



Filing of Documents under Companies Act 2013

CS RISHIKESH VYAS

Pre Certification -

2

Professional
Liability

Avoid
Delays

Reducing
Workload of
ROC

Pre emptive check by
Professionals

Disclosure
based
reporting



History -

3

**Ministry of Department
of Company Affairs vide
No 1/1/90 dated
05/09/1990
Circular No 14/90**

**This was in
reference to
Charges**

**To take on
record within 10
days if certified
by Professionals**

**Ministry of Department
of Company Affairs vide
No 1/3/91 dated
26/02/1991
Circular No 5/91**

All documents

**To take on
record within 10
days if certified
by Professionals**

Parliament
Standing
Committee
1999

Naresh
Chandra
Committee

Companies
Amendment
Bill ,2003

Vital E Forms under Companies Act, 2013

Annual Compliance

6

S.No	Form Name	Purpose	Pvt Co	Public Co	Listed Co
1	MGT 7	Annual Return Section 92(1) of the Companies Act, 2013 and rule 11(1) of the Companies (Management and Administration) Rules, 2014.			
2	AOC 4	Financial Statement and other documents with the Registrar . Section 129(3), 137 of the Companies Act.2013 and Rule 12(1) of the Companies (Accounts) Rules, 2014.			

Annual Compliance

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S.No	Form Name	Purpose	Pvt Co	Public Co	Listed Co
3	MGT 14	Approval of Directors' Report and Annual Statement Section 179(3)(g).	MGT 9 Extract of Annual Return		
4	AOC 1	Statement containing salient features of the financial statement of subsidiaries/associate companies/joint ventures. Pursuant to first proviso to sub-section (3) of section 129 read with rule 5 of Companies (Accounts) Rules, 2014).			

Annual Compliance

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S.No	Form Name	Purpose	Pvt Co	Public Co	Listed Co
5	AOC 2	Information relating to Related Party Transaction clause (h) of sub-section (3) of section 134 of the Act and Rule 8(2) of the Companies (Accounts) Rules, 2014.			

Vital E Forms

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AOC 4 Attachments

- Financial statements duly authenticated as per section 134
- auditors' report
- Board's report
- MGT-9 IF ANY
- Secretarial Audit Report
- Statement of subsidiaries/ Associates/ Joint Ventures as required under section 129 in the format of Form AOC-1
- Company CSR policy
- 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

Some Vital E Forms

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Annual Return Certification under Companies Act, 2013

Annual Return Certification

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- ✓ Annual Return has been an integral part of annual compliances of all companies
- ✓ It used to be prepared as on the date of Annual General Meeting – including all events from the end of financial year till AGM
- ✓ Annual Return Certification was amongst the first exclusive recognitions and area of practice given to PCS.
- ✓ In the era of physical share transfers it was a very big assignment – running into several weeks

Annual Return Certification

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- ✓ PCS was recognised in a BIG way due to Annual Return Certification of Listed Companies
- ✓ Role of PCS in this process was very crucial but there was no mechanism for reporting the non-compliances or irregularities to the regulators
- ✓ Smaller and mid size companies – always gave less importance – compliances were done out of compulsion.
- ✓ Secretarial Compliance Certificate was introduced for mid sized companies for higher compliance level

Annual Return Certification

13

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Legal Provisions

- ▶ **Section 92 of Companies Act, 2013**
- ▶ **Rule 11 & 12 of the Companies (Management and Administration) Rules 2014**
- ▶ **Form MGT 7, MGT 8 and MGT 9 of Companies (Management and Administration) Rules 2014**

Major Changes in Annual Return

- ▶ The position to be given as on which date
- ▶ Signing Requirements
- ▶ Annual Return Extract
- ▶ Contents
- ▶ Penal Provisions

Date -

- ▶ The details to be provided as on Financial Year
- ▶ The details to be given from last financial year end till this financial year end
- ▶ To be filed within 60 days from the date of AGM / Due date. With reasons of not holding AGM, If not held
- ▶ Late fee as per Section 403 of Companies Act, 2013

Signing Requirement

- ▶ **One person Company and Small Company – By CS or Director**
- ▶ **Listed Companies and Other Companies having Paid up 10 Cr or More or having turnover 50 Cr or more – by Director and CS and Certified by PCS**
- ▶ **Other than above Companies - By Director and CS – if no CS then PCS**

