- Under the Constitution of India, Articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The power of Legislature to delegate its legislative power is not prohibited in the Constitution.
- Law making by the administration can take various forms. It can be in the form of rules, regulations, bye-laws etc. In the case of this normal type of delegated legislation, the limits of the delegated power are clearly defined in the enabling statute and they do not include such exceptional powers as the power to legislate on matters of principle or to impose taxation or to amend an act of legislature.
- In India, we have courts at various levels – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy with the Supreme Court of India at the top, followed by High Courts of respective states with District and Sessions Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.
- Code of Criminal Procedure, 1973 is the procedural law for conducting a criminal trial in India. The procedure includes the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by police and courts, bail, the process of criminal trial, a method of conviction, and the rights of the accused of a fair trial by principles of natural justice.
- A reference to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, should be made only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.
- Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine ‘actus curiae neminem gravabit’ which means an act of the court shall prejudice no man. The other maxim is, ‘lex non cogit ad impossibillia’ which means the law does not compel a man to do that what he cannot possibly perform.

SELF TEST QUESTIONS

1. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the present day. Comment.
2. Enumerate various types of delegation of legislative power.
3. Discuss modes of control over delegated legislation.
4. Discuss procedural aspects of working of Civil Courts.
5. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Discuss Briefly.
6. Discuss Reference, Review and Revision under Civil Procedure Code, 1908.

Lesson 2
General Principles of Drafting and Relevant Substantive Rules

LESSON OUTLINE

- Introduction
- Drafting, its Meaning
- Conveyancing, its Meaning
- Drafting and Conveyancing: Distinguished
- Distinction between Conveyance and Contract
- General Principles of Drafting all sorts of Deeds and Conveyancing & other Writings
- Some Do's & Don'ts
- Guidelines for Use of Particular Words and Phrases for Drafting & Conveyancing
- Use of Appropriate Words and Expressions
- Aids to Clarity and Accuracy
- Legal Implications and Requirements
- Deed and Document
- Various Kinds of Deeds
- Components of Deeds
- Engrossment and Stamping of a Deed
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

Drafting, in legal sense, means an act of preparing the legal documents like agreements, contracts, deeds etc. A proper understanding of drafting cannot be realised unless the nexus between the law, the facts, and the language is fully understood and accepted. Conyeyancing is an art; an art of drafting deeds and documents whereby any right, title or interest in an immovable property is transferred from one person to another.

The importance of the knowledge about drafting and conveyancing for the corporate executives has been felt particularly for the three reasons viz., (i) for obtaining legal consultations; (ii) for carrying out documentation departmentally; (iii) for interpretation of the documents.

A corporate executive must note down the most important legal requirements which must be fulfilled while drafting complete instrument on the subject.

The objective of the study lesson is to make the students understand the meaning and distinction between drafting and conveyancing, general principles of drafting of deeds, legal implications and requirements, engrossment and stamping of a deed etc.

INTRODUCTION

Importance of drafting and conveyancing for a company executive could be well imagined as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.

The importance of the knowledge about drafting and conveyancing for the corporate executives has been felt particularly for the three reasons viz.,

(i) for obtaining legal consultations;

(ii) for carrying out documentation departmentally;

(iii) for interpretation of the documents.

With the knowledge of drafting and conveyancing, better interaction could be had by the corporate executives while seeking legal advice from the legal experts in regard to the matters to be incorporated in the documents, to decide upon the coverage and laying down rights and obligations of the parties therein. Knowledge in advance on the subject matter facilitates better communication, extraction of more information, arriving on workable solutions, and facilitates settlement of the draft documents, engrossment and execution thereof.

Knowledge of drafting and conveyancing for the corporate executives is also essential for doing documentation departmentally. An executive can make a better document with all facts known and judging the relevance and importance of all aspects to be covered therein.

A number of documents are required to be studied and interpreted by the corporate executives. In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents.

DRAFTING – ITS MEANING

Drafting may be defined as the synthesis of law and fact in a language form [*Stanley Robinson: Drafting Its Application to Conveyancing and Commercial Documents (1980);* (Butterworths); Chapter 1, p.3]. This is the essence of the process of drafting. All three characteristics rank equally in importance. In other words, legal drafting is the crystallization and expression in definitive form of a legal right, privilege, function, duty, or status. It is the development and preparation of legal instruments such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc.

The process of drafting operates in two planes: the conceptual and the verbal. Besides seeking the right words, the draftsman seeks the right concepts. Drafting, therefore, is first thinking and second composing.

Drafting, in legal sense, means an act of preparing the legal documents like agreements, contracts, deeds etc.

A proper understanding of drafting cannot be realised unless the nexus between the law, the facts, and the language is fully understood and accepted. Drafting of legal documents requires, as a pre-requisite, the skills of a draftsman, the knowledge of facts and law so as to put facts in a systematised sequence to give a correct presentation of legal status, privileges, rights and duties of the parties, and obligations arising out of mutual understanding or prevalent customs or usages or social norms or business conventions, as the case may be, terms and conditions, breaches and remedies etc. in a self-contained and self-explanatory form without any patent or latent ambiguity or doubtful connotation. To collect, consolidate and co-ordinate the above facts in the form of a document, it requires serious thinking followed by prompt action to reduce the available information into writing with a legal meaning, open for judicial interpretation to derive the same sense and intentions of the parties with which and for which it has been prepared, adopted and signed.

CONVEYANCING — ITS MEANING

Technically speaking, conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.

Mitra's legal and commercial dictionary defines "conveyance" as the action of conveyancing, a means or way of conveyancing, an instrument by which title to property is transferred, a means of transport, vehicle. In England, the word "conveyance" has been defined differently in different statutes. Section 205 of the Law of Property Act,

1925 provides that the "conveyance includes mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of any interest therein by any instrument except a will". "Conveyance", as defined in clause 10 of Section 2 of the Indian Stamp Act, 1899, "includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided by Schedule I" of the Act." Section 5 of the Transfer of Property Act, 1882 (Indian) makes use of the word "conveyance" in the wider sense as referred to above.

Thus, conveyance is an act of conveyancing or transferring any property whether movable or immovable from one person to another permitted by customs, conventions and law within the legal structure of the country. As such, deed of transfer is a conveyance deed which could be for movable or immovable property and according to the Transfer of Property Act, 1882, transfer may be by sale, by lease, by giving gift, by exchange, by will or bequeathment. But acquisition of property by inheritance does not amount to transfer under the strict sense of legal meaning.

DRAFTING AND CONVEYANCING: DISTINGUISHED

Both the terms "drafting and conveyancing" provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas "drafting" gives a general meaning synonymous to preparation of drafting of documents. Document may include documents relating to transfer of property as well as other "documents" in a sense as per definition given in Section 3(18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters, figures or mark, which is intended to be used for the purpose of recording that matter. For example, for a banker the document would mean loan agreement, deed of mortgage, charge, pledge, guarantee, etc. For a businessman, document would mean something as defined under Section 2(4) of the Indian Sale of Goods Act, 1930 so as to include a document of title to goods i.e. "Bill of lading, dock-warrant, warehouse-keepers' certificate, wharfingers' certificate, railway receipt multi-model transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented." As per Section 2(36) of the Companies Act, 2013 the term "document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form. Thus, drafting may cover all types of documents in business usages.

In India, the commercial houses, banks and financial institutions have been using the term "documentation" in substitution of the words "drafting and conveyancing". Documentation refers to the activity which symbolises preparation of documents including finalisation and execution thereof.

DISTINCTION BETWEEN CONVEYANCE AND CONTRACT

Having understood the meaning of conveyance, it becomes necessary to understand the distinction between conveyance and contract before discussing basic requirements of conveyance or deed of transfer. Apparently, conveyance is not a contract. The distinction between conveyance and contract is quite clear. Contract remains

to be performed and its specific performance may be sought but conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may pertain both contract as well as conveyance. For example, lease, whereby obligation is created while possession of the property is transferred by lessor to lessee. More so, contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of Property Act, 1882 in India. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction becomes conveyance. Any such transaction would be governed under the provisions of the Transfer of Property Act, 1882.

GENERAL PRINCIPLES OF DRAFTING ALL SORTS OF DEEDS AND CONVEYANCING AND OTHER WRITINGS

As discussed above, drafting of legal documents is a skilled job. A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument. He must obtain particulars about all necessary matters which are required to form part of the instrument. He must also note down with provision any particular directions or stipulations which are to be kept in view and to be incorporated in the instrument. The duty of a draftsman is to express the intention of the parties clearly and concisely in technical language. With this end in view, he should first form a clear idea of what these intentions are.

When the draftsman has digested the facts, he should next consider as to whether those intentions can be given effect to without offending against any provision of law. He must, therefore, read the introductory note, or, if time permits, the literature on the subject of the instrument. A corporate executive, therefore, must note down the most important requirements of law which must be fulfilled while drafting complete instrument on the subject. Validity of document in the eye of law cannot be ignored and at the same time the facts which should be disclosed in the document cannot be suppressed. Nothing is to be omitted or admitted at random. Therefore, knowledge of law of the land in general and knowledge of the special enactments applicable in a particular situation is an essential requirement for a draftsman to ensure that the provisions of the applicable law are not violated or avoided. For example, in cases where a deed to be executed by a limited company, it is necessary to go into the question as to whether the company has got power or authority under its memorandum to enter into the transaction. A limited company can do only that much which it is authorised by its memorandum. Further, a company being a legal entity, must necessarily act through its authorised agents. A deed, therefore, should be executed by a person duly authorised by the directors by their resolution or by their power of attorney.

It is also to be ensured that the format of documents adopted adheres to the customs and conventions in vogue in the business community or in the ordinary course of legal transactions. For any change in the form of such document, use of juridical and technical language should invariably be followed. The statements of negatives should generally be avoided. The order of the draft should be strictly logical. Legal language should be, to the utmost possible extent, precise and accurate. The draft must be readily intelligible to laymen. All the time the draftsman must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and choose his phraseology to fit them. [*Piesse and Giechrist Smith book on The Elements of Drafting,* 2nd Ed. pp. 7-12].

Document should be supported by the schedules, enclosures or annexures in case any reference to such material has been made in that.

In addition to above facts, following rules should also be followed while drafting the documents:

(i) Fowlers' five rules of drafting

According to Fowler, "anyone who wishes to become a good writer should endeavour, before he allows himself

to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid."

The principle referred to above may be translated into general in the domain of vocabulary as follows:

(a) Prefer the familiar word to the far fetched (familiar words are readily understood).

(b) Prefer the concrete word to the abstract (concrete words make meaning more clear and precise).

(c) Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective).

