

Copy of Financial Statement to be filed with Registrar (Sec 137)

1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

“This clause corresponds to section 220 of the Companies Act, 1956 and seeks to provide that copies of financial statement including consolidated financial statement, if any, and all such documents which are annexed to the financial statement and adopted at the annual general meeting shall be filed with Registrar. In case a company does not hold an annual general meeting in any year, a statement of facts and reasons along with financial statement and attachment has to be filed with the Registrar. This clause further provides that in case the accounts are not adopted at annual general meeting or in adjourned meeting, the un-adopted accounts shall be filed with the Registrar and the Registrar shall take them in his records as provisional till the final accounts are filed. The clause further provides penalty for company and Managing Director and Chief Finance Officer of the company or any director in a company fails to comply with the provision of this clause.”

Section 220 of the Companies Act, 1956 required filing of three copies of financial statements. With the coming into force of electronic filing, the reference to number of copies became redundant.

2. Filing of adopted financial statements

Sub-section (1) of section 137 provides that one copy of the financial statements, including consolidated financial statement, if any, together with all the documents which are required to be or attached to such financial statements shall be filed with the Registrar after they are duly adopted at the annual general meeting of the company. Such statements are required to be filed within 30 days of the date of annual general meeting. Rule 12 prescribes Form AOC-4 (for standalone statements) and AOC-4 CFS (for consolidated statements). It should be noted that separate forms are prescribed for filing in Extensible Business Reporting Language (XBRL) format. If the same are not filed within 30 days, they can be filed within further 270 days as specified under first proviso to sub-section (1) of section 403 with such additional fees as are prescribed in Rule 12 read with the Table of Fees annexed to the Companies (Registration Offices and Fees) Rules, 2014.

The word “financial statement” is defined in clause (40) of section 2. The documents which are required to be annexed to the Financial Statement are notes forming part of financial statement, Auditor’s Report and Board’s Report as provided under sub-section (7) of section 134. (For detailed discussion, refer to commentary on section 134).

3. Filing of unadopted financial statements

First proviso to sub-section (1) of section 137 provides that when financial statements are not adopted in annual general meeting or at an adjourned annual general meeting, such unadopted financial statements together with documents which are required to be annexed to the financial statement shall be filed with the Registrar within 30 days from the date of annual general meeting. Such filings will be taken on record as provisional till the filing of the adopted financial statements. This gives rise to the interpretation that till the financial statements are adopted by the annual general meeting, the said meeting does not conclude and merely stands adjourned. However, it should be noted that this provision is applicable when the annual general meeting was held by the company.

4. Filing of Financial statements at adopted at adjourned annual general meeting

Second proviso to sub-section (1) of section 137 provides that the financial statements adopted in the adjourned meeting shall be filed with Registrar within 30 days from the adjourned annual general meeting with the fees or such additional fees as may be prescribed within the time specified under section 403. If the same are not filed within 30 days, they can be filed within further 270 days as specified under first proviso to sub-section (1) of section 403 with such additional fees as are prescribed in Rule 12 read with the Table of Fees annexed to the Companies (Registration Offices and Fees) Rules, 2014.

5. Filing of financial statements where annual general meeting is not held

The situation where the annual general meeting is not held is dealt with by sub-section (2) of section 137. It seeks to provide that the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting are required be filed with the Registrar within 30 days from the last date before which the Annual General Meeting should have been held. The manner of filing and fees are same as for the adopted financial statements. It should be noted that this provision is applicable where the financial statements, duly signed and audited are available but no meeting is held within the due date.

6. Filing of financial statements by OPC

Third proviso to sub-section (1) of section 137 deals with the filing of financial statements by OPC. The OPC shall file a copy of financial statements adopted by member, duly attaching all documents, within 180 days from the closure of financial year. As there need not be an annual general meeting of an OPC by virtue of section 96, the requirement of filing the financial statements is linked with closure of financial year.

It is to be clearly understood that the timeline is 180 days and not six months. The period of 180 days from the closure of financial year 2015-16 will end on 27.09.2016 and not on 30.09.2016, as the case would be, if six months period was allowed. This time period is 180 for all filings including the ones for first annual general meeting.

