



360 Degree of Annual Return

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Disclaimer



- This PPT is for better discussion only and nothing to be considered as a written opinion from my side.





Governing Section

- Section 92
- To be filled with RoC within 60 days from the date of AGM as held pursuant to Section 96 of CA-2013



Wordings of Section 92(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.



Section 134(3)



There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—



[(a)the web address, if any, where annual return referred to in subsection (3) of section 92 has been placed]

Rule 12 of Companies (Management and Administration) Amendment Rules, 2020

- As per amendment dated August 28, 2020 after Sub rule (1) of Rule 12 of Companies (Management and Administration) Amendment Rules, 2020 the following proviso shall be added:
- *“Provided that a Company shall not be required to attach extract of the annual return with the Board’s Report in Form MGT-9, in case the web link of such annual return has been disclosed in the Board’s Report in accordance with subsection (3) of Section 92 of the Companies Act, 2013.”*

Whether to Attach MGT-9

- Let's have discussion
- MGT-9 is abstract of Annual Return
- No Where in the act the word **abstract** is return as per new amendment.



Read the judgement

- <https://indiankanoon.org/docfragment/876340/?formInput=act%20and%20rules%20which%20will%20prevail%20%20author%3A%20M%20Katju>
- 15. In our country this hierarchy is as follows:-
 - (1)The Constitution of India.
 - (2)Statutory Law, which may be either Parliamentary Law or law made by the State Legislature.
 - (3)Delegated legislation which may be in the form of **rules**, regulations etc. made under the **Act**.
 - (4)Administrative instructions which may be in the form of GOs, Circulars etc.
- 16. The SEBI **Act** is in the second layer of this hierarchy and the **rules** and regulations are in the third layer, whereas the circular dated 16.3.1998 is in the fourth and the lowest layer in the hierarchy. Hence, if there is a conflict between the **Act** and the **Rules & Regulations, the Act will prevail**, and if there is a conflict between the **Act, Rules** and Regulations on the one hand, and the circular on the other, the former **will prevail** and the later becomes ultra vires vide [Union of India v. Arun Kumar Roy](#), AIR 1986 SC 737 (para 15), Page 1997 [Shish Ram v. State of H.P.](#) , [Union of India v. Madras Telephone S.C & S.T Social Welfare Association](#) , etc.

What to do in disputed case or a case is before NCLT under O & M



Always take the signature of all the parties.



Private Companies are considered as glorified partnership under O & M



Better to take hard copy and send for the physical signature(s) of all the parties to the dispute and then may please be uploaded.



The signed version can be scanned and attach as an optional attachment.



The Purpose of Discussion is that the professional is not made a soft target by any authority or any unscrupulous person.

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 thereunder, he shall be [liable to a penalty of two lakh rupees.]
- Big responsibility casted on the professional.. So be careful while certifying.



What due care CS Must take

- CS Must take care of All Accounting and Secretarial records.
- Practically Secretarial Records are not updated sometimes, make it updated.
- At least have a soft copy of all records and returns and registers.
- On Accounting records there can be reliance on the fellow professionals
- Take ROC Search (VPD Facility)
- Always have authority to use the digital signature of the client or else attach from their digital signature (Professionals are made soft targets)



Conflict of Opinion between MR-3 (Secretarial Audit Report) and MGT-7 and MGT-8

- There should not be any conflict of opinion and Opinion must move in the same Direction in all the 3 Documents.
- If MR-3 and MGT-8 attested by 2 Different Professionals, then one must take into the consideration of the certification of others.



Always Respect Your
Independence

Have a Courage to say "No "When
You are not in comfort zone.

MGT -8 Certification

- Approach may Vary from person to person.
- There is no common Check list
- The ICSI Guidance Note can be one of the references.
- Make Sure that all the things are reported in Directors Report as stipulated under the Provisions of Section 134 and other Applicable Provisions.
- Always make sure that you have done proper due-diligence and that will save the skin in case of litigation.
- Back Papers (Supporting Documents) must be ready and to be collected from the client
- Generate UDIN

Remuneration to Directors

- Make Sure that it is supported by Minutes of the Meeting of Board of Directors and in case of Public Company the same is supported in line with Section 196, 197, 198 and Schedule V.





Compounding Issues

- Always ask for Management representations.
- Most prominent cases are MGT-14, CHG-4 etc.



Moot Points

- Always have control over the information.
- Good Relationship with the person who provides information.



Whether Disclaimer Serves the Purpose

- When an auditor issues a [disclaimer of opinion](#) report, it means that they are distancing themselves from providing any opinion at all related to the financial statements or Secretarial Records. Some of the reasons that auditors may issue a disclaimer of opinion are because they felt like the company limited their ability to conduct a thorough audit or they couldn't get satisfactory explanations for their questions. They may not have been able to decipher the correct nature of some transactions or to secure enough evidence to support good financial reporting or records.
- Auditors that aren't allowed an opportunity to observe operational procedures or to review particular procedures may feel like they're not able to express a definite opinion, so they feel a disclaimer is necessary and in order. The general consensus is that a disclaimer of opinion constitutes a very harsh stance. As a result, it creates an adverse image of the company.



Thank you very much

ANY QUESTIONS