General Circular No. 11/2015

No. 1/19/2013-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi
Dated 21st JULY, 2015

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification with regard to circulation and filing of financial statement under relevant provisions of the Companies Act, 2013-reg.

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Sir,

Stakeholders have drawn attention to the proviso to section 101(1) of the Companies Act, 2013 (Act) which allows general meetings to be called at a shorter notice than twenty one days, and sought clarification as to whether provisions of section 136 would also allow circulation of financial statements at a shorter notice if conditions under section 101 are fulfilled.

1.2 The matter has been examined and it is clarified that a company holding a general meeting after giving a shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

2.1 Attention has also been drawn to the provisions of clause (a) of fourth proviso to section 136(1) which require every company having a subsidiary or subsidiaries to place on its website, if any, separate audited accounts in respect of each of its subsidiary. Further, fourth proviso to section 137(1)requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India. Clarification has been sought on -

(a) Whether a company covered under above provisions can place/file unaudited accounts of a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted, and;

P.no. 2 contd../

(b) Whether accounts of such foreign subsidiary would need to be as per format under Schedule III/Accounting Standards or the format as per country of incorporation of the foreign subsidiary would be sufficient.

2.2 The matter has been examined in the Ministry in consultation with ICAI and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements of Section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed alongwith such accounts.

This issues with the approval of the competent authority.

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Yours faithfully

(KMS Narayanan)
Assistant Director

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2. Guard File