

GUIDANCE NOTE ON REPORT OF THE BOARD OF DIRECTORS

The “Secretarial Standard on Report of the Board of Directors” (SS-4), formulated by the Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) and issued by the Council of the ICSI, has been effective from 1st October, 2018. Adherence to SS-4 is recommendatory.

This Guidance Note sets out the explanations, procedures and practical aspects in respect of the provisions contained in SS-4 to facilitate compliance thereof by the stakeholders.

INTRODUCTION

The Companies Act, 2013, requires the Board of Directors of every company to attach its report to the financial statements to be laid before the members at the annual general meeting.

The Board’s Report is an important means of communication by the Board of Directors of a company with its stakeholders. The Board’s Report provides the stakeholders with both financial and non-financial information, including the performance and prospects of the company, relevant changes in the management and capital structure, recommendations as to the distribution of profits, future and on-going programmes of expansion, modernisation and diversification, capitalisation of reserves, further issue of capital and other relevant information.

The Companies Act, 2013, mandates certain disclosures to be made in the Board’s Report.

A listed company is also required to comply with certain additional requirements as stated under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Similarly, a company, whose securities are listed on an overseas stock exchange, is required to comply with additional requirements as may be specified by such stock exchange.

Further, a company which is regulated under other laws, may also be required to make additional disclosures in its Board's Report as stated in the respective applicable laws.

The Board's Report should be based on the company's standalone financial statement and not on the consolidated financial statement and should relate to the financial year for which such financial statement is prepared.

The Board's Report should avoid repetition of information. If any information is mentioned elsewhere in the financial statement, a reference thereof should be given in Board's Report instead of repeating the same.

SCOPE

With a view to ensure enhanced disclosures and transparency, the Companies Act, 2013 and rules made thereunder, as well as the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, provide for the disclosures in the Board's Report and other documents enclosed in the Annual Report. The matters to be reported in Board's Report require special focus, and hence this Guidance Note is intended to facilitate appropriate disclosure in a simplified and structured manner by adding the best practices therein.

SS-4 prescribes a set of principles for making disclosures in the Report of the Board of Directors of a company and matters related thereto.

This Guidance Note attempts to guide the companies in preparing the disclosures mentioned in SS-4, which inherently include the relevant provisions of the Companies Act, 2013 and rules made thereunder as well as the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

In case, a particular disclosure which is required to be made as per SS-4 is not applicable to a particular company, the company need not disclose the same in the Board's Report except where the Standard requires specific disclosure in this respect.

For example, SS-4 provides that even if no amount is proposed to be transferred to reserves, or if no dividend has been recommended by the Board, a statement to that effect should be included in the Board's Report. The purpose of this requirement is to ensure the inclusion of certain important information that should be presented to the stakeholders in a single document.

SS-4 is in conformity with the provisions of the Companies Act, 2013. However,

if due to subsequent changes in the Companies Act, 2013, any part of the Standard becomes inconsistent with the Act, the provisions of the Act shall prevail.

Further, if due to Notification(s)/Circular(s)/Clarification(s) issued by the Ministry of Corporate Affairs and / or by the Securities and Exchange Board of India, the provisions of SS-4 or any part thereof become inconsistent with any of the provisions of the Act and / or the Listing Regulations or becomes inapplicable to any class of companies, such provisions of the Act and / or the Listing Regulations shall prevail.

The Board's Report of a One Person Company (OPC) and Small Company shall be prepared in the abridged form as prescribed by the Central Government.

*The matters to be included in the Board's Report of a One Person Company and Small Company are provided in **Annexure-I**.*

In addition to the disclosure requirements prescribed in this Standard, some sector specific Regulations/Guidelines may require additional disclosures to be made in the Board's Report/Annual Report of companies operating in specific sectors such as Public Sector Undertakings (PSUs), Insurance Companies, Non-Banking Financial Companies, Housing Finance Companies etc. Hence, such companies should make requisite disclosures in accordance with applicable sector specific Regulations/Guidelines in its Board's Report/Annual Report.

DEFINITIONS

The following terms are used in this Guidance Note with the meaning specified:

"Act" means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Committee" means a Committee of Directors mandatorily required to be constituted by the Board under the Act.

"Listing Regulations" means SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

"Report" means Board's Report or the Report of the Board of Directors.

"Specified Securities" means the specified securities as defined in the Listing Regulations.

"Year" means the financial year to which the Board's Report relates.

As per the proviso to sub-section (41) of section 2 of the Act, for companies following a different financial year i.e. other than the period ending on 31st day of March every year, the term "Year" should mean such different financial year.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act and / or the Listing Regulations, as may be applicable.

GUIDANCE ON THE PROVISIONS OF SS-4

PART I: DISCLOSURES

The Report shall, *inter alia*, include the following:

1. COMPANY SPECIFIC INFORMATION

1.1 Financial summary and highlights

The matters to be included in the Report are covered under Rule 8 of Companies (Account) Rules, 2014. Sub-rule 5(i) of the said rules provides that the financial summary or highlights thereof shall be disclosed in the Report.

The financial summary and highlights thereof should be accompanied by the macro-economic, geo-political, financial, industry specific as well as any company specific information affecting the business of the company and the market in which it operates, along with the industry performance vis-à-vis the company's performance.

In case of a listed company which has listed its specified securities, the business highlights should also be reported, to the extent possible, as per the segment reporting requirements. In case of an unlisted company, the financial summary in the Report may be disclosed segment wise.

