



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

e-CS Nitor



13th ICSI National Awards for Excellence in Corporate Governance on 24th August, 2014 at Kolkata

Sitting on the Dais from L to R : Shri M. S. Sahoo, Secretary, ICSI; Shri Vikas Y Khare, Vice-President, ICSI; Shri R. Sridharan, President, ICSI; Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs; Shri Sanjay Grover, Council Member, ICSI; Shri Anil Murarka, Past-President and Council Member, ICSI.

- Message from the President
- Annual General Meeting
- Annual Return
- Annual Return under Sec. 92 of the Companies Act, 2013
- Points of View : Can a Woman Director on Board help better Corporate Governance ?
- Publications Released at 42nd National Convention of Company Secretaries
- Circulars, Notifications, Orders, Amendment, Rules under Companies Act, 2013
(since last issue of e-CS Nitor)





Best Governed Company (in alphabetical order)

Rural Electrification Corporation Ltd.:

Shri Rajeev Sharma, CMD receiving the Award from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs, alongwith Shri J S Amitabh, Company Secretary and Shri M L Kumawat, DGM.

Best Governed Company (in alphabetical order)

The Tata Power Company Ltd.:

Shri Ashok Sethi, Executive Director receiving the Award from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs, alongwith Shri H M Mistry, Company Secretary.



ICSI Life Time Achievement Award for Translating Excellence in Corporate Governance into Reality

Shri Shiv Nadar, Chairman and Chief Strategy Officer, HCL Technologies Limited receiving the Award from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs.





Certificate of Recognition to other Top 5 Companies (in alphabetical order)

CMC Limited :

Shri R. Ramanan, MD & CEO receiving the Certificate from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs, alongwith Shri J K Gupta, CFO and Shri Vivek Agarwal, Company Secretary.

Hindustan Petroleum Corporation Ltd. :

Shri Shrikant Bhoekar, Company Secretary receiving the Certificate from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs.



ICICI Bank Ltd. :

Shri Sanker Parameswaran, Company Secretary receiving the Certificate from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs.



Oil & Natural Gas Corporation Limited :

Shri A. V. Sathe, Executive Director alongwith his team receiving the Certificate from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs.



Persistent Systems Ltd. :

Shri Amit Atre, Company Secretary receiving the Certificate from Shri Arun Jaitley, Hon'ble Union Minister for Finance, Defence and Corporate Affairs.



Message from President



Dear Member,

The month of August 2014 studded with magnificent events and wonderful programmes. I find that the topics at these programmes were varied and differed in contents, but it seems to me that they all could be brought under a common theme – *governance issues*. Often it has been debated as to whether governance issues to be legislated or self-regulated. Bedrock of Corporate Governance is ethics, which is in the truest sense cannot be legislated. Governance practices to be voluntary devoid of compulsion. Prof H L A Hart in his monumental work on “Concept of Law” observed “***that law is concerned more with obligations rather than compulsion.***”

Self-regulating status is a privilege granted to a profession in order to serve the public interest and comprises two essential aspects: the authority to license and the ability to discipline licensees. A key expectation of members of self-governing professions is that they accept legal and ethical responsibility for their work and hold the interest of the public and society as paramount. Company Secretary is looked upon by the regulators, as ethical and trustworthy professional whose professional judgment and competence has made a mark in the corporate sector. Therefore, a need for introspection and a dynamic movement is desired to promote a value revolution with deeper conviction and creative consciousness, leading us to be good professional citizens. I wish that the professional attitude to blossom into a professional skill, as observed by Brit Hume - “***Fairness is not an attitude. It's a professional skill that must be developed and exercised.***”

With regards

CS R. Sridharan
President
president@icsi.edu



The Council

President

R. Sridharan

Vice-President

Vikas Y. Khare

Members

(in alphabetical order)

Amardeep Singh Bhatia

Anil Murarka

Ardhendu Sen

Arun Balakrishnan

Ashok Kumar Pareek

Atul Hasmukhrai Mehta

Atul Mittal

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Sudhir Babu C.

