

## SECTION 134 OF THE COMPANIES ACT, 2013

(Amended vide Section 36 of the Companies Amendment Act 2017)-

wef 31<sup>st</sup> July 2018



MCA vide Notification dated 31<sup>st</sup> July 2018 has notified Section 36 of the Companies (Amendment) Act, 2017( CAA 2017) pursuant to which some changes have been made in Section 134 of the Companies Act, 2013 (CA 2013).

Following are the key highlights:

➤ **Section 134 (1) of CA 2013 has been substituted**

The Financial Statement, including Consolidated Financial Statement (if any), shall be approved by the Board of Directors and to be signed by the Chairperson of the Company, where he is authorized by the Board or by any two Directors out of which one shall be Managing Director (MD), if any and the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and by Company Secretary (CS). In case of One Person Company (OPC) it shall be signed by only one director before they are submitted to the auditor for their report.

Now the CEO is also required to sign the Board Report even if he is not the Director of the Company.

➤ **Section 134 (3)(a) has been substituted**

Now, Director Report shall include detail of web address(if any), where an extract of the Annual Return in Form MGT 9 has been placed [as referred to in Section 92(3) ]

The Company need to first upload FormMGT 9 on its website, if it has, then the web address to be part of Directors Report. If the Company has no website then the Directors Report shall have Form MGT 9 as part of it.

Since section 92 (3) is not yet notified under CAA 2017 there is confusion with professionals whether Form MGT 9 (Extract of Annual Return) or Form MGT 7 (Annual Return) link to be given in the Board Report .

In our opinion till section 92 (3) is notified, it is Form MGT 9 to be part of the Directors Report, for the Company which has no website and for the Company which has website , the link of Form MGT 9 to be given in Directors Report.

➤ **Section 134 (3)(p) some words have been changed**

In sub-clause (p) of Section 134(3), there is redrafting of the statement about requirement related to annual evaluation of performance of Board, its committees and each individual directors. This statement is required for listed companies and every other public company having such paid-up share capital as may be prescribed.

Section 178 (2) is amended with effect from 7<sup>th</sup> May 2018 which reads that the Nomination and Remuneration Committee (NRC) shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the NRC or by an independent external agency and review its implementation and compliance.

Earlier in Directors Report a statement was to be given on annual evaluation made by the Board of its own performance and that of its committees and individual directors. Now with amendment in section 134 and 178, the Board Report states the manner in which annual evaluation of the Board , its committees and each individual directors of its performance has been made.

➤ **Proviso (1) under Section 134(3)(q) has been inserted**

After sub-clause (q) of Section 134(3), Proviso no. 1 has been inserted which reads that where any disclosure list of which is referred under Section 134 (3) has been included in the Financial Statement, then such disclosure shall be referred in the Board Report instead of being repeated in the Board Report.

Now, if disclosures as required in Board Report are made in financial statements then its reference in Board Report is sufficient.

➤ **Proviso (2) under Section 134(3)(q) has been inserted**

After sub-clause (q) of Section 134(3), Proviso no. 2 has been inserted which reads that if the Company has put up its policy (i) on directors appointment, remuneration and other criteria for determining qualifications, positive attributes, independence of a Director and other matters provided under section 178 (3) wrt Nomination and Remuneration Committee and (ii) policy on Corporate Social Responsibility (CSR), on its website , then it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's Report and the web-address is indicated therein at which the complete policy is available.

Now, mentioning salient features of the CSR & NRC policies and any changes therein in the Board Report is sufficient compliance and the web-address where the detailed policy is available need to be provided.

➤ **Section 134 (3A) has been inserted**

Central Government has prescribed an abridged format of Board's Report, for the compliance with Section 134 of CA 2013 for One Person Company (OPC) & Small Company.

As per the Companies (Accounts) Amendment Rules, 2018 published on 31<sup>st</sup> July, 2018, the Board Report of OPC and Small Company shall contain the following matters :

(A) The Board Report of OPC and Small Company shall be prepared based on the stand alone financial statement of the Company and it shall contain the following details :

1. Web Address (if any), where the Annual Return specified under Section 92(3) has been placed;
2. Number of Meetings of the Board;
3. Director Responsibility Statement as referred to in Section 134(5);
4. Details in respect of fraud reported by Auditor under Section 143(12) other than those which are reportable to Central Government;
5. Explanation or comment by the Board on every qualification, reservation or adverse remark or disclaimer by the Auditor in his report;
6. The state of Company's affairs;
7. The financial summary or highlights;
8. Material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the Company;
9. The details of the Directors who were appointed or have resigned during the year;
10. The details or significant and material orders passed by the regulators or court or Tribunal impacting the going concern status and Company's operations in future.

(B) The Board Report of OPC and Small Company shall also contain the particulars of contract or arrangement with related parties referred in Section 188(1) of CA 2013 in **Form AOC-2**.

**Disclaimer**

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