PART M	ANNUAL RETURNS AND FINANCIAL REPORTING

1. Decoupling of Financial Statements and Annual Return – What are the time frame for filing of Financial Statements and Annual Returns?

Answer:

The Companies Act 2016 de-couples the filing requirements of audited financial statements and Annual Returns.

The audited financial statements are required to be lodged with SSM as follows:

(a) In the case of private companies, within 30 days after the audited financial statements have been circulated to members; and

(b) In the case of public companies, within 30 days after the audited financial statements have been tabled at the AGM.

The Annual Returns are required to be lodged with SSM within 30 days of the anniversary of a company's incorporation date.

2. What is the procedure for filing of past financial statements to the Registrar? *(updated on 13 July 2017)*

Answer:

Lodgement of multiple sets of audited financial statements

There are situations where companies failed to lodge their financial statements (FS) for past years to the Registrar and these companies intend to lodge these FS pursuant to the Companies Act 2016. For purpose of illustrations below, FS for past years means on lodgement date, the lodgement of FS has exceeded the time allowed to lodge with the Registrar.

The lodgement may be accepted subject to compliance with the following guidelines:

(A) For private companies–

FS for past years where on lodgement date, the lodgement has exceeded the time allowed to lodge with the Registrar as prescribed under section 165(4) of the Companies Act 1965 [CA 1965] or section 259 of the Companies Act 2016 [CA 2016].

If a company has not sent and/or tabled its FS at its AGM prior to 31 January 2017, then the company may circulate these FS to members in the manner as prescribed under section 257 and 259 of the Companies Act 2016 and lodge the FS with the Registrar within 30 days from the date of circulation.

The lodgement need not be accompanied by FS of the current financial year for the purpose of lodgement of FS for past years. However, if the FS of current financial year is available for lodgement, the FS for past years may be lodged together with the FS of current financial year.

Illustration I:

XYZ Sdn Bhd has not been holding its AGM in calendar years 2015 and 2016. Its financial year end is 31 December.

On 30 June 2017, XYZ Sdn Bhd circulated the following:

(a) audited FS for financial year ending 31 December 2014;
(b) audited FS for financial year ending 31 December 2015;
(c) audited FS for financial year ending 31 December 2016.

XYZ Sdn Bhd is required to lodge its FS for 2014, 2015 and 2016 within 30 days from circulation date in compliance with section 259 of the CA 2016.

Illustration II:

OPP Sdn Bhd has not been holding its AGM in calendar years 2014, 2015 and 2016. Its financial year end is 31 May.

On 30 June 2017, OPP Sdn Bhd circulated the following:

(a) audited FS for financial year ending 31 May 2014
(b) audited FS for financial year ending 31 May 2015
(c) audited FS for financial year ending 31 May 2016.

On 30 November 2017, OPP Sdn Bhd circulated the audited FS for financial year ending 31 May 2017.

OPP Sdn Bhd is required to lodge its FS for 2014, 2015, 2016 and 2017 within 30 days from circulation date in compliance with section 259 of the CA 2016. Hence there will be 2 lodgements of FS with the Registrar in 2017, namely before 30 July 2017 and 30 December 2017 due to the company circulating the FS twice in 2017.

(B) For public companies–

FS for past years where on lodgement date, the lodgement has exceeded the time allowed to lodge with the Registrar as prescribed under section 165(4) of the Companies Act 1965 or section 259 of the Companies Act 2016.

If a company has not sent/tabled its FS at its AGM prior to 31 January 2017, then the company may circulate and table these FS to members in the manner as prescribed under section 257 and 258 of the Companies Act 2016 and lodge the FS with the Registrar within 30 days from the date of its annual general meeting.

However, for the purpose of lodgement of FS for past years, the lodgement need not be accompanied by FS of the current financial year.

Illustration III:

ABC Bhd has not been holding its AGM in calendar years 2015 and 2016. Its financial year end is 31 December.

On 30 June 2017, ABC Bhd tabled the following FS at its AGM:

(a) audited FS for financial year ending 31 December 2014;
(b) audited FS for financial year ending 31 December 2015;
(c) audited FS for financial year ending 31 December 2016.

ABC Bhd is required to lodge its FS for 2014, 2015 and 2016 within 30 days from AGM date in compliance with section 259 of the CA 2016.

Illustration IV:

DEF Bhd has not been holding its AGM in calendar years 2014, 2015 and 2016. Its financial year end is 31 May.

On 30 November 2017, DEF Bhd tabled the following FS at its AGM:

(a) audited FS for financial year ending 31 May 2014.
(b) audited FS for financial year ending 31 May 2015.
(c) audited FS for financial year ending 31 May 2016.

However, DEF Bhd did not table the audited FS for financial year ending 31 May 2017 as it was not ready for tabling on AGM date.

DEF Bhd is required to lodge its FS for 2014, 2015 and 2016 within 30 days from AGM date in compliance with section 259 of the CA 2016.

(C) For public and private companies–

i. Where FS was sent out on a date which is on or before 30 January 2017 and AGM was held on or after 31 January 2017.

The company is required to comply with the provisions of the CA 1965 for lodgement of FS purposes even though the FS was lodged with the Registrar on or after 31 January 2017.

Illustration V:

GH Sdn Bhd has not been holding its AGM in calendar years 2015 and 2016. Its financial year end is 30 September.

On 30 January 2017, GH Sdn Bhd sent out the following FS:

(a) audited FS for financial year ending 30 Sept 2014.
(b) audited FS for financial year ending 30 Sept 2015.
(c) audited FS for financial year ending 30 Sept 2016.

AGM is held on 28 February 2017.

GH Sdn Bhd is required to lodge its FS for 2014, 2015 and 2016 within one month from AGM date in compliance with section 165 of the CA 1965.

ii. **Where circulation of FS or holding of AGM (where applicable) is carried out on or after 31 January 2017.**

The company is required to comply with the provisions of the CA 2016 for lodgement of FS purposes.

iii. **Where FS was sent and holding of AGM was carried out on or before 30 January 2017.**

The company is required to comply with the provisions of the CA 1965 for lodgement of FS even though the FS was lodged with the Registrar on or after 31 January 2017.

3. Under section 68(6) of the Companies Act 2016, the company is allowed to lodge a statement stating that there is no change in any of the matters stated from previous years. Is this a substitution to the company's annual return for that particular year?

Answer:

The statement issued under section 68(6) of the Companies Act 2016 means that there is no change to the matters required to be disclosed under section 68(3). The statement itself, which is signed by the director or company secretary, is sufficient as a substitute for the annual return for that particular year.

4. With the new format of the Annual Return, is it possible for an existing company to submit an unchanged Annual Return for the first Annual Return due to be lodged? *(updated on 13 July 2017)*

Answer:

No, it is not possible as the format has changed from the Annual Return in the 1965 Act. Therefore, all companies are required to lodge the Annual Return for the first time it is due under the 2016 Act.

5. What is meant by "financial records" under section 68?

Answer:

For the purposes of section 68, "financial records" refers to any financial statements of the company.

6. For change of business during the financial year. Any rules that company need to comply with before the change? I believe shareholders resolution is needed. Any forms need to be filed with SSM?

Answer:

A company must notify any change of the nature of its business within fourteen (14) days after such change.