Enhanced Disclosures Regime – Companies Act, 2013
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Corrigendum to FAQs on e-voting
Circulars/Notifications

CS R. Sridharan, President, ICSI unfurling the National Flag on the occasion of 68th Independence Day on 15th August 2014 at ICSI House, Lodi Road, New Delhi.
Message from President

Dear Member,

When I started writing this column, historical speech on the eve of Independence Day by Shri Jawaharlal Nehru, First Prime Minister of India and the Architect of Modern India at the constituent assembly on the night of August 15, 1947, came to my mind instantaneously not only for the style of prose, his thoughts, his aspirations, which was a grand curtain raiser for the free India’s Agenda for Progress. It kindles our thoughts, touches our conscience and stimulates for action. I am reproducing hereunder certain portions of the address:

Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance.

It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

One of the important aspects of Companies Act, 2013, is the introduction of Section 135(1) with respect of Corporate Social Responsibility [CSR]. When Pundit Jawaharlal Nehru strongly advocated the participation of common man of India for the larger cause of humanity, as professionals, we cannot afford to lag behind. Therefore, we need to go beyond the compliances under the law and involve ourselves with all passion and enthusiasm in CSR activities.

For ensuring robust governance architecture, the role of independent directors has become critical. Their increased presence in the board rooms has been hailed as harbingers, to strike right chord between, individual, economic, social and stakeholders of a company. I am happy to inform you that on 11th August 2014, the Independent Directors Data Base Portal was made operational. At the function held at ICSI-SIRC Chennai, myself and CMA (Dr.) A S Durga Prasad, President of the Institute of Cost Accountants of India participated while, CA K Raghu, President, The Institute of Chartered Accountants of India participated in the said function from Bangalore. Creation of the portal is the initiative of MCA and the formal launch of the portal has been scheduled some time later.

Our actions as well as inactions to be justified within the context of code of conduct. Both the means and ends of our actions to be justifiable. We should not be guided by the irrational impulses, biased emotions, partisan views, but rather through free will with pragmatic approach. I am concluding this column with a quote from Jawaharlal Nehru – “The purely agitational attitude is not good enough for a detailed consideration of a subject”

On this solemn day of India’s independence day, let us re-dedicate ourselves for building up of strong, vibrant, energetic India.

My Independence Day Greetings to all of you!

CS R. Sridharan
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The Council

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R. Sridharan

Vice-President
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(in alphabetical order)
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Sutanu Sinha

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Launch of 'Independent Directors Repository Portal' on Monday the 11th August 2014 at ICSI – SIRC House, Chennai

Shri R. Sridharan, President, ICSI; CMA (Dr.) A S Durga Prasad, President, The Institute of Cost Accountants of India; CS (Dr.) Baiju Ramachandran, Chairman, SIRC-ICSI

Laying of Foundation Stone of “ICSI House-Faridabad” on 3rd August, 2014
Addressing Shri Krishan Pal, Hon’ble Minister of State Road Transport Highways & Shipping.

Sitting on the dais from L to R: Shri N K Goel, Chairman, Faridabad Chapter; Shri Sanjay Grover, Chairman-Building Committee of Faridabad Chapter and Council Member, ICSI; Shri R. Sridharan, President, ICSI; Shri Vikas Y Khare, Vice-President, ICSI; Shri M.S. Sahoo, Secretary, ICSI; Shri Shyam Aggarwal, Chairman, NIRC-ICSI
National Seminar on Governance, Administration & Management of Companies Act, 2013 held on August 1st & 2nd, 2014 at SCOPE Convention Centre, CGO Complex, New Delhi

Sitting on the dais from L to R: Shri Sutanu Sinha, CE, ICSI; Shri Vikas Y Khare Vice President, ICSI; Dr. U D Choubey, Director General, SCOPE and Council Member, ICSI; Shri Sanjay Grover, Program Director and Chairman, Corporate Law and Governance Committee

MCA-ICSI Investor Awareness Seminar on August 09, 2014 Hotel Buddha Heritage, Patna

Sitting on the dais from L to R: CS Manjay Kumar, Secretary, Patna Chapter of ICSI; Shri Lalan Kumar, State Vice President, RJD (Business Cell), Bihar; Shri Sumit Kumar Singh, Member of Legislative Assembly, Bihar; Shri Rajendra Prasad, Retired Justice, Patna High Court; CS Subir Kumar, Chairman, Patna Chapter of ICSI and CS Saurabh Kumar Sonu, Vice Chairman & Treasurer, Patna Chapter of ICSI
ENHANCED DISCLOSURES REGIME - COMPANIES ACT, 2013

Lakshmi Arun*

Enhanced disclosures being the primary agenda of Companies Act 2013, as stated in the Statement of objects and reason, the Board disclosures under Companies Act 2013, spans over the entire Act and different Rules made there under. Besides listing agreement mandates certain disclosures by listed companies.

In this Article attempts to highlight the important Board disclosures under the following heads.

1. **Board Disclosures under Companies Act 2013 (Section 134 and other relevant sections) and Rules made there under**
2. **Board disclosures under Listing Agreement**

BOARD DISCLOSURES UNDER COMPANIES ACT 2013 AND RULES MADE THERE UNDER

DISCLOSURES UNDER SECTION 134 OF COMPANIES ACT 2013

The Board’s Report shall be attached to every copy of financial statement laid before the company. The section also provide for penal provisions for the company and for the every officer of the company in the case of any contravention.

Section 134(3) Provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(a) the extract of the annual return as provided under **Section 92(3)** An extract of the annual return in such form as may be prescribed shall form part of the Board’s report. (prescribed under rule 12(1) and form MGT 9, Companies(management and administration) Rule 2014

(b) number of meetings of the Board;

(c) Directors’ Responsibility Statement

(d) a statement on declaration given by **independent directors** under section 149(6)

(e) in case of a company covered under sub-section (1) of section 178, company’s policy on directors’ appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters as given under sub-section (3) of section 178.

