



S R. Sridharan
PRESIDENT

MCA: 2014

April 11, 2014

Dear *Sh. Naved Masood,*

Sub.: Pre-certification of e-forms under the Companies Act, 2013

This is further to our representations dated April 2, April 4, and April 7, 2014 seeking restoration of pre-certification of e-forms and providing the rationale for the same.

2. Ministry has come up with various measures from time to time to improve its services to various stakeholders. It has in the last decade, in particular, leveraged technology with the introduction of MCA 21 and used regulated professionals extensively to share the responsibility through precertification of various e-forms. This has reduced the burden on Ministry officials who are too few to administer the Companies Act for over one million companies, while improving integrity of business operations, compliance, governance and making available quick and accurate information. This has also ensured availability of prompt and accurate information for the benefit of all stakeholders.

3. Let me provide a brief genesis of pre-certification for better appreciation of facts. The precertification was introduced after detailed deliberations and this has been refined over time. It was introduced Vide circular No.14 of 1990 dated September 5, 1990 read with circular No.5 of 1991 dated February 26, 1991, in relation to documents relating to registration of charges with a view to avoid delays in registration of charges.

4. The push came from the **Department Related Parliamentary Standing Committee, which examined the Companies (Second Amendment) Bill, 1999**. While endorsing the pre-certification in its 64th Report in 2000, it observed that verification of compliances with the provisions of the Companies Act, 1956 by a company secretary in practice was necessary. **The High Level Committee (Naresh Chandra Committee) on Corporate Audit and Governance in its report in 2002**, while observing wide gap between prescription and practice, recommended a system of pre-certification by company secretaries to remove defects in documents so that these could be taken on record immediately and to reduce workload on Ministry. It also recommended that the system should provide for monetary and other penalties on company secretaries who certify incorrectly, even through error or oversight. Accordingly, **the Companies (Amendment) Bill, 2003 sought to add a new section 383C** to provide that all documents, returns, forms required to be filed with the Registrar or any statutory authority shall be pre-certified by a company secretary in whole-time practice. In the meantime, Government came out with the **Concept Paper for revamping of Company Law on August 8, 2004** containing a model codified company law which incorporated the provisions of section 383C of the 2003 Bill.

5. Pending enactment of the new company law, Ministry vide circular 14 of 2011 dated April 8, 2011, stated as under:

"2. For this purpose, Ministry of Corporate Affairs has entrusted practicing professionals registered as Members of the professional bodies namely, ICAI, ICSI & ICWAI with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode. Professionals are now to be responsible for submitting



/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry.

3. However, to ensure that the data integrity is maintained at all times, there will be checking of such submissions to guard against fraudulent filing. In addition to the penal actions against the companies and their officers in default for furnishing incorrect or false information in the documents as provided under the Companies Act, 1956, action would also be taken on receipt of any complaint, anonymous or otherwise, against such professionals in the following manner:-

.....”

6. In view of the above, the Institute has been popularising pre-certification, preparing its members for the same, sensitizing them of their responsibilities and accountabilities and strengthened disciplinary mechanism to deal with errant members.

With regards,

Yours sincerely,

(CS R. Sridharan)

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CC: ✓ a) Shri M. J. Joseph, Additional Secretary, Ministry of Corporate Affairs
b) Ms. Renuka Kumar, Joint Secretary, Ministry of Corporate Affairs