

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

(Continued from Geeta Saar 88)

4. Contents of Board's report (Continued)

1. 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;
2. The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year. If the company has failed to spend the prescribed amount, the reasons for not spending such amount.
3. In case of a listed company and every other public company having a paid-up share capital of Rs. 25 crore or more, 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 (the Companies (Amendment) Bill, 2016 proposes to substitute the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors",
4. The financial summary or highlights;
5. The change in the nature of business, if any;
6. The details of directors or key managerial personnel who were appointed or have resigned during the year;
7. The names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;
8. 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;
9. The details of deposits which are not in compliance with the requirements of Chapter V of the Act;

10. 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;
11. The details in respect of adequacy of internal financial controls with reference to the financial statements.
12. Apart from the requirement in the section 134, there are other details which are required to be disclosed in the Board's Report which are as follows:
 1. Detailed reasons for voluntary revision of financial statement or report made during the year (third proviso to sub-section (1) of section 131)
 2. Composition of CSR Committee (sub-section (2) of section 135)
 3. Disclosure of re-appointment of Independent Director under sub-section (10) of section 149
 4. Composition of Audit Committee and reasons for not accepting the recommendation of audit committee, if any, (sub-section (8) of section 177)
 5. Establishment of vigil mechanism (sub-section (10) of section 177)
 6. Remuneration policy for remuneration of directors, key managerial personnel and other employees (sub-section (4) of section 178)
 7. Disclosures regarding ratio of director's remuneration to median employees' remuneration (sub-section (12) of section 197 read with rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014)
 8. Disclosure of remuneration or commission received from holding or subsidiary company of the company (sub-section (14) of section 197)
 9. Details of shares with differential voting rights (rule 4 (4) of the Companies (Share Capital and Debentures) Rules, 2014)
 10. Disclosures in respect of voting rights not exercised directly by the employees in respect of shares under the scheme under section 67 (rule 16 (4) of the Companies (Share Capital and Debentures) Rules, 2014)
 11. Details of money accepted from directors (rule 2 (1) (c) (viii) of the Companies (Deposits) Rules, 2014)

Laws other than Companies Act, 2013 also create obligation for disclosures in the board's report. One such example is details of cases of sexual harassment filed and details of their disposal required to be given by the company under section 22

of Sexual Harassment of Women at Work Place (Prevention Prohibition and redressal) Act 2013.

The Companies (Amendment) Bill proposes to add the following provisos after subsection (3) of section 134:

“Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board’s report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company’s website, if any, it shall be sufficient compliance of the requirements under such clauses 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.”

5. Exemption to Government company

Government companies are given certain exemptions from the contents of the Board’s report vide notification G.S.R. 463 (E) dated 05.06.2015. Clause (e) of sub-section (3) of section 134 which deals with policy of appointment and remuneration of directors does not apply to such companies. Further, clause (p) dealing with formal evaluation of performance of board or its committees does not apply if the directors are evaluated by the evaluation methodology used by the Department or Ministry of State or Central Government, as the case may be, which is administratively in charge of the company.

6. Board’s report for OPC

For an OPC, the director’s report shall contain only the explanations or comments of the board on every qualification, reservation, adverse remark or disclaimer made by the auditor.

The Companies (Amendment) Bill proposes to add the following provisos after subsection (3) of section 134:

“(3A) The Central Government may prescribe an abridged Board’s report, for the purpose of compliance with this section by a One Person Company or small company.”

7. Directors’ responsibility statement

The introduction of the directors’ responsibility statement by the Companies (Amendment) Act, 2000 was noted by the J. J. Irani Committee in its report. The same is given in legislative background. The clause (c) of sub-section (3) and sub-section (5) of section 134 provide for the same. The clauses of the sub-section (2AA) of section 217 of the Companies Act, 1956 have been retained with the addition of two more clauses, clause (e) and (f). The clauses are as follows:

- (a) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (b) The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (c) The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (d) The directors had prepared the annual accounts on a going concern basis; and
- (e) The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation: For the purpose of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (f) The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Due to these additional clauses, the responsibility of directors is widened considerably. Clause (e) puts the responsibility on the directors both to lay down and to check the efficacy of the internal financial controls. Further, as per the explanation provided, the internal financial controls cover the entire gamut of activities of the company and not just the finance aspects. Clause (f) covers designing and testing the efficacy of the systems put up to ensure compliance with all applicable laws.

8. Signing of Board’s report

The Board’s report including the annexures mentioned in sub-section (3) shall be signed by the Chairperson of the company if he is authorized by the Board. Otherwise, it is to be signed by two directors of the company, one of whom shall be a managing director. Where the company has only one director, such director shall sign the report.

9. Punishment and Compoundability

In case of any contravention of the provisions of this section, the company shall be liable for a minimum fine of Rs 50,000/- which may extend upto Rs. 25 lacs and every officer who is in default shall be liable for imprisonment upto 3 years or with a fine which shall not be less than Rs 50000/- but which may extend to Rs 5 lacs or with both. As the offence by the company is punishable only with fine, it is compoundable as per the provisions of sub-section (1) of section 441. The offence by officer in default is compoundable with the permission of special court as provided in clause (a) of sub-section (6) of section 441.

(Concluded)

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