

EXPLANATORY STATEMENTS UNDER CA, 2013

INTRODUCTION

General principle of law is that the decisions which are serious in nature or which involve significant business transactions are taken at Shareholders meetings. The scope of this decision making power has been increased by Companies Act, 2013.

To enable shareholders to take apt and a well informed decision, it is necessary to provide them with requisite information. Under Companies Act, 1956 section 173 ensured that the shareholders are well equipped with necessary information, but as the decisions to be taken at the meeting are of various types therefore the information required also cannot be framed in a particular stereotype format and unlike Companies Act, 1956 proper care has been taken of this in the new law.



EXPLANATORY STATEMENT

Different requirements with respect to explanatory statements pursuant Companies Act, 2013 are stated as under:-

❖ General requirement

As per Section 102, every special business to be transacted at a general meeting should contain following information in the explanatory statement:-

1. Concern or interest, financial or otherwise of every Director, KMP and their relatives.
2. Any other information and facts that may enable members to understand the meaning, scope and implication of the proposed resolution.
3. Shareholding interest of every Promoter, Director and KMP in any other company exceeding 2% of paid-up share capital of such company, if the resolution to be passed relates to that another company.

Note: If any document is referred which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the explanatory statement.

❖ Specific requirements

Specific requirements regarding explanatory statement under Companies Act, 2013 are:-

1. Independent Director

(Section 150(2) & 152(5) read with Schedule IV)

- a) Justification for choosing the appointee for appointment as independent director.
- b) A statement that in the opinion of the Board, person being appointed fulfills the conditions specified in this Act and the rules made there under and is independent of the management.



2. Managing / Whole-time Director

(Section 196 read with Schedule V)

- ❖ **General:-** Terms and conditions of appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any
- ❖ **If person being appointed > 70 years:-** Justification for appointing such person;
- ❖ **If remuneration paid in case of no or inadequate profit without CG approval:-**

I. General Information:

- (1) Nature of industry
- (2) Date or expected date of commencement of commercial production
- (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
- (4) Financial performance based on given indicators
- (5) Foreign investments or collaborations, if any.

II. Information about the appointee:

- (1) Background details
- (2) Past remuneration
- (3) Recognition or awards



- (4) Job profile and his suitability
- (5) Remuneration proposed
- (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position.
- (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel.

III. Other information:

- (1) Reasons of loss or inadequate profits
- (2) Steps taken or proposed to be taken for improvement
- (3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

- All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- Details of fixed component and performance linked incentives along with the performance criteria;
- Service contracts, notice period, severance fees;
- Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

3. Conversion of Section 8 company into a company of any other kind

(Rule 21 of Companies (Incorporation) Rules, 2014)

- a) Date of incorporation of the company;
- b) Principal objects of the company as set out in MOA.
- c) Reasons that why objects of the company cannot be carried on in the current structure.
- d) If principal objects to be altered, then mention the altered objects and the reasons for the alteration
- e) Impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.
- f) Tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization.

4. Issuance of equity shares with differential rights

(Rule 4 of Companies (Share Capital and Debentures) Rules, 2014)



- a) The total number of shares to be issued;
- b) The details of the differential rights ;
- c) The percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- d) The reasons or justification for the issue;
- e) The price at which such shares are proposed to be issued either at par or at premium;
- f) The basis on which the price has been arrived at;
- g) (i) in case of private placement or preferential issue-
 - ✓ Details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;
 - ✓ Details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;
- (ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;
- h) The percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
- i) The scale or proportion in which the voting rights of such class or type of shares shall vary;
- j) The change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;
- k) The diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;
- l) The pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

5. Issuance of sweat equity shares

(Rule 8 of Companies (Share Capital and Debentures) Rules, 2014)

- a) Date of the Board meeting at which the proposal for issue of sweat equity shares was approved;
- b) Reasons or justification for the issue;
- c) Class of shares under which sweat equity shares are intended to be issued
- d) Total number of shares to be issued as sweat equity;
- e) Class or classes of directors or employees to whom such equity shares are to be issued;
- f) Principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation ;
- g) Time period of association of such person with the company;
- h) Names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;
- i) Price at which the sweat equity shares are proposed to be issued;

- j) Consideration including consideration other than cash, if any to be received for the sweat equity;
- k) Ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;
- l) A statement to the effect that the company shall conform to the applicable accounting standards; and
- m) Diluted Earning Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards

6. Issuance and redemption of preference shares

(Rule 9 of Companies (Share Capital and Debentures) Rules, 2014)

- a) Size of the issue and number of preference shares to be issued and nominal value of each share;
- b) Nature of such shares i.e. cumulative or non - cumulative, participating or non - participating, convertible or non – convertible.
- c) Objectives of the issue;
- d) Manner of issue of shares;
- e) Price at which such shares are proposed to be issued;
- f) Basis on which the price has been arrived at;
- g) Terms of issue, including terms and rate of dividend on each share, etc.;
- h) Terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
- i) Manner and modes of redemption;
- j) Current shareholding pattern of the company;
- k) Expected dilution in equity share capital upon conversion of preference shares.



