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SS 10 SECRETARIAL STANDARD

SS - 10 SECRETARIAL STANDARD ON BOARD'S REPORT

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The following is the text of the Secretarial Standard-10 (SS-10) issued by the Council of the Institute of Company Secretaries of India, on "Board's Report."

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

Introduction

The Companies Act, 1956 requires the Board of Directors of every company to present annual accounts to the shareholders along with its report, known as the "Board's Report". Disclosures in the Board's Report are specified under various sections of the Act.

The Board's Report is the most important means of communication by the Board of Directors of a company with its stakeholders. The Board's Report should, so far as is material for the appreciation of the state of the company's affairs by its members, deal with any changes which have occurred during the financial year. The Board's Report should cover wide spectrum of information that stakeholders need, in addition to financial data, to understand fully the prospects of the company's business and the quality of the management.

Generally, information relating to finances raised during the year, utilization of funds for the purpose for which it was raised, repayment of public deposits, liability for unclaimed deposits and long term agreements including with employees which have substantial financial impact are included in the Board's Report. The Report should also contain the information and explanations on every reservation, qualification or adverse remarks contained in the auditor's report.

The Board's Report of a listed company should include a statement on compliance of corporate governance norms within the company and also a report covering management discussion and analysis (MDAR).

Certain additional disclosures are also required to be made in Board's Report under various other enactments.

Scope

This Standard seeks to lay down practices pertaining to the preparation and presentation of the Board's Report.

Definitions

The following terms are used in this standard with the meaning specified:

"Act" means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof.

"Board" means the Board of Directors of a company.

"Company" means a company as defined in Section 3 of the Act.

"Financial year" means the period in respect of which the profit and loss account of the company laid before it in an annual general meeting is made up, whether that period is a year or not.

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"Financial Statement" means and includes a balance sheet, a statement of profit and loss (also known as income statement), a cash flow statement and those notes and other statements and explanatory material that are integral part of the financial statements.

"Going concern" is an accounting assumption according to which an enterprise is viewed as continuing in operation for the foreseeable future; it is also assumed that the enterprise has neither the intention nor the necessity of liquidation or of materially curtailing the scale of its operations.

"Housing Finance Company" means a company as defined under the Housing Finance Companies (NHB) Directions, 2001

"Listed company" means a public company which has any of its securities listed on any recognized stock exchange.

"Member" means any person who agrees, either by subscribing to the Memorandum of Association of the company or by applying in writing, to become a Member of the company and whose name is entered either in the Register of Members of the company or in the records of the depository as a beneficial owner in respect of the shares of the company held by him.

"Miscellaneous Non-Banking Company" means a company as defined under Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977.

"Non-Banking Financial Company" means - (i) a financial institution which is a company; (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may specify.

"Preference Shareholder" means a holder of such shares as carry a preferential right, in respect of dividend, to a fixed amount or an amount at a fixed rate and, in respect of capital, to repayment of capital.

"Producer Company" means a body corporate having objects or activity as specified in the Act.

"Report" means Board's report.

"Residuary Non-Banking Company" means a non-banking institution as defined under Residuary Non-Banking Companies (Reserve Bank) Directions, 1987.

"Shareholder" means a Member as defined above and, where the context requires or admits, includes Preference Shareholder.

"Sickness" in the case of a company means it has-

(i) accumulated losses in any financial year equal to fifty per cent, or more of its average net worth during four years immediately preceding such financial year; or

(ii) failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

Secretarial Standards

Under the Act it is the Board's responsibility to make out its report to the Shareholders with reference to matters set out in the Act and attach the said report to every balance sheet laid before the company at its annual general meeting.

1. DISCLOSURES PURSUANT TO THE ACT

Every company should attach the Report to the balance sheet of the company laid before its annual general meeting.

- **The Report should deal with the state of affairs of the company.**

The state of affairs of the company should relate to the period for which the financial statements have been prepared.

- **The Report should also deal with material changes and commitments, if any, affecting the financial**

position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of report.

Adjustment to assets and liabilities are required for events occurring after the balance sheet date that provide additional information materially affecting the determination of amounts relating to conditions existing at the balance sheet date in accordance with the accounting principles. However, those events which do not affect the assets and liabilities as they do not relate to conditions existing at the balance sheet date are required to be disclosed in the Report, if considered to be material by the Board.

