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# **RESPONSIVENESS OF THE LAW IN REGARD TO DISCLOSURES IN INDIA**

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## **ABSTRACT**

The structure and contents of the profit and loss statement and balance sheet are outlined in the Companies Act. In addition to these declarations, the Act requires the directors' report to contain comprehensive details on a number of topics, including the duties of the directors. Through giving accounting standards legal standing, the Act has increased the scope of corporate disclosure. India's accounting regulations cover a broad spectrum of financial reporting for companies. In response to the SEBI's directive, the Indian stock exchanges have mandated that listed corporations furnish cash flow statements, related party disclosure, and segment reports.

**Keywords:** SEBI: The Securities and Exchange Board of India Act of 1992 ; RBI: Reserve Bank of India ; MOA: Memorandum of Association

## **INTRODUCTION**

Following corporate scandals and frauds that caused business entities and the country's financial system to collapse as a result of bad governance, the necessity for superior corporate governance became evident. India is not an exception to the rule that upholding governance principles is more crucial than ever in the modern world in order to protect and defend the interests of stakeholders. Corporate governance is viewed as an essential tool for long-term business operations more than at any other time in the history of corporate management. The legal foundation for corporate governance is essential to this endeavour. India is a federal republic with a propensity towards unity. This may help to explain why India does not have distinct business laws for each of its states, in contrast to other nations. The Ministry of Corporate Affairs, a federal government organisation, is in charge of overseeing the corporate sector in India. The Companies Act, 2013, which regulates all business activities from the initial formation decision to the ultimate dissolution, is enforced by the Ministry. The Securities Exchange Board of India was founded by the government in 1932 to foresee and learn from previous instances of securities fraud, as per the

Securities Exchange Board of India Act. Consequently, SEBI has complete authority over the capital market and serves as its exclusive regulator with regard to securities. The Companies Act of 2013 and the Securities and Exchange Board of India Act of 1992 (The SEBI Act, 1992) are the two centrally enacted statutes that primarily control company disclosure regulations in India, aside from professional regulation. Additional disclosure requirements apply to companies listed on Indian stock exchanges in addition to those mandated by the Companies Act of 2013, which is applicable to all companies incorporated under it. The legislative basis for corporate disclosure in India is provided by these two pieces of law taken together. In addition to these two laws, the RBI Act of 1934 specifies rules for the governance of banking institutions, the IRDA specifies rules for the governance of insurance firms, and TRAI specifies rules.

## **MINISTRY OF CORPORATE AFFAIRS**

In the 1950s, the Department of Corporate Affairs was founded. It was a division or a department of the Ministry of Law, Ministry of Finance, or Ministry of Commerce until 2004. It received its current name in May 2007 after being recognised as a Ministry in 2004. The Ministry of Corporate Affairs, a Central Government entity, is responsible for the corporate sector. The Companies Act, 2013, which regulates all corporate activities from the moment of creation to the time of dissolution, is enforced by the Ministry. Accordingly, the Ministry's major duty is to implement the Companies Act of 2013 and other laws, as well as to create the necessary guidelines and policies to facilitate business transactions while upholding corporate governance principles. The Ministry monitors a wide range of operations through the implementation of the Companies Act, 2013 and the laws adopted under it, including incorporation, operationalisation, liquidation, governance, and firm wound up, among others. In addition, the Ministry has created a number of organisations, including the Regional Director, Registrar of Companies, and Official Liquidators, for administrative ease in order to detect and punish noncompliance with the Companies Act, 2013 and other laws.

## **THE COMPANIES ACT 2013**

A noteworthy piece of legislation with broad ramifications for all Indian firms is the Companies Act of 2013. The Act of 2013, however, aims to conform to international standards and is more outward-looking. It is meant to serve as a model for more contemporary legislation that permits India's corporate sector to grow under stricter regulation. The purpose of the 2013 Act was to safeguard the interests of investors, especially small investors, and to enhance corporate governance, accountability, and transparency for both companies and auditors. The Companies

Act, 2013 highlights the government's intention to move away from a control-based or regulatory framework and towards a disclosure-based and transparent regime, and it reflects important developments in our nation's corporate governance structure. The Act emphasises the importance of good corporate governance practices, among other things by giving the Board of Directors and Independent Directors more roles and responsibilities, (ii) safeguarding the interests of shareholders, including by granting them special legal rights, (iii) enhancing disclosures and transparency, (iv) holding management and auditors of the company more accountable, and (v) promoting Corporate Social Responsibility (CSR) and other initiatives.

