

# PART XXVIII

## COMPANY SECRETARY AND COMPLIANCE CERTIFICATE

### Chapter 1

#### Requirement for compulsory appointment of a Company Secretary Synopsis

Important Provisions at a Glance

1. Definition of 'Company Secretary'
  2. Definition of Secretary in Whole-time Practice  
*Compulsory appointment of whole-time company secretary*
  3. Appointment of a director as secretary
  4. Authority to appoint secretary in a company
  5. Company Secretary in practice may become non-executive director/promoter/promoter-director/subscriber
  6. Qualification prescribed for appointment of a company secretary
  7. Functions of company secretary
  8. Filing of Return for appointment and change in the secretary
  9. Duty to make disclosure of other directorship
  10. Duty to disclose shareholding in the company
  11. Secretary as an officer who is in default
  12. Secretary is not responsible u/s 138 and 141 of the Negotiable Instrument Act, 1981
  13. Failure to comply with section 383A
- Appendix 1 Text of Companies (Appointment and Qualification of Secretary) Rules, 1988  
Appendix 2 Specimen of a Board resolution for appointment of Secretary

#### Important Provisions at a Glance

| Sl. No. | Sections | Matters dealt with                                                           | E-Form Nos. |
|---------|----------|------------------------------------------------------------------------------|-------------|
| 1.      | 383A     | Provisions regarding the Appointment and Qualification of Company Secretary. | 32          |
| 2.      | 2(45)    | Definition of Secretary.                                                     |             |
| 3.      | 2(45A)   | Definition of Secretary in Whole-time Practice.                              |             |
| 4.      | 305      | Disclosure of other directorship, etc.                                       |             |

#### 1. Definition of 'Company Secretary'

Section 2(45) of the Companies Act, 1956 defines the term secretary to mean a company secretary within the meaning of section 2(1)(c) of the Company Secretaries Act, 1980 and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under the Companies Act, 1956 and any other ministerial or administrative duties.

Section 2(1)(c) of the Company Secretaries Act, 1980, defines a company secretary as a person who is a member of the Institute of Company Secretaries of India.

Therefore, a Company Secretary is an individual who is either a member of the Institute of Company Secretaries of India or who possesses the qualifications as prescribed under the Companies (Appointment and Qualification of Secretary) Rules, 1988. (Appendix 1)

## **2. Definition of Secretary in Whole-time Practice**

Section 2(45) of the Companies Act, 1956 defines 'Secretary in Whole-time Practice' as a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980 and who is not in full time employment. A member of the Institute of Company Secretaries of India, who is not in full time employment, can become a Secretary in Whole-time Practice (hereinafter referred to as the CSP) after obtaining the Certificate of Practice from the Council of the Institute of Company Secretaries of India, under section 6 of the Company Secretaries Act, 1980.

### **COMPULSORY APPOINTMENT OF WHOLE-TIME COMPANY SECRETARY**

Every company having a paid-up capital of not less than Rs. 200 Lacs [Limit increased from Rs. 50 Lacs to Rs. 200 Lacs by Notification No. GSR 419(E), dated 11-6-2002] shall be required to appoint a whole-time secretary.

Where the paid up share capital of a company increased to Rs. Two Crores or more, then the company shall appoint a whole-time company secretary who shall be a member of the Institute of Company Secretaries of India, within a period of one year from the date of such increase.

## **3. Appointment of a director as secretary**

Where the Board of directors of any company having a paid up capital of Rupees Two Crores or more consisting of only two directors, neither of them shall be appointed as a secretary of the company.

However, if a private company has more than two directors and a public company which has more than three directors on the Board, one of them can act as a secretary subject to the possession by him the prescribed qualifications under the Companies (Appointment and Qualification of Secretary) Rules, 1988 and subject to the compliance of the provisions of section 314 of the Companies Act, 1956.

