THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CS R. Sridharan
PRESIDENT

MCA: 2014

May 1, 2014

Respected Shri Sachin Pilot

You may recall that you had kindly heard us patiently and reassured us of sympathetic consideration of the following three issues, when we had called on you on April 4, 2014 at Kekdi in Rajasthan, in the interest of compliance and governance in corporate sector and the profession of company secretaries:

a. Appointment of company secretaries in companies under section 203 of the Act;
b. Secretarial audit in bigger companies under section 204 of the Act; and
c. Pre-certification of e-forms filed by companies on MCA 21.Though there has been some progress regarding this, it has left out 70% of the companies out of the purview.

We reiterate our submissions on these three issues at Annex 1, 2 and 3 respectively. We also enclose the latest three representations dated April 24, April 28 and April 30, 2014 at Annex 4, 5 and 6 respectively on these issues. We request you to kindly address these issues immediately so that the law settles down quickly and the mechanism of compliance and governance in corporate sector is strengthened further.

With best regards,

Yours sincerely,

(CS R. Sridharan)

Shri Sachin Pilot
Hon'ble Minister for State for Corporate Affairs (I/C)
Government of India
ShastriBhawan, New Delhi

Encl.: As above.

Pre-Certification

What it is: The e-forms loaded into MCA 21 are pre-certified by professionals.

Purpose: Data integrity and availability of prompt and accurate information to stakeholders.

History:

(a) **Department Related Parliamentary Standing Committee, which examined the Companies (Second Amendment) Bill, 1999,** while endorsing the pre-certification in its 64thReport in 2000, observed that verification of compliances with the provisions of the Companies Act, 1956 by a company secretary in practice was necessary.

(b) **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 though error or oversight.

(c) 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.

(d) 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.

(e) Pending enactment of the new company law, the Ministry introduced pre-certification by circulars.

(f) The process has been now been sanctified in the Companies (Registration of Offices and Fees) Amendment Rules, 2014.

Who Pre-certifies? Though it was intended to be pre-certified by company secretaries, these are being done by all three kinds of professionals.

New Rules:

(a) Pre-certification is not required for e-forms filed by 70% of the companies.

(b) Pre-certification of a critical form, AOC-4 has been reserved for one kind of professional.

Concerns:

(a) Since small companies are not subject to annual returns, secretarial audit, key managerial personnel, etc., this would adversely affect compliance with laws;

(b) If these are not pre-certified by company secretaries, the quality of certification would be suspect; and

(c) 70% of data in MCA system would be unauthenticated.

Suggestion: All e-forms filed by all companies need to be pre-certified by company secretaries who are trained in regulatory compliance.

Key Managerial Personnel

What it is: The Act requires every company belonging to such class or classes of companies as may be prescribed shall have whole-time key managerial personnel, including a company secretary. It also specifies the functions of company secretary and qualification to be a company secretary.

Purpose: Company secretary must ensure compliance with all applicable laws, secretarial standards and all governance norms.

History:
(a) The Standing Committee on Finance had examined the Companies Bill, 2009. The said Bill had proposed every company belonging to such class or description of companies as may be prescribed shall have whole-time KMP. ICSI had then suggested that the Bill may be specific and suggested that every company with a paid up share capital of Rs.5 crore should have KMP. The Ministry had then replied that there may be a need for revising the limit from time to time and hence the limit may not be specified in the Act. If the limit has to be specified, it had suggested an alternate formulation that every company having a paid up capital of Rs.5 crore or more or such other amount as may be prescribed from time to time shall have KMP. The Ministry has, therefore, committed before the legislature that companies above a threshold in terms of capital will have KMPs. Based on this understanding, the Companies Act, 2013 has been enacted.
(b) The draft rules notified in August / September 2013 under the Companies Act, 2013 carried this intention and reiterated the paid up capital as the basis of classification. These Rules specified that the companies with a threshold of capital shall have KMP. These did not distinguish between private companies and public companies.
(c) This approach is continuation of the approach followed in the Companies Act, 1956 under which companies with a threshold of capital were required to have company secretaries.

New Rules
The rules do not require KMPs in public companies with less than Rs.10 crore of capital and in all private companies.

