

Enhanced Disclosures under Companies Act, 2013



Presentation at ICSI by:

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Companies Act, 2013

Particulars	Companies Act, 1956	Companies Act, 2013
Sections	658	470
Schedules	15	7
Parts / Chapters	13 Parts	29 Chapters

- Simplified ?
- **Improved Corporate Governance / Transparency**

Content

Additional DISCLOSURE:

- Board of Directors Report
- Annual Return
- Websites
- Prospectus

- Q&A

BOARD'S REPORT

[u/s 134 (3)] *(corresponding to S 215, 216, 217 of the 1956 Act)*

- *Extract of the **Annual Return** in Form MGT 9 (Section 92 read with Rule 12 of The Companies (Management and Administration) Rules, 2014 -Chapter VII)*
- **Number of Board Meetings**
- **Directors Responsibility Statement u/s 134(5)**
 - In Annual Accounts, the applicable accounting standard has been followed along with explanation for material departures
 - That such policies are applied consistently and directors made judgment that are reasonable
 - Proper record kept to prevent/ detect fraud/ irregularities
 - Internal financial controls have been laid down that are adequate and are operating effectively
 - Proper systems to ensure compliance of all applicable laws and that such systems are adequate and are operating effectively
- **Statement of Declaration of Independence** by Independent Directors that he meets the criteria provided u/s 149(6) **every FY**

BOARD'S REPORT

[u/s 134 (3)] *(corresponding to S 215, 216, 217 of the 1956 Act)*

- For specified companies: **Company's Policy on Directors' appointment and remuneration**, criteria for determining qualifications/ independence of a Director & matters covered u/s 178(3) (which also covers **KMP & senior management**)
- This is applicable for companies covered u/s 178(1) relating to Nomination & Remuneration Committee i.e.
 - Every Listed Company
 - Public company with paid up share capital of Rs 10 crores or more
 - Public company with Turnover of Rs 100 crores or more
 - Public company with outstanding loans/ deb/ deposits of > Rs 50 crores
 - as on date of last audited accounts

[Rule 6 of the Companies (Meetings of Board & its Power) Rules, 2014-Chapter XII]

BOARD'S REPORT

contd.

- Explanations or comments by the Board on every ***qualification, reservation or adverse remark*** or disclaimer ***made by*** auditors & ***the Company Secretary in practice*** in his Secretarial Audit Report (such audit required for public co with paid-up share capital Rs 50 crores or more OR Turnover of Rs 250 crores or more – Rule 9 Chapter XIII)
- Particulars of **loans, guarantees or investments** u/s 186.
- Particulars of **RPTs referred to u/s 188(I)** along with *justification* for entering such contract/ arrangement.

BOARD'S REPORT

contd.

- A statement indicating development and implementation of a **risk management policy** including identification of elements of risk which in the opinion of the Board may threaten the existence of the Company
- **CSR Policy** and initiatives taken during the year and reasons for not spending the money
- 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** (applicable to listed cos. and specified public co)

Board Report of Listed Companies:

Managerial Remuneration u/s 197(12) read with Rule 5 of The Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 - Chapter XIII

- **The ratio of remuneration of each director to the median remuneration of the employees;**
- **% increase in remuneration of each Director, KMP and of % increase in median remuneration of employees**
- Explanation of relationship between average increase in remuneration & Company performance
- **Comparison of remuneration of each KMP against performance of company**
- Variation in market cap/ net worth of company
- **Justification of increase** in managerial remuneration with that of increase in remuneration of other employees
- **Key parameters for any variable remuneration of directors**
- Ratio of remuneration of highest paid director to other employees who gets remuneration more than highest paid director
- **Affirmation that remuneration is as per remuneration policy of the Company**

BOARD'S REPORT

contd.

