

BANGLADESH SECRETARIAL STANDARDS

BANGLADESH SECRETARIAL STANDARD - 1
[BSS-1]

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SECRETARIAL STANDARD ON MEETINGS OF THE BOARD OF DIRECTORS



Institute of Chartered Secretaries of Bangladesh
A Statutory Body Under an Act of Parliament

PREFACE TO THE SECRETARIAL STANDARDS

Need for Secretarial Standards

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency.

Secretarial Standards Board and its Objectives

The Institute of Chartered Secretaries of Bangladesh (ICSB), recognizing the need for integration, harmonization and standardization of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

Scope and Functions of the SSB

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSB and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSB, corporate and other users. The main functions of SSB are:

- (i) Formulating Secretarial Standards;
- (ii) Clarifying issues arising out of the Secretarial Standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the Secretarial Standards/ Guidance Notes at periodic intervals.

Scope of Secretarial Standards

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

ICSB will endeavor to persuade the Government of Bangladesh and appropriate authorities to enforce these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardization of secretarial practices.

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Procedure for Issuing Secretarial Standards

The following procedure is adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, determines the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.
2. In the preparation of Secretarial Standards, SSB may assign to Secretarial Practice Sub-Committee to formulate preliminary drafts of the proposed Standards.
3. The preliminary draft of the Secretarial Standard formulated by the Secretarial Practice Sub-Committee is circulated amongst the members of SSB for discussion and is modified appropriately, if so required.
4. The preliminary draft is then circulated to the members of the Council of ICSB or other bodies/organizations as is decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.
A meeting of SSB with the representatives of such bodies / organizations may then be held, if considered necessary, to examine and deliberate on their suggestions.
5. On the basis of the preliminary draft and the discussion with the Council Members/ bodies/ organizations referred to in 4 above, an Exposure Draft is prepared and published in the "Chartered Secretary", the journal of ICSB, and also put on the Website of ICSB to elicit comments from members of ICSB and the public at large.
6. The draft of proposed Secretarial Standard generally includes the following basic points:
 - (a) Concepts and fundamental principles relating to the subject of the Standard;
 - (b) Definitions and explanations of terms used in the Standard;
 - (c) Objectives of issuing the Standard;
 - (d) Disclosure requirements; and
 - (e) Date from which the Standard will be effective.
7. After taking into consideration the comments received, the draft of proposed Secretarial Standard is finalized by SSB and submitted to the Council of ICSB.

8. The Council considers the final draft of the proposed Secretarial Standard and finalizes the same based on the recommendation of the SSB. The Secretarial Standard is then issued under the authority of the Council.

Compliance with Secretarial Standards

The Institute will request the Government and other appropriate authorities to enforce these Standards and will endeavor to educate the users about the utility and need for compliance with these Standards. The Standards will be made mandatory thereafter.

BSS-1
SECRETARIAL STANDARD
ON
MEETINGS OF THE BOARD OF DIRECTORS

INTRODUCTION

Although a company is a legal entity, it cannot act by itself and can do so only through its Directors, thus establishing a relationship of principal and agent. Moreover, Directors are in a fiduciary position vis-à-vis the company and, to that extent, they are also deemed to be trustees of the properties and assets of the company. They owe a duty to the shareholders and should exercise care, skill and diligence in the discharge of their functions and in the exercise of the powers vested in them. All the powers vested in Directors are exercisable by them only collectively. As an individual Director, no Director has the power to act on behalf of the company unless such powers have been delegated to him by the Board.

This Secretarial Standard (i.e. BSS-1) seeks to prescribe a set of principles for the convening and conduct of Meetings of the Board of Directors and matters related thereto. The principles enunciated in this Standard for Meetings of the Board of Directors are equally applicable to Meetings of Committees, unless otherwise stated herein or otherwise stipulated by any other applicable Guidelines, Rules or Regulations.

DEFINITIONS

The following terms are used in this Standard with the meaning specified:

'Act' means the Companies Act, 1994 (Act 18 of 1994), or any statutory modification or re-enactment thereof and includes any Rules and Regulations framed thereunder.