Concerns

a. The rule has kept out more than 99.5% of companies from the purview of KMP.
b. The Act envisages classification, not grouping of companies. A company chooses to be private company or public company. Whether a company is a private or public reflects its character, and, therefore, grouping, not classification.
c. The subordinate legislation aims to further the objects of legislation. The classification must, therefore, have a nexus with the purpose. There is no nexus in grouping companies as private or public as regards compliance or governance is concerned. It is not that private companies are immune from misdemeanour. It is not that private companies are not important for the economy or country.

Suggestion
The Rules may be amended to put companies in different classes and prescribe requirement of KMPs as may be warranted for each class. While a very big company may need to have all three kinds of KMPs, companies of with at least Rs.5 crore of paid up capital must have at least a company secretary.

Secretarial Audit

What it is: The Act requires bigger companies to have secretarial audit.
Purpose: Since it is an audit of compliances of applicable laws, this gives comfort to all stakeholders.

History: The legislative intention of section 204 is evident from the **report of the Standing Committee on Finance (SCF), which had examined the Companies Bill, 2009.** The Ministry had submitted before the SCF as under:
"Secretarial Audit gives a necessary comfort to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of noncompliance of the provisions of the Companies Act and other important corporate laws. It is, accordingly, felt and suggested that the Bill may provide for requirement of conduct of secretarial audit by at least bigger companies by a company secretary in practice."
Based on this recommendation, the Ministry proposed to the SCF that it would include a new clause in the Bill as under:
"Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub-section (3) of section 120 of the Act, a Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed."
The Ministry has, therefore, committed before the legislature that companies above a threshold in terms of capital will have secretarial audit. Based on this understanding, the Companies Act, 2013 has been enacted. The requirement of secretarial audit is, therefore, necessarily linked to size of capital.

Rules: The rules do not require secretarial audit in public companies below a threshold and in all private companies irrespective of size.

Concerns

(a) The Act requires every listed company, big or small, and every other company which is not 'small', needs secretarial audit. The need for a company to have secretarial audit company can be linked to scale of operations or presence which can be determined in terms of paid up capital, turnover, number of employees, number of shareholders, outstanding borrowings, kind of business, etc. and has no link whether a company is public or private.

(b) A company chooses to be private company or public company. Whether a company is a private or public reflects its character, and, therefore, grouping, not classification. Further the subordinate legislation aims to further the objects of legislation. The classification must, therefore, have a nexus with the purpose. There is no nexus in grouping companies as private or public as regards compliance or governance is concerned.

(c) The exclusion of private companies, irrespective of their size, from secretarial audit gives a message that the matters covered under such audit such as compliance with applicable laws is not important from public interest and governance perspective.

Suggestion

The rules may be amended to provide for secretarial audit for all listed companies – big or small, and every other company which is not a 'small company'. At the least, the secretarial audit must be made applicable, to start with, to those companies which are subject to internal audit under the Rules under section 138 of the Companies Act, 2013.

Annexure - 4

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CS R. Sridharan
PRESIDENT

MCA:2014

April 24, 2014

Dear Mr. Mr J. Joseph

Sub: Rules under section 203(1) of the Companies Act, 2013

This is in continuation of our letters of even number dated April 2, 2014 and April 7, 2014 on the above subject. During the discussion today with you, we were reassured that our representations on the above subject are receiving active and sympathetic attention.

2. We have examined the legal position carefully. We are writing this to share our understanding of the law and the background and legislative intention behind section 203. We are fully convinced that **every company** is required to have a company secretary and it is permissible to make such a prescription under section 203 of the Companies Act, 2013.