The effects of material events occurring after the balance sheet date and an estimate of their financial impact should be disclosed in the Report to enable users of financial statements to make proper evaluations and decisions. If evaluation of such an estimate cannot be explicitly made, a statement may be incorporated in the Report to that effect. It is also desirable to mention the causes for such material events and the remedial measures in the Report.

- **The Report should state the amount if any, which the Board proposes to carry to any reserves.**
The Report should disclose the amount proposed to be transferred to reserves.
- **The Report should state the amount, if any, which the Board recommends by way of dividend per share.**
The total amount to be appropriated should be disclosed, stating separately the proposed outgo on account of dividend and the tax payable thereon for the year under report.
- **The Report should contain particulars with respect to conservation of energy, technology absorption and foreign exchange earnings and outgo in accordance with the prescribed rules.**
The Companies (Disclosure of Particulars in the Report of Board of Directors) Rules, 1988 give the prescribed format.

In cases where such disclosures are not applicable, the Report should contain a statement to that effect.

The Report should disclose the changes during the year in:

- **the nature of company's business;**
- **the company's subsidiaries;**
- **the nature of the business carried on by subsidiaries;**
- **the class of business in which the company has an interest.**

In the case of an unlisted subsidiary, the Report of the holding company should include an affirmation by the Board that it has reviewed the affairs of the subsidiary company.

Even when no material changes in the company's subsidiaries or in the nature of business carried on by them has taken place during the year, the highlights of the performance of the subsidiaries should be briefly stated in the Report. Such information relating to joint ventures, if any in the Report should also be provided.

A statement of holding company's interest in subsidiaries as required under sub-section (3) of Section 212 the Act should be provided by way of an annexure. If the holding company is unable to obtain such information, a report in writing is required to be attached to the balance sheet.

The Report should include the particulars of specified employees of the company who were in receipt of remuneration beyond prescribed limits.

The particulars should be furnished either in the body of the Report or by way of an annexure thereto in the format as prescribed in Companies (Particulars of Employees Rules), 1975.

- **The Report should include a statement showing the name of every employee who was in receipt of remuneration at a rate in excess of that drawn by the managing director or whole time director or manager if the employee holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.**
It is clarified that the holding of not less than 2% of equity shares of the company and receipt of remuneration at a rate in excess of that drawn by managing/ whole-time director should be concurrently in the same financial year.
- **The Report should indicate any such employee who is a relative of any director or manager and the name of such director.**

The Report should include a Directors' Responsibility Statement.

The Directors' Responsibility Statement should indicate that:

- applicable accounting standards have been followed in the preparation of annual accounts alongwith

explanation for material departures from accounting standards;

- accounting policies are selected and applied consistently, and judgments and estimates are made that are reasonable and prudent so as to give a true and fair view of the state of affairs at the end of the financial year and profit or loss of the company during the year;
- directors have taken proper and sufficient care for
 - maintenance of accounting records,
 - safeguarding assets of the company, and
 - preventing and detecting fraud and other irregularities;
- directors have prepared the annual accounts on a going concern basis.

The Directors' Responsibility Statement should form part of the Report and should not be given as an Annexure to the Report.

The Board's Report should include a statement by the Board that the company has devised proper systems to ensure compliance of all laws applicable to the company.

In the event of sickness of the company, the Report should provide the factors leading to such sickness and the steps proposed to be taken.

The Report should disclose specified details of issue of sweat equity shares.

The details that should be disclosed include:

- (a) number of shares issued or proposed to be issued to the employees or the directors;
- (b) conditions for issue of sweat equity shares;
- (c) the pricing formula;
- (d) the total number of shares arising as a result of issue of sweat equity shares;
- (e) money realized or benefit accrued to the company from the issue of sweat equity shares;
- (f) diluted earnings per share pursuant to issuance of sweat equity shares.

The Report should specify the status of the buy-back process up to the date of the Report and reasons, if any, for the failure to complete the buy-back of securities within the time prescribed under the Act.

The Report should specify the reasons for the failure to implement any proposal relating to preferential allotment.

The Report should specify the reasons for the failure to pay interest or redeem debentures or preference shares on due date(s) and remedial measures taken.

If failure continues it should be disclosed in the subsequent Reports.

