



Certain crucial reporting under Auditor's Report

Vinit Nagar, FCS

**M/s. Vinit Nagar & Co.
Company Secretaries (Ahmedabad)
vinit_nagarcs@yahoo.com**

The financial year is about to get over, the business across globe is being impacted by the disaster of COVID-19 and everybody at this moment is prioritizing its health & hygiene and continuously praying for speedy recovery of this ongoing conditions. In this situation of lockdown every corporates are much concerned for their business and are equally bothered with regards to multiple compliance deadlines under several acts with the panic of the consequences of the adverse reporting and its negative impact thereafter and the most important out of many such deadlines is the Audit for the Financial Year 2019-20.

Every Companies are required to complete their homework with regards to the maintenance of books, papers, deeds, documents, writings, vouchers, minutes, register, records, and also required to give their final hands to several compliance committed during the year and these all should require to get over much prior to the inception of audit, considering the fact that the Statutory Auditor of such entities is required to report on these various points

after performing their task of verification of books and records.

There are certain provisions in the Companies Act, 2013 which every auditor is required to report with due and reasonable care considering the impact of such provisions over the Company's Shareholder and Creditors and also looking after the consequences of its misreporting. In this regards the below stated provisions of the Companies Act, 2013 and its relevant Rules are always considered crucial at the time of reporting and these are:

1. To oversee the maintenance of the Company's Registered Office

This is in pursuance to the requirements of Sec. 12(1) of the Companies Act, 2013 which requires that every company shall within thirty days of its incorporation and at all times thereafter shall have a registered office which is capable of receiving and acknowledging all communications and notices as may be addressed to it and every such companies are also required to prepare and keep at its registered office its books of account and other relevant books and papers and financial statement, unless otherwise decided by its Board of Directors.

Now, since auditor has to right to inspect and also possess right of access at all times to the books of account and vouchers of the company, many of such register, books and papers are mandatorily required to be prepared and maintained at the Company's Regd. Office. Even through the Auditor of the Company possess all the flexibilities to ask for any of the relevant information from

Company and entitled to require from any of the concerned officers of the company for any of such information and explanation at any time as he may consider necessary for the sake of performance of his duties but the fact with regards to the maintenance of Registered Office is something out of his duties to take care of and report if the same is not maintained by the Company.

2. To oversee that whether loans and advances MADE by the company to any another Company on the basis of security have been properly secured

In this connection, the Auditor has to report that whether the borrower Company to whom to secured loan has been granted by the Company has been registered by the borrower with the Registrar of Companies or not. In this connection Sec. 77(1) of the Companies Act, 2013 cast duty on every such borrower company who has created a charge on its property or assets or any of its undertakings to register the particulars of the charge together with the instruments with the Registrar of Companies and in this connection it is equally vital to observe the compliance with regards to Sec. 185 of the Companies Act, 2013, if the loan has been given to relate party or to such entities in which directors are interested.

3. Interest free loan

No loan shall be given at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year

Government Security closest to the tenor of the loan pursuance to the provisions of Sec. 186(7) of the Companies Act, 2013. Interest free loan need to be reported.

4. Loan to directors or to any person in whom any of the director of the company is interested

The companies are not allowed to advance any loan, directly or indirectly, or give any guarantee or provide any security in connection with any loan taken by any director of company, or of a company which is its holding company or any partner or relative of any such director or to any firm in which any such director or relative is a partner. This is very crucial reporting considering some flexibilities which are provided u/s 185(2) of the Companies Act, 2013 and certain class of Private Companies are also exempt from the requirements of compliance of this Section.

5. Investment, loan, guarantee and security provided by the Company

There is limit prescribed u/s 186(2) of the Companies Act, 2013 that no company without the approval of its shareholders shall give any loan to any person or other body corporate; or give any guarantee or provide security in connection with a loan to any other body corporate or person; and acquire by way of subscription, purchase or otherwise, the securities of any other body corporate exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

6. Borrowings of the Company

The Companies are not allowed to borrow where the money proposed to be borrowed, together with the money already borrowed by the company beyond the aggregate of its paid-up share capital, free reserves and securities premium without the shareholders' approval. However Private Limited Companies are exempted with regards to the said provision of Sec. 180(1) (c) of the Companies Act, 2013.

