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Enforcement of Mandatory Governance Disclosures in Indian Startups: Penalties and Case Studies

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ABSTRACT

This research article investigates the mandatory governance disclosures stipulated for startups in India under the Companies Act, 2013, and their enforcement through penalties levied by the Registrar of Companies (ROC). Focusing on the period from November 2, 2018, to March 31, 2025, the study employs a case study methodology, analyzing adjudication orders issued by the Ministry of Corporate Affairs (MCA). It highlights over 2200 orders issued by the ROC and approximately 800 by the Regional Director, demonstrating the significant enforcement actions taken to ensure compliance with disclosure requirements. The article explores the implications of non-compliance, including monetary penalties and reputational damage, and illustrates these consequences through practical examples involving procedural and technical defaults. It concludes with actionable recommendations for startups to enhance compliance, such as maintaining accurate records, ensuring website disclosures, and securing Directors and Officers liability insurance, thereby promoting transparency and accountability within India's startup ecosystem.

Methodology: Case study methods are used by analyzing adjudication orders under the MCA.

Findings: There are more than 2200 orders passed by exercising the adjudication power given to ROC between 2/11/2018 and 31/3/25, and there are about 800 orders passed by RD. These decisions will help to understand the mandatory governance disclosures to stay immune from penalties imposed by the company law regulators on the companies in India.

Keywords: Mandatory Disclosures, Non-financial Disclosures, Corporate Legal Compliances, Company Law, Startup Governance and Penal Actions.

MANDATORY GOVERNANCE DISCLOSURES FOR STARTUPS AND IT'S ENFORCEMENT THROUGH PENALTIES

Why Governance Disclosures?

This research article examines the framework of Governance Disclosures as stipulated under Indian company law, with a specific focus on their implications for startups. These disclosures, legally mandated for companies registered in India, have gained prominence following a series of corporate governance failures in prominent startups, including Byjus, BharatPe, Trell, Zilingo, GoMechanic, and Mojocare. Such lapses have prompted heightened scrutiny and enforcement by the Ministry of Corporate Affairs (MCA), the regulatory authority overseeing compliance with the Indian Company Law. Consequently, there is an intensified emphasis on ensuring that companies, encompassing startups as well as micro, small, medium, and large enterprises, adhere to the disclosure obligations prescribed by law. This responsibility extends to directors across all such entities, who are now compelled to ensure full compliance with governance disclosure requirements. Additionally, the study considers the complexities arising from the increasing establishment of multinational corporations in India, particularly those with multi-tiered structures, where private subsidiaries of public companies may still be subject to the disclosure obligations applicable to public entities.

How procedural/ technical defaults are dealt?

This research article investigates the consequences faced by companies in India that fail to comply with legal requirements, even when such non-compliance is unintentional or pertains to minor or technical breaches. Such companies may encounter a range of repercussions, including criminal prosecution, reputational damage, employment losses, monetary fines, penalties, imprisonment, legal costs, and psychological distress. Historically, every instance of default or violation—whether procedural, technical, fraudulent, or intentional—was treated with significant severity, often resulting in the imprisonment of directors. However, due to judicial backlog and limited time availability, enforcement actions were frequently delayed, occurring years after the initial violations. This delay not only enabled wrongdoers to evade accountability but also undermined justice for stakeholders. In response, the Ministry of Corporate Affairs (MCA) introduced a pivotal reform to distinguish procedural and technical defaults from fraudulent or intentional violations.

Under this framework, the former are now addressed by the Registrar of Companies (ROC) through the imposition of penalties, while the latter remain under the purview of the judiciary, which may impose fines, imprisonment, or both. This strategic delineation has alleviated the burden on the judiciary, Special Courts, and the Serious Fraud Investigation Office (SFIO), allowing them to concentrate resources on substantive fraudulent cases. By decriminalizing procedural and technical defaults and substituting penalties for fines or imprisonment, this reform not only reduces judicial congestion but also promotes a "comply or pay" regime, fostering the development of robust corporate governance practices in India. The MCA has underscored the critical role of sustaining a sound corporate governance framework in tandem with these changes.

Improving Governance Disclosures – A study of selected case studies:

This research article explores the compliance obligations imposed on companies incorporated in India as either private limited or public limited entities, emphasizing that such requirements persist regardless of whether the company actively conducts business. The study highlights recent enforcement actions undertaken by the Registrar of Companies (ROC) under the Ministry of Corporate Affairs (MCA), which has intensified its oversight of companies failing to adhere to mandatory disclosure provisions under Indian company law. Through the imposition of penalties, the ROC has sought to ensure adherence to these legal standards. The article presents a series of case studies that serve as a valuable reference for directors and officers, illustrating the importance of ensuring all requisite disclosures are diligently made by their startups. These examples underscore the necessity of upholding governance and achieving full compliance with the law, both in its literal requirements and its broader intent, thereby protecting stakeholders from penalties and reinforcing corporate accountability.

