Tiny Handbook on Annual Filing under the Companies Act, 2013 and rules framed thereunder (Latest)

Written by whole team

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PREFACE

After getting huge success in a short span of time of our previously published e-book titling ***"Compliance universe under Companies Act, 2013 read with rule made thereunder"*** (Your Pocket Compliance calendar for whole year), we are realising now this short e-book book on Annual Filing under the Companies Act, 2013 titled as ***"All about Annual Filing under the Companies Act, 2013 and rules framed thereunder"***. We trust this e-book will also be useful in your day to day working and for knowledge updates.

As we all knows that, it is mandatory for the Board of Directors ("**BOD**") of every company to present annual accounts to the shareholders along with their report (*i.e.* Board's Report). It is pertinent to mention that the Annual Report is the most important means of communication by the Company with its shareholders and other stakeholders. Companies Act, 2013 read with Rules thereof provides for the contents and disclosures required to be given in the Annual Report. The aforesaid Act also provides detailed procedure of preparing the Annual Report, presenting the same at the Annual General Meeting and filing alongwith requisite documents with Registrar of Companies ("**RoC**").

Mandatory disclosures to be given under the Annual reports and financial statements of the Company are the method of providing adequate information to the shareholders and general public about true and fair view of its state of affairs and financial position. The Annual reports also disclose the activities of the Company during the previous Financial Year enabling its members to exercise more intelligent and purposeful control thereon.

Annual Reports and Financial Statements (standalone and consolidated, as the case may be) consist of a Balance Sheet, a Statement of Profit & Loss (Income and expenditure Statement in case of non-profit making Companies), Cash Flow Statement (if applicable), a Statement of changes in Equity (if applicable), any explanatory note annexed thereto, Directors'/Governing Body's Report, Independent Auditor's Report, Declaration regarding Compliance of various laws applicable on the Company, Schedules annexed to the Balance Sheet, Statement of Profit & Loss /Income and Expenditure Account, Notes to accounts etc.

In case of listed Companies and prescribed classes of Companies, Annual Report also consists of Corporate Governance Report, Management Discussion and Analysis Report, Report on Corporate Social Responsibility Activities, Secretarial Audit Report.

This e-book will deals with the procedure for preparation, reviewing, updating, analysing and submitting the Annual Return alongwith Financial Statements of Private Limited, Public (unlisted and listed) Companies.

"The world is reshaping itself every second, are you?"

<u>INTRODUCTION</u>: As per the Companies Act, 2013 all companies whether public or private are required to file their financials annually with the ROC in respective forms which include:

- Annual returns;
- Balance Sheet and Statement of Profit & Loss;
- Consolidated Financial statement;
- Cash flow statement (if applicable);
- Statement in changes in equity (if applicable); and
- Director report alongwith the annexure(s);

Now we will discuss, in short, the relevant provisions about filings. Firstly we will look into the provisions regarding Annual Return.

<u>ANNUAL RETURN</u>- FORM MGT-7: Section 92 of the Companies Act, 2013 deals with the Annual Return. It is a yearly statement, required to be filed by every company highlighting the information about Company's various aspects pertaining to its composition, activities, and financial position so that the investors, consumers, financial institutions, regulator and many others dealing with the Company can get a 'true and fair view' of the state of its affairs in a very comprehensive and crisp manner. It is the responsibility of the management to file the Annual Return with the ROC.

Sub-section (1) to Section 92 read with the Rules 11 of the Companies (Management and Administration) Rule, 2014 makes it mandatory for every Company to prepare Annual Return in Form No. **MGT – 7** containing the particulars as they stood on the close of the financial year, such as:-

(a) Company's registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(b) Particulars regarding its shares, debentures and other securities and shareholding pattern;

(c) Its indebtedness;

(d) Overview regarding 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) Details of penalty or punishment (if any) 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,

<u>AUTHENTICATION OF ANNUAL RETURN</u>: The Annual Return shall be signed by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in Practice. However, in case of One Person Company and small company, the Annual Return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of the Company.

Further, sub-section (2) of Section 92 read with Rule 11(2) of the Companies (Management and Administration) Rules, 2014 provides that Annual Return of every Listed Company or a Company having paid up share capital of 10 crores or more or turnover of 50 crores or more shall be certified by a Company Secretary in Practise and the Certificate shall be in Form No. MGT-8, which shall state that the Annual Return discloses the facts correctly and adequately and that the Company has complied with all the provisions of this Act.

