

Editorial 925

Quick Bites- Directors Report 2024.

Section 134 of Companies Act, 2013

(01st August 2024)

SHORT SUMMARY:

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 Companies Act, 2013, mandates certain disclosures to be made in the Board's Report, additionally, a listed company is required to comply with disclosures requirement stated under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

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.

QUICK BITES:

Que 1: If a Company is preparing Consolidated Financial statements, Whether the directors report shall be prepared on the basis of a consolidated financial statement or a standalone financial statement? (DG)

Ans 1: As mentioned in the ICSI Guidance Note, The Board's Report should be based on the company's standalone financial statement and not on the consolidated financial statement (DG)

Que 2: If any information is already mentioned in the financial statement, does the company need to mention the same in the Directors report?? (DG)

Ans 2: As mentioned in the ICSI Guidance Note, 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 (DG)

For example, under Section 134, the company is required to include information about the loan, guarantee, and investment made by the company under Section 186. However, the same has been mentioned in the financial statement. Therefore, instead of repeating the same, if the company gives reference to note no. of the financial statement in the director's report, that is enough to complete the compliance.

Que 3: Are only disclosures mentioned in Section 134 required to be mentioned in the Directors' Report? (DG)

Ans 3: The Directors Report can't be finalized only by following the disclosures mentioned in u/s. 134. Companies need to comply with other sections and act for the same. (DG)

For example, disclosure of Sections 135, 188, etc. Disclosure of Secretarial Standards, Disclosure of Posh Act, etc.

Que 4: If the Company have not declared any Dividend, not transferred any amount in reserves. Whether Companies should give disclosure of the same in Directors Report.? (DG)

Ans 4: As per ICSI Guidance Note, 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. (DG)

Que 5: Whether disclosure requirement (Format) of Directors Report of One Person Company & Small Company are same as other Company? (DG)

Ans 5: 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. Therefore, the Directors Report disclosures of OPC and Small Company are lessor than other Companies. (DG)

Que 6: Which sector-specific Regulations should companies check while drafting the Directors report? (DG)

Ans 6: Specific Sectors regulations, 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. (DG)

Que 7: Whether disclosure of compliance of Secretarial Standards are mandatory to mention in Directors Report? (DG)

Ans 7: Paragraph 9 of Secretarial Standard on Meetings of the Board of Directors (SS-1), provides that the Report of the Board of Directors shall include a statement on compliance of applicable Secretarial Standards.

In case a certain portion of applicable Secretarial Standards is not adhered, the same should be highlighted in the Report alongwith the reasons for not complying with the same.

Compliance with Secretarial Standards voluntarily adopted by the company should also be stated in the Report. In case the voluntary adoption is partial the same need to be stated in the Report.

Que 8: Whether MGT-9 is required to attach along with the directors' report for the FY ended March 31, 2024? (DG)

Ans 8: MGT-9 has been omitted from the Companies Act. Therefore, Whatever the type of Company and whatever the status of the website, the Companies are not required to prepare MGT-9.

Que 9: If any Company is having website. Whether such Company needs to publish Annual Return i.e. MGT-7 of FY 2023-2 on its website? (DG)

Ans 9: A copy of the annual return shall be placed on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Report. This requirement is applicable on all the Company, whether Small Company, OPC, Non small Company, Public Company etc.

Que 10: Whether every Company required to give disclosure of POSH Act in their Directors Report.? (DG)

Ans 10: As per the POSH Act every company should give disclosure of POSH act in its Directors Report.

The disclosure shall include the following:

- (a) a statement that the company has complied with the provision relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.
 - (b) the details of number of cases filed and disposed as required under the Sexual Harassment of Women
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Que 11: Whether Directors report can be approved by passing of Circular Resolution by Board of Directors? (DG)

Ans 11: Sub-section (3) of section 179 of the Act provides that the Board of Directors of a company shall approve the financial statement and the Report on behalf of the company by means of resolutions passed at meetings of the Board.

Therefore, Directors Report can't be approved by passing of Circular Resolution.

Que 12: Whether Directors reports can be approved by passing a Resolution by the board of Directors in a board meeting held through videoconferencing? (DG)

Ans 12: After the amendment to Section 173, there is no restriction on passing any resolution through a video conference board meeting.

Therefore, the Directors report can be approved in the Board Meeting held through videoconferencing.

Que 13: Who can sign the Directors Report? (DG)

Ans 13: The Directors Report can be sign in following manner:

- i. Solely by Chairman of the company, if authorized in that behalf by the Board
 - ii. If Chairman not authorized, by two Directors one of whom shall be the Managing Director (if any)
 - iii. In the case of a One Person Company, by one Director
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Que 14: Who can sign the Annexures of Directors Report? (DG)

Ans 14: The annexures to the Report shall be signed in the similar manner as the Report.

Except the Report on CSR activities of the company, which is required to be signed by the Chief Executive Officer or the Managing Director or any other Director of the company and by the Chairman of the CSR Committee of the Company.

Que 15: Who can sign the Directors Report if Company is under Insolvency Laws? (DG)

Ans 15: As per clause (b) of sub-section (1) of section 17 of Insolvency and Bankruptcy Code (IBC), a company of which Interim Resolution Professional (IRP) is appointed, the powers of the Board of Directors stands suspended and shall be exercised by IRP.

Since the ultimate responsibility and powers of the Board lies with IRP/RP, in the aforesaid context, it appears that IRP/RP should approve and sign the Report.

Que 16: How many days before the AGM should the directors report be circulated to Members of the company?? (DG)

Ans 16: A copy of the Report along with the financial statement and the Auditor's Report shall be sent, either physically or in electronic form, to every member at **least twenty-one clear days** in advance of the annual general meeting.

Note: However, in case of **Section 8 Companies**, the said documents shall be sent to the members not less than **fourteen clear** days before the date of the annual general meeting

Que 17: Whether the chairman of the Board Meeting can be considered the Chairman of the Company? (DG)

Ans 17: A Chairman of the board meeting can't be considered the Chairman of the Company until unless:

- i. Their name mentioned in AOA as chairman of the Company
 - ii. Board has designated them Chairman of the Company by passing of Board Resolution.
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Que 18: Whether Board Resolution passed by Board of Directors required to be file with ROC in MGT-14? (DG)

Ans 18: The resolution passed by the Board approving such Report shall also be filed with the Registrar of Companies in case of Public Limited Companies.

However **Private Companies** are not required to file such resolution with the Registrar of Companies.

Que 19: What are the annexures of Directors Report? (DG)

Ans 19: On the basis of the transactions and applicability, the Directors Report can have the following annexures.

S. No.	Annexure No.	Purpose of Annexure
i.	AOC-1	Statement containing salient features of the financial statement of Subsidiaries/associate companies/joint ventures
ii.	AOC-2	Details of contracts or arrangements or transactions with Related Party
iii.	CSR Annexure	Annual Report on CSR
iv.	MR-3	Secretarial Audit Report

Que 20: Whether Directors Report can be signed by using Digital Signature Certificates? (DG)

Ans 20: There is no such restriction in the Law. Therefore, Director's report can be sign physically as well as Digitally by the Directors of the Company.

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