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

   (i) by the auditor in his report; and

   (ii) by the company secretary in practice in his secretarial audit report.

(g) particulars of loans, guarantees or investments under section 186.

* Deputy Director, Dte. of Academics, ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.
(h) particulars of contracts or arrangements with related parties referred to in sub-section (I) of section 188 in the prescribed form.

(i) the state of the company’s affairs.

(j) the amounts, if any, which it proposes to carry to any reserves.

(k) the amount, if any, which it recommends should be paid by way of dividend.

(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report.

(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.

(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

(q) such other matters as may be prescribed.

OTHER DISCLOSURES UNDER COMPANIES ACT 2013

- As per section 149(10) an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board’s report. [Subject to the provision of 152 (i.e. Appointment of Directors)]

- Board’s Report shall disclose the composition of audit committee under section 177(8) and also discloses the recommendation of the audit committee which is not accepted by the board along with reason thereof.

- Proviso to section 177(10) prescribes that the disclosure in board’s report includes the detail of establishment of vigil mechanism[under section 177(9)].

- Remuneration policy to be disclosed as stated in proviso to section 178(4)

- Secretarial Audit report by required companies as required under Section 204(1)
DISCLOSURES UNDER VARIOUS RULES MADE UNDER COMPANIES ACT, 2013

I. Matters to be included in Board’s report [Rule 8 of Companies(Accounts) Rules 2014].-

As per Rule 8 of Companies(Accounts)Rules 2014 following matters to be disclose in the Board’s Report:-

(1) The Board’s Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

(3) The report of the Board shall contain the required information under the following heads, namely:-

(A) Conservation of energy
(B) Technology absorption
(C) Foreign exchange earnings and Outgo

Further Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

(4) In addition to the information, the report of the Board shall also contain –

(i) the financial summary or highlights;
(ii) the change in the nature of business, if any;
(iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
(iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
(v) the details relating to deposits, covered under Chapter V of the Act,-

(a) accepted during the year;
(b) remained unpaid or unclaimed as at the end of the year;
(c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-

(i) at the beginning of the year;
(ii) maximum during the year;

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(iii) at the end of the year;

(vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

(vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future;

(viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

II. Disclosure under Companies( Share Capital and Debenture) Rules, 2014

Disclosures pursuant to shares with differential voting rights

The Board of Directors shall, *inter alia*, disclose in the Board’s Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, namely:-

(a) the total number of shares allotted with differential rights.

(b) the details of the differential rights relating to voting rights and dividends.

(c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital.

(d) the price at which such shares have been issued.

(e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued.

(f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights.

(g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards.

(h) the pre and post issue shareholding pattern along with voting rights in the format specified under rule 4(2).

Disclosure in pursuit to Issue of Sweat Equity Shares

As per sub rule (13) of rule 8 the Board of Directors shall, *inter alia*, disclose in the Directors’ Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

(a) the class of director or employee to whom sweat equity shares were issued.

(b) the class of shares issued as Sweat Equity Shares.
(c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital.

(d) the reasons or justification for the issue.

(e) the principal terms and conditions for issue of sweat equity shares, including pricing formula.

(f) the total number of shares arising as a result of issue of sweat equity shares.

(g) the percentage of the sweat equity shares of the total post issued and paid up share capital.

(h) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares.

(i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

**Disclosure pursuit to Employee Stock Option and Employee Stock Purchase Schemes**

As per the rule 12(9) of Companies(Share Capital and Debenture)Rules 2014, the Board of directors, shall, inter alia, disclose in the Directors’ Report for the year, the following details of the Employees Stock Option Scheme:

(a) options granted;

(b) options vested;

(c) options exercised;

(d) the total number of shares arising as a result of exercise of option;

(e) options lapsed;

(f) the exercise price;

(g) variation of terms of options;

(h) money realized by exercise of options;

(i) total number of options in force;

(j) employee wise details of options granted to:

   (i) key managerial personnel;

   (ii) any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.

   (iii) identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;
Disclosure pursuant to purchase of its own shares by employees or by trustees for the benefit of employees

Section 67(2) provides that no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

Section 67(3) also provides that nothing in sub-section (2) shall apply to—

(a) the lending of money by a banking company in the ordinary course of its business;

(b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;

(c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership:

Rule 16(4) Companies (Share Capital and Debentures) Rules, 2014

When the voting rights are not exercised directly by the employees in respect of shares to which the scheme relates, the Board of Directors shall, inter alia, disclose in the Board’s report for the relevant financial year the following details, namely:-

(a) the names of the employees who have not exercised the voting rights directly;

(b) the reasons for not voting directly;

(c) the name of the person who is exercising such voting rights;

(d) the number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company;

(e) the date of the general meeting in which such voting power was exercised;

(f) the resolutions on which votes have been cast by persons holding such voting power;

(g) the percentage of such voting power to the total voting power on each resolution;

(h) whether the votes were cast in favour of or against the resolution.
III. Rule 5 of Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014:-

Rule 5(1) of Companies (Appointment & Remuneration) Rules, 2014 made under Chapter IV provides the following disclosure by the listed companies in the Board’s Report:-

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;

(ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;

(iii) the percentage increase in the median remuneration of employees in the financial year;

(iv) the number of permanent employees on the rolls of company;

(v) the explanation on the relationship between average increase in remuneration and company performance;

(vi) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;

(vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;

(viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;

(ix) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;

(x) the key parameters for any variable component of remuneration availed by the directors;

(xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and

(xii) affirmation that the remuneration is as per the remuneration policy of the company.
Rule 5(2) of Companies (Appointment and Remuneration) Rules, 2014 made under Chapter IV provides the following disclosure on particulars of employees:

The board’s report shall include a statement showing the name of every employee of the company, who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

The statement referred to in sub-rule (2) shall also indicate -

(i) designation of the employee;

(ii) remuneration received;

(iii) nature of employment, whether contractual or otherwise;

(iv) qualifications and experience of the employee;

(v) date of commencement of employment;

(vi) the age of such employee;

(vii) the last employment held by such employee before joining the company;

(viii) the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2) above; and

(ix) whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager:

Proviso(i) says that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board’s report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports:

Proviso(ii) says that such particulars shall be made available to any shareholder on a specific request made by him in writing before the date of such Annual General Meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company within three days from the date of receipt of such request from shareholders:
Proviso(iii) says that in case of request received even after the date of completion of Annual General Meeting, such particulars shall be made available to the shareholders within seven days from the date of receipt of such request.

