MCA: 2014

April 7, 2014

Dear Shri Naved Masood,

Sub.: Rules under Sec. 203 (1) of Companies Act, 2013

This is further to our representation dated April 2, 2014 and the discussions the Institute had with MCA officers and with the Hon’ble Minister, thereafter on the above subject.

2. We reiterate that the law requires certain functions to be performed by a company secretary. These include reporting to the board about compliances with all applicable laws, ensuring compliance with secretarial standards, and assisting the board in governance. However, the rules have exempted private companies, which constitute 93% of all companies, from having company secretaries. These have also exempted public companies with paid up capital less than Rs.10 crore and thereby another 5% plus companies from having company secretaries. As a consequence more than 99% of companies are not required to have company secretaries. This means that these functions are not required to be performed by more than 99% of the companies which can’t be the legislative intention. Compliance and Governance norms have to be followed by every company, private or public.

3. The draft rules provided that every company having a paid up share capital of Rs.5 crore or more shall have whole-time key managerial personnel, including company secretary. This did not make any distinction between a public company and a private company. However, the rules now notified have exempted all private companies and public companies of upto Rs. 10 crore from having a company secretary. This is drastically different from that in draft rules. Such a major change could have gone through the public consultation. No consultation on such major change, that is, to exclude additional 93% of the companies from the purview of law, has rendered public consultation meaningless.

4. During the meeting with MCA officers, a view was expressed that it is legally difficult to provide for company secretary in private companies in view of provisions in section 203 of the Act. However, ICSI does not share this view. If it was possible in the draft rules, it is possible in final rules. It has been explained earlier, there can be different thresholds for companies to have different kinds of KMPs based on the rationale for the same. While certain companies may be required to have all three kinds of KMPs, certain others can be required to have two kinds of KMP and certain others to have only one kind of KMP. Section 203 needs to be read with section 205.

5. If MCA strongly feels that there is constraint in view of definition of KMP, it may exercise its powers under Section 470 of the Companies Act, 2013 to remove any difficulties which may arise in giving effect to the provisions of the Act for allowing company secretaries to be appointed under section 203 for all companies.
6. We shall be happy to provide any further information or clarification that may be desired in this regard.

With regards,

Yours sincerely,

(CS R. Sridharan)

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Shastri Bhawan,  
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CC : a) Shri M.J. Joseph, Addl. Secretary, Ministry of Corporate Affairs  
b) Ms. Renuka Kumar, IAS, Joint Secretary, Ministry of Corporate Affairs