

APPLICABILITY OF PROVISIONS UNDER COMPANIES ACT- 2013

GOYAL DIVESH & ASSOCIATES, Practicing

Company Secretary

LIMITS UNDER CA-2013

Series-35

SERIES

NO- 35



1. Applicability of XBRL (Extensible Business Reporting):

General Circular No. 16/2012 Dated: 06.07.2014.

Vide Companies (Filing of documents and forms in Extensible Business Reporting Language) Rules, 2011 notified vide GSR No. 748E dated 5.10.2011, following class of companies are required to file their Balance Sheet and Profit & Loss Account and other documents as required u/ s 220 of Companies Act, 1956 with the Registrar of Companies for the financial year ending on or after 31 st March, 2011 in XBRL format.

- All companies listed with any Stock Exchange(s) in India.
- Subsidiaries on any company listed with any Stock Exchange(s) in India.
- All companies having Paid up Capital of Rupees 5 Crore (five crore) and above.
- All companies having Turnover of Rupees 100 Crore (one hundred) crore and above.

Companies Exempt from XBRL requirements:

- Banking Companies- That are regulated by RBI
- Insurance Companies- That are regulated by IRDA
- Power Companies
- Non-Banking Financial Companies

MCA FAQ'S:

1. *If a Company had done voluntary filing in XBRL mode last year (FY 2010-11), though the same was not required to be done by the company. Whether now it is compulsory for the company to file its financial statements in XBRL*

Sol: MCA recommends that a company which has done filing in XBRL mode last year on voluntary basis should continue to do so in subsequent years as well. However in case the company does not want to voluntarily file in XBRL for FY 2011-12, then it may request for exemption from the Ministry

2. *Does the subsidiary of a subsidiary of a listed company also need to file in XBRL?*

Sol: Yes, all Indian subsidiaries (including subsidiary of a subsidiary) of a listed company are mandated to file their financial statements in XBRL.

3. *Is the consolidated financial statement of a listed holding company alone is required to be filed in XBRL or the subsidiaries also need to file their financials in XBRL?*

Sol: The listed holding company has to file its standalone and consolidated financial statement (if applicable) in XBRL. Its Indian subsidiaries also need to file their financial statements in XBRL.

4. *What about non exempt subsidiary of exempt holding company?*

Sol: Non-exempt subsidiaries of exempt parents (e.g. shared service center or broking subsidiary of a bank) are covered since such companies file Schedule VI financial statements and are covered by the current taxonomy.

Found Circular for the same on

http://www.mca.gov.in/Ministry/pdf/General_Circular_16_1_2012_XBRL.pdf

2. Applicability of CARO:

CARO came into force on 1-7-2003. It applies to all Companies, including foreign Companies defined u/s.591 of the Companies Act (Act). It is, however, provided that this order will apply to following companies:

- a) All companies listed with any Stock Exchange(s) in India.
- b) All Public Limited Companies.
- c) Private Limited Company if fulfill any of below mentioned condition:
 - Its paid up capital and reserves exceed Rs.50 lacs;

- Its turnover exceed Rs.5 Crores;
- Its outstanding loan from any bank or financial institution exceeds Rs.25 lacs.

Companies Exempt from CARO requirements:

- a) A banking company
- b) An insurance company
- c) A company registered u/s.25 of the Act
- d) A Private Limited Company if satisfy all criteria given above.

Found Circular for the same on

[http://www.mca.gov.in/Ministry/notification/Notifications_2003/noti_12062003_480\(E\).html](http://www.mca.gov.in/Ministry/notification/Notifications_2003/noti_12062003_480(E).html)

3. Applicability of CASH FLOW STATEMENT:

Before applicability of Companies Act-2013

- a) All companies whose equity or debt securities listed with any Stock Exchange(s) in India or outside India.
- b) Company which is in the process of listing their equity or debt securities as evidenced by the board of Director's resolution in this regard.
- c) A Bank includes Co-operative Bank.
- d) Financial Institutions.
- e) Insurance Company.
- f) whose turnover (excluding other income) exceed rupees fifty crore in the immediately preceding accounting year;
- g) which have borrowings (including public deposits) in excess of rupees ten crore at any time during the immediately preceding accounting year;
- h) Holding or Subsidiary company of a company which is not a small and medium-sized company.

Under Companies Act-2013

As per Provisions of sub section 40 of Section 2 of Companies Act, 2013 financial statements would include Cash Flow Statements. Therefore as per 2(40) "EVERY COMPANY" required to prepare "CASH FLOW STATEMENT" along with Balance Sheet & Statement of Profit & Loss.