'Article' or 'Articles' means the Articles of Association of a company, as originally framed or as amended from time to time, including, where they applicable or appropriate, the Regulations contained in the Tables in Schedule-I to the Act.

'Board' means the Board of Directors of a company.

'Chairman' means the Chairman of the Board, or the Chairman appointed or elected for presiding over a Meeting.

'Committee' means a Committee of the Board and includes any Sub-committee under a Committee to act on its behalf.

'Disinterested Director' means a director who is not, directly or indirectly, an Interested Director to an agenda or item of a meeting.

'Interested Director' means a director who is directly or indirectly concerned or interested in any contract, arrangement or item of the business which is under consideration of the Board.

'Meeting' means a Meeting, duly been convened, constituted and held, of the Board or any Committee or Sub-committee thereof.

'Original Director' means a Director in whose place the Board has appointed any other individual.

'Quorum' means the minimum number of Directors whose presence is necessary for a Meeting.

'Secretary' means the Company Secretary of a company or Chartered Secretary in Practice.

'Unpublished price sensitive information' means any data or information which is material or generally not yet known or disclosed or published by the company for information of general public but which, if published, disclosed or known, is likely to materially affect the price of the securities of the company in the secondary market.

Such information includes financial results or basic information relating thereto, intended declaration of dividend, announcement of bonus, rights shares and other corporate benefits, issue of securities, buy and sale of fixed assets, BMR&E, setting up of new unit or projects, any major expansion plans, amalgamation, merger and takeovers, demergers, compromise or arrangement with creditors and members, disposal of the whole or substantially the whole of the undertaking, any changes in policies, company's activities (viz. products, produced goods, planning, implementation or policy formulation relating thereto, plans or operations of the company), and such other information as may affect the earnings of the company.

Words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

SECRETARIAL STANDARD

The following is the text of the 'Bangladesh Secretarial Standard on Meetings of the Board of Directors' issued by the Council of the Institute of Chartered Secretaries of Bangladesh and named as Bangladesh Secretarial Standard-1 (BSS-1).

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

In this Secretarial Standard, the Standard Portions have been set in *Italic Type*.

1. Convening of a Meeting

1.1 Authority for Convening of a Meeting

1.1.1 *Any Director of a company including the Chairman may, and the Secretary on the requisition of a Director shall, at any time, summon a Meeting of the Board unless the Articles of the company provide otherwise.*

1.2 Notice of a Meeting

1.2.1 *Every Director of the Company shall be entitled to get the Notice of every Meeting in writing in any mode including by hand or by post or by facsimile or by e-mail or by any other electronic mode. A director may specify any particular mode to receive such notices. If any of the Directors so specifies, the Notice shall be sent to him by such mode.*

1.2.2 *The Notice of the Meeting shall specify the day, date, time and full address of the venue wherein the Meeting be held.*

A Meeting may be held at any place, any time, on any day.

1.2.3 *The Notice of a Meeting shall be given in respect of all meetings including the Meetings which are held on pre-determined dates or at pre-determined intervals.*

1.2.4 *Notice shall be given at least seven (7) days before scheduled date of the Meeting unless the Articles of the company denote a longer period for such notice.*

Notice need not to be given of an adjourned Meeting other than a Meeting that has been adjourned "sine die". However, Notice of the reconvened adjourned Meeting shall be given to those Directors who were absent in the Meeting which had been adjourned.

1.2.5 *Unless a Notice has not been given to the directors then no business shall be transacted at a Meeting.*

1.2.6 *The Agenda as to be transacted at the Meeting along with Notes to the Agenda shall be circulated or sent at least three (3) days before the date of the Meeting.*

1.2.7 *Each Agenda to be transacted in the meeting shall be supported by notes, details of the item and, where a Resolution is required to be passed, the draft Resolution shall be attached with the Notice.*

1.2.8 *The Notice may be given at shorter period of time than those respectively stated above if the majority of members of the Board or Committee so agree. The proposal to hold the Meeting at a shorter notice shall be stated in the Notice and the fact that consent thereto was obtained shall also be recorded in the Minutes.*

Notice, Agenda and Notes on Agenda shall be given to all Directors or to all Members of the Committee, as the case may be, at their respective addresses as provided by them, whether in Bangladesh or abroad, and shall also be given to the Original Director, even when the Notice, Agenda and Notes on Agenda have been sent to the Alternate Director.