ROLE OF PCS

- ▶ **FOR LISTED AND OTHER APPLICABLE COMPANIES**
- ▶ **PCS has to certify the AR prepared in MGT 7 by way of separate certificate in form MGT 8**
- ▶ **Stating that the annual return discloses the facts relating to a company correctly and adequately**
- ▶ **That the company has complied with ALL the provisions of the Companies Act**

Annual Return Extract

- ▶ An extract of the annual return in prescribed form shall form part of the Board's report.
- ▶ Similar Information
 - ▶ To be attached to Board report as per Section 134
 - ▶ All old provisions are there and many new and detailed information and changes during the two financial years is to be included in the new AR in MGT 7
 - ▶ AR has to be filed with 60 days of AGM but the data is as on accounting close

Contents (only changes)

- ▶ AGM extension & Reasons of not holding
- ▶ Name of Police Station under whose jurisdiction the Registered office would be situated
- ▶ Address for correspondence
- ▶ Details of R & T Agent – required for listed companies and for other companies who have got the demat facility signed with the depository
- ▶ Principal Business Activities (above 10% of turnover with NIC)

Contents (only changes)

- ▶ HOLDING, SUBSIDIARY AND ASSOCIATE COMPANIES Names, CIN, Holding %,
- ▶ Authorised, Issued, Subscribed and Paid up Capital – for all these types the details are mandatory
- ▶ Capital – Opening, Increase, decrease and closing for all types
- ▶ Splitting or consolidation during the year
- ▶ Details of other securities than Equity, Preference, Debentures (ADR, GDR etc)

Contents (only changes)

- ▶ **Security Premium account, opening, changes, closing**
- ▶ **Turnover and net-worth as on end of financial year**
- ▶ **Shareholding Pattern showing the promoters, public shareholding, TOP 10 shareholders, directors & KMP**
- ▶ **Indebtedness Opening, Changes and closing (principal, Interest due & Interest accrued but not due)**

Contents (only changes)

- ▶ For companies without share capital the AR is in the same form MGT 7
- ▶ It has to state the total number of members as on DOI (First AR)/ end of previous financial year
- ▶ Number of persons who have become members since DOI (First AR)/ end of previous financial year
- ▶ Number of persons who have ceased to be members since DOI (First AR)/ end of previous financial year
- ▶ Number of members as on the end of the

Contents (only changes)

- **Details of shareholders (Date of becoming member)**
- **Details of transfers: no change**
- **Details of Promoters, Directors & KMPs:**
 - Promoters can be Company / Individuals**
 - Directors – category Promoter (Executive & Non executive), Non Promoter (Executive & Non executive, Independent), Nominee .**
 - No of shares held**

Contents (only changes)

- **Meetings:**

Members – All types of meetings, No of Members entitled to vote, Attendance and % they represent.

Directors meeting: No of Directors on the date of meeting, no of directors present, % of attendance

Committee Meetings: No of Directors on the date of meeting, no of directors present, % of attendance

Director-wise attendance of Directors

Contents (only changes)

- ❖ **Details of Payment of Remuneration:**
- ❖ **Remuneration to Managing Directors, Managers etc**
- ❖ **Remuneration to KMPs**
- ❖ **Comparison of actual and overall ceiling under Act**
- ❖ **Payment to other Directors**

Contents (only changes)

- **PENALTIES / PUNISHMENT/ COMPOUNDING OF OFFENCES**
- **Compliance related matters:**
 1. **Due dates of Compliance / Filing**
 2. **Disclosure regarding:**
 - a. Closure of Register
 - b. Declaration of Dividend
 - c. Delisting of Shares / Securities,
 - d. Change in Nominal Value of Shares

Contents (only changes)

- e. Particulars of inter-corporate loans, investments,
- f. Contracts or arrangements in which directors are interested / related party transactions
- g. Details of resolutions passed by postal ballot

3. Other Disclosures:

- a. CSR
- b. Limits of Sec 186 loan & investment by co.
- c. Limits of Sec 180(1)(c) restrictions on powers of board
- d. Whether Directors have disclosed interest
- e. Whether Independent Director has given Declaration

Contents (only changes)

f. Details of Appointment / Reappointment of Auditors

4. Certifications all Companies:

a. Correct and Adequate Facts have been disclosed

b. Unclaimed / Unpaid Dividend has been transferred to IRPF as per Section 125

c. The Company has maintained all registers

d. Otherwise mentioned in the Return the Company has Complied with Companies Act

Contents (only changes)

5. Additional Certifications for Private Companies:

- a. No public invitation for deposits / shares subscription**
- b. Number of members below 200**
- c. The Company continues to be a private limited Company**

6. Additional Certifications for One Person Company / Small Company:

The Company continues to be one person company / small company.