U. D. Choubey (Dr.)

Umesh Harjivandas Ved

Secretary

M. S. Sahoo

Chief Executive

Sutanu Sinha

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ANNUAL GENERAL MEETING*

CS Prakash K. Pandya

Practising Company Secretary

Section 96 of the Companies Act, 2013 ('the Act') states that 'the first' annual general meeting of a company shall be held within 9 months from the closing of its first financial year. There is a change in the time limit for holding first annual general meeting of the company than was specified under the Companies Act, 1956 ('Act of 1956').

Annual General Meeting ('AGM'), other than the first AGM, shall be held by companies within 6 months from the close of its financial year. There is no change in the provisions under the Act relating to holding of AGM other than first AGM as compared to Act of 1956.

One Person Company have been given the option to dispense with the requirement of holding AGM.

Under section 101 of the Act, all companies are required to give clear 21 days' notice of general meeting (including AGM) either in writing or by electronic mode. Shorter notice of general meeting can be given if 95% of the members entitled to vote at such general meeting gives consent, either in writing or by electronic mode. There is no distinction made with respect to shorter notice period for AGM and EGM, as was provided in the Act of 1956.

One of the changes in the Act is that AGM can now be held on all days including Public holidays but cannot be held on National Holidays as declared by the Central Government (section 96(2) of the Act). So companies can now hold annual general meetings on all the days except National Holidays.

As per Section 102 of the Act, an explanatory statement setting out all material facts concerning each item of special business to be transacted at AGM shall be annexed to the notice of the general meeting. Whereas Section 173 of the Act of 1956 does not define the term material facts.

Format of proxy form is prescribed in Form no. MGT.11. A single person can be proxy of not more than 50 shareholders and holding in aggregate not more than 10% of total share capital of the company. A shareholder holding more than 10% of total share capital of the company, can appoint a single person as its proxy, however, such person cannot be appointed as proxy of any other shareholder.

To encourage wider participation of shareholders at general meetings, the Central Government has prescribed that all listed companies and all public companies with 1000 or more shareholders should offer an option to its shareholders to cast their vote using electronic voting system. This requirement has been deferred till 31 December 2014, by the Ministry of Corporate Affairs vide its Circular No. 20/2014 dated 17 June 2014. However, listed companies are required to offer ensure compliance in this regard as per clause 35B of the Equity Listing Agreement. The said clause requires that listed companies offers electronic voting system to its shareholders, in respect of all shareholders' resolutions, to be passed at general meetings (including AGM).

* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



It may be noted that, as per said MCA circular 20/2014 dated 17 June 2014, inter alia, where e-voting facility is provided by a company-

- (a) Its members cannot vote at general meeting by show of hands,
- (b) Where members have cast vote electronically, can participate at the general meeting, but cannot vote,
- (c) Demand for poll would not be relevant.

Companies providing e-voting facility need to send notice of the meeting (including AGM) by registered post or speed post or courier service (which shall provide proof of its delivery) or through electronic means like e-mail. Sending of notice and annual report by electronic mode is part of the Green Initiative which saves time, efforts and paper. Rule 18 of the Companies (Management and Administration) Rules, 2014 is relevant.

Section 20 (2) of the Act states that a document (includes notice of general meeting as per section 2(36) of the Act) may be served on any member by sending it to him either by way of electronic mode/ email or by post or by registered post or by speed post or by courier service (which shall provide proof of its delivery) or by personal delivery.

Companies not required to offer e-voting facility, need to send notice of AGM as per the aforesaid section 20(2) of the Act.

As per provision of the Act of 1956, the quorum for the general meeting was 5 in case of a public company. Whereas, section 103 of the Act states that unless the articles of the company provide for a larger number, in case of a public company the quorum shall depend on number of members as on the date of a meeting.

Further, companies will be mandatorily required to follow SS-2 i.e. Secretarial Standards specified by the Institute of Company Secretaries of India, as and when approved by the Central Government under section 118(10) of the Act.

