

SES View on Non-disclosure of relevant extract of Annual Return / Annual Return

SES Proxy Advisory Guideline Note: #2/2021

Brief Background:

Until [Companies \(Management and Administration\) Amendment Rules, 2021](#) came into force under existing provisions of Section 134 & Section 92 of the Companies Act 2013 (Act 2013) and Rules made thereunder, companies were required to disclose to information in Form MGT-9 (Extract of Annual Return) with their Board's Report.

However, the Companies (Management and Administration) Amendment Rules, 2021, in order to do away with repetition have done away with the requirement of disclosure of extract of annual return by way of Form MGT-9 altogether, as it is deemed that a copy of annual return is sufficient enough.

Issue:

- The Annual Returns are filed after completion of AGM. As a result, the information is not available to shareholder and it is not in public domain.
- As a result, information in Annual return filed becomes dated and of limited use to shareholders
- The Companies are not disclosing Annual Return of the relevant FY with their Board's Report. Information in Annual Return is one year prior to the that of the Board's Report.
- For instance, Board Report of FY 2019-20 contains web-link of Annual Return of FY 2018-19, as a result the information in Board's Report and Annual Return are not comparable.

Hence, shareholders are deprived of relevant information, defeating the very objective of the law.

Law:

Section 92 of the Act 2013 inter alia mandates as follows:

*“(1) Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars **as they stood on the close of the financial year** regarding-*

.....

*(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.**”*

*(4) 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**.....*

Further, Section 134 pertaining to Board's Report states that:

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

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed.

Relevant provision under Companies Act, 1956 (understanding the background)

159. Annual Return to be made by Company having a Share Capital

*(1) Every company having a share capital shall, within **sixty days from the day on which each of the annual general meetings** referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, **as they stood on that day**, regarding –*

(a) its registered office,

(b) the register of its members,

.....

Stakeholders Empowerment Services

Registered Office: Flat No. 109, 1st Floor, Shyam Baba House, Upper Govind Nagar, Malad (East), Mumbai 400097.
Ph: +91 22 4022 0322 | Email: info@sesgovernance.com | Website: www.sesgovernance.com
CIN: U74120MH2012NPL232154 | SEBI Registration Number: INH000000016 (Proxy Adviser)

Interpretation of Law:

Date of filing Annual Return with Registrar:

Annual Return under the provisions of the erstwhile Companies Act, 1956 (CA 1956) contained information as on the date of AGM, therefore, its filing with the Registrar was mandated within 60 days from the date of AGM.

In the present legal framework of Act 2013, Annual Return contains information as on the date of the end of the relevant financial year, however, filing date still remains from AGM. Ideally, date of filing Annual Return should also have been 60 days from the end of FY, as there is no point waiting till AGM in the present legal framework.

Legislations	Content of Annual Return	Filing of Annual Return
CA 1956	Till date of AGM	60 days from AGM date
CA 2013	Till end of financial year	60 days from AGM date

Therefore, not updating the date of filing appears to be an unintended omission, which according to SES must be addressed by MCA.

Disclosure of relevant Annual Return in Board's Report:

Reading the provisions under section 92 & 134 of the Companies Act 2013, it is clear that:

- Annual Return contains information as on end of the relevant FY.
- While, approving the Board's Report, weblink of the annual return has to be furnished.

Most companies have interpreted the legislation about the weblink of Annual Return to be given in Boards Report as weblink of Annual return already filed. As a result, Board's Report of FY 2020-21 gives link of Annual Return filed in 2019-20, which is dated information and does not serve any purpose. The question is whether the law intended that the Board's Report of FY 2019-20 contain web-link of Annual Return of FY 2018-19?

SES is of the opinion that such interpretation of law is not only erroneous but also erodes the confidence and gives rise to question as to whether demand for ease of business was intended to shut information?

Content of the Board's Report and Annual Return must be in consonance since both are part of the same document and the objective is to provide information to shareholders. **No interpretation of law can be made in such a manner which defeats its basic objective.**

Information contained in MGT-9 was vital from shareholders decision making point of view, in absence of MGT 9, shareholders would not have information on:

- Particulars of Holding, Subsidiary and Associate Companies (Including Joint Ventures) at a single place;
- Changes to shareholding pattern during the financial year;
- Details of Directors and KMPs including their shareholding in the Company;
- Remuneration details of Directors and KMPs;
- Penalty and Punishments imposed on Company / Directors; etc

Therefore, if the Company wants to take advantage of ease of business, the Company must disclose the Annual Return prior to the AGM or continue to disclose MGT 9. There will not be any extra burden on companies as, the contents of Annual Return are frozen as on the end of the relevant FY and are part of Boards Report, which is part of Annual Report.

Conclusion:

SES is of the view that due to erroneous interpretation, the mission of ease of business in this case has been at the cost of stakeholder transparency wherein shareholders have become the ultimate losers.

According to SES, substance must always take priority over the form and in the present case, information of the Annual Return must be in consonance with that of the Board's Report. Not providing the same may deprive shareholders of relevant information.

SES Policy: in view of foregoing, SES as a policy would take a negative view in case Annual Return or MGT 9 information of relevant FY is not given in public domain at least 21 days prior to AGM. As a result, SES voting advisory on resolutions, which rely on information of Form MGT 9 / MGT-7 will be severely impacted.

Effective Date: For AGMs to be conducted for FY 2020-21 onwards

Circulation: All Listed Companies in SES coverage and all SES clients & MCA and SEBI.