

Analytical Speaking

Companies to make additional disclosure in notice calling general meetings- relevant provisions of new Act get enforced



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September 13, 2013

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Article

The Companies Act, 2013 (the Act) has already been enacted as Act no. 18 of 2013 after getting green signal from the Hon'ble President on August 29, 2013. The Ministry of Corporate Affairs has placed on its portal, the draft rules for public comments on September 6, 2013¹ inviting comments till October 8, 2013. As a further step and as continuation of its speedy actions, the Ministry has now enforced 98 sections of the Act vide notification dated September 12, 2013. The said sections have come into effect with immediate effect (i.e. from September 12, 2013).

One of the enforced sections is section 102 dealing with Statement to be annexed to the notice calling general meetings for every special business [corresponding to section 173 of the Companies Act, 1956 (1956 Act)].

What are the additional disclosures required now?

Apart from the existing requirements of disclosing full particulars and reasons for proposing a resolution and place and date for inspection of relevant documents, Section 102 now requires disclosure of not only the names of the interested parties but also the nature and extent of interest of directors, managers, key managerial personnel (KMP) and relatives of directors, manager and KMP in the explanatory statement to be annexed for every special business in the notice calling general meetings.

The proviso to sub-section (2) requires mention of extent of the interest of every promoter, director, manager or KMP in any other company to be affected by the proposed resolution if they hold 2 (Two) percent in that other company. The 1956 Act required such a disclosure if director, manager or secretary holds 20 (Twenty) percent or more in such other companies.

Our Analysis

It is pertinent to note that the section now requires disclosure of interest of KMP and relatives of directors, managers and KMP also. The term 'relative' as defined in section 2(71) of the Act has also been enforced and includes, for the time being, members of HUF and husband-wife relationship only. The other relationships to be termed as 'relatives' are yet to be specified by the Central Government as the draft Rules as put up by the MCA on its portal do not provide for the same.

¹ The draft Rules are available on the MCA portal at: <http://14.140.191.91/>



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In terms of proviso to sub-section (2), disclosure of interest is to also to be made in relation to other companies in which director, promoter, manager or KMP holds 2% or more paid up capital. One may note that the provision uses the term 'paid up capital' which includes equity as well as preference share capital of a company.

Impact of enforcement of the section

As this is the peak time for companies to hold their annual general meetings, it is quite necessary to know whether the enforced section 102, which has come into effect with immediate effect, applies to them or not.

Section 102 has been enforced w.e.f. September 12, 2013, and hence, in our view, it will apply to all notices to be issued after this date and not to the meetings to be held after this date. Accordingly, all notices which are to be issued by a company after this effective date will be required to have additional disclosures in the notices as detailed in preceding paras.

What if the company fails to comply?

Unlike 1956 Act, the Act now prescribes for huge penalty which may extend to Rs. 50,000 or five times of benefits accrued due to non disclosure of interest or violation of any other provision of the section. In addition to any other action under the Act, the benefits, which have accrued to director, manager, KMP or their relatives due to non disclosure of interest, are required to be held in trust by such persons and such persons will also be liable to compensate the company to the extent of such benefit received by them.

Conclusion

The Ministry has acted before anyone expected with regard to notifying and implementing the new act and MCA has enforced 98 sections in the first phase. However as everybody knows 'haste makes waste', such faster actions of MCA might also prove so.

Along with section 102, some other sections related to calling of general meetings have been enforced by the MCA at this time when most of the companies have already issued the notices calling their annual general meetings. In absence of appropriate clarifications in this regard, the stakeholders might have to face problems while complying with the new provisions. Enforcement of several sections in lack of proper guidelines, rules, clarifications etc from the MCA might prove the 12th September notification a premature and haste action of MCA.



Companies to add additional disclosures in notice calling general meetings- relevant provisions of Companies Act, 2013 get enforced

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Also see our other related write-ups:

- Article on 'MCA notifies 98 sections w.e.f September 12, 2013- An analysis' at https://india-financing.com/MCA_notifies_98_sections_of_Companies_Act_2013_wef_September_12_2013_an_analysis.pdf
- Article on 'Transition from 1956 Act to 2013 Act: You need to act NOW' at https://india-financing.com/Transitioning_from_1956_Act_to_2013_Act_You_Need_to_Act_NOW.pdf
- Presentation on Companies Act, 2013 at <https://india-financing.com/component/content/article.html?id=279>
- Article on 'Companies Bill: From Rule of Law to the Law of Rules' at [https://india-financing.com/Companies_Bill_from_the_Rule_of_Law_to_the_Law_of_Rules%20\(1\).pdf](https://india-financing.com/Companies_Bill_from_the_Rule_of_Law_to_the_Law_of_Rules%20(1).pdf)
- Article on 'Corporate Social Responsibilities- One of the major highlights of Companies Bill, 2012' at https://india-financing.com/Companies_Bill_2012_Corporate_Social_Responsibilities.pdf
- All other articles on Companies Bill, 2012 at <https://india-financing.com/component/content/article/281.html>
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