IV. Rule 8 of Companies (Corporate Social Responsibility) Rules, 2014

Section 135(2) provides that the Board’s report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.[also refer the rule 8 of Companies (Corporate Social Responsibility) Rules 2014]

Rule 8 of Companies (Corporate Social Responsibility) Rules, 2014 prescribes that the following CSR reporting:

i) The Board’s Report of a company under these rules pertaining to a financial year commencing on or after 1st day of April, 2014 shall include an Annual Report on CSR containing particulars specified in Annexure.

ii) In case of a foreign company, the balance sheet filed under section 381(1)(b) shall contain an Annexure regarding report on CSR.

DISCLOSURES PURSUANT TO THE LISTING AGREEMENT OF STOCK EXCHANGES

I. Management Discussion and Analysis Report

Clause 49 (IV) (F) of the listing agreement provides that as a part of the directors’ report or as an addition thereto, a Management Discussion and Analysis Report (MDAR) should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company’s competitive position:

1. Industry structure and developments.
2. Opportunities and Threats.
4. Outlook.
5. Risks and concerns.
6. Internal control systems and their adequacy.
7. Discussion on financial performance with respect to operational performance.
8. Material developments in Human Resources / Industrial Relations front, including number of people employed.

Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

II. Corporate Governance Report

Corporate governance aims to improve the company’s image, efficiency, effectiveness and social responsibility. It encompasses in itself a range of corporate controls and accountability mechanisms designed to meet the aims of corporate stockholders. It deals
with issues regarding transparency accounting integrity, composition of the board of directors, the role of non-executive directors and their accountability to shareholders, etc.

Clause 49 (VI) of the listing agreement relates to reporting on corporate governance. It provides that there shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.

III. Disclosures as required by other clauses of Listing Agreement

The following disclosures are also to be made by the Board in its report under clause 32:

(i) in case the shares are delisted, the fact of delisting, together with reasons therefore;
(ii) in case the securities are suspended from trading, the reasons therefore;
(iii) the name and address of each stock exchange at which the company's securities are listed and also confirmation that annual listing fee has been paid to each such exchange.
**GENERAL MEETINGS, KINDS OF APPROVALS AND COMPLIANCES - AN OVERVIEW**  
Chitranjan Pal*

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year.

This article attempts to cover the broad regulatory scenario, procedural aspects involved, kinds of approval for holding General Meetings.

**General Meeting – A general Regulatory overview**

- Annual general meeting should be held once every year.
- First annual general meeting of the company should be held within 9 months from the closing of the first financial year.
- Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
- In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months.
- An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday.
- If any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient.
- All other businesses transacted at an Annual General Meeting except the consideration of financial statements and the reports of the Board of Directors and auditors; the declaration of any dividend; the appointment of directors in place of those retiring; the appointment of, and the fixing of the remuneration of, the auditors, are special business.
- All general meetings other than annual general meetings are called extraordinary general meetings.
- All businesses items can be transacted at the extraordinary general meetings are special business.
- Extraordinary General Meetings can be called by the Board, by the Board on requisition of shareholders, by requisitionists, by tribunal.
- A general meeting of a company may be called by giving not less than 21 clear days’ notice either in writing or through electronic mode.
- Every member of the company, legal representative of any deceased member or the assignee of an insolvent member; the auditor or auditors of the company; and every director of the company are entitled to notice of general meetings.

* AEO, Dte. of Academics, ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.
Quorum for (a) Public company is, 5 members personally present if the number of members as on the date of meeting is not more than 1000; 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000; and 30 members personally present if the number of members as on the date of the meeting exceeds 5000. And in case of (b) Private company: 2 members personally present, shall be the quorum for a meeting of the company.

Every listed company or a company having not less than 1000 shareholders shall provide to its members facility to exercise their right to vote at general meetings by electronic means.

One person company need not hold an Annual General Meeting.

Steps involved in holding General Meetings

- To convene a Board meeting to transact the following business.
  1. To consider and discuss the report of Audit Committee on the Annual accounts.
  2. To approve the accounts and authorise signing of accounts.
  3. To secure Auditor’s report on the accounts.
  4. To approve the draft of the Board’s Report in compliance with the provisions of Section 134 of the Act and to authorise the Chairman to sign the Report on behalf of the Board.
  5. To consider the payment of dividend, if any, in case it is to be declared in the Annual General Meeting
  6. To fix time, date and place for the annual general meeting, approve the draft notice and also authorise the Secretary to issue Notice for the meeting.
  7. To consider the closure of Register of Members and the necessary notices to stock exchanges and its publication in case of listed companies.

- Invite the Auditors

- To give advance notice to the Stock exchanges, where securities are listed.

- Inform the stock exchanges of the dividends and/or cash bonuses recommended by the Board and other necessary intimation and such intimation has to be sent within 15 minutes of closure of the Board meeting.

- To arrange for the publication in a newspaper of at least 7 days previous notice of closure of the Register of Members and the Share Transfer Books.

- In case of listed company, close the registers for the period as advertised and inform all the stock exchanges by giving a notice in advance of at least 7 working days.

- To issue notice to the shareholders, for at least 21 clear days before the date of annual general meeting and where it is to be sent by post, it should be posted 48 hours still earlier.

- In case of listed company, send six copies of the directors’ report, balance sheet and profit and loss account and three copies of the notices to such stock exchange(s) and one copy of each of them to all other recognised stock exchanges in India.