(d) Prefer the short word to the long (short word is easily grasped).

(e) Prefer the Saxon word to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).

(ii) Sketch or scheme of the draft document

It is always advisable to sketch or outline the contents of a document before taking up its drafting. This rule is suggested by *Mr. Davidson,* a celebrated authority on conveyancing in his book on *Conveyancing,* 4th Ed., Vol. I, p. 20, where the learned author says as follows:

"The first rule on which a draftsman must act is this-that before his draft is commenced, the whole design of it should be conceived, for if he proceeds without any settled design, his draft will be confused and incoherent, many things will be done which ought to be done and many left undone which ought to be done. He will be puzzled at every step of his progress in determining what ought to be inserted and what is to guide him in his decision because he does not know what his own object is."

The importance of the above rule cannot be overemphasized and it should be observed by every draftsman.

(iii) Skelton draft and its self-appraisal

After the general scheme of the draft has been conceived, the draftsman should note down briefly the matters or points which he intends to incorporate in his intended draft. In other words, he should frame what is called a "skeleton draft" which should be filled in or elaborated as he proceeds with his work. Once the draft of the document is ready, the draftsman should appraise it with reference to the available facts, the law applicable in the case, logical presentation of the facts, use of simple language intelligible to layman, avoidance of repetition and conceivable mis-interpretation, elimination of ambiguity of facts, and adherence to the use of Fowlers' Rules of drafting so as to satisfy himself about its contents.

(iv) Special attention to be given to certain documents

Certain documents require extra care before taking up the drafting. For example, it must be ensured that contractual obligations are not contrary to the law in the document, where the facts so warrant to ensure. Further, in all the documents where transfer of immovable property is involved through any of the prescribed legal modes, it is necessary to ensure the perfect title of the transferor to such property proposed to be transferred by causing investigation and searches in relation to such title done through competent lawyers or solicitors in the concerned offices of Registrar of Assurance, local authorities, Registrar of Companies (in the case of the vendor being a corporate unit) etc. In addition, the requisite permissions required under different enactments viz., Income-tax Act, Land Ceiling Laws, Companies Act, 2013, Lessor's consent in the case of leasehold land, or any compliance desired under other Central or State Laws or personal laws etc. should be planned to be obtained in advance and recited in the documents wherever thought necessary.

(v) Expert's opinion

If the draft document has been prepared for the first time to be used again and again with suitable modification

depending upon the requirements of each case it should be got vetted by the experts to ensure its suitability and legal fitness if the corporate executive feels it so necessary.

To sum up, the draftsman should bear in mind the following principles of drafting:

(i) As far as possible the documents should be self-explanatory.

(ii) The draftsman should begin by satisfying himself that he appreciates what he means to say in the document.

(iii) The well drafted document should be clear to any person who has competent knowledge of the subject matter.

(iv) The draft must be readily intelligible to a layman.

(v) The document may not be perfect because it says too much or too little or is ambiguous or contains one or more of the facts because it has to be applied in circumstances which the draftsman never contemplated. This should be avoided in the drafting of the documents.

(vi) Nothing is to be omitted or admitted at random on the document that is to say negative statements should generally be avoided.

(vii) Use of juridical language should be made.

(viii) The text of the documents should be divided into paragraphs containing the relevant facts. Each paragraph should be self-explanatory and should be properly marked by use of Nos. of letters for clause, sub-clause and paragraphs.

(ix) Schedule should be provided in the documents. Schedule is a useful part of the document and should contain the relevant information which forms part of the document. Whether any portion of the document should be put into the schedule(s) will depend upon the circumstances. The schedule is important in the document as it explains useful matters which forms part of the document and should not be ignored and should not be inserted in the body of the document. The main function of the schedule is to provide supplementary test to the document with clarity and convenience.

(x) The active voice is preferable to the passive voice, unless the passive voice in a particular connection makes the meaning more clear. [See *Sir Rohland Burrow's Book on Interpretation of Documents*, pp. 119 to 121].

Some Do's

1. Reduce the group of words to single word;
2. Use simple verb for a group of words;
3. Avoid round-about construction;
4. Avoid unnecessary repetition;
5. Write shorter sentences;
6. Express the ideas in fewer words;
7. Prefer the active to the passive voice sentences;
8. Choose the right word;
9. Know exactly the meaning of the words and sentences you are writing; and
10. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.

Some Don'ts

The following things should be avoided while drafting the documents:

(a) Avoid the use of words of same sound. For example, the words "Employer" and "Employee";

(b) When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, "in clause 2 above" and so on.

(c) Negative in successive phrases would be very carefully employed.

(d) Draftsman should avoid the use of words "less than" or "more than", instead, he must use "not exceeding". (e) If the draftsman has provided for each of the two positions to happen without each other and also happen without, "either" will not be sufficient; he should write "either or both" or express the meaning of the two in other clauses.

While writing and typing, the following mistakes generally occur which should be avoided:

1. "And" and "or";
2. "Any" and "my";
3. "Know" and "now";
4. "Appointed" and "Applied";
5. "Present" and "Past" tense.

GUIDELINES FOR USE OF PARTICULAR WORDS AND PHRASES FOR DRAFTING AND CONVEYANCING

There cannot be any clear cut rule which can be laid down as guideline for using the particular words and phrases in the conveyancing. However, the draftsman must be cautious about the appropriate use of the words and should be clear of its meaning. The following rules may be prescribed for the guidance of the draftsman for using any particular word and phrase in the drafting of the documents:

(1) For general words refer to ordinary dictionary for ascertaining the meaning of the words. For example, *Oxford Dictionary* or *Webster's Dictionary* or any other standard dictionary may be referred to for this purpose.

(2) For legal terms refer to legal dictionary like *Wharton's Law Lexicon* or other dictionaries of English Law written by eminent English Lexicographers as Sweet Cowel, Byrne, Stroud, Jowit, Mozley and Whiteley, Osborn etc. In India, *Mitra's Legal and Commercial Dictionary* is quite sufficient to meet the requirements of draftsman.

(3) As far as possible current meaning of the words should be used and if necessary, case law, where such words or phrases have been discussed, could be quoted in reference.

(4) Technical words may be used after ascertaining their full meaning, import of the sense and appropriate use warranted by the circumstances for deriving a technical or special meaning with reference to the context.

(5) The choice of the words and phrases should be made to convey the intention of the executor to the readers in the same sense he wishes to do.

(6) The draftsman should also use at times the recognised work of eminent legal expert on the interpretation of statutes. In *Maxwell's Interpretation of Statutes* use of some of the words is explained for the guidance of the readers.

The above guidelines acquaint the students of a few instances leading to the choice of appropriate word or

phrase. As a matter of fact, much will depend upon the executives own skills and talents as to how they express the wishes of the company in limited words befitting to an expression of a certain event or description of facts.

USE OF APPROPRIATE WORDS AND EXPRESSIONS

After discussing the guidelines for use of particular words and phrases in drafting of documents, meaning of some of the terms commonly used in drafting of deeds and documents is discussed hereunder:

Instrument: The word "instrument" has been interpreted in different judgements by different courts with reference to the different enactments. As such, the meaning of instrument has to be understood with reference to the provision of a particular Act. For example, under Section 2(b) of the Notaries Act, 1952, and Section 2(14) of the Indian Stamp Act, 1899, the word "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded.

The expression is used to signify a deed *inter partes* or a charter or a record or other writing of a formal nature. But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an order made under constitutional or statutory authority. Instrument includes an order made by the President in the exercise of his constitutional powers (*Mohan Chowdhary* v. *Chief Commissioner*, AIR 1964 SC 173).

"Instrument" includes awards made by Industrial Courts (*Purshottam* v. *Potdar*, AIR 1996 SC 856).

"Instrument" does not include Acts of Parliament unless there is a statutory definition to that effect in any Act

(*V.P. Sugar Works* v. *C.I. of Stamps U.P.* AIR 1968 SC 102).

A will is an instrument (*Bishun* v. *Suraj Mukhi* , AIR 1966 All. 563).

The word "instrument" in Section 1 of the Interest Act is wide enough to cover a decree (*Savitribai* v. *Radhakishna*, AIR 1948 Nag. 49).

Deed, Indure and Deed Poll: These terms have been discussed at length in "Study II".

"AT", "NEAR", "ON", "in the vicinity" and the like: In construing a description, the word "at" when applied to a place, is less definite in meaning than "in" or "on". Primarily, "at" signifies nearness, and is thus a relative term. When used in describing the location of real estate the word "near" signifies relativity in a greater or less degree. It may be equivalent to "at" or it may import the sense of "at" or "along" as in the expression "along the sea shore".

The word "on" when used in describing the location of the land with reference to some geographical feature may mean, "in the vicinity of". The phrase "in the vicinity" imports nearness to the place designated but not adjoining or abutting on it. The word "immediate" when used to qualify the word "vicinity" may signify adjoining.

Generally "Adjoining", "Adjacent" or "Contiguous": In the absence of anything to the contrary indicated by the deed itself words descriptive of the land conveyed are construed according to their proper and most generally known signification, rather than according to their technical sense with the view of giving effect to the probable intention of the parties. Nevertheless, specific terms of description may be regarded as having a technical meaning unless controlled by something else in the deed.

The word "adjoining" does not necessarily import that the boundary of the land conveyed is conterminous with the boundary of the adjoining land, for all that the word implies is contiguity, and hence it is equally applicable where one boundary is shorter than the other. It has been held that a common corner will make two tracts of land "contiguous".

The term "adjacent" is not synonymous and "abutting". It may imply contiguity but the term is more often a relative one depending for its meaning on the circumstances of the case.

"LOT": The term "lot" is sometimes used in restrictive sense as a wood lot, a house lot, or a store lot, but where the term is used unqualifiedly, especially if it refers to a lot in a certain range or right, it is almost uniformly used in a technical sense and means a lot in a township as duly laid out by the original proprietors. Lots from lands which have been surveyed and laid out in ranges and townships which are numbered in regular sequence may be sold and described by number and range without a more particular description. In the absence of qualifying words, the designation of the number of a lot will be taken to refer to the original place of the city or town.

Generally speaking, in a conveyance of fractional part of a designated lot, the word "lot" refers to that portion of the premises set aside for private use, and hence does not include the right to occupancy of any part of a street on which it abuts.

"And", "Or": As used in deeds, the word "and" ordinarily implies the conjunctive, while "or" ordinarily implies the alternative or is used as a disjunctive to indicate substitution. There is a presumption that when the word "or" is used in the *habendum* of deed, the grantor intended it to express its ordinary meaning as disjunctive, and that he did not intend to use the word "and" which will be read "or" and "or" will be read "and" but such construction is never resorted to for the purpose of supplying an intention not otherwise appearing.

