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BANGLADESH **S**ECRETARIAL **S**TANDARDS
[BSS-6]

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SECRETARIAL STANDARD
ON
RESOLUTIONS BY CIRCULATION



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

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PREFACE TO THE SECRETARIAL STANDARDS

Need for Secretarial Standards

Setting of Secretarial Standard is necessary for maintaining objectivity in corporate governance. Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonize and standardize such practices so as to promote uniformity and consistency.

Secretarial Standards Board and its Objectives

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

Scope and Functions of the SSB

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

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

Scope of Secretarial Standards

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

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

The Institute will strive to persuade the Government and appropriate authorities to promulgate these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardization of secretarial practices.

Procedure for Issuing Secretarial Standards

The following procedure shall be adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, shall determine the areas where Secretarial Standards need to be developed and the priority proportions with regard to their formulation.
2. The Secretarial Practice Sub-committee of the Institute may be assigned to formulate preliminary drafts of the proposed Standards.
3. The preliminary draft of the Secretarial Standard formulated by the Secretarial Practice Sub-committee is circulated amongst the members of SSB for discussion and is modified appropriately, if so required.
4. The preliminary draft is then circulated to the members of the Council of ICSB or other bodies/organizations as is decided by SSB, for acquiring their views, specifying a time-frame within which such views, comments and suggestions are to be received.

A meeting of SSB with the representatives of such bodies / organizations may then be held, if considered necessary, to examine and deliberate on their suggestions.

5. The draft of proposed Secretarial Standard generally includes the following basic points:
 - (a) Concepts and fundamental principles relating to the subject of the Standard;
 - (b) Definitions and explanations of terms used in the Standard;
 - (c) Objectives of issuing the Standard;
 - (d) Disclosure requirements; and
 - (e) Date from which the Standard will be effective.
6. On the basis of the preliminary draft and the discussion with the Council Members/ bodies/ organizations referred to at 4 above, an Exposure Draft is prepared and published in “The Chartered Secretary”, the journal of ICSB, and also put on the Website of ICSB to elicit comments from members of ICSB and the public at large.
7. After taking into consideration the comments received, the draft of proposed Secretarial Standard is finalized by SSB and submitted to the Council of ICSB.
8. The Council considers the final draft of the proposed Secretarial Standard and finalizes the same based on the recommendation of SSB. The Secretarial Standard is then issued under the authority of the Institute.

Compliance with Secretarial Standards

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

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SECRETARIAL STANDARD ON RESOLUTIONS BY CIRCULATION

The following is the text of the Secretarial Standard on "Resolutions by Circulation (RBC)".

A. INTRODUCTION

A company, being a legal entity, cannot act by itself but can do so only through its Board of Directors.

The Board is entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do subject to the restrictions and limitations imposed by the Act, Memorandum and Articles of Association and the Company in general meeting.

Decisions relating to the policy and operations of the company are arrived at meetings of the Board held periodically.

Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on collective wisdom of the Board. Accordingly, it is ideal that all corporate matters are placed before the Board meeting and they are duly considered, studied, discussed and decided upon.

However, it may not always be practicable to convene a physical meeting of the Board to discuss matters on which decisions are needed urgently. In such circumstances, passing of resolution by circulation can be resorted to. However, such an action has to be mandated by the Articles of Association of the company, which should also specifically mention the minimum 'signature quorum' required for adopting the resolution concerned. But passing of a resolution by circulation, however, does not constitute the holding of a Board meeting. Further, matters which are not of routine nature and warrants thorough considerations by the Board should not be placed for passing by the Board by way of circulation since

it limits detailed discussions by the Board members. A list of matters which are not to be passed by means of resolution by circulation is attached as Appendix to this Standard.

The passing of a resolution by circulation is never a regular practice and is to be resorted to under constrained situations only. Accordingly, this 'Standard' is neither an encouragement nor endorsement for passing of a resolution by circulation.

B. DEFINITIONS

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

'Act' means the Companies Act, 1994 (Act No. XVIII of 1994), or any statutory modification or re-enactment thereof.

'Articles' means the Articles of Association of a company, as originally framed or as altered from time to time, including, where they apply, the Regulations contained in the Schedule-I of the Act.

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

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

'Director' means an individual who is a member of the Board of Directors of a company and also means the Chairperson or an Independent Director.

'Interested Director' means a Director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, Director, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company or defined by any Regulatory Authority.

'Quorum' means the minimum number of Directors whose presence is necessary for conducting a valid meeting.

'Security Laws' mean any security law or laws issued by the Bangladesh Securities and Exchange Commission from time to time.

'SSB' means Secretarial Standards Board.

'Secretary' means the Company Secretary of a company or companies.

'Signature quorum' means the minimum number of signatures required for the resolution to be considered passed by means of circulation as specified in the Articles of Association of the company or stated in any other applicable law.

'Meeting' means a duly convened, held and conducted meeting of the Board of Directors of a company.

Words and Expressions used but not defined herein should have the same meaning respectively as assigned to them under the Act and BSS-1 published by ICSB.

Words and Terms used in masculine gender should include feminine if applicable.

Words and Terms used in plural number should include singular if applicable.

C. SCOPE

The principles enunciated in this Standard for passing of resolutions by circulation by the Board of Directors are also applicable to resolutions passed by circulation under any other applicable Laws, Rules, Regulations and Articles of Association.