- Check proxies with the Register of Members as and when they are received, from day to day, so that an up-to-date position is available till the date of the meeting.
To prepare Dividend List from the Register of Members/beneficial owners, as on the last date of the closure of the Register of Members and the Share Transfer Books.

To arrange for the collection of admission slips or in the alternative to get the Attendance Register signed by the shareholders, and to make them comfortable in their seats, and to look to the comfort and convenience of the directors and the chairman.

To read out the notice of the meeting if advised by the Chairman.

To read out the Auditor’s Report, if advised by the Chairman, when the item relating to adoption of accounts is taken up for consideration.

To produce copies of Memorandum and Articles of Association of the company.

To help the Chairman in the conduct of the meeting, particularly in the conduct of poll, counting of votes etc.

To supply to the Chairman any information which he may require in connection with the queries raised by the shareholders relating to accounts and other connected matters.

Give advance information to the members who are to propose and second the resolutions to be passed at the meeting.

To take notes of the proceedings for the purpose of preparing minutes thereof.

To keep at the meeting, Register of Members, Minutes Book of the general meeting containing minutes of the previous annual general meeting(s), copies of the accounts, notice of the meeting and reports of the directors and of the auditors.

To ensure that the Chairman of the Audit Committee is present at annual general meeting to provide any clarification on matters relating to audit and to answer shareholder queries;

To prepare minutes of the proceedings.

To record the minutes of the meeting and get them signed by the Chairman within thirty days of the meeting.

To send intimation of appointment/re-appointment of directors. File Form DIR - 12 with the Registrar of Companies within 30 days of appointment along with filing fee.

To send intimation of appointment/re-appointment of auditors.

To file copies of the special and other resolutions, if any, passed at the meeting, along with Form MGT – 14 with the Registrar of Companies, within thirty days of the meeting.

To file balance sheet, profit and loss account, reports of the directors and the auditors and the notice of the meeting within thirty days of the meeting.

In case of listed company, send a copy of the proceedings of the annual general meeting to the stock exchange.

Deposit dividend distribution tax at the applicable rate within the prescribed time limit under Income-tax Act, 1961.
Where the company has invited public deposits, a copy of the Balance sheet shall be forwarded to the RBI.

To open a separate bank account known as “Dividend Account for the year…….” and to deposit the total amount of dividend within five days from the date of declaration of dividend.

To get the Dividend Warrants and Notice of Dividend signed by authorised persons.

To despatch Dividend Warrants to the shareholders within thirty days of the declaration of dividend.

To take action on other decisions of the shareholders.

If the company is listed then to submit to the stock exchange, within 48 hours of conclusion of annual general meeting, details regarding the voting results in the format as prescribed in clause 35A of the listing agreement.

Every listed public company required to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is to be filed with the Registrar in Form No. MGT. 15 within thirty days of the conclusion of annual general meeting.

To file other necessary documents such as Annual Return secretarial audit report etc.,

Types of approvals from shareholders in general meetings

Companies Act, 2013 requires certain transactions to be approved through

i. Ordinary resolution

ii. Special Resolution

Transactions requiring approval through Special resolution includes the following

- for altering Articles of Association of a public company for providing that specified clauses can be altered only if conditions restrictive than those applicable in case of special resolutions are met.
- for shifting the registered office outside the local limits of any city, town or village.
- for altering the Memorandum of Association, subject to other conditions, as provided.
- for altering its objects clause, if a company has raised money from public through prospectus for such object and any amount of such issued capital is still unutilized.
- for altering the Articles of Association.
- Re-appointment of independent director.
- altering the terms of contract referred to in or objects for which prospectus is issued at any time by the company.
- varying the rights attached to the share of any particular class, in case of different classes of Shares, in the meeting of that particular class of Shareholders, subject to certain other conditions.
- for issuing the Sweat Equity Shares, subject to other conditions.
• to offer the shares to persons other than the existing shareholders or employees by the Company having share capital, subject to other conditions.
• for issuing the debentures or loan containing the option of conversion into shares.
• for issuing further shares to employees under Employees Stock Option, subject to such conditions as may be prescribed.
• for reduction of share capital.
• for creating the provision of money for purchase of or subscription for fully paid-up share in the company or its holding company; if such purchase or subscription is for benefit of employees or to be held by them.
• Special resolution is required for the buy-back of the shares and other specified securities of the Company, subject to certain other conditions
• for issuing debentures which are either wholly or partly convertible into shares at the time of redemption
• for keeping the registers and the annual return at any place other than the registered office [where more than one-tenth of the total members of the Company resides] in India
• to appoint any auditor other than the retiring auditor or for providing that the retiring auditor shall not be re-appointed.
• for removal of auditor from his office before the expiry of his term subject to the approval of central government.
• for appointing more than 15 directors.
• to sell, lease or otherwise dispose of the whole or substantially of the whole of the undertaking of the company.
• to invest, otherwise in trust securities, the amount of compensation received by it as a result of any merger or amalgamation.
• to borrow money exceeding the aggregate of its paid-up share capital and free reserves.
• to remit, or give time for the repayment of any debt due from a director.
• to permit Managing and Whole-time director, to avail loan from the Company or avail guarantee or any security in connection with any loan taken by them.
• for granting any loan or providing any security or guarantee in connection with any loan or for making any investment by way of subscription, purchase or otherwise for an amount exceeding the prescribed limit.
• for entering into any specified contract or arrangement with the related party, in case of Companies having prescribed paid up capital or the amount of the transaction to be entered exceeds the prescribed amount, subject to other conditions.
• to appointment any person as a Managing Director, Whole-Time Director, Manager, who has attained the age of 70.
• for fixing the remuneration of any director including any managing or whole-time director or manager, if such manner of fixing remuneration is provided in the articles.
• in case the affairs of the company are ought to be investigated
• to file an application on specified grounds by the company to the Registrar of Companies for removing its name from the register
• for approving the scheme in the general meeting of both of the companies, in addition to the approval of the creditors, in case scheme provides for the amalgamation of the sick company with other company
• for winding up a company by the Tribunal.
• for voluntarily winding up a company.
• for the purpose of the removal of the official liquidator.

