



The Companies Act 2013

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E-newsletter

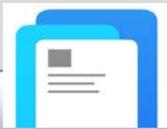
JULY, 2015

ABOUT THE E-NEWSLETTER

Dear Users,

Thecompaniesact2013.com imports yet another innovation for all the valuable users in the form of e-newsletter. This is the first issue of the **July month** comprising contemporary articles, latest notifications, circulars & orders.

The notion is to render all the updates about Company law of the current month in a compiled format and serve a better pavement for easy accessibility to the users.



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ANNUAL RETURN

INTRODUCTION: -

Annual return is a **yearly statement**, required to be filed by every company irrespective of their nature or status, which highlights the information about company's various aspects pertaining to its composition, activities, and financial position. Annual Return is not a **tax return**; it is simply a corporate law requirement and every company is legally obligated to file this return with **Registrar of Companies (ROC)**.

The Companies Act 2013 **mandates** to put information in Annual Return as on the **last date of Financial Year** irrespective of information stood on the Date of AGM.



PARTICULARS OF ANNUAL RETURN

Mandatory requirements are required to be included in the Annual Return:

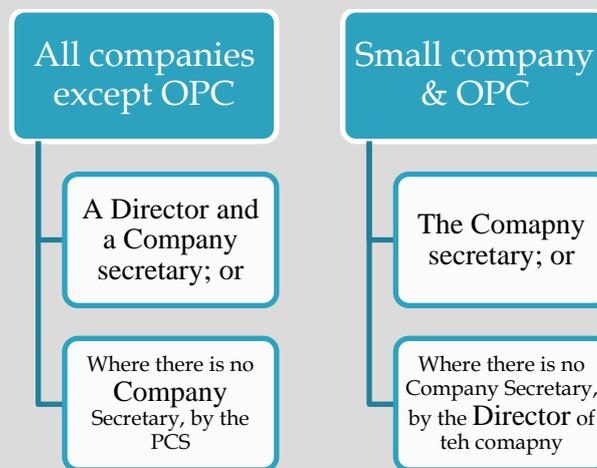
- a) Its registered office, **principal business activities**, particulars of its holding, subsidiary and associate companies;
- b) Its shares, **debentures** and other securities and **shareholding pattern**;
- c) **Its indebtedness**;
- d) **Its members and debenture-holders** along with changes therein since the close of the previous financial year;
- e) Its promoters, **directors, key managerial personnel** along with changes therein since the close of the previous financial year;
- f) **Meetings of members** or a class thereof, Board and its various committees along with attendance details;
- g) **Remuneration of directors and key managerial personnel**;
- h) Penalty or punishment imposed on the **company**, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- i) Matters relating to **certification of compliances, disclosures** as may be prescribed;

- j) Details, as may be prescribed, in respect of shares held by or on behalf of the **Foreign Institutional Investors** indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- k) Such **other matters** as may be prescribed



AUTHENTICATION OF ANNUAL RETURN

Annual Return shall be signed by, in case of:-



CERTIFICATION OF ANNUAL RETURN BY PCS: -

The **Annual return** shall be filed by

- A **Listed** Company; or
- A Company having **paid-up capital** of Rupees **ten crore** or more or **turnover** of Rupees **Fifty crore** or more

Note: the abovementioned shall be certified by a PCS in **Form No. MGT-8** stating that the annual return discloses the facts correctly and adequately and that the company has been complied with all the provisions of this act.

FORMAT OF ANNUAL RETURN

Rule 11(1) of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare its annual return in Form No. **MGT.7**.

But , Further with regard to General Circular No. 22/2014 vide dated 25th June, 2014, MCA has clarified that Form No. MGT.7 shall not apply to annual returns in respect of companies whose financial year ended **on or before 1st April, 2014** and for annual returns pertaining to earlier years. It means companies need to

file their annual return in earlier form as prescribed under the Companies Act, 1956 i.e. **Form 20B and Form 21A as the case may be.**

Section 92(3) read with Rule 12(1) of the Companies (Management and Administration) Rules, 2014, provides that **an extract of the annual return** shall form part of the Board's report and such extract shall be in **Form No. MGT.9.**

FILLING OF ANNUAL RETURN

Section 92(4) of the Companies Act, 2013 sets the following deadline for filing an annual return:

- **Within the 60 days** from the date on which the annual general meeting is held or
- Where no annual general meeting is held in any year, then within sixty days from the date on which the annual general meeting (AGM) should have been held shall file annual return along with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under **section 403.**

Note: However, as per **third proviso to sub-section (1) to section 96** of the 2013 Act, ROC may extend time within which AGM must be held by **not more than three months** on the ground of sufficient reason. And this provides **3 months extra period** in addition to the 60 days for filing of Annual Return.