1. Check the basic disclosure requirements:

a) Checking the name board of your company:

Some companies are now emphasising having a fancy, stunning name board with logos and everything as a marketing technique in order to capture the attention of prospective customers while failing to fulfil the requirements of the law. Every company is required to have the following disclosures made in their Name Board outside its registered office, Business letters, Billheads, Invoices, Letter papers, Notices and Official Publications:

• Name of the Company	• Address of registered office	• Corporate identity number	
• Telephone number	• Fax number, if any	• E-mail address	• Website address, if any

Though these may seem trivial in nature, the ROC has imposed penalties on several companies and on its directors for failure to comply with this compliance. Also, care must be given even to the spelling of the name of the company. Spelling mistake in the company name may arise due to typographical errors. For instance, for a company having "Laxmi" as its name, there could be chances of running autocorrect function in computer system due to which the spelling automatically got changed at the time of typing from "Laxmi to Lakhsmi". And this error can be overlooked by all the staffs.

Such errors may happen by mistake, without wilfull or mala-fide motive and purely unintentional however not an exception for penalty. Below mentioned are the penalties imposed by various ROCs on failure of the company to comply with the basic disclosure requirements as specified in Section 12 (3) of the Act.

Penalty imposed for		
Non-mentioning of CIN on the letterhead	Using letter head with different spelling in the company name	Not mentioning the address of the registered office and CIN on letterhead
On Company – Rs. 7,000 On Directors – Rs. 10,000	On Company – Rs. 1 Lakh On Directors – Rs. 3 Lakh	On Company – Rs. 2 Lakh On Directors – Rs. 3 Lakh

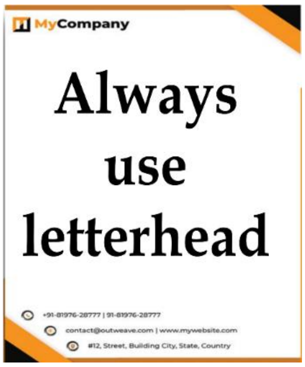
Section 12(3)(c) of the Companies Act, 2013 mandates that all the business letters, bill heads, letter papers, and all its notices and other official publications including the letterhead of the company must mention the details such as name, registered office and corporate office address, corporate identification number, telephone number, fax number, email and website addresses. In the adjudication matter of (*M/s Wise R&D India Private Limited Having Matter No. F. No. ROCB/ Adj. 454.12/ Wise R&D/ Co No. 131821/ 2022/ SRN I00074480 Dated July 1, 2022,* n.d.), the ROC has levied penalty of INR 7,000 on the company and INR 2,000 on each of the directors of the company for non- compliance of Section 12(3)(c) of the Companies Act, 2013 as the company has not mentioned corporate identification number on the letterhead of the company.

b) Website disclosures:

In today's modern world, all businesses are expected to have some form of online presence. A company's website is as important as having a store, office, or phone number. Having a website has its own advantages. However, it is requisite for a company to put on a website, the below mentioned simple things even for a private company:

<table>
<tr><td rowspan="4">Disclosure in website of the Company
• Name
• Address of registered office
• Corporate Identity Number
• Telephone number
• Fax number if any
• Email
• Name of the person who may be contacted in case of any queries or grievances on the landing/ home page of the said website.</td><td>• Notice of the General Meeting
(unless Articles provides otherwise)</td></tr>
<tr><td>• Annual return
(web-link of such annual return shall be disclosed in the Boards' report)</td></tr>
<tr><td>• New Director proposed to be appointed.
(Special notice to be placed 7 days before General Meeting)</td></tr>
<tr><td>• Notice of resignation received from director</td></tr>
</table>

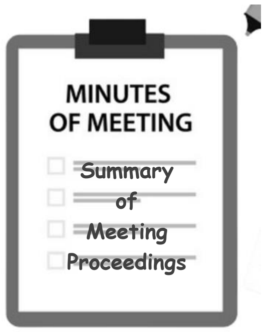
c) Official communications on letterhead:



As stated above, failing to have the required information in letterhead of a company is a default. What if a company does not use its letterhead? Whenever a company sends any communication like notice of meeting to its members, enquiry letter to creditors asking for a proforma or quote, reminder letter to debtors for settlement of dues, etc., it should be kept in mind that whatever the communication or to whomever it is addressed, it should always be on the letterhead of the company. The fact of whether a company is using its letterhead or not can be verified in a number of ways. And the most significant one among them is complaints. This is a real life happening wherein the ROC of NCT of Delhi & Haryana received two complaints in his office from an individual person (s) via e-mail dated 6th November 2020 and also on 1st June 2021 against the company stating that the company had communicated with them on certain matter by using the plain paper and not on the company's letterhead. Also, the company instead of using the letter head, corresponded with the officer of the Registrar on a plain paper. On failure to use the letter head, the company and directors were penalised Rs.1,500.

2. Minutes as per SS 1:

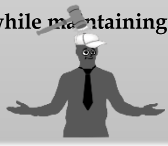
Minutes are the summary proceedings of the meeting that shall be written in clear, concise and plain language. SS 1 stipulates some requirements for preparation of minutes (Annexure 1). Some of the disclosure requirements are: Serial number of meeting, Board meeting mode of attendance, commenting on presence of quorum, time of conclusion of the meeting, etc. Another point to add here is, where a director who resigned from the board and no-longer is associated with the company can still be held liable as officer in default for the defaults occurred during the period while he was a director. Also, he shall be required to appear either personally or through authorised representatives if personal hearing notice is served on him by the adjudicating authorities.



The ROC has imposed the following penalty on company and its directors who resigned from the directorship for non-compliance of SS-1 while maintaining minutes of board meeting:

Penalty imposed u/s 118(11) having non-compliance of SS-1 while maintaining minutes of board meeting.

On Company	–	Rs. 3,25,000
On Directors	-	Rs. 1,30,000



It is mandatory for every company to maintain the proceedings of every general meeting of any class of shareholders, or creditors and every meeting of its board of directors or any committee formed thereof. The company is required to prepare, sign and maintain the minutes in accordance with the Secretarial Standards (SS) 1 and 2 as issued by the Institute of Company Secretaries of India (ICSI). Every minutes should contain all information in accordance with the secretarial standards, and must be prepared and signed within 30 days from the date of conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for the purpose with their pages consecutively numbered.

In the matter of (*Ruckus Wireless Private Limited Having Matter No. ROCB/Sec 454(3)/54261/4500-4503 Dated March 15, 2019*, n.d.), the company was levied penalty of INR 3,25,000 and INR 65,000 each on the officers in default for not complying with secretarial standards with respect to 13 different board meetings. Every company must maintain minutes of meeting of board of directors and members in accordance with Section 118 of the Companies Act, 2013 read with SS-1 and SS-2 issued by ICSI.

3. Mentioning Director Identification Number (DIN) while signing:

It is a mandatory requirement under the provisions of the Companies Act, 2013 that the DIN number is always required to be mentioned underneath the signature of the director whenever any document, information, or a return would be submitted to the authorities under the law. The documents, information or return shall include resolutions filed with ROC, Financial statements, Board's report, etc.

Failure to mention DIN while signing will result in violation of the provisions of the Act and will attract penalty. ROC imposed the following on a company and its director who failed to mention his DIN while signing:

Penalty for not mentioning DIN while signing documents by directors.

On Company	–	Rs. 1,50,000
On Managing Director	-	Rs. 1,50,000

In accordance with the provisions of Section 158 of the Companies Act, 2013, while furnishing any return, information or particulars, every person or company shall mention the director identification number (DIN) in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director. In connected matter of (*M/s. Premier Solution Private Limited Having Application No. RD (NWR)/ Appeal u/s 454(5)/040/2022 Dated January 30, 2023*, n.d.), the ROC observed from the financial statements for the last three years filed by the company that DIN have not mentioned therein which reveals that the company has defaulted under the provisions of the section 158 of the Companies Act, 2013. After the appeal was heard by the Regional Director, they reduced the penalty levied by the ROC and passed an order imposing a penalty of INR 15,000 on the company and each of its directors.

In similar matter of M/s. (*M/s. Shri Narayani Nidhi Limited Having Matter No. ADJ/07/RD (SR)/2022-23 Dated January 11, 2023*, n.d.), the ROC observed that the directors signing the financial statement have not mentioned their Director Identification Number in the documents attached to Form AOC-4 for the financial year(s) 2014-15, 2016-17 and 2017-18 respectively. Thus, the provisions of Section 158(1) of the Companies Act, 2013 is violated. The company challenged the ROC order before the Regional Director. Consequently, the impugned order of the ROC to the extent of reducing the quantum of penalty. The Regional Director imposed a reduced penalty of INR 20,000 per year on the company and each of its directors.

