

The Most Powerful Weapon on Earth Is the Human Soul On Fire

ANNUAL FILING UNDER COMPANIES ACT 2013

Financial Year 2015-16



After Completion of Two Year of Companies Act, 2013, Law has been settled down. Now it is the high time for the members to start work on Annual Return (MGT-7) and Director Report. Because there were many amendments in Rules, many circulars, notification came during the year 2015-16 which will affect the Annual filing of the Company.

The companies under the Companies Act 2013 are required to E-file annually the following documents with the Registrar of Companies (ROC) as follow:

Type of Document	TYPE OF E-FORM	Purpose of Filing of Form
Balance –Sheet	Form AOC-4.	Filing of Financial Statement with the ROC
Consolidated Financial Statement	Form AOC-4 (CFS)	Companies which have Subsidiary Company, Associate Company and Joint Ventures.
Profit & Loss Account	Form AOC-4.	Filing of Profit & Loss Account with the ROC
Annual Return	Form MGT-7.	To be filled by Companies having share Capital. To give information relating to directors and shareholder for the period of Financial Year.
Annual Return	Form MGT-7	To be filled by companies not having share capital.
Director Report	Director Report along with Following Annexure: - AOC-2 - MGT-9 - Secretarial Audit Report	

¹ <http://www.csdiveshgoyal.info/2016/07/company-account-amendment-rules.html>
<http://www.csdiveshgoyal.info/2016/07/consolidated-financial-statement.html>

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Filing of CTC of Resolution	Form MGT-14 (for the Companies except Private Limited Company)	For the purpose of adoption of Balance Sheet and Director Report.
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FIVE STEPS FOR E-FILLING PROCESS

A) REGISTER YOUR SELF (STEP – I) :

Only registered users are allowed to do E-Filing. Registration is a Simple, One time process.

B) DOWNLOAD E-FORM (STEP – II) :

Go to the Annual filling corner following the link provided at the home page of the MCA portal & download the applicable E-forms following the Link “Downloads E-form”

C) COMPLETE E-FORM (STEP – III):

Download e-form MGT-7 & AOC- 4 and fill the complete e-forms and attach respective attachments. Affix DSC of Director and Professional and complete the e-form.

D) SUBMIT E-FORM (STEP – IV) :

A connection to the internet will be required to carry out- e-filing submission will need to be made at the MCA21 Portal using Specialized Functionality that is provided.

E) MAKE PAYMENT (STEP – V):

Fees calculation will be done automatically by the system as applicable under the law & the Fee for the services will be displayed to the user. The filling fees will be paid through credit card & internet Banking. The system will generate a receipt that you can retain as a part of your records.



COMPLETION OF E-FILLING

❖ The E-filing process will be completed once the necessary payment is remitted.



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- ❖ You will also be provided a facility at MCA21 portal to check if the e-filing has been completed successfully.
- ❖ The services request Number is printed on the Challan or the computer generated receipt & is used to track your services request.

PROVISIONS OF COMPANY LAW RELATING TO ANNUAL RETURN AS PER COMPANY ACT 2013:

ANNUAL RETURN:

The 2013 Act states that requirement of certification by a company secretary in practice of annual return will be extended to:

CERTIFICATION OF ANNUAL RETURN (MGT-8):

- a) All Listed Companies
- b) Every Company having:
 - Paid-Up share capital of 10 Crore (Ten Crore) rupees or more or
 - Turnover of 50 Crore (fifty crore) rupees or more

SIGNING OF ANNUAL RETURN (DSC on MGT-7):

- a) All Listed Companies
- b) All Public Companies
- c) Private Limited company having:
 - Paid up share Capital Exceeding 50 lac
 - Turnover exceeding 2 Crore

Companies Exempt from signing of annual return from Company Secretary:

- a) One Person Company
- b) Small company

The information that needs to be included in the annual return has been increased by Companies Act, 2013. The additional information required, includes particulars of holding, subsidiary and associate companies, remuneration of directors and key managerial personnel, penalty or punishment imposed on the company, its directors or officers.

According to section 92 (1):

Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding:—



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- Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- Its shares, debentures and other securities and shareholding pattern;
- Its indebtedness;
- Its members and debenture-holders along with changes therein since the close of the previous financial year;
- Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial Year;
- Meetings of members or a class thereof, Board and its various committees along with attendance details;
- Remuneration of directors and key managerial personnel;
- 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;
- Matters relating to certification of compliances, disclosures as may be prescribed;
- 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
- Such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no Company \ secretary, by a company secretary in practice:

According to section 92 (4):

Every company shall file with the Registrar a copy of the annual return, within 60 (sixty) 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 should have been held together 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.