*The format for disclosure of financial information in the Report is placed at **Annexure-II**.*

1.2 Amount, if any, which the Board proposes to carry to any reserves

The amount proposed to be transferred to any reserves of the company. If no amount is proposed to be transferred to reserves, a statement to that effect shall be included.

It may be noted that in case of declaration of dividend there is no

stipulation in the Act for mandatory transfer of any amount out of the profits for the year to any reserves. The transfer of profits to reserves is left at the discretion of the Board of Directors of the company.

However, disclosure with respect to application of discretion by the Board is considered as a good practice from governance point of view.

Therefore, in addition to the legal requirements of sub-section (3) of section 134 of the Act, which requires a company to disclose the amount which it proposed to carry to any reserves, the Standard requires that a statement be included in the Report. A disclosure should be made even if no amount is proposed to be transferred to reserves of the company.

Illustration

If no amount is transferred to the Reserves, the following statement be included in the Report:

“The Board of Directors of your company, has decided not to transfer any amount to the Reserves for the year under review.”

1.3 Dividend

- a. The amount of dividend per share and the percentage thereof which the Board recommends for the year and the dividend distribution tax thereon. In case no dividend has been recommended by the Board, a statement to that effect shall be made.

The Board may recommend the dividend to be declared by the Members at the Annual General Meeting in accordance with the dividend distribution policy of the company, if any. Unless the Dividend has been recommended by the Board, Members in the Annual General Meeting cannot on their own declare any Dividend.

Sub-section (3) of section 134 of the Act requires a company to disclose the amount of dividend recommended by the Board in its Report.

The Standard, in addition to the requirements of the Act and to promote uniformity in disclosures, requires a company to disclose the percentage of the dividend on a per share basis and the amount of applicable tax payable on distribution of such dividend.

This percentage of dividend should be based on the face value of the shares. For example, a dividend of Rs. 7.50 per Equity Share of the face value of Rs. 5 each would indicate that dividend @150% has been recommended by the Board.

While indicating the dividend distribution tax payable by a company, the amount of tax on distributed profits on the dividends declared by subsidiaries of the company as of the date of the Report and receivable during the current Financial Year (in which it is paid), should be indicated separately in the Report.

Illustration

A statement on the recommendation of dividend by the Board may be made as under:

"The Board of Directors of your company is pleased to recommend a dividend of Rs. _____ per equity share of the face value of Rs. _____ each (@____%), payable to those Shareholders whose names appear in the Register of Members as on the Book Closure / Record Date.

An amount of Rs..... would be paid as dividend distribution tax on the dividend.

The dividend pay-out is in accordance with the company's dividend distribution policy."

Even if no dividend is recommended by the Board, a statement to that effect should be included in the Report. Such statement may be made as under:

"The Board of Directors of your company, after considering holistically the relevant circumstances and keeping in view the company's dividend distribution policy, has decided that it would be prudent, not to recommend any Dividend for the year under review."

Further, the disclosure under this paragraph of SS-4 should not include any amount capitalised for issue of Bonus shares. The issue of Bonus shares in lieu of dividend is prohibited under sub-section (3) of section 63 of the Act.

- b. The amount and the percentage of interim dividend declared, if any, during the year and the dividend distribution tax thereon.

The Board of Directors of a company may declare Interim Dividend during any financial year or at any time during the period from closure of financial year till holding of the Annual General Meeting. Once an Interim Dividend is declared by the Board, noting, approval, confirmation or ratification at a general meeting is not required. However, the Report should mention the amount of Interim Dividend declared and paid by the company during the financial year.

Accordingly, the Standard requires a company to disclose the amount and percentage of interim dividend declared by the Board of Directors in respect of the financial year for which accounts are to be adopted at the ensuing Annual General Meeting.

The amount of tax paid on the distribution of dividend should also be disclosed in the Report.

Illustration

A statement on the declaration of interim dividend by the Board may be made as under:

“The Board of Directors of your company after considering the company’s dividend distribution policy has declared and paid an interim dividend of Rs.....per equity shares of the face value of Rs. _____ each (@____%) during the year.

An amount of Rs..... was paid as dividend distribution tax on the interim dividend declared by the Board.”

- c. The total amount of dividend for the year.

The cumulative amount of dividend including the Interim Dividend declared by the Board and the Final Dividend as recommended by the Board should also be disclosed in the Report.

Illustration

The total amount of dividend for the year may be disclosed as under:

"Cumulatively, the Board of Directors of your company has declared / recommended a total Dividend of Rs.....per equity shares (@____%) for the year under review"

- d. A statement on compliance with the Dividend Distribution Policy, if applicable, and the reasons for deviation and the rationale for additional parameters considered, if any.

The Securities and Exchange Board of India (SEBI) vide its notification dated 8th July, 2016 inserted Regulation 43A to the Listing Regulations making it mandatory for top 500 companies to formulate a "Dividend distribution policy" including the following parameters:

- (a) the circumstances under which the shareholders of the listed entities may or may not expect Dividend;*
- (b) the financial parameters that shall be considered while declaring Dividend;*
- (c) internal and external factors that shall be considered for declaration of Dividend;*
- (d) policy as to how the retained earnings shall be utilised; and*
- (e) parameters that shall be adopted with regard to various classes of shares:*

If the listed company proposes to declare dividend on the basis of parameters in addition to clauses (a) to (e) above or proposes to change such additional parameters or the dividend distribution policy contained in any of the parameters, it shall disclose such changes along with the rationale for the same in its annual report and on its website.

The listed companies other than the top five hundred listed entities based on market capitalisation may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.