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Annual Return as per Companies Act, 2013



Annual return is a yearly statement, required to be filed by every company, which highlights the information about company's various aspects pertaining to its composition, activities, and financial position and let the investors, consumers, financial institutions, regulator and

many others dealing with the company get a 'true and fair view' of the state of its affairs in a very comprehensive and crisp manner.

It is a corporate law requirement and every company is legally obligated to file this return with Registrar of Companies (ROC)

Applicable Section

Under the Companies Act, 1956, Section 159, 160, 161 and 162 read with Schedule V dealt with the Annual Return & related provisions. However, under the Companies Act, 2013, all these sections are clubbed together and enumerated under Section 92. The new provisions are applicable to all the Companies whose financial year begins on or after 1st April, 2014.

Time Period for filing Annual return

The particulars mentioned in Section 92 of the Companies Act, 2013 are to be filed as on closing date of the financial year unlike the date of AGM as per the old act.

Sub-section 4 of section 92 of the Companies Act, 2013 sets the deadline for filing an annual return within 60 days from the date on which the Annual General Meeting is held or where no Annual General Meeting is held in any year within sixty days from the date on which the Annual General Meeting (AGM) should have been held together with statement specifying the reasons for not holding the AGM, with such fees and additional fees as may be prescribed, within the time specified under section 403.

Changes made under Companies Act, 2013

Following are the particulars that are to be mentioned in Annual Return in form MGT-9 which are in addition to Schedule V of Companies Act, 1956-

- **Principal Business Activities**

As per the provisions of section 92 of Companies Act, 2013 all the business activities contributing 10% or more of the total turnover of the Company needs to be mentioned in Annual return.

- **Particulars of Holding, Subsidiary and Associate Company**

Complete particulars of Holding, Subsidiary and Associate Company is to be given mentioning name, address, CIN No., of each company, nature of relation etc.

- **Share Capital**

- i) A complete breakup of Authorized, Issued and Subscribed Capital is to be given mentioning the capital at the beginning of year, changes made and capital at the end of the year.
 - ii) A complete breakup of the paid up capital is to be given including increase/decrease during the year, shares issued etc.
- A detail of stock split/consolidation during the year for each of shares is to be given.

- **Security Premium Account**

A detail of security premium account at the beginning of the year, changes made during the year and premium at the end of the year for each class of securities is to be given.

- **Shareholding Pattern**

- i) Shareholding pattern of Indian promoters including individual/HUF, Central Government, Banks, FI's, others and Foreign Promoters including NRI individuals, body corp., others is to be mentioned.
- ii) Shareholding pattern including institutions i.e. mutual funds, banks/FI, Central Govt., State Govt. and non-institutions i.e. body corporate, individual shareholders is to be given.
- iii) Change in the shareholding pattern of promoters during the year is to be given.
- iv) Shareholding pattern of top ten shareholders other than Directors, Promoters and Holders of GDRs and ADRs at beginning and end of the year is to be given.

- v) Shareholding for each of the Directors and KMP at beginning and end of the year is to be given.

- **Indebtedness**

Indebtedness of the Company mentioning secured loans excluding deposits, unsecured loans and deposits including principal amount, interest due but not paid and interest accrued but not due at the beginning and end of the year is to be given. The details of unsecured loans were not required under the old provisions.



- **Details of Directors**

Particulars of individual Directors including their interest in other Companies and particulars of KMPs since the close of previous financial year is to be given.

- **Meetings of Members/ Class of Members/ Board of Directors**

Meetings of Members/ Class of Members/ Board of Directors specifying date of meeting, total number of meetings held during the year, no. of Directors attending the meeting , % of attendance and others is to be mentioned.

- **Remuneration of Directors and KMP's**

Remuneration of Managing Directors, Whole-time Directors, Managers, Independent Directors and other KMP's is to be given specifying their gross salary as per Income Tax Act, 1961, stock options, sweat equity and others.

- **Penalties/ Punishments/ Compounding of Offences**

Any penalties/punishments/compounding of offences imposed on/by the Company, Directors or any other officers in default specifying section of Companies Act, Description, Details of penalty/punishment, compounding fees imposed, Authority is to be given.

- **Certification of Compliances**

Details of events / matters in respect of which the company was liable to file returns or comply with requisite provisions of the Companies Act and rules made thereunder is to be mentioned.

- **Disclosures**

Disclosures related to closure of register of members/ debenture holders/ other security holders, declaration of dividend, delisting of shares/ securities, change in nominal capital of shares, particulars related to inter corporate loans, investments, etc. is to be given in annual return.



- **Corporate Social Responsibility**

Amount spent by the Company during the financial year in pursuance of its Corporate Social Responsibility policy need to be disclosed.

- **Certification of Annual return by Practicing Company Secretary**

Under the companies act 1956, a company having paid up capital of Rs 10 lakhs was required to obtain a compliance certificate from practicing company secretary. Now as per the new act, the annual return is to be signed by the director and company secretary and where there is no company secretary, by a company secretary in practice. However, this is exempted for one person companies and small companies. Further, the Annual Return filed by the Listed Company or by a Company having paid up share capital of Rs. 10 crores or more OR turnover of Rs. 50 crores or more shall be certified by a Practicing Company Secretary in Form No. MGT 8 stating that the Annual Return discloses the fact correctly and adequately and that the Company has complied with all the provisions of this Act.