"Subject to": The words "subject to" in a deed conveying an interest in real property are words of qualification of the estate granted. Even though the words "Subject to" mentioned in the phrase "subject to a specified encumbrance" bear the obvious meaning that only the equity of redemption belonging to the grantor passes by a deed, such words may, under the circumstances of the particular case, be ambiguous. To ascertain the intention in such an ambiguous case, all the circumstances are taken into consideration, and the primary meaning of the words "subject to" will be departed from, if necessary, in order to effectuate what seems best to accord with intention of the parties. Of course, the rights of an earlier grantee to which a later grant is expressed to be subject are neither abridged nor enlarged by the later grant.

Use of the terms "excepting", "reserving" and the like: While there is a well defined distinction between a "reservation" and an "exception" in deed, the use, in the instrument of conveyance, of one or the other of these terms is by no means conclusive of the nature of the provisions. In fact, it may be said that since these two terms are commonly used interchangeably little weight is given to the fact, that the grantor used one or the other. The use of the technical word "exception" or "reservation" will not be allowed to control the manifest intent of the parties, but that such words will be given a fair and reasonable interpretation looking to the intention of the parties, which is to be sought from a reading of the entire instrument, and when their intention is determined it will be given effect, provided no settled rules of law are thereby violated. In cases of doubt, the question will be determined in the light of the subject matter and circumstances of the case, and the deed will be construed, where possible, so as to give it validity.

"More or less", "about", "estimated" and the like: The words "more or less" when related to the description of the property in a deed, are generally construed with reference to the particular circumstances involved. In relation to the quantity of land conveyed, the description is not rendered indefinite by the addition of the words "more or less" to the specified area. Such words are used as words of precaution and safety and are intended to cover unimportant inaccuracies. They and other words of like import regarding the quantity of acres intended to be conveyed are regarded as matters of description of the land, and not of essence of the contract, and the buyer as a general rule takes the risk of quantity in the absence of any element of fraud. But in case of a considerable and material discrepancy in quantity, relief may be had after the conveyance. Accordingly, where the deed purports to convey the whole of a designated tract, described whatever may be its acreage, the grant is not defeated by a discrepancy between the recited and the actual area. When used with reference to the quantity of land conveyed, the words "estimated" and "about" are synonymous with the phrase "more or less".

In construing a description as to the length of a line, the words "more or less" may be deemed to have some

meaning so as not to fix the distance absolutely even though they may be often construed as having practically no effect.

Words indicating compass points: The words "north", "south", etc. indicating points of the compass, may, no doubt, be controlled or qualified in their meaning by other words of description used in connection with them, but unless qualified or controlled by other words, they mean "due north", "due south" etc. Moreover, the words "Easterly", "Westerly", etc. when used alone in the description of land, will be construed to mean "due East", "due West", etc. unless other words are used to qualify their meaning. Where, however, the land is described as being the "West half" of a city lot and a North to South line will divide the lot almost diagonally, it has been held that parol evidence can be introduced on the theory that such evidence neither enlarges nor diminishes the grant, but merely identifies the land.

AIDS TO CLARITY AND ACCURACY

The following discussion is devoted to devices that are resorted to provide clarity and accuracy in documents:

Interpretation of Deeds and Documents

In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents. There is no law in India on the interpretation of documents also. On the subject of interpretation of statutes Maxwell's works published by Butterworth commands wide acceptance by the judiciary all over India. Based on the said work a set of principles has been evolved for the interpretation and construction of documents, assessing the language and assigning the exact meaning to the words and phrases to be used in the documents. *S*ome of the relevant principles of interpretation of deeds and documents are discussed below:

(A) Informal Agreements: In interpretation of informal agreements, the rule to be applied is that of reasonable expectation; that is to say, the agreement is to be interpreted in the sense in which the party who used the words in question should reasonably have apprehended that the other party may apprehend them. If the intention is manifested ambiguously, the party manifesting the same in an ambiguous manner ought to have had reason to know that the manifestation may reasonably bear more than one meaning and the other party believes it to bear one of those meanings, having no reason to know that it bears another meaning that is given to it.

(B) Formal Agreements: Where the agreement is formal and written, the following rules of the interpretation may be applied:

(1) A deed constitutes the primary evidence of the terms of a contract, or of a grant, or of any other disposition of property (Section 91 of the Evidence Act). The law forbids any contradiction of, or any addition, subtraction or variation in a written document by any extrinsic evidence, though such evidence will be admissible to explain any ambiguity (Section 92 of the Evidence Act). The document should, therefore, contain all the terms and conditions, preceded by recital of all relevant and material facts.

(2) In cases of uncertainty, the rules embodied in provisos 2 and 6 of Section 92 of the Evidence Act can be invoked for construing a deed. The sixth proviso enables the court to examine the facts and surrounding circumstances to which the language of the document may be related, while the second proviso permits evidence of any separate oral agreement on which the document is silent and which is not inconsistent with its terms.

(3) The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention. But if the words used are not clear and unambiguous the intention will have to be ascertained. In other words, if the intention of the parties can be gathered from the words and expressions used in a deed, such an intention does not require to be determined in any other manner except giving

the words their normal or natural and primary meanings. It is the dominant intention of the document as disclosed from its whole tenor, that must guide the construction of its contents.

(4) In case the terms are not unambiguous it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the parties. The social milieu, the actual life situations and the prevailing conditions of the country are also relevant circumstances.

(5) Sometimes a contract is completed in two parts. At first an executory contract is executed and later on an executed contract. In case of any difference between the preliminary contract and final contract, the terms of the latter must prevail.

(6) If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the latter clause is to be rejected as repugnant and the earlier clause prevails.

(7) The court must interpret the words in their popular, natural and ordinary sense, subject to certain exceptions as,

(i) where the contract affords an interpretation different from the ordinary meaning of the words; or

(ii) where the conventional meanings are not the same with their legal sense.

(8) Hardship to either party is not an element to be considered unless it amounts to a degree of inconvenience or absurdity so great as to afford judicial proof that such could not be the meaning of the parties.

(9) All mercantile documents should receive a liberal construction. The governing principle must be to ascertain the intention of the parties through the words they have used. The Court should not look at technical rules of construction, it should look at the whole document and the subject matter with which the parties are dealing, take the words in their natural and ordinary meaning and look at the substance of the matter.

The meaning of such a contract must be gathered by adopting a commonsense approach and it must not be by a narrow, pendantic and legalistic interpretation.

(10) No clause should be regarded as superfluous, since merchants are not in the habit of inserting stipulations to which they do not attach some value and importance. The construction adopted, should, as far as possible, give a meaning to every word and every part of the document.

(11) Construction given to mercantile documents years ago, and accepted in the mercantile world should not be departed from, because documents may have been drafted in the faith thereof.

(12) If certain words employed in business, or in a particular locality, have been used in particular sense, they must *prima facie* be construed in technical sense.

(13) The ordinary grammatical interpretation is not to be followed, if it is repugnant to the general context.

(14) Antecedent facts or correspondence, or words deleted before the conclusion of the contract cannot be considered relevant to ascertain the meaning.

(15) Evidence of acts done under a deed can, in case of doubt as to its true meaning, be a guide to the intention of the parties, particularly when acts are done shortly after the date of the instrument.

(16) Unless the language of two documents is identical, and interpretation placed by courts on one document is no authority for the proposition that a document differently drafted, though using partially similar language, should be similarly interpreted. However, judicial interpretation of similar documents in the past can be relied on, but as the effect of the words used must inevitably depend on the context and would be conditioned by the tenor of each document such decisions are not very useful unless words used are identical.

(17) If the main clause is clear and the contingency mentioned in the proviso does not arise, the proviso is not attracted at all and its language should not be referred to for construing the main clause in a manner contradictory to its import.

(18) The fact that a clause in the deed is not binding on the ground that it is unauthorised cannot *ipso facto* render the whole deed void unless it forms such an integral part of the transaction as to render it impossible to severe the good from the bad.

(19) As a general rule of construction of documents, the recitals are not looked into, if the terms of the deed are otherwise clear. If in a deed the operative part is clear, or the intention of the parties is clearly made out, whether consistent with the recitals or not, the recitals have to be disregarded. It is only when the terms of a deed are not clear or are ambiguous or the operative part creates a doubt about the intention of the parties that the recitals may be looked into to ascertain their real intention. If there are several recitals in a deed, as is the case with indentures, and there is at the same time some ambiguity in the operative part of the deed, it may be resolved by giving preference to such a recital as may appear to be the most important to convey the intention of the parties. An ambiguity in the recitals, when the terms of the contract or the intentions of the parties are clear from the operative part, has no importance. If the recitals refer to an earlier transaction evidenced by a deed, such reference does not amount to an incorporation of the terms and conditions of the earlier deed unless the parties so intended.

(20) Sometimes a standard form is used, particularly in contracts with government departments or big corporations. In these standard printed forms, words not applicable are deleted according to the requirements of individual transactions. A question often arises, whether reference may be made to the deleted words for interpretating the terms of the contract. The true rule is that the court must first look at the clause without the deleted words, and only if that clause is ambiguous then for solving the ambiguity assistance may be derived by looking at the deleted words. If something is added in handwriting or by typewriter to a printed form, such addition should prevail over the language in print.

(21) If an alteration by erasure, interlineations, or otherwise is made in a material part of a deed after its execution by, or with the consent of, any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void, but only with prospective effect. However, an alteration which is not material i.e., which does not vary the legal effect of the deed in its original state but which merely express that which was implied by law in the deed as originally written, or which carries out the intention of the parties already apparent on the face of the deed and does not otherwise prejudice the party liable thereunder will not make the deed void.

Legal Implications and Requirements

Drafting of documents is very important part of legal documentation. Documents are subject to interpretation when no clear meaning could be inferred by a simple reading of the documents. The legal implications of drafting, therefore, may be observed as under:

(a) Double and doubtful meaning of the intentions given shape in the document.

(b) Inherent ambiguity and difficulties in interpretation of the documents.

(c) Difficulties in implementation of the objectives desired in the documents.

(d) Increased litigation and loss of time, money and human resources.

(e) Misinterpretation of facts leading to wrongful judgement.

(f) Causing harm to innocent persons.

The above implications could be avoided if drafting principles are fully adhered to by the draftsman as discussed in the foregone paragraphs.

BASIC COMPONENTS OF DEEDS

Having understood, the meaning of drafting and conveyancing it is necessary to familiarise with various terms such as deeds, documents, indentures, deed poll etc. These terms are frequently used in legal parlance in connection with drafting and conveyancing. Out of these, the meaning of deeds and documents, have a common link, and used in many a time interchangeably, but it is very essential to draw a line in between.