PENALTY PROVISIONS

Section 92(5) defines consequences of **non Filing of Annual Return** as under:-

For Company which fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee.	Fine not less than Rupees fifty thousand but which may extend to Rupees five lakhs.
For officers of the company who is in default	Imprisonment for a term which may extend to six months or Fine which shall not be less than fifty thousand but which may extend to five lakhs or with both



CONSEQUENCES OF FALSE CERTIFICATION

As per Section 92(6), if a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, he shall be punishable with fine which shall not be less than **Rupees Fifty thousand** but which may extend to **Rupees Five lakhs**.

Further, Apart from section 92 of the Act, a person is liable under **section 448**:

if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement,—

- a) Which is **false in any material particulars**, knowing it to be false; or
- b) Which **omits any material fact**, knowing it to be material shall be liable under **section 447**.

Section 447 provides that any person found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than **six months** but which may extend to **ten years** and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to **three times** the amount involved in the fraud.

PLACE OF KEEPING ANNUAL RETURN

Section 94(1) of the Companies Act, 2013, mandates every company to keep copies of annual return filed under Section 92 at its **registered office**.

But further inserted a Proviso to sub-section (1) of section 94 which provides that copies of Annual Return may also be kept as such place in India in which **more than 1/10th of the total number of members** entered in the register of members reside, by passing a **Special Resolution** at General Meeting of the Company and copy of the proposed Special Resolution shall be given in advance to the Registrar (ROC) in **Form No. GNL. 2** along with fees as applicable.

Provided, the need to comply with **Section 117** is required that every **special resolution** passed in general meeting shall be registered with ROC in **Form MGT.14**.

Note: To comply with the abovementioned section, there is need to with the Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 which provides that for the purpose of filing the documents for which no e-form is prescribed under the Act or Rules, the documents shall be filed through **Form No.GLN.2**; therefore, copy of resolution shall be submitted to the ROC by filing Form No. GNL. 2.

PRESERVATION OF ANNUAL RETURN

As per **Rule 15 of the Companies (Management and Administration) Rules, 2014**, copies of annual return prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of **eight years** from the date of filing with the Registrar. These copies shall be kept in the custody of the **Company Secretary** of the Company or **any other person** authorized by the Board for the purpose.



INSPECTION OF ANNUAL RETURN

Section 94(2) says that, **copies of all the returns** shall be open for inspection by **any member, debenture-holder, other security holder or beneficial owner**, during **business hours** without payment of any fees and by any other person on payment of such fees as may be prescribed.

With this regard, **Rule 14 of the Companies (Management and Administration) Rules, 2014** provides that:

1. The **registers and indices** maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during **business hours**, at such reasonable time on **every working day** as the board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company **but not exceeding fifty rupees** for each inspection.

Note: For the purposes of this sub-rule, reasonable time of **not less than two hours** on every working day shall be considered by the company.

2. Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not **exceeding ten rupees** for each page. Such copy or entries or return shall be supplied **within seven days** of deposit of such fee.

Rule 16 of the Companies (Management and Administration) Rules, 2014 provides that:

1. Copies of the annual return and the registers filed under section 92 shall be furnished to any member, debenture-holder, other security holder or beneficial owner of the company or any other person on payment of such fee as may be specified in the Articles of Association of the company but not exceeding ten for each page and such copy shall be supplied by the company within a period of seven days from the date of deposit of fee to the company.

Penal Provisions with regard to Inspection:

Section 92(4) provides that the Company and every officer of the company who is in default shall be liable. If any inspection or the making of any extract or copy required under this section is refused for each such default, to a penalty of rupees **one thousand for every day** subject to a maximum of rupees **one lakh** during which the refusal or default continues.

