



No. MCSA:2014

April 4, 2014

Mr. M. J. Joseph
Additional Secretary to the Government of India
Ministry of Corporate Affairs
5th Floor, Shastri Bhawan
New Delhi

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

Dear Sir,

This is in continuation of our letter dated 2nd April 2014 on the above subject and the discussion we had with you yesterday. The Companies Act, 2013 rests on corporate compliance and governance which is sought to be achieved through self-regulation coupled with professional oversight.

Sir, you would kindly appreciate that pre-certification of e-forms has substantially improved compliance of the requirements under the Companies Act and the Rules made there under and reduced the burden of oversight on MCA. This has ensured availability of correct, complete and timely information for the stakeholders. This is so because an independent professional conducts thorough check of the correctness of the particulars stated in the e-forms both in terms of compliance with the provisions of law and also in consonance with the books and records of the company.

The table below shows a comparison of the e-forms which required pre-certification in terms of Companies Act, 1956 and the rules there under vis-à-vis Companies Act, 2013 and the Rules there under as also the need for pre-certification:

Pre-certification of e-forms: Companies Act, 1956	Corresponding E-forms under Companies Act, 2013	Justification
Form No.2 – Return of allotment	PAS.3 Chapter III Return of allotment	This form contains details of securities allotted payable in cash, securities allotted for consideration other than cash including details of consideration, bonus shares issued and private placement, whether valuation report of registered valuer is obtained, etc. The practising professional can give a certificate that he has verified the particulars contained in the form from the original records maintained by the company.
Form No.3 – Particulars of contract of shares allotted for consideration other than cash		
Form No.5 Notice of consolidation,	SH.7 (Rule 15) Chapter IV	The pre-certification will ensure the necessary amendments in Articles



division, etc. or increase in no. of members		of Association /MoA if required due to the increased capital and includes the verification of revised capital structure of the company and compliance of due procedure of law.
Form No.10 Particulars of registration of charges	CHG.1 (Rule 3(1)) Chapter VI	The creation and satisfaction of charges are the two important forms which include the verification of property charged against the amount secured and the creation /modification /satisfaction of Charge. Public at large including corporate normally refer these forms for verification from MCA-21 before any financial engagement with the concerned company. Considering the involvement of large public interest the form should be pre-certified by an independent professional.
Form No.17 Satisfaction of charges	CHG.4 Rule 8(1) Chapter VI.	
Form No.23 registration of resolutions and agreements	Form No. MGT.14 Chapter VII (Section 117)	Pre-certification will ensure a check on the resolution passed/authorization and due and whether process of law was followed or not in that regard.
Form No.25C Return of appointment of managing director/ WTD	Form No. MR.1 Chapter XIII (Section-196/197)	It will ensure that the due procedure of appointment is complied during the appointment of MD/WTD/Manager
Form 61: Form for filing an application with Registrar of Companies	GNL .1 (Yet to be notified)	The precertification will ensure the application which is to be filed with the Government is proper and in accordance with the requirement of the Act. Since it is the combined form it may include the checks at various things to ensure due compliance of law.
Form 67: Form for filing addendum for rectification of defects or incompleteness		
Form 68: Application for		

[Handwritten signature]



rectification of mistakes apparent on record.		
Form 1: Statement of amount credited to investor education and protection fund (under the IEPF (Awareness and Protection of Investors) Rules, 2001	DIV 5 (No pre-certification)	It will ensure the verification of actual fund due and deposited with the IEPF.

In addition to above, the draft rules required that the extracts of annual returns to be attached with the board report in (form 7.7 of draft rules) after being certified by a practising company secretary which is not available in the final rules (form no. MGT.9) notified by the Ministry of Corporate Affairs. Considering the importance of annual return extracts which are to be circulated to the various stakeholders alongwith the Board Report, we request you to restore the certification of extracts of annual return by a company secretary in practice as it would be in the interest of public at large.

An apprehension has been expressed that there are rare instances of deficiency in pre-certification. This must not be deterrent because it serves a very useful supportive regulatory purpose. Penal provisions in the new Act and the disciplinary mechanism at ICSI would take care of deficiencies, if any.

Considering the above, we request you kindly include pre-certification of e-forms being introduced under various rules notified under Companies Act, 2013 to be pre-certified practicing company secretaries. When these e-forms would be effective for e-filing on 14th April, 2014, the pre-certification of the e-forms by Practicing Company Secretaries should be a part of these e-forms.

Yours Sincerely,

(R. Sridharan)
President