Deed

In legal sense, a deed is a solemn document. Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability. To take for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on. Even a power of Attorney has been held in old English cases to be a deed. A bond is also included in the wide campass of the term deed.

For such an instrument covering so wide field it is difficult to coin a suitable definition. A deed may be defined as a formal writing of a non-testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest. Many authorities have tried to define the deed. Some definitions are very restricted in meaning while some are too extensive definitions. The most suitable and comprehensive definition has been given by *Norten on 'Deeds'* as follows:

A deed is a writing –

(a) on paper, vallum or parchment,

(b) sealed, and

(c) delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmance of some act whereby an interest, right or property has been passed.

In *Halsbury's Laws of England*, a deed has been defined as "an instrument written on parchment or paper expressing the intention or consent of some person or corporation named therein to make (otherwise than by way of testamentary disposition, confirm or concur in some assurance of some interest in property or of some legal or equitable right, title or claim, or to undertake or enter into some obligation, duty or agreement enforceable at law or in equity or to do, or concur in some other act affecting the legal relations or position of a party to the instrument or of some other person or corporation, sealed with the seal of the party, so expressing such intention or consent and delivered as that party's act and deed to the person or corporation intended to be affected thereby.

A deed is a present grant rather than a mere promise to be performed in the future. Deeds are in writing, signed, sealed and delivered.

Deeds are instruments, but all instruments are not deeds.

Document

"Document" as defined in Section 3(18) of General Clauses Act, 1894 means any matter expressed or described upon any substance by means of letters, figures or marks, or by the more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustration:

A writing is a document.

Words printed, lithographed or photographed are documents. A map or plan is a document.

An inscription on a metal plate or stone is a document. A caricature is a document. Thus document is a paper or other material thing affording information, proof or evidence of anything.

All deeds are documents. But it is not always that all documents are deeds. A document under seal may not be a deed if it remains undelivered, e.g. a will, an award, a certificate of admission to a learned society, a certificate of shares or stocks and share warrant to bearer, an agreement signed by directors and sealed with the company's seal, license to use a patented article, or letters of co-ordination.

Various Kinds of Deeds

Particular statutory definitions cover different sets of deeds. In the re-statement of American Law in Corpus *Juris Secundum,* the following kinds of deeds have been explained:

A good deed is one which conveys a good title, not one which is good merely in form.

A good and sufficient deed is marketable deed; one that will pass a good title to the land it purports to convey. An inclusive deed is one which contains within the designated boundaries lands which are expected from the operation of the deed.

A latent deed is a deed kept for twenty years or more in man's escritoire or strong box. A lawful deed is a deed conveying a good or lawful title.

A pretended deed is a deed apparently or *prima facie* valid.

A voluntary deed is one given without any "valuable consideration", as that term is defined by law, one founded merely on a "good", as distinguished from a "valuable", consideration on motives of generosity and affection, rather than a benefit received by the donor, or, detriment, trouble or prejudice to the grantee.

A warranty deed is a deed containing a covenant of warranty.

A special warranty deed which is in terms a general warranty deed, but warrants title only against those claiming by, through, or under the grantor, conveys the described land itself, and the limited warranty does not, of itself, carry notice of title defects.

Some other terms connected with deeds are of importance of general legal knowledge. These terms are mentioned herein below:

(i) Deed Pool

A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.

(ii) Deed Poll

A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.

(iii) (a) Indenture – Indenture are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult. Indentures were so called as at one time they are indented or cut with uneven edge at the top. In olden times, the practice was to make as many copies or parts as they were called, of the instruments as they were parties to it, which parts taken together formed the deed and to engross all of them of the same skin of parchment.

(b) Cyrographum – This was another type of indenture in olden times. The word "Cyrographum" was written between two or more copies of the document and the parchment was cut in a jugged line through this word. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the

original. This practice of indenting deeds also has ceased long ago and indentures are really now obsolete but the practice of calling a deed executed by more than one party as an "indenture" still continues in England.

(iv) Deed Escrow

A deed signed by one party will be delivered to another as an "escrow" for it is not a perfect deed. It is only a mere writing (Scriptum) unless signed by all the parties and dated when the last party signs it. The deed operates from the date it is last signed. Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed. (*Halsbury Laws of England*, 3rd Edn., Vol. II, p. 348).

Components of Deeds

As explained what is a deed, it is now appropriate to know more about drafting of Deed as a document. Out of various types of deeds, Deeds of Transfer of Property is the most common one. Deeds of Transfer include Deed of Sale, Deed of Mortgage, Deed of Lease, Deed of Gift etc. These deeds effect a transfer of property or interest.

A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language as explained in the earlier chapter. If a particular part is not applicable in a particular case that part is omitted from the document.

The usual parts or components or clauses of deeds in general are mentioned as follows:

(1) Description of the Deed Title.

(2) Place and Date of execution of a Deed.

(3) Description of Parties to the Deed.

(4) Recitals.

(5) Testatum.

(6) Consideration.

(7) Receipt Clause.

(8) Operative Clause.

(9) Description of Property.

(10) Parcels Clause.

(11) Exceptions and Reservations.

(12) Premises and Habendum.

(13) Covenants and Undertakings.

(14) Testimonium Clause.

(15) Signature and Attestation.

(16) Endorsements and Supplemental Deeds.

(17) Annexures or Schedules.

The above parts of the deeds are described as under:

1. Description of the Deed Title

The deed should contain the correct title such as "This Deed of Sale", "This Deed of Mortgage", "This Deed of Lease", "This Deed of Conveyance", "This Deed of Exchange", "This Deed of Gift" etc. These words should be

written in capital letters in the beginning of document. Where it is difficult to locate the complete transaction out of number of transactions covered under the deed, it may not be possible to give single name to the deed like

'Deed of Gift' and as such it would be better to describe the deed as "This Deed" written in capital letters like

"THIS DEED".

This part hints the nature of the deed and gives a signal to the reader about the contents of the Deed.

Sometimes a question may arise whether a particular instrument or document is a deed of conveyance of

transfer. To ascertain the nature of the document it becomes necessary to read the language of the document and locate the intention of the parties which is the sole determining factor. Besides the intention of the parties, consideration paid for conveyance is another important aspect in assessing the document as a conveyance. Consideration may be paid initially or may be agreed to be paid in future also. However, in those cases where any condition is stipulated as precedent to the title being passed on to the purchaser then the document does not become conveyance unless the condition is performed. The document may be couched in ambiguous terms then the interpretation of the wordings would throw light on the intention of the parties so as to treat a particular document as conveyance or contract or otherwise.

2. Place and Date of Execution of a Deed

We first highlight the importance of "date". The date on which the document is executed comes immediately after the description of the deed. For example, "This Deed of Mortgage made on the first day of January, 1986". It is the date of execution which is material in a document for the purpose of application of law of limitation, maturity of period, registration of the document and passing on the title to the property as described in the document. Thus, the "date" of the document is important.

Date of execution of document is inscribed on the deed. The date is not strictly speaking an essential part of the deed. A deed is perfectly valid if it is undated or the date given is an impossible one, e.g. 30th day of February.

If no date is given oral evidence will always be admissible to prove the date of execution only it leaves necessary to prove it. However, it is of great importance to know the date from which a particular deed operates. In India there is a short period of 4 months (Section 23 of Registration Act) for its registration from the date of execution within which a deed must be presented for registration. The date is important for application of law of limitation also. In view of the extreme importance of date of execution of deed it should be regarded as an essential requirement. The date of deed is the date on which parties sign or executing it. If several parties to a deed sign the deed on different dates, in such cases, the practice is to regard the last of such dates as the date of deed.

In order to avoid mistake and risk of forgery, the date be written in words and in figures.

The place determines the territorial and legal jurisdiction of a document as to its registration and for claiming legal remedies for breaches committed by either parties to the document and also for stamping the document, as the stamp duty payable on document differs from State to State. An Illustration of this part follows:

"This Deed of Lease made at New Delhi on the First day of December One Thousand Nine Hundred and Eighty Eight (1.12.1988)" etc.

3. Description of Parties

The basic rule is that all the proper parties to the deed including inter-parties should be properly described in the document because inter-parties are pleaded as they take benefit under the same instrument. While describing the parties, the transferor should be mentioned first and then the transferee. Where there is a confirming party, the same may be placed next to the transferor. In the order of parties, transferee comes in the last.

Full description of the parties should be given to prevent difficulty in identification. Description must be given in the following order:

Name comes first, then the surname and thereafter the address followed by other description such as s/o, w/o, d/o, etc. It is customary to mention in India caste and occupation of the parties before their residential address.

However, presently mention of caste is not considered necessary. But to identify the parties if required under the circumstances, it may be necessary to mention the profession or occupation of a person/party to the deed. For example, Medical Practitioner, Chartered Accountant, or Advocate or likewise.

In the case of juridical persons like companies or registered societies it is necessary that after their names their registered office and the particular Act under which the company or society was incorporated should be mentioned. For example, "XYZ Co. Limited, the company registered under the Companies Act, 1956 and having its registered office at 1, Parliament Street, New Delhi".

In cases where the parties may be idol then name of the idol and as represented by its "Poojari" or "Sewadar", or so, should be mentioned. For example, "the idol of Shri Radha Mohan Ji installed in Hanuman Temple in Meerut being 10, Jawahar Chowk, Lale Ka Bazar, Meerut City acting through its Sewadar Pt. Krishan Murari Lal Goswami of Mathura".

In the case of persons under disability like minor, lunatic, etc. who cannot enter into a contract except through a guardian or a ward, in certain cases through guardian with the permission of the court where necessary, full particulars of the same should be given with the authority from whom a guardian draws power. For example, "Mohan, a minor, acting through Ramdev as guardian appointed by Civil Judge Class I, Delhi by order on… passed under Section… of… Act or "Mohan, Minor acting through his father and natural guardian Ramdev etc." In this way, particulars for the sake of identification of the party should be given. Similarly, in the case of partners, trustees, co-partners, etc. full details of the parties should be given for the sake of identification.

Reference label of parties are put in Parenthesis against the name and description of each party to avoid repetition of their full names and addresses at subsequent places. The parties are then prepared to by their respective lables e.g. "lesser" and "lessee" in a lease deed.

The form is illustrated as under:

"This lease deed is made at New Delhi on the ……..… day of ……..…… 2018 between Shri Vinod resident of……..…… (Hereinafter called *'lessor'*) of the one part and Shri Dinov resident of …….. (hereinafter called '*lessee'*) of the other part.