Specimen time-table for holding Annual General Meeting (suggestive)

Holding of Board Meeting for deciding the date of AGM	X-38
Intimation to the exchange within 15 minutes of closure of Board Meeting regarding AGM date (applicable in case of listed company)	X-38
Intimation to the exchange about Book closure dates(applicable in case of listed company)	X-37
Placing of notice of Book Closure dates on the website of the Company(applicable in case of listed company)	X-37
Issue advertisement in one English newspaper in english language and one vernacular newspaper in vernacular language informing about the Book Closure Dates(applicable in case of listed company)	X-37
Tie-up printer for printing of annual report	X-36
Tie-up with Mass mailer for sending annual reports electronically to the shareholders	X-36
Tie-up with Mass mailer for sending annual reports by registered and or speed post / courier to the shareholders	X-36
Proof Reading of Annual report and other documents.	X-32
Confirm final printing strike order to Printer	X-30



Final copies of annual report ready for dispatch to the shareholders	X-26
Dispatch of Annual Report along with Notice of general meeting to all the shareholders	X-25
Emailing final copy of Annual report to BSE &NSE (applicable in case of listed company)	X-25
Submission of six copies of Annual Report to BSE &NSE (applicable in case of listed company)	X-24
Dispatch of Notice of meeting to auditors and all directors of the company	X-23
Date of Annual General Meeting – Ordinary and Special Business to be transacted.	X
Placing of Register of Directors and KMP's shareholding	X
Submit copy of proceedings of AGM to NSE and BSE (applicable in case of listed company)	X+1



ANNUAL RETURN*

CS Hariom Rastogi

Introduction

Annual return is a yearly statement, required to be filed by every company irrespective of their nature, i.e. private, public, listed, unlisted, or status, i.e. active, dormant or under amalgamation and function, which highlights the information about company's various aspects pertaining to its composition, activities, and financial position and lets the investors, consumers, financial institutions, regulator and many others dealing with the firm can get a 'true and fair view' of the state of its affairs in a very comprehensive and crisp manner.

It is not a tax return; it is simply a corporate law requirement and every company is legally obligated to file this return with Registrar of Companies (ROC).

When to File

The 2013 Act provides that the information stood on the closing of financial year only need to be captured.

This is the major change under 2013 Act from the 1956 Act. Under erstwhile Act, section 159 & section 160 provides that information stood on the AGM date must be put in.

Sub-section 4 of section 92 of the Companies Act, 2013 set the deadline for filing an annual return which is within the 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 sixty days from the date on which the annual general meeting (AGM) should have been held.

Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty 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, with such fees or additional fees as may be prescribed, within the time as specified, under section 403. However, as per third proviso to sub-section (1) to section 96 of the 2013 Act, ROC may extend time within which AGM must be held by not more than three months on the ground of sufficient reason. And this provides a 3 months cooling period in addition to the 60 days for filing of Annual Return.

What to File

Under the provisions of sub-section (1) to section 92 of Companies Act, 2013, the following information must be incorporated in the prescribed form such as

- 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;

* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



- 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.

Relevant Forms Filed

Rule 11(1) of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare its annual return in Form No. MGT.7.

Sub-section (3) to section 92 read with Rule 12(1) of the Companies (Management and Administration) Rules, 2014, says that an extract of the annual return shall form part of the Board's report and such extract shall be in Form No. MGT.9.

Pursuant to General Circular No. 22/2014 vide dated 25th June, 2014, MCA has clarified that Form No. MGT.7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years.

It means companies need to file their annual return in earlier form as prescribed under the Companies Act, 1956 i.e. Form 20B and Form 21A as the case may be.

Authentication of Annual Return

- a) One person Company and Small company
Annual Return shall be signed by the Company Secretary, or where there is no Company Secretary, by the Director of the Company.
- b) Every Company other than Listed companies and other class of Companies
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.
- c) Listed Companies and Company having paid-up share capital of Rs. Ten crore or more or turnover of Rs. Fifty crore or more

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.

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 and as above prescribed class of companies shall be certified by Company Secretary in Practice and such certificate shall be in Form No. MGT.8 which state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.



Consequences of Not Filing

Section 92(5) categorized consequences of non-filing into two parts - monetary provision and penal provision.

Monetary Provision	
For Company Which fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fee.	Not be less than ₹fifty thousand but which may extend to ₹five lakhs.
Every officer of the Company who is in default	Shall be punishable with imprisonment for a term which may extend to six months Not be less than ₹fifty thousand but which may extend to ₹five lakhs 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 thereunder, he shall be punishable with fine which shall not be less than Not be less than ₹Fifty thousand but which may extend to ₹Five lakhs.