3. The legislative intention of section 203 is gathered from the following:
a. The Standing Committee on Finance had examined the Companies Bill, 2009. Para 13.23 to 13.28 (enclosed) deal with key managerial personnel (KMP). The said Bill had proposed every company belonging to such class or description of companies as may be prescribed shall have whole-time KMP. ICSI had then suggested that the Bill may be specific and suggested that every company with a paid up share capital of Rs.5 crore should have KMP. The Ministry had then replied that there may be a need for revising the limit from time to time and hence the limit may not be specified in the Act. If the limit has to be specified, it had suggested an alternate formulation that every company having a paid up capital of Rs.5 crore or more or such other amount as may be prescribed from time to time shall have KMP. The Ministry has, therefore, committed before the legislature that companies above a threshold in terms of capital will have KMPs. Based on this understanding, the Companies Act, 2013 has been enacted. The requirement of KMP is, therefore, necessarily linked to size of capital.
b. The draft rules notified in August / September 2013 under the Companies Act, 2013 carried this intention and reiterated the paid up capital as the basis of classification. These Rules specified that the companies with a threshold of capital shall have KMP. These did not distinguish between private companies and public companies.
c. This approach is essentially continuation of the approach followed in the Companies Act, 1956 under which companies with a threshold of capital were required to have company secretaries.
d. Section 203 aims at having KMPs. As specified elsewhere in the Act, KMPs have specific responsibilities. For example, the responsibilities of company secretary, as specified in section 205, is ensuring compliance and governance. The rules do not require KMPs in over 99.5% of companies. Therefore, the responsibilities of company secretary are not required to be performed in these companies. It gives an impression that the Companies

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ICSI

Act, 2013 has been enacted only for less than 0.5% of companies which may reduce to zero if the proposed regulatory arbitrage is allowed.

4. The extant rule 8 of the Companies (Appointment and Remuneration) Rules, 2014 does not seem consistent with the section 203 of the Act for the following reasons:

a. The purpose of section 203 is promotion of compliance and governance by requiring companies to have key managerial personnel who have specified obligations under the Act. The rule has kept out more than 99.5% of companies from the purview of KMP. Such regulatory arbitrage would distort economic choice which is not in the interest of the economy.
b. The Act envisages classification, not grouping of companies. A company chooses to be private company or public company. Whether a company is a private or public reflects its character, and, therefore, grouping, not classification. For example, we do not classify people on the basis of first alphabet of names of the individuals; we classify them based on their level of income, kind of health, etc.
c. The subordinate legislation aims to further the objects of legislation. The classification must, therefore, have a nexus with the purpose. There is no nexus in grouping companies as private or public as regards compliance or governance is concerned. It is not that private companies are immune from misdemeanour. It is not that private companies are not important for the economy or country.

5. There is a feeling in some circles that private and small companies would not afford penalty under section 203(5) if they are required to have KMPs and they do not engage KMPs. The penalty under 203(5) is nominal in comparison to penalty on failure to comply with other provisions of law such as those relating to related party transactions. If there is no KMP/company secretary, a company would end up paying much higher penalty. In any case, the object of law is not to save companies from penalty, but to ensure compliance and governance in companies which are critical for the growth of the economy. If Government wishes to reduce cost on companies, it may exempt small companies and one person companies from the requirement of KMPs or some kinds of KMPs.

6. The law casts various obligations on companies. For example, section 118 requires every company to observe secretarial standards. Section 205 requires a company secretary to ensure compliance with secretarial standards. This means that every company must have at least a company secretary, if not all kinds of KMPs.

7. Though company secretary is bracketed as KMP, it is a unique kind of KMP. The law specifies that only a member of ICSI, who is a qualified and a regulated professional can be a company secretary. No such qualification or regulation is required to be any other KMP. Further, the law specifies the functions and responsibilities of a company secretary.

Most of these functions are compliance and governance. The law, therefore, treats company secretaries on a footing different from that of other kinds of KMPs.

8. The law needs to be so interpreted as it furthers the legislative intention and not negates the same. Section 203 requires every company belonging to such class or classes of companies to have KMPs. Section 204 requires a company belonging to other class of companies to annex secretarial report. The connotation of the words 'every company' in section 203 and the words 'a company' in section 204 is different. Section 203 requires every company to be classified. Each class may have different requirement / entitlement of KMPs depending on the policy objective or the need. It is possible to have a class of companies which needs to have all three kinds of KMPs, another class which needs only two kinds of KMPs, another class which needs only one kind of KMPs and still another class which may not need any.

9. Keeping the above in view, we strongly urge you to amend the rule 8 to put companies in different classes and prescribe requirement of KMPs as may be warranted for each class. While a very big company may need to have all three kinds of KMPs, companies of with at least Rs.5 crore of paid up capital must have at least a company secretary.

With best regards,

Yours sincerely,

(R. Sridharan)

Shri M. J. Joseph
Additional Secretary to Government of India
Ministry of Corporate Affairs
Shastri Bhawan, New Delhi.

