



**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)

CL: MCA: 2023

Shri Manoj Govil, IAS
Secretary
Ministry of Corporate Affairs
Government of India
Shastri Bhawan
New Delhi-110001

Ministry of Corporate Affairs

Dy. No. 1932/JR & I/MCA

Date 25/08/2023

August 24, 2023

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

Ref: ICSI Letter dated September 28, 2022 and January 04, 2023

Dear Sir,

At the outset, the Institute of Company Secretaries of India extends its appreciation and gratitude towards the Ministry of Corporate Affairs for its committed endeavours in promoting ease of doing business while keeping in sight the goal of good corporate governance. The dedicated attempts intended at promoting ease of doing business and creating a conducive business environment is making way for growth and development opportunities for the Indian Economy immensely.

This has reference to the MCA Notification dated 15th September 2022 wherein the threshold for small companies have been revised under section 2(85) of the Companies Act, 2013 for paid up capital to 'not exceeding Rs. 4 crore' and turnover to 'not exceeding Rs. 40 crore'.

Given the large number of companies falling within the ambit of this definition, and to ensure that governance stays intact therein, such companies are required to ensure compliances under the Companies Act, 2013 along with various other laws.

Small companies and its officers in default are also subject to penalty for non-compliance of the provisions of applicable laws akin to their larger counterparts. Even further it has been noticed that large number of Multinational Corporations are formed and structured as small companies. In such a scenario, an appropriate governance and compliance mechanism is required for such companies, not only to strengthen the Indian corporate governance scenario but show to the world as to how it must be done.

However, such small companies seldom have the benefit of services from professionals since they are not mandatorily required to engage professionals. 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.

Manoj Govil

Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टकारं कुरु। तृप्तार्थं। शोभते। ह्यु कुरु। कुरु।

Mission

"To develop high calibre professionals facilitating good corporate governance"

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Furthermore, in the recent past, 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 MCA had struck-off names of around 2.17 Lakh Companies.

It is pertinent to note that non-compliances in any organization, highlights lack of a strong governance framework regardless of the structure and size of the entity. Therefore, 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 itself.

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. In case there is no company secretary, a company is likely to end up paying much higher penalty and risk of non-governance issues.

We wish to bring to your kind notice that similar recognition was also in existence under the Companies Act, 1956. Proviso to Sub-section (1) of section 383A of the Companies Act, 1956 (since repealed) 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”* (W.e.f. 13th December, 2000 by the Companies (Amendment) Act, 2000).

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, helped Board in understanding about the level of compliances under company law and served as salutary and built-in mechanism in ensuring enhanced level of compliances, and thereby governance.

Submission

In view of the above, we request to revisit the Companies Act, 2013 and make appropriate arrangements to inculcate provisions 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, on one hand, and proper and timely compliance by the companies on the other. Draft Compliance Certificate for small companies is placed as Annexure.



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

Thanking You,

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Manish Gupta', is written over a horizontal line.

(CS Manish Gupta)

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;
12. Approvals required to be taken from the Central Government, Tribunal, Regional Director, Registrar, Court or such other authorities under the various provisions of the Act;
13. Acceptance/ renewal/ repayment of deposits;

14. Borrowings from its directors, members, public financial institutions, banks and others and creation/ modification/ satisfaction of charges in that respect, wherever applicable;
15. Loans and investments or guarantee given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act;
16. Alteration of the provisions of the Memorandum and/ or Articles of Association of the Company.

Place:

Date:

Signature

Name

C.P. No