Further, Apart from section 92 of the Act, Section 448 also prescribed penalty which is reproduce below-

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 say that - *any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.*

Place of Keeping Annual Returns

Section 94(1) of the 2013 Act says that every company shall keep copies of annual return filed under Section 92 at its registered office.

Proviso to sub-section (1) of section 94 provides leeway to the companies and say that copies of return may also be kept as such place in India in which more than 1/10th of the total number of members entered in the register of members reside.

To avail this, companies are required to pass a Special Resolution at General Meeting of the Company and Registrar (ROC) has been given a copy of the proposed Special Resolution in advance. For this we need to comply with Section 117 of the Act which says that every special resolution passed in general meeting shall be registered with ROC in **Form MGT.14**.

To comply with this, Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 which says that for the purpose of filing the documents for which no e-form is prescribed under the Act or Rules, the documents shall be filed through **Form No. GNL. 2** along with fees as applicable.



Therefore, copy of resolution shall be submitted to the ROC by filing **Form No. GNL. 2.**

Inspection of Annual Returns

Section 94(2) says that, copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

In this regard, Rule 14 and 16 of the Companies (Management and Administration) Rules, 2014 is reproduced below -

Rule 14. Inspection of registers, returns etc.-

(1) The registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

Explanation.- For the purposes of this sub-rule, reasonable time of not less than two hours on every working day shall be considered by the company.

(2) Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not exceeding ₹ ten for each page. Such copy or entries or return shall be supplied within seven days of deposit of such fee.

Rule 16. Copies of the registers and annual return.-

Copies of the annual return filed under section 92 shall be furnished to any member, debenture-holder, other security holder or beneficial owner of the company or any other person on payment of such fee as may be specified in the Articles of Association of the company but not exceeding ₹ten for each page and such copy shall be supplied by the company within a period of seven days from the date of deposit of fee to the company.

Section 92(4) says that the Company and every officer of the company who is in default shall be liable

If any inspection or the making of any extract or copy required under this section is refused for each such default, to a penalty of ₹One thousand for every day subject to a maximum of ₹One lakh during which the refusal or default continues.

Power of Central Government

Section 92(5) provides discretionary power to the Central Government and says that, The Central Government may also, by order, direct an immediate inspection of the document, or directs that the extract required shall forthwith be allowed to be taken by the person requiring it.

Preservation of Annual Return

Rule 15 of the Companies (Management and Administration) Rules, 2014 talk about preservation of the annual return.

Copies of all annual returns prepared under section 92 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. These copies shall be kept in the custody of the Company Secretary of the Company or any other person authorized by the Board for the purpose.



ANNUAL RETURN FOR FOREIGN COMPANIES

Under 1956 Act, every company had to file Annual return under section 159 or section 160 either in E-Form 20B or E-Form 21 as the case may be. This was equally applicable to the foreign companies. But this has been changed under 2013 Act as it segregated the Form which needs to be filed by foreign companies. Under the provision of Section 384 under Chapter XXII of the Act, which talk about Debentures, Annual return, Registration of Charges, Books of Account and their inspection.

Section 384(2) deals with the Annual Return of the Foreign Companies and says that *“the provisions of section 92 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.*

Rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014 provides that - Every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form FC.4 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year.

ANALYSIS

Under the Companies Act, 1956, Section 159,160,161,162 read with Schedule V deals with the Annual Return & related provisions. But, in Companies Act, 2013, all these sections are clubbed together and enumerated under Section 92.

Changes made under 2013 Act:-

1. Particulars as mentioned under Section 92 are to be filed as on closing of the financial year not as on date of Annual General Meeting.
2. A matter in respect of which information has to be provided is enlarged under new Act. The followings are the new requirements –
 - i. Meetings of members or a class thereof, Board and its various committees along with attendance details.
 - ii. Remuneration of directors and key managerial personnel. Penalties or punishments imposed on directors/officers or on company, steps taken for compounding or appeals made against alleged offence.
 - iii. Details of 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.
 - iv. 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.
 - v. Any other matters as may be prescribed.
3. Annual return for One Person Company (OPC) and Small Company.
4. Segregation of Annual Return Forms.
5. An extract of the annual return in Form No. MGT.9 shall be annexed to the Directors Report [Section 134(3)(a)].
6. Companies whose paid-up share capital of ₹Ten crore or more or turnover of ₹Fifty crore or more is required to obtain a certificate from Company Secretary in Practice.
7. Penalty has been substantially increased.
8. Company Secretary and Company Secretary in Practice brought under penal jurisdiction.