- **Penalty provisions u/s 134(8)**
 - Company
 - Fine of Rs 50K to Rs 25 lakhs
 - Every Officer in default
 - Imprisonment up to 3 years Or
 - with fine INR 50K to INR 5 lakhs Or
 - with Both

ANNUAL RETURN

[u/s 92] *(corresponding to S 159 to 162 of the 1956 Act)*

- New Annual Return Format is much elaborate with non financial information (Form MGT 7)
- Annual Return to contain **information up to the date of closure of FY** and not up to AGM date.
- **Principal business activities** of the Company (activities contributing 10% or more of turnover ..with their %)
- **Particulars of holding, subsidiary and associate cos.**
- **Other Securities** issued by the Company (in addition to shares & debentures)
 - Change in promoters shareholding
 - **Change in shareholding of Top 10 Shareholders (other than Directors and Promoters)**
 - **Change in shareholding of Directors or KMP**

ANNUAL RETURN

[u/s 92] *(corresponding to S 159 to 162 of the 1956 Act)*

- **Indebtedness** (secured & unsecured), addition and reduction & interest due but not paid and interest accrued but not due
- **Promoters, Key Managerial Personnel along with changes** since the closure of the last FY.
- **Meetings** of Members, Board and its Committees with **dates and attendance at the meeting**
- **Remuneration of the Directors and KMP** (salary, perquisites, stock option, sweat equity, as % of profits, other commission, others to specify)
- **Remuneration to ID and non-executive directors** (showing fees for meeting, commission, others)

ANNUAL RETURN

[u/s 92] (*corresponding to S 159 to 162 of the 1956 Act*)

- **Penalties or Punishment imposed** on the **company, its directors/officers**, compounding of offences and appeals made against penalty/punishment – *under the Companies Act*
- **Details of certification of compliances** (with due date, SRN, reason of delay)
- **Disclosures** relating to **closure of register of members, inter corporate loans & investment, Related Party Transactions**, details of resolutions passed by postal ballot.
- Details of **shares held by or on behalf of FII**s indicating their names, addresses, countries of incorporation, registration and % of shareholding held by them.

ANNUAL RETURN

[u/s 92] *(corresponding to S 159 to 162 of the 1956 Act)*

- **Disclosures for CSR** – Amount spent, amount spent as % of PAT of preceding 3 FY
- **Limits** with brief description
 - **u/s 186 for loans & investment** made by Company
 - **u/s 180(1)(c) restriction on powers of Board to borrow**

ANNUAL RETURN

[u/s 92] (corresponding to S 159 to 162 of the 1956 Act)

- Form MGT 7: **Every Company** shall file the Annual Return duly **signed by** Director and **CS (and if there is no CS, then by a CS practice) (Section 92(1))**
- Form MGT 8: Return to be certified by **CS in practice** also stating that company has complied all provisions of the Act [u/s 92(2) read with Rule 11] for following companies
 - **All Listed companies**
 - **Company with paid up share capital of Rs 10 crores or more**
 - **Company with turnover of Rs 50 crores or more**
- Form MGT 9: **Extracts** of Annual Return shall be made part of the Directors' Report.

ANNUAL RETURN

[u/s 92] (*corresponding to S 159 to 162 of the 1956 Act*)

- **Penalties provisions u/s 92 (5)**

- If the company fails to *file return* within 60 days of AGM and before of expiry of period specified u/s 403 with additional fee (i.e. 275 days of due date)
 - Company : INR 50K to INR 5 Lakh
 - Officer in default : Imprisonment upto 6 months or fine from INR 50K to INR 5 Lakhs or with both.
- If CS in practice certifies return *which is not in conformity with the Act & Rules*, he is punishable with Fine from INR 50K to INR 5 Lakh

STATEMENT WITH AGM NOTICE

[u/s 102] (corresponding to S 173 of the 1956 Act)

- The Statement to be annexed with AGM notice for special business should specify the **nature of concern or interest**, financial or otherwise, in respect of the following persons :
 - Every Director and the Manager;
 - Every other **Key Managerial Personnel**;
 - **Relatives** of the persons above; and
 - Any other information and facts that may enable members to understand the meaning, scope and implications of the item of business and to take decisions thereon.
- In case the matter is related to or **affects any other company** in which promoter / director / KMP holds **not less than 2% of paid up share capital (compared to 20% earlier)** of that company, then state the extent of shareholding interest.

STATEMENT WITH AGM NOTICE

[u/s 102] (corresponding to S 173 of the 1956 Act)

- Where as a result of non/insufficient disclosure in the Statement, **any benefit accrues to such promoter, director, manager or KMP** etc. such person shall **hold such benefit in trust** for the Company and shall be liable to compensate the Company to the extent of the benefit received by him.
- **In case of default is made**, then Director/ KMP/Officer in default to be penalized with fees of INR 50K or 5 times of amount of benefit accrued to such Officer, *whichever is higher*.

