



DIRECTOR REPORT

SERIES NO

83

GOYAL DIVESH & ASSOCIATES,
Practicing Company Secretary



**"Everything is easy, if you are crazy about it And
Nothing is easy, when you are lazy about it."**

BACKGROUND:

CONTENT OF ARTICLES

- A. Provisions
- B. Disclosure required to be made by every Company.
- C. Even Based Disclosure.
- D. Disclosure mandatorily required to be made by Public Company.
- E. Disclosure mandatorily required to be made by Listed Company

It is mandatory for every company, to forward to its members, along with its annual Financial Statement the Board of Director's report. Report of Board of Directors should be 'ATTACHED' to the Balance Sheet laid before the AGM

Provisions Relating to Director's Report:-

❖ Applicability of Provision of Section-134 of Director Report:

The provision of Director Report (u/s 134) is applicable only to financial year commencing on or after 1st April, 2014.

❖ Signing of Director's Report along with Annexure:

As per Section 134(6) Board Report and annexure thereto shall be signed by

- its 'CHAIRPERSON' if he is authorized by Board of director; Where he is not so authorized by,
- At least 2 (Two) Director, one of whom shall be a Managing Director.
- If there is no Managing Director then by Two Directors.



CONTENT OF DIRECTOR REPORT:

As per Section 134(3) of Companies Act, 2013 Director Report shall include:

DISCLOSURE MANDATORY TO BE MADE BY
EVERY COMPANY

Draft Format of Director Report of Small Companies can be get at
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S. No.	Board Report Content- Every Company
I.	<u>State of Company's Affairs- S 134(3)(I)</u> The Directors' report starts with the financial results of the year which will show the working results for the year under review, the Net Profit Before Tax (PBT) and the Net Profit After Tax (PAT) and the appropriation of profit including the transfer to general reserve which has been left to the Director to decide. The Report will mention yearly total Sales Turnover and Income and Point out any problems faced by the company which have affected the profits and measures which have been taken to improve the working and reduce costs.-
II.	<u>Extract of the Annual Return:</u> As per Section 92(3) r/w Rule 12 of Companies (Management & Administration) Rules, Board's Report required attaching extract of Annual Return of company in form MGT-9
III.	<u>Number Of Board Meeting 134(3) (b)</u> Board Report required to mention the following Details: • <u>Number</u> of Board Meeting held during the year • <u>Date of Board Meetings</u> held during the year • Number and Date of Committee meeting held during the year • No. of <u>Board Meeting</u> attended by the each Directors during the year
IV.	<u>Inter Corporate Loans And Investments- 186</u>



	There is required to disclose by director in Board's Report that, the company has complied with the provisions of Section 186 of companies Act, 2013 in relation to Loan, Investment & Guarantee given by the company during the financial.
V.	<u>Related Party Transaction- 188</u>
	There is required to disclose by director in Board's Report all the related party transaction entered along with the justification for entering into such contract and arrangement by the company during financial year.
VI.	<u>Subsidiaries, JVs or Associate Companies- Rule 8(5)(iv)</u>
	The name of Company which has become or ceased to be its subsidiaries, Joint Venture or associate company during the year
VII.	<u>Report on performance of subsidiaries, associates companies and joint ventures:</u>
	The Board's Report shall be prepared based on <u>"STAND ALONE FINANCIAL STATEMENT OF THE COMPANY"</u> But the Board's Report shall contain <u>a Separate section</u> wherein a report on the performance and financial position of each: • Subsidiary • Associate • Joint venture companies, including in the consolidated financial statement is presented.
VIII.	<u>Details of Directors/KMP/ appointed/resigned during the year</u> As per Section 134(3)(q) r/w Rule 8(5)(iii) of Companies (Account) Rules, 2014
	Board Report required to mention the following Details: • Director/KMP appointed during the year. • Director/KMP resigned during the year.
IX.	<u>Explanation on Auditor Qualification- S 134(3)(f)</u>