### **Initial Disclosures**

The principal means of first disclosure are the publishing of a prospectus and the filing of the articles of association and memorandum with the registrar of companies. The articles of incorporation, the memorandum, and any agreements with candidates for managing director or manager should be sent to the registrar at the time of registration. The Memorandum of Association (MOA) enumerates the purpose for which a corporation is established. It lays out the parameters of its activities and the restrictions that apply to it. A MOA is a public document as per the Companies Act of 2013. The memorandum of association should contain the name and registered office of the firm, along with its primary goals and planned share capital. The articles provide forth the guidelines for achieving these goals. While the memorandum outlines the company's objectives, the articles specify the guidelines by which those objectives are to be achieved. Each member is entitled to a copy of the articles and memorandum of the company. Any employee of the company who fails to provide copies of the articles and memoranda to its members will face disciplinary action. Any copies of the company's memorandum and articles issued after that date should be updated to reflect any changes made. The officer who is in default faces consequences if the modifications are not implemented. It is against the law to make a public offering of securities without first releasing a prospectus. Investors continue to seek information even after the shares are issued. Requirements for secondary market efficiency include continuous data flow regarding the company and its securities. Laws governing listed firms mandate that they give shareholders semi-annual reports in addition to annual reports. These specifications guarantee ongoing transparency. Every stakeholder has an equal right to information regarding the company's financial situation and management. It should be made clear to him whether or not the money is being spent prudently. The financial accounts and records of the company contain information on the subject. Since the Companies Act of 2013 mandates the laying of accounts prior to the annual general meeting, this information may be made public. An excessive percentage

of annual reports and balance sheets are not filed by Indian corporate sector companies. In the instance of,<sup>1</sup> the Company Secretary signed the prospectus on behalf of the company's Director using their power of attorney, and SEBI found that the Company Secretary was not liable for the prospectus' misstatement as the company's Director. Under section 447 of the Companies Act, all those who approved the prospectus's dissemination are liable if any of its statements contain inaccurate or misleading information. If a director or other individual in charge of prospectus distribution can demonstrate that he was unaware of the nondisclosure or that it was the result of an honest error on his side, they may be able to escape punishment. It is also possible to escape liability if non-material information was withheld. In addition to the issuer company, other organisations with clearly defined roles such as lead managers and bankers also collaborate in the public sale of shares. Everyone participating is required to do due diligence since public dollars are at stake.

### **Disclosure of Financial Statements**

To ensure appropriate financial accountability, accounts must be prepared, released, and made available for shareholders to evaluate. Every company ought to have an annual general meeting once a year. At each annual general meeting, the board of directors is required to present the company's annual accounts, which show the trading performance for the relevant time. An essential communication tool between managers and shareholders is the annual report. The Act also details how and when the annual report is to be prepared. An accurate and balanced depiction of the company's current state of affairs should be included in the annual report. But there's no objective standard for defining what makes a fair and accurate perspective. Discipline will be applied to any corporate director who does not take reasonable action to lay the annual accounts and balance sheet before the annual general meeting. It is not possible to hold a director who has resigned from office liable for neglecting to submit accounts during their term in office. There are further penalties for withholding information needed for the profit and loss account and balance sheet. All profit and loss accounts have to comply with the requirements of the Act. A copy of the balance sheet, profit and loss account, and auditor's report must be sent to each and every employee of the company 21 days prior to the meeting. If this clause is broken, there will be consequences. Three copies of the balance sheet must be sent to the registrar. Penalties also apply for failing to comply. Penalties arise for failing to file the annual report with the registrar of companies, to transmit a copy of the annual report to the members, and to lay the annual accounts at the AGM.

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<sup>1</sup>*Sahara India Commercial Corporation Ltd. v. SEBI* (2012) 10 SCC603

## **Disclosure by Directors**

The financial disclosure given to the company's shareholders by the board of directors is known as a director's report. The company's operations, range of business, subsidiaries, and other details will all be made public in an effort to disclose the financial status of the organisation. It is essentially a summary of the company's financial performance for the entire fiscal year along with an outlook for the future. The board of directors is in charge of carrying out efficient self-evaluation, keeping an eye on the disclosure and communications procedure, and being reachable by shareholders. The director's report's main objective is to give enough pertinent information on the performance of the company. Comprehensive details regarding the company's past performance, present situation, and potential future growth must be included in the director's report. It is presented at the annual meeting of the corporation and is linked to the balance sheet. This enables the shareholders to decide on the company's future and operations in a way that makes sense economically. Furthermore, the report functions as a tool for the company to promote itself to prospective investors and persuade existing investors to maintain or augment their stake in the enterprise.

## **SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)**

The swift growth of the worldwide corporate domain has led to several modifications in the methods by which businesses function. The Indian corporate sector went awry in the middle and was later revived with the mindset of profit at all costs. The sector was greatly influenced by its peers and was meant to adjust to the dynamics of contemporary enterprises. This change in corporate behaviour led to major corporate failures in the 1990s. The Financial Services Assessment program was subsequently created by the World Bank and the IMF to evaluate the financial systems of their members. The Indian government intended to establish a securities market, a stable financial environment, and a regulator that supports the most recent corporate governance standards based on this program. The Securities Exchange Board of India (SEBI), a securities market regulator patterned after the US Securities Exchange, was established as a result of the adoption of the Securities Exchange Board of India Act, 1992. The SEBI Act of 1992 has granted SEBI a wide range of authority and powers to oversee and enforce Indian enterprises' adherence to Governance Standards, as well as to sanction companies that fail to do so. SEBI has made several efforts in this regard to guarantee that businesses adhere to corporate governance principles.

