

Secretarial Standards are two eyes to guide signing or certifying of annual return

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It is the requirement of every company registered under the Companies Act to file two important returns with the Registrar of Companies (ROC). They are the (a) annual report including financial statement, director's report with annexures, and (b) annual return. The annual return is the single document which contains the information of the company as on the closure of the financial year. It includes both the financial and non-financial information and is available for anyone from the website of Ministry of Corporate Affairs.



The annual return of the company (MGT-7) contains information relating to source of finance of the company such as change of capital structure, total borrowings by way of debentures or any other source, deposits, turnover, net worth of the company, and non-financial information such as composition of its Board of directors, any change in the composition, number of Board and committee meetings, and the meetings of the members of the company held during the financial year, details of promoters, details of transfer of shares, remuneration to directors and other KMP of the company. Besides, an annual return also contains several disclosures and certification.

Salient features of new annual return format and certification

The Companies Act, 2013 (the Act) has added a few items in the new annual return format MGT-7 from the old format. The Act also requires that an extract of annual return in format MGT-9 is to be annexed with the directors' report. The particulars that are to be included in the annual return are as on the date of closure of financial year which is the deviation from the earlier, as on the date of annual general meeting.

Signing of annual return has also undergone a change and every annual return shall be signed by a director and by an employed company secretary (CS) and where there is no employed CS, by a practising CS, except in the case of small and one person company. In the case of small company and

one person company, the annual return has to be signed by only CS and if there is no CS then by a director of the company.

The Act has also simultaneously introduced a separate form, MGT-8, for certification by a practising CS. The important change is that the certification of annual return of companies is further extended to unlisted public companies having paid up share capital of rupees ten crore or more or having a turnover of rupees fifty crore or more besides that of listed companies.

The role and responsibility of both the employed CS and practising CS are enormous and every care has to be taken while affixing the signature of CS in the annual return.

Role of company secretary

The Act has, for the first time, recognised the importance of practising CS both for certification as well as signing of the annual return. The annual return at its first place has to be signed by an employed CS of such company and where there is no employed CS in that company by a practising CS.

The annual return of one person company and small company has to be signed by a single person by the employed CS if, there is one or by a director. Thus, an annual return of every company has to have the signature of a CS in one form or another.

The CS, while signing the annual return in MGT-7, certifies that:

1. The annual return states the facts, as they stood on the date of the closure of the financial year correctly and adequately;
2. Unless otherwise expressly stated to the contrary elsewhere in the return, the company has complied with the applicable provisions of the Act during the financial year.

Besides the above certification, the CS has to declare that:

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

The certification of a practising CS in MGT-8 starts with the examination of registers, records and books and papers of the company. He has to certify that:

1. The annual return states the facts as at the close of the said financial year correctly and adequately; and
2. Compliance of certain specified provisions of the Act and different Rules made thereunder.

Hence, we can conclude that a company secretary is playing a very significant role in annual filing of a company by giving certification to the correctness of the details provided by the company, which means that any non-compliance on the part of the company shall also press the trigger on to the company secretary as he is giving the certifications in MGT-7 and MGT-8. Therefore, they should diligently look into the affairs of the company before certifying the annual return.

Introduction of Secretarial Standards

The Act also recognised and introduced that “every company shall observe Secretarial Standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.”

The compliance of Secretarial Standards is exempted for one person company, where there is only one director on the Board of directors. The Central Government, by notification exempted Section 8 companies from the compliance of Secretarial Standards.

Compliance of the provisions of the Act, its rules framed thereunder with schedules attached thereto gives scope of different interpretations. The Ministry of Corporate Affairs (MCA) also, from time to time, issues notifications, orders and circulars to simplify or clarify several issues and to ease from different interpretations leading to divergent views in compliance. The compliance of the Act is the responsibility of the Board of directors and they are professionally assisted by company secretaries to ensure proper, timely and adequate compliance. The company secretary being the compliance officer of the company plays a vital role to ensure compliance. Besides, the forms prescribed under the Act provide various dimensions for filling and filing with MCA. The forms and returns filed with MCA also require pre-certification by professionals and there arise different interpretations for proper compliance. The Secretarial Standards address

the divergent secretarial practices and bring into proper integration, harmonisation and standardisation of divergent secretarial practices.