1.2.9 *Any supplementary items not originally included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of the majority of the Directors present in the Meeting. However, no supplementary item which is of significance or is in the nature of unpublished price sensitive information shall be taken up by the Board without prior written Notice.*

The items of business to be transacted shall be arranged in order of those items that are of a routine or general nature or which merely require to be noted by the Directors, and those items which require discussions and specific approval.

Besides the items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board and all material items having a significant bearing on the operations of the company, there are certain items which, if applicable, shall also be placed before the Board. An illustrative list of such items is given at 'Annexure-A'.

There are certain specific items which shall be placed before the Board at its first Meeting and there are certain items which shall be placed before the Board at the Meeting held for consideration of the year-end accounts.

2. Frequency of Meetings

2.1 Meetings of the Board

2.1.1 *The Board shall meet at least once in every quarter of a calendar year i.e. in three months, and at least four Meetings are to be held in each year. The maximum interval between any two Meetings shall not be more than 90 days.*

Each Meeting shall be of such duration to enable proper deliberations to take place on agenda or items placed before the Board.

2.2 Meetings of Committees

2.2.1 *Committees shall meet at least as often as stipulated by the Board or as prescribed by any other authority.*

3. Quorum

3.1 Meetings of the Board

3.1.1 *Quorum shall be present throughout the Meeting. No business shall be transacted unless the Quorum is so present.*

The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board (any fraction contained in that one-third being rounded off as one), or two Directors, whichever is higher.

Where the requirements for the Quorum, as provided in the Articles, are stricter, then the Quorum shall conform to such requirements.

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 time.

3.1.2 *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.*

If a Meeting of the Board could not be held for want of quorum, then, unless the Articles otherwise provide, the Meeting shall automatically stand adjourned to the same day in the next week, at the same time and place.

3.2 Meetings of Committees

3.2.1 *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 by the Board while constituting the Committee.*

Certain guidelines, Rules and Regulations framed under the Act or by any statutory authority may contain provisions for the Quorum of a Committee and such stipulations shall then be followed.

4. Attendance at Meetings

4.1 Attendance Register

4.1.1 *An Attendance Register shall be maintained containing the names and signatures of the Directors present at the Meeting.*

If an attendance register is maintained in loose-leaf form, it shall be bound at reasonable intervals.

4.2 Leave of Absence

4.2.1 *Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Secretary or to the Board or to the Chairman.*

5. Chairman

5.1 Meetings of the Board

5.1.1 *Every company shall have a Chairman who will preside over the Meetings of the Board.*

5.1.2 *It will be the duty of the Chairman to look into that the Meeting is duly convened and constituted as per the provisions of the Act or any other applicable guidelines, Rules and Regulations before it proceeds to transact business.*

5.1.3 *The Chairman shall then conduct the proceedings of the Meeting and ensure that only those items of business as have been set out in the Agenda are transacted and ideally in the order in which the items appear on the Agenda.*

5.1.4 *The Chairman shall encourage deliberations and debate and assess the sense of the Meeting. The Chairman shall ensure that the proceedings of the Meeting are correctly recorded and, in doing so, he may include or exclude any matter as he deems fit.*

5.1.5 *In the case of a public company, if the Chairman himself is interested in any item of business, he shall entrust any other dis-interested Director present to conduct the proceedings in respect of such item. After the transaction of the item of business is over then the Chairman may resume his position.*

Minutes Books in the course of their audit or certification. A member of the company or any other person has no right to inspect the Minutes of Meetings of the Board or any Committee thereof.

Officers of the Registrar of Joint Stock Companies & Firms, other Government or regulatory bodies duly authorized in this behalf under law, during the course of an inspection, can also inspect the Minutes for discharging of their official duties.

7.1.5 *Minutes shall not be pasted or attached to the Minutes Book.*

7.1.6 *Minutes, if maintained in loose-leaf form, shall be bound at intervals coinciding with the financial year of the company.*

The pages of the Minutes Book shall be serially numbered and there shall be proper locking device to ensure security and proper control to prevent any sort of removal of the loose leaves of the Minutes Book.

