



**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 28<sup>th</sup> 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 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 64<sup>th</sup> 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 28<sup>th</sup> 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-



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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

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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