Penal Provisions

- **Note:**

Attention is also drawn to provisions of Section 448 which provide for punishment for false statement and certification.

- **Section 92:**

Not filed within stipulated time – 50 thousand to 5 lacs, Imprisonment 6 months.

- **PCS penalty -not be less than fifty thousand rupees but which may extend to five lakh rupees**

Role of Professional and role of Professional and responsibility of professional in preparation of Annual Return.

Documents which required to prepare the
Annual Return:

- Memorandum & Article of Association
- Statutory Registers –

Role of Professional and role of Professional and responsibility of professional in preparation of Annual Return.

➤ Statutory Registers –

1. Register of Members
2. Register of Directors
3. Register of Director Shareholding
4. Register of Key Managerial Personnel
5. Register of Related Party Contracts
6. Register of Loan and Investment
7. Register of Charge
8. Register of Securities

Role of Professional and role of Professional and responsibility of professional in preparation of Annual Return.

➤ Minutes of the Meetings

- - Board Meeting
- - General Meeting
- - Committee Meeting
- • Attendance Sheet of the all Meetings
- • Forms & receipts filed with the Registrar of Companies

Role of Professional and role of Professional and responsibility of professional in preparation of Annual Return
✓ **Truthfulness Certificate signed by Company Secretary/ CFO of the Company.**

- ✓ **Latest Audited Financial Statement**
- ✓ **Copy of Notice of Annual General Meeting**
- ✓ **List of Shareholders as on 1st April and 31st March**
- ✓ **List of Share Transfers during the Financial Year.**

Role of Professional and role of Professional and responsibility of professional in preparation of Annual Return

- ✓ Any orders received by the company from the High court or from any other regulatory body

- ✓ List of Promoters

Note -

Except the above mention information, if required professional can take Management Representation letter (MR Letter) from the Company. MR Letter should be suitably drafted.

Note -

1. Company has maintained all the Registers and Records.
2. Company has maintained all the Minutes.
3. Obtain the following Certificate from the Management - Indebtedness of Company - Number of Shareholder along with Shareholding pattern - Transfer and Issue of Shares - No. of Shareholder along with shareholding pattern as on 01.04.2014 & 31.03.2015.

Note -

4. Details of Penalty/ Punishment on Company, Director and Officer.
5. Details of compounding of offence on Company, Director and Officer.
6. Any other things.

Penalty for late filing of E Forms

40

Beware friends!! Don't delay the filing of e-forms under companies act by more than 270 days from the last date of filing the form!!

Penalty for late filing of E Forms

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Section 403: Brief: If a assessee delays filing of e-form by more than 270 days from the time period granted for filing of the respective e-form, then penalty as given in the concerned section will be imposed.

Penalty for late filing of E Forms

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For eg: If the resolution to be attached in MGT-14 is passed on 21.01.2015, then normal time to file the form is 30 days. Penalty will be imposed if the person doesn't file the form within 300 days from 21.01.2015 or if the form is not filed within 270 days from 20.02.2015.

Penalty for late filing of E Forms

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Bare law: Sec 403.

(1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed.

Penalty for late filing of E Forms

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First Proviso

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed.

Penalty for late filing of E Forms

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Second Proviso:-

Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in first proviso on payment of fee and additional fee specified under this section.

Penalty for late filing of E Forms

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(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Penalty for late filing of E Forms

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Event -

Commencement of Business

**Section 11(2) Company – upto Rs.
5,000/-**

Officer – upto Rs. 1,000/- per day

Penalty for late filing of E Forms

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Event -

Return of Allotment

Section 39(5) Company & officer in default: Rs. 1000/- per day or 1 lakh, whichever is less.