The Report should specify changes in the composition of Board.

The Report should also specify changes in management or control.

The Report should disclose if any director has incurred any disqualification or vacated office pursuant to the provisions of the Act or any other law for the time being in force.

The Report should disclose the amounts, if any, transferred during the year to the Investor Education and Protection Fund.

The Report should also specify the reasons for the failure, if any, to transfer the amount, to the Investor Education and Protection Fund and remedial measures proposed.

The Report should, in case of payment of managerial remuneration in excess of prescribed limits, disclose the particulars specified under the Act.

The disclosures pertaining to this can be made in the Report under the heading corporate governance.

The Report should disclose composition of audit committee.

The Report should also disclose particulars of other committees of directors constituted by the Board.

The Report should specify the reasons for not accepting the recommendations of the Audit Committee.

2. DISCLOSURES PURSUANT TO THE LISTING AGREEMENT OF STOCK EXCHANGES

The Report should give additional information as required by the listing agreement.

The Report should also specify the reasons for non-compliance with the same.

The management discussion and analysis report should be a part of the Report or annexed to it.

Management discussion and analysis report should be considered and approved at a meeting of the Board.

- **The management discussion and analysis report should include a brief analysis of the company's strengths, weaknesses, opportunities and threats as envisaged by the Board.**

The following elements should be covered in the management discussion and analysis report:

- Industry Structure and Developments
- Opportunities and threats
- Segment-wise or Product-wise performance

- Outlook
- Risks and concerns
- Internal Control Systems and their adequacy

- Discussions on financial performance vis-à-vis operational performance
- Material developments in Human Resources / Industrial Relations Front including number of people employed

The Report should include a detailed compliance report on corporate governance covering the following:

- the composition of audit committee;
- the reasons of the Board for not accepting the recommendations of the Audit Committee;
- the reasons for the failure to act upon the resolutions which were passed by the shareholders in the previous meeting(s).

3. DISCLOSURES PURSUANT TO EMPLOYEE STOCK OPTION AND EMPLOYEE STOCK PURCHASE SCHEMES

The Board should disclose in the Report the details of the Employee Stock Option Scheme (ESOS).

The Report should contain the following disclosures:

- (a) Options granted;
- (b) the pricing formula;
- (c) Options vested;
- (d) Options exercised;
- (e) the total number of shares arising as a result of exercise of Options;
- (f) Options lapsed;
- (g) variation of terms of Options;
- (h) money realised by exercise of Options;
- (i) total number of Options in force;
- (j) Employee wise details of Options granted to -
 - (i) senior managerial personnel;
 - (ii) any other Employee who receives a grant in any one year of Option amounting to 5% or more of option granted during that year.
 - (iii) Identified Employees who were granted Options, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the Company at the time of grant;
- (k) diluted Earnings Per Share (EPS) pursuant to issue of shares on exercise of Option calculated in accordance with AS-20 relating to EPS.
- (l) Where the Company has calculated the Employee Compensation cost using the intrinsic value of the Options, the difference between the Employee Compensation Cost so computed and the Employee Compensation Cost that shall have been recognized if it had used the fair value of the Options, shall be disclosed. The impact of this difference on profits and on EPS of the Company shall also be disclosed.
- (m) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock.
- (n) A description of the method and significant assumptions used during the year to estimate the fair values of options, including the following weighted-average information:
 - (i) risk-free interest rate,
 - (ii) expected life,
 - (iii) expected volatility,
 - (iv) expected dividends, and
 - (v) the price of the underlying share in market at the time of option grant.

The disclosure could also be made in an annexure to the Report.

The Board should disclose in the Report the details of the Employee Stock Purchase Scheme (ESPS).

The Report should contain the following disclosures:

- (a) the details of the number of shares issued in ESPS;
- (b) the price at which such shares are issued;
- (c) employee-wise details of the shares issued to;
 - (i) senior managerial personnel;
 - (ii) any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year;
 - (iii) identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance;

issued capital of the company at the time of issuance,

- (d) diluted Earning Per Share (EPS) pursuant to issuance of shares under ESPS; and
- (e) consideration received against the issuance of shares.

The disclosure could also be made in an annexure to the Report.