Transactions requiring Ordinary Resolution includes the following
• for changing the name of the Company on direction of the Registrar if it is found that the application for the reservation of name with Registrar was applied by furnishing false information
• to change the name of the company on direction of the Central Government, if the Central Government is of the opinion that the name of the Company is similar to any other company or on any application made by the proprietor of registered trademark
• to alter the capital clause of Memorandum of Association for Limited Company having share capital.
• by Limited Company having share capital to convert all or any of its fully paid-up shares into stock and reconvert that stock into fully paid-up shares of any denomination.
• on recommendation of the Board is required to capitalize the profits or reserves for the purpose of issuing fully paid-up bonus shares
• by Unlimited Company for providing reserve share capital on its re-registration as a Limited Company
• by the company to accept the deposit from the members, subject to certain conditions.
• to be passed in the Extra Ordinary General Meeting for appointing the auditor, in case of the companies other than the government companies, if the first auditor is not appointed by the board within 30 days of registration of the company
• is required by the company to appoint any Director
• for removing any director before the expiry of term, other than the director appointed by the tribunal under section 242. -
• for entering any non-cash transactions in which directors of the Company or holding subsidiary or associate Company are involved.
• for appointing a Managing Director, Whole-Time Director, Manager
• for voluntarily winding up of the company in case of the expiry of the period of its duration if any or on the occurrence of any event where in the articles it is provided that it should be dissolved.
• for appointing the liquidator from the panel prepared by the Central Government for the purpose of winding up the affairs of the Company.
• for the dissolution of the company by the majority of the members, if they are satisfied that company should be wound up, after considering the liquidator's report.
Executive Summary

Provisions for Corporate Social Responsibility (CSR) are not new to the companies pertaining in multi-national environment. Annual Reports of almost all major companies world over carry a note on their CSR initiatives, whether or not its mandatory. Apart from the mandatory requirements in some of the countries, some companies are opting for in voluntarily. Some companies look at it as gratitude and indebtedness to the society as a whole in which they do business, contrastingly; some companies look at it more as a statutory compliance, and on the other hand, some companies look at it as a branding or image makeover/facelift exercise. Whatever may be the perspective, Indian new Companies Act has introduced mandatory CSR provisions to be effective April 1 onward. This write-up intends to look at these provisions with in details –

Ministry of Corporate Affairs has notified Section 135 of the Companies Act, 2013 along with Companies (Corporate Social Responsibility Policy) Rules, 2014 [CSR Rules] on February 27, 2014. Accordingly, these rules come into effect from April 1, 2014 onwards.

Qualification Criteria

Companies meeting any of the following criteria during any financial year are covered under mandatory CSR spends:

1. Net worth* of Rs. 500 Crores or more or
2. Turnover** of Rs. 1000 Crores or more or
3. Net profit of Rs. 5 Crores or more

*Definition of Net Worth – Section 2 (57) of the Companies Act, 2013 – the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

**Turnover – Section 2(91) – the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.

* Director, Prossure Consulting Pvt. Ltd., The views expressed are personal views of the author and do not necessarily reflect those of the Institute.
Imperatives under CSR Regulations

With the application of CSR regulations, following tasks become imperative on all the companies meeting the criteria as specified in Section 135 (1):

1. Form a CSR Committee with minimum 3 directors, one of whom to be independent director.

2. CSR Committee to formulate a CSR Policy [in line with Schedule VII of the Companies Act, 2013]. CSR Committee to also install a transparent mechanism for implementation of CSR activities/projects/programs undertaken by the company.

3. Board to approve CSR Policy based on recommendation of CSR Committee

4. Board to undertake projects or programs in line with CSR Policy and Schedule VII and spend at least 2% of average net profit [computed in accordance with Section 198] for three immediately preceding financial years in accordance with the CSR Policy. In case of shortfall, Board to give reasons thereof in its report.

5. Disclose CSR Policy and other specified details of CSR spending in the Board Report and the Company’s website

6. Company to give preference to the local areas where it operates in CSR spending

7. Option has been given to the companies to undertake its CSR activities/projects/programs either with the Company or through a registered trust or society or company or its group company. Some conditions have been specified if the CSR activities/projects/programs are being undertaken outside the subject company.

Indicative CSR Activities as per Schedule VII

Schedule VII indicates following activities to be included in CSR policy of the qualified companies –

Activities relating to –

a. Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water

b. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects

c. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups

d. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water

e. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts
f. Measures for the benefit of armed forces veterans, war widows and their dependents

g. Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports

h. Contribution to the Prime Minister's National Relief Fund or any other-fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women

i. Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government

j. Rural development projects

**CSR activities for this purpose do not include** –

a. Activities undertaken in pursuance of normal course of business of a company

b. Any expenditure on an item not in conformity with Schedule VII

c. Contributions, directly or indirectly, to any political parties

d. The activities/projects/programs that benefit exclusively the employees of the company or their families. However, it is felt that activities/projects/programs that benefit employees of the company or their families along with others will be permitted.

*Exit clause from CSR applicability –*

Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to –

(a) Constitute a CSR Committee; and

(b) Comply with the provisions contained in sub-sections (2) to (5) of section 135,

till such time it meets the criteria specified in section 135(1).

(* Taxman's Company Law Manual page 1.213 Rule 3*)

**Some finer aspects –**

1. The criteria for applicability of mandatory CSR looks a bit oblique. Though on one hand these provisions covers companies with net worth more than or equal to Rs. 500 Crores or companies with turnover of more than or equal to Rs. 1000 Crores, it also covers companies with net profit of Rs. 5 Crores or more. This implies that companies with modest net profit margins of 3 – 5% to turnover will come under the ambit of these provisions even if their turnover is merely Rs. 100 Crores – Rs. 150 Crores. This could prove to be a matter of concern for a lot of such companies.