	Explanation or comments by Board on every qualification, reservation or adverse remarks or disclaimer made by Statutory Auditor or Secretarial Auditor (if applicable) in its report.
X.	<u>Dividends- S 134(3)(K)</u>
	Where it is proposed to pay dividend, Report shall contain the recommendation of the Board as to the rate of dividend for the year under review for the approval of members at the AGM.
XI.	<u>Material Events Occurring After Balance Sheet Date- S 134(3)(L)</u> <u>Post Balance Sheet Events</u>
	Material Changes and Commitments, if any, affecting the Financial position of the Company <u>which have occurred between the end of financial year of the Company to which the financial statement relate and the date of the report.</u> The term material included items, the knowledge of which might influence the decision of use of financial statement.
XII.	<u>Transfer To Reserve- S 134(3)(J)</u>
	The report of the Board of Directors shall state the amount which it proposes to carry to any reserve in the Balance Sheet like debenture redemption reserve in terms of Section 71(13) etc.
XIII.	<u>Risk Management Policy- S 134 93) (n)</u>
	A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, this in the opinion of the Board may threaten the existence of the company
XIV.	<u>Disclosure under Sexual Harassment of Women & Workplace (Prevention, prohibition & redressal) Act, 2013</u>
	Company should make disclosure in Board Report relating to Sexual Harassment of

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	Women & Workplace.
XV.	<u>Financial Highlights & Change in the Nature of Business- Rules 8(5)(i) &(ii)</u>
	Disclosure on financial summary or highlights and Change in the nature of business, if any.
XVI.	<u>Voluntary revision of financial statements or Board Report- S131</u>
	Detailed reason for revision of such financial statement or Board's Report to be disclosed in the Board's report in the relevant f.y. in which such revision is being made.
XVII.	<u>Adequate Internal Financial Control- Rule 8(5)(vii)</u>
	In case of private limited company board of director is required to comment only on the adequacy of Internal Financial Control (Sec- 134(5)(e)) and not on its effectiveness.
XVIII.	<u>Conservation of energy, technology absorption & foreign exchange dealing: Rule8(3)</u>
	The report of the Board shall contain the following information and details, namely:- (A) Conservation of energy- (i) the steps taken or impact on conservation of energy; (ii) the steps taken by the company for utilizing alternate sources of energy; (iii) the capital investment on energy conservation equipments; (B) Technology absorption- (i) the efforts made towards technology absorption; (ii) the benefits derived like product improvement, cost reduction, product development or import substitution; (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-



	(a) the details of technology imported; (b) the year of import; (c) whether the technology been fully absorbed; (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and (iv) the expenditure incurred on Research and Development. (C) Foreign exchange earnings and Outgo- The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.
XIX.	<u>DIRECTOR RESPONSIBILITY STATEMENT 134(3) (c)</u>
	The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall State that— - Accounting Standard - Accounting Policy - Proper and efficient care for three things: • Going concern Basis • Adequate Internal Financial Control • Compliances with all applicable law

EVENT BASED DISCLOSURES TO BE MADE BY THE COMPANY

S. No.	Board Report Content- EVENT BASED
I.	<u>Disclosure about ESOP and Sweat Equity Share:</u> Director report shall disclose following about Sweat Equity Shares: .[Rule 7 of



	Unlisted Companies (Issue of Sweat Equity Share] Rules, 2003 • Number of Share issued Condition of issue of shares. • Pricing formula • Total Sweat equity share issued. • Money realized and benefit accrued • Diluted EPS pursuant to issue of sweat equity shares. If ESOP has been given, its details are to be disclosed.
II.	<u>Disclosure of Vigil Mechanism in board Report:</u> If provisions of vigil Mechanism apply on company, then directors required to disclose in Board's report establishment of Vigil Mechanism. Also a requirement in terms of Clause 49(vii)(H)(2) of Clause 49. <u>Applicable to the Companies</u> which have borrowed money from banks & FIs in excess of Rs. 50 Crore.
III.	<u>Order of Authority:</u> The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operation in future.
IV.	<u>Disclosure if MD/WTB is receiving remuneration or commission from a MD/WTB or subsidiary Company:</u> As per Section 197(14) of the Act, 2013 A MD/WTB of company can receive remuneration or commission from any holding company or subsidiary company of such company. This should be disclosed by the company in Board's Report.
V.	<u>Details Relating to Deposit:</u> • Details of deposits which are not in compliance with the requirement of