FILING OF ANNUAL RETURN: As per sub-section 4 of Section 92 of the Companies Act, 2013 every Company shall file with the Registrar a copy of Annual Return, within the 60 days from the date on which the Annual General Meeting ("**AGM**") is held. In case where no AGM is held in any year- within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM, with such fees or additional fees as may be prescribed[1], within the time as specified, under section 403.

However, as per third proviso to sub-section (1) to section 96 of the Act, ROC may extend time within which AGM must be held (except 1st AGM) by not more than three months on the ground of sufficient reason.

PENALTIES FOR NOT FILING ANNUAL RETURN: Section 92(5) provides for the penal provisions for Companies which fail to file its Annual Return under Section 92(4), before the expiry of the period specified under section 403 with additional fee as under:

For Company	**Penalty:** At lease INR 50,000/- but which may extend to INR 5,00,000/-.
For every officer of the company who is in default	**Imprisonment:** Upto 6 months; OR **Fine:** At least INR 50,000/- but which may extend to INR 5,00,000/- OR With both.

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

[1]Rule 12(1) read with Table of Fees of the Companies (Registration Offices and Fees) Rules, 2014

thereunder, he shall be punishable with fine which shall not be less than INR 50, 000/-but which may extend to INR 5, 00, 000/-.

Further, Apart from above, Section 448 also prescribed penalty which is reproduce below:

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 thereunder, 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,

he shall be liable under section 447.

SECTION 447: Any person, who is found to be guilty of fraud, shall be punishable with:

Imprisonment: for a term not be less than six months but which may extend to ten years; and
Fine: not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Now let's come to the second concept *i.e.,* Financial Statement and Consolidated Financial Statement.

FINANCIAL STATEMENT- FORM-AOC 4: Section 2(40) of the Companies Act, 2013 defines the term Financial Statement in relation to a Company in an inclusive way. It includes:

(A) Balance Sheet;
(B) A Profit and Loss account (or Income and Expenditure Account);
(C) Cash Flow Statement[2];
(D) A statement of changes in equity (if applicable); and
(E) Any explanatory note annexed or forming part of the documents mentioned above.

Requirement regarding preparation and keeping the books of accounts, other relevant books and papers, and financial statements: Section 128(1) of the Companies Act, 2013 requires every Company to 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 offices, if any. Further, such books shall be kept on accrual basis and according to the double entry system of accounting.

The first proviso of that section provides that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the Company shall within 7 days thereof, file with the Registrar a notice regarding address at which books of account is decided to be kept in **Form AOC-5**. Further as per the second proviso of Section 128(1), the Company may keep such books of account or other relevant papers in electronic mode as prescribed in Rule 3 of the Companies (Accounts) Rules, 2014.

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[2]Financial Statement with respect to One Person Company, small company and dormant company, may not include the Cash Flow Statement.

As per Section 129 (1) the financial statements shall give a true and fair view of the state of affairs of the Company, comply with the accounting standards notified under Section 133 and shall be in the form or forms as may be provided for different class or classes of Companies in Schedule III.

Sub-section (2) of Section 129 provides that Board of Directors of the Company shall lay before every AGM, the financial statement for the financial year.

The first proviso to sub-section (3) of Section 129 provides that the Company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1 as prescribed under Rule 5 of the Companies (Accounts) Rules, 2014.

CONSOLIDATION OF FINANCIAL STATEMENT - FORM-AOC-4 CFS: Sub-section (3) of Section 129 states that where a Company has one or more subsidiaries, it shall, in addition to its financial statement, prepare a consolidated financial statement of the Company and of all the subsidiaries in the same form and manner as that of its own.

This consolidated financial statement shall also be laid before the Annual General Meeting of the Company alongwith the laying of its own financial statement. The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1 as prescribed under Rule 5 of the Companies (Accounts) Rules, 2014. In this regard, Rule 6 of the Companies (Accounts) Rules, 2014 provides the manner of consolidation of accounts.

AUTHENTICATION OF FINANCIAL STATEMENT: As per Section 134 of the Act, 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 at lease by:

- Chairperson of the Company (where authorised by Board);
  OR
- any two Directors (one shall be MD);
  AND
- CEO, if appointed (if he is a Director in the Company);
- CFO, if appointed; and
- Company Secretary, if appointed.

