iComply

Editorial

Compliance professionals are seeing a marked shift in the environment in which they operate.
Read more…

A CALL FOR CHANGE:

Communicating Required Information: Trimming the Corporate Governance Report



Just as salt enhances the taste in food, brevity in communication enhances comprehension and effectiveness. Read more…

Compliance calendar



Due dates for Professional tax, Goods and Service Tax, Companies Act, 2013 among others has been captured for your ready reference. View the list…

Gist of Regulatory Changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of May, 2018

Nineteen Regulatory changes in Companies Act, 2013, SEBI(LODR), 2015 and Insolvency & Bankruptcy Code, 2016 were made in the month of May. View the list…

FIRST OF FIRST:

The Birth of Profit & Loss Account & A New Method to Compute Profits

By Shankar Jaganathan



(*This article is the second of a trilogy that traces the origin of the three elements of financial statements, the balance sheet, the profit and loss account and the cash flow statement)*

Financial Statements consisting of the three- Balance Sheet, Profit and Loss Account and the Cash Flow Statements, form the core segment of corporate communication to stakeholders with financial interests. Read more…

BUT: BLISS Useful Tips for the Month

BUT#22: Store Your Past Secretarial Records in BLISS
BUT#23: Agenda Preview and Edit
BUT#24: IP Access Restriction
BUT#25: Transfer Your Admin Rights



Editorial

Compliance professionals are seeing a marked shift in the environment in which they operate. For the first time, we are seeing large audit firms resigning prior to giving the audit report, as they were not getting information or cooperation from the management of companies.

In our considered view, we feel the resignation is a wrong move, given that the auditors are appointed by the shareholders of the company and have a duty to give a report- unqualified or otherwise to the shareholders. This move by auditors is only an indication of the heat rising on non-compliant company and the consequences paid or likely to be paid for by the compliance professionals associated with these companies.

In all situations there are some losers and some gainers. All those standing up for compliance are definitely the gainers in this environment as today no company or compliance professional can afford to be non-compliant, either by choice or negligence.

In our series the **First of First** we have captured the advent of profit and loss statement, the second of the three elements of financial statement that emerged in 1860s and the events that led to it. In the next issues, we will cover the events that led to the birth of Cash Flow Statement, third of the financial statement that companies publish to their investors now.

Continuing our series **CALL FOR CHANGE,** in this issue we address the need for trimming the Corporate Governance Report to make it more effective in communicating the governance practices of a company. We believe just as we keep making additions to corporate reporting for new developments, we also need to keep pruning the contents to keep reports brief and effective. Our other regular features –**Gist of Changes in the Companies Act, SEBI(LODR) and Insolvency & Bankruptcy Code** and **Statutory Compliance Calendar** is also included in this issue.

Please feel free to share your feedback with us at contact@cimplyfive.com. We look forward to your feedback with interest and as ever strive to improve the quality of everything we do.

Happy reading,

Shankar Jaganathan
Editor of iComply
June 5, 2018

A CALL FOR CHANGE:
Communicating Required Information: Trimming the Corporate Governance Report

Just as salt enhances the taste in food, brevity in communication enhances comprehension and effectiveness. More so in corporate communication to shareholders, where the audience consist of individuals with a wide range of interest and knowledge.

The Corporate Governance Report that forms a part of the Annual Report of listed companies in India, despite being one of the latest reports to be introduced has quickly grown to become quite voluminous, thereby reducing its effectiveness in communication.

Given the change in both the communication scenario with increased internet penetration in India and the business environment where electronic communication to shareholders is promoted as an environmentally favorable move in a big way, there a need to evaluate the content in the Corporate Governance Report and trim it to make it more effective and useful.

While this article looks only at the Corporate Governance Report, there is a similar need to look at the Annual Report in entirety to remove duplication and eliminate superfluous information thereby making it much more effective.