It is also necessary that refusee of heirs, executors, assigns liquidators, successors etc. should be made against each party's name after putting lables. It shall safeguard the interest of the parties. Legal heirs of the property of the party can take benefit on death of the original party when the easy identification of the party is done by giving the notation of the "one part" and "of other part" will be written as of first part 'for party one', 'of the second part' for party two and 'of the third part' for party three and so on, the likewise illustrating this.

Between…….. called the lessor.

(which term shall mean and unless, it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns of one part) AND……. called the lessee (which term shall unless it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns (or in case of a company the liquidator or assigns).

4. Recitals

Recitals contain the short story of the property up to its vesting into its transferors. Care should be taken that recitals are short and intelligible. Recitals may be of two types. One, narrative recitals which relates to the past history of the property transferred and sets out the facts and instrument necessary to show the title and relation to the party to the subject matter of the deed as to how the property was originally acquired and held

and in what manner it has developed upon the grantor or transferor. The extent of interest and the title of the person should be recited. It should be written in chronological order i.e. in order of occurrence. This forms part of narrative recitals. This is followed by inroductory recitals, which explain the motive or intention behind execution of deed.

Introductory recitals are placed after narrative recitals. The basic objective of doing so, is to put the events relating to change of hand in the property.

Recitals should be inserted with great caution because they precede the operative part and as a matter of fact contain the explanation to the operative part of the deed. If the same is ambiguous recitals operate as estoppel. Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open for interpretation for the courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning. In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order.

Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppel [*Ram Charan* v. *Girija Nandini,* 3 SCR 841 (1965)].

Recital generally begins with the words “Whereas” and when there are several recitals instead of repeating the words “Whereas” before each and every one of them, it is better to divide the recitals into numbered paragraphs for example, “Whereas” –

1.

2.

3.

etc.

5. Testatum

This is the “witnessing” clause which refers to the introductory recitals of the agreement, if any, and also states the consideration, if any, and recites acknowledgement of its receipt. The witnessing clause usually begins with the words “Now This Deed Witnesses”. Where there are more than one observations to be put in the clause the words, “Now This Deed Witnesses as Follows” are put in the beginning and then paragraphs are numbered.

6. Consideration

As stated above, consideration is very important in a document and must be expressed. Mention of consideration is necessary otherwise also, for example, for ascertaining stamp duty payable on the deed under the Indian Stamp Act, 1899. There is a stipulation of penalty for non-payment of stamps, but non-mention of consideration does not invalidate the document.

In the absence of mention of consideration the evidentiary value of document is reduced that the document may not be adequately stamped and would attract penalty under the Stamp Act.

7. Receipt

Closely connected with consideration is the acknowledgement of the consideration amount by the transferor, who is supposed to acknowledge the receipt of the amount. An illustration follows:

“Now this Deed witnesses that in pursuance of the aforesaid agreement and in consideration of sum of ₹.

100,000/- (Rupees One Lakh Only) paid by the transferee to the transferor before the execution thereof

(receipt of which the transferee does hereby acknowledge)”.

8. Operative Clause

This is followed by the real operative words which vary according to the nature of the property and transaction involved therein. The words used in operative parts will differ from transaction to transaction. For example, in the case of mortgage the usual words to be used are "Transfer by way of simple mortgage" (usual mortgage) etc. The exact interest transferred is indicative after parcels by expressing the intent or by adding *habendum*. (The parcel is technical description of property transferred and it follows the operative words).

9. Description of Property

Registration laws in India require that full description of the property be given in the document which is presented for registration under Registration Act. Full description of the property is advantageous to the extent that it becomes easier to locate the property in the Government records and verify if it is free from encumbrances. If the description of the property is short, it shall be included in the body of the document itself and if it is lengthy a schedule could be appended to the deed. It usually contains area, measurements of sides, location, permitted use, survey number etc. of the property.

10. Parcels Clause

This is a technical expression meaning methodical description of the property. It is necessary that in case of non-testamentary document containing a map or plan of the property shall not be accepted unless it is accompanied by the True Copy. Usually the Parcel Clause starts with the words "All Those……. And further or description covers as per the type of property subjected to transfer under the deed. This clause includes words such as: Messuages, Tenements, Hereditaments, Land, Water etc. But use of these now has been rendered unnecessary in view of Section 8 of Transfer of Property Act, 1882 given herein below.

"*Section 8. Operation of transfer — Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.*

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

And, where the property is machinery attached to the earth, the movable parts thereof;

And, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

And, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

And, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

This Section has cut down the length of the deeds and do away with description of minute details of the incidents of the property intended to be conveyed.

11. Exceptions and Reservations Clause

It refers to admission of certain rights to be enjoyed by the transferor over the property to be agreed to by the transferee. All exceptions and reservations out of the property transferred should follow the parcels and operative words. It is the contractual right of the parties to the contract or to the document to provide exceptions and reservations which should not be uncertain, repugnant or contrary to the spirit of law applicable to a particular document or circumstances. For example, Section 8 of the Transfer of Property Act, 1882 provides for transfer of all the interest to the transferee in the property and any condition opposing the provisions of law will be void. Further, Section 10 of the said Act provides that any condition or limitation absolutely restraining the transferee of property in disposing of his interest in the property is void. So, nothing against the spirit of law can be provided in the document.

The clause generally is signified by the use of words “subject to” in deeds, where it is mentioned, it is advisable that both the parties sign, to denote specific understanding and consenting to this aspect.

12. Premises and Habendum

Habendum is a part of deed which states the interest, the purchaser is to take in the property. *Habendum* clause starts with the words “THE HAVE AND TO HOLD”. Formerly in England if there was a gratuitous transfer, the transferee was not deemed to be the owner of the beneficial estate in the property, the equitable estate wherein remained with the transferor as a resulting trust for him. It was therefore, necessary to indicate in the deed that it was being transferred for the use of the transferee if it was intended to confer an equitable estate in him. It was for that reason that the *habendum* commenced with the words: “to have to hold to the use of……..”. Now it is not necessary to express it so. In the modern deeds, however, the expression “to have and” are omitted. The *habendum* limits the estate mentioned in the parcels. The transferee is mentioned again in the *habendum* for whose use the estate is conveyed. Whatever precedes the *habendum* is called the premises. The parcels or the description of the property usually again included in the premises. If the property conveyed in encumbered, reference thereto should be made in the *habendum*. If the parties to transfer enter into covenants, they should be entered after the *habendum*.

In India such phrases as “to have and to hold” or such an expression as “to the use of the purchaser” can very well be avoided as in cases except those of voluntary transfers such an expression is superfluous.

13. Covenants and Undertakings

The term “covenant” has been defined as an agreement under seal, whereby parties stipulates for the truth of certain facts. In *Whasten’s Law Lexicon*, a covenant has been explained as an agreement or consideration or promise by the parties, by deed in writing, signed, sealed and delivered, by which either of the parties, pledged himself to the other than something is either done or shall be done for stipulating the truth of certain facts. Covenant clause includes undertakings also. Usually, covenant is stated first. In some instances the covenants and undertakings are mixed, i.e. can not be seperated in that case, they are joint together, words put for this as “The Parties aforesaid hereto hereby mutually agree with each other as follows:” Such covenants may be expressed or implied.

14. Testimonium Clause

Testimonium is the clause in the last part of the deed. *Testimonium* signifies that the parties to the document have signed the deed. This clause marks the close of the deed and is an essential part of the deed.

The usual form of *testimonium* clause is as under:

“In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written”. This is the usual English form of *testimonium* clause. In India, except in the case of companies and corporations seals are not used and in those cases *testimonium* clause reads as under:

“In witness whereof the parties hereto have signed this day on the date above written”.

Thus *testimonium* clause can be worded according to the status and delegation of executants.

15. Signature and Attestation Clause

After attestation clause, signatures of the executants of the documents and their witnesses attesting their signatures follow. If the executant is not competent enough to contract or is juristic person, deed must be signed by the person competent to contract on its behalf. For example, if the deed is executed by the company or co-operative society then the person authorised in this behalf by and under the articles of association or rules and regulations or by resolution as the case may be should sign the document and seal of the company/society should be so affixed, thereto by mentioning the same.

In India, the Deed of Transfer is not required to be signed by the transferee even though the transferee is

mentioned as party in the document. All conditions and covenants are binding upon him without his executing the conveyance, if he consents to it by entering into the lease granted under the conveyance. However, in case the deed contains any special covenant by the transferee or any reservation is made by the transferee then it is always proper to have the deed signed by the transferee also.

Attestation is necessary in the case of some transfers, for example, mortgage, gift, sale, and revocation of will. In other cases, though it is not necessary, it is always safe to have the signatures of the executant attested. Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures. It is not necessary that both the witnesses should have been present at the same time. There is no particular form of attestation but it should appear clearly that witnesses intended to sign is attesting the witnesses. General practice followed in India is that the deed is signed at the end of the document on the right side and attesting witnesses may sign on the left side. If both the parties sign in the same line then the transferor may sign on the right and the transferee on the left and witnesses may sign below the signatures.

It is essential that the attesting witness should have put his signature, *amino attestandi*, intending for the purpose of attesting that he has seen the executant sign or has received from him, a personal acknowledgement of his signature.

16. Endorsements and Supplemental Deeds

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term “endorsement” is used with reference to negotiable documents like cheques, bill of exchange etc. For example, on the back of the cheque to sign one’s name as Payee to obtain cash is an endorsement on the cheque. Thus, to inscribe one’s signatures on the cheque, bill of exchange or promissory note is endorsement within the meaning of the term with reference to the Negotiable Instrument Act, 1881. Endorsement is used to give legal significance to a particular document with reference to new facts to be added in it. Endorsement helps in putting new facts in words on such document with a view to inscribe with a title or memorandum or to make offer to another by inscribing one’s name on the document or to acknowledge receipt of any sum specified by one’s signatures on the document or to express definite approval to a particular document. Thus, endorsement is an act or process of endorsing something that is written in the process of endorsing when a provision is added to a document altering its, scope or application. Under the Registration Act, 1908 the word endorsement’ has significant meaning and it applies to entry by the Registry Officer on a rider or covering slip tendered for registration under the said Act.

Supplemental deed is a document which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement. Thus, supplemental deed is executed to give effect to the new facts in the deed. When a deed or document is required to be supplemented by new facts in pursuance of or in relation to a prior deed this can be affected by either endorsement on the prior deed when short writing would be sufficient, or by executing a separate deed described as supplemental deed. For example, if lessee transfers his right in the lease to another person such transfer may be done by way of endorsement. On the other hand, if the terms of the lease document are to be altered then it becomes necessary to give effect to such alteration through a supplementary deed. In case the alteration to be made in the terms and conditions and is of minor nature and can be expressed by a short writing execution of supplementary deed may not be considered necessary as this can be done by endorsement only. Thus, this is a matter of convenience which of the two alternatives whether endorsement or a supplementary deed is to be used by the parties to a particular document.