2. There’s no clarity with respect to income tax deductibility of these CSR spends. As per the extant provisions of the Income Tax Act, expenses, which are not related to the business of the company, are not deductible. There is some conditional relief to the donations given to the approved entities in the form of deduction under Section 80G but again, that’s partial and limited to 10% of gross total income. Considering the conditions prescribed in the CSR Rules for undertaking CSR projects or programs, clear
inference can be drawn that simple donations are not envisaged thereunder. So, there’s a conflicting situation arising out of this. In my humble opinion, offering a weighted deduction on such spends wouldn’t be a bad idea at all. This would go a long way in fostering the CSR sprit and an encouragement to companies to undertake additional spends.

3. Further, the provisions and rules appear to be silent on the treatment of the revenues/surplus generated through CSR activities/projects/programs. Though generation of surplus from CSR activity/project/program is not intended but possibility thereof can’t be ruled out. Also, taxation aspects of such revenues/surplus need to be addressed.

4. CSR activities/projects/programs undertaken only in India qualify for mandatory CSR spends under the provisions. So if an Indian multi-national is undertaking CSR activities/projects/programs outside India in the areas covered by Schedule VII won’t be considered for the mandatory spending threshold.

5. Lastly, looking at the exit criteria for the CSR applicability, it could become difficult for companies formed for carrying out specific large sized projects in a SPV model having no business as such after the project is over. In this case, such companies continue to be covered by CSR regulations until they meet the exit criteria specified. This could be a point of concern for business operating in infrastructure or real estate sectors where project specific SPVs are common.

At the end, following is one of the quote from Former Minister of State holding independent charge of corporate affairs, Mr. Sachin Pilot:

“I would be happy if the companies are able to get some taxation benefits out of it (CSR activities). I don’t know what kind of structure it might evolve (into) and what might be the proposals that will come to the Finance Ministry. If companies are getting some benefits, I would be open to that idea”.

To sum up, it is definitely felt that CSR should not be looked at from a revenue generating opportunity. It is more of undoing/rectifying the impairment caused to the environment and society at large while doing business, though a flat 2% repayment cost across all companies meeting the threshold may be a point of debate.

Points of View

Are CSR provisions in the Companies Act 2013 just a regulatory prescription or a business opportunity?

"Corporate social responsibility is a hard-edged business decision. Not because it is a nice thing to do or because people are forcing us to do it... because it is good for our business" - Niall Fitzgerald, Former CEO, Unilever

The concept of Corporate Social responsibility has its roots in the philanthropic activities such as donations, charity, relief work, etc. of corporations. However with the passage of time the concept of CSR has evolved globally and now it encompasses all related concepts such as triple bottom line, corporate citizenship, philanthropy, strategic philanthropy, shared value, corporate sustainability and business responsibility.

The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses. CSR should address the well-being of all stakeholders. Philanthropic activities are only a part of CSR. Today some of the key CSR issues are environmental management, eco-efficiency, responsible sourcing, stakeholder engagement, labour standards and working conditions, employee and community relations, social equity, gender balance, human rights, good governance, and anti-corruption measures.

The Companies Act, 2013 has introduced the concept of CSR to the forefront and through its disclose-or-explain mandate; it aims to promote greater transparency and disclosure. The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 which will come into effect from April 1, 2014.

The term ‘CSR’ is defined in the Companies (Corporate Social Responsibility Policy) Rules. By providing the definition of CSR, the scope and application of CSR that can be undertaken by the companies has been further clarified. The definition of CSR assumes significance as it allows companies to engage in projects or programs relating to activities enlisted under the Schedule VII. It also permits flexibility to companies by allowing them to choose their preferred CSR engagements that are in conformity with the CSR policy. By keeping the definition of CSR inclusive, MCA acknowledges the urgent need of the industry to be given more freedom in choosing their CSR activities.

The CSR provision will be applicable to companies having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year. The CSR Rules appear to widen the ambit for compliance obligations to include the holding and subsidiary companies as well as foreign companies whose branches or project offices in India fulfil the specified criteria.

* Contributed by Nishita Singhal, AEO, Dte. of Academics, ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.
Further, the report of the Board of Directors attached to the financial statements of the Company would also need to include an annual report on the CSR activities of the company in the format prescribed in the CSR Rules setting out inter alia a brief outline of the CSR policy, the composition of the CSR Committee, the average net profit for the last three financial years and the prescribed CSR expenditure. If the company has been unable to spend the minimum required on its CSR initiatives, the reasons for not doing so are to be specified in the Board Report. Where a company has a website, the CSR policy of the company would need to be disclosed on such website. It is mandatory for companies to disclose their CSR Policy, programs/projects undertaken and amount spent in their report and the CSR Rules provide for a separate format. The report containing details of such activities and CSR policies have to be made available on the company's website for informational purposes.

A properly implemented CSR concept can bring along a variety of competitive advantages to the companies such as enhanced access to capital and markets, increased sales and profits, operational cost savings, improved productivity and quality, efficient human resource base, improved brand image and reputation, enhanced customer loyalty, better decision making and risk management processes. The introduction of CSR provision in the Companies Act 2013 is a positive step towards this.

We invite the members to contribute their “Points of View” on any topic under the Companies Act, 2013 for inclusion in the coming issues of e-CS nitor at: ecsnitor@icsi.edu. It should ordinarily contain around 500 words.
To,

All Regional Directors,

All Registrars of Companies.

Subject: COMPANY LAW SETUEMENT SCHEME, 2014

Sir,

As you are aware, the Companies Act requires companies to file annual documents (Annual Return and Financial Statements) on the MCA21 electronic registry within prescribed time limits. Sections 92, 137 and 403 of the Companies Act, 2013, which correspond to sections 159, 220 and 611 of the Companies Act, 1956 may be referred to in this regard. These annual documents are considered very important in context of an up-to-date Registry, it is observed that a large percentage of companies have not filed their statutory documents making them liable for penalties and prosecution for such non-compliance.

