

Financial Statements, Board's Report etc. (Sec 134)

1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

“Clause 134.—This clause corresponds to sections 215, 216 and 217 of the Companies Act, 1956 and seeks to provide that the financial statement including consolidated financial statements should be approved by the Board of Directors before they are signed and submitted to auditors for their report. The auditor's report is to be attached to every financial statement. A report by the Board of Directors containing details on the matters specified including Director's responsibility statement shall be attached to every financial statement laid before company. The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board's report. The clause also provides for penal provisions for the company and every officer of the company in case of any contravention.”

Relevant excerpts of Chapter IX: “Accounts and Audit” from J. J. Irani Committee report, 2005 are as follows:

“Authentication, Circulation and Revision of Financial Statements

The Committee discussed at length the existing provisions of the Act regarding approval and authentication of accounts, circulation of accounts and filing of accounts with the Regulatory body. The Committee was of the view that the concept of appointment of CFO should be recognized under the Act who should be made responsible for preparation and submission of financial statements to the Board. The financial statements should also be signed by Managing Director, CEO, CFO, and the Company Secretary wherever such functionaries are mandated, whether or not they are present at the Board meeting at which the accounts are adopted. All the Directors who were present in the meeting which approved the accounts should also be mandated to sign the accounts. If a Director dissents, he should also sign the financial statement with the dissent note. ... The provisions under the Companies Act relating to circulation of financial statements should continue. However, the Committee recommended that the financial statements should be permitted to be sent by electronic means instead of hard copy. In the case of listed Companies, where abridged financial statements are circulated amongst members, the full financial statements should be made available on the website and the hard copy thereof should also be made available on request.

Directors' Responsibility Statement

The Committee noted that the Companies Act was amended by inserting section 217 (2AA) by the Companies (Amendment) Act, 2000, which has brought about inclusion of Directors' Responsibility Statement in the report of the Board of

Directors. The Committee was of the view that in addition to the existing requirements, the Responsibility Statement should include that the related party transactions and have been entered into at arm's length, and if not, the relationships of the directors in such transactions along with the amounts involved have been disclosed as a part of the Director's Report along with management justification thereof. The existing requirement in Section 217 (2AA) requiring a Director Responsibility statement indicating that the Directors have taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of the Act and that the books of accounts comply with the accounting standards and policies should continue.

Certification of Internal Control by CEO/CFO

The Committee dwelt at length matters connected with Audit and the basic principles governing Audit. The Committee felt the need for a high quality of financial reporting, a strengthened corporate governance mechanism, an independent audit and fearless expression of opinion by the Auditors. The Committee feels that the internal controls in any organization constitute the pillar on which the entire edifice of Audit stands. For this purpose, it was felt that public listed companies be required to have a regime of internal financial controls for their own observance. Active interest of the shareholders' association in improving the quality of financial reporting, investor education for better understanding of the financial statements combined with presence of internal controls would provide for effective financial reporting.

In sum:

- Internal controls as mandated by the company with the approval of the Audit Committee, if any, should be certified by the CEO and CFO of the Company and in the Directors report through a separate statement on the assessment.
- The investors be educated and imparted with better understanding and appreciation of the financial statements. The law should also provide for an active role for the shareholders' associations in ensuring high quality of financial reporting."

2. Approval and signing of financial statements

Sub-section (1) of section 134 of the Act provides for approval and signing of financial statements (as defined in clause (40) of section 2) including consolidated financial statements, if any. Such approval of financial statement needs to be given in a duly convened board meeting. Such meeting cannot be held through video conferencing or any other audio-visual means as provided in rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Such approved financial statements will be signed on behalf of the company by the following:

- a. Chairperson of the company where he is authorized by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company
- b. the Chief Financial Officer, wherever appointed
- c. the Company Secretary of the company, wherever appointed

In the case of an OPC, such statements are required to be signed only by one director.

It should be noted that for signing the financial statements, chairperson of the company is recognised and not chairperson of the meeting. Hence, the person who is appointed as chairperson of the company may sign the financial statements after authorisation by the Board irrespective of whether he chaired the meeting or not. Where the company does not have a Chief Financial Officer and company secretary, signing by a duly authorised chairman will suffice. Where the company does not have a chairperson or if he is not authorised by the board, signing of financial statements by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director. Where the company does not have a managing director and Chief Executive Officer, any two directors may sign the financial statements.

Such approved and signed financial statements are sent to the auditor for his report thereon.

The Companies (Amendment) Bill, 2016 proposes to substitute the sub-section (1) of section 134 with the following sub-section:

“(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company, where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.” This changes, the position of CEO for signing the financial statement and by dispensing with the condition of his being a director for signing.”

3. Additional documents to be circulated along with financial statement

Sub-section (2) of section 134 provides that the auditors' report shall be attached to every financial statement. Further, sub-section (7) provides that a signed copy of financial statement (including consolidated financial statement, if any) shall be issued, circulated or published along with the following documents:

- a. Notes annexed to or forming part of financial statement
- b. Auditor's report
- c. Board's report
- d. The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies

and joint venture or ventures as prescribed under the first proviso to sub-section (3) of section 129 in Form AOC-1

4. Contents of Board's report

The content of the board's report are prescribed in sub-section (3) of section 134 read with rule 8. Further, there are certain other provisions in the Act or other laws which require disclosures to be made in the board. The board's report is to be based on standalone financial statement. It shall contain a separate section where the performance and financial position of each subsidiary, associate and joint venture company which is included in the consolidated financial statement is covered.

Sub-section (3) of section 134 read with rule 8 prescribes the following contents of the board's report:

1. the extract of the annual return as provided under sub-section (3) of section 92 in form MGT-9 (the Companies (Amendment) Bill, 2016 proposes to do away with the providing of extract and requires only stating the web address where the annual return is placed);
2. number of meetings of the Board held during the year;
3. Director's responsibility statement (discussed in detail later)
4. Details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central government (this clause was inserted by the Companies (Amendment) Act, 2015 w.e.f. 29.05.2015)
5. a statement on declaration of independence given by independent directors under sub-section (6) of section 149 about meeting the criteria of independence;
6. in case of a company which is required to constitute nomination and remuneration committee 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 provided under sub-section (3) of section 178;
7. 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; The explanation needs to be given for qualification, reservation or adverse remark or disclaimer in the secretarial report. Further, the said report is required to be attached to the Board's report as per sub-section (1) of section 204.
8. particulars of loans, guarantees or investments under section 186; All details and particulars of loans, guarantees, securities or investments made under section 186 has to be provided during the reporting period.
9. particulars of contracts or arrangements with related parties referred to in subsection (1) of section 188 in Form AOC-2;
10. the state of the company's affairs;

11. the amounts, if any, which it proposes to carry to any reserves;
12. the amount, if any, which it recommends should be paid by way of dividend;
13. 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;
14. the conservation of energy, technology absorption, foreign exchange earnings and outgo, as given below:

A) Conservation of energy

- i) the steps taken or impact on conservation of energy;
- ii) the steps taken by the company for utilising alternate sources of energy;
- iii) the capital investment on energy conservation equipments;

B) Technology absorption

- i) the efforts made towards technology absorption;
- ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)
 - (a) the details of technology imported;
 - (b) the year of import;
 - (c) whether the technology been fully absorbed;
 - (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- iv) the expenditure incurred on Research and Development.

C) Foreign exchange earnings and outgo

The foreign exchange earned in terms of actual inflows during the year and the foreign exchange outgo during the year in terms of actual outflows.

An exemption has been given to a Government company engaged in the engaged in the production of defence equipment from disclosing the information covered under this point.

(To be continued...)

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.