



Company Law Corner

ANNUAL RETURN

Introduction

An Annual Return is a snapshot of vital company information as they stood on the close of the financial year. It is a most significant document for the stakeholders of a company as it provides in a nutshell, very comprehensive information about various aspects of a company. Apart from the Financial Statements, this is the only document to be compulsorily filed with the Registrar every year irrespective of any events / happenings in the company. While the Financial Statements give information on the financial performance of a company, it is the Annual Return which gives extensive disclosure and greater insight into the non-financial matters of the company and the people behind management of the company.

Objective of filing the Annual Return

The basic purpose behind filing of Annual Returns with the Registrar is to provide Annual information in respect of company, promoters, members, meetings, remuneration of directors and key managerial persons etc., to the Registrar of Companies/shareholders/other stakeholders. Filing of Annual returns yearly to the Registrar of Companies is the responsibility of the management of the Company. It helps stakeholders to ensure that the company is administered in a proper way in the interest of its members and creditors.

Contents of Annual Return

In pursuance of Section 92 of the Companies Act, 2013, every company shall prepare an Annual return in e-Form MGT-7 containing the particulars as they stood on the close of the financial year regarding:

- 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 [*Omitted by the Companies (Amendment) Act, 2017 - yet to be notified by Central Government*];
- 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;

In case of Private Company – in Annual return company need to mention "aggregate amount of remuneration drawn by the directors; "Notification dated June 13, 2017 ;

- 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 entage of shareholding held by them - *Omitted by the Companies (Amendment) Act, 2017 - yet to be notified by Central Government*];
- such other matters as may be prescribed.

Further 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 Central Government may prescribe abridged form of Annual Return for one person company, small company and such other class or classes of company as may be prescribed [*Inserted by the Companies (Amendment) Act, 2017 – yet to be notified by Central Government*].

Certification of Annual Return

The Annual Return, filed by a listed company or, by 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 (PCS) and the certificate shall be in Form No. MGT-8 as provided under Section 92 (2) of the Companies Act, 2013 r/w Rule 11(2) of the Companies (Management and Administration) Rules, 2014.

The certificate shall state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Companies Act, 2013.

For the purpose of certification, PCS should carry out a scrutiny of the data available and check the correctness of the same. The PCS should be prudent in understanding the events and its impact and consequences, while certifying the same. For ensuring the correctness of information contained in the Annual Return, the primary source documents should be looked into. While doing the detailed scrutiny, he may rely on certified copies of the resolutions, forms, agreements and also certificates from the management.

If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of Section 92 of the Companies Act, 2013 or the rules made thereunder, he shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to 5 lakh rupees.

Required Documents / Records for Annual Return preparation/certification

- Memorandum and Articles of Association;
- Shareholding pattern and its breakup;
- List of Promoters;
- Statutory Registers
 - Register of Members -MGT-1;

- Register of Debenture-holders and other security holders- MGT-2;
- Foreign Registers of Members / Debenture holder / other security holder;
- Register of Directors and Key Managerial Personnel & their Shareholding;
- Register of loans, guarantee, security and acquisition made by the company- MBP-2;
- Register of Investment not held in its own name by the company-MBP-3;
- Register of Contracts or Arrangements with related party and with bodies corporate etc. in which directors are interested- MBP-4;
- Register of deposit;
- Register of Charge- CHG-7;
- Register of Employee Stock Option-SH-6;
- Register of Buyback -SH-10;
- Register of Sweat Equity shares-SH-3;
- Other Statutory Registers and Records.
- Minutes of the Meetings
 - Board Meeting
 - General Meeting
 - Committee Meeting
 - Class Meeting
 - Creditors Meeting
 - Debenture holders Meeting
 - Court convened Meetings for the purpose of restructuring and amalgamation
- Attendance Registers of all Meetings;
- Forms & receipts filed with the Registrar of Companies;
- Copy of Notices and agenda papers for convening meetings of the Board / Committees / Annual General Meeting/Extraordinary General Meetings/Postal Ballots/Court convened Meetings / Creditors Meetings / Class Meetings/ Debenture holders Meeting;
- Copy of Latest Financial Statements along with the Board's Report and Auditor's Report;
- Shareholder List, details of Share Transfers taken place between close of the previous financial year and close of the financial year to which Annual Return relates, controls of the data as on the date of Annual General Meeting of the company or the beneficial positions as on close of financial year downloaded from the records of the Depository participants by Registrar Transfer Agent (RTA) of the company on record/book closure date prior to AGM;
- Certificate from RTA stating the number of shareholders as on the close of the financial year;
- Indebtedness Certificate;
- Change of name of the company, change in the face value of the shares of the company, new ISIN No. of the company in respect of the allotment or as a result of any change in capital structure due to any corporate action taken by the company during the Financial year;
- Board Resolution for any type of corporate actions taken by the company;
- Corporate Action Forms filed by the company with Depositories;

- Any orders received by the company, Director or officer from Tribunal/court or from any other regulatory body under any act;
- Listing and Trading Approval(s) from Stock Exchanges, Credit Confirmation from Depositories namely NSDL and CDSL respectively/confirmation from both depositories in respect of allotment of equity shares of the company;
- Intimation to Stock Exchanges, Confirmation from National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL) for change of the name of the company, change in the face value of equity shares, change in ISIN of the company and the Scrip Code/Symbol of the company, etc.;
- Other prescribed documents.

Signing of Annual Return

- Under section 92(1) of the Companies Act, 2013, the Annual Return is required to be signed both by a director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in practice.
- In relation to One Person Company, small company and private company which is a start-up, the Annual Return shall be signed by the Company Secretary or where there is no Company Secretary, by the director of the company.