## **Disclosure Regulations under SEBI**

By controlling (i) issuers' eligibility to offer securities to the public (sometimes referred to as access limits), (ii) information production at the time of issue, and (iii) processes and procedures related to securities issuance, SEBI has regulated the primary market. These aspects have mostly been managed by the SEBI (Issuer of Capital and Disclosure Requirements) Regulations, 2018 (ICDR) and a series of regulations that regulate the many intermediaries participating in the issuance process, such as merchant bankers, registrars to the issue, and so on. Over the years, SEBI has improved the issue process in a number of ways. These have included things as little as the number of locations where applications for initial public offerings are accepted to things like the allocation methodology that significantly affect investor welfare. SEBI depends on the merchant banker's certification to guarantee adherence to the regulations. According to the provisions, the issue manager is in charge of verifying the accuracy of the prospectus, as well as making sure the underwriter has the financial capacity to perform the service and that the banker and registrar, among other intermediaries involved in the issue, have the required licenses. The key markets were dramatically changed by three fundamental institutional reforms. First, subject to a floor price specified in the prospectus and a 20% band above the floor, issuers were permitted by the book-building criterion to price shares based on investor demand and market conditions at the time of the public offering. The offer price in the so-called fixed price regime has to be disclosed in the prospectus prior to the publication of the book-building legislation.

## **SEBI Issue of Capital and Disclosure Requirement Regulation (ICDR Regulation) 2018**

The Controller of Capital Issues was responsible for determining a company's admittance to the market and the price at which securities were to be made available to the public until the early 1990s. Companies can now determine their own issue prices for securities without interference from regulators thanks to the implementation of a disclosure-based regime under SEBI's purview, enabling them to benefit from market forces. Primary issuances are governed by SEBI under the 2018 SEBI (ICDR) Regulations. In order to facilitate public offerings, SEBI created the Disclosures and Investor Protection (DIP) recommendations. These guidelines were finally converted into regulations (ICDR Regulations) in 2018. To stay up with the ever-changing market conditions, the SEBI DIP Guidelines and subsequently the ICDR Regulations have undergone multiple amendments throughout the years. It creates a thorough structure under which businesses can issue securities. A company must make sure it complies with the SEBI (ICDR) Regulations, 2018 before going after the primary market to obtain capital through a fresh issuance of securities. The Merchant Banker performs due diligence and verifies compliance with the ICDR Regulations

prior to filing the document with SEBI. The concepts, shared responsibilities, and ongoing disclosure requirements for all companies that have previously been listed on any of the nation's stock exchanges are covered by the SEBI Listing Regulations in addition to the ICDR Regulations. A listed business must comply with all corporate governance standards, which are outlined in the Listing Regulations. The primary body of the SEBI ICDR regulation consists of substantive provisions, and its schedules provide further procedural requirements and document submission forms. These two sections make up the SEBI ICDR regulation. The emphasis of the New ICDR Regulations is on streamlining disclosure requirements with respect to financial statements in offer documents for initial public offerings by lowering the volume of disclosures and concentrating on what is deemed material and relevant to an investor in making an investment decision.

### **SEBI (Listing Obligations and Disclosure Requirement) Regulations 2015 (LODR Regulation 2015)**

The Listing Obligations and Disclosure Requirements (LODR) regulations are among SEBI's most significant mandates. The degree of disclosure and openness needed of publicly traded companies is governed by the regulation. The rule enhances the mandatory disclosure standards and the listing agreement that must be formed between the stock exchange and the firm that is going to be listed. Terms and conditions pertaining to disclosures, governance, and the company's listing status are included in the agreement. The SEBI Listing Regulations are divided into two sections: the main text of the Regulations contains substantive regulations, and the Schedules to the Regulations contain procedural requirements. Chapter II of the SEBI Listing Regulations lays forth the broad guidelines guiding the disclosures and responsibilities of listed companies. In the absence of specific limitations or ambiguity, the aforementioned entities would be guided by these principles. A framework for obligations that are generally applicable to all listed firms has been mentioned in Chapter III of the SEBI Listing Regulations. These comprise the general compliance requirement of the listed organisation, the designation of a common compliance officer, electronic filings, and the necessity of SCORES registration, among other things.

## **CONCLUSION**

Robust and efficient regulatory bodies are essential components of a robust corporate governance framework. A Ministry of Corporate Affairs, which is in charge of all matters pertaining to companies, is part of the centralised administrative structure established by corporate laws. The Companies Act of 2013 is enforced by the Ministry, which controls every aspect of business operations, including the decision to incorporate a company and its dissolution. The Companies

Act of 2013 and other laws, as well as the creation of appropriate rules and regulations to facilitate company operations while upholding corporate governance standards, are the main responsibilities of the Ministry in this regard. The MCA formed the Securities Exchange Board of India to provide additional regulation for the securities market. There will inevitably be confusion if there are several regulators. It is crucial to be clear about each body's jurisdiction as a result. To facilitate the resolution of commercial disputes by providing a single point of contact, quasi-judicial organisations like the Securities Appellate Tribunal, the National Company Law Appellate Tribunal, and the National Company Law Tribunal were founded. These organisations are meant to promptly settle business-related disputes; yet, the quasi-judicial bodies are overburdened. Their disposal is slowed down by this.