However, in case of One Person Company the financial statements shall be authenticated by one director.

FILING OF FINANCIAL STATEMENT: Section 137 read with Rule 12(1) of Companies (Accounts) Rules, 2014 requires a copy of the financial statements including consolidated financial statement, if any, alongwith all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the Annual General Meeting of the Company, shall be filed with the Registrar within 30 days of the date of Annual General Meeting in **Form AOC-4/ AOC-4 CFS,** as the case may be.

Rule 12(2) of Companies(Accounts) Rules, 2014 specifies that the class of companies as may be notified by the Central Government from time to time shall mandatorily file their financial statement in Extensible Business Reporting Language (**XBRL**) format and the Central

Government may specify the manner of such filing under such notification for such class of companies.

According to first proviso of Section 137 of the Act, in case the financial statements are adopted/unadopted at Annual General Meeting or adjourned annual general meeting, such adopted/unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of Annual General Meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned Annual General Meeting for that purpose.

Third proviso of that Section also specifies that One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.

PENALTIES: If a company fails to file the copy of the financial statements, before the expiry of the period specified in Section 403, the company shall be punishable with a Fine of INR 1000/- for every day during which the failure continues but such fine shall not be more than INR 10,00,000/- (Ten lakh).

Also, the MD and the CFO of the Company, if any, and, in the absence of the MD and the CFO, any other director who is in charged, and, in the absence of any such director, all the directors of the Company, shall be punishable with imprisonment for a term which may extend to 6 months; or with fine which shall not be less than INR 100,000/- (One lakh) but which may extend to INR 500,000/- (Five lakh), or with both.

COMPLIANCE TABLE IN RESPECT OF ANNUAL FILINGS BY COMPANIES:

TYPE OF COMPANIES	EVENT	TIME FRAME/SIGNING AUTHORITY
Private Company (*i.e.* Small Company* or OPC) **Here small company means a company having a Paid up share capital less than INR 50 lakh or turnover less than INR 2 crore.*	Date of AGM	[3]Within 6 months of closing of FY. Can be held on any day other than National Holiday.
	Financial Statements	Includes Balance sheet, Profit & Loss Account only
	Signing of Financial Statements and notice of AGM	By any director in case of OPC or by minimum two directors in case of small Company.
	Filing of Financial Statements (Form AOC-4)	Within 30 days of the date of AGM. If there is no AGM then within 30 days from the date on which AGM should held.

[3]OPC is not mandatorily required to hold AGM. But it has to approve and file its Financial Statements within 180 days (6 months approx) from the closure of Financial Year.

	Signing of Annual return	By Company Secretary. If there is no Company Secretary then by any Director.
	Filing of Annual Return (Form MGT-7)	Within 60 days of the date of AGM. If there is no AGM then within 60 days from the date on which AGM should held.
Private Company (other than Small Company and OPC)	Date of AGM	Within 6 months of closing of FY Can be held on any day other than National Holiday.
	Financial Statements	Includes Balance sheet, Profit & Loss Account and Cash flow Statement
	Signing of Financial Statements and notice of AGM	By Chairperson of the Company if he is authorised or by two directors out of which one shall be Managing Director, and by Chief Executive Officer (if he is Director in the Company), and by Chief Financial Officer and Company Secretary of the Company, if they are appointed.
	Filing of Financial Statements (Form AOC-4)	Within 30 days of the date of AGM. If there is no AGM then within 30 days from the date on which AGM should held.
	Signing of Annual Return	By a Director and Company Secretary or where there is no Company Secretary by a Director and a Practising company secretary.
	Certification by Practising Company Secretary (Form MGT-8)	Required if paid up capital INR 10 crore or more or turnover INR 50 crore or more.
	Filing of Annual Return (Form MGT-7)	Within 60 days of the date of AGM. If there is no AGM then within 60 days from the date on which AGM should held.
Public Company	Filing of Disclosure of interest of Board of Directors (Form MGT-14)	Within 30 days of the date of first Board Meeting of FY.
	Filing for Approval of Financial Statements (Form MGT-14)	Within 30 days of the date of the Board Meeting in which Financial Statements approved.
	Date of AGM	Within 6 months of closing of

