

Annual Filings (Certification of e-Forms and MGT-8)

By CS D.V.M Gopal



Topic to discuss



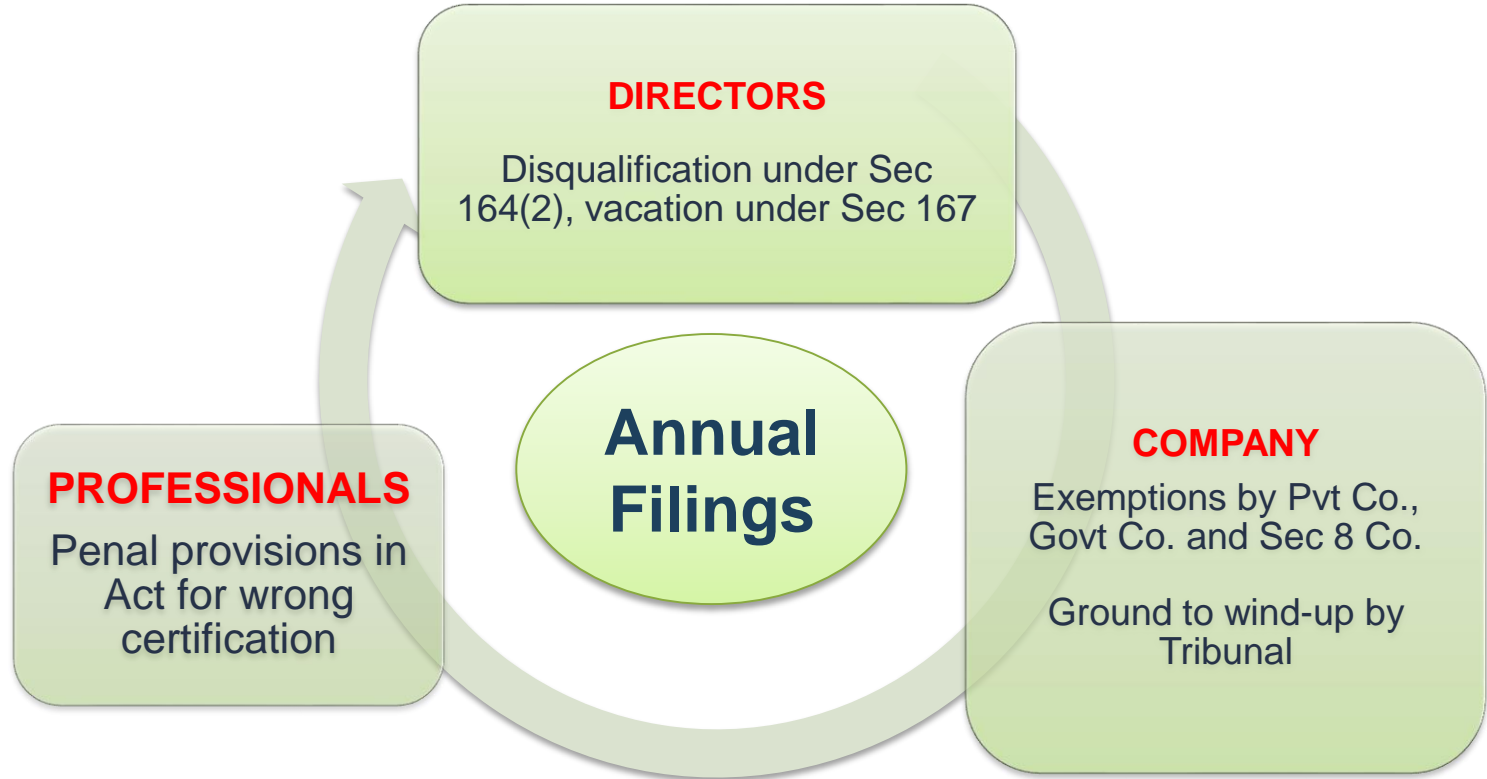
Practical aspects on certification of:

- Form AOC-4
- Form MGT-8
- Form MGT-7

“ There are three qualities that make someone a true professional. These are the ability to work unsupervised, the ability to certify the completion of a job or task and, finally, the ability to behave with integrity at all times.

— *Subroto Bagchi*

Why annual forms is imp to file?