Penalty for late filing of E Forms

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Event -

Intimate alteration of Capital Section
64(2)

Company & officer in default: Rs.
1000/- per day or 5 lakh, whichever is
less .

Penalty for late filing of E Forms

50

Event -

Deposits

Section 66(11) Officer will be liable u/s
447 and

company will have to pay from Rs. 5
lakh to 25 lakh.

Penalty for late filing of E Forms

51

Event -

Charges

Section 86

Company: Rs. 1 lakh to 10 lakh

**Officer: Imprisonment upto 6 months
and/or fine of Rs. 25000/- to 1 lakh.**

Penalty for late filing of E Forms

52

Event -

Annual Return

Section 92 (5) Company: Rs. 50,000/- to
5,00,000/-

Officer: Rs. 50,000/- to 5,00,000/-
and/or imprisonment of 6 months.

Penalty for late filing of E Forms

53

Event -

Filing of resolutions

Section 117 (2)

Company: Rs. 5 Lakh to 25 Lakh.

Officer: Rs. 1 Lakh to 5 Lakh.

Penalty for late filing of E Forms

54

Event -

Retirement of Auditor

Section 140(3)

Auditor: Rs. 50,000/- to Rs. 5 Lakh

Penalty for late filing of E Forms

55

Event -

Intimation of DIN

Section 157 (2)

Company: Rs. 25,000/- to Rs. 1 lakh

Officer: Rs. 25,000/- to Rs. 1 lakh -

Penalty for late filing of E Forms

56

Event -

Disclosure of Interest Section 184 (4)

Director: Rs. 50,000/- to Rs. 1 lakh
and/or imprisonment upto 1 year

Officer in Default

57

Section 2(60) of Companies act 2013 defines the Term of Officer in Default.

Officer in Default

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“officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

Officer in Default

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- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

Officer in Default

60

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

Officer in Default

61

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

Officer in Default

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(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

Officer in Default

63

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

4 Punishments which you should no

64

It's very essential to know and learn the sword sections (heavy consequences) in the Act. I had picked 4 such sections ranging from Section 447 to Section 453 in the Companies Act 2013.

Section 447 – Punishment for

65

fraud:

One of the most frequently quoted sections in the 2013 Act is the Section 447 dealing with “Punishment for fraud”. The term fraud is a commonly used one, but the new law for company has a clear explanation for the term “fraud”, which is explained below:

Section 447 – Punishment for fraud:

66

“fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.”

Section 447 – Punishment for

67

Thus, as per Section 447, 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.

Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Section 448 – Punishment for false statement:

68

This section corresponds Section 628 of the 1956 Act, and one of the very important provision for the practising professionals like CA, CS and CMAs who do pre-certification work and attestation / audit assignments.

Section 448 – Punishment for false statement:

69

Section 448 says that, 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 2013 Act or the rules made there under, 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, the, such person be liable under section 447.

Section 448 – Punishment for false statement:

70

Thus every professional who gives / signs / attests / certifies a return, report, certificate, financial statement etc. under the 2013 Act will be punishable u/s.447 if the criteria stated in Section 448 are attracted.

Section 449 – Punishment for false evidence:

71

This section corresponds Section 629 of the 1956 Act, and one of the very important section for individuals giving an evidence under the 2013 Act.

Section 449 – Punishment for false evidence:

Section 449 states that, if any person intentionally gives false evidence— (a) upon any examination on oath or solemn affirmation, authorised under this Act; or (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees -

Section 450 – Punishment where no specific penalty or punishment is provided:

You may find many Sections in the 2013 Act, where there is no specific penalty or punishment are stated. It's not happy news, as far as you come to know about Section 450, which specifies penalty or punishment in such cases. This section corresponds Section 629A of the 1956 Act.

Section 450 – Punishment where no specific penalty or punishment is provided:

According to Section 450, if a company or any officer of a company or any other person contravenes any of the provisions of 2013 Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day (*penalty doubled from 1956 Act) after the first during which the contravention continues. -

Section 450 – Punishment where no specific penalty or punishment is provided:

According to Section 450, if a company or any officer of a company or any other person contravenes any of the provisions of 2013 Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day (*penalty doubled from 1956 Act) after the first during which the contravention continues.

Thank You
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