ISSUE

Corporate Governance Report that forms a part of the Annual Report of listed companies today runs into 10-15 pages based on the quantum of company specific details required to be provided. A detailed analysis of this report indicates that some segments of the report may have outlived their utility or in the case of the other, they are better placed elsewhere in the annual report for a more effective communication and value addition to the corporate governance system.

Even the recently appointed committee under the chairmanship of Uday Kotak to review Corporate Governance Practices had a specific term of reference, item 7 which required the committee to review issues related to 'Disclosure and Transparency related issues, if any.' However, it appears that trimming the Corporate Governance report was not an option this committee looked at.

Our review indicates five elements in the Corporate Governance Report the can be removed as they are better placed in the website of the company under the investor section, as the information is more dynamic in nature or the data placed elsewhere where it is more appropriate.

In the class of information that are better placed in the website of the company the following three top the list:

1. Graph of share price movement during the year compared with the index.
2. Monthly high and low of share price with volumes traded on that day
3. AGM details and the details of the last 3 AGMs with list of special resolutions.

Being dynamic in nature, the first two can be updated on a daily and monthly basis respectively and regarding the third item, details for a longer period could be made available if the company thinks appropriate.

Turning to information that is better placed in the Management Discussion and Analysis (MDNA) section is the section on Foreign exchange risk and hedge activity. Many company even today provide details of this in the Corporate Governance Report only by providing the page reference where this is contained in the MDNA section.

Finally, the information on CIN (Corporate Identification Number) is better placed in the Corporate Information segment at the beginning of the Annual Report as they introduce the company more comprehensively and effectively.

Solution

Since the annual reporting season has already started with some companies publishing their annual reports, SEBI can make these changes in the month of October 2018 and make it effective for all annual reports published in the year 2019. This will not only make the annual report brief and concise but also make the communication to shareholders and investors more effective.

The Birth of Profit & Loss Account & A New Method to Compute Profits

By Shankar Jaganathan

(*This article is the second of a trilogy that traces the origin of the three elements of financial statements, the balance sheet, the profit and loss account and the cash flow statement)*

Financial Statements consisting of the three- Balance Sheet, Profit and Loss Account and the Cash Flow Statements, form the core segment of corporate communication to stakeholders with financial interests. The three can be likened to a still photograph, a video film and a slow-motion replay of the video film.

Like a still photograph, the balance sheet is at a point of time, on a given date, while the profit and loss account like a video film is for a given duration, which can be for a month, a quarter or a year. When the action is very fast and rapid, as in a fight or dance sequence, a good director shows it in slow motion for the audience to appreciate the nuances. Likewise, the Cash Flow statement is the profit and loss account played in slow motion shorn of all special effects or judgement. It helps an investor appreciate the true business performance shorn of the accountants' judgement.

Like in the world of photography, the three came chronologically one after another- Balance Sheet the first, followed by the Profit and loss account and finally the Cash flow statement.

The Concept

Profit, for a long time in human history was computed as an increase in the owners' net worth. While the total of all the assets that belonged to the owners was their gross worth, net worth was what they owned, which was computed by deducting all their borrowings and credits received by them. Profit was the increase in their net worth over a period, while a decrease was their loss. This was also called the Surplus Theory of Profit, as it was computed by comparing net worth at the beginning and end of the period to quantify the surplus.

As businesses evolved resulting in three critical developments, higher fixed assets investments, longer business cycles, and trade based on credit, the Surplus Theory of Profit became unreliable due to depreciation on fixed assets, timing mismatch between income and expenditure and the element of bad debts. The result was a new concept devised to measure profits, the Residue Theory of Profit.

In Residue Theory of Profit, surplus of revenue over the costs incurred for realizing that revenue is computed to arrive at profit. An added advantage of this theory was the multiple levels at which profits can be computed:

1. Contribution =Revenue less material cost
2. Gross Margin =Revenue less direct cost
3. Profit Before Interest, Tax & Depreciation= Revenue less all non-financial cost
4. Profit Before Tax= Revenue less all costs, excluding taxes
5. Profit After Tax = Revenue less all costs including taxes

But what led to this realisation of the limitations of the Surplus Theory of Profit?