Point to Remember - for certification

- Due consideration of provisions of the Act
- Check thoroughly the correctness
- Exercise due care, diligence and skill
- Obtain Letter of engagement/ BR - authorization
- Maintain copy of document verified
- Witness the authorised signatory of form signing it
- Ensure all attachments are duly attached and are legible



Penal actions for wrong certification

- Company Secretaries Act, 1980 – Professional and other misconduct
- Liable under Sec 447, 448 & 449 w.r.t. for Fraud, False statement and False evidence & Applicable Section

1

Form AOC-

4

Filing financial statement, etc – Form AOC-4

Section 137(1), every Co. to file with the ROC a copy of its FS, including CFS, if any, along with all other document required under the Act

Form prescribed – [Form AOC-4](#)

Categorization of Companies

- Companies not requiring consolidation
- Companies requiring consolidation
- Companies for which filing in XBRL is applicable

Role of Professional in Certification

- Is he doing audit of the Financials again or just checking whether the AOC-4 figures are matching with the audited financials??
- If Directors have not explained in their directors report for qualifications, observations, remarks made by the auditors??
- If Directors Report is not prepared as per Sec 134??
- If you find non-compliances under the CA 2013, while certifying AOC-4??

Companies not requiring consolidation

Form AOC-4 with the ROC within 30 of AGM or last date for AGM

Companies requiring consolidation

File Form AOC-4 and Form AOC-4 CFS, with the ROC within 30 of AGM or last date for AGM

Applicability:

Consolidation is required for companies having Subsidiary(s), Associate Company and Joint venture

Exemption:

- Intermediate Subsidiary Co., Subject to..... [\(Rule 6\)](#)
- Co.'s having only Subsidiaries Inc outside India, for the FY II 1st April, 2014, ----- Is it still continuing (4th proviso Rule 6)

Companies filing in XBRL

File Form AOC-4 XBRL, with the ROC within 30 of AGM or last date for AGM

Applicability for XBRL:

- Co. listed on **any SE** and its Indian Subsidiary(s)
- Co. with paid up capital of Rs. 5 Cr or >
- Co. with turnover of Rs. 5 Cr or >

Exemption to Co. in banking, insurance, power sector, NBFC and HFC

Attachments to AOC-4

- ✓ Copy of financial statements duly authenticated as per section 134 (including Board's report, auditors' report and other documents)
- ✓ Statement of subsidiaries as per section 129 – Form AOC-1
- ✓ Statement of the fact and reasons for not adopting Financial statements in the annual general meeting (AGM)
- ✓ Statement of the fact and reasons for not holding the AGM
- ✓ Approval letter of extension of financial year or AGM
- ✓ Supplementary or test audit report under section 143
- ✓ Company CSR policy as per sub-section (4) of section 135
- ✓ Details of other entity(s)
- ✓ 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
- ✓ Details of comments of CAG of India
- ✓ Secretarial Audit Report
- ✓ Directors' report as per sub-section (3) of section 134
- ✓ Details of remaining CSR activities
- ✓ Optional attachment(s), if any





Practical aspects



- Companies rounding off the amounts in the FS – In AOC-4
- III. *Financial parameters – Balance sheet items in list 1 to 41 (warrant, Inter-corporate deposits , etc) - As on financial year end date
- Are SD copies permitted?/ only signed
- AGM notice attachment?
- Director's attendance - mandatory as per SS
- Books of Accounts – maintenance
- Secured borrowings
- Limit on fields in AOC-4 – persons signing
- What if Co. is sub Co. of Foreign Co., for Hold Co.
- In case of qualifications, reservations or adverse remarks in AR, no comment in BR – stand on certification
- Is correctness of attachments also required to be certified
- Do the PCS need to check Notice, Minutes, attendance, etc



Business / Product Codes



Form MGT-7

Principle
Business
activity of
Company

codes are
provided in the
Instruction Kit of
MGT-7

Form MGT-9

Principle
Business
activity of
Company

NIC Code –
2004/2008??

As per ICSI Draft GN
on AR – NIC 2008

Form AOC- 4

Principle
Products or
services of the
Company

NPCS / ITC-HS
code available on
www.mca.gov.in

Declaration & Certificate

Declaration

I am authorized by the Board of Directors of the Company vide *resolution number *dated to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I further declare that:

1. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
2. All the required attachments have been completely and legibly attached to this form.

Certificate by Practicing professional

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

1. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;
2. All the required attachments have been completely and legibly attached to this form;
3. It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage.