In conveyancing practices endorsements which are of general use and for which no supplementary deed is necessary are those which relate to part payment or acknowledgement of a debt by a debtor. The main stress is that endorsement should represent or exhibit the intention of the parties to the document. Thus, in the

context of negotiable instruments, endorsements which are made on the document will definitely differ with reference to the nature and content of the prior document and will be added to the endorsement explained above. Endorsements are common for negotiating a negotiable document or instrument or transfer of bill of exchange or policy or insurance or Government securities and there is no particular form of endorsement prescribed in such cases. Endorsements follow the forms by customs, conventions and trade practices or banking norms.

The following forms of endorsement and supplemental deed respectively could be used by business executives while facing a situation of altering the documents:

1. Form of Endorsement: The endorsement on the document may begin either by saying:

This deed made on this ……day of …… between within named …….. and within named ……..” or directly like, “The parties to the within written deed hereby agree as follows:”

The operative part of the deed then follows usually without any recital unless any recital is considered necessary to make the deed intelligible. Generally, no recital is added but there may be exception in different situations to this rule. The original deed on which endorsement is made as referred to in the endorsement is within the written deed and the parties, recital covenants in the original deed are referred to as within named “Lessor” or “within named parties” or “within mentioned covenants” or “within described use” or “the garden described in the schedule of the within written deed”.

These are the examples when endorsement is to be made for the first time in the document.

There may be situations where subsequent endorsement becomes necessary on the document which bears already an endorsement. In such eventuality when endorsement is made one after another reference in the latter to the former endorsement shall be made by the use of the word “above” instead of M/s “within”. After the operative part of endorsement the usual *testimonium* clause shall be added ending with signatures of executants and of witnesses, if necessary.

2. For giving effect to the supplemental deed the form of the deed of agreement will be more or less the same as the prior document with the difference that with the other names of the parties the words, “Supplemental (intended to read as annexed) to a deed of…….. dated…….. made between the parties thereto (or between……..) hereinafter called the principal deed”, shall be added. In case the particulars of a principal deed are somewhat long it is more convenient to refer to the principal deed in the first recital and to say that this deed (the one under preparation) is supplemental to that (the former) deed; for example, “Whereas this deed is supplemental to a deed of sale made, etc. hereinafter called the ‘principal deed’.

There may be situations when the supplemental deed is supplemental to several deeds. In such a case, each prior deed should be mentioned clearly by way of recitals to make the deed with reference to the existing deed intelligible and free from ambiguity.

All endorsements or supplemental deed should be stamped according to the nature of the transaction which they evidence. In case the endorsement is made for receipt of money which should be stamped as a receipt. In case it is an agreement, it must be stamped as an agreement. Some documents if endorsed are exempted from stamp duty, for example, endorsement made on the prior deed, receipt of mortgage money, endorsement on mortgage deed. Similarly, transfer of bill of exchange or policy of insurance or security of Government of India can be endorsed without attracting the stamp duty.

17. Annexures or Schedules

A deed remains incomplete unless particulars as required under registration law about the land or property are given in the Schedule to be appended to the deed. It supplements information given in the parcels. A Site Plan or Map Plan showing exact location with revenue no. Mutation No., Municipal No., Survey No., Street No., Ward

Sector/Village/Panchayat/Taluka/District etc……. Plot No., etc. so that the demised property could be traced easily.

Engrossment and Stamping of a Deed

The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorising of its execution. The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Indian Stamp Act. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.

If a document is not properly stamped, it is rendered inadmissible in evidence nor it will be registered with Registrar of Assurances.

LESSON ROUNDUP

- Drafting of legal documents is a skilled job. A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument. The duty of a draftsman is to express the intention of the parties clearly and concisely in technical language.
- A corporate executive must note down the most important requirements of law which must be fulfilled while drafting complete instrument on the subject.
- All the time the draftsman must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and choose his phraseology to fit them. Apart from the above facts, there are certain rules that should also be followed while drafting the documents.
- For using particular words and phrases in the conveyancing, the draftsman must be cautious about the appropriate use of the words and should be clear of its meaning.
- Drafting of documents is very important part of legal documentation. Documents are subject to interpretation when no clear meaning could be inferred by a simple reading of the documents.
- Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability. To take for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on.
- A deed may be defined as a formal writing of a non-testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest. Many authorities have tried to define the deed. Some definitions are very restricted in meaning while some are too extensive definitions.
- The usual parts or components or clauses of deeds in general are: Description of the Deed Title; Place and Date of execution of a Deed; Description of Parties to the Deed; Recitals; Testatum; Consideration; Receipt Clause; Operative Clause; Description of property; Parcels Clause; Exceptions and Reservations; Premises and Habendum; Covenants and Undertakings; Testimonium Clause; Signature and Attestation; Endorsements and Supplemental Deeds; Annexure or Schedules.
- The draft of document is required to be approved by the parties. The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Stamp Act. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.

SELF TEST QUESTIONS

1. What are the preliminary requirements of drafting which a company executive should consider before drafting a document?
2. Draw guidelines for use of particular words or phrases in drafting and conveyancing.
3. What are the principles which a corporate executive should keep in mind while drafting company's documents?
4. What are the "do's" and "don'ts" which a draftsman should keep in mind while drafting company's documents?
5. Discuss briefly the Components of Deed of Transfer of Property.
6. What do you understand by endorsement and supplemental deeds? Does such an endorsement or supplemental deed attract stamp duty?
7. Explain "Habendum". What does a Habendum clause signify in a document? How does the absence of a Habendum clause in a document effect the validity of the document?

Lesson 3
Secretarial Practice in Drafting Notice, Agenda and Minutes of Company's Meetings

LESSON OUTLINE

- Collective decision making process in companies- Resolution
- Powers of the Board
- Secretarial Standards- Introduction
- Secretarial Standard on Board Meetings- (SS-1)
- Guidance on the provisions of SS-1
- Annexures to SS-1
- Secretarial Standard on General Meetings (SS-2)
- Guidance on the Provisions of SS-2
- Practical Aspect of Drafting Resolutions
- Resolutions passed in General Meetings
- Annexures to SS-2
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

A company, being a legal entity, cannot act by itself. It, therefore, expresses its will or takes its decisions through Resolutions passed at validly held Meetings. Determining what constitutes a Meeting is therefore an important issue. A Meeting has been defined as "coming together of two or more persons face to face so as to be in each other's presence or company". [In *Re. Associated Color Laboratories Ltd*. (1970) 12 D.L.R.]. The decision-making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. The will of members of a company is expressed through Resolutions passed at general meetings or through postal ballots. Similarly, the will of the governing body of the company (i.e. its Board of Directors) is expressed through Resolutions at meetings of the Board or those passed by circulation. General Meetings of the Members provide a forum for them to express their will with regard to the management of the affairs of the 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.

Section 118(10) of the Companies Act, 2013, provides that every company shall observe Secretarial Standards with respect to general and board meeting specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government. Secretarial Standard SS-1 and SS-2 w.r.t. meetings of Boards of Directors and general meetings respectively has been issued and revised in this respect.

As u/s 205(1)(6) of the Companies Act, it is the duty of Company Secretary to ensure compliance of Secretarial Standards in the company, so it is very important for the students to learn about the procedural aspects relating to meetings.

The Institute of Company Secretaries of India is the only professional body in the world to issue Secretarial Standards. The Institute of Company Secretaries of India has announced that the Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) w.e.f. 1st July, 2015. The Secretarial Standards have been revised and the revised Secretarial Standards have received approval from the Central Government. The revised Secretarial Standards shall be applicable for compliance by Companies (except the exempted class of companies) from October 1, 2017 .

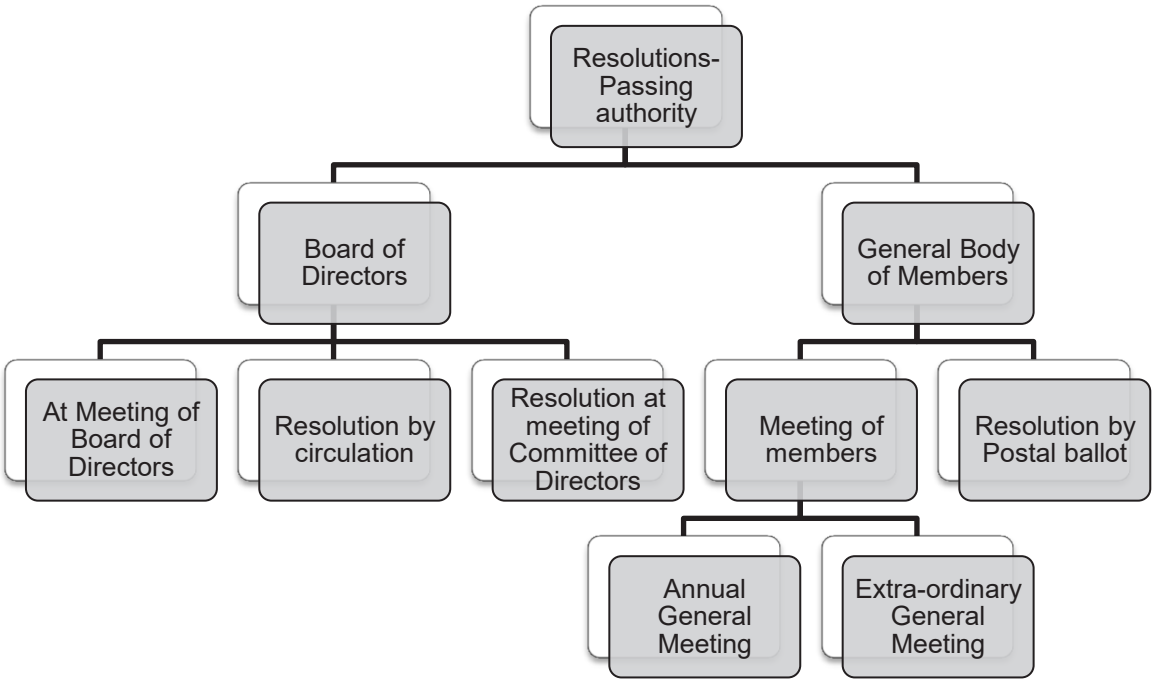
COLLECTIVE DECISION MAKING PROCESS IN COMPANIES- "RESOLUTION"

