and general meetings are applicable to all companies and are mandatory in nature (compliance was made voluntary under Companies Act, 1956). The MCA has accorded its approval under Section 118(10) of the Companies Act, 2013 to the said Secretarial Standards specified by the ICSI. It's noteworthy that India is the first and only country to adopt the Secretarial Standards. The article gives an overview of the Secretarial Standards, and covers their applicability to companies and their important advantages and goals.

Introduction :

The Accounting Standards ('AS') have the requisite statutory recognition under the Companies Act, 1956 and the Companies Act, 2013. There is a definite and streamlined procedure for their preparation, applicability and its notification for making it binding on India Inc.

The Secretarial Standards ('SS') under the Companies Act, 1956 were issued by the Institute of Companies Secretaries of India ('ICSI'). However, these were recommendatory in nature and the companies were able to choose whether or not to adopt them. Under the

Companies Act, 1956, the ICSI issued several SS, which covered various aspects including: board meetings, general meetings, dividends, register and records, minutes of meetings, transmission of shares, forfeiture of shares, etc.

The SS under the Companies Act, 2013:

Under the Companies Act, 2013 the following SS are applicable to all companies and are, moreover, mandatory (as opposed to previously being voluntary under the Companies Act, 1956):

- (1) SS-1 is applicable to general meetings and
- (2) SS-2 is applicable to board meetings.

The Ministry of Corporate Affairs accorded its approval, under Section 118(10) of the Companies Act, 2013, to the aforementioned Secretarial Standards specified by the ICSI. ICSI has clarified that the Secretarial Standards will be applicable with effect from July 1, 2015, i.e. the SS shall be applicable to board meetings and general meetings whose notices are issued on or after July 1, 2015.

It's noteworthy that India is the first and only country to adopt the Secretarial Standards.

Importance of the Secretarial Standards:

The SS assist and supplement (but do not supplant) the implementation of existing company law regulations. Wherever there are operational issues in the practical implementation of the company law provision, i.e. where there is no precise solution in the Companies Act or the Rules, the Secretarial Standards provides corporations and professionals with adequate guidance on ensuring compliance.

The Secretarial Standards do not form a parallel or conflicting regulatory framework, but they ensure smooth compliance with the current regulatory framework. Furthermore, if any changes are made to the Act or a part thereof and if these changes correspond to the Secretarial Standards, the Act prevails in the event of any inconsistencies.

Advantages of the Secretarial Standards

The adoption of the Secretarial Standards by Indian companies will substantially impact the quality of their corporate secretarial practices, and this in turn will make their practices comparable with best practices worldwide. Some of the advantages of SS for the corporate sector are :

- (i) Improvement in the quality of the secretarial practices observed in Indian companies,
- (ii) Enhancement of corporate disclosures,
- (iii) More transparency,
- (iv) Reduction in non-compliance,
- (v) Better corporate governance,
- (vi) Increased confidence shown by global investors,
- (vii) More recognition of the ICSI and its members

Goals of the Secretarial Standards:

SS not only aids in the implementation of law by bringing in clarity wherever needed, but also recommends good governance practices in certain areas where definite laws are not feasible or where divergent practices are followed. Broadly, the SS are intended to achieve the following goals :

- (1) Strengthening the board process,
- (2) Protecting the interests of individual directors, including independent directors,
- (3) Preventing disputes between shareholders and management.
- (4) Benefiting and providing reassurance to auditors and trustees,
- (5) Enhancement of the position of CS,
- (6) Introduction of e-initiatives good governance.





Brief Introduction to SS-1 and SS-2:

Secretarial Standard 1 seeks to prescribe a set of principles for convening and conducting meetings of the board of directors. The principles laid out in SS-1 for Meetings of the board of directors are also applicable to meetings of committees of the board, unless otherwise stated herein or stipulated by any other applicable guidelines, rules or regulations.

"Invitee" has been defined in the SS-1 as a person, other than a director or a company secretary, who attends a particular meeting by invitation, which would now include people like statutory auditors, nominees of financial institutions, and nominees of CG.

Secretarial Standard 2 seeks to prescribe a set of principles for the convening and conduct of general meetings and related issues, and also

deals with the conduct of e-voting and postal balloting. SS-2 is applicable to all types of general meetings of all companies (private companies and public companies) incorporated under the Act. The principles for general meetings of members, laid out in SS-2, are applicable mutatis mutandis to meetings of debenture holders and creditors.

Where the meeting has been called by the court or the National Company Law Tribunal (NCLT) of the members or by a certain class of members or debenture holders or creditors, then the meetings shall be governed by SS-2 without prejudice to any rules, regulations or directions prescribed for/ordered by the court / NCLT.

Conclusion :

The Secretarial Standards have plugged the gaps in areas where there are no obvious provisions in the

Companies Act or the Rules. The provisions discussed above have been incorporated into the Secretarial Standards after exhaustive discussion within the ICSI's Secretarial Standard Board about the practical issues faced by its members in implementing provisions of the Companies Act, 2013 for board meeting and general meeting. These provisions should not be considered over-compliance, but rather, should be seen as providing the requisite guidance for ensuring smooth compliance with the Companies Act.

*The authors are qualified company secretaries from Pune.
acsgauravpingle@gmail.com*