## **4. Authority to appoint secretary in a company**

Generally, the Articles of Association contained the powers for appointment of a secretary by the Board of directors, however he may be appointed by the managing director or by any other director of the company and his appointment may be noted and confirmed by the Board in the subsequent meeting. (Appendix 2)

## **5. Company Secretary in practice may become non-executive director/promoter/promoter-director/subscriber**

The Council of the Institute at its 156<sup>th</sup> Meeting held on March 19-20-2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 has accorded general permission to its members in practice to become non-executive director/promoter/promoter-director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

The Council has further allowed members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The Council in its resolution adopted at the said meeting defined the term non-executive director as to mean an ordinary director who is required to attend the meetings of the Board or its committees only, not paid any remuneration except the sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled as ordinary director, and devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

## **6. Qualification prescribed for appointment of a company secretary**

The whole-time company secretary shall be a member of the Institute of Company Secretaries of India. The Central Government has amended the Companies (Appointment and Qualifications of Secretary) Rules, 2003 on 14-10-2003 as under:

"Provided further that a company with its registered office and corporate office and works situated in towns with a population of less than one lakh in accordance with census of India 2001 report and having a paid-up share capital of rupees two crores or more but less than rupees five crores, may appoint any individual, who possess any one or more of the qualifications specified in clauses (i) to (x) of sub-rule (4) as its whole-time secretary to perform the duties as such under the Companies Act, 1956 (1 of 1956):

Provided also that if a company having a paid-up share capital of rupees two crores or more but less than rupees five crores shifts either its registered office or corporate office or works from towns with a population of less than one lakh in accordance with census of India 2001 report, it shall appoint a person as a whole-time secretary under sub-rule (1)."

A company of the above size can also appoint a whole-time company secretary as mentioned above voluntarily. The individual possessing the following qualifications may also be appointed company secretary in such a company:

- (i) membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980);
- (ii) pass in the Intermediate examination conducted either by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (No. 56 of 1980), or by the earlier Institute of Company Secretaries of India incorporated on 4th October, 1968, under the Companies Act, 1956 (1 of 1956), and licensed under section 25 of that Act;
- (iii) Post-graduate degree in commerce or corporate secretaryship granted by any university in India;
- (iv) degree in law granted by any university;
- (v) membership of the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949);
- (vi) membership of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959);
- (vii) post-graduate degree or diploma in management sciences, granted by any university, or the Institutes of Management, Ahmedabad, Calcutta, Bangalore or Lucknow;
- (viii) post-graduate diploma in company secretaryship granted by the Institute of Commercial Practice under the Delhi Administration or Diploma in Corporate Laws and Management granted by the Indian Law Institute, New Delhi;
- (ix) post-graduate diploma in company law and secretarial practice granted by the University of Udaipur; or
- (x) membership of the Association of Secretaries and Managers, Calcutta, registered under the West Bengal Registration of Societies Act, 1961 (XXVI of 1961).

## **7. Functions of company secretary**

A company secretary has to perform number of functions which had not been specified in section 383A. Some of them are as follows:—

- (a) Maintenance of statutory registers and records.
- (b) Conveying, holding and conduct of the Board and general meetings.
- (c) Registration, modification and satisfaction of charges.
- (d) Making, signing and filing of forms and returns with the Registrar.
- (e) Assisting to the chairman for conducting of Board and general meetings and preparing of minutes and proceedings thereof.

- (f) Recording transfer, transmission of shares or issuance of duplicate shares certificates, etc.
- (g) Dealing with the SEBI, Stock Exchanges, in case of a listed company, and investors grievances.
- (h) Dealing with the matters relating to the corporate governance as applicable to the company.
- (i) Providing information, explanations and documents during the course of inspection and investigation into the affairs of the company by the Registrar of Companies or any other competent authorities.

## **8. Filing of Return for appointment and change in the secretary**

When a Company Secretary is appointed in the company or any change takes place in his appointment, it is required to file a return in an e-Form 32 electronically with the Registrar of Companies within 30 days of his appointment. Particulars of the secretary shall also be recorded in the Register kept under section 303.