7. Issuance of employee stock options

(Rule 12 of Companies (Share Capital and Debentures) Rules, 2014)

- a) Total number of stock options to be granted;
- b) Identification of classes of employees entitled to participate in the Employees Stock Option Scheme;
- c) Appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
- d) Requirements of vesting and period of vesting;
- e) Maximum period within which the options shall be vested;
- f) Exercise price or the formula for arriving at the same;
- g) Exercise period and process of exercise;
- h) Lock-in period, if any ;
- i) Maximum number of options to be granted per employee and in aggregate;
- j) Method which the company shall use to value its options;
- k) Conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;



- l) Specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and
- m) a statement to the effect that the company shall comply with the applicable accounting standards .

8. Private Placement

(Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014)

Basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed.

9. Preferential allotment

(Rule 13 of Companies (Share Capital and Debentures) Rules, 2014)



- a) objects of the issue;
- b) Total number of shares or other securities to be issued;
- c) Price or price band at/within which the allotment is proposed;
- d) Basis on which the price has been arrived at along with report of the registered valuer;
- e) Relevant date with reference to which the price has been arrived at;
- f) Class or classes of persons to whom the allotment is proposed to be made;
- g) Intention of promoters, directors or key managerial personnel to subscribe to the offer;
- h) Proposed time within which the allotment shall be completed;
- i) Names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
- j) Change in control, if any, in the company that would occur consequent to the preferential offer;
- k) Number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
- l) Justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- m) Pre issue and post issue shareholding pattern of the company in the format specified in rules.

10. Buy back of shares

(section 68 read with rule 17 of Companies (Share Capital and Debentures) Rules, 2014)

- a) Full and complete disclosure of all material facts;
- b) Necessity for the buy-back;
- c) Class of shares or securities intended to be purchased under the buy-back;
- d) Amount to be invested under the buy-back;



- e) Time-limit for completion of buy-back;
- f) Date of the board meeting at which the proposal for buy-back was approved by the board;
- g) Objective of the buy-back;
- h) Number of securities that the company proposes to buy-back;
- i) Method to be adopted for the buy-back;
- j) Price at which the buy-back of shares or other securities shall be made;
- k) Basis of arriving at the buy-back price;
- l) Maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
- m) Aggregate shareholding of the promoters, directors, KMP and of director of promoter, where the promoter is a company as on the date of the notice convening the general meeting;
- n) Aggregate number of equity shares purchased or sold by persons mentioned in (m) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;
- o) Maximum and minimum price at which purchases and sales referred to in (n) were made along with the relevant date;
- p) If, Persons mentioned in (m) intend to tender their shares for buy-back –
 - i. the quantum of shares proposed to be tendered;
 - ii. the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;
- q) A confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;
- r) A confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
 - i. that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;
 - ii. as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and
 - iii. the directors have taken into account the liabilities(including prospective and contingent liabilities)

- s) A report addressed to the Board of directors by the company's auditors stating that-
- i. they have inquired into the company's state of affairs;
 - ii. the amount of the permissible capital payment for the securities in question is in their view properly determined;
 - iii. that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document; and
 - iv. Board of directors have formed the opinion(as specified in point r) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

11. purchase of company's own shares by employees or by trustees for the benefit of employees
(Rule 16 of Companies (Share Capital and Debentures) Rules, 2014)

In addition to disclosures required to be made in case of **buy-back** following additional disclosures shall also be made in the explanatory statement:-

- a) Class of employees for whose benefit the scheme is being implemented and money is being provided for purchase of or subscription to shares;
- b) Particulars of the trustee or employees in whose favor such shares are to be registered;
- c) Particulars of trust and name, address, occupation and nationality of trustees and their relationship with the promoters, directors or key managerial personnel, if any;
- d) Any interest of key managerial personnel, directors or promoters in such scheme or trust and effect thereof;
- e) Detailed particulars of benefits which will accrue to the employees from the implementation of the scheme;
- f) Details about who would exercise and how the voting rights in respect of the shares to be purchased or subscribed under the scheme would be exercised;

12. Related party transaction
(Rule 15 of Companies (Management and Administration) Rules, 2014)

- a) Name of the related party ;
- b) Name of the director or key managerial personnel who is related, if any;
- c) Nature of relationship;
- d) Nature, material terms, monetary value and particulars of the contract or arrangement;
- e) Any other information relevant or important for the members to take a decision on the proposed resolution.



13. Extraordinary general meeting by requisitionists

(Rule 17 of Companies (Meetings of Board and its Powers) Rules, 2014)

No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

Suggestions, comments and queries solicited

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