The First of First

Nineteenth century saw the advent of insurance business. A peculiar feature of insurance business is that premiums are collected in advance and assets insured for varying periods and in the case of life insurance for multiple years if not decades, which resulted in exposing the inadequacies of the Surplus Theory of computing profits.

The spectacular crash in London of Albert Conglomerate of insurance companies in 1870 illustrated the limitation of computing profits using the balance sheet. The failure of the Albert Conglomerate was believed to be a result of extravagant commissions paid and excessive remuneration to negotiators as profit was inappropriately computed using the Surplus Theory of Profit. Learning from this episode, the Life Assurance Companies Act, 1870, and the Building and Friendly Societies Act of 1874 were enacted in a short time that required the disclosure of profit and loss account[1] along with the balance sheet.

The initial Companies Act enacted both in England and in India made it only optional for companies to disclose their profit and loss account, as the provision to place this account in the shareholders meeting was provided only in the Articles of Association, which is optional for the companies to adopt. It was only in the year 1928 that the Profit and Loss account was mandated for all companies in England by the Companies Amendment Act, 1928. India followed suit eight years later in 1936.

Companies Act, 2013

Section 129 of the current Act requires every company to place before its shareholders each year a copy of its profit and loss account. Further, Schedule III of the Act specifies the format in which this statement is to be presented.

The profit and loss account statement today occupy a prominent position in the financial statements, pushing the Balance Sheet that emerged much earlier into the background.

Compliance Calendar

June 7th	TDS payment for May
June 10th	GSTR-1 (Mar2018): Monthly return for registered persons with aggregate turnover of more than Rs. 1.50 crores
June 15th	Pay PF contribution for May, 2018
	ESIC payment for May.
June 20th	GST Payment for May 2018 - GSTR 3B
	Professional Tax payment
June 25th	PF Return for month of May
June 30th	GST TRAN 2

[1] Profit and loss account was also called the Nominal accounts, as it consists of only nominal accounts, i.e. income and expenditure accounts and excluded the real and personal accounts which is contained in the balance sheet.

Cimplyfive's Offerings

BLISS is a Cloud hosted software that automates the routines, provides an e-repository, timely alerts and a real-time dashboard, all aimed at ensuring compliance and good corporate governance. By doing so, it also provides complete peace of mind to the Board of Directors and assurance to professionals by providing them with real-time compliance status with respect to the Companies Act, 2013.

BLISSPLUS

An advanced variant of BLISS with multiple premium features like Directors view page, Past records, Automated compliance tracker under the Companies Act, 2013.

BLISS LISTED

An advanced variant of BLISSPLUS for Listed Companies with Companies Act, 2013 and SEBI's LODR 2015 compliances integrated to provide a single point compliance automation, risk manager & e-repository for secretarial records.

BLISSDOCS

An Android/IOS Board app for Directors which provides secure access to Board documents on tablets/mobile phones, facilitates enhanced productivity making the Board meetings more efficient & effective.

CAIRR

CAIRR is a free to use website from CimplyFive that provides at your fingertips, an integrated view of the Companies Act, 2013 & SEBI Regulations. The site is updated daily at 10AM for changes in the Act & Regulations. For more details, visit www.ca2013.com.



Gist of regulatory changes in Companies Act, 2013, SEBI (LODR), 2015 and Insolvency & Bankruptcy Code, 2016 in the month of May, 2018

- **01.05.2018**
  - Enforcement notification

Central Government has hereby notified commencement of section 227, 228 and 229 of the Code pertaining to Power of Central Government to notify financial service providers, etc., Budget and Annual Report respectively, with effect from 01/05/2018.

  - The Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018

Central Government has notified these rules to provide the form of Annual Report to be prepared by the Insolvency and Bankruptcy Board of India (IBBI) and a copy of which shall be submitted with the Central Government within 90 days of the end of the financial year.