## **9. Duty to make disclosure of other directorship**

Section 305 provides that the secretary shall within twenty days after his appointment to or relinquishment of such office as the case may be, disclose to other companies where he is a director, managing director or manager, the requisite particulars as per section 303(1) of the Companies Act, 1956. Failure to comply with the above requirement is punishable with fine which may extend to Rupees Five Thousand.

## **10. Duty to disclose shareholding in the company**

As per the listing agreement and the SEBI (Prohibition of Insider Trading Regulation), 1992, the company secretary has been considered as an officer, who is required to disclose his shareholding in the company at the time of his joining as well as change in the same as specified in the regulation.

## **11. Secretary as an officer who is in default**

Under section 5 of the Companies Act, the Secretary has also been included in the category of the officer of the company and shall be considered to be in default in complying with any provisions of the Companies Act, 1956.

In addition to the Companies Act, other laws like Income-tax Act, Negotiable Instruments Act, SEBI Act, MRTP Act, FEMA Regulations, Central Excise and Customs Act, etc. has recognised the secretary as a principal officer of the company and has placed on various responsibilities for compliance by him.

## **12. Secretary in not responsible u/s 138 and 141 of the Negotiable Instrument Act, 1981**

It has been held that the role of Company Secretary is distinguishable and he is merely an employee of the company. If he is neither director nor signatory to the cheque, in view of that the secretary has no active role in the passing of resolution and policy decision of the company or the seeking financial assistance or issuing cheques and he rather an outsider and mere employee of the company, therefore, the proceeding under section 138 and 141 of the Negotiable Instrument Act, 1981 against the company secretary has been dropped. [*Madan Aggarawal v State & Others* 128 (2006) DLT 74 decided on 24<sup>th</sup> Jan., 2006 by Justice J. P. Singh.

## **13. Failure to comply with section 383A**

Where a company having paid-up share capital of Rupees Two Crores or more fails to employ a whole-time secretary, the company and every officer of the company who is in default shall be punishable with fine upto Rs. 500 for every day during which the default continues:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of section 383A(1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

## Appendix 1

### **Text of Companies (Appointment and Qualification of Secretary) Rules, 1988<sup>1</sup>**

*Notification No. GSR 1105(E), dated 29 November, 1988*

In exercise of the powers conferred by clauses (a) and (b) of section 642 read with clause (45) of section 2 and section 383A of the Companies Act, 1956 (1 of 1956), and in supersession of the Companies (Secretary's Qualifications) Rules, 1975, the Central Government hereby makes the following Rules, namely:

**1. Short title and commencement.**—(1) These Rules may be called the Companies (Appointment and Qualifications of Secretary) Rules, 1988.

(2) It shall come into force on the 1st day of December, 1988.

**2. Appointment, etc., of whole-time secretary.**—(1) Every company having a paid-up share capital of not less than rupees <sup>2</sup>[two crores] shall have a whole-time secretary.

(2) No person shall be appointed as whole-time secretary under sub-rule (1) unless he is a member of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980).

(3) A company having a paid-up share capital of less than rupees <sup>3</sup>[two crores] may appoint any individual as its whole-time secretary to perform the duties of a secretary under the Companies Act, 1956, and any other ministerial or administrative duties:

Provided that no individual shall be eligible to be so appointed unless he possesses one or more of the qualifications specified in sub-rule (4).

<sup>4</sup>[Provided further that a company with its registered office and corporate office and works situated in towns with a population of less than one lakh in accordance with census of India 2001 report and having a paid-up share capital of rupees two crores or more but less than rupees five crores, may appoint any individual, who possess any one or more of the qualifications specified in clauses (i) to (x) of sub-rule (4) as its whole-time secretary to perform the duties as such under the Companies Act, 1956 (1 of 1956):

Provided also that if a company having a paid-up share capital of rupees two crores or more but less than rupees five crores shifts either its registered office or corporate office or works from towns with a population of less than one lakh in accordance with census of India 2001 report, it shall appoint a person as a whole-time secretary under sub-rule (1).]