4. Know your related parties & disclose them:

The term related-party transaction refers to a deal or arrangement made between two parties who are joined by a pre-existing business relationship or common interest. It is not uncommon for companies to do business with people and organizations with whom they already have relationships. This kind of business activity is called a related-party transaction. Companies often have relationships with different parties such as their affiliates, shareholders, subsidiaries and related owned corporate. These are the most commonly seen types of related entities. Related-party transactions can include sales, leases, service agreements, and loan agreements. Who are involved in the transaction are named as related parties.

When any transaction entered into with a related party by company on such transaction of sales, purchase, supply, selling, disposing and leasing of any property, goods or materials dealing with any person and same such transaction undertaking with any agent or person.

Such transactions are required to be approved by members of the company or members of the board from time to time based on the value of the transaction or accordance with the Articles of the company prescribed any value.

Transaction	**Threshold limit**
a) sale, purchase, or supply of any goods or materials.	a) 10% or more of the turnover of the company.
b) selling or otherwise disposing of or buying property of any kind, directly or through the appointment of an agent.	b) 10% or more of the networth of the company.

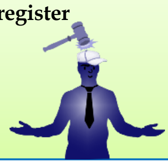
c) leasing of any kind of property.	c) 10% or more of the turnover of the company.
d) availing or rendering of any services, directly or through the appointment of an agent.	d) 10% or more of the turnover of the company.
e) appointment to any office or place of profit in the company, its subsidiary company or associate company.	e) Monthly remuneration exceeding two and a half lakh rupee.
f) underwriting the subscription of any securities or derivatives.	f) 1% of the net worth of the company.

The above transaction required approval by members of the company except the above transaction members of the board approval is sufficient.

Such transaction should be reported by the company on board report and maintained in the register of contract or arrangements of form MBP-4. If director who fails to comply with the above provisions shall be liable to a penalty of Rs. 25000 which happened in the case of Adani Power Limited which identified by ROC. Hence the following penalty is imposed by ROC:

Penalty for not recording the related party transaction in MBP-4 register

On Company – Rs. 75,000
On Managing Director - Rs. 75,000
On Whole Time Director - Rs. 75,000



Similar default happened in another case of Lava International Limited, while perusing the minutes and statutory registers for the FY 2017-18 to 2019-20, it was observed that the company had made entries of sale-purchase from related parties in the MBP-4 register relating to contracts or arrangements in which the directors were interested. From the MBP-4 register, maintained, it was observed that the register was neither placed at the board meetings nor signed by the board of directors in compliance with Section 189(1) of the Companies Act, 2013.

Based on the inspection report, and also taking into consideration the oral submissions made during the personal hearing, the ROC imposed the following penalty vide adjudication order:

The order directed the officers to pay the penalty out of their own funds.

Penalty for not obtaining approval of board for the related party transaction

On Managing Director - Rs. 25,000
On Whole Time Directors - Rs. 50,000
On Directors - Rs. 1,50,000

MCA vide letter No. 7/453/2014/CL-II dated 05.04.2018 has ordered for Inquiry of the Company under section 206(4) of the Companies Act, 2013 in the matter of (*M/s. Adani Power Limited Having Matter No. ROC-Guj/ Adj.Order/ Sec.189/ 2023/ 915 to 919 Dated May 16, 2023*, n.d.). The ROC has observed from the financial statement of the company for the financial year 2017-18, 2018-19 and 2019-20 that the company has entered into various related party contracts as per Section 184(2) and 188 of the Companies Act, 2013. However, the company has not entered the said details in the register of contracts under Section 189 of the Companies Act, 2013 in form MBP-4. Hence, the company, its directors and officer in default made violation of Section 188 read with Section 189 of the Companies Act, 2013. It was further submitted by the ROC that the company has not furnished the documentary evidence related to transaction in ordinary course of business and arm’s length basis. The ROC thereby levied a penalty of INR 75,000 on each of the officers in default for non-compliance of Section 189 for the financial year 2017-18 to 2019-20.

5. Auditors to disclose their qualifications and Board to reply:

An auditor's report is qualified when there is either a limitation of scope in the auditor's work, or when there is a disagreement with management regarding application, acceptability or adequacy of accounting policies. For auditors to qualify a report, an issue must be material or financially worth consideration.