Particulars of annual return

The annual return requires several information which are broadly classified into:

- A) Meetings of directors and shareholders;
- B) Shareholding pattern;
- C) Borrowings;
- D) Directors, promoters, key managerial personnel and their remuneration;
- E) Particulars about the company, its principal business activities;
- F) Penalties, disclosure and certification.

Both the Secretarial Standards cover the complete information on meetings of directors and shareholders. Secretarial Standards on Board meetings guide the CS in employment as well as in practice about compliance and best practice relating to issue of notice, agenda and background papers, frequency of meetings, attendance, quorum, video conference meetings, circular resolution, contents, recording and maintenance of minutes and signing of minutes and so on. Secretarial Standards on general meetings further extend to guide on proxies, voting both in electronic mode and physical mode etc. Both the Secretarial Standards set a timeframe for dispatch of notice, agenda, entry of proceedings of meeting in minutes book, and signing of final minutes.

All other particulars in the annual return as classified above, such as capital, borrowings, constitution of directors, key managerial personnel are based on the decision and recording of minutes both in the directors' and shareholders' meetings. In short, almost all corporate actions are based on the decisions taken at both the meetings. Hence, the compliance of Secretarial Standards in an efficient manner also becomes important so that we can maintain all the evidences while certifying the annual return.

The maintenance of registers and records are based on the conclusion of both the meetings. Similarly, the filling and filing of forms and returns except a few are also based on the decisions arrived at the said meetings. Overall, the entire corporate actions are ably supported by the decisions arrived at the meetings for which proper recordings are necessary which are

evidence before the courts of law. Both the Secretarial Standards guide the CS professionals to properly address all the issues and to ably comply with the Acts and Rules made thereunder in letter and spirit.

Responsibility of CS professionals

The signing of the annual return shall be based on the original records maintained by a company. Based on maintenance of such records, the particulars of annual return have to be filled in and the facts stated. It is also a confirmation about the compliance of applicable provisions of the Act during the financial year.

The practising CS have to examine the registers, records, books and papers which are in original before certifying the annual return.

The annual return and furthermore its certification have put an endless responsibility on the company secretary. Now the liability of the company secretary and the company are parallel. Wherever the liability arises on the head of the company the question on the certification of the company secretary about the affairs of the company will also arise. Therefore, this situation demands more vigilance and focus of the company secretary into the affairs of the company.

Both the Secretarial Standards guide the CS profession and the corporate management for several issues which are not covered in the Act and Rules which are otherwise very important for ensuring proper compliance. Some of them are:

- 1) Issue of notice convening Board meetings even to a company having only two shareholders;
- 2) Proper maintenance of proof of despatch/ delivery of notices;
- 3) Attendance of directors;
- 4) Passing of proper resolution by circulation by directors;
- 5) Evidence of minutes by providing serial number for each and every meeting and agenda;
- 6) Defining certain words which are not otherwise defined in the Act like calendar year, original director;
- 7) Authority to convene meetings;
- 8) To mention concluding time of the meeting and the date of entry of proceedings of meeting in the minutes book;

- 9) To circulate draft minutes of the meetings of Board and committee to all the members of the Board and committee within 15 days of the meeting for their comments; and so on.

Certification of annual return in itself accounts for a huge responsibility on the part of the company secretary as there is interest of the all the stakeholders in the annual return and a single misstatement in the return may attract a huge liability on the part of the company and simultaneously on the part of the company secretary whether in employment and/or in practice.

Conclusion

The signing or certifying of annual return in MGT-7 is very time consuming and needs a lot of attention. MCA has come out with modifications on MGT-7 at least three times in a span of a few months for which it has time and again extended the filing of annual return without payment of additional fees. The responsibility of the CS professionals has increased to a greater extent. The signing or certifying of annual return needs to be verified from the original records.

Secretarial Standards broadly cover all the issues which are to be dealt with at any meeting of directors and shareholders including serving of notices, proof of despatch/ delivery, preparation and circulation of draft minutes, signing of minutes and so on. It also covers the providing of serial number for each and every meeting so as to be evidence.

Secretarial Standards guide every company secretary in employment or in practice to a greater extent for proper compliance on meetings of directors and shareholders. More particularly, smaller companies which do not prepare proper notices for Board meetings necessarily have to comply with in accordance to the Secretarial Standards which would safeguard the CS professionals while signing or certifying of annual return.

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Secretarial Standards guide every company secretary in employment or in practice towards proper compliance on meetings of directors and shareholders.