		FY. Can be held any day other than National Holiday.
	Financial Statements	Includes Balance Sheet, Profit & Loss Account and Cash flow Statement.
	Signing of Financial Statements/Consolidated Financial Statement and notice of AGM	By Chairperson of the Company if he is authorised or by two directors out of which one shall be Managing Director, and by Chief Executive Officer (if he is Director in the Company), and by Chief Financial Officer and Company Secretary of the Company, if they are appointed.
	Filing of Financial Statements/Consolidated Financial Statement (Form AOC-4/Form AOC-4 CFS)	Within 30 days of the date of AGM. If there is no AGM then within 30 days from the date on which AGM should held.
	Signing of Annual Return	By a Director and Company Secretary or where there is no Company Secretary by a Director and a Practising Company Secretary.
	Certification by Practising Company Secretary (Form MGT-8)	Required if paid up capital INR 10 crore or more or turnover INR 50 crore or more
	Filing of Annual Return (Form MGT-7)	Within 60 days of the date of AGM. If there is no AGM then within 60 days from the date on which AGM should held.
Listed Company	Filing of disclosure of interest of Board of Directors (Form MGT-14)	Within 30 days of the date of first Board meeting of FY.
	Filing for Approval of Financial Statements	Within 30 days of the date of the Board Meeting.
	Date of AGM	Within 6 months of closing of FY Can be held any day other than National Holiday.
	Financial Statements	Includes Balance Sheet, Profit & Loss Account and Cash flow Statement.
	Signing of Financial	By Chairperson of the

	Statements/Consolidated Financial Statement and notice of AGM	Company if he is authorised or by two directors out of which one shall be Managing Director, and by Chief Executive Officer (if he is Director in the Company), and by Chief Financial Officer and Company Secretary of the Company.
	Filing of Financial Statements/Consolidated Financial Statement (Form AOC-4/Form AOC-4 CFS)	Within 30 days of the date of AGM. If there is no AGM then within 30 days from the date on which AGM should held.
	Signing of Annual Return	By any Director and Company Secretary
	Certification by Practising Company Secretary (Form MGT-8)	Required
	Filing of Annual Return (Form MGT-7)	Within 60 days of the date of AGM. If there is no AGM then within 60 days from the date on which AGM should held.
Newly incorporated Company	Date of first AGM	Within 9 months from the closing of first FY.
	Closure of First FY	(a) If incorporated on after 1st January, 2015 then FY can of 15 months OR (b) If before 1st January, 2015 then upto 31st March of continuing year.

**FY- Financial year*

TABLE SHOWING DOCUMENTS TO BE ATTACHED ALONGWITH THE FORMS:

S. NO.	FORM NO.	ATTACHMENTS
1.	AOC-4	• Financial Statements duly authenticated as per Section 134; • Auditors' Report; • Board's Report; • MGT-9 (if any); • Secretarial Audit Report (if applicable); • Report on CSR (if applicable); and • Statement of subsidiaries/ Associates/ Joint Ventures as required under section 129 in the format of Form AOC-1 (if applicable);

		• Details of salient features and justification for entering into contracts/ arrangements/transactions with related parties as per Sub-section (1) of section 188 in Form AOC-2 (if applicable).
2.	MGT-7	• List of Shareholders; • List of Debenture Holders; • Approval letter for extension of AGM (if any); • Copy of MGT-8 (if applicable);
3.	MGT-14	• Board Resolution for approval of Financial Statement; • Board Resolution for approval of Directors' Report; • Disclosure of Interest by Directors in the first board meeting of Financial Year (if applicable).

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CONCLUSION: It is apparent that now the law has been settled down under Companies Act, 2013 and there were many amendments in Rules, and many circulars, notification came during the year which will affect the Annual filing of the Company. Now the due date for annual filing is on neck and it is the high time for the professionals to start working on Annual Return, Financial Statements, Director's Report and other documents. We hope this e-book will be useful in your future endeavours.

We are getting huge amount of responses from professionals like you, so we are proposing to release a consolidated book of 10 chapters covering Companies Act, 2013, SEBI (LODR) Regulations, 2015 and Annual filing compliances under Companies Act, 2013. This consolidated book will be released in due course. The same will be available on our portal.

Suggestions are always invited, in case you need any further clarification/suggestion/ queries, please write to us providing your details on our portal and we assure you to revert at the earliest:

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THANK YOU