  - The Insolvency and Bankruptcy Board of India (Form of Annual Statement of Accounts) Rules, 2018

Central Government has notified these rules to provide that the IBBI shall maintain its accounts and records in the Form of financial statements which is annexed to the rule.

- **02.05.2018**

XBRL based Compliance filings for Listed Companies at NSE vide Circular No. NSE/CML/2018/13

In continuation of the circular no. NSE/CML/2018/08 dated April 13, 2018, NSE have announced the availability of XBRL based filling of financial results for Banking and Ind AS formats.
However, the effective date for implementation of filing Financial Results for Non Ind AS format and other than banking using XBRL taxonomy is yet to be notified.

- **03.05.2018**

Circular on non-compliance with certain provisions of the SEBI (LODR), 2015 and the Standard Operating Procedure (SOP) for suspension and revocation of trading of specified securities

In Supersession of the circular no. CIR/ CFD/ CMD/ 12/ 2015 and SEBI/ HO/ CFD/ CIR/ P/ 2016/ 116 dated November 30, 2015 and October 26, 2016 respectively, SEBI has issued this Circular that provides the following:

i. **Annexure I -** the action to be taken by the stock exchanges in case of non-compliances with the Listing Regulations quantifying the penalty for each of such non-compliance that ranges from Rs.1000 per day to Rs.5000 per day.
ii. **Annexure II** - the SOP to be followed by the stock exchanges for suspension and revocation of suspension of trading of specified securities.

It is further clarified that Stock Exchanges may deviate from the above requirement, if found necessary and only after recording their reasons in writing.

The recognized stock exchanges are required to disclose on their website the action(s) taken against the listed entities for non-compliance(s); including the details of the respective requirement, amount of fine levied, the period of suspension, details regarding the freezing of shares, etc.

This Circular shall come into force with effect from compliance periods ending on or after September 30, 2018.

- **07.05.2018**
  - XBRL based Compliance filings for Listed Companies at NSE vide Circular No. NSE/CML/2018/15

In continuation of the circular no. NSE/CML/2018/13 dated May 2, 2018, NSE have announced the availability of XBRL based filling of financial results for Non Ind AS and other than Banking formats.

  - MCA notification on effective date for 28 sections of the Companies Amendment Act, 2017

MCA has notified the effective date as May 7th for 28 sections in the Companies Amendment Act, 2017.

  - The Companies (Appointment and Qualification of Directors) Rules, 2018

1. Strengthened the qualifications of Independent Director by requiring that none of the relatives of the proposed Independent Director:
   - is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
   - has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.

2. The filing of Form DIR-11 by the ceased director is made optional.

➢ **The Companies (Meeting of Board and its Powers) Amendment Rules, 2018**

- Clarified that the restriction on the matters not to be dealt with in a meeting through video conferencing or other audio-visual means do not apply where there is quorum physically present for the meeting.
- Only Listed Public Company is mandated to constitute the Audit Committee.
- Resolution passed at a general meeting for intercorporate loans or guarantees or investment or providing any security or acquisition, Sec 186(3) shall specify the maximum amount up to which the Board of Directors are authorized.

➢ **The Companies (Audit and Auditors) Amendment Rules, 2018**

- The explanation for the Rule 3, Proviso of Rule 3 (7) and Rule 9 is omitted.
- The report of the auditor shall state the existence of internal financial control w.r.t financial statements and its operating effectiveness.
- The Companies which are required to constitute an audit committee where the cost audit is to be done shall appoint an individual who is a cost accountant or a firm of cost accountants in practice as cost auditor.

➢ **The Companies (Registration offices and Fees) Second Amendment Rules, 2018**

- Time period for resubmission of the RUN form increased from one day to 15 days.
- Penalty for Delay in Filling Annul Return and Financial Statement quantified at Rs.100 for every day of delay.

➢ **The Companies (Specification of Definitions Details) Amendment Rules, 2018**

Omitted the Definition of Total Share Capital.

