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Analysis of Disclosure of Interest by Directors under CA, 2013

Dear Professional Colleagues,

During the process of unlocking provisions of Companies Act, 2013, I have realized that Section 184 regarding disclosure of concern or interest by the Director has invoked considerable controversy for various reasons. In erstwhile Companies Act, 1956, provisions related to disclosure of concern or interest by the Director is given in section 299. I have gone through the provisions of section 184 of the Companies Act 2013 in deep and noted certain facts. So an attempt has been made from my side to discuss critical aspects and various issues w.r.t. the compliance of section-184. I hope the write up below would be of some help to understand the provisions regarding disclosure of concern or interest by the Director.

Section 184(1) of Companies Act, 2013

Please find below the text of section 184 for your ready reference:

- (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.*
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—*
 - (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or*
 - (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,*

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided *that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.*

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- (3) *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.*
- (4) *If a director of the company contravenes the 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 fifty thousand rupees but which may extend to one lakh rupees, or with both.*
- (5) *Nothing in this section—*
- (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;*
 - (b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company.*

Analysis of Section 184 regarding Disclosure of Interest

Section 184 is about 2 separate disclosures. One is under section 184(1) and second is under section 184(2).

- A. **General Disclosure u/s 184(1):** First let us discuss **General Notice** of disclosure of concern or interest by the Director under section 184(1).

As per section 184(1) of Companies Act, Every director shall:

- (i.) At the first meeting of the Board in which he participates as a director; and thereafter
- (ii.) At the first meeting of the Board in every financial year or
- (iii.) Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change,

disclose his concern or interest in any **company** or **companies** or **bodies corporate, firms**, or **other association of individuals** which shall include the shareholding, in such manner as may be prescribed.

- B. **Specific Disclosure of Interest u/s 184(2):** Disclosure u/s 184 (2) is a specific disclosure given by the director at the meeting of the Board in which a contract or arrangement is discussed and entered into/proposed to be entered into with any entity in which such director has interest in the manner/ to the extent specified therein. Section 184 (2) also restrict the interested Director to participate in the Board proceedings at such meeting.

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Method of General Notice of Interest (Form MBP.1)

As per section 184(1) read with rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014, Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form No. **MBP.1**.

Requirement of filing form MGT.14 for disclosure of interest by Director

As per Section 117(1), certain resolutions and agreements as required by section 117(3) are required to be submitted with ROC through filing form **MGT.14**. Section 117(3) also refers matter given in section 179(3) are also required to be reported via **MGT.14**.

As per section 179(3)(k) read with rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014, taking note of the disclosure of director's interest and shareholding shall be done by the Board only by means of resolutions passed at meetings of the Board. Hence it is duty of the company to pass board resolution to take note of disclosure of interest by Director and file a copy of that board resolution in **MGT.14** within 30 days of passing board resolution.

Now it is a matter of discussion that whether form **MBP.1** regarding disclosure of director's interest is also required to be attached through form **MGT.14** along with copy of resolution passed u/s 184(1). As per my opinion there is no harm in attaching form **MBP.1** with **MGT.14** along with copy of board resolution though there is no compulsion as far as language of form **MGT.14** is concerned.

Date of form MBP.1

Please find below my point wise opinion w.r.t. the date of form **MBP.1**:

1. Technically speaking Section-299 and **form 24AA** was very much there till March 31, 2014 with respect to general disclosure of interest by Directors. Hence to maintain best practice it is advisable to collect disclosure in form 24AA for the financial year 2014-15.
2. From April 01, 2014, Section-184 came into effect and rules prescribe form MBP.1 in place of form 24AA and place requirement to upload form MGT.14 in that regard.
3. Now as far as cut of date is concerned, we should collect revised disclosure for the financial year 2014-15 in form MBP.1 as early as possible. So revised MBP.1 may be collected within a week so any date of first week of April would be fine.
4. Now as per section 184(1), this disclosure needs to be taken note of in the first board meeting of the financial year 2014-15. For example if the date of first board meeting is April 03, 2014, then **MBP.1** may be dated April 01, 2014 or April 02, 2014 or April 03, 2014.

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5. Further all the above facts like initial disclosure in form **24AA**, revised disclosure in form **MBP.1** relevant provision of law should be part of commentary of the resolution passed for taking note of disclosure of interest.

The above information is based on my personal understanding. You may verify the same from some other sources before relying upon it.

Attaching MBP.1 with MGT.14 is Compulsory or not

Requirements of filing of copy of board resolution passed for taking note of disclosure of interest through form **MGT.14** is very much there. As far as the requirement of attaching form **MBP.1** with **MGT.14** is concerned different professionals taking different views and adopting different practices. Initially it was observed by many learned experts that form MBP.1 is required to be attached with form MGT.14 along with copy of board resolution.

However, as per my understanding and as per opinion of few learned friends, in some cases ROC has asked the company to attach **MBP.1** and kept form **MGT.14** pending for resubmission. Here I would specifically mention the fact that ROC-Kolkata has started rejecting **MGT.14** filed without **MBP.1**. It seems mere annexing of extracts of Board resolution with form **MGT.14** does not suffice. Hence to be on safer side it would be advisable to voluntarily attach **MBP.1** as an optional attachment, though not mandatory as per law.

However, as per my personal opinion form MBP.1 is not required to be attached with form MGT.14 as it is not required statutorily. Further attaching and asking form MBP.1 through form MGT.14 is a kind of privacy of Director which should not be allowed.

Disclosure of Interest in case of small shareholding

As per my understanding even if Director holds 1 share of any company he has to disclose the same through MBP.1 keeping in view straight language of Section 184(1). It is well established fact that disclosure of interest on the part of director includes disclosure of direct as well as indirect interest.

Further, exception created by Section 184(5)(b) does not affect the general nature of Interest to be disclosed in the beginning of the financial year under sub section (1). Members who think if shareholding is less than 2%, then no general disclosure u/s 184(1) would be required are misinterpreting the provision. In simple words there is no exemption from the compliance of section 184 (1). Section 184(1) is an independent section and simply talks about shareholding interest without putting any limit.

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Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks

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