	chapter V of the Act. • Deposit Accepted during the year. • Unpaid and unclaimed deposit at the end of the year. • If there is any default in repayment of deposit or payment of interest thereon during the year then; <u>Number of such cases and total amount involved</u> - At the beginning of the year - Maximum during the year - At the end of the year
VI.	<u>Details of Corporate Social Responsibility (CSR) (to be include in limit are triggered) S- 134(3)(o):</u> Composition of CSR Committee, the details about the policy developed and implemented by the Company on Corporate Social Responsibility initiatives taken during the year. Details about: • Policy; • Its Implementation; • Spending as per <u>Format</u> in CSR Rules. This will go as a separate annexure to the Board Report in the formant prescribed in CSR Rules. The concept of CSR is based on the principle ‘comply or explain’. <u>Hence, if Company fails to spend</u>, the Board shall in its report specify the reason for not spending the amount and in case it does not disclose the reason for not spending, the company shall be punishable with fine.
VII.	<u>General Disclosures:</u> ▪ Name of retiring directors and whether or not they offer themselves for re-appointment. ▪ Casual vacancies in the Board filled during the year.



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	▪ Re-appointment. ▪ Casual vacancy in the Board filed during the year ▪ Changes in Board during the year, by change of nominees, appointment of additional directors, death, resignation or any other reason ▪ Details, if anyone is contesting for election as director/ small shareholder director.
VIII.	<u>Provision of Money by Company to purchase its own Shares- S 67(3) (b):</u> If a public company provide financial assistance for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of Company.
IX.	<u>Issue of Shares with Differential Rights- S 43 r/w Rules 4(4)</u>
	Company will prescribe details of issue of equity shares with differential rights.

DISCLOSURE MANDATORY TO BE MADE BY **PUBLIC COMPANY**

Disclosure about receipt of commission by MD/ WTD- S 197(14)

Any MD/ WTD who receive commission from a company shall not be disqualified from receiving commission or remuneration from the Company's holding or subsidiary if such fact is disclosed by the Company in Board's Report.



DISCLOSURE MANDATORY TO BE MADE BY LISTED COMPANY

The Ration of the Remuneration of each director to the median employee's

Sec 197(12) r/w rules 5 ask for "Elaborate Disclosures" on remuneration, employment and other HR data.

This is new and cumbersome requirement. The Act seeks disclosure on Statistics Calculations.

- The ratio of remuneration of each director to the median remuneration of the employees;
- % increase in remuneration of each Director, KMP and of % increase in median remuneration of employees
- Explanation of relationship between average increase in remuneration & Company performance
- Comparison of remuneration of each KMP against performance of company
- Variation in market cap/ net worth of company
- Justification of increase in managerial remuneration with that of increase in remuneration of other employees
- Key parameters for any variable remuneration of directors
- Ratio of remuneration of highest paid director to other employees who get remuneration more than highest paid director.
- Affirmation that remuneration is as per remuneration policy of the Company.

Listing Agreement Clause 49

- Management discussion & Analysis Report- For Listing Agreement Compliance- CL 49(III) (D)
- Listed Entities also need to comply with other requirements of Clause 49 of Listing Agreement.
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DISCLOSURE MANDATORY TO BE MADE BY LISTED & SELECTED PUBLIC COMPANY

A Statement on declaration given by Independent Director u/s 149(6) r/w Sec 134(3)(d)

Director will disclose the statement on declaration given by Independent Director.
This provision is applicable on Listed Company and selected public Companies.

Disclosure of Re-appointment of Independent Director Sec- 149(10)

Independent Director shall be appointed for a term of 5 consecutive years but he shall be eligible for re-appointment by passing of Special Resolution. In this regard, the Company must disclose such re-appointment of Independent Director in the Board Report.