The auditor shall exercise professional judgment and maintain professional scepticism throughout the planning and performance of the audit to detect and report the fraud envisaged under the provisions of Section 143 of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2014.The auditor may communicate directly with the internal auditors and statutory auditors to verify whether they have suspected/ identified any fraud during the course of their audit.

Also, the auditor is expected to give his opinion on the financial statement whether they give a true and fair view and whether they are materially misstated or not. Auditor bridges the gap between the company and members and his opinion on the financial statement is addressed to the members of the company to take informed business decision. Failing to deliver his duty will also make him liable for penalty. While examining the financial reports submitted by Tilak Proficient Nidhi Limited, the ROC noted that interest accrued from long-term borrowing was not included in the balance sheet for the year ended 31st March 2021 and came to the conclusion that the above had affected the true and fair view of the state of affairs of the company for the financial year ended as at 31st March 2021 leading to violation of Section 129 of the Companies Act 2013 read with Schedule III of the Companies Act 2013.

Additionally, the ROC pointed out that the auditor left no remarks in their report concerning this. The lack of an auditor's comment in the audit report was a breach of his duty as required under the law.

Penalty for not commenting about non-disclosure in the financial statement.		
Statutory Auditor of the company	-	Rs. 10,000

Pursuant to Section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the Chairperson of the company where he is authorized by the Board or by two directors out of which one shall be managing director, if any, and the chief executive officer, the chief financial officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for this report thereon. However, it was observed in the matter of (*M/s. Michelin India Private Limited Having Matter No. F. No. ROC/CHN/Michelin India/ADJ Order/S.134(1)/JTA(SK)/2022 Dated October 10 2022*, n.d.) and (*M/s. Michelin India Technology Center Private Limited Having Matter No. F. No. ROC/CHN/Michelin Tech/ADJ Order/S.134(1)/JTA(SK)/2022*, n.d.) all the directors of both the companies have not signed the Balance Sheet on 27.09.2021 and the provisions of Section 134(1) of the Companies Act, 2013 do not contemplate the directors signing the Balance Sheet in part. It was pertinent to also note that the Auditor has also signed the Balance Sheet on 27.09.2021 at Pune with respect to both companies. The Balance Sheet cannot be furnished to the auditor without approval and signed as per provisions of section 134(1) of the Companies Act, 2013. Due to such contravention of provisions of the Companies Act, 2013, both the company was imposed with a penalty of INR 3,00,000 each and INR 50,000 on each of the officer in default.

Conclusion & recommendations:

"A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment." (*A Comprehensive Look at SEBI's ESG Recent Reform*, n.d.). By this, one can understand the significance of governance disclosure of the company in India and how they should ensure the compliance of law by disclosing the mandatory legal requirement in the best interest of the stakeholders. "Even the G20 New Delhi Leaders Declaration emphasized on disclosures." (G20 Cooperation Is Essential in Determining the Course the World Takes. Headwinds to global Economic Growth and Stability Persist., n.d.). Indian startup ecosystem is growing such a way that many reverse flip structures are being implemented by which "Indian startups shifting their headquarters abroad due to favourable regulatory frameworks and ease of doing business." (*How GIFT IFSC Can Encourage Indian Startups to Shift HQS Back Home*, n.d.). The developments outlined above represent positive strides within the Indian startup ecosystem, fostering an environment of enhanced corporate governance and accountability. To sustain and build upon these advancements, this research article proposes the following recommendations for consideration by stakeholders:

1. Companies should be incorporated with a commitment to achieving full compliance by stipulated deadlines, a practice to be upheld from the outset of formation, irrespective of whether active business operations are undertaken.

2. Shareholders must be provided with comprehensive details regarding financial statements, related party transactions, and other pertinent matters, equipping them with the information necessary to make well-informed decisions.

3. For companies maintaining an online presence, it is imperative that their websites remain fully operational and include all mandated legal, secretarial, and financial disclosures as required under applicable laws.

4. Independent professionals, including statutory auditors, secretarial auditors, cost auditors, legal advisors, and due diligence teams engaged by investors, should be furnished with all necessary documentation and data to enable them to provide informed guidance, ensuring the company's adherence to regulatory standards.

5. As a prudent risk management strategy, companies are strongly encouraged to secure Directors and Officers (D&O) liability insurance for all directors and officers designated as officers in default under the Companies Act. This precaution is advisable regardless of the company's scale, given the potential for class action lawsuits initiated by dissatisfied individuals or shareholders.

These recommendations aim to reinforce a culture of compliance and transparency, safeguarding the interests of all stakeholders while supporting the long-term growth and integrity of India's startup landscape.

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