Encl. As above.

Clause 178 – Appointment of Key Managerial Personnel

13.23 This clause seeks to provide that every company belonging to such class or description of companies, as prescribed by the Central Government, shall have whole-time key managerial personnel.

13.24 Clause 178 (1) read as follows:

"Every company belonging to such class or description of companies as may be prescribed shall have whole-time key managerial personnel."

13.25 ICSI in their written memorandum submitted to the Committee suggested as follows :-

The Bill may be specific in respect of the class or description of companies which shall be required to have whole time key managerial personnel. It is suggested that every listed company and every other company having paid-up share capital of Rupees Five crores or more should mandatorily be required to employ whole-time key managerial personnel.

13.26 Reply of the Ministry on this suggestion is given as under:

The suggestion is to specifically indicate in clause 178(1,) the paid-up share capital of Rs. 5 crore or more as the class or description of companies to whom the requirement of this clause shall be applicable.

It is felt that since there may be need for revising the limit under clause 178(1) from time to time, the provisions proposed in the clause may not be considered to be modified and the flexibility proposed in the Bill on this matter may be continued.

13.27 However, the Ministry have also suggested an alternate clause to clause 178(1) which is given as follows:

"178. (1) Every company <u>having a paid up share capital of Rs. 5 crore or more or such other amount as may be prescribed by Central Government from time to time</u> shall have whole-time key managerial personnel:

<u>Provided that an individual shall not be the Chairman of the company as well as the Managing Director or Chief Executive Officer of the company at the same time.</u>

<u>Provided further that every company existing on or before the commencement of this Act shall comply with the requirements of this sub-section within one year from the date of commencement of this Act."</u>

13.28 The Committee are of the view that the proposal originally contained in the Bill in clause 178 (1) regarding appointment of KMP may be retained with a view to providing flexibility to decide the threshold limit of companies which shall compulsorily have whole-time KMP. The other modifications proposed above in Clause 178 (1) regarding appointment of KMP may be duly incorporated.

Annexure – 5

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CS R. Sridharan
PRESIDENT

MCA:2014

April 28, 2014

Dear Sh. M.J. Joseph

Sub: Rules under section 204(1) of the Companies Act, 2013

This is in continuation of our letters of even number dated April 2, 2014, April 7, 2014 and April 11, 2014 and several rounds of discussions with the Ministry on the above subject. During the discussion yesterday with you, we were reassured that our representations on the above subject are receiving active and sympathetic attention.

2. We have examined the legal position carefully. We are writing this to share our understanding of the law and the background and legislative intention behind section 204. We are fully convinced that every listed company – big or small - and every other company, which is not a 'small company', is required to have a secretarial audit and it is not permissible to exclude private companies which are not 'small' from the ambit of secretarial audit.

3. The legislative intention of section 204 is evident from the **report of the Standing Committee on Finance (SCF), which had examined the Companies Bill, 2009**. Para 10.51 to 10.53 and Para 13.33 (enclosed) dealwith secretarial audit.The Ministry had submitted before the SCF as under:

"Secretarial Audit gives a necessary comfort to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of noncompliance of the provisions of the Companies Act and other important corporate laws. It is, accordingly, felt and suggested that the Bill may provide for requirement of conduct of secretarial audit by at least bigger companies by a company secretary in practice."

Based on this submission, the SCF recommended that secretariat audit may be required for companies exceeding certain threshold limit of paid up share capital. **Based on this recommendation, the Ministry proposed to the SCF that it would include a new clause in the Bill as under:**

"Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub-section (3) of section 120 of the Act, a Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed."

The Ministry has, therefore, committed before the legislature that companies above a threshold in terms of capital will have secretarial audit. Based on this understanding, the Companies Act, 2013 has been enacted. The requirement of secretarial audit is, therefore, necessarily linked to size of capital.