Conclusion

No doubt, new provision has made it more comprehensive one albeit it has reduced the period, by deviating the date on which data must be captured, i.e. As on AGM to As on Closing of Financial Year. By doing so, Government has tried to treat every company at par and even availability of almost all those information which a listed company incorporates in its Annual Report in public domain. This will help to curb the irregularity of Private companies which reluctant to share their information. However, this will be the repetition of information in case of listed companies.

Since, information provided under Annual return is linked to the closing of financial year date, the time period of 60 days from the date of AGM to file annual return has no relevance. Annual Return can be filed immediately after the closing of financial year, without waiting for AGM. This provision requires a reconsideration.

It cast huge responsibility on in house Company Secretaries and Company Secretary in Practice to check not only the veracity of contents of Annual Return but also confirm the compliance of the provision of the Act in letter spirit.

Professional need to be more alert and well equipped with the provision of the Act and bound to exercise their diligence for avoiding any penalties as they have been substantially increased in the 2013 Act.



ANNUAL RETURN UNDER SEC.92 OF THE COMPANIES ACT, 2013*

CS M.KURTHALANATHAN

Practising Company Secretary

Introduction:

Section 159,160,161,162 & Schedule V deals with the Annual Return & related provisions under Companies Act, 1956. But in Companies Act, 2013, all these sections are combined together under Section 92.

Preparation of Annual Return:

Every company shall prepare a return (hereinafter referred to as the annual return) in Form No.MGT-7 containing the particulars as they stood on the close of the financial year.

MCA's clarification on applicability of Form MGT-7 for FY-2013-14:

The MCA has clarified that Form MGT-7 shall not apply to annual return in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act,1956

Particulars of Annual Return (in context of a company) :

- its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- its shares, debentures and other securities and shareholding pattern;
- its indebtedness;
- its members and debenture-holders along with changes therein since the close of the previous financial year;
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration of directors and key managerial personnel;
- 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;
- matters relating to certification of compliances, disclosures as may be prescribed;
- 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
- such other matters as may be prescribed,

Authentication of Annual Return:

All Companies (Except OPC and small company)

Annual Return shall be signed by –

- a director and the company secretary, or
- where there is no company secretary, by a PCS

* *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



OPC and small company

Annual Return shall be signed by –

- the company secretary, or
- where there is no company secretary, by the director of the company.

Certification of Annual Return by PCS:

The annual return, filed by a listed company or, by a company having such paid-up capital of Rs.10 Crores or more OR turnover of Rs.50 Crores or more shall be certified by a PCS 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. Thus, in case of companies which falls under the above criteria, it is enough to merely sign the annual return. The PCS will have to verify whether the Company has complied with all the provisions of the Act. .

It may be noted that currently Annual Return certification is required only for listed Companies and now it is being extended to cover other unlisted companies with prescribed paid up capital or turnover.

Extract of Annual Return:

An extract of the annual return in Form No MGT-9 shall be attached to and form part of the Board's report.

Filing of Annual Return:

Every company shall file a copy of the annual return with the Registrar.

If AGM is held-

File Annual Return within 60 days from the date on which the AGM is held or

If no AGM is held in any year-

File Annual Return 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, within the time as specified, under section 403.

Inspection of Annual Return:

Copies of Annual return shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

The company shall consider allowing reasonable time of not less than two hours on every working day for allowing inspection.

MCA's clarification on fees to be charged by companies for allowing inspection of Annual Return:

The MCA has clarified that until the requisite fees is specified by companies, inspection could be allowed without levy of fee.

Preservation of annual return:

Copies of all annual returns and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the Registrar.



