MCA: 2014

April 4, 2014

Shri Naved Masood, IAS
Secretary to Government of India
Ministry of Corporate Affairs
Shastri Bhawan, New Delhi

Dear Sir,

Sub: Rules under Section 92 relating to Annual Return under the Companies Act, 2013

Section 92(2) of the Companies Act, 2013 provides that the annual return, filed by a listed company or by a company having such paid-up capital and turnover as may be prescribed, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act. The Rules notified now relating to this section, however, provide that the annual return, filed by a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a company secretary in practice.

2. We submit the following in this regard:

a. The Companies Act, 2013 consciously provides a liberalized regulatory framework for small companies and one person companies because the concerns of public interest are minimum in such companies. A rigorous framework is applicable in bigger companies where potentially such concerns are high.

b. Under the Companies Act, 1956, a company having paid-up capital of Rs.10 lakh was required to obtain a Compliance Certificate from a Practicing Company Secretary. Such certification has been dispensed with. Therefore, a professional oversight on governance and compliance on such companies is not available.

c. On realization of the need for governance and compliance, a larger number of companies is subject to professional oversight in the form of financial audit, internal audit, etc.

d. The requirement proposed in rules would keep 99% of the companies out of purview of section 92(2) of the Act.
e. The prescription in the rules notified are substantially different from the draft rules earlier placed on the website for comments. While the draft rules required the Annual Return of companies having a paid up share capital of five crore rupees or more and turnover of twenty-five crore or more to be certified by a Company Secretary in Practice, the rules notified now require Annual Return of companies with paid up share capital of ten crore rupees or more or turnover of fifty crore rupees or more to be certified by Company Secretary in Practice.

f. In terms of the draft rules, extract of Annual Return which is required to be attached with the Board’s Report required certification by Company Secretary in Practice. The dispensation has also been altered in the Rules now notified and no such certification is required under the rules now notified.

3. In the interest of governance, transparency and compliance, we request the rules to provide that:

   (i) certification by a Company Secretary in practice for annual return under Section 92(2) must be applicable to companies with paid-up share capital of five crore or more or a turnover of twenty-five crore rupees or more.

   (ii) Certification by a company secretary in practice of extracts of annual return which are to be circulated to the various stakeholders alongwith the Board Report, the as it would be in the interest of public at large.

Yours sincerely,

(CS R. Sridharan)
President