2. The Companies Act, 2013 lays down a stricter regime for the defaulting companies with higher additional fees. The quantum of punishment has been enhanced under the above mentioned provisions of the Act vis-a-vis the earlier Act i.e. Companies Act, 1956. A specific provision for enhanced fine in case of repeated default has also been included in the form of section 451 of the Act. Additionally, the provisions of section 164(2) of the Act, inter alia, providing for disqualification of directors In case a company has not filed financial statements or annual returns for any continuous period of three financial years has been extended to all companies.

3. The Ministry has received representations from various stakeholders requesting for grant of transitional period/one-time opportunity to enable them to file their pending annual documents to avoid attraction of higher fees/fine and other penal action, especially disqualification of their Directors prescribed under the new provisions of the Act.
4. In order to give such an opportunity to the defaulting companies to enable them to make their default good by filing these belated documents, the Central Government in exercise of powers conferred under section 403 and 460 of the Companies Act, 2013 has decided to introduce a Scheme namely "Company Law Settlement Scheme 2014" [CISS-2014] condoning the delay in filing the above mentioned documents with the Registrar, granting immunity for prosecution and charging a reduced additional fee of 25% of the actual additional fees payable as per section 403 read with Companies(Registration Offices and Fee ) Rules, 2014 for filing those belated documents under the Companies Act, 1956/2013 and the Rules made thereunder.

5. In addition, the scheme gives an opportunity to Inactive companies to get their companies declared as ‘dormant company’ under section 455 of the Act (Chapter XXIX) by filing a simple application at reduced fees. The said provision enables Inactive companies to remain on the Register of Companies with minimal compliance requirements.

6. The details of the Scheme are as under: -

(i) The scheme shall come into force on the 15th August 2014 and shall remain in force up to 15th October, 2014.

(ii) Definitions - In this Scheme, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013 and Companies Act, 1956 (where ever applicable);

(b) "Company" means a company as defined in clause of 20 of section 2 of the Companies Act, 2013;

(c) "defaulting company" means a company defined under the Companies Act, 2013, and which has made a default in filing of annual statutory documents.

(d) "designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company.

(e) "immunity certificate" means the certificate referred to In sub-paragraph (vi) Of the Scheme;

(f) "inactive Company" means as defined in Explanation (ij to sub-section (1) of section 455(1) of Companies Act, 2013.

(iii) Applicability: - Any "defaulting company is permitted to file belated documents which were due for filing till 30th June 2014 in accordance with the provisions of this Scheme:
(iv) Manner of payment of fees and additional fee on filing belated document for seeking Immunity under the Scheme - The defaulting company shall pay statutory filing fees as prescribed under the Companies (Registration Offices and fee) Rules, 2014 along with additional fees of 25% of the actual additional fee payable on the date of filing of each belated document.

(v) Withdrawal of appeal against prosecution launched for the offences: If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Companies Act, 1956 and/or Companies Act, 2013 in respect of which application is made under this scheme, the applicant shall before filing an application for Issue of immunity certificate, withdraw the appeal and furnish proof of such withdrawal along with the application.

(vi) Application for issue of Immunity in respect of document(s) filed under the Scheme - The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the e-Form CLSS-2014 annexed, after the document(s) are taken on file, or on record or approved by the Registrar of Companies as the case may be. The e-Form for filing application to obtain such a certificate will be available on the MCA21 portal from 1st September, 2014 and may be filed thereafter but not later than three months from the date of closure of the Scheme. There shall not be any fee payable on this Form. Provided that this immunity shall not be applicable in the matter of any appeal pending before the court of law and in case of management disputes of the company pending before the court of law or tribunal.

(vii) Order by designated authority granting Immunity from penalty and prosecution - The designated authority shall consider the application and upon being satisfied shall grant the Immunity certificate in respect of documents filed under this Scheme.

(viii) Scheme not to apply in certain cases - (a) This scheme shall not apply to the filing of belated documents other than the following:

  a. Form 20B - Form for filing annual return by a company having share capital.

  b. Form 21A - Particulars of Annual return for the company not having share capital.

  c. Form 23AC, 23ACA, 23AC-XBRL and 23ACA-XBRL - Forms for filing Balance Sheet and Profit & Loss account.
d. Form 66 - Form for submission of Compliance Certificate with the Registrar.

e. Form 238 - Form for Intimation for Appointment of Auditors.

(ix) This Scheme shall not apply

a. to companies against which action for striking off the name under sub-section (5) of section 560 of Companies Act, 1956 has already been initiated by the Registrar of Companies or

b. where any application has already been filed by the companies for action of striking off name from the Register of Companies or

c. where applications have been filed for obtaining Dormant Status under section 455 of the Companies Act, 2013;

d. to vanishing companies

(x) After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s);

(xi) **Scheme for Inactive Companies:** The defaulting inactive companies, while filing due documents under CLSS-2014 can, simultaneously, either:

a. apply to get themselves declared as Dormant Company under section 455 of the Companies Act, 2013 by filing e-form MSC-1 at 25% of the fee for the said form; OR

b. apply for striking off the name of the company by filing e-Form FTE at 25% of the fee payable on form FTE

(xii) **Applicability of clause (a) sub-section (2) of Companies Act, 2013 In case of companies availing the Scheme:** In case of defaulting companies which avail of this Scheme and file all belated documents, the provisions of clause (a) of subsection (2) of section 164 of the Companies Act, 2013 shall apply only for the prospective defaults, if any, by such companies.

4. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956/2013 against the companies who have not availed this Scheme and are in default in filing these documents in a timely manner.

