

Essential Role of Minutes in Corporate Governance

Date : June 28, 2024



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Essential Role of Minutes in Corporate Governance

- Board meetings play a key role in company governance, necessitating meticulous documentation through minutes.
- Section 118(10) requires adherence to ICSI secretarial standards, specifying detailed maintenance protocols for minutes.
- The ROC's scrutiny revealed lapses in minute maintenance dating back 16 years prompting penalties on the company, its directors, and the company secretary.

INTRODUCTION

Board meetings are key to the governance and strategic direction of any company. Thorough documentation of these meetings, particularly through the maintenance of minutes as mandated under the provisions of the Companies Act, 2013 ('**CA 2013**') and by the secretarial standards issued by the Institute of Company Secretaries of India (**ICSI**), is critical. *Minutes* serve as the official record of the discussions and decisions made by the board. Adhering to secretarial standards^[1] in maintaining these minutes ensures compliance with legal requirements and promotes good governance practices.

The CA 2013 requires that minutes contain a fair and correct summary of the proceedings^[2] In case of a board meeting, or meeting of committees of board, the minutes should include the names of directors present, and if a resolution was passed, the names of directors dissenting to it.^[3] The Chairman exercises complete discretion pertaining to exclusion of matters which could be defamatory, irrelevant to proceedings or detrimental to interest of the company.^[4]

In this hotline, we discuss the recent order of the Registrar of Companies (**ROC**) penalising **Wind World (India) Limited** for not complying with requirements of maintaining minutes of meeting, as stipulated under the provisions of the CA 2013, thus violating provision 118(10) of the Companies Act, 2013. We examine legal framework governing maintenance of minutes of meeting to shed light on the RoC's approach in the said order.

LEGAL FRAMEWORK

"*Minutes*" means a formal written record, in physical or electronic form, of the proceedings of a Meeting^[5]. The minutes are prepared by the company secretary or any person authorized by the board of directors. These minutes serve as a formal *record* of the proceedings and *decisions* taken during the meeting. Minutes of the meeting is a document that captures the important discussions, decisions, and actions taken during a meeting. This document is essential as it serves as evidence of the proceedings and decisions made during the meeting. It provides a clear and concise record of the discussions that took place and the decisions that were made.

Further, minutes kept in accordance with the provisions of the CA 2013 can serve as evidence in any proceeding^[6]. Also, if the minutes are kept in accordance with the provisions of section 118 of the CA 2013, then, until the contrary is proved, the meetings are deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting are deemed to be valid^[7].

Section 118(1) of the CA 2013 read with Rule 25 Companies (Management and Administration) Rules, 2014, provides for each company maintaining a distinct minute book for each type of meeting namely, general meetings of the members, meetings of the creditors, meetings of the board of directors, meetings of each of the committees of the board. It further provides for:

- Maintaining minutes of proceedings of each meeting in a book within thirty days of the conclusion of meeting.
- Each page of such book to be initialled or signed and last page of the record of proceedings of each meeting to be dated and signed.
- Signing of minutes by the chairman of the said meeting or the chairman of the next succeeding meeting.

Section 118 (10) of the CA 2013 requires every company to observe secretarial standards with respect to general and board meetings specified by the ICSI. Standard 7 of the Secretarial Standards - 1 provides directions for maintenance of the minutes of board meeting, which includes:

- Minutes to be maintained in physical or electronic form.
- Pages of the minutes book to be consecutively numbered.
- Minutes shall be bound periodically if maintained in loose leaf form.
- Minutes books to be kept at the registered office of the company or at such other place as may be approved by the board.
- 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.
- Minutes to be entered in the minutes book within thirty days from the date of conclusion of the meeting.
- Minutes, once entered in the minutes book, shall not be altered.
- Minutes of all meetings shall be preserved permanently in physical or in electronic form with timestamp.

ROC'S OBSERVATIONS

In a striking example of regulatory diligence, the RoC recently initiated penal action against **Wind World (India) Limited** for non-

compliance with secretarial standards dating back 16 years. The case involved the minutes of a board meeting held on November 29, 2007, which were found to be undated, unsigned with a place of signing, and improperly bound. These lapses were discovered during an inspection and inquiry conducted under the provisions of the CA 2013. Although the CA 2013 and mandatory secretarial standards came into effect from September 12, 2013, similar provisions existed in the erstwhile Companies Act 1956 under Section 193. This required that minutes of board meetings be documented, dated, signed, and bound properly within 30 days of the meeting. Further, secretarial standards, even though made mandatory under the CA 2013 regime, they were issued by the ICSI in the year 2000 and were voluntarily adhered to by several companies.

The violations identified were:

- **Absence of Date:** The minutes did not include the date.
- **Missing Place of Signing:** The minutes didn't include the place where it has been signed.
- **Improper Binding:** The minutes were not bound properly.

The RoC's inspection officials observed these discrepancies during an inquiry under Section 206 of the CA 2013. The company's failure to adhere to the mandatory requirements was seen as a violation of Section 118(10), thus warranting penal action under Section 118(11).

Upon being notified, a director of Wind World (India) Limited responded that the concerned issues had been rectified by putting the place and date of the signing in the same. However, the reply was deemed unsatisfactory, leading the RoC to escalate the matter to the Directorate of Ministry of Corporate Affairs. Consequently, an adjudication notice was issued under Section 454(4) of the CA 2013, which the company failed to adequately respond to.

After considering the facts, the RoC imposed penalties on the company, its directors, and the company secretary. The penalties, totalling INR 90,000, were levied for not binding the minutes book periodically and for not dating and specifying the place of signing the minutes. The breakdown of the penalties is as follows:

- Company: INR 50,000
- Directors: INR 10,000 per director
- Company Secretary: INR 10,000

CONCLUSION:

This case highlights the rigorous enforcement capabilities of regulatory authorities and the importance of meticulous compliance with secretarial standards. Companies must ensure that their secretarial practices are robust, comprehensive, and in line with statutory requirements to avoid significant penalties and reputational damage. Any default or non-compliance with these provisions in respect of any meeting invites penal action from regulators. Given the stringent penalty provisions under the CA 2013, it is crucial for companies to ensure absolute compliance with all requirements under the CA 2013, relevant rules, and applicable secretarial standards.

It is important for the company secretary, and in their absence, the directors and other authorized officials of the company, to ensure compliance with the mandatory requirements as per the provisions of the CA 2013. As demonstrated in this case, regulators can retroactively inspect records from many years prior, as they did by going back almost 16 years, and initiate legal actions for any default or non-compliance. The case of *Wind World (India) Limited* serves as an important reminder of the importance of secretarial standards and the potential consequences of non-compliance. It underscores the need for rigorous governance practices to uphold the integrity and transparency of corporate operations.

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(The authors would like to acknowledge and thank Purva Mandale, Third Year, LLB, Symbiosis Law School, Pune, for her contribution to this article.)

[1] Section 118(10) of CA 2013

[2] Section 118(2) of CA 2013

[3] Section 118(4) of CA 2013

[4] Section 118(5) and 118(6) of CA 2013

[5] https://www.icsi.edu/media/webmodules/Final_SS-1.pdf

[6] Section 118(7) of CA 2013

[7] Section 118(8) of CA 2013