(4) No individual shall be appointed as secretary pursuant to sub-rule (3) unless he possesses any one or more of the following qualifications, namely:—

- (i) membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980);
- (ii) pass in the Intermediate examination conducted either by the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (No. 56 of 1980), or by the earlier Institute of Company Secretaries of India incorporated on 4th October, 1968, under the Companies Act, 1956 (1 of 1956), and licensed under section 25 of that Act;
- (iii) Post-graduate degree in commerce or corporate secretaryship granted by any university in India;
- (iv) degree in law granted by any university;
- (v) membership of the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949);
- (vi) membership of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959);

---

<sup>1</sup> See sections 2(45) and 383A of the Companies Act, 1956.

<sup>2</sup> Substituted for "fifty lakhs" by GSR 419(E), dated 11-6-2002, w.e.f. 11-6-2002.

<sup>3</sup> Substituted for "fifty lakhs" by GSR 419(E), dated 11-6-2002, w.e.f. 11-6-2002.

<sup>4</sup> Inserted vide Companies (Appointment and Qualifications of Secretary) (Amendment) Rules, 2003

- (vii) post-graduate degree or diploma in management sciences, granted by any university, or the Institutes of Management, Ahmedabad, Calcutta, Bangalore or Lucknow;
- (viii) post-graduate diploma in company secretaryship granted by the Institute of Commercial Practice under the Delhi Administration or Diploma in Corporate Laws and Management granted by the Indian Law Institute, New Delhi;
- (ix) post-graduate diploma in company law and secretarial practice granted by the University of Udaipur; or
- (x) membership of the Association of Secretaries and Managers, Calcutta, registered under the West Bengal Registration of Societies Act, 1961 (XXVI of 1961):

Provided that where the paid-up share capital of such company is increased to rupees <sup>1</sup>[two crores] or more, the company shall, within a period of one year from the date of such increase, comply with the provisions of sub-rules (1) and (2) of rule 2.

*Explanation.*—In this rule, "University" has the meaning assigned to it in the University Grants Commission Act, 1956 (No. 3 of 1956), and includes any university outside India which is recognised by the Union Public Service Commission for the purposes of recruitment to public services and posts in connection with the affairs of the Union or of any State.

**3. Provisions relating to existing secretaries.**—Notwithstanding anything contained in sub-rules (1) and (2) of rule 2, the qualifications possessed by a person holding the office of whole-time secretary of a company immediately before 30th October, 1980, in terms of the second proviso to clause (a) of rule 2 of the Companies (Secretaries Qualifications) Rules, 1975, shall be deemed to be the qualifications which he shall be required to possess in order to be eligible to continue as whole-time secretary in that company.

## Appendix 2

### Specimen of a Board resolution for appointment of Secretary

**RESOLVED THAT** pursuant to the provisions of section 383A of the Companies Act, 1956 read with the Companies (Appointment and Qualification of Secretary) Rules, 1988, Ms. Abha Jaiswal, an Associate Member of the Institute of Company Secretaries of India, be and is hereby appointed as a Company Secretary of the Company w.e.f. 01<sup>st</sup> Jan., 2007 on the terms and conditions as mentioned in her appointment letter as placed before the Board duly initialed by the Chairman for the purpose of identification.

---

<sup>1</sup> Substituted for "fifty lakhs" by GSR 419(E), dated 11-6-2002, w.e.f. 11-6-2002.