Copies of Annual Return:

Copies of the Annual return shall be furnished to any member, debenture-holder, other security holder or beneficial owner of the company or any other person on payment of such fee as may be specified in the Articles of Association of the company but not exceeding rupees ten for each page and such copy shall be supplied by the company within a period of seven days from the date of deposit of fee to the company.

Annual Return by Foreign Company:

Every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form FC.4 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year.

Penalty:

Company	Fine which shall not be less than Rs.50,000/- but which may extend to Rs. 5,00,000/-
Officer	Imprisonment for a term which may extend to 6 months or Fine which shall not be less than Rs.25,000/- but which may extend to Rs.5,00,000/- or with both.
PCS	Fine which shall not be less than Rs.50,000/- but which may extend to Rs.5,00,000/-

Changes in Annual Return:

Details	Companies Act, 1956	Companies Act, 2013 & Rules, 2014
Provisions	Sec. 159,160,161,162 & Schedule V	Sec.92, & Form MGT-7 along with MGT-8
Particulars	<ul style="list-style-type: none">Registered office,ROM,RODh,Shares & Debentures,IndebtednessMembers and Debenture holders past and present,Directors, MDs, Managers, CS past and Present	Refer the Particulars of Annual Return Highlighted above i.e. under earlier heading "Particulars of Annual Return"
Return in Question	As per Sec.159(1), if any of the 5 immediately preceding returns has given the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only changes in those particulars.	No Such Provision
Certification	Certification of Annual Return by a Secretary in Whole-time practice in case of Listed Companies.	This requirement extends to the unlisted companies having PSC of Rs.10 Crs or more or turnover of Rs.50 Crs or more.



Preparation	Earlier Annual return prepared with the details up to the date of the AGM as prescribed under the Companies Act,1956	Now Annual Return has to be prepared with the details as they stood on the close of the financial year under Companies Act,2013.
Extract of AR – part of Board Report	No Such Provision	An extract of Annual Return shall form part of Board's Report.
Penalty for PCS	No Such provision	Fine which shall not be less than Rs.50,000/- but which may extend to Rs.5,00,000/-



Points of View

CAN A WOMAN DIRECTOR ON BOARD HELPS IN BETTER CORPORATE GOVERNANCE?

The Companies Act 2013 has opened the doors for the women towards board in India. The new act has made several significant changes which seek to redefine the board governance in India. Proviso to Section 149(1) stipulates prescribed class or classes of companies to have at least one Woman Director. As per Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 notified by the MCA, every listed company and public companies having paid up share capital of Rs.100 Crore or more should have at least one Woman Director on their Board. It will be also applicable to public companies with a minimum turnover of Rs. 300 Crore.

It paves the way for experienced and exceptionally skilled/talented women candidates on Company Boards. But it also poses challenge for companies to ensure that their Boards have women representatives who are appropriately skilled and experienced to govern the company. It can be argued that the mandate of women on board is gender biased. Selection on the board should be done purely on the basis of merits, and no reservation should be given to gender, regional, or religion background etc. Some times in want of a competent women candidate, companies may have to compromise with a less competitive one. Women are generally considered emotional but in corporate world it is more about diplomacy and being practical in approach; the area where women lacks behind. Woman if married and have kids then she might not be able to manage the affairs of the company, potentially due to other commitments as well, or if participate then do not get herself fully involved.

But if we look at past researches, the story is somewhat different. For example, the 2011 study of Dutch companies by M Luckerath-Rovers of Nyenrode University showed that companies with female directors performed better, financially, than those that did not. The research argues that besides governance roles, Boards are a critical linkage mechanism to the broader environment, and to that extent diversity is important for all four linking features they establish - understanding otherwise illusive information, communicating to the environment, getting commitments of support from key external stakeholders and legitimizing in the eyes of partners and current/future employees. This last feature is a critical one in the Indian context, where firms struggle with the retention of key talent. For companies where women are key customers, a woman board member can bring valuable insight. Women also bring a unique skill set of creative inputs, out-of-the-box thinking, collaboration and more wisdom to the table where ethical issues are concerned. In companies where 30% to 50% of the workforce is female, a woman board member can bring into discussion aspects pertaining to women employees that men can't easily think about. More women in the workplace and on boards will result in a better work-life balance for families overall.