According to section 92 (5):

If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.



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According to 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 fifty thousand rupees but which may extend to five lakh rupees.

According to section 92 (5):

If a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

According to 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 fifty thousand rupees but which may extend to five lakh rupees.

According to section 88 (5):

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

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BOOKS OF ACCOUNT TO BE KEPT:

Place of keeping of Books of Accounts:

Every Company shall prepare and Keep At Its Registered Office

- Books of Account and
- other relevant Books and Papers and



Financial Statement for every financial year which give a true and fair view of the state of the affairs of the Company including that of its branch office or offices, if any Company can keep all or any of the books of account aforesaid at Place Other Than

Registered Office (but in INDIA) of the Company by following procedure:

- Board of Director of the Company will pass a Board Resolution.
- Within 7 days of passing of resolution company will file form AOC-5 with ROC.

Meaning of Books of Accounts:

Every company must keep proper books of account with respect to:

- all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
- all sales and purchases of goods by the company;
- the assets and liabilities of the company; and
- in the case of a company engaged in production, processing, manufacturing or mining activities, such particulars relating to utilization of material or labor or other items of cost as may be prescribed by the Central Government, provided the Central Government so directs to any such class of companies or any particular company.



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Meaning of Book or Paper:

Accounts, Deeds, vouchers, writings, documents, MINUTES and REGISTERES maintained on paper or in electronic form.

TIME PERIOD OF PRESERVATION OF BOOKS OF ACCOUNT TO BE KEPT:

Books of accounts of every company relating to a period of Not Less Than 8 (Eighty) Years immediately proceeding the financial year, along with relevant books and papers.

It is highly advisable to pass a Board Resolution to Destroy records every year, after prescribed period is over, giving list of records to be destroyed.

FINANCIAL YEAR:

In case of newly incorporate company:

- ❖ If Company incorporated ON OR AFTER 1st January of a year, the period ending on the 31st day of March of FOLLOWING Year.
- ❖ If Company incorporated ON OR BEFORE 1st January of a year, the period ending on the 31st day of March of that Year.

In case of old incorporate company:

- Financial year means the period ending on the 31st Day of March every year.

Transitory provisions in case of existing Companies:

A company existing on the commencement of the 2013 Act, shall, within a period of 2 (TWO) years from such commencement, align its financial year as 1st April, to 31st March. This period has already been expired.

Different financial year if holding or Subsidiary is outside India:

If because of holding or subsidiary is outside India Company required to follow a different financial year for consolidation of its accounts outside India. The company can make an application with CLB, if CLB satisfied, allow any period as its financial year, whether or not that period is a year.



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[This can happen in case of foreign Companies having subsidiaries in India. Even in that case, the Indian company has to prepare accounts for year ending on 31st March, for income tax purpose]

FINANCIAL STATEMENT:

- A Balance Sheet
- A profit and Loss account (or Income and expenditure account)
- Cash Flow Statement
- A statement of changes in equity (If applicable)
- Any explanatory note attached to,

[The State changes in equity is applicable for Companies to which the AS applies]

Cash Flow Statement not required to be prepared by the companies:

- One Person Company; of
- Small Company; or
- Dormant Company.

Financial Statement of Companies governed by Special Acts:

Insurance Company
Electricity Company

Banking Company
any other company governed by Special law.

Need not to disclose matters which are not required to be disclosed under their specific Act.

In other words, financial statements of the Companies governed by Special Acts will be prepared as per provisions of those special Acts and not as per provision of Companies Act.

Preparation of Financial Statements:

- Every Company must prepare 'Financial Statement' for every financial year.
- The Financial statement should be prepared at the Annual General Meeting of members.



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AUTHENTICATION OF FINANCIAL STATEMENT:

The Financial Statement (Including consolidated financial statement where applicable) shall be approved by the Board of Directors. After Board approval, the statement should be signed on behalf of the Board as follows-

- a) By any two Directors (on shall be MD, if any) and
 - b) CEO, if any
 - c) CFO, if appointed.
 - d) Company Secretary of the Company, if appointed
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- In case of Small Company where no MD, CEO CFO than Financial statement should be signed by the Two Directors of the Company.
 - After the signatures, it should be submitted to the auditor for his report thereon.
 - When financial statement signed by two directors, such directors ***should be present at the meeting and should sign the accounts at the meeting.*** (i.e. should be signed at the meeting itself and not later).

Approval of Financial Statement and Board Report by Board in Meeting:

Theoretically, financial statements are presented to auditors only after they approved by Boards and signed by authorized persons. The auditors are only expected to submit his report on the financial statements presented to him for audit.