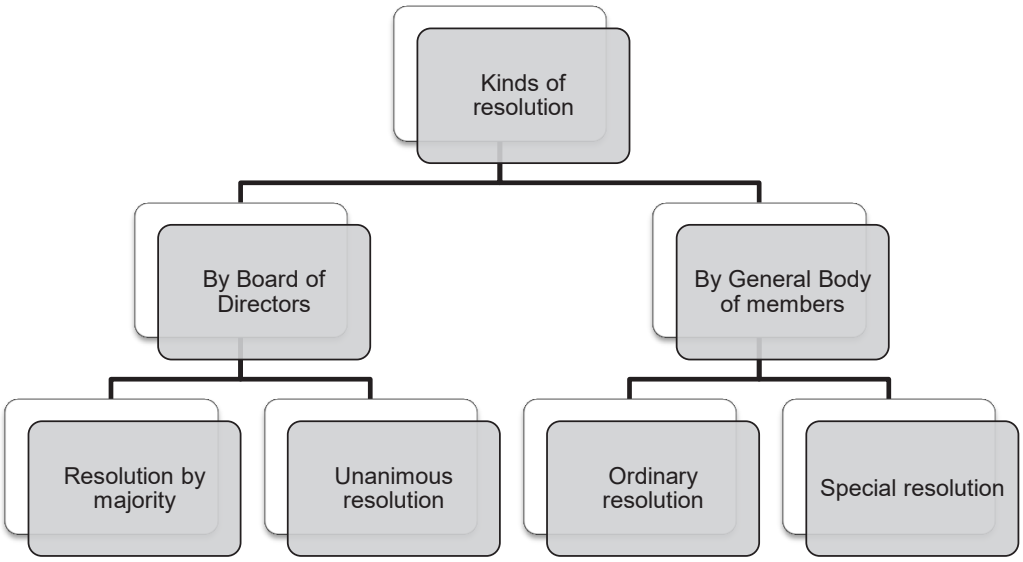
A company is an artificial judicial person created by law having its own distinct entity form and capable of entering into contracts. Though company is bestowed with the characteristic of separate legal entity but it cannot take decision on its own. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name. Despite all these powers, since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as "resolutions."

There are two collective bodies in the company which take decision through resolutions:

(i) Board of Directors – who manage, control and direct the business of the company

(ii) General body of members – who ultimately own the company.





Points to be noted:

- The resolution making process includes e-voting and video-conferencing also.
- The powers relating to the affairs of a company are divided between the Board and shareholders of the company.
- Approval of transactions which are ultra vires the directors but intra- vires the company: A transaction by the directors which is beyond their own powers but within the powers of the company can be ratified by a resolution of the company in a general meeting, provided that the shareholders have knowledge of the facts relating to the transaction to be ratified or the means of knowledge are available to them and a company may by a resolution at a subsequent meeting ratify business. But a transaction which is ultra vires the company cannot be ratified even if agree by all the members of the company.
- The usual meetings of a company under the Companies Act, 2013 can be classified as under:

1. Meetings of the Directors and their Committees
2. Meetings of Members:
   (a) Annual General Meetings (AGM)
   (b) Extraordinary General Meetings (EGM)
   (c) Class Meetings.

There are other meetings too like meeting of debenture/ bond holders, meeting of creditors , contributories, Court convened meeting etc. but they do not take place in conducting general business of company in routine.

- Board of directors take decision by passing resolution as follows:

(i) Resolution by majority (≥51%)

(ii) Unanimous resolution(100%)

- Resolution by general body of members take place in following two modes:

(i) Ordinary resolution:

An Ordinary resolution is one which is passed in the company's general meeting by a simple majority of votes ie-51%.No notice is required to be given for moving an ordinary resolution..All matters relating to the company's business, except those which need to be settled by a special resolution, are settled by an ordinary resolution.

(ii) Special resolution

The votes cast in favour of the resolution, whether in person or by proxy, are not less than three times the votes cast against the resolution by members so entitled. A prior notice needs to be given for moving a special resolution in any meeting of the company. A special resolution is meant to make decisions in important matters and protect the rights of company's members.

If law requires a resolution to be passed by special majority, then it shall be a Special Resolution but otherwise where it is not specifically provided, the resolution will be an ordinary resolution. Secretarial Standards

POWERS OF THE BOARD

1. 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.
2. 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.
3. Powers to be exercised subject to passing of Special Resolution: 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 or through Postal Ballot. A list of powers to be exercised subject to passing of Special Resolution is given in Annexure ID.
4. 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) 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]

For delegation of powers, a board resolution must be passed at meeting of Board of Directors. 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.

SECRETARIAL STANDARDS

Introduction

Section 118(10) of the Companies Act, 2013, provides that every company shall observe Secretarial Standards with respect to general and board meeting specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government. The Ministry of Corporate Affairs on 10th April, 2015 accorded the approval of the Central Government to the Secretarial Standards (SS) namely-

(i) SS-1 Meetings of the Board of Directors and

(ii) SS-2 General Meetings

Scope: Secretarial Standards are in conformity with the provisions of the Companies Act, 2013. 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.

In terms of section 205(1)(6), it is the function of the Company Secretary to ensure that the company complies with the applicable Secretarial Standards.

SECRETARIAL STANDARD ON BOARD MEETINGS (SS-1)

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

(i) One Person Companies(OPC)having only one Director on its Board and

(ii) Such other class or class of companies which are exempted by Central Government through Notification e.g. companies licensed under Section 8 of the Companies Act, 2013

Exemptions shall be applicable to a Section 8 company provided it has not committed a default in filing its Financial Statements or Annual Return with the Registrar of Companies.

However, Section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings.

Applicability to Meetings of the Committees

SS-1 is also applicable to the Meetings of Committee(s) of the Board constituted in compliance with the requirements of the Act. At present, the Act provides for the constitution of following committees of the Board:

- Audit Committee
- Nomination and Remuneration Committee
- Corporate Social Responsibility (CSR) Committee
- Stakeholders Relationship Committee

In case any other committee of the Board is constituted voluntarily or pursuant to any other statute or regulations etc., the company may comply with SS-1 with respect to meetings of such committee(s) as a good governance practice.

Secretarial Standard on meetings of the Board of Directors: SS – 1 (Relevant extract for drafting notice, agenda and minutes of Meeting of Board of Directors/ Committee thereof)

The first version of SS-1 was applicable to Meetings of the Board of Directors and its Committees, in respect of which Notices were issued during 1st July, 2015 to 30th September, 2017. The revised version of SS-1 applies to Meetings of the Board of Directors and its Committees, in respect of which Notices are issued on or after 1st October, 2017. SS-1 prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto. Guidance Note sets out the explanations, procedures and practical aspects in respect of the provisions contained in revised SS-1 (effective from 1st October, 2017) to facilitate compliance thereof by the stakeholders.

Section 179 of Companies Act 2013 describes the scope of the powers of the Board of Directors as it states "The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do." 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 (Section179 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.

Subject to the provisions of the Act, all powers which the company is authorised to exercise and do can be exercised by the Directors

(i) at a Meeting [Section 173] or

(ii) by Resolutions passed by circulation [Section175] or

(iii) by delegating the same to Committees or to the Managing Director or other principal officers [Proviso to 179(3)] or others in accordance with the provisions of the Act and the Articles.

GUIDANCE ON THE PROVISIONS OF SS-1

Convening a Meeting

Authority means who can convene meeting i.e. who shall sign notice of board meeting.

Subject to Articles of Association of a company, Board meeting may be convened by

- Any Director of a company
- The Company Secretary or where there is no Company Secretary, any person authorized by the Board in this behalf, on the requisition of a Director.
- The Company Secretary cannot summon a Meeting on his own, unless authorized by the Board of Directors or the Articles to do so.

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.

Day, Time, Place, Mode and Serial Number of Meeting

It is mandatory for every meeting to have a serial number for ease of reference.

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 12 th Meeting (Adjourned).

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 after1st July,2015,this being the date from which SS-1 became effective.

In any case,the company should follow a uniform and consistent system.

Now, Board of Director’s meeting can be convened even on Sunday and national holiday too. Even a meeting of Board of Director’s adjourned for want of quorum can be held on national holiday.

Notice of the meeting

(i) Venue of the meeting: Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.

(ii) 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]. Directors shall not participate through electronic mode in the discussion on certain restricted items. (Earlier, they could do so with express permission of Chairman). After giving the aforesaid intimation, if the Director decides to participate by being present physically at a particular Meeting, he may so participate after communicating the same to the Company.

(iii) **Meetings through Electronic Mode**: 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 and comply with the applicable legal provisions. 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.

(iv) **Delivery of Notice** : Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means. Where a director specifies a particular means of delivery of notice, the notice shall be given to him by such means. But, in case of a meeting conducted at a shorter notice, the company may choose an expedient mode of sending notice.

(v) **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.***

(vi) **Authority to sign 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.

(vii) **Essentials of Notice:**

- ✓ 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.
- ✓ 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.

(viii) **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.

(ix) **Intimation to Directors for avalilability of option to participate through Electronic Mode**: The

Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information. The Notice shall also contain the contact number or e-mail address(es) of the Chairman or the Company Secretary or any other person authorized by the Board, to whom the Director shall confirm in this regard. If a Director intends to participate through electronic mode, he shall give sufficient prior intimation to the Chairman or to the Company Secretary to enable them to make suitable arrangements in this behalf. The Director may intimate his intention of participation through electronic mode at the beginning of the Calendar year also, which shall be valid for such calendar year.

(x) **Notice is mandatory**: The Notice of a Meeting shall be given even if meetings are held on pre-determined dates or at pre-determined intervals.

(xi) **Time period for giving Notice**: Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

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

(xii) **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.

(xiii) **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.

(xiv) **Notice to contain detailed note of each item of business** : 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. However any other decision taken at the meeting may also be recorded in the Minutes in the form of Resolution. While earlier, it was allowed to discuss a matter which was not included in agenda but resolution can be passed on it only in subsequent meeting after fulfilling the requirement of sending note as stated above.

(xv) **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. However, any other decision taken at the Meeting may also be recorded in the Minutes in the form of Resolution. 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.

(xvi) **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:

- Items which are required to be approved by the Board at its Meeting as prescribed under the Act, and
- 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.

(xvii) **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.

(xviii) **Numbering of each item of business:**

Each item of business to be taken up at the Meeting shall be serially numbered.

Illustrations

(i)Serially numbering irrespective of the number of 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 13th 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 st 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 1st July, 2015, this being the date from which SS-1 became effective.

Whatever method a company choose, it should follow a uniform and consistent system.

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.

(xix) **Shorter Notice for notice and agenda**: 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.

(xx) **Additional content in such shorter notice issued for conducting "urgent business:**

- ✓ 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.