Penal provisions

Failure to file

- **Company** - punishable with fine 1K every day during default, upto 10 Lakhs
- **MD & CFO**– If no MD & CFO, authorised Director for filing
- If no authorised Director, all Director Imprisonment upto 6 month or with fine $\neq < 1$ Lakh, upto 5 Lakhs, or both



Compounding of Offence

Offence committed u/s Section 137 is compoundable ***only with the permission of the Special Court***

IND AS IMPLEMENTATION STAGES

- Listed companies having net worth => ₹ 500 crore
- Companies having net worth => ₹ 500 crore
- Effective 1st April, 2016

- Companies with net worth => ₹ 250 crore to < ₹ 500 crore
- Effective 1st April, 2017

- NBFC having net worth => ₹ 500
- Banking companies
- Effective 1st April, 2018

- NBFC with net worth => ₹ 250 crore to < ₹ 500 crore
- Effective 1st April, 2019

IND AS applicable on Parent, Subsidiary, Associate and JV

2

Form MGT-

8



Certificate by a Company Secretary in Practice

Applicability:

- listed company
- Co. with paid-up share capital of Rs. 10 Cr or >
- Co. with turnover of Rs. 50 Cr or >

Certification on:

disclosure on facts correctly & adequately and that Co. has complied with ***all the provisions of CA, 2013*** (Sec 92(2))

Format prescribed in Rules – MGT-8

Mini Secretarial Audit

Form MGT-8

Submitted as an attachment to Annual Return in Form MGT-7

MGT-8 - Contents

A. the Annual Return states the facts correctly and adequately (as at end of FY)

B. during financial year Co. has complied with provisions of the Act & Rules made there under *in respect of:*

1	status under the Act
2	maintenance of registers/records
3	filing of <u>forms and returns as stated in the annual return</u> , with ROC, RD, CG, NCLT, Court or other authorities within/beyond the prescribed time
4	calling/ convening/ holding BM or its committee Meeting, if any, and meetings of members on due dates as stated in the annual return
5	closure of Register of Members / Security holders
6	advances/loans to its directors and/or persons or firms or companies referred in section 185

MGT-8 - Contents

7	contracts/arrangements with related parties as specified in section 188
8	issue / allotment / transfer / transmission / buy back of securities/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates
9	keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer of shares
10	declaration/ payment of dividend; transfer of unpaid/ unclaimed dividend/other amounts to the IEPF as per section 125
11	signing of audited FS as per section 134 and Boards report is as per sub - sections (3), (4) and (5) of section 134
12	constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them;
13	appointment/ reappointment/ filling up casual vacancies of auditors as per section 139

MGT-8 - Contents

14	approvals required to be taken from the CG, NCLT, RD, ROC, Court or such other authorities under the provisions of the Act
15	acceptance/ renewal/ repayment of deposits
16	borrowings from its directors, members, public financial institutions, banks and others and creation/ modification/ satisfaction of charges
17	loans and investments or guarantees given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act
18	alteration of MOA and/ or AOA of the Company

Note - The qualification, reservation or adverse remarks; if any, may be stated at the relevant place(s).

Attachments - Annexure to the Certificate



Practical aspects



Scope of Certificate – Act / MGT-8

Timing of MGT-8 & MGT-7

Words *“forms and returns as stated in annual return”*

2 different professionals for Signing and Certification - Recom

Format not clear- to state Not Applicable in appropriate cases

Where Secretarial Audit applicable to Co.

3

Form MGT-

7

Questions before us'

- What is Annual Return?
- Why Annual Return to be filed?
- How it has to be filed?
- What all contents to be covered in it?
- Who has to file it?
- Who all to sign the Annual Return?
- What are the penal provisions of non-filing of Annual Return on time?
- Checks for certification?



Annual Return – snapshot of Co.

Section 92 - Every Co. to prepare Annual Return in [Form MGT-7](#), must be filed with ROC within 60 days

Why is it imp to file:

- Definition of “Promoter”
- Availing exemptions by Pvt Co., Govt Co. and Sec 8 Co- **Amendment**
- Copies of annual returns as prima facie evidence (Sec 95)
- Disqualification under Sec 164(2), vacation under Sec 167
- Ground for petition under Sec 272, to wind-up by Tribunal
- Other penal provisions in Act

The image shows a screenshot of the MGT-7 Annual Return form. At the top, it says 'FORM NO. MGT-7' and 'Annual Return'. Below this, there is a small logo of the Government of India and the text 'Annual Return'. The form is in English and has a 'Print-All' button. The form is divided into sections: 'I. REGISTRATION AND OTHER DETAILS'. The sections include: (i) Corporate Identification Number (CIN) of the company, Global Location Number (GLN) of the company, and Permanent Account Number (PAN) of the company. (ii) Name of the company and Registered office address. (iii) e-mail ID of the company. (iv) Telephone number with STD code. (v) Website. (vi) Date of Incorporation. (vii) A table with columns: Type of the Company, Category of the Company, and Sub-category of the Company. (viii) Whether company is having share capital. (ix) Whether shares listed on recognized Stock Exchange(s).