D. SECRETARIAL STANDARDS

The following is the text of 'Bangladesh Secretarial Standard on 'Resolutions by Circulation (RBC)' issued by the Council of the Institute of Chartered Secretaries of Bangladesh (ICSB) and called as Bangladesh Secretarial Standard - 6 (BSS-6).

In this Secretarial Standard, the Standard portions have been set in 'Italic Type'.

1. AUTHORITY

- 1.1 *The Chairman of the Board of the Company should decide whether the approval of the Board for a particular business should be obtained by means of a resolution by circulation.*
- 1.2 *If the resolution is proposed by any other Director, the approval of the Chairman or in his absence consent of the majority of the Directors should be obtained before the draft resolution is circulated to all the Directors.*

2. PROCEDURE

- 2.1 *A resolution proposed to be passed by circulation should be sent in draft form, together with the necessary papers/clarifications, individually to all the Directors at the same time. There should be a date of the proposed resolution and a date by which the resolution is to be returned, signed or otherwise. The resolution together with all papers should be sent to all resident and non-resident Directors. Notice and Agenda are not necessary for passing of a Resolution by circulation.*
- 2.2 *Each business proposed to be passed by way of resolution by circulation should be explained by a note setting out the details of the proposal and the draft of the exact resolution proposed. The note should also indicate how to signify assent or dissent to the resolution proposed.*
- 2.3 *The draft of the resolution to be passed and the necessary papers should be circulated by hand, or by post or courier, or by facsimile, or by email or by any other recognised electronic modes.*

It is preferable that one resolution is sent under one covering letter or one e-mail.

If more than one resolution is sent under the same covering letter or e-mail, the approval of the Directors should be individually obtained for each resolution.

3. APPROVAL

- 3.1 *The resolution is passed, when it is approved by a majority of Directors (not being less than the number fixed for 'signature quorum') entitled to vote on the resolution other than Interested Directors on the resolution.*

If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the resolution should be passed only with the assent of such special majority or such affirmative vote.

- 3.2 *Directors signify their assent or dissent by signing the resolution to be passed by circulation or by e-mail or any other electronic means. A scanned copy of the signed response may also be sent. Any dissent to the resolution must be categorically mentioned on the paper concerned. The date of the resolution is to be taken as the date of the resolution passed.*

In cases where the interest of a director is yet to be communicated to the company, the Director concerned should disclose his interest and abstain from signing the resolution mentioning the reason thereof.

If the approval of the Directors required under signature quorum is not received by the date specified for receipt of such approval, the resolution should be considered not passed.

4. RECORDING

- 4.1 *Resolutions passed by circulation should be noted at the next meeting of the Board and the decision recorded in the minutes of such meeting.*

The minutes should record the exact text of the resolution passed, and the note of dissent, if any.

Minutes should also record the fact that an Interested Director did not vote on the resolution. The names of Directors who have abstained from signing on the resolution should also be recorded.

5. VALIDITY

- 5.1 *Passing of resolution by circulation should be deemed valid as if it had been passed at a duly convened meeting of the Board.*

This does not, however, dispense with the requirement for the Board to meet at the specified frequency.

EFFECTIVE DATE

This Standard has been approved by the Council of the Institute of Chartered Secretaries of Bangladesh (ICSB) on December 5 2020 with immediate effect.

APPENDIX

Matters to be passed at a duly convened Board Meeting and which ideally should not be passed by means of resolution by circulation:

1. To make calls on shares in respect of unpaid share capital of the company,
2. To issue debentures,
3. To borrow money otherwise than on debentures,
4. To invest the funds of the Company,
5. To buy-back its own securities,
6. To grant corporate guarantee or any other security to anybody,
7. To make investment in shares of other companies,
8. To make declaration of solvency with respect to winding up,
9. To enter into joint venture and collaboration agreement,
10. To commence a new business/venture,
11. To approve mergers and acquisitions,
12. To shift the location of plant or factory or a registered office,
13. To fill casual vacancy in the Board,
14. To appoint or remove senior management personnel as mentioned in the BSEC CG Code,
15. To appoint statutory and Corporate Governance compliance auditors, subject to vetting at AGM,
16. To appoint internal auditors, cost auditors or secretarial auditors,

17. Appointment, removal or resignation of Managing Director or whole-time Director,
18. To make Price Sensitive Information (PSI) and any other public disclosures,
19. Forfeiture of shares,
20. Granting loans to Directors or Related Party,
21. To sanction contracts in which a director is interested,
22. To grant loans or any other security to any holding/ subsidiary/ associate company,
23. Noting of Directors' interest,
24. Noting of Directors' shareholdings,
25. Appointment of the Company Secretary and Chief Financial Officer,
26. Appointment of sole-selling agents,
27. To approve quarterly, half-yearly and annual accounts and cost accounts,
28. To approve Directors' Report and the Annual Report,
29. To approve IPO and Prospectus,
30. Annual operating plans and budgets,
31. Any material default in financial obligations,
32. Noting of statutory compliance reports, show cause notices, prosecutions and penalty notices of material nature,
33. Sale of investments, subsidiaries or assets which is not in the normal course of business,
34. Any issue which involves possible public or product liability claims,
35. Transactions that involve substantial payment towards goodwill, brand equity or intellectual property,
36. Foreign exchange exposures and the steps taken by Management to limit the risks of adverse exchange rate movements/fluctuations,
37. To accept fixed deposits and related matters.
38. To change name of the company.