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Secretarial Standards- Guide to professionals for healthy Corporate Governance

- By Aditi Jhunhunwala
aditi@vinodkothari.com

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Introduction of Secretarial Standards

Though we have the law in place for taking necessary action and steps as and when required and thereafter the various rules and regulations to follow the procedure laid down for business activities but in order to bring harmony and unity between the secretarial practice adopted by all the companies, a need was felt to develop some kind of standards by means of which in certain areas professionals could have standard format of work and there could be integration of secretarial practice. In need of the same Institute of Company Secretaries of India (ICSI/Institute) constituted Secretarial Standards Board (SSB) for formulating Secretarial Standards (SS) in the year 2000-2001.

The SSB in consultation with the Council is to determine the areas in which SS are to be developed. Thereafter SSB can constitute working groups to work and develop SS on those areas. Once the draft SS is in place by the Working Group the same shall be placed before the SSB for confirmation after receiving comments and views from the Regional Councils/Chapters. Thereafter, preliminary draft shall be placed on the website of the Institute. The major points of the SS will be:

- Fundamental principles relating to the subject of the Standard
- Objectives of the Standard
- Definitions, where applicable
- Disclosure requirements
- Effective date of the Standard

Need for the same

These SS are surely not an alternative to the applicable laws, rules and regulations but will surely compliment and rather supplement the existing laws, rules and regulations under which our corporate scenario is governed. The sole purpose of these SS is to bring concord between the various areas of practice used by different professionals. One of the important factors also is where the law is not clear SS will help to bring in more clarity besides recommending good governance practices.

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How many Standards do we have?

All in all 10 Standards have been introduced till date. A brief of them are below:

SS-1- Meetings of the Board of Directors: This Standard prescribes a set of principles for the convening and conduct of Meetings of the Board of Directors and matters related thereto. In line with The Companies Act, 1956 (Act) and other applicable Rules, the Standards lay a mode of conducting, procedure and action plan in Board Meetings including Committees. The same also prescribe the voting, quorum, frequency, agendas, minutes etc. in relation to calling and holding of meetings in line with the Act and other recommendations.

SS-2- General Meetings: In a similar manner the Standard lays principles lay down the conducting general meetings not only of all members but also class of members, creditors, debt holders etc. What are the major issues requiring General Meeting consent, what should be the notice content and procedure of sending the same. Manner of putting a resolution to vote, casting poll, appointing proxies, the votes casted, type of resolutions, frequency, quorum etc.

SS-3- Dividend: This standard prescribes principles in relation to declaration and payment of dividend and matters incidental thereto. The principles formulated are ofcourse governed by the Act. It lays down procedures regarding the treatment of dividend and the procedure to be followed for its timely payment and treatment in event of non-payment.

SS-4- Registers and Records: Under the Act companies are required to maintain statutory registers and records. Some are to be kept as mandatory registers and some are maintained for the effective working of the organisation. This Standard prescribes principles in relation to various registers and records with reference to their maintenance and inspection.

SS-5- Minutes: This Standard prescribes principles for the recording of minutes of the meeting of the board, members, debenture holders, creditors, and other meetings as may be necessary under the Act or conducted in any manner under the rules and procedures laid down. It enumerates the manner in which the records are to be maintained.

SS-6- Transmission of Shares and Debentures: This Standard lays down principles regarding the transmission of shares and debentures. The standard

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defines transmission and the process in which the transmission shall take place. It states the conditions for transmission and the events which can give rise to transmission of securities.

SS-7- Passing of resolution by circulation: A company cannot work on its own; for this reason the Board of Directors are appointed to manage the affairs of the company. Any decision taken by the board shall be executed by a resolution passed by it in its meeting. This standard lays down principles for passing of resolutions by circulation in circumstances where it is not feasible to call a physical meeting.

SS-8- Affixing of Common Seal: A common seal is a seal of identification of the company which can be used only with the prior approval of the board of directors. It works as the signature of the company to any document. This Standard deals with the proper use and maintenance of the official seal of the company.

