



# THE INSTITUTE OF Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

ok

MCA: 2022

September 28, 2022

Shri Tarun Bajaj, IAS  
Secretary  
Ministry of Corporate Affairs &  
Department of Revenue  
Government of India  
Shastri Bhawan  
New Delhi -110001

Ministry of Corporate Affairs

Dy. No. 777 /R & I/MCA

Date 28/9/22

**Subject: Introduction of compliance mechanism to promote governance in Small Companies**

Sir,

The government has always been committed to taking measures which create a more conducive business environment for law-abiding companies. The Ministry of Corporate Affairs vide its notification dated 15th September 2022 has revised the threshold for paid up capital and turnover of small companies under section 2(85) of the Companies Act, 2013.

The definition of small company has, now been revised by increasing thresholds of paid-up Capital to 'not exceeding Rs. 4 crore' and turnover to 'not exceeding Rs. 40 crore'. Therefore, at present 'small company' is a company, other than a public company, the paid-up share capital of which does not exceed 4 crore rupees and turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees. We expect this would support in promoting the innovative goals and contribute to economic growth and employment in a significant manner.

The small companies too, are custodian of huge resources of the country and are expected to play a larger role to raise the economy. Such companies are required to ensure compliances under the Companies Act, 2013 (hereinafter referred to as 'the Act) and under various other laws also. It may also be noted that small companies and its officers in default are also subject to penalty for non-compliance of any of the provisions of this Act and of other laws of land which at times can be quite stringent.

Such small companies do not have the benefit of services from professionals as they are not required to engage professionals. In order to handhold, assist and advise the Board in ensuring the compliances and in complying with the corporate governance requirements, there is a need to provide a built-in mechanism under the law.

In case of companies having paid up capital of 10 crores rupees or more, professional certifies that the company has complied with all the provisions of this Act in terms of section 92 (2). For bigger companies, secretarial audit is prescribed. Small companies are not required to carry out any verification or certification by an independent professional.

**Vision**

"To be a global leader in promoting good corporate governance"

**Motto**

सत्यं वद। धर्मं चर।  
इष्टकारं कुरु। तृणोक्तं शब्देन न कुरु।

**Mission**

"To develop high calibre professionals facilitating good corporate governance"



It is pertinent to note that non-compliances in any organization, irrespective of their inherent nature and characteristics highlights lack of a strong governance framework regardless of the structure and size of the entity.

To strengthen the mechanism of compliance and governance in such companies, the compliance certificate from independent professional may be required to be obtained certifying the compliance of the applicable laws.

The cost of obtaining a compliance certificate is nominal in comparison to penalty on failure to comply with other provisions of law. In case there is no company secretary/certification, a company is likely to end up paying much higher penalty. Therefore, to ensure compliance and governance in companies which are critical for the growth of the economy, it is necessary to require for obtaining certification related to the compliance of applicable laws.

We wish to bring to your kind notice that similar recognition was also in existence under the Companies Act, 1956.

Sub-section (1) of section 383A of the Companies Act, 1956 (since repealed) provided that '*Every company having such paid-up share capital as may be prescribed shall have a whole time secretary, and where the Board of Directors of any such company comprises only two directors, neither of them shall be the secretary of the company*'. Proviso to the above sub-section provided that '*every company not required to employ a whole time secretary under sub-section (1) and having a paid up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217*' [With effect from 13<sup>th</sup> December, 2000 by the Companies (Amendment) Act, 2000.

In terms of the above provision and Companies (Compliance Certificate) Rules, 2001, a Company Secretary, while issuing the Compliance Certificate after due examination and verification of records etc., *inter alia*, certifies the maintenance of statutory registers, **filing of the forms and returns with the Registrar of Companies, Regional Director, Central Government. Company Law Board or other authorities during the financial year**, proper notices for and recording of proceedings of meetings of the Board, conduct of annual, and extra-ordinary, general meetings, information relating to Loans etc.

The said Certificate had served as salutary and built-in mechanism in ensuring enhanced level of compliances, and thereby governance.

Further, the Company Secretary as an independent professional providing compliance certificate, not only ensured that the company has complied with the provisions of the Companies Act but also extended professional help to the company in carrying out effective compliance, establishment of proper systems, checks and balances. The said certificate also observed by the Board at its meeting while considering the Directors' Report, which helped Board in understanding about the level of compliances under company law.



Recently, consequent to the contravention of the related provisions, approx. 3.19 Lakh directors stand identified and face disqualification under section 164(2)(a) of the Companies Act, 2013. The Ministry of Corporate Affairs (MCA) struck off names of around 2.17 Lakh Companies.

In the backdrop of the foregoing, it is our firm belief that had the aforesaid, or a similar, provision in relation to compliance certificate continued in the re-enacted Companies Act, 2013, the comparative number of defaulting companies and/or directors would not have been much. Since the said certificate required to be placed before the Board at its meeting while considering the Directors' Report, it can alert them beforehand and help Board handholding to raise the compliance level. Draft Compliance Certificate for small companies is placed as **Annexure**.

### **Submission**

In view of the above, we request to consider our submission favourably for requiring every small company which has not employed a whole time company secretary under sub-section (1) of section 203 of the Act to file with the Registrar a certificate from a company secretary in whole-time practice in Form no. MGT- \_\_ within thirty days of annual general meeting, as to whether the company has complied with all provisions of the Act and a copy of such certificate be attached with Board's report referred to in section 134. Such requirement would also help in considerably easing the workload of the concerned authorities, e.g. Registrar of Companies on the one hand, and proper and timely compliance by the companies on the other hand.

We shall be pleased to provide any further information or clarification in this regard on hearing from your goodself.

Thanking You,

Yours faithfully,

(CS Devendra V. Deshpande)  
President  
The Institute of Company Secretaries of India

**Draft Compliance Certificate**

Form No. MGT-\_\_\_\_

[Pursuant to section 92(\_\_\_\_) of the Companies Act, 2013 and rule \_\_\_\_ of Companies (Management and Administration) Rules, 2014]

**CERTIFICATE BY A COMPANY SECRETARY IN PRACTICE**

I/ We have examined the registers, records and books and papers of \_\_\_\_\_Private Limited (the Company) as required to be maintained under the Companies Act, 2013 (the Act) and the rules made thereunder for the financial year ended on \_\_\_\_\_, 20—. In my/ our opinion and to the best of my information and according to the examinations carried out by me/ us and explanations furnished to me/ us by the company, its officers and agents, I/ we certify that:

During the aforesaid financial year the Company has complied with provisions of the Act & Rules made there under in respect of:

1. Maintenance of registers/records & making entries therein within the time prescribed therefor;
2. Filing of forms and returns as applicable, with the Registrar of Companies, Regional Director, Central Government, the Tribunal, Court or other authorities within/beyond the prescribed time;
3. Calling/ convening/ holding meetings of Board of Directors, if any, and the meetings of the members of the company on due dates in respect of which meetings, proper notices were given and the proceedings, have been properly recorded in the Minute Book/registers maintained for the purpose and the same have been signed;
4. Advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act;
5. Contracts/arrangements with related parties as specified in section 188 of the Act;
6. Issue or allotment or transfer or transmission/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates in all instances;
7. Keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act
8. Declaration/ payment of dividend; transfer of unpaid/ unclaimed dividend/other amounts as applicable to the Investor Education and Protection Fund in accordance with section 125 of the Act;
9. Signing of audited financial statement as per the provisions of section 134 of the Act and report of directors is as per sub – sections (3), (4) and (5) thereof;
10. Constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, and the remuneration paid to them;
11. Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act;