Yours faithfully,

(KMS Narayanan)
Assistant Director

23387263
To
The Registrar of Companies,

Sir/Madam,
I herewith make an application for issue of immunity certificate under the Company Law Settlement Scheme, 2014 and give below the following particulars, namely:

1. (a) * Corporate identity number (CIN)  
   (b) Global location number (GLN) of company

2. (a) Name of the Company
   (b) Address of the registered office
   (c) * e-mail ID of the company

3. Date of incorporation of company
   (DD/MM/YY)

3. Details of documents filed under the Company Law Settlement Scheme, 2014

   Total number of Service request Number (SRN)(s)

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<th>SRN</th>
<th>Form number(s)</th>
<th>Date of filling (DD/MM/YY)</th>
<th>Date of event (DD/MM/YY)</th>
<th>Statutory filing fees (in Rs.)</th>
<th>Normal Fees charged under CLSS, 2014 (in Rs.)</th>
<th>Actual additional fees (in Rs.)</th>
<th>Additional charged under CLSS, 2014 (in Rs.)</th>
<th>Total Fees paid (in Rs.)</th>
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4. Whether any appeal(s) was filed against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of the mentioned documents. If yes, attach proof of withdrawal of such appeal.  YES  No  Not Applicable
5. Whether any prosecution(s) is pending in court against the company and its officers in respect of belated documents filed under the Scheme. If yes, provide details thereof as an attachment.

YES   No

6. Whether any director(s) of the company is declared as proclaimed offender or facing criminal case(s) for economic offences. If yes, provide details of such director(s) as an attachment.

Yes   No

Attachments
1. Proof of withdrawal of any appeal(s) against any Notice issued or complaint filed before the Competent court

2. Details in respect of prosecution(s) pending against The company and its officers in respect of belated documents filed under the scheme which requires withdrawal by the Registrar

3. Details of director(s) declared as proclaimed offender or facing criminal case(s) for economic Offences

4. Optional attachment(s) – If Any

Verification
To the best of my knowledge and belief, the intimation given in this application and its attachments is correct and complete.

☐ I have been authorised by the Board of directors’ resolution number ______ dated ________ (DD/MM/YY) to sign and submit this application.

☐ I am authorised by the Board of directors to sign and submit this application.

☐ The company had failed to comply with the provisions of the Act as mentioned in respect of filing of above mentioned documents.

☐ The Company has withdrawn the appeals pending before any court or Company Law or Regional Director or any other adjudicating authority.

To be digitally signed by

* Designation

* Director identification number of the director; or DIN or PAN of the manager or CEO or CFO or Membership number of the company Secretary
For office use only:

**Affix filing details**

eform Service request number (SRN) [ ]
eform filing date [ ](DD/MM/YY)

**Digital Signature of the authorising officer**

This e-form is hereby approved [ ]

This e-form is hereby rejected [ ]

Date of signing [ ] (DD/MM/YY)
MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 25th July, 2014

S. O. 1913(E).—In exercise of the powers conferred by the second proviso to sub-section (1) of Section 203 of the Companies Act, 2013 (18 of 2013), the Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of Section 203 of the said Act.

Explanation.—for the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

[F. No. 1/5/2013 CL-V]

AMARDEEP SINGH BHATIA, Jt. Secy. 3027 GI/2014

***

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II SECTION 3, SUB-SECTION (1)]

Government of India
Ministry of Corporate Affairs
NOTIFICATION

New Delhi, the 6th August, 2014

G.S.R.------(E).—In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments in Schedule VII of the said Act, namely:—

1. In Schedule VII, after item (x), the following item and entry shall be inserted, namely:

“(xi) slum area development.

Explanation.—For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.”

2. This notification shall come into force on the date of its publication in the Official Gazette.

[F.No.1/18/2013-CL-V]

Sd/-

AMARDEEP S. BHATIA
Joint Secretary to the Government of India

Note.—The Schedule VII was brought into force with effect from 1st April, 2014 and was amended (effective from 1st April, 2014) vide notification number GSR 130(E) dated 27th February, 2014 and Corrigenda number GSR 261(E) dated 31st March, 2014.
Corrigendum to the Article ‘FAQs on e-voting’

With reference to the article “FAQs on e-voting”, as published in the issue No. 5, Volume I, August, 1 2014, of e-CS Nitor, please note the following revised answer to Question No. 17

Q17. When the provision of e-voting will be applicable to the company?

In case of Unlisted companies:

The provisions relating to e-voting is applicable to unlisted companies, in case the number of shareholders is not less than one thousand and governed by Section 108 of Companies Act 2013 read with Rule 20 of Companies (Management Administration) Rules 2014. Further, MCA has clarified vide its circular no 20/2014 dated June 17, 2014 that e-voting is not mandatory till December 2014. However, the unlisted companies can voluntarily adopt the same, by following the modalities prescribed in the Rule 20 of Companies (Management Administration) Rules 2014.

In case of Listed Companies:

The e-voting in listed companies are governed by Clause 35B of listing agreement in addition to Companies Act, 2013 and Rule 20 of Companies (Management Administration) Rules 2014. SEBI has clarified vide its circular dated April 17, 2014 that the revised Clause 35B is applicable to all listed companies and the modalities would be governed by the provisions of Companies (Management and Administration) Rules, 2014. Accordingly, E-voting is mandatory for all listed companies by virtue of revised clause 35B of the listing agreement.

Further, the Question No. 20 covered in the article ‘FAQ’s on e-voting’ may be ignored.

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Articles / Reviews invited for e-CS Nitor

We invite the members to contribute articles/checklist/reviews or any other relevant material pertaining to the Companies Act, 2013 for inclusion in the coming issues of e-CS nitor through e-mail at: ecsnitor@icsi.edu. The article should ordinarily have 1500 to 2000 words.

Broad topics for submission of Articles

- Acceptance of Deposits
- Annual Return
- AGM
- Bonus Shares
- Board Disclosures
- Incorporation
- Incorporation conversion
- One Person Company
- Preferential issues
- Rules under Companies Act, 2013
- Resolutions to be filed under Companies Act, 2013
- Shareholders democracy
- Women Director
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To be a global leader in promoting good corporate governance

MISSION
To develop high calibre professionals facilitating good corporate governance