

Annual Return (Sec 92)

1. Applicability of the provision

Every company shall prepare an Annual Return in the MGT-7 form containing the particulars as they stood on the close of the financial year. Such return is required to be prepared for all financial years ending after 01.04.2014. It was clarified through general circular no. 22/2014 dated 25.06.2014 that the annual return will be prepared as per the applicable provisions of the Companies Act, 1956 for all companies whose financial years ended on or before 01.04.2014.

2. Content of annual return

Annual Return shall contain, as provided in sub-section (1) of section 92, the following particulars about the company as they stood on the close of the financial year

- (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.

No other additional matters are prescribed under the rules till date. Further, para 9 of Secretarial Standard-1 provides that annual return shall disclose the number and dates of meetings of the board and committees held during the financial year indicating the number of meetings attended by each director. Para 20 of Secretarial Standard 2 provides that the Annual Return of a company shall disclose the date of Annual General Meeting held during the financial year. The details regarding each point are covered in the Guidance Note on Annual Return issued by ICSI.

The Companies (Amendment) Bill, 2016 proposes to omit clause (c) regarding indebtedness. Further, in clause (j) relating to foreign institutional investors, the words “indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them” shall be omitted. It further proposes to empower Central Government to prescribe abridged form of annual return for OPC and small company.

MGT-7 updated version in the point no. XI.A uses the expression ‘compliances and disclosures in respect of applicable provisions’ and section 92 (1) subsection (i) and (k) words “as may be prescribed” are used. It means the rules under section 92 shall state such matters. Rule 11 and 12 are relevant to this section but these Rules are silent on such matters. In the absence of such specified matters, it is felt that the certification of compliances and disclosures ‘under this Act’, in this context, is meant compliances and disclosures under section 92(1)(i) of the Act. Of course, the Central Government is empowered to add further matters under section 92(1)(k) by notifications.

3. Reporting of particulars as on the close of financial year

Under present law, this is a notable change that all particulars are to be filled as on closing of the financial year not as on date of annual general meeting as was the practice in the Companies Act, 1956.

4. Signing of annual return

The annual return shall be signed by a director and the company secretary of the company. Annual return may be signed by any director authorised by the Board who may not be managing or whole time director. Where company has no company secretary of the company, the annual return shall be signed by a company secretary in practice.

In case of One Person Company and Small Company, if company appointed Company Secretary, the annual return shall be signed by the company secretary. Where company has not appointed company secretary, annual return of such one person company or small company shall be signed by the director of the company only.

Where a company is required to have a company secretary in employment as whole-time key managerial personnel, but does not have one, it may be a separate offence under this Act. For the compliance of provision of this section, in absence of company secretary in employment, a company secretary in practice may be engaged to sign the annual return.

5. Certification of annual return

Sub-section (2) of section 92 provides for certification of annual return. The annual return of a listed company or a company having paid-up share capital of 10 crore rupees or more or turnover of 50 crore rupees or more, shall be certified by a company secretary in practice. The certificate shall be in Form No. MGT.8, stating that the annual return discloses the facts correctly and

adequately and that the company has complied with all the provisions of this Act. The criteria for the certification contained the word “and” which was replaced with the word “or” vide the Companies (Removal of Difficulties) Order, 2014 dated 29.04.2014.

6. Extract of annual return to form part of Board’s report

An extract of the annual return in Form MGT-9 shall form part of the Board’s report as provided in sub-section (3) of section 92. This is a new provision. It may result into such a scenario where the extract of annual return is required to be prepared before the preparation of actual annual return.

The Companies (Amendment) Bill, 2016 proposes to do substitute above sub-section with the following sub-section:

“(3) Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board’s report.”

7. Filing of annual return with Registrar

Every company shall file with the Registrar a copy of the annual return within a period of 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 60 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. The annual return shall be accompanied with such fees or additional fees as may be prescribed, within the time as specified, under section 403. Hence, an additional period of 270 days is available for filing of annual return with payment of additional fees.

Stressing the independence of holding of annual general meeting from the filing the annual return, it was held in Registrar of Companies v Utkal Distributors (P) Ltd *[[1978] 48 Comp Cas 768(Ori)]* “In our opinion, on the facts of the present case and in view of the provisions in Section 159(2) of the Act, for a consideration of the duration of default, it was not necessary to refer to Section 166 of the Act. Independent of holding of the annual general meeting, there was default and it continued until the return was filed. There was no explanation from the accused persons as to why the return was not filed when the law permitted such return to be filed even without the holding of the annual general meeting.”

8. Applicability of this section to foreign Companies

As provided in sub-section (2) of section 384, the provisions of section 92 regarding filing of annual return apply to a foreign company subject to such exceptions modifications and adoptions as may be made therein by rules made under this Act. According to rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014, form FC – 4 is required to be filed within a period of 60 days from the closure of financial year.

9. Preservation of annual return

As provided in rule 15 (3), annual returns 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 Here the period starts from the date of filing and not from the date of preparation of annual return.

10. Effects of non-filing of annual return

Other than the fine being levied, the company is prohibited from undertaking certain other actions in case of default in filing of annual return. They are as follows:

- (a) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92 (sub-section (2) of section 70)
- (b) No person who is or has been a director of a company which has not filed annual returns for any continuous period of three financial years shall be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so (clause (a) of sub-section (2) of section 164)
- (c) A company may, on a petition under section 272, be wound up by the Tribunal if the company has made a default in filing with the Registrar its annual returns for immediately preceding five consecutive financial years (clause (f) of sub-section (1) of section 270)
- (d) In case of a company which has not filed annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.(subsection (4) of section 455)
- (e) Filing of all annual returns upto preceding financial year is a condition precedent before making an application to the Regional Director for conversion of a section 8 company into a company of any other kind (Rule 22 (6) of the Companies (Incorporation) Rules, 2014)
- (f) The change of name shall not be allowed to a company which has defaulted in filing its annual returns due for filing with the Registrar (rule 29(1) of the Companies (Incorporation) Rules, 2014)
- (g) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless the company has not defaulted in filing annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares; (Rule 4 (1) (e) of the Companies (Share Capital and Debenture) Rules, 2014)

- (h) The Registrar may not accept request for recording any event based information or changes except certain exceptions from defaulting companies, unless they file their Annual Return with the Registrar (sixth proviso to Rule 7 of the Companies (Registration Office and Fees) Rules, 2014)
- (i) No Nidhi to open branches unless the annual returns are filed with the Registrar (rule 10 (5) of the Nidhi Rules, 2014)

11. Punishment and Compoundability

The penal provisions are contained in sub-section (5) and (6) for non-filing by the company and wrong certification of annual return by a company secretary in practice.

If a company fails to file its annual return 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. As the offence by the company is punishable only with fine, the same shall be compoundable under the provisions of clause (b) of sub-section (1) of section 441 of the Act while the offence by the officer in default will be compoundable with the permission of special court under the provisions of clause (a) of sub-section (6) of section 441. It was held in Registrar of Companies v Utkal Distributors (P) Ltd [[1978] 48 Comp Cas 768(Ori)] that the offence is a continuing one: "It is a well-known legislative policy to provide for imposition of recurring fine where it is intended that the statutory provision should be followed and the breach should not be permitted to continue. The default in this case is, therefore, unconnected with the holding of the annual general meeting and as long as the default continued the delinquents were liable to be subjected to the recurring punishment."

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 or she shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees. The offence is not compoundable as offences only by a company and its officers are compoundable.

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.