

# Amita Desai & Co. Company Secretaries

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## Institute of Company Secretaries of India (ICSI)

### Secretarial Standards (SS) -4 on Report of Board of Directors

(Recommendatory and not mandatory)

The Report of Board of Directors is the most important document through which the Board communicates about the Company and its affair of the previous financial year and also upto the date of Board's Report to various stakeholders like Shareholders, Investors, Banks, Financial Institutions, Vendors, Customers, Collaborators or public at large.

Section 134 of the Companies Act, 2013 mandates Board of Directors of every company to attach its report to the Financial Statement to be placed at Annual General Meeting before the members. Section 134 (3) and Rule 8 of Companies (Accounts) Rules, 2014 mandates details of items to be a part of the Board Report. Listed Company is also required to disclose certain additional details in the Board Report as stated under SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015.

Standard is defined as a level of quality or something used as a norm or model. Secretarial Standards on Report of Board of Directors is a step towards standardization of practice to present Boards Report, which will be helpful and meaningful to various stakeholders, investors, analyst and regulators.

Secretarial Standards on Report of Board of Directors is divided into two parts after detailing of Scope and Definition.

<b>Part I</b>	It consists of <b><u>various disclosures</u></b> under the Companies Act, SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015, SEBI (Share Based Employee Benefit) Regulation, 2014 and pertaining to the Sexual Harassment of women at the workplace (Prevention, Prohibition and Redressal) Act, 2013.
<b>Part II</b>	It consists of <b><u>other requirements</u></b> like approval, signing, Right of members to have copies of it placing of it on the website and filing of it with MCA and Stock Exchange.

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The Exposure Draft of Secretarial Standard-4 circulated in the year 2016 by ICSI was more detailed. However, in the final Secretarial Standard-4, following are not finding its place.

1. **Definition** does not include many definitions which were originally there in 2016 like Associates Company, Board of Directors, Body Corporate, Company, Employee Stock Option, Financial Year, Financial Statement, Holding Company, Housing Finance Company, Key Managerial Personnel, Listed Company, Member, Miscellaneous Non Banking Companies, Non Banking Financial Company, Producer Company, Promoters, Residuary Non-Banking Company, Securities, etc.
2. **Disclosures** pertaining to requirement of following Acts or laws are not found in final SS-4 like Directives of Reserve Bank of India for Non Banking Financial Companies, Miscellaneous Non Banking Companies and Residuary Companies, National Housing Bank Direction, FEMA Regulations, Producer Company.
3. Details related to Stock Appreciation Rights (SAR) is deleted from final SS- 4.

## **Certain key issues to be noted as mentioned under SS-4:**

1. The Boards Report should be based on the Company's Standalone Financial Statement and not on Consolidated Financial Statements (CFS);
2. In case particular disclosure which is required to be made as per this SS-4 but it is not applicable to a particular company, the company need not disclose it in the Board's Report except that the Standard requires specific disclosure in this report;
3. Adherence to SS-4 is recommendary;
4. While disclosing details on Dividend, the Company also needs to mention the Dividend Distribution Tax thereon;
5. Company to disclose details about its revision in Financial Statement or the Report in respect of any of three preceding financial year either voluntarily or pursuant to order of judicial authority;

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6. Details to be given as mentioned in SS-4 with respect to Issue of Equity Shares with Differential Rights and Sweat Equity Shares which is as per Rule 4(4) and Rule 8(13) of the Companies (Share Capital and Debentures) Rules, 2014, respectively ;
7. A Statement with reason to be given when Board has not accepted any recommendation of Audit Committee;
8. A Statement to be given on compliance of applicable Secretarial Standard and other Secretarial Standard adopted voluntarily by the Company;
9. Disclosure if any with respect to Corporate Insolvency Resolution Process (CIRP) initiated under Insolvency and Bankruptcy Code, 2016 to be made with respect to details like (a) Who has filed the application (b) status of such details and (c) status of CIRP process;
10. Disclosure is required to be given in case the company has failed to complete or implement any Corporate Action within specified time limit. **Corporate action** is defined for this purpose to include Buy Back of Securities, Payment of Dividend declared, Merger and Demerger, Delisting and Split and Issue of any securities.

**CONCLUSION:** Standards facilitates and increases the value of any product or services and hence SS-4 on Report on Board of Directors is helpful to the Company and various stakeholders. SS-4 is an attempt of ICSI to bring more uniformity and consistency in Board's Report by integrating various practices on mandatory requirement under various Acts and Regulations about disclosures in Board's Report.

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## Disclaimer

*\*This legal update is not intended to be a form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. This update is intended for private circulation only.*

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