



The Companies Act 2013

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E-newsletter

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About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the May month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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ARTICLE

DIRECTORS' REPORT

The Boards' Report is the part of Annual Report in which the details of Company are provided. There is no restriction to put any matter in the Boards' Report if the Directors have intention to mention there apart from legal provisions.

1. APPLICABILITY

Section 136(1) of the Companies Act, 2013 provides that every company, public or private shall forward to its members along with its annual financial statements, the Boards' report. The Boards' report is an important document in which the Board gives a complete review of the performance of the company during the year under review.

The Board's Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report. [Rule 8(1) of the Companies (Accounts) Rules, 2014]

2. EXTRACT OF THE ANNUAL RETURN AS ATTACHMENT OF THE BOARDS' REPORT

For every company, it is mandatory to prepare Annual Return for the previous financial year as per details given in Section 92 of the Act, Section 92(3) also says that the extract of the Annual Return as prescribed in the Form MGT-9 shall form part of the Boards' Report.

3. CONTENTS OF THE BOARD'S REPORT

Section 134(3) as amended by the Companies (Amendment) Act, 2017 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 web address, if any, and the web link of such annual report shall be disclosed where annual return referred to in sub-section (3) of section 92 has been placed;

(b) number of Board meetings;

(c) Directors' Responsibility Statement;

(ca) 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;

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

(e) if a company covered u/s 178(1) which requires to constitute nomination and remuneration committee, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and remuneration policy for KMP and others;

(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 by company under section 186;

(h) particulars of contracts or arrangements with related parties under section 188(1) alongwith the justification for entering into such contract or arrangement;

(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 in the Appendix specified under the Companies (Corporate Social Responsibility Policy) Rules, 2014;

(p) in case of a listed company and every other public company having paid-up share capital of Rs. 25 crores or more, calculated as at the end of the preceding financial year, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committee and of individual directors has been made;

(q) such other matters as may be prescribed.

It is further provided by the proviso inserted by Companies (Amendment) Act, 2017, w.e.f. 31-7-2018, *vide* Notification No. SO 3838(E), dated 31-7-2018 that where disclosures referred to in this section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report.

Where the remuneration policy or CSR Policy u/s 135 and the Company's policy u/s 178(1) on directors appointment and remuneration, including criteria for determining qualification, positive attributes, independence of directors and other matters provided u/s 178(3) is made available on company's website, if any, it shall be sufficient compliance if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.

Section 134(3A) has been inserted by the Companies (Amendment) Act, 2017, w.e.f. 31-7-2018, *vide* Notification No. SO 3838(E), dated 31-7-2018 which provides that the Central Government may prescribe an abridged Board's report, for a One Person Company or small company.

Revised SS-1 provides that the Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards.

4. EXEMPTIONS

Exemptions for disclosure by a Specified IFSC Private Company

As per Notification No. GSR 8(E) & 9(E), dated 4th January, 2017 in case of a Specified IFSC public and private company, if any information listed above in section 134(3) is provided in the financial statement, the company may not include such information in the report of the Board of Directors.

Exemptions for disclosure by a Government Company

As per Notification No. GSR 463(E) dated 5th June, 2015, following disclosures under section 134(3)(e) shall not apply to a Government company:

(i) constitution nomination and remuneration committee, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and remuneration policy for KMP and others;

(ii) 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.

5. ADDITIONAL DISCLOSURES IN THE BOARDS' REPORT

Disclosure of the related party transactions in the Form AOC-1

Rule 8(2) provides that the Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in section 188(1) in the Form AOC-2.

Disclosure for formal annual evaluation by Board of the listed and public company having paid up capital exceeding 25 Crores

Rule 8(4) provides that 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.

Disclosure of other information in the Board Report

Rule 8(5) provides that in addition to the information and details specified in section 134(3), read with Rule 8(4) 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;
 - (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.
- (ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained.
- (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Exemptions to OPC and Small company for disclosure under Rule 8(5)

It has been provided by the Companies (Accounts) Amendment Rules, 2018, w.e.f. 31-7-2018 that rule 8 shall not be applicable to One Person Company or Small Company.

6. BOARDS' REPORT OF ONE PERSON COMPANY

The report of the Board of Directors to be attached to the financial statement shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report. [Section 134(4)]

The MCA by the Companies (Accounts) Amendment Rules, 2018, w.e.f. 31-7-2018 has provided that the Board's Report for One Person Company and Small Company, shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:—

- (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
- (b) number of meetings of the Board;
- (c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;
- (d) 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;
- (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
- (f) the state of the company's affairs;
- (g) the financial summary or highlights;
- (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- (i) the details of directors who were appointed or have resigned during the year;
- (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

The Report of the Board shall also contain the particulars of contracts or arrangements with related parties in the Form AOC-2.

7. SIGNING OF THE BOARDS' REPORT

Section 134(6) of the Companies Act, 2013 provides that the Boards' Report shall be signed by the chairperson of the company, if so authorised by the Board or by two directors, one of whom shall be the Managing Director, if there is one.

8. PENALTIES

If a company contravenes the requirements under section 134, it will be punishable with a fine, minimum Rs. 50,000 and maximum upto Rs. 25 lakhs. Every officer of the company who is in default will be punishable with imprisonment for a term, which may extend to 3 years or with fine minimum `50,000/- but which may extend to Rs. 5 lakh, or with both.



NOTIFICATIONS

A. G.S.R. 350(E) Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019 dated 08.05.2019

In exercise of the powers conferred by sub-sections (1), (2) and Sub-section (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 , namely:-

1. (1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2019.

(2) They shall come into force with effect from 10th May, 2019.

2. In the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (hereinafter referred to as the principal rules), in rule 4, —

(a) in sub-rule (1), for the words “five thousand rupees”, the following shall be substituted, namely:-

“ten thousand rupees:

Provided that no application in Form No. STK-2 shall be filed by a company unless it has filed overdue returns in Form No. AOC-4 (Financial Statement) or AOC-4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return), up to the end of the financial year in which the company ceased to carry its business operations:

Provided further that in case a company intends to file Form No. STK-2 after the action under sub-section (1) of section 248 has been initiated by the Registrar; it shall file all pending overdue returns in Form No. AOC-4 (Financial Statement) or AOC-4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return) before filing Form No. STK-2:

Provided also that once notice in Form No. STK-7 has been issued by the Registrar pursuant to the action initiated under sub-section (1) of section 248, a company shall not be allowed to file an application in Form No. STK-2.

(b) in sub-rule (3), in clause (ii), after the words, “statement of accounts”, the words, letters and figures “in Form No. STK-8” shall be inserted.

3. In the Annexure to the principal rules, —

(a) in Form No. STK-4, in Serial Number 2, after item (vii), the following item shall be inserted, namely:-

“(viii) The company has fulfilled all pending compliances, if any [Applicable in case an application under sub-section (2) of section 248 has been filed after the initiation of action under sub-section (1) of section 248].

(b) after Form No. STK -7, the following Form shall be inserted, namely:-

“Form No. STK-8- Statement of Account”

B. G.S.R.368(E) Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019 dated 16.08.2019

In exercise of the powers conferred by the second proviso to sub-section (1), subsection (4), clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, after rule 12A, the following rule shall be inserted, namely:-

‘12B. Directors of company required to file e-form ACTIVE.- (1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director

Identification Number (DIN) allotted to its existing directors, shall be marked as “Director of ACTIVE non-compliant company”.

(2) Where the DIN of a director has been marked as “Director of ACTIVE non-compliant company”, such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.

(3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as “Director of ACTIVE compliant company”.

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