Filing of Annual Return

Section 92 of the Companies Act, 2013 provides that every company shall file with the Registrar a copy of the annual return in Form MGT-7, within 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, with such fees or additional fees as prescribed.

Applicability to Foreign Companies

- According to Section 384(2) of the Companies Act, 2013, the provisions of section 92 shall also apply to a foreign company, subject to such exceptions, modifications and adaptations as may be made therein by rules made under the Companies Act, 2013.
- Rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014 provides that every foreign company shall prepare and file, within a period of 60 days from the last day of its financial year, to the Registrar annual return in Form FC-4 along with fee, containing the particulars as they stood on the close of the financial year.

Attachments to E-form MGT-7

- List of Shareholders/ debenture holders
- Approval letter for extension of AGM (if any)
- Copy of MGT-8 (if applicable)
- Optional Attachments, if any

Placing Annual Return on website [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.

Extract of Annual Return [Rule 12 of the Companies (Management and Administration) Rules, 2014]

- The extract of the annual return is required to be attached with the Board's Report which shall be in Form No. MGT-9.
- However, a company shall not be required to attach the extract of the annual return with the Board's report, in case the web link of such annual return has been disclosed in the Board's report in accordance with Section 92 (3) of the Companies Act, 2013.

Place of keeping and Preservation of Annual Return (Section 94 r/w Rule 15 of the Companies (Management & Administration) Rules, 2014)

- The Company is required to keep and maintain copies of the Annual Return filed under Section 92 of the Companies Act, 2013 at the registered office of the company.
- However, such copies of Annual Return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members resides, if approved by a special resolution passed at a general meeting of the company.
- Copies of all 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.

Inspection of Annual Return (Section 94 r/w Rule 14 of the Companies (Management & Administration) Rules, 2014)

- Copies of Annual returns prepared pursuant to Section 92, shall be open for inspection during business hours, of not less than two hours 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 50 rupees for each inspection.
- Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of return on payment of such fee as may be specified in the articles of association of the company but not exceeding 10 rupees for each page. Such copy of return shall be supplied within 7 days of deposit of such fee.
- The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

Return to be Evidence (Section 95)

Copies of annual returns maintained under Section 94 of the Companies Act, 2013 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under the Companies Act, 2013.

Effect of Non-Filing of Annual Return

According to Section 92(5), if any company fails to file its annual return, before the expiry of specified period, such company and its every officer who is in default shall be liable to a penalty of Rs. 50,000 and in case of continuing failure, with further penalty of Rs.100 for each day during which such failure continues, subject to a maximum of 5 lakh rupees.

Besides the penal provision other effects of non-filing of annual return are:

Other than the penal provisions, the company is prohibited from undertaking certain other actions in case of default in filing of annual return. Such as:

- (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 (Section 70 (2));
- (b) Any 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 not be eligible to be reappointed as a director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do so (Section 164 (2) (a));
- (c) In case of a company which has not filed annual returns for 2 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.(Section 455 (4));
- (d) An application in Form No. STK-2 for removal of name of the company from the register of companies shall not be filed by a company unless it has filed overdue Annual Return in Form No. MGT-7, up to the end of the financial year in which the company ceased to carry its business operations.

Further in case a company intends to file Form No. STK-2 after the action under section 248(1) of the Companies Act, 2013 has been initiated by the Registrar for removal of name of the company, it shall file all pending overdue Annual Returns in Form No. MGT-7 before filing Form No. STK-2.

- (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 shall 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).
- (j) Various exemptions which were given by MCA to Private Companies, Government Companies and Section 8 Companies from complying with various provisions of the Companies Act, 2013, will not be available if the companies have defaulted in filing Annual Return under Section 92 of the Companies Act, 2013.

Relevant case laws pertaining to Annual Return

- 1) In the matter of *Anil kumar Poddar vs. Nessville Trading (P.) Ltd.*, Appellant made an application for inspection of register of members and annual return of respondent company for the years 2009 to 2012. When company failed to provide copies of aforementioned documents, he filed petition for supply of documents.

The Respondent relied upon doctrine of “ejusdem generis” saying the word “any other person” mentioned in Section 163(2) of the erstwhile Companies Act, 1956 is limited to the person holding commercial interest such as creditor, financier, customer etc., because the preceding would the member and debenture holder to this word “any other person” being the persons having interest in the company, then the following word “any other person” cannot be said as extendable to any person who has no interest in the company, normally, a person considered to aggrieved when his interest is affected by the act of somebody else, but whereas this Petitioner has no interest in these companies, therefore, he cannot be called aggrieved to file these company petitions against the Respondent.

The NCLT, Mumbai Bench held that, since petitioner was neither a shareholder, nor debenture holder nor holding commercial interest in respondent company, he was not entitled to seek relief under Section 163 of the erstwhile Companies Act, 1956 regarding supply of copies of documents for inspection

- 2) In the matter of *Suhas Chakma vs. South Asia Human Rights Documentation Centre Pvt. Ltd.*, the contention of the petitioner is that he never executed any instrument of transfer of his shareholdings to the 2nd respondent, and that he came to know that he was not a shareholder of the 1st respondent company by virtue of inspection of the Annual Return and that in relation to the illegal and fraudulent transfer of his shares, he came to know about the same only upon perusal of the Annual Returns.

The NCLT, New Delhi Bench observed that, in view of the wordings used in section 164 of the Companies Act, 1956 (now Section 95 under the Companies Act, 2013) to the effect that registers, returns and documents shall be only prima facie evidence and hence subject to rebuttal, and therefore, cannot be treated as conclusive evidence and in absence of share transfer forms and specified share certificates/letter of allotment in question, transfer of equity shares of Petitioner by Respondents were fraudulent and sham and declare it to be illegal and void.