Type of the Company	Category of the Company	Sub-category of the Company

Other points.....

- **Format:** Form MGT-7
- **Signing:** director and the CS, or where there is ***no CS, by a PCS***
- **Place:** Copy of Annual Return shall be kept at RO
- **Preservation:** shall be preserved for a period of 8 Years from filing
- **Certification of AR:** Listed Co. , Co. - PUC of Rs. 10Cr or >, Co. – TO of Rs. 50 Cr

Attachments

- List of Shareholders/ debenture & MGT-8 (if any)
- Approval letter for extension of AGM (if any)

Exemption - form Cert..

- OPC and Small Company
- shall be signed by CS, or If no CS, by a director

Penal provisions

Failure to file

- **Company** - punishable with fine \neq < 50 K, upto 5 Lakhs
- **Officer in default** – Imprisonment upto 6 month or with fine \neq < 50 K, upto 5 Lakhs, or both

Certification not in conformity

- **PCS**- punishable with fine \neq < 50 K, upto 5 Lakhs



Compounding of Offence

Offence committed u/s 92 is compoundable
only with the permission of the Special Court





Practical aspects



- What is the difference between Signing & Certification?
- Promoter-Who is the Promoter?
- Share capital update on MCA
- Hold Co. – Only regd under CA
- Sub Co. & JV – even Body Corp
- Asso Co. – Only regd under CA
- Indebtedness calculation & if 2 or > types of Debentures
- Current maturities included in Current Liabilities – Is it a debt?
- GM attendance -- % include Pref. Shares?
- % of Shares held by directors – Incl. Pref. Shares?
- Hold/ Sub / JV/ Asso Co. – % include Pref. Shares?
- Net-worth Calculation – P&L Balance
- Count for person holding Eq. and Pref.
- Cessation for Disqualified Directors?
- Declaration in Form for Compliance with Act, for person certifying form
- Remuneration of CS/CFO/CEO – not KMP
- Committee ?

Limits for PCS as per ICSI

- **CERTIFY** Annual Return pursuant to Section 92(2) (MGT-8) - not more than **80 companies** for each of the financial year
- **SIGN** Annual Return pursuant to Section 92(1) (MGT-7)– No Limit



THE COMPANIES BILL, 2017

- ❖ Proposed to be deleted
 - Indebtness
 - disclosure of name, address , counties of incorporation, registration of FIIIs
- ❖ CG may prescribe abridged form of AR for OPC, small companies
- ❖ Annual Return on website – Disclosure of weblink in Boards Report, if any

Management Representation Letter

- Suggested as per ICSI Guidance Note
- May be signed by Company Secretary/ Managing Director/ Senior Management
- Adequate enquiries should be made and ***mere getting from management*** may defeat the purpose of the audit.

Management Representation Letter

Purposes of the letter:

1. To impress upon management its responsibility for the assertions in the financial statements.
2. To remind management of potential misstatements or omissions in the financial statements.
3. To document the responses from management to inquiries about various aspects of the audit.

Legality of Management Representation

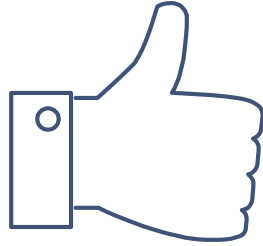
31

- Obtaining Management Representation Letter is suggested by ICSI
- Cover the points of which direct verification is not possible
- The Auditor can use this letter of representation as part of his audit evidence. – ICSI
- Subject to adequate verification in respect of all matters is carried out effectively.
- Only obtaining Certification from Management may not serve the purpose of Audit and detailed verification shall be carried out.
- However, in Satyam Scam the representation certified by Company and presented by Statutory Auditor of the Company was questioned.
- Thus a detailed verification of all aspects & matters shall be carried out instead of mere relying on the Management Representation.



COMPLIANCE – THUMB RULE

WHEN IN DOUBT, DISCLOSE IT.



THANKS!

Any questions?

You can find me at

CS DVM Gopal

098491 53690

www.dvmgopalandassociates.in
dvm@dvmgopalandassociates.in