7.1.7 *Extracts of the Minutes shall be given only after the Minutes have duly been signed. However, certified copies of any Resolution passed at a Meeting may be issued even pending signing of the Minutes by the Chairman, if the draft of that Resolution had been placed at the Meeting and was duly approved.*

7.1.8 *Minutes of an earlier Meeting shall be noted at the next Meeting.*

7.1.9 *Any alteration, other than grammatical, typographical or minor corrections, in the Minutes as entered, shall be made only under the approval taken in the subsequent Meeting in which such Minutes are sought to be altered.*

7.1.10 *The Minutes of Meetings of any Committee shall be circulated to the Members of the Board along with the Agenda for the Meeting of the Board next following such Meeting of the Committee and shall be noted at the Board Meeting.*

At the time of circulating the Agenda for the Meeting of the Board, if the Minutes of Meetings of any Committee are pending noting by the Committee on such Minutes shall be circulated to the Board in draft form.

7.2 Recording in the Minutes

7.2.1 *The names of the Directors present in the Meeting along with the names of persons who were in attendance and the names of invitees in the Meeting, if any, shall be recorded in the Minutes.*

7.2.2 *Apart from the Resolution or the decision, the Minutes shall mention the brief background of the proposal and the rationale for passing the Resolution or taking of the decision.*

7.2.3 *The names of the Directors who have dissented or have abstained from the decision shall be recorded. Similarly, the fact that an interested Director who did not participate in the discussion or vote on the agenda shall also be recorded in the Minutes.*

7.2.4 *Wherever any approval of the Board or of the Committee is taken on the basis of certain papers laid before the Board or the Committee, proper identification by initialing of such papers by the Chairman or any Director shall be made and a reference thereto shall be made in the Minutes.*

7.3 Preservation of Minutes and Supporting Papers

7.3.1 *The Minutes of all Meetings shall be preserved permanently.*

7.3.2 *If a company has been merged or amalgamated with any other company, the Minutes of all Meetings of the Board and Committees of the transferor company shall be preserved permanently by the transferee company for any future references notwithstanding the fact that the identity of the transferor company may not survive under such arrangement.*

7.3.3 *All office copies of Notices, Agenda and Notes to Agenda and other related papers shall be preserved in orderly manner for as long as they remain current or for twelve years, whichever is later, and may not be destroyed thereafter without the authority of the Board.*

8. Disclosure

8.1 Disclosure regarding Meetings of the Board and Committees

8.1.1 *The Annual Report of a company shall disclose the number of Meetings of the Board and Committees held during the year indicating the number of Meetings attended by each Director.*

EFFECTIVE DATE

This Standard has been approved by the Council of the Institute Chartered Secretaries of Bangladesh (ICSB) on September 18, 2012 with immediate effect.

'Annexure-A'

Illustrative List of items of business for the agenda which shall be placed in the Meeting of the Board of Directors

1. Calls on shareholders in respect of money unpaid on their shares.
2. Issue of debentures.
3. Borrowing money otherwise than by issue of debentures.
4. Investing the funds of the company.
5. Making loans.
6. Filling casual vacancies in the office of Directors.
7. Making donation to political parties.
8. Granting loans to Directors.
9. According sanction for specified contracts in which one or more Directors are interested and to sign the Register of Contracts.
10. Disclosure of interest by a Director.
11. Receiving notice of disclosure of Director's interest.
12. Receiving notice of disclosure of Director's shareholdings.
13. Appointment or Resignation of Managing Director or Whole-time Director or Manager.
14. Appointment and Removal of the Company Secretary, the Chief Financial Officer and the Head of Internal Audit.
15. Appointment of sole-selling agents.
16. Making a declaration of solvency where it is proposed to wind up the company voluntarily.
17. Forfeiture of shares.
18. Approval of the quarterly financial results.
19. Approving the half-yearly financial results.
20. Noting Minutes of Meetings of Committees of the Board.
21. Quarterly results for each operating division or business segment.
22. Annual operating plans and budgets.
23. Any material default in financial obligations.
24. Non-compliance of any regulatory/statutory provisions or listing requirements.
25. Sale of investments, subsidiaries or assets which is not in the normal course of business.
26. Show cause notices, prosecutions and penalty notices of material nature.
27. Any material effluent or pollution problems, industrial accidents, labor problems, signing of wage agreement, implementation of Voluntary Retirement Scheme, etc.
28. Any issue which involves possible public or product liability claims.

29. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
30. Foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movements.
31. Information on recruitment and remuneration of senior officers and transfers or resignations.
32. Details of any joint venture or collaboration agreement.
33. Material liability - legal or contractual.
34. Report of the Compliance Officer regarding share transfer process and analysis of movement of bulk transfers.
35. Fixed deposit advertisements.
36. Certificate regarding compliance with various applicable laws.
37. Events which are significant or have material commercial/financial implications, such as:
 - (a) Strikes, lockouts, lay-off, closure of units/factory, etc;
 - (b) Change in the general character or nature of business;
 - (c) Major expansion plans or execution of new projects;
 - (d) Disruption of operations due to natural calamity or Act of God;
 - (e) Commencement of commercial production/ operations;
 - (f) Developments with respect to pricing/realization arising out of change in the regulatory framework;
 - (g) Litigation/dispute with a material impact;
 - (h) Revision in ratings assigned by credit rating agencies;
 - (i) Issue of any class of securities;
 - (j) Acquisition, merger, demerger, amalgamation, restructuring, scheme of arrangement, spin off of divisions of the company;
 - (k) Change in market lot and sub-division of equity shares of the company;
 - (l) Voluntary delisting of securities from the Stock Exchange(s);
 - (m) Default in the repayment of any deposits or redemption of any securities including debentures and in payment of interest, if any, due thereon;
 - (n) Any action which will result in alteration in the terms regarding redemption / cancellation / retirement in whole or in part of any securities issued;
 - (o) Information regarding opening, closing of status of ADR, GDR or any other class of securities issued abroad;
 - (p) Cancellation of dividend / rights / bonus, etc;
 - (q) Formation of a subsidiary company and/or de-subsidarization of an existing subsidiary company.

'Annexure-B'

Illustrative List of Agenda for the First Meeting of the Board of Directors

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Joint Stock Companies and Firms.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company.
5. To confirm/note the appointment of the first Directors of the company.
6. To read and record the notices of disclosure of interest given by the Directors.
7. To consider the appointment of Additional Directors.
8. To consider the appointment of the Chairman of the Board.
9. To fix the financial year of the company.
10. To consider the appointment of the first Auditors.
11. To adopt the Common Seal of the company.
12. To appoint Bankers and to open bank accounts of the company.
13. To authorize printing of share certificates.
14. To authorize the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
15. To approve preliminary expenses and preliminary contracts.
16. To consider the appointment of the Managing Director/Whole time Director/Manager and Company Secretary or Chartered Secretary in Practice, if applicable and other senior officers.

'Annexure-C'

Illustrative List of Agenda for the Meeting of the Board of Directors at which annual accounts, etc. are to be considered.

(Besides regular Agenda items, such as confirmation of Minutes, granting leave of absence to Directors, reading Notices of disclosure of interest of Directors)

1. To consider and approve matters arising out of the accounts such as commission to Directors, write-offs, provisions, legal cases, etc.
2. To consider and approve transfers to Reserves and other appropriations.
3. To consider recommendation of dividend.
4. To consider and approve the Balance Sheet and the Profit & Loss Account as well as the abridged Accounts or statement of financial results.
5. To consider and take note of the Directors to retire by rotation at the Annual General Meeting.
6. To consider the draft Notice of the Annual General Meeting and to authorize issuance thereof.
7. To consider the appointment of Auditors and the payment of remuneration to them, to be proposed for members' consideration.
8. To take note of the draft Auditor's report.
9. To consider the draft Directors' Report and to authorize issuance thereof.
10. To open a Bank Account for payment of dividend.
11. To approve/note the closure of the Register of Members or Record date and the Share Transfer Books for the purposes of the Annual General Meeting or other circumstances.
12. To approve the text of the advertisement inviting fixed deposits.
13. To discuss the Compliance Certificate issued by a Chartered Secretary in Practice.