Practically, The checking of financial statements is already completed before these are approved by the Board. Auditor informally approves the draft financial statements with notes etc., before the accounts are approved by the Board. Usually, he also gives unsigned draft of the Auditor's Report.

However, auditor signs the financial statements only after these are approved by Board and signed by person authorized by Board of the Company.

APPROVAL OF FINANCIAL STATEMENT:

- Approval of Financial Statement shall be done at the meeting of the Board.
- The approval can't be done by circulation or by committee. (same provision in Secretarial Standard (SS-1) of ICSI)



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- MGT-14: The Board resolution approving financial statement to be filed with ROC in form MGT-14. (But Private Company not required to file MGT-14 after exemption on Private Limited Companies)

CIRCULATION OF FINANCIAL STATEMENT:

To whom:

- Every Member of the Company
- To every trustee for the debenture-holder of any debentures issued by the Company and
- To all persons other than such member of trustee, being the person so entitled.

Time period of circulation:

The financial statement (including consolidated financial statement, if any) auditor's report and every other documents required by law to be annexed or attached to financial statements, which are to be laid before a company in its general meeting shall be sent "Not Less Than 21 (Twenty One) days before the date of the Meeting."

Publication on Website:

A listed Company (Whether Debt Listed or Equity Listed) shall place its financial statements (including consolidated financial statements, if any), and all other documents required to be attached thereto, on Company's website, which is maintained by or on behalf of the Company.

Inspection of Documents:

A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under section 136(1) at its registered office during business hours- Section 136(1)

Mode of sending Financial Statement:

Financial statement can be sent to members and others through post or courier or had delivery as per Section 20(2).



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However, a listed company or a public company whose net worth is more than one crore and turnover of more than ten Crores, financial statement can be sent by-

- (a) E-mail if shares in Demat form and email ID is registered with depository.
- (b) E-mail if shares are in physical form and member has positively consented in writing for receiving by email
- (c) By post, courier or had delivery as per section

CONSOLIDATION OF FINANCIAL STATEMENT:

- Every company having a subsidiary or subsidiaries has to submit consolidated financial statement in addition to its own 'financial statement'.
- The financial statement should be in same form.
- It shall be laid before annual general meeting of the company, along with company's own financial statement.
- In addition to consolidated financial statement, a separate statement containing salient features of financial statement of its subsidiaries shall be attached. (Form AOC-1)

FILING COPY OF FINANCIAL STATEMENT:

- Copy of Financial Statements (including consolidated financial statements in case of holding company), shall be filed with Registrar of Companies within 30 (Thirty) days from the date when the accounts were duly adopted at the annual General Meeting of the Company.
- All documents which are required to be annexed or attached to the financial statement must be filed.
- The documents are required to be filed with filing fees.

Financial statement to be filed even if not adopted in AGM:

Even if the financial statements are not adopted at AGM or at the adjourned general meeting, the un-adopted financial statement duly signed is required to be submitted within 30 days from date of AGM. The registrar of Companies shall take them on record provisionally, till the financial statements duly adopted are filed after the accounts are adopted in the adjourned General Meeting.



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Such adopted financial statement shall be filed within 30 days from the date of adjourned meeting where the accounts were adopted.

Financial statement to be filed even if not adopted in AGM:

Where the annual General Meeting of a company for any year has not been held, the financial statement along with the documents required to be attached under section 137(1), duly signed along with the statement of facts and reasons for not holding the Annual General Meeting shall be filed with the Registrar within 30 (thirty) days of the last date before which the annual General Meeting should have been held.

Filing financial statement in case of OPC:

In case of One Person Company, financial statement along with annexes and attachments should be filed with ROC within 180 days from close of financial year.

Filing financial statement in case of Company having subsidiaries outside India:

In case of companies having subsidiary or subsidiaries outside India and which has no place of business in India, the accounts of subsidiary/ subsidiaries should be filed along with financial statement of the holding Company.

INSPECTION OF FINANCIAL STATEMENT:

The financial statement and related documents filed with ROC are 'public documents' and any person can inspect those documents on payment of prescribed inspection fees.



Duty to lay Annual Accounts at Annual General Meeting:

1. Notice of AGM
2. Directors Report and Compliance Certificate from Practicing Company Secretary, (If Required).
3. Auditors Report
4. Balance Sheet
5. Profit & loss Account



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In case of Holding company:

1. Balance Sheet
2. Directors Report
3. Auditors Report

Statement of holding company's interest in subsidiary, if any

AUDIT REPORT REQUIREMENT

Section 143 (3) read with rule 11 of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act, 2013 talks about the provisions of Audit Report.

The Requirement of audit report comes from Section 142(2) of Companies Act, 2013.

The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required by or under this act to be laid before the company in general meeting.