- **Extract of Annual Return**

An extract of Annual return in Form No. MGT 9 shall be attached to and form part of the Board's Report.

- **Annual return for One Person Company**

An OPC also has to file Annual return as per the provisions of Companies Act, 2013.

- **Annual Return for Foreign Companies**

Under 1956 Act, every company had to file Annual return under section 159 or section 160 either in E-Form 20B or E-Form 21 as the case may be. This was equally applicable to the foreign companies. But this has been changed under 2013 Act as it segregated the Form which needs to be filed by Foreign Companies. Rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014 provides that - 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.

- **Relevant Form to be filed**

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.

- **Consequences of False Certification by Company Secretary in Practice**

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 thereunder, he shall be punishable with fine which shall not be less than not be less than Rupees Fifty thousand but which may extend to Rupees Five lakhs.

Further, Apart from section 92 of the Act, Section 448 also prescribed penalty which is reproduce below-

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 thereunder, any person makes a statement,—

(i) which is false in any material particulars, knowing it to be false; or

(ii) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

Section 447 say that - any person who is 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.

Directors Report as per Companies Act, 2013

A Directors' Report is intended to explain to shareholders, the Company's affairs, including its subsidiaries and the nature and scope of company's business. The report is a summation of activities of the company in the relevant financial year and an idea about possible future developments. In previous law there was a separate section 217 of the Companies Act, 1956. The whole section was related to the



Report of Directors. But in the Companies Act, 2013, a lot of sections make mandate to disclose the facts in the Director Report.

- **Applicability of Provision of Section-134 of Director Report**

The provision of Director Report (u/s 134) is applicable only for financial years commencing on or after 1st April, 2014.

- **Signing of Director's Report**

As per Section 134(6) Board Report and annexure thereto shall be signed by its 'CHAIRPERSON' if he is authorized by Board of director; Where he is not so authorized, by:

- (i) At least 2 (Two) Director, one of whom shall be a Managing Director.
- (ii) If there is no Managing Director then by Two Directors.

- **Basis of Board Report**

The Board's Report shall be prepared based on "STAND ALONE FINANCIAL STATEMENT OF THE COMPANY" but the Board's Report shall contain a Separate section wherein a report on the performance and financial position of each:

- (i) Subsidiary
- (ii) Associate
- (iii) Joint venture companies, including in the consolidated financial statement is presented.

- **Approval of Board Report**

As per the provisions of section 179(3), Approval of Board's Report shall be done in Meeting of the Board of Director only. Approval of Board's Report shall not be done by "Circulation Resolution", or "by Committee". Meeting of Board of directors for approval of board's report can't be done by "Video Conferencing".

- **Content of Board's Report**

As per Section 134(3) of Companies Act, 2013 Director Report shall include:

- (i) Extract of Annual Return**

The extract of Annual Return of Company in Form MGT 9 is required to be attached in Boards Report.

- (ii) Number of Board Meetings held**

The number of Board Meetings held during the financial year is required to be mentioned in Directors Report.

- (iii) Particular of Loan & Investment**

Directors are required to disclose in Board's Report that the company has complied with the provisions of Section 186 of companies Act, 2013 in relation to Loan, Investment & Guarantee given by the company during the financial year.

(iv) Disclosure of Related Party Transaction

Directors are required to disclose in Board’s Report about all the related party transaction entered by the company during financial year as per the section 188 of Companies Act, 2013.

(v) Risk Management Policy

A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any.

(vi) Corporate Social Responsibility (CSR)

Directors are required to disclose in the Board Report the details about the policy developed and implemented by the company on Corporate Social Responsibility initiatives taken during the year as per the section 135 of Companies Act, 2013.

(vii) Order of Court

The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operation in future is to be given.

(viii) Disclosure about ESOP/Sweat Equity Share/ Equity shares with Differential Rights

Director report shall disclose in Boards Report about the issue of Sweat Equity Shares/ ESOP/ Equity Shares with



Differential Rights Number of Share mentioning number of shares issued, conditions of issue, price, etc.

(ix) Disclosure where company is required to constitute Nomination and Remuneration committee

The director will disclose in Director Report followings:

- (a) The policy of qualification
- (b) The remuneration of directors as, formulated under section 178(3)
- (c) Others

(x) Disclosure if MD/WTD is receiving remuneration or commission from a MD/WTD or subsidiary Company

As per Section 197(14) of the Companies Act, 2013, A MD/WTD of company receiving remuneration or commission from any holding company or subsidiary company of such company should be disclosed by the company in Board’s Report.

(xi) Disclosure of Vigil Mechanism in board Report

If provisions of vigil Mechanism apply on company, then directors are required to disclose in Board’s report about establishment of Vigil Mechanism.

Relaxation of Additional fees and extension of last date of filing of MGT 7 and AOC 4

The Ministry vide General Circular No. 10/2015 has clarified that the electronic versions of Forms AOC 4, AOC 4 XBRL (format for filing of financial statements) and Form MGT 7 (filing of Annual return) are being developed and shall be made available for electronic filing latest by 30th September, 2015. In addition to this a separate form for filing of Consolidated Financial Statement (CFS) with the nomenclature AOC-4 CFS will be made available latest by October 2015.



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 upto 31 October,2015,.

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