SS-9- Forfeiture of Shares: This Standard prescribes principles for forfeiture of both equity and preference shares arising from non payment of calls. It states the principles for the procedure to be followed, requirements, and effects of forfeiture along with the re-issue of the forfeited shares.

SS-10- Board's Report: It is mandatory under the Act to present the annual accounts of a company to its shareholders. The annual accounts are accompanied by the report of the board of directors, commonly known as "director's report". It contains all the information that is required to be disclosed to the shareholders by its directors. This standard sets out principles for the structure of the director's report and the information it should contain.

Whether the Standards are recommendatory or mandatory?

The Standards were introduced only so as to bring in consistency among the working of the companies therefore, the same in the initial years were only recommendatory. Adherence to Standards by Companies was therefore only recommendatory in nature but with the rising need for Corporate Governance the same are now recommended to become mandatory.

The Institute is in endeavour to make the Standards mandatory. The Institute on several occasions has requested the Government and other appropriate authorities to enforce these Standards on the Companies.

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Relevant proposals for mandating the Standards

In 2006:

The Standards were always recommendatory in nature. With the growing corporate scenario a need was felt to standardize the secretarial practices so the Standards were thereafter recommended to be made mandatory first somewhere in 2006. Many members of the Institute and big corporate houses were in favour of the SS being made mandatory. Many corporate houses had even started adopting such standards so it was therefore understood that all can therefore adopt and follow the same. Moreover, the members and council wanted the SS to be treated in lines with Accounting Standards (AS) issued by the Institute of Chartered Accountants of India (ICAI). The Institute also was open to recommend the SS to National Advisory Committee on Accounting Standards (NACAS) to examine the Standards.

In 2010:

Recommendations were again made by the Institute to the Government so as make the Standards mandatory for all companies for uniformity in practices.

In Companies Bill 2011:

After the several recommendation and comments the SS have been introduced and have been provided statutory recognition in the Act.

Secretarial Standards on General and Board Meetings are introduced in sub-clause (10) of Clause 118 of the Companies Bill, 2011. According to the provisions of the said Clause the Company Secretary had to ensure that the applicable Standards are duly complied with.

Further sub-clause (1)(b) of Clause 205 states that one of the functions of a Company secretary shall be to ensure that the company complies with the applicable secretarial standards; therefore, an initiative has been taken to make the Standards a part of the law.

Secretarial Standards: A guidance to CS professionals

Professionals are custodian of expertise and are to ensure that they carry on and follow the best practice so as to foster good corporate governance. It is therefore essential that there is harmony among the secretarial practice. Standards to an extent help in that by proving to be guidance to the CS professionals. Though the reference to the Standards is not a part of the Code of Conduct by the Institute as yet but the same may be introduced at a later stage. The law is surely unclear at various places and at the time of a situation where there is a difference of opinion due to the



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language and the interpretation of law by various people something like the Standards are surely a guidance to the professional as the same are framed after a thorough study and research and are overviewed and examined by panel of experts. Therefore, one can surely rely on the same in case a situation so warrants.

But, what if let's say a situation where one wants to take a different course of action from that prescribed in the Standards. It might also so happen that there is a difference of opinion from what is laid down in the Standards and what one has interpreted on his own reading of law. Well as of now since the Standards are only recommendatory therefore, one can take his own view and action but once the same are mandated, we shall have to follow the same. Ofcourse, there will be conflict of opinions always and under those circumstances either one waits for change/amendment in law or shall take recourse of judicial pronouncements.

Prospective areas for introduction of Standards

As of now we have the Secretarial Standards on the above discussed subjects. One can also think of introducing the same on various other complicated issues such as managerial remuneration, loans and investments and but not limited to related party transactions. These are some areas which surely are debatable. The areas requiring procedural adaptation of uniform practices has been taken care of by the SSB but the areas which are more complex in nature due to the transactions followed by procedures, disclosures and approvals need to be also surely taken care of. With the various recommendations by various regulatory bodies, Institutes and forums we expect other standards soon being developed and ofcourse also we see a future where the recommendations might be mandated.

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