- **17.05.2018**

➢ **Clarification regarding filing requirements under Condonation of Delay Scheme, 2018 (e-CODS) vide General Circular No. 05/2018**

In continuation of the General Circular No. 16/2017 dated 29.12.2017, General Circular No. 02/2018 dated 28.03.2018 and General Circular No. 03/2018 dated 27.04.2018, MCA has clarified that defaulting companies whose names have been removed from the register of companies may file application to Registrar under e-CODS, 2018 and re-activate the DIN of disqualified Directors along with the NCLT order for reviving the company and subject to filing of all the overdue documents.

It is also clarified that to file under e-CODS, 2018, the company must have filed application before NCLT during the validity of CODS Scheme.

➢ **Corrigendum to Notification No. G.S.R. 432(E)**

It is provided that the notification no. G.S.R. 432(E) dated the May 7, 2018 which is the Companies (Audit and Auditors) Amendment Rules, 2018 should be read as the Companies (Audit and Auditors) Second Amendment Rules, 2018.

- **22.05.2018**

The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Third Amendment Rules, 2017

Rule 6(13) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 is amended to provide that the details of amount that is required to be credited by the companies to the Fund shall be furnished in form IEPF-7 within 30 days from the date of remittance of amount or enforcement of these rules, as the case may be.

- **28.05.2018**

- **Circular on system-driven Disclosures in Securities Market vide Circular No. SEBI/ HO/ CFD/ DCR1/ CIR/ P/ 2018/ 85**

In continuation of circular dated December 1, 2015, SEBI have proposed to implement the next phase of the system which shall pertain to additional disclosures under Regulation 29(1) and 29(2) of SAST Regulations for non-promoters and Regulation 7(2) of PIT Regulations pertaining to directors and employees of the company.

It is clarified that CEO and up to two levels below CEO of a company shall be deemed as employees for purpose of system-driven disclosures under Regulation 7(2) of PIT Regulations.

Scheduled commercial bank or public financial institution as pledge irrespective of whether such a pledge is for securing indebtedness in the ordinary course of business or not is exempted from system-driven disclosures under Regulation 29(4) of SAST Regulations.

These disclosures pertaining to SAST Regulations and PIT Regulations should be disseminated on the websites of respective stock exchanges from August 1, 2018.

- **Clarification regarding provisions under section 135(5) of the Companies Act, 2013 vide General Circular No. 06/2018**

MCA has reiterated that the companies should follow the letter and spirit of the provision of section 135(5) by giving preference to local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

- **30.05.2018**

Circular on enrolment as Valuer Member by Registered Valuers Organization (RVO) and Registration as Registered Valuer by the Authority

IBBI has laid down additional requirement of "fit and proper" to make an individual eligible for registration as a registered valuer.

Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2018

IBBI has issued guidelines replacing "the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2017" specifying the methodology to be followed by Adjudicating Authority to propose the name of Insolvency Professional(IP) to the Board who may act as an interim resolution professional (IRP) or liquidator. To reduce the time taken in making this recommendation, the new guideline require a Panel of Insolvency Professionals to be constituted and assignments given based on the volume of work currently handled by the IP. The guideline also requires the IP who has the least work to be selected first and where two IPs are on par, work to be allotted to the IP who has registered earlier.

These Guidelines shall come into effect for appointments as IRP or Liquidator with effect from 1st July 2018.

- **31.05.2018**

 Copyright © 2018, CimplyFive

About CimplyFive

Vision

Leverage research and technology to eliminate procedural non-compliance risk for entities regulated by the Indian Companies Act, 2013.

Mission

Provide a cost-effective, secure web-based, menu driven, subscription services that provides curated resolutions, timely alerts and informative dashboards to free the management bandwidth for pursuing business goals



CAIRR

Contact us at:

Email: contact@cimplyfive.com

Phone: 080-23441212

To view the previous issues of *iComply* click here