Power of Central Government:

Section 92(5) provides **discretionary power** to the Central Government and says that, The Central Government may also, by order, direct an immediate inspection of the document, or directs that the extract required shall forthwith be allowed to be taken by the person requiring it.

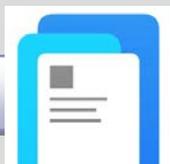
ANNUAL RETURN BY FOREIGN COMPANY

Every foreign company shall prepare and file, within a period of **sixty days** from the last day of its financial year, to the Registrar annual return in **Form FC.4** along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the **close of the financial year**.



CONCLUSION

No doubt, new provision has made Annual Return more **comprehensive one** as it has reduced the period, by deviating the date on which data must be captured, i.e. **as on AGM to as on closing of Financial Year**. Government has tried to treat every company at par and to make availability of almost all those information which a listed company incorporates in its Annual Report in public domain. This will help to curb the irregularity of Private companies which reluctant to share their information. However, this will be the repetition of information in case of listed companies. Since, information provided under Annual return is linked to the closing of financial year date, the time period of 60 days from the date of AGM to file annual return has **no relevance**. It cast huge responsibility **on in house Company Secretaries and Company Secretary in Practice** to check not only the **veracity** of contents of Annual Return but also confirm the compliance of the provision of the Act in **letter spirit**. Professional need to be more alert and well equipped with the provision of the Act and bound to exercise their **diligence for avoiding any penalties** as they have been substantially increased in the 2013 Act.



CIRCULARS

A. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF IN FILING OF FORMS MGT-7 (ANNUAL RETURN) AND AOC-4 (FINANCIAL STATEMENT) UNDER THE COMPANIES ACT, 2013

CIRCULAR NO.10/2015

1. Ministry has clarified vide General Circular 8/2014 dated 04/04/2014 that provisions of the Companies Act, 2013 relating to financial statements, auditor's report and Board's report shall apply in respect of financial years commencing on or after 1st April, 2014. Form AOC-4 or Form AOC-4 XBRL (Format of filing of financial statement) shall, as applicable, have to be used for filing of such statement for financial years commencing on or after 1st April, 2014. Attention is also invited to this Ministry's General Circular 22/2014 dated 25/06/2014 wherein it has been clarified that MGT-7 (Form of Annual Return) shall apply to annual returns in respect of financial years ending after 1st April, 2014.

2. The electronic versions of Forms AOC-4, AOC-4 XBRL and MGT-7 are being developed and shall be made available for electronic filing latest by 30th September 2015. In addition, a separate form for filing of Consolidated Financial Statement (CFS) with the nomenclature AOC-4 CFS will be made available latest by October 2015. MGT-7 has been notified while AOC-4, AOC-4 XBRL and AOC-4 CFS will be notified shortly.
3. In view of this, it has been decided to relax the additional fee payable on Forms AOC-4, AOC-4 XBRL and Form MGT-7 up to 31/10/2015. Further, a company which is not required to file its financial statement in XBRL format and is required to file its CFS would be able to do so in the separate form for CFS without any additional fees up to 30/11/2015.

IMPACT OF ABOVE MENTIONED CIRCULAR:

- Extension of the time to file **AOC-4, AOC-4 XBRL** and **MGT-7**, till 31-10-2015. The said forms are expected to be available for filing on only by 30-09-2015.
- There will be separate filing for consolidated financial statements for other XBRL companies. The separate **Form-AOC-4_CFS** will be made available by October 15 and time to file extended till 31-11-2015.

B. CLARIFICATION WITH REGARD TO CIRCULATION AND FILING OF FINANCIAL STATEMENT UNDER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013.

CIRCULAR NO.11/2015

- 1.1. 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;
 - 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.

IMPACT OF ABOVEMENTIONED CIRCULAR:

- ✓ A company holding a general meeting after giving a shorter notice as per Section 101 may circulate financial statements (to be laid /considered in the same general meeting) at such shorter notice.
- ✓ A Holding (Indian Company) may file/place unaudited accounts of its foreign subsidiary, only if that such subsidiary, is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation.

Provided that:

(A) accounts must be translated in English,

(B) the format of accounts of foreign subsidiaries should be, in accordance with Companies Act, 2013.

Note: In Case if it is not possible to draft format required as per the Companies Act, 2013 then a **statement indicating the reasons for deviation** may be placed/filed along with such accounts.



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