(xxi) **Presence of Independent Director or ratification of decisions**: If none of the Independent Directors are present at the Meeting held on shorter Notice 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 at least 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 at least one Independent Director, if any. 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.

Frequency of Meetings

Meetings of the Board	The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings. Now, the stricter requirement of holding Board Meeting in every quarter has gone away with. As a good governance practice, the Board may approve in advance, a calendar of dates for Meetings to be held in a year.
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. The above provision is equally applicable in case of a private “start-up Company”. (MCA Notification G.S.R. 583(E) dated 13th June, 2017). The term “start-up company” means a private company incorporated under the Act and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.
Meetings of Committees	Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board. For example, the Audit Committee of equity listed company should meet at least four times in a year and not more than one hundred and twenty days should elapse between two Meetings. Also, the Audit Committee of equity listed company may invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee. Occasionally the audit committee may meet without the presence of any executives of the company.

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. However, the MCA vide Notification dated 5th July, 2017 has clarified that the Independent Directors are required to meet at least once in a financial year. The independent directors of the company shall hold at least one meeting in a financial year without the attendance of non-independent directors and members of 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, wherever appointed, shall facilitate convening and holding of such meeting, if so desired by the Independent Directors.
Invitees in meeting of 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.

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.

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.
Interested Director not to participate in Quorum	An Interested Director should neither participate nor vote in respect of an item in which he is interested, nor such Director be counted for Quorum in respect of such item. However, such Director may be present in the Meeting during discussions on such item. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest. If the item of business is a related party transaction, then he shall not be present at the meeting, whether physically or through electronic mode, during discussions and voting on such item. In case of a private company, MCA Notification dated 5 th 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 th , 2015] MCA Notification G.S.R. 583(E) dated 13 th June, 2017 specifically provides that in case of a private company, an Interested Director may also be counted towards quorum after disclosure of his interest pursuant to Section 184.
Related Party Transaction	If the item of business is a related party transaction, then the interested director shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item. As per Rule 15(2) of the Companies (Meetings of Board and its Powers) Rules, 2014, an Interested Director shall not be present during discussions and voting on the item in which he is interested, if the item happens to be a related party transaction.
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].
Quroum w.r.t. Directors participating through Electronic Mode	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.
Quorum for Meetings of the Board	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.
Quorum for Meetings of Committees	Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.

Attendance at Meetings

(i) Attendance register : Every company shall maintain attendance register for the Meetings of the Board and Meetings of the Committee. The pages of the attendance register 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 after1st July,2015,this being the date from whichSS-1 became effective.

(ii) **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, at least once in every three years.

(iii) **Particulars of attendance register**: 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 and signatures of the Directors,
- the Company Secretary and
- persons attending the Meeting by invitation and their mode of presence, if participating through Electronic Mode

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. 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.

(iv) **Signing of Attendance Register:** The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes.

In terms of this paragraph SS-1, the attendance of any of the Directors participating through Electronic Mode in a Meeting is required to be recorded in the attendance register and authenticated by the Chairman or the Company Secretary. Such authentication may also be done by any other director

present at the meeting, if so authorised by the Chairman. This is provided to facilitate the authentication process in the absence of Company Secretary.

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.

In case of meeting where directors are present in person, 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.

(v) **Place of maintaining attendance register:** 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 is open for inspection by the Directors. Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship.

(vi) **Roll call for 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 preserved for at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board.

(vii) **Leave of absence:** Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting. Request for leave of absence may be either oral or written. Any such request received should be mentioned at the Meeting 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.

(viii) **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.

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 (b) of sub-section (1) of Section 167 of the Act) [Bharat Bhushan v. H.B. Portfolio Leasing Ltd. (1992) 74 Comp. Cas. 20 (Del)]. 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.

(ix) **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.

Chairman

(i) **Meetings of the Board:** 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 procedure for appointment and powers and duties of a Chairman may be prescribed in the Articles of the company.

(ii) **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.

(iii) **Election of Chairman in the absence of elected chairman:** The Chairman of the Board shall conduct the Meetings of the Board. If no such 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**.** 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].

(iv) **Role of Chairman:** The Chairman shall ensure that the required Quorum is present throughout the meeting and at the end of discussion on each agenda item, the Chairman shall announce the summary of the decision taken thereon. The main function of the Chairman is to preside over and conduct the Meeting in an orderly manner.

(v) **Interested Chairman should vacate the Chair:** If the Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the Chair after that item of business has been transacted. However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest. If the item of business is a related party

transaction, the Chairman shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

(vi) **Chairman of Committee Meeting:** 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).

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.

(i) **Authority for resolution by circulation:** The Chairman of the Board or in his absence, the Managing Director or in their absence, 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. 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.

(ii) **When does Resolution by circulation fails:** 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.

(iii) **Despatch of circular resolution:** A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Directors including Interested Directors on the same day.

(iv) **Mode of delivery of circular resolution:** 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. An additional two days should be added for the service of the draft Resolution, as in case the same has been sent by the company by speed post or by registered post or by courier, while computing the date of circulation of the draft of the Resolution given to the Directors to respond in case of Resolution by circulation.

A time period of minimum three years from the date of meeting has been prescribed for preserving proof of sending and delivery of the draft of the Resolution and the necessary papers**.**

(v) **Essentials of circular resolution:** 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 earlier that circular resolution will fail and shall be considered at a meeting , 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. 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.
- *A suggested format for circulation is given in* ***Annexure VI.***

(vi) **Approval of circular resolution:** 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. The Resolution, if passed, shall be deemed to have been passed on the earlier of:

- the last date specified for signifying assent or dissent by the Directors; or
- the date on which assent has been received from the required majority, provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of Directors; and shall be effective from that date, if no other effective date is specified in such Resolution.

(vii) **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.

(viii) **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.

(ix) Recording: Resolutions passed by circulation shall be noted at a subsequent 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. 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, this fact should be appropriately recorded in the Minutes of the next Meeting. Now there is no need for recording in Minutes the fact that the Interested Director did not vote on the Resolution.

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. There is no restriction in law on the language of recording Minutes.

(i) Maintenance of Minutes: Minutes shall be recorded in books maintained for that purpose. A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees. A company may maintain its Minutes in physical or in electronic form. 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. 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).

(ii) Consistency in the form of maintaining Minutes: A 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 of a few Meetings in electronic form.

(iii) 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 so as to facilitate easy retrieval of any decision/Resolution and additionally to safeguard the integrity of the Minutes. 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 st 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. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

(iv) No attachment or pasting is allowed in Minutes: Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.

(v) Contents of Minutes:

General Contents: Minutes should state at the beginning the following:

- The name of the company
- The type of Meeting (Board Meeting, Committee Meeting, etc.
- The serial number, day, date and venue of the Meeting
- The time of commencement of the Meeting

Specific Contents: Minutes shall *inter-alia* contain:

- The name(s) of Directors present and their mode of attendance, if through Electronic Mode: In case all Directors are present physically, the Minutes need not specially record the mode of attendance. However, the Minutes should record the same in respect of Directors who participated in the Meeting through Electronic Mode.
- In case of a Director participating through Electronic Mode, his particulars, the location from where he participated and wherever required, his consent to sign the statutory registers placed at the Meeting.
- Minutes should record the location from where the Directors participating through Electronic Mode participated in the Meeting.
- 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.
- 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.
- 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.
- The names of Directors who sought and were granted leave of absence.
- Noting of the Minutes of the preceding Meeting.
- Minutes of the preceding Meeting, including any adjourned Meeting, should be noted.
- 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.

- *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.*
- *The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of related party transaction such director was not present in the Meeting during discussions and voting on such item. (Earlier this was specifically provided to be recorded but now in revised SS-1, there is no such specific requirement)*
- *In case of a private company, the Minutes should record the fact that an interested Director after disclosure of his interest participated in the discussion and voted thereat (In line with MCA Notification No. G.S.R. 464(E) dated June 5, 2015)*
- *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.*
- *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.*
- *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.*
- *Ratification by Independent Director or majority of Directors, as the case may be, in*
- *case of Meetings held at a shorter Notice.*
- *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.*
- *Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.*
- *Minutes should state that items which were not included in the Agenda were taken up with the consent of the Chairman and majority of the Directors present at the Meeting. Minutes should also state that the decision taken in respect of such item has been approved / ratified by the majority of the Directors of the company.*
- *The time of commencement and conclusion of the Meeting.*
- *The Minutes should record the time when the Meeting commenced and concluded.*
- *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.

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. 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.

(vi) 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.
- 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.

(vii) **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.

(viii) **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 discussion and the complete text of the Resolutions passed at the Meeting.
- 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.
- There is no restriction in law on the language in which the Minutes are recorded.

(ix) **Recording of unsigned documents which were not part of the Notes on Agenda**: Wherever the decision of the Board is based on any unsigned documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are referred to in the Minutes, shall be identified by initialing of such documents by the Company Secretary or the Chairman.

(x) **Recording of supersession or modification of earlier resolution:** Where any earlier Resolution(s) or decision is superseded or modified, Minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard.

(xi) **Noting of minutes of preceding Meeting**: 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.

(xii) **Noting of 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.

(xiii) 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, as on the date of the Meeting, 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.
- A minimum period of three years from the date of meeting has been prescribed for maintaining proof of sending draft minutes and its delivery.
- Only if Chairman is authorized by the Board, he has discretionary power to consider the comments of any director received after expiry of seven days from the date of dispatch of draft minutes to them.

(xiv) Entry in the Minutes Book

- Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.
- 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.

(xv) Alteration in the minutes once entered in the Minutes Book: 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 at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting. Any corrections or modifications in the text of Minutes, duly entered in the Minutes Book and signed by the Chairman, would tantamount to alteration of Minutes.

(xvi) 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.

(xvii) Signing and Dating of Minutes: 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. 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.

- 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.

(xviii) **Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard**: As SS-1 specifically provides for that any alteration in the Minutes, as entered, should be made only by way of an express approval of the Board at its subsequent Meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting. Within 15 days of signing of the Minutes, a copy of the said signed Minutes certified by the Company Secretary or if there is no Secretary then by any of the director authorized by the Board, shall be circulated to all the directors as on the date of meeting and appointed thereafter. But if any Director has waived right of receiving the said copy of signed Minutes either in writing or his waiver is recorded in Minutes then there is no need of sending him such copy.

(xix) **Inspection and Extracts of Minutes**: Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book: 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.

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 Report of the Board of Director's shall include a statement on compliance of applicable Secretarial Standards. The above statement may be given as under:

"The Directors have devised proper systems to ensure compliance with the provisions of all applicable Secretarial Standards and that such systems are adequate and operating effectively".

The above statement is intended to align the disclosure requirement with the provisions of Section 134(5)(f) of