As stated above, the filing requirement is linked to 180 days from closure of financial year and not to 30 days from the annual general meeting. In terms of sub-section (3) of section 122 of the Act, the deemed date of annual general meeting for an OPC would be the date on which the resolutions and minutes book are signed & dated by the member. Hence, if such signing happens much before the 150th day of closure of financial year, the OPC can take advantage of filing the financial statements even beyond 30 days from the date of AGM, but within 180 days of closure of financial year.

7. Financial statements of subsidiary or subsidiaries incorporated outside India but have not established business in India

Fourth proviso to sub-section (1) of section 137 requires every company having a subsidiary or subsidiaries which are incorporated outside India and which have not established their place of business in India to attach the financial statements of such subsidiary or subsidiaries along with its financial statements.

From the analysis of this proviso, it may be construed that even where the company consolidates the financials of the foreign subsidiary, it is still required to attach the financials of the foreign subsidiary.

The Companies (Amendment) Bill, 2016 proposes to insert the following proviso after the fourth proviso of sub-section (1) of section 137:

‘Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as “foreign subsidiary”), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian listed company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.’ This benefit is proposed to be provided only to a listed company. General Circular no. 11/2015 dated 21.07.2015 had extended this benefits to all companies.

8. Filing of financial statements in XBRL format

XBRL is a standardised language for communication in electronic form to express, report or file financial information by companies which is introduced to ensure easier collection and better utilization of data filed by the companies.

The requirement to file in XBRL format was introduced under the Companies Act, 1956 for the first time in the year 2011 and subsequently, vide General Circular No. 16/2012 dated 06.07.2012, which mandated the following select class of companies to file the financial statements in XBRL mode for the financial year commencing on or after 01.04.2011:

- (i) All companies listed with any stock exchange(s) in India and their Indian Subsidiaries
- (ii) All companies having paid up capital of Rs. 5 Crores and Above ;
- (iii) All companies having turnover of Rs. 100 Crores and Above
- (iv) All companies who were required to file their financial statements for FY 2010 – 11 using XBRL mode.

Other than Banking Companies, Insurance companies, Power companies and NBFC's which are exempted from XBRL filing.

Rule 12 (2) provides powers to Central Government notify the class of companies which shall mandatorily file their financial statement in XBRL format. Currently, the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 have been notified with effect from 09.09.2015. These Rules provide for filing of financial statement and cost audit report in XBRL format for the following class of companies:

- (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid up capital of Rs. 5 crore or above;
- (iii) all companies having turnover of Rs. 100 crore or above; or
- (iv) all companies which were covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:

However, the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies continue to be exempted from XBRL filing.

9. Additional compliances for listed companies

Apart from the above, the Regulation 34 of SEBI (LODR) Regulations, 2015 the listed entity shall submit the annual report to the stock exchange within 21 working days of it being approved and adopted in the AGM as per the provisions of the Act.

10. Filing of financial statements under Company Law Settlement Scheme, 2014

As the consequences of non-filing of financial statements are very severe, a scheme called 'Company Law Settlement Scheme, 2014' was introduced vide General Circular No. 34/2014 dated 12.08.2014. The scheme came into force on

15.08.2014 and remained in force till 31.12.2014. It condoned the delay in filing the documents, granted immunity from prosecution and charged a reduced addition fees of 25% of actual additional fees.

11. Punishment and Compoundability

Upon failure to file the copy of the financial statements before the expiry of period specified in section 403, the company shall be punishable with a fine of Rs.1000 for every day during which the failure continues which shall not exceed the maximum penalty of Rs. 10 lakhs. The punishment for officer of the company is imprisonment which may extend up to 6 months or a minimum fine of Rs. 1 lacs which may extend to Rs. 5 lacs or both. Where a company has Managing Director and Chief Financial Officer, they shall be punishable under this section. In their absence, any other director who was charged with the responsibility of complying with the provisions shall be punishable. In absence of such director, all directors of the company shall be punishable. The offence for the company, being one which is punishable with fine is compoundable under sub-section (1) of section 441 while the offence by the officers is compoundable with permission from Special Court as provided under sub-section (6) of section 441.

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