Women generally by being good listeners may encourage participative decision-making. They are known for their patience and perseverance, which is a prerequisite for CSR initiatives as they are sometimes challenging and demand long-drawn action. Women Directors may also add value to human resource policies to ensure gender diversity, work-life balance, and a harassment-free workplace. Appointing a woman in board will help in allowing women to make an impact at Board level by affording them an opportunity they may not otherwise have been afforded. It will also help in increasing the awareness of the benefits of gender diversity on Boards. It will help to improve confidence in women to apply for Board positions. As a result of this amendment in the new Act, women candidates will feel more empowered and strive hard to find a place on Company Boards.

At the face of it, it is a corrective action to bring in the balance in board rooms in terms of gender, talent and skills. It is important for corporate boards to ensure gender diversity, but before that happens, availability of women eligible for board positions needs to be created.

* *Contributed by Dr. Rahul Chandra, Joint Director, Dte. of Academics, ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



PUBLICATIONS RELEASED AT 42ND NATIONAL CONVENTION OF COMPANY SECRETARIES

August 21, 22, 23, 2014

Science city, Kolkata

1. Souvenir released on the occasion
2. Circulars, Notifications, Orders, Amendment Rules under Companies Act, 2013-A Compendium
3. Legal & Professional Writing & Drafting in Plain Language
4. E-Voting (Ready Reckoner)
5. Companies Act, 2013 A ready Referencer (Revised Edition)
6. Board Committees-A Handbook
7. Independent Directors-A Handbook
8. Guidance Note on Annual Return
9. Corporate Social Responsibility-An Engine for Inclusive Growth
10. FAQs on the Companies Act, 2013
11. Challenging Opportunities for Practicing Company Secretaries in Labour Laws
12. Compounding of Contraventions under FEMA
13. Settlement Orders under SEBI Act
14. Listing Agreement Referencer
15. Training Guide

**Circulars, Notifications, Orders, Amendment, Rules
under Companies Act, 2013**
(since last issue of e-CS Nitor)

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 14th August, 2014

G.S.R. 590(E).—In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2014.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Meetings of Board and its Powers) Rules, 2014, -
 - (1) in rule 3, in sub-rule (6), the words and commas “,which shall be in India,” shall be omitted.
 - (2) in rule 4,—
 - (a) in sub-rule (1), for the brackets, figure and word “(1) The”, the word “The” shall be substituted;
 - (b) in clause (iv), for the words “consideration of accounts”, the words “consideration of financial statement including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act” shall be substituted.
 - (3) in rule 15, for sub-rule (3), the following sub-rule shall be substituted, namely:—

“(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,—

 - (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mentioned below -
 - (i) sale, purchase or supply of any goods or materials, directly or through appointment of agent, exceeding ten per cent. of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
 - (ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, exceeding ten per cent. of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
 - (iii) leasing of property of any kind exceeding ten per cent. of the net worth of the company or ten per cent of turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;
 - (iv) availing or rendering of any services, directly or through appointment of agent, exceeding ten per cent of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation.—It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

- (b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of subsection (1) of section 188; or
- (c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one per cent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.- (1) The Turnover or Net Worth referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding Financial year.

(2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:—

- (a) name of the related party ;
- (b) name of the director or key managerial personnel who is related, if any;
- (c) nature of relationship;
- (d) nature, material terms, monetary value and particulars of the contract or arrangement;
- (e) any other information relevant or important for the members to take a decision on the proposed resolution.”

[F. No. 1/32/2013-CL-V-Part]

Sd/-

AMARDEEP SINGH BHATIA, Jt. Secy.

Note : The principal notification was published in the Gazette of India *vide* No. G.S.R. 240(E), dated 31.03.2014 and was amended *vide* notification number G.S.R. 398(E), dated 12.06.2014.

F.No. 17/66/2013/CL-V

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS**

5th Floor, 'A' Wing Shastri Bhawan,
Dr. R.P. Road, New Delhi

Dated: 27th August 2014

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification Accounting Standards (AS) 10 - Capitalization of Cost - regarding.

Sir,

Government has received a number of representations seeking clarifications on capitalization of costs in cases of Competitive Bid power projects. The clarifications sought were with regard to capitalization of borrowing costs incurred during extended delay in commercial production for reasons beyond the developer's control, and whether capitalization of power plant should be unit-wise or project-wise. The matter has been examined in consultation with the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI).