All the company except mentioned below required to prepare Cash Flow Statement for the Financial year 01st April, 2014 to 31st March, 2015.

Companies Exempt from Cash Flow requirements:

- a) One Person Company
- b) Small company – As defined below*
- c) Dormant company-

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Sec 2(85) defines Small Companies as:

“small company” means a company, other than a public company,—

- (i) Paid-up share capital of which does not exceed Rs 50 Lakhs or such higher amount as may be prescribed which shall not be more than Rs 5 Crores ; or
- (ii) Turnover of which as per its last profit and loss account does not exceed Rs 2 crore or such higher amount as may be prescribed which shall not be more than Rs 20 Crores:

Provided that nothing in this clause shall apply to—

- (A) A holding company or a subsidiary company;
- (B) A company registered under section 8; or
- (C) A company or body corporate governed by any special Act;

4. Applicability of INTERNAL AUDITOR:

As per Provisions of sub section ‘1’ of Section 138 of Companies Act, 2013

As per Provisions of Section 113 of Companies Act, 2013 read with sub rule 1 of Rule 13 Chapter IX, Companies (Accounts) Rules, 2014.

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-

- a) All Listed Companies
- b) Every unlisted PUBLIC company having:
 - Paid Up Share capital of 5 Crore (fifty crore) rupees or more during the preceding financial year
 - Turnover of 200 Crore (two hundred crore) rupees or more during the preceding financial year

- *Outstanding loans or borrowings from banks or public financial institutions exceeding 100 Crore (one hundred crore) rupees or more at any point of time during the preceding financial year; or*
- *Outstanding Deposits of 20 Crore (twenty five) crore rupees or more at any point of time during the preceding financial year; and*
- c) *Every Private Company having''*
 - *Turnover of 200 Crore (two hundred crore) rupees or more during the preceding financial year*
 - *Outstanding loans or borrowings from banks or public financial institutions exceeding 100 Crore (one hundred crore) rupees or more at any point of time during the preceding financial year; or*

Transitional Period: Existing company covered under any of the above criteria shall Comply with the requirements within six months of from 01st April, 2014.

**Note:* The internal auditor may or may not be an employee of the company;

5. Applicability of Annual Return Certification and Signing:

As per Provisions of Clause 'K' of Sub section 1 of Section 92 of Companies Act, 2013

As per Provisions of Section 92 of Companies Act, 2013 read with sub rule 2 of Rule 11 Chapter VII, Companies (Management and Administration) Rules, 2014.

CERTIFICATE OF ANNUAL RETURN (MGT-8):

- d) All Listed Companies
- e) Every Company having:
 - Paid-Up share capital of 10 Crore (Ten Crore) rupees or more or
 - Turnover of 50 Crore (fifty crore) rupees or more

SIGNING OF ANNUAL RETURN:

- a) All Listed Companies
- b) All Public Companies
- c) Private Limited company having:
 - Paid up share Capital Exceeding 50 lac
 - Turnover exceeding 2 Crore

Companies Exempt from signing of annual return from company secretary:

- a) One Person Company

- b) *Small company – As defined above**

6. Applicability of COMPANY SECRETARY (KMP):

As per Provisions of sub section '1' of Section 203 of Companies Act, 2013 Company Secretary Known as **Key Managerial Person:**

As per Provisions of Section 203 of Companies Act, 2013 read with Rule 8A Chapter XIII, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

The following class of companies shall be required to appoint a Company Secretary, namely:-

- a) All Listed Companies
- b) Every other company having a paid-up share capital of **Rs. 5 Crore (Five crore rupees)** or more:

7. Applicability of SECRETARIAL AUDIT:

As per Provisions of sub section '1' of Section 204 of Companies Act, 2013:

As per Provisions of Section 204 of Companies Act, 2013 read with Rule 8A Chapter XIII, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

The following class of companies shall be required to **Annex Secretarial Audit Report with Director Report**, namely:-

- a) All Listed Companies
- b) Every **Public Company** having a **Paid-Up Share Capital** of **Rs. 50 Crore (fifty crore rupees)** or more
- c) Every **Public Company** having a **Turnover** of **Rs. 250 Crore (two hundred fifty crore rupees)** or more

8. Applicability of Independent Director:

As per Provisions of sub section '4' of Section 149 of Companies Act, 2013:

As per Provisions of Section 204 of Companies Act, 2013 read with Rule 4 Chapter XI, Companies (Appointment and Qualification of Directors) Rules, 2014:

The following class of companies shall be required to **Appoint Independent Director**, namely:-

a) All Listed Companies

If Public Company fulfill any requirement mentioned below then **at least 2 (Two) Independent Director**:

b) The **Public Companies** having **Paid Up Share** capital of **Rs. 10 Crore** (ten crore rupees) or more (AT LEAST 2 (TWO) INDEPENDENT DIRECTOR)

c) The **Public Companies** having **Turnover** of **Rs. 100 Crore** (one hundred crore rupees) or more (AT LEAST 2 (TWO) INDEPENDENT DIRECTOR)

d) The **Public Companies** which have, **in aggregate, outstanding loans, debentures and deposits**, exceeding **Rs. 50 Crore** (fifty crore rupees):

Transitional Period: Existing Company covered under any of the above criteria shall Comply with the requirements within One year from 01st April, 2014. (As per Section-149 sub section 5.)

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9. Applicability of Managing Director/ Whole Time Director:

As per Provisions of sub section '1' of Section 203 of Companies Act, 2013:

As per Provisions of Section 203 of Companies Act, 2013 read with Rule 8 Chapter XIII, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:

The following class of companies shall be required to **Appoint MD/ WTD/ CEO/ and CFO**, namely:-

a) All Listed Companies

b) Every **Public Company** having a **Paid-Up Share Capital** of **Rs. 10 Crore** (Ten crore rupees) or more.

c) Companies which do not fall in above limits can also appoint MD and WTD by follow the procedure given under Section 196 of Companies Act, 2013.

For Full-fledged Article on **Appointment of MD by Private Limited Company**

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10. Applicability of KEY MANAGERIAL PERSONNEL:

As per Provisions of sub section '1' of Section 203 of Companies Act, 2013:

As per Provisions of Section 203 of Companies Act, 2013 read with Rule 8 Chapter XIII, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:

The following class of companies shall be required to **Appoint Key Managerial Personnel**, namely:-

- a) All Listed Companies
- b) Every **Public Company** having **Paid-Up Share Capital** of Rs. **10 Crore (Ten crore rupees)** or more.
- c) *Every Private Limited Company having **Paid-Up Share Capital** of Rs. **5 Crore (five crore rupees)** or more required to appoint Company Secretary and designate as Key Managerial Personnel.

11. Applicability of AUDITORS COMMITTEE:

As per Provisions of sub section '1' of Section 177 of Companies Act, 2013:

As per Provisions of Section 177 of Companies Act, 2013 read with Rule 6 Chapter XII, Companies (Meetings of Board and its Powers) Rules, 2014:

- a) All Listed Companies
- b) Every **Public Company** having **Paid-Up Share Capital** of Rs. **10 Crore (Ten crore rupees)** or more.
- c) The **Public Companies** having **Turnover** of Rs. **100 Crore** (one hundred crore rupees) or more (AT LEAST 2 (TWO) INDEPENDENT DIRECTOR)
- d) The **Public Companies** which have, **in aggregate, outstanding loans, debentures and deposits**, exceeding Rs. **50 Crore** (fifty crore rupees):

Explanation.- The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

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12. Applicability of NOMINATION COMMITTEE:

As per Provisions of sub section '1' of Section 177 of Companies Act, 2013:

As per Provisions of Section 177 of Companies Act, 2013 read with Rule 6 Chapter XII, Companies (Meetings of Board and its Powers) Rules, 2014:

- a) All Listed Companies
- b) Every **Public Company** having **Paid-Up Share Capital** of Rs. **10 Crore (Ten crore rupees)** or more.
- c) The **Public Companies** having **Turnover** of Rs. **100 Crore** (one hundred crore rupees) or more (AT LEAST 2 (TWO) INDEPENDENT DIRECTOR)
- d) The **Public Companies** which have, **in aggregate, outstanding loans, debentures and deposits**, exceeding Rs. **50 Crore** (fifty crore rupees):

Explanation.- The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

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13. Applicability of Women Director:

As per Provisions of sub section '1' of Section 149 of Companies Act, 2013:

As per Provisions of Section 149 of Companies Act, 2013 read with Rule 3 Chapter XI, Companies (Appointment and Qualification of Directors) Rules, 2014:

The following class of companies shall be required to **Appoint Women Director**, namely:-

- a) All Listed Companies
- b) Every **Public Company** having a **Paid-Up Share Capital** of Rs. **100 Crore (One Hundred crore rupees)** or more.
- c) Every **Public Company** having a **Turnover** of Rs. **300 Crore (Three Hundred crore rupees)** or more

Transitional Period: Existing Company covered under any of the above criteria shall Comply with the requirements within One year from 01st April, 2014. (As per Section-149 sub section 5.)