4. ADDITIONAL DISCLOSURES BY PRODUCER COMPANY

In the case of Producer Company, 'Member' means a person or Producer institution, whether incorporated or not, admitted as a Member of such company and who retains the qualifications necessary for continuance as such.

The Report should disclose the amounts to be paid as limited return on share capital.

The Report should disclose the amounts, if any, proposed to be disbursed as patronage bonus.

5. DISCLOSURES PURSUANT TO DIRECTIONS OF RESERVE BANK OF INDIA

Non-Banking Financial Companies

- **The Report should include the information on:**
 - (i) **the total number of accounts of public deposit with the company which have not been claimed by the depositors or not paid by the company after the date on which the deposit became due for repayment; and**
 - (ii) **the total amounts due under such accounts remaining unclaimed or unpaid beyond the due date for repayment.**

The said particulars or information shall be furnished with reference to the position as on the last day of the financial year to which the report relates and if the amounts remaining unclaimed or undisbursed as referred to in clause (ii) of the preceding sub-paragraph exceed in the aggregate a sum of rupees five lakhs,

there shall also be included in the report a statement on the steps taken or proposed to be taken by the Board for the repayment of the amounts due to the depositors remaining unclaimed or undisbursed.

Miscellaneous Non-Banking Companies

- **The Report should include information on:**
 - (i) **the total number of depositors with the company whose deposits have not been claimed by the depositors or paid by the company after the date on which the deposit became due for repayment or renewal as the case may be according to the contract with the depositor or the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977.**
 - (ii) **the total amount due to the depositors and remaining unclaimed or unpaid beyond the due date for repayment.**

The said information should be furnished with reference to the position as on the last date of the financial year to which the report relates. If the amounts remaining unclaimed or undisbursed exceed in the aggregate the sum of rupees five lakhs, the Report should also include a statement on the steps taken or proposed to be taken by the Board for the repayment of the amounts due to the depositors and remaining unclaimed or undisbursed.

Residuary Companies

- **The Report should include information on:**
 - (i) **compliance with the Residuary Non-Banking Companies (Reserve Bank) Directions, 1987;**
 - (ii) **the total number of depositors of the company whose deposits have not been claimed by the depositors or paid by the company after the date on which the deposit became due for repayment or renewal as the case may be, according to the contract with the depositor or the provisions of these directions, whichever may be applicable; and**
 - (iii) **the total amounts due to the depositors and remaining unclaimed or unpaid beyond the due date for repayment.**

The said information should be furnished with reference to the position as on the last date of the financial year to which the report relates. If the amounts remaining unclaimed or unpaid exceed in the aggregate the sum of rupees five lakhs, the Report should also include a statement on the steps taken or proposed to be taken by the Board for the repayment of the amounts due to the depositors and remaining unclaimed or unpaid.

6. DISCLOSURES PURSUANT TO NATIONAL HOUSING BANK DIRECTIONS

The Report should include information on:

- (i) the total number of accounts of public deposit of the housing finance company which have not been claimed by the depositors or not paid by the housing finance company after the date on which the deposit became due for re-payment; and
- (ii) the total amounts due under such accounts remaining unclaimed or unpaid beyond the due date for repayment.

The said information should be furnished with reference to the position as on the last date of the financial year to which the report relates. If the amounts remaining unclaimed or undisbursed exceed in the aggregate the sum of rupees five lakhs, the Report should also include a statement on the steps taken or proposed to be taken by the Board for the repayment of the amounts due to the depositors or group of joint depositors and remaining unclaimed or undisbursed.

7. OTHER DISCLOSURES

The Report should state that the consolidated financial statements are also presented in addition to the individual financial statement of the company.

The Report should specify projections made in the previous year and the current status related to the company's performance.

The Report should also specify the reasons for the failure to meet the projections made in the previous year's Report, if any.

If there are material variations in the projections and current status relating to the actual utilisation/ profitability and project implementation status, the same shall be explained in the Report.

A list of additional information which may be given in the Report is placed at Annexure-I.

8. EXPLANATIONS IN THE BOARD'S REPORT IN RESPONSE TO AUDITORS' QUALIFICATIONS

The Report should contain the information and explanations on every reservation, qualification or adverse remarks contained in the auditor's report.

The Report should also specify any point in auditor's report on the annual financial statements on which a difference of opinion has arisen.

