

Compliances for a Private Limited Company for FY 2020-21

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In brief

Compliances has always been an integral part of operating a Company. But now, in this 21st century and new era of technology and increasing number of frauds it has become mandatory for the Government to ensure good governance for betterment and safety of the stakeholders.

Since inception, there were always been a lot of Compliance requirements for a Public Limited Company but now it is no less for a Private Limited Company.

In detail

Definition of Private Company-

As per the Companies Act, 2013:
Section 2(68) - Private Company

The "private company" means a company which by its articles:

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred;

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

ANNUAL COMPLIANCES

1. Board Meeting

1st meeting- Within Thirty days from the date of its Incorporation.

Thereafter, hold at least be 4 board meetings in a calendar year

Gap - Not more than 120 days between two consecutive meetings

Notice – At least 7 days clear notice to every director at his address registered

For urgent business Meeting can be called at shorter notice - at least one independent director shall be present at the meeting (if any)

In case of absence of independent directors from

such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

2. Annual General Meeting (AGM)

This is a shareholders meeting that needs to be held every year and a gap of not more than 15 months should exist between two AGMs. Approval of financial statements, declaration of dividends, appointment of auditors, etc. is the primary agenda for this meeting. AGM needs to be held in the city where the registered office of the company is situated.

3. Appointment of the Auditor (Form ADT-1)

The Board shall appoint the First Auditor within 30 days of incorporation and such auditor shall hold office till the conclusion of the first annual general meeting. And thereafter the auditor will be appointed for five years and the appointment must be filed using Form ADT-1.

4. Director Disclosure

All the directors of the Company are required to fill the form MBP-1 to disclose their interest in any other entities. Such disclosure is required to be made every year in the first Board Meeting or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

5. Filing of Annual Returns (Form MGT-7)

Every Company has to prepare an Annual Return and file Form MGT-7 within 60 days from the date of conducting Annual General Meeting. It should contain the following information:

- Details of the meeting (Board meeting or members meeting)
- Registered office and principal place of business along with other holdings and associate companies
- Debenture holders / members including changes, if any
- Key managerial personnel, Directors and Promoters (mention the changes made)

- Remuneration of Directors and Key managerial personnel
- Details of the legal matters that the company is involved in
- Penalty and fine imposed on the company
- Shareholding pattern
- Debentures, shares and other securities
- Liability or indebtedness
- Certification of compliance matters, and other important matters.

The matter that is filed before the RoC are those which will be open for public inspection in case of any dispute or any matter arising thereof.

Non-filing - In case of default in filing the annual return, fine of Rs. 100 will be imposed per day for default.

6. Filing of Financial Statement (Form Aoc-4)

Financial statement is a mode of Communication between the Stakeholders and the Board of Directors to inform them about their investment and a disclosure of all the financial transactions done. It is compulsory to file Form AOC-4 within 30 days from the date of the Annual General Meeting. It should include the following:

- Details of the particulars on the Balance sheet. Balance sheet should be disclosed
- Details of the Profit and Loss account
- Details of the Corporate Social Responsibility
- All the Related Party Transactions that the company have entered into.
- The audit report and any other miscellaneous

transaction (directors report and secretarial audit)

- Statutory Audit of Accounts, and other mandatory disclosures.

Companies must prepare their accounts and get them audited by a Chartered Accountant at the end of the Financial year. Audit reports and financial statements should be filed with the Registrar.

Furthermore, following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in

e-form AOC-4 XBRL –

1. Companies having PUSC of Rs. 5 Cr or above
2. Companies having turnover of Rs. 100 cr. Or above
3. All companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

7. DIR-3 KYC WEB

E-Form DIR-3 KYC is to be filed by an individual who holds DIN (every director) and is filing his KYC details for the first time or by the DIN holder who has already filed his KYC once in e form DIR-3 KYC but wants to update his details.

Web service DIR-3-KYC-WEB is to be used by the DIN holder who has submitted DIR-3 KYC e-form in the previous financial year and no update is required in his details.

Due date – On or before 30th, September of immediate next financial year.

8. Maintenance of Statutory Registers

Statutory registers are the records of the company.

For example: Minutes are the summary of all the happening and incidents that took place in the Board room. Hence, they should be taken good care of.

Maintaining statutory registers, Minutes of Board Meeting books, Minutes of AGM books, creditors meeting, debenture holder meetings etc. is the duty by law and responsibility of the company to ensure good governance.

COMPLIANCES BASED ON APPLICABILITY

9. Form - MSME

All companies, who procure supplies of goods or services from micro and small enterprises and who have outstanding payments to micro and small enterprise suppliers exceeding 45 days from the **date of acceptance** or the **date of deemed acceptance** of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006, shall submit a half yearly return to the MCA stating the following:

- (a) The amount of payment due; and
- (b) The reasons of the delay;

Due date –

1. For Half year period 'April to September' – 31st October
2. For half year period 'October to March' – 30th April

10. Deposits related Compliances

Every Company other than a Government Company shall file a Return of Deposit or Particulars of Transaction not considered as Deposit or both basis the information contained in its Audited financials as on 31st March, of previous financial year.

Due date – on or before the 30th day of June, of every year. This return will contain details of all outstanding receipt of money or loan by the Company from any entity/ individual as on 31st March, irrespective of the fact whether the same was received before / after period 01st April, 2014.

Auditors Certificate

The Statutory Auditor of the Company has to certify the information relating outstanding receipt of money or loan being filled in the Form is true & correct.

11. Appointment of Company secretary

A Private Limited company having paid up share capital of Rs 10 Cr. or more shall appoint Whole time Company secretary. The form for appointment of Company secretary is DIR-12.

EVENT BASED COMPLIANCES

Below mentioned compliances are triggered based on happening of certain events. There are different annual compliance requirements of a company that arise only when a certain event occurs. In such an occurrence, the company is required to file its ROC return and inform the ROC about such an event. These event-based

compliances of a Private Limited Company include:

Event	Required Form
Change in Directors or KMP	DIR-12
Increase in Authorized Share capital	SH-7
Increase in Paid up share capital (Issue of security)	PAS-3
Change in registered office	INC-22
Change in secured borrowing (Creation, modification and satisfaction of charge)	CHG-1/CHG-4
Change of name of company	INC-24
Filing of resolution and agreements	MGT-14
Change in Significant Beneficial Owner (SBO) under SBO Rules, 2019	Form BEN-2

It doesn't end here! If a company has some extra ordinary event through the year then all those compliances which are attracted needs to be followed.

Apart from MCA Mandatory, event based and non-Mandatory compliances, few other compliances are also required to be complied.

NON - COMPLIANCE WITH ANNUAL COMPLIANCE REQUIREMENTS

When a Private Limited Company fails to adhere to these compliance requirements, the company is penalized by the MCA for every day for which the default

continues. In case of repetitive or consecutive defaults by the company, the MCA can strike off the name of the company from its database and penalize its directors and may initiate legal action.

COMPLIANCES APART FROM COMPANY LAW

- TDS/TCS payment
- GST payment and GST filing
- Other payments of periodic dues
- Filing of quarterly TDS returns
- Advance tax payment
- Filing of IT returns
- Filing of tax audit reports
- Tax audits, and other applicable.

So now you know there are a lot of legal work that has to be done if you're interested in starting your Startup as a private company or in case if you already are one. As MCA doesn't go easy on Private companies as well. We would be happy to help you in these compliances.

Non-compliance with these requirements attracts heavy penalties which in turn becomes an unforeseen expenditure for startups. Instead plan your annual compliance with an expert and safeguard your business for the undue risk.



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