Secretarial Audit Report: S-204

- Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's Report, a Secretarial audit report.
- The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the Company Secretary in practice in his secretarial audit report.

Explanation on Secretarial Auditor's Qualification – S 134(3)(f)(ii) & 204(3)

CS Fraternity should feel elated at this.

Explanation or comments by the Board on every qualification, reservation or adverse remark or disclaimer made in the Audit Report–

By Company Secretary in Practice in the Secretarial Audit Report;

Performance Evaluation of BOD & Individual Directors- S 134(3)(p)

In case of Listed Company and every other public Company having paid up share capital



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of Rs. 25 crores or more as at the end of proceeding F.Y. 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 has to be disclosed.

Companies need to attend to this with utmost professionalism by hiring external agencies.

Composition of Audit Committee- S 177

Disclosure on the composition of Audit Committee. Further, if the Board has not accepted any recommendation of the Audit Committee, the same shall also be disclosed along with reason thereof;

Nomination & Remuneration Committee- S 178(3) & (4)

- Details on Company's policy on appointment of directors;
- remuneration for the director, Key Managerial Personnel and other employees,
- Including criteria for determining qualification, positive attributes, independence of a director and other matters provided u/s 178(3).
- The report shall disclose the policy formulated by the said Nomination & Remuneration Committee.

This again is applicable to listed Companies and select public Companies under preview of Section-177 r/w Rules 6 of Meetings of Board & its Power Rules.

Details of employees drawing salary above prescribed limits: (LISTED)

Every listed company shall disclose in the Board's Report the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed. [197(12)]. The disclosures are summarized as below:

- Comparison between remuneration managerial personnel and remuneration to employees.
- Details of employees drawing salary of Rs. 500,000/- or more per month.
- Details of remuneration to person holding 2% or more equity shares
- Details of employees (who are not directors or relatives) posted outside India.



DIRECTORS' RESPONSIBILITY STATEMENT- DETAILED

DIRECTORS' RESPONSIBILITY STATEMENT- DETAILED CONTENT		
S. No.	Content	Content of DRS in Detail
A.	Accounting Standard	In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures
B.	Accounting Policies	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.	Proper & efficient care for 3 things	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.	Going Concern Basis	the directors had prepared the annual accounts on a going concern basis.
E.	Internal Financial Controls- applicable to "Listed Entity only"	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.
F.	Compliance with all laws	The director has devised proper system to ensure compliance with the provisions of all applicable laws and that such system were adequate and operating effectively.



❖ **Basis of Board Report:**

The Board's Report shall be prepared based on **"Stand Alone Financial Statement of the Company"**

But the Board's Report shall contain **a Separate section** wherein a report on the performance and financial position of each:

- Subsidiary
- Associate
- Joint venture companies, including in the consolidated financial statement is presented.

❖ **Approval of Board Report:**

- Approval of Board's Report shall be done in Meeting of the Board of Director Only. {179(3)}
- Approval of Board's Report shall not be done by "Circulation Resolution", or "by Committee". {179(3)}
- Meeting of Board of directors can't be done by "Video Conferencing".

❖ **E-filing of Resolution for approving Board report:**

The Board resolution for approval of Board Report required being file with ROC in form **"MGT-14"** within 30 days of passing of Board Resolution.

PENALTY FOR NON COMPLIANCE:

For any violation of provisions of Section 134:

COMPANY:

The company shall be punishable with fine which shall not be less than Rs.50,000/but it may extend to Rs.25 lakhs.

OFFICER:

Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend



to 3 years or with fine which shall not be less than Rs.50, 000/but such fine may extend to 5 lakhs or with both.

CONCLUSION:

- Drafting a Directors report under the New Act will be a challenge to the Company Secretaries as the scope of the Report has been widened.
- Enlarged scope of Directors Responsibility statement(DRS) casts a huge responsibility on the Board of directors as they are required not only to confirm about framing of prudent policies and internal financial controls but also adherence to policies and compliance of all applicable laws for safeguarding interests and assets of company.
- Preparing of Board Report will definitely required the experience and expertise of a professional and the Board will need to be extremely cautious in certifying the same.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the written