4. The legislative intention is also evident from the use of the word 'bigger companies' in section 204. It requires every listed company, big or small, and every other company which is not 'small', needs secretarial audit. **The need for a company to have secretarial audit company can be linked to scale of operations or presence which can be determined in terms of paid up capital, turnover, number of employees, number of shareholders, outstanding borrowings, kind of business, etc. and has no link whether a company is public or private.** The law does not envisage any distinction between private companies and public companies. In fact, the Companies Act 2013 has done away with most of the exemptions / relaxations available to private companies under the earlier law and endeavours to provides level playing field to all kinds of market participant This is based on the profound realization that private companies are not immune to misdemeanors and they are important for the economy and the country. The exclusion of private companies, irrespective of their size, from secretarial audit gives a message that the matters covered under such audit such as compliance with applicable laws is not important from public interest and governance perspective.

5. Secretarial Audit is basically an audit of compliances of applicable laws as is evident from the format of the report notified in the Rules. Its scope extends to compliances under the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, the Foreign Exchange (Management) Act, 1999 (to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings), the Securities and Exchange Board of India Act, 1992 and rules and regulations made thereunder and all other laws as may be applicable to the company. This gives the necessary comfort to the Government, Regulators, Board and Key Managerial Personnel of companies, the investors and other stakeholders that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of non-compliance with the provisions of the Companies Act and other important corporate laws. There is no rationale to exclude private companies and big companies from the purview of secretarial audit.

6. **Section 204 envisages classification, not grouping of companies**. A company chooses to be private company or public company. Whether a company is a private or public reflects its character, and, therefore, grouping, not classification. For example, we do not classify people on the basis of first alphabet of names of the individuals; we classify them based on their level of income, kind of health, etc. Further the subordinate legislation aims to further the objects of legislation. The classification must, therefore, have a nexus with the purpose. There is no nexus in grouping companies as private or public as regards compliance or governance is concerned. The extant rule 9 of the Companies (Appointment and Remuneration) Rules, 2014 which exclude the private companies from the purview of secretarial audit is ultra vires section 204 of the Companies Act, 2013. There is strong view in the member fraternity that it is also violative of Article 14 of the Constitution as the classification is devoid of any rationale.

7. There is a feeling in some circles that the secretarial audit and the financial audit may have possible overlaps. The format of secretarial audit report which is prescribed vide Form No. MR3 and defines scope of secretarial audit is attached. A referencer on secretarial audit published by the Institute, which also indicates scope of secretarial audit, is also attached. As is evident from these, **secretarial audit is an audit of compliances of applicable laws and no way audit of financial transactions which is the scope of financial audit. For example, the secretarial audit verifies if a company meets the public shareholding requirement under the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder, while the financial audit verifies if the books of account reflect true and fair view of financial position and performance of the company.There is absolutely no overlap**. If at all any overlap arises in future, Ministry can address the same by changing the format of report.

8. As indicated to you, the Institute is working on a Guidance Note on Secretarial Audit which will help the company secretaries in carrying out the audit. A copy of the draft Guidance note is attached. This will be finalized in about a week from now. Though many company secretaries have been conducting secretarial audit for over several years, the Institute proposes to hold a series of workshops to prepare a larger number of company secretaries to undertake this work.

9. In view of the above, we urge you to amend the rule 9 immediately to provide for secretarial audit for all listed companies – big or small, and every other company which is not a 'small company'. At the least, the secretarial audit must be made applicable, to start with, to those companies which are subject to internal audit under the Rules under section 138 of the Companies Act, 2013.

With best regards,

Yours sincerely,

(R. Sridharan)

Shri M. J. Joseph
Additional Secretary to Government of India
Ministry of Corporate Affairs
Shastri Bhawan,
New Delhi.

Encl : As above.

Annexure-6

THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CS R. Sridharan
PRESIDENT

MCA: 2014 30 April 2014

Dear Mr. M.J. Joseph

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

This is further to our representations dated April 2, April 4, April 7 and April 11, 2014 and several rounds of discussions we had with you, other senior officers of the Ministry and the Hon'ble Minister for Corporate Affairs (I/C) seeking restoration of pre-certification of e-forms filed by companies in public interest.

