

Financial Statements (Sec 129)

1. Legislative background

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

“This clause corresponds to section 211 of the Companies Act, 1956 and seeks to provide that the financial statements shall give a true and fair view of the state of affairs of the companies in the form as may be provided for different class or classes in Schedule III and shall comply with accounting standards. Insurance companies, banking company, companies engaged in generation / supply of electricity or any other class of companies shall make financial statements in the form as has been specified in or under the relevant Act governing such companies. The financial statement shall be laid in the annual general meeting of that financial year. In case of subsidiary companies, the company shall prepare a consolidated financial statement of the Company and all subsidiaries and lay before the annual general meeting. The Central Government shall have the power to exempt a class or classes of companies from any of the requirement of this section. The clause also provide the penalty where company contravenes the provision of this section.”

On the provisions of consolidation, significant discussion can be found in the Report of the 57th Standing Committee on Companies Bill, 2011. While taking a different view on the suggestion that unlisted companies should not to be mandated consolidation of financial statements, it was stated by the Hon'ble Committee that “Intention of consolidation of financial statements is to give true and clear picture of financial position of the holding company and its all subsidiary companies to the investor and public at large. This would reflect the true strength of the entire group of companies. Since these provisions seek to enhance standards of financial reporting and are for the benefits of users of financial statements, including investors, the provisions proposed in the Bill may be considered to be retained.”

Some of the relevant remarks of JJ Irani Committee from Chapter IX : Accounts and Audit are as follows:

“Holding-Subsidiary Accounts and Consolidation

- 4. The Committee took the view that consolidation of financial statements of subsidiaries with those of holding companies should be mandatory. The Committee discussed the question of the manner of maintenance of accounts of entities other than companies but controlled by companies registered under the Act. With the proposed consolidation of accounts by holding companies, the Committee felt the need for prescribing maintenance of proper records by a non-corporate entity which is controlled by a company to which the provisions of the Act apply. This is because companies are now increasingly controlling entities such as partnership firms, special purpose vehicles, associations, etc. which are non-corporate bodies.*

Further, the responsibility for proper maintenance of records in such cases should be that of the holding company.

5. *With consolidation of financial statements by holding companies on mandatory basis, the provisions requiring attaching the accounts of subsidiary companies with those of holding companies, for circulation to shareholders in accordance with the provisions of the present Companies Act should be done away with. In case the financial statements of a foreign subsidiary are required to be furnished to the shareholders of the holding company, these should be accepted in the same format and currency in which these were prepared as per laws of the relevant country. With implementation of e-governance project, it should be possible to view the records of the companies filed with Registrars through electronic media. Notwithstanding this, both holding and subsidiary companies should be encouraged to make greater use of electronic media to make their published financial accounts available for viewing.*
6. *Further, the Committee took the view that the holding companies should be required to maintain records relating to consolidation of financial statements for specified periods. Presentation of consolidated financial statements by the holding company should be in addition to the mandatory presentation of individual financial statements of that holding company. Form of Accounting Records and Accounting Standard*
8. *In order to bring about more transparency and uniformity in the maintenance of accounts, the Committee felt that the companies should continue to be mandated to maintain their books of accounts on accrual basis and double entry method of book keeping. The question arose before the Committee as to whether the form and content of the financial statements needs to be specified separately in the Act or should be left to the Accounting Standards prescribed by the Central Government in consultation with NACAS. After considerable deliberations, it was decided that the form and content of the financial statements and the disclosures required therein need to be provided for under the Act/Rules. Any changes made in the Accounting Standards could be factored in the Act/Rules from time to time. It was also decided that the companies should be given the option to maintain the records in electronic form capable of conversion into hard copy.”*

The major difference in the new section and corresponding sections of the Companies Act, 1956 is the provisions for mandatory consolidation of accounts with subsidiaries including associate companies and joint ventures as per subsection (3) of section 129. Under the Companies Act, 1956, consolidation was not mandatory for unlisted companies. However, for listed companies, it was mandated by the listing agreement.

2. **Financial statements to give a true and fair view**

The financial statements (as defined in clause (40) of the section 2) shall give a true and fair view of the state of affairs of the company or companies. (For detailed

discussion on true and fair view, refer to commentary under section 128). The explanation appended to the section clarifies that term 'financial statement', for the purpose of this section will include notes annexed to and forming part of the financial statements unless the context requires otherwise. Such notes may give information required to be given or allowed to be given under the Act. The said notes are included in the definition of financial statements (as defined in clause (40) of the section 2) as well.

This requirement of giving a true and fair view is not vitiated by certain non-disclosures when these non-disclosures are brought about due to non-applicability of Schedule III and no corresponding disclosure requirements are provided under the formats given under the legislations prescribing other formats. It should be noted that this provision prevents any clash of statutory obligations under two statutes. This provision covers the following classes of companies and non-disclosures:

- (a) an insurance company, where any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
- (b) a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
- (c) a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
- (d) a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

3. Financial statements to be made in prescribed format

Financial statements are required to be prepared in the form as mentioned in Schedule III. Different forms may be provided for different class or classes of companies in Schedule III. The phrase "or as near thereto as circumstances admit" used in section 211 of the Companies Act, 1956 is conspicuous by its absence. Hence, all companies are required to adhere to the format prescribed in Schedule III.

It should be noted that as mentioned in the General Instructions given in Schedule III, such disclosure requirements prescribed under Schedule III are in addition to accounting standards. Additional disclosures as prescribed under accounting standards can be made either through notes to accounts or through additional statements while additional disclosures under the Act are to be made in notes to the accounts. Requirements of the Schedule III are minimum requirements for disclosure on the face of balance sheet, profit and loss account and notes. For companies not carrying out activities for profit, the income and expenditure account is required to be prepared in a like manner as a profit and loss account. No format

is prescribed for a cash flow statement which is dealt with in accounting standard-3.

However, for certain companies engaged in insurance, banking or any company engaged in the generation of supply of electricity or to any other class of companies which may be prescribed by the Central government from time to time, the financial statements need not conform to Schedule III. This exemption is only for the form of financial statement.

4. Financial Statements to comply with accounting standards

The financial statements of all companies shall comply with the accounting standards as prescribed under section 133 of the Act. As accounting standards are yet to be prescribed under section 133, rule 7 provides that accounting standards as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under section 133. Central Government has powers to prescribe the accounting standards or any addendum as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956. (For detailed discussion, refer to commentary on section 133).

5. Financial Statements to be laid before annual general meeting

It shall be the duty of the board to lay the financial statements for the said financial year at every annual general meeting. After the financial statements are so laid and adopted, they are to be filed with the Registrar as prescribed under section 137. As per the provisions of sub-section (3), consolidated financial statements are also to be laid before the meeting.

(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.