14. Applicability of Vigil Mechanism:

As per Provisions of sub section '9' of Section 177 of Companies Act, 2013:

As per Provisions of Section 177 of Companies Act, 2013 read with Rule 7 Chapter XII, Companies (Meetings of Board and its Powers) Rules, 2014:

- a) All Listed Companies
- b) The Company which **accept deposits from the public;**
- c) The companies which have **borrowed money** from banks and public financial institutions in **excess of Rs. 50 crore** (Rupees Fifty Crore only)

Explanation.- The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

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15. Applicability of Special Resolution in case of Related Party Transaction:

As per Provisions of Section: 188 of Companies Act, 2013 read with Rule RULE - 3, of Chapter Xii (Meetings Of Board And Its Power) Second Amendment Rules, 2014:

For entering Transactions with related parties mention below SR is required to be passed in GM:

<u>NATURE OF RELATED PARTY TRANSACTION</u>	<u>THRESHOLD LIMIT EARLIER</u>	<u>FROM-14TH AUTUST, 2014</u>
For Every Transaction	When paid Share Capital of Company is 10 Crore or More.	REMOVED FROM RULE
Sale, purchase or supply of any goods or materials directly or through appointment of agents (or)	Exceeding 25% of Annual Turnover	Exceeding 10% if Turnover of Company or Rupees 100 Crore Whichever is Lower
Selling or otherwise disposing	Exceeding 10% of Net	Exceeding 10% of Net worth

<i>of, or buying, property of any kind directly or through appointment of agents (or)</i>	worth	or Rupees 100 Crore Whichever is Lower
<i>Leasing of property of any kind (or)</i>	Exceeding 10% of Annual Turnover OR Exceeding 10% of Net worth	Exceeding 10% of the Net worth of company or 10% of Turnover of Company of Rupees 100 Crore, Whichever is lower
<i>Availing or rendering of any services directly or through appointment of agents (or)</i>	Exceeding 10% of Net worth	Exceeding 10 % of Turnover of company or Rupees 50 Crore, Whichever is lower.
<i>Appointment to any office or place of profit in the company, its subsidiary company or associate company (or)</i>	Monthly Remuneration Exceeding Rs. 2.5 lakhs	NO CHANGE
<i>Remuneration for underwriting the subscription of any securities or derivative</i>	Exceeding 1% of Net worth	NO CHANGE

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16. Applicability of Corporate Social Responsibility Committee (CSR):

As per Provisions of sub section '1' of Section 135 of Companies Act, 2013:

As per Provisions of Section 135 of Companies Act, 2013 read with Rule 3 Chapter XI, Companies (Appointment and Qualification of Directors) Rules, 2014:

The following class of companies shall be required to **constitute a Corporate Social Responsibility Committee** of the Board consisting of three or more directors, out of which at least one director shall be an independent director:-

- a) Every company having **net worth of rupees 500 Crore (five hundred crore)** or more;
- b) Every company having **turnover of rupees 100 crore (one thousand crore)** or more;

c) Every company having **net profit of rupees 5 crore (five crore)** or more;

AMOUNT OF CONTRIBUTION: The Board of every company mentioned above shall ensure that the company spends, in every financial year, **at least two per cent. of the average net profits of the company** made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

17. Applicability of Rotation of Auditor:

As per Provisions of sub section '2' of Section 139 of Companies Act, 2013:

As per Provisions of Section 139 of Companies Act, 2013 read with Rule 5 Chapter X, Companies (Audit and Auditors) Rules, 2014: Below mentioned Companies shall not appoint or re-appoint:

- An individual as auditor for more than one term of five consecutive years; and
- An audit firm as auditor for more than two terms of five consecutive years.

Limits of Companies as given below:

- a) All Listed Companies
- b) Every **Public Company** having a **Paid-Up Share Capital** of **Rs. 10 Crore (Ten crore rupees)** or more.
- c) Every **Private Limited Company** having **Paid-Up Share Capital** of **Rs. 20 Crore (Twenty crore rupees)** or more.
- d) All Companies having public borrowings from Financial Institutions, banks or public deposits of **Rs. 50 Crore (Rupees Fifty Crore Only)** or more.

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(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