7. Acceptance of Deposits from Public

The provision of deposit are governed under Sec. 73 to Sec. 76A of the Companies and the same is required to be considered along with the Companies (Acceptance of Deposits) Rules, 2014 wherein it is expressly provided under Rule 3 of the said rules that except eligible company no companies are allowed to accept deposit from Public. Additionally for an eligible companies also the permissible limit of deposit to be accepted from public is expressly provided which in no case shall exceed exceeds 25% of aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Rule 2(1)(c) has exhaustively provides the particulars of transactions which are not considered as Deposit and this is very important for an auditor to identify that whether any particular receipt of money is to be reported as an acceptance of deposit or not.

8. Allotment of Shares

In case when it is stated in the books of the company that any shares have been allotted for cash then it is also very crucial for an Auditor to check that whether cash has actually been received in respect of such allotment or not. In this regards the Auditor has to check the provisions with regards to allotment of Securities by Company as provided under Sec. 39, Issue of Sweat Equity Shares which is governed u/s 54 of the Companies Act, 2013, issue of preference shares as provided under sec. 55 of the Companies Act, 2013, further issue of share capital which is governed u/s 62 of the Companies Act, 2013 and Offer or Invitation for Subscription of Securities on Private Placement which is governed u/s 42 of the Companies Act, 2013.

In this connection it is equally important for an auditor to seek the relevant statutory register such as register of members, register of issue of sweat equity shares, register of issue of shares as ESOP and also the return of allotment of securities filled with the Registrar in form PAS-3.

9. Utilization of funds

Considering the public element, the reporting with regards to misapplication of public funding is one of the vital reporting requirements on the part of any Auditor specially when Company has raised any money from public by the way of issue of securities or else has accepted deposit from public or else financial assistance whether fund based or non-

fund based has been availed from bank or financial instructions. In this connection the Auditor is required to oversee the offer document such as prospectus or letter of officer or letter of grant or private placement offer letter in case if fund is raised by the Company by the way of allotment of securities.

10. Disqualification of Director

Generally for this purpose it is always advisable for an Auditor to avail written representation from all the directors of the Company with regards to the status of their disqualification u/s 164(2) of the Companies Act, 2013, considering the very fact that it's very difficult for an Auditor to keep a vouch over all such companies in which the directors are holding their directorship. But now a days the Ministry of Corporate Affairs has uploaded the list of disqualified Directors u/s 164 of the Companies Act 2013 on its official website as a separate link established on such portal through which it can be easily identified the status of Directors u/s 164(2) of the Companies Act, 2013.

11. Managerial Remuneration

The Public Companies are always surrounded with threshold under several provisions of the Companies Act, 2013 and one of the prominent one out of many is the provision with regards to the remuneration payable to its managerial personnel which is again not applicable to every Private Limited Company.

Sec. 197(1) of the Companies Act, 2013 stipulates that the total managerial

remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year.

But its proviso also states that the company in general meeting may authorize the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V.

12. Transactions with Related parties

This is one of the provision of the Companies Act, 2013 which is always required to be taken care of while reporting along with its compliance undertaken under its applicable Accounting Standard. In order to check compliance with regards to this section an Auditor is not only required to check the limit/quantum of such transactions or whether the approval accorded by its board or the company's but more importantly the details with regards to all the related parties of the Company as provided u/s 2(76) along with the disclosure received from the Directors under Sec. 184.

13. Reporting of Fraud

If the Auditor of a company during the course of the performance of his duties has reason to believe that an offence of fraud involving is being or has been committed in the company by its officers or employees, then onus is on his part to report immediately to the Audit

Committee or the Ministry of Corporate Affairs as the case may be else he will always remain accountable for the non-reporting of such fraud or misconduct.

14. Cost Accounting Records

The Central Government has provided classification industry wise, sector wise, product wise and service wise wherein certain class of companies on the basis of Customs Tariff Act are required to include in its books of account the particulars relating to the utilization of material or labor or to other items of cost as prescribed in the Companies (Cost Records and Audit) Rules, 2014 and reporting of its applicability is one of the requirement under CARO.

15. Transfer of unclaimed amount to the Investor Education Protection Fund

In this regard an Auditor has to identify all such amount as stated /s 125(2) of the Companies Act, 2013 more specifically referred to in clauses (h) to (j) of the said sub-section which shall form part of the Investor Education & Protection Fund considering its nature i.e. if it remained unclaimed and unpaid for a period of seven years from the date it became due for payment. This reporting is also mandatory for a Statutory Auditor in its report.

Think Tank

Taking into consideration all the above provisions of the Companies Act, 2013 and many more such provision it is always advisable for any auditor to prepare and circulate check list of requirements from Company much prior to his audit engagement so that every such records should get verified by an auditor with utmost time much in advance.