2. While we appreciate restoration of pre-certification for big companies, we are deeply disturbed by the Companies (Registration of Offices and Fees) Amendment Rules, 2014 issued on 28th April, 2014 which requires pre-certification of e-forms to be filed by companies other than one person companies and small companies. This means that only about 2 lakh companies would require pre-certification while the balance 7.5 lakh companies would not. Assuming that that each of these 7.5 lakh companies files on average five forms each annually, a total of four million e-forms would be filed annually on MCA-21 system, the veracity of which would not be authenticated. We strongly feel that this exemption of more than 70% of the companies and four million filings from pre-certification per year has defeated the basic purpose of pre-certification, that is, data integrity and availability of prompt and accurate information to stakeholders. Since these companies are not subject to certification of annual returns by an independent professional, secretarial audit, appointment of key managerial personnel, etc., this exemption would adversely affect compliance of laws and regulations and deprive the Government and the society of the much needed comfort.

3. Further, the penalties imposed in the new Act are the same for all companies, whether small or big. Therefore, non-certification of information in respect of forms filed by these small companies could result in imposition of severe penalties on these companies.

4. At the cost of repetition, we reiterate briefly the genesis of pre-certification for better appreciation of the public interest served by pre-certification. 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, 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,**

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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. Pending enactment of the new company law, the Ministry introduced pre-certification by circulars. The process has been now been sanctified in the Companies (Registration of Offices and Fees) Amendment Rules, 2014.

5. Incidentally, I may mention that all along the authorities, including the expert committees and parliamentary standing committee, had recommended pre-certification by the professionals who are competent to do so. They had identified company secretaries in practice for this purpose given their acumen and aptitude in compliance and governance. Unfortunately, this pre-certification has been diluted by allowing others to pre-certify the e-forms along with company secretaries in practice. We strongly urge you to adhere to such pre-certification by company secretaries in practice only who are trained in compliance and governance, in the interest of data integrity.

6. All along, the Ministry allowed company secretaries in practice to pre-certify Form AOC-4. This was profound recognition by the Government that the company secretaries are well qualified to do so. There has been no change whatsoever on the ground. Despite that, the Rules notified on 28th April 2014 have reserved AOC-4 for one kind of professional and deprived company secretaries in practice of this pre-certification. I painfully note that other professionals are being allowed to undertake the pre-certifications, which ought to be done by company secretaries in practice. On the other hand, the pre-certifications which were being done by company secretaries in practice along with others professionals are being reserved for one kind of professional. I urge you to allow company secretaries in practice to pre-certify AOC-4 also. It may be noted that the Ministry, vide circular No.57/2011 dated 28.07.2011 authorised company secretaries in practice to verify and certify XBRL document of financial statements in e-

forms (copy attached). To the best of our knowledge, most of such filings are now done by company secretaries in Practice today.

7. In the public interest, namely, prompt availability of quality information to stakeholders, it is necessary to amend the Companies (Registration of Offices and Fees) Rules, 2014 to provide for the following:

a. Pre-certification of e-forms to be filed by one person companies and small companies also;

b. Pre-certification of all forms (other than AOC-4) only by company secretaries in practice who are well equipped for this kind of work; and

c. Pre-certification of AOC-4 by company secretaries in practice among others.

With best regards,

Yours sincerely,

(CS R. Sridharan)

Shri M. J. Joseph
Additional Secretary
Ministry of Corporate Affairs
Shastri Bhawan, New Delhi.

CC: Shri Naved Masood, IAS
Secretary to Government of India
Ministry of Corporate Affairs

Circular No: 57/2011

No. HQ/MCA/DigitisedBS/AR/2009
Government of India
Ministry of Corporate Affairs

5th Floor, "A" Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi – 110001
Dated: 28.07.2011

All the Regional Directors,
All the Registrar of Companies/ Official Liquidators
All stakeholders

Sub: Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode.

Sir,

The Para 3 of the Circular no. 37/2011 dated 07.06.2011 may be read as under: -

"All companies falling in Phase-I class of companies (excluding exempted class) are permitted to file their financial statements without any additional fee up to 30.11.2011 or within 60 days of their due date, whichever is later."

2. Further, in supersession of Para 2 (i) of Ministry's Circular No. 43/2011 dated 07.07.2011, it is informed that the verification and certification of the XBRL document of financial statements on the e-forms would continue to be done by authorized signatory of the company as well as professional like Chartered Accountant or Company Secretary or Cost Accountant in whole time practice.

3. This issue with approval of Competent Authority.

Yours faithfully,

(J.N. Tikku)
Joint Director