PROVISIONS RELATING TO DISCLOSURE OF INTEREST

UNDER COMPANIES ACT 2013 AT A GLANCE

By P C Agrawal
B.Com., LL.B., CAIIB, FCS

cs.pcagrawal@gmail.com
Aurangabad (Maharashtra)

Particulars	Disclosure u/s 184(1), 189(2) read with Rules 9 & 16	Disclosure u/s 184(2), read with Rule 16
Nature of disclosure	General disclosure of concern or interest (which shall include shareholding) in: a) any company b) Bodies corporate (which will include companies incorporated outside India, statutory corporations, nationalized banks and LLPs but not proprietorship concerns) c) Firms d) Other association of individuals (which will include HUFs and trusts) From the language of the Section it appears that disclosure will have to be made even if one share is held in a company.	Concern or interest in a contract or arrangement or proposed contract or arrangement entered into or to be entered into by the company with: a) a body corporate in which such director or such director in association with any other director, holds more than 2% shareholding of that body corporate; or b) a body corporate in which such director is a promoter, manager, CEO of that body corporate; or c) a firm or other entity in which such director is a partner, owner or member, as the case may be.
Whether indirect interest also to be disclosed	No [Sec.184(1)]	Yes [Sec.184(2)]
To whom applicable	Every director or KMP (including CEO, CFO or CS who may not be a director) [Sec.189(2)]	Every director. [Sec.184(2)]
Time limit for disclosure of interest	Within 30 days of his appointment or relinquishment of his office, as the case may be [Sec.189(2)]	At meeting of the Board in which the contract or arrangement is discussed
Board meeting at which disclosure to be noted in case of regular disclosure	a) At the first meeting of the Board in which he participates as a director; or b) Thereafter at the first meeting of the Board in every financial year	Disclosure is required in the meeting of the Board only if the director is interested in a contract or arrangement being discussed.
Whether the director can participate in the discussions in disclosure	Yes	No. He will not even participate in the meeting.

Particulars	Disclosure u/s 184(1), 189(2) read with Rules 9 & 16	Disclosure u/s 184(2), read with Rule 16
Board meeting at which disclosure to be noted in case of any change in the disclosure already made	At the first Board meeting held after such change. (Any change in concern or interest including shareholding already disclosed will have to be disclosed every time whenever there is any change at first Board meeting after the change.)	At the first meeting of the Board held after he becomes concerned or interested in a contract or arrangement (if he was not concerned or interested at the time of entering into such contract or arrangement)
Form in which disclosure is to be given	a) Regular disclosure by a director: Form MBP.1. b) Regular disclosure by a KMP who is not director: No form specified. (Can be given in almost similar format with suitable modification). c) Disclosure in case of any change in disclosure already made: No form specified. Can be given by way of simple notice.	Not specified. Can be given by way of simple notice.
Whether Board resolution for noting disclosure or any change therein needs to be filed with ROC with e-Form MGT.14	Yes [Sec.117(3)(g) read with Sec.179(3) read with Rule 8(5) under Chapter XII]	Yes [Sec.117(3)(g) read with Sec.179(3) read with Rule 8(5) under Chapter XII]
Whether notice of disclosure of interest also needs to be attached with MGT.14	No. Sec.117(3)(g) requires only Board resolution to be filed. Further, such disclosure is open for inspection only to directors and members, but not to general public. (It is noticed that some ROCs are insisting for such attachment which is not in accordance with the scheme of the Act.)	No. Sec.117(3)(g) requires only Board resolution to be filed. Further, such disclosure is open for inspection only to directors and members, but not to general public. (It is noticed that some ROCs are insisting for such attachment which is not in accordance with the scheme of the Act.)
Place where notices are to be kept	Registered office of the company [Rule 9(3)]	Not specified.
Preservation period of notices	8 years from the end of financial year to which it relates [Rule 9(3)]	Not specified.
Notices to be kept in the custody of	Company Secretary or any other person authorized by the Board for the purpose [Rule 9(3)]	Not specified.
Consequences of default	1) If a director contravenes the provisions of sub-section (1) or sub-section (2) of Sec.184, such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs.50,000 but which may extend to Rs.1 lac, or with	1) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company. [Sec.183(3)] 2) If a director contravenes the

Particulars	Disclosure u/s 184(1), 189(2) read with Rules 9 & 16	Disclosure u/s 184(2), read with Rule 16
	both. [Sec.184(4)] 2) Every director who fails to comply with the provisions of Sec.189 and the rules made thereunder shall be liable to a penalty of Rs.25,000.	provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs.50,000 but which may extend to Rs.1 lac, or with both. [Sec.184(4)] 3) Every director who fails to comply with the provisions of Sec.189 and the rules made thereunder shall be liable to a penalty of Rs.25,000. [Sec.189(6)] 4) Office of a director shall become vacant in case he acts in contravention of provisions of Sec.184 relating to entering into contracts or arrangements in which he is directly or indirectly interested or he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Sec.184. [Sec.167(1)].
Exemption	N.A.	Nothing in Sec.184 shall apply to any contract or arrangement entered into or to be entered into between two companied where any of the directors of the one company or two or more of them together holds or hold not more than 2% of the paid-up share capital in the other company.
Whether to be entered in register of contracts in Form MBP.4	Yes. (except particulars of company or companies or bodies corporate in which a director himself togetherwith any other director holds 2% or less of the paid-up share capital) [Rule 16(1)(a)]	Yes. It has also to be signed by all directors present at the next meeting. [Sec.189(1), Rule 16(1)(b)] [except in case of contract or arrangement (a) for sale, purchase or supply of any goods, materials or services, if the value of such goods and materials or the cost of such services does not exceed Rs.5 lacs in the aggregate in any year or (b) by a banking company for the collection of bills in the ordinary course of its business.]