REPORT ON AGM [u/s 121]

New Provision

- Every **Listed Company** shall prepare a Report on each AGM.
- Report to contain **confirmation that the meeting was convened, held and conducted as per the provisions of the Act / Rules.**
- The Company shall **file the Report with the Registrar within 30 days of the conclusion of the AGM.**
- Proceedings at the AGM of a listed co. thus becomes a public document.

Disclosures on WEBSITE

- **u/s 13 (8)(i):**
- A company, which has **raised money** from public through prospectus and still has any **unutilised amount** out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a **special resolution** is passed by the company and the **details, as may be prescribed, in respect of such resolution** shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and **shall also be placed on the website of the company, if any, indicating therein the justification for such change;**

Disclosures on WEBSITE

- **u/s 124(2):**
- The company shall **within a period of 90 days** of making any **transfer** of an amount u/s 124(1) to **Unpaid Dividend Account**, prepare a statement containing the **names, their last known addresses and the unpaid dividend** to be paid to each person and place it on the **website** of the company, if any, and also on any other website approved by the Central Government for this purpose.

Disclosures on **WEBSITE**

- **u/s 135:**
- The Board of every company referred to 135(1) approve the **Corporate Social Responsibility Policy** for the company and disclose contents of such Policy in its report and also place it on the company's **website**, if any
 - Every company having :
 - Net worth of Rs 500 crore or more, or
 - Turnover of Rs 1000 crore or more or
 - Net profit of Rs 5 crore or more during any FY shall constitute a CSR Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Disclosures on WEBSITE

- **u/s 136(1):**
- that a **listed company** shall also place its **financial statements including consolidated financial statements**, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:
- Provided also that every **company having a subsidiary** or subsidiaries shall place **separate audited accounts** in respect of each of its subsidiary on its website;

Disclosures on **WEBSITE**

- **u/s 177** : read with Rule 7 Chapter XII
- **Audit Committee: Vigil mechanism**
- Prescribed companies shall establish a vigil mechanism **for directors and employees to report genuine concerns** and the details of establishment of such **vigil mechanism** shall be disclosed by the company on its **website**, if any, and in the Board's report.
 - Every listed company
 - Companies which accept deposit
 - Companies which have borrowed money from banks / FI in excess of Rs 50 crores

Disclosures on WEBSITE

- **u/s 230(3):**
- Where a meeting is proposed to be called in pursuance of an order of the Tribunal u/s 230(1) **in case of compromise/ arrangement**, a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, KMP, and the debenture-holders
- Provided that **such notice and other documents shall also be placed on the website of the company**, if any, and in case of a listed company, these documents shall be sent to the **SEBI and SE where the securities of the companies are listed, for placing on their website** and shall also be published in newspapers in such manner as may be prescribed

Disclosures on **WEBSITE**

- **Schedule IV – Code of Independent Director**
 - The **terms and conditions of appointment** of independent directors shall also be posted on the company's **website**.
- **Appointment & Qualification of Directorship**
 - The company shall within 30 days from the date of receipt of notice of **resignation** from a director, intimate the Registrar in Form **DIR-12** and post the information on its website, if any.

Disclosures on WEBSITE

- **Acceptance of Deposit Rules**
 - Rule 4: Form and particulars of advertisements or circulars
 - **Every company inviting deposits from the public shall upload a copy of the circular on its website, if any**

- **Management & Administration Rules**
 - Rule 10: **Closure of register of members** or debenture holders or other security holders
 - and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.

Disclosures on WEBSITE

- **Notice of the General Meeting**
 - Rule 18: Notice shall be simultaneously placed on the website of the company if any and on the website as may be notified by the Central Government.
- **Voting through electronic means.**
 - Rule 20: the results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members
- **Postal Ballot**
 - Rule 22: The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members

PROSPECTUS

[u/s 26] (corresponding to S 55 to 58, 60 of the 1956 Act)

- **Name and address of CFO** in addition to existing list
- Management perception of Risk Factors of the project, gestation period, progress in the project and deadline for completion of the project.
- Details of any litigation **legal action pending/taken against the promoters by Government Dept. or statutory body** during the **preceding 5 years** and any direction given by such authority.
- The **Companies (Prospectus and Allotment of Securities) Rules, 2014** notified with details to be disclosed



Q&A

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