The Report should also provide an explanation for each qualification contained in the auditors' report along with the circumstances necessitating the qualifications, likely impact on the financial statements and the corrective measures that are proposed to be taken.

In case the auditor's remarks are not available to the Board at the time of consideration and authentication of the balance sheet and profit and loss account, the Board has to subsequently consider the reservations and qualifications made in auditor's report and give their explanations to the said remarks as an addendum to the report.

9. EXPLANATIONS IN THE BOARD'S REPORT IN RESPONSE TO QUALIFICATIONS OF SECRETARY IN WHOLE - TIME PRACTICE

The Board should specify information and explanations in its Report on every reservation, qualification or adverse remark contained in the compliance certificate issued by the Secretary in whole-time practice.

The Report should indicate status regarding compliance of secretarial standards issued by the Institute of Company Secretaries of India.

10. INFORMATION ON ACCOUNTS

The Report may disclose any information which is required by the Act to be given on the accounts.

Such information may be given in the Report or in the accounts, or in a statement annexed to the accounts.

11. APPROVAL OF THE REPORT

The Report should be considered and approved at a duly convened meeting of the Board.

12. SIGNING AND DATING OF THE REPORT

The Report and any addendum thereto should be signed by the Chairman of the Board, if any, authorized in that behalf by the Board, or, by not less than two directors of the company, one of whom shall be a

managing director, where there is one.

If the Auditor's Report is available for consideration at the time of approving the Board's Report, the Board's Report may bear the same date as that of the Auditor's Report. However, if the Auditor's Report is dated subsequent to the date of Board's Report, then the Addendum to the Board's Report may bear the same date or a date after the date of the Auditor's Report.

13. COLLECTIVE RESPONSIBILITY OF THE BOARD

The Report shall be the collective responsibility of all the directors though the report may have been approved only by a majority of the directors.

The dissent, if any, of any director(s) on any item in the Report shall be reflected in the minutes of the meeting but not in the report.

The Board shall be collectively responsible for any statement in its Report which is false in any material particular or for any omission of a material fact, knowing it to be material.

14. FILING OF THE BOARD'S REPORT

The Report along with audited annual accounts should be filed with the Registrar of Companies within the prescribed time limit.

15. CONSISTENCY

The Board should ensure consistency of information given in the Report, the Report on Corporate Governance and the explanatory statements to resolutions.

16. RIGHT OF MEMBERS TO COPIES OF REPORT.

A copy of the Report along with balance sheet and profit and loss account and auditors' report should be sent so as to reach every member atleast 21 days before the date of the annual general meeting.

The Report should be supplied to each Member and upon application to any member of the stock exchange in case of a listed company.

The Report should also be put up on the website of the company.

Every Non-Banking Financial Company, Miscellaneous Non-Banking Company and Residuary Company shall deliver to the Reserve Bank, an audited balance sheet as on the last date of each financial year, an audited profit and loss account in respect of that year as passed by the company in general meeting together with a copy of the Report laid before the company in such meeting within fifteen days of such meeting.

Every housing finance company shall deliver to the National Housing Bank an audited balance sheet as on the last date of each financial year and audited profit and loss account in respect of that year as passed by the housing finance company in General Meeting together with a copy of the Report laid before the housing finance company in such meeting within 15 days of such meeting.

EFFECTIVE DATE

This Standard is effective from 31st November 2009.

As a good corporate governance practice, the Board's Report should also contain disclosures with regard to:

- the names of directors retiring by rotation and whether or not they offer themselves for reappointment ;
- casual vacancies occurring during the period by reason of death or resignation, and names of directors filling such vacancies, if any;
- appointment of additional directors /alternate directors;
- appointment of additional directors /alternate directors;
- nominations and withdrawal of nominees;
- name of the director, if any, nominated by small shareholders;
- name of retiring Auditors and/or Practising Company Secretary and whether or not they are eligible and willing for reappointment;
- name of Auditors and/or Practising Company Secretary, if any, who resigned during the year;
- change in auditor during the year;
- appointment of relatives of directors to an office or place of profit;

appointment of relatives or directors to an office or place of profit,

reasons for delay, if any, in holding Annual General Meeting.

change in financial year;

status of repayment of matured deposits;

changes in shareholding pattern.

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