Importance of Audit Report:

The audit report of the company is referred to and relied upon by many who are dealing with the Company. Information available in the audited accounts is very valuable for all.

A. Contravention of Provision of Section 139-146: (Attendance in General Meeting): If any provisions of this Section contravene then.

Penalty on Company:

The company shall be punishable with fine which shall not be less than Rs. 25,000 (Rupees twenty-five thousand) but which may extend to Rs. 5 Lac (Rupees five lac)

AND (+)

Penalty on Officer of Company:



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Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year OR with fine which shall not be less than Rs. 10,000/- (Rupees ten thousand) but which may extend to Rs. 1 Lac (Rupees one lakh), OR with BOTH.

B. Contravention of Provision of Section 145: (Signing of Auditor Report): If any provisions of this Section contravene then:

Penalty on Auditor (without intention or will):

The auditor shall be punishable with fine which shall not be less than Rs. 25,000/- (Rupees twenty-five thousand) but which may extend to Rs. 5 Lac (Rupees five lakh)



Penalty on Auditor (Contravene the provisions knowingly or willfully):

If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year **AND** with fine which shall not be less than Rs. 1 Lac (Rupees one lac) but which may extend to Rs. 25 Lac (Rupees twenty-five lac).

Please find below the link of the relevant articles:

How to prepare Directors' Report:

How to prepare Annual Return:

Checklist of Director Report

Draft of Director Report for 2015-16

CONCLUSION:

Therefore all Companies registered under the provisions of the companies Act 1956/2013 are required to file with the registrar of companies the audited copy of financial statement with in a period of 30 days of holding the annual general meeting in terms of section 137(1), and the Annual return within a period of 60 days

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of the Annual General meeting in terms of section 92(4) of the Companies Act, 2013.

A. Purpose of the Forms:

S. No.	Form No.	Purpose of Form	Status of Form
1.	MGT-7	Annual Return	E-Form
2.	AOC-4	Financial Statement and other documents with the Registrar	E-Form
3.	MGT-14	Approval of Directors' Report and Annual Statement	E-Form
4.	MGT-9	Extract of Annual Return	Attachment
5.	AOC-1	If Company have any Subsidiary/ Associate/ Joint Venture Company	Attachment
6.	AOC-2	Information relating to Related Party Transaction.	Attachment

B. Attachment in the Forms:

Form No.	Attachments:
AOC-4	- Financial statements duly authenticated as per section 134 - auditors' report - Board's report - MGT-9 IF ANY - Secretarial Audit Report - CSR Policy - Statement of subsidiaries/ Associates/ Joint Ventures as required under section 129 in the format of Form AOC-1 - Company CSR policy - Details of salient features and justification for entering into contracts/ arrangements/ transactions with related parties as per Sub-section (1) of section 188 - Form AOC-2
MGT-7	- List of shareholders, - Debenture Holders IF ANY - Approval letter for extension of AGM - Copy of MGT-8;



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MGT-14	- Board Resolution for approval of Financial Statement - Board Resolution for approval of Directors' Report
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C. Time Period for filing of Forms:

AOC-4	Within 30 days of Holding of Annual General Meeting
MGT-7	Within 60 days of holding of Annual General Meeting. If there is no AGM then within 60 days from the date on which AGM should held.
MGT-14	Within 30 days of Holding of Board Meeting. For Companies Other than Private Limited Companies.

D. Sections Relating to Annual Forms:

Form	Section and Rules
MGT-7	Section 92(1) of the Companies Act, 2013 and rule 11(1) of the Companies (Management and Administration) Rules, 2014
Aoc-4	Section 129(3), 137 of the Companies Act.2013 and Rule 12(1) of the Companies (Accounts) Rules, 2014
MGT-14	Section 179(3)(g) read with section 17(3)(g)

NOTE:

▪ **AOC-1:**

As per provisions of Section 129(3) read with Rule 5 every company which have any subsidiary/Associate/Joint Venture Company required to attach AOC-1 along with AOC-4.

Even Companies exempted for preparation of Consolidated Financial statement required to attach AOC-1.

▪ **Date of Filing:**

MCA came with a circular according that Companies which have done there Annual General Meeting before 30th September, 2015 can file AOC-4 & MGT-7 upto 30th October, 2015 without any late fee.



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▪ **Form 23AC/ACA:**

If Financial of Company started before 01.04.2014 then Annual Statement will file in e-form 23AC, ACA for this financial year instead of AOC-4.

▪ **ADT-1:**

No need to file e-form ADT-1 for ratification of Auditor.

▪ **Professional Certification MGT-7:**

No Need of Professional Certification in e-form MGT-7 of Small Company and One Person Company.

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