2. Accounting Standards AS-10 and AS-16 prescribe the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed assets which increase the worth of the assets. Cost incurred during the extended delay in commencement of commercial production after the plant is otherwise ready does not increase the worth of fixed assets. Such costs cannot, therefore, be capitalized.

3. Accounting Standard AS 16, inter alia provides guidance with regard to part capitalization where some units of a project are complete. In case one of the units of the project is ready for commercial production and is capable of being used while construction continues for the other units, costs should be capitalized in relation to that part once the part is ready for commercial production.

4. It is further clarified that AS 10 and AS 16 are applicable irrespective of whether the power projects are 'Cost Plus projects' or 'Competitive Bid projects'.

This issues with approval of the competent authority.

Yours faithfully

Sd/-

(S.K Verma)

Assistant Director (Policy)

Ph: 23073067

Copy to:-

1. E-Governance Section and web contents Officer to place this circular on the Ministry website.
2. Guard File.

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II
SECTION 3, SUB-SECTION (i)]**

**Government of India
Ministry of Corporate Affairs**

New Delhi, dated the 29th August, 2014

Notification

G.S.R. _____(E).- In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments further to amend Schedule II of the said Act with effect from the date of publication of this notification in the Official Gazette, namely: -

1. In Schedule II of the Companies Act, 2013,...

(a) in Part 'A', in paragraph 3, for sub-paragraph (i), the following sub-paragraph shall be substituted, namely:-

"(i) The useful life of an asset shall not ordinarily be different from the useful life specified in Part C and the residual value of an asset shall not be more than five per cent, of the original cost of the asset:

Provided that where a company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice";

(b) after Part 'C', under the heading Notes, --

(i) for paragraph 4 the following paragraph shall be substituted namely:-

"4(a) Useful life specified in Part C of the Schedule is for whole of the asset and where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

(b) The requirement under sub-paragraph (a) shall be voluntary in respect of the financial year commencing on or after the 1st April, 2014 and mandatory for financial statements in respect of financial years commencing on or after the 1st April, 2015.

(c) in paragraph 7, in sub-paragraph (b) for the words "shall be recognized", the words "may be recognized" shall be substituted.

File Number 17/60/2012-CL-V

Sd/-

(Amardeep S. Bhatia)

Joint Secretary to the Government of India

Note.- Schedule II of the Companies Act, 2013 came into force with effect from the 1st April, 2014 and was amended (with effect from 1st April, 2014) vide notification number SO 237(E), dated the 31st March, 2014.



Articles / Reviews invited for *e-CS Nitor*

We invite the members to contribute articles/checklist/reviews or any other relevant material pertaining to the Companies Act, 2013 for inclusion in the coming issues of *e-CS nitor* through e-mail at: ecsnitor@icsi.edu. The article should ordinarily have 1500 to 2000 words.

Broad topics for submission of Articles

- Acceptance of Deposits
- Bonus Shares
- Board Disclosures
- Incorporation
- Incorporation conversion
- One Person Company
- Preferential issues
- Rules under Companies Act, 2013
- Resolutions to be filed under Companies Act, 2013
- Shareholders democracy
- Women Director

We invite the members to contribute their "Points of View" on any topic under the Companies Act, 2013 for inclusion in the coming issues of e-CS Nitor at ecsnitor@icsi.edu. It should ordinarily contain around 500 words.



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Over one million companies in the country are custodians of huge resources of the society and public. They drive the growth of the economy. It is, therefore, imperative that their operations should be so carried out that they exist forever to contribute to prosperity of the society and the economy even as they balance the interests of various stakeholders. This requires care for and adherence to law and justice, ethics, compliance, governance, risk management, conflict resolution etc. A Company Secretary, who is a regulated professional, ensures just that.

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Statutory body under an Act of Parliament

Headquarters

ICSI House, 22, Institutional Area, Lodi Road, New Delhi-110003

tel : 011-4534 1000, 4150 4444 fax : +91-11-2462 6727

e-mail : info@icsi.edu website : www.icsi.edu / www.icsi.in