## Chapter 2

### Compliance Certificate

#### Synopsis

##### Important Provisions at a Glance

*Compliance certificate under proviso to sub-section (1) of section 383A of the Companies Act, 1956*

1. Introduction
2. Meaning of 'Company Secretary in Whole-time Practice'  
*The Companies (Compliance Certificate) Rules, 2001*
3. Effective date for commencement of the Rules
4. Compulsory requirement for obtaining of the Compliance Certificate  
*Scope of Compliance Certificate*
5. Matters to be specified
6. Flexibility in the form of Compliance Certificate
7. Verification of records and documents
8. Crucial area of the Compliance Certificate
9. Period of the Certification
10. Scale of fee to be charged for issuance of Compliance Certificate
11. Ceiling on number of Compliance Certificate which may be issued by a Company Secretary in Practice
12. Filing of the Compliance Certificate with the Registrar
13. Payment of filing fee on the Compliance Certificate
14. Right to access records
15. Attachment of the Compliance Certificate with the Directors' Report
16. Laying of the Compliance Certificate at the annual general meeting
17. Penalty
18. Appointment and tenure of CSP
19. Disqualifications for appointment of CSP
20. Maintenance of Register of Attestation of Services by the Practising Company Secretaries
- Appendix 1 Text of the Companies (Compliance Certificate) Rules, 2001
- Appendix 2 Specimen e-FORM 66
- Appendix 3 Specimen for disclosure to be given in the Directors' report for Compliance Certificate
- Appendix 4 Specimen Resolutions
- Appendix 5 Format of Register of Attestation

#### Important Provisions at a Glance

| Sl. No. | Sections                                                 | Matters dealt with                                                           | e-Form Nos. |
|---------|----------------------------------------------------------|------------------------------------------------------------------------------|-------------|
| 1.      | 2(45A)                                                   | Definition of Secretary in Whole-time Practice.                              |             |
| 2.      | 383A(1)                                                  | Provisions regarding Compliance Certificate issued by secretary in practice. |             |
| 3.      | 217                                                      | Copy of the certificate to be attached with the Directors' Report.           |             |
| 4.      | Rule 2 of Companies (Compliance Certificate) Rules, 2001 | Filing of compliance certificate with the Registrar                          | 66          |

## **COMPLIANCE CERTIFICATE UNDER PROVISIO TO SUB-SECTION (1) OF SECTION 383A OF THE COMPANIES ACT, 1956**

### **1. Introduction**

Proviso to sub-section (1) of section 383A of the Companies Act, provides 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 the provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.

As per rule 2 of the Companies (Appointment and Qualifications of Secretary) Rules, 1988, every company having a paid-up share capital of rupees Two Crores or more [Limit increased from Rs. 50 Lacs to Rs. 200 Lacs by Notification No. GSR 419(E), dated 11-6-2002] is required to have a whole-time secretary. Accordingly, every company having a paid-up share capital of Rs. 10.00 lakhs or more but less than Rs. 200.00 lakhs is required to file with the Registrar of Companies (ROC) a Compliance Certificate obtained from a secretary in whole-time practice and also attach a copy of that certificate with the report of the Board of directors of the company.

### **2. Meaning of 'Company Secretary in Whole-time Practice'**

Section 2(45) of the Companies Act, 1956 defines 'Secretary in Whole-time Practice' as a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980 and who is not in full time employment. A member of the Institute of Company Secretaries of India, who is not in full time employment, can become a Secretary in Whole-time Practice (hereinafter referred to as CSP) after obtaining Certificate of Practice from the Council of the Institute of Company Secretaries of India under section 6 of the Company Secretaries Act, 1980.

### **THE COMPANIES (COMPLIANCE CERTIFICATE) RULES, 2001**

In terms of the proviso to sub-section (1) of section 383A, the Central Government has prescribed the Companies (Compliance Certificate) Rules, 2001 (hereinafter called the rules) for issuance of compliance certificate by a company secretary in practice. (The Text of the Rules is given in Appendix 1)

### **3. Effective date for commencement of the Rules**

The Rules have come into force w.e.f. February 1, 2001, i.e. the date of its publication in the Official Gazette of the Government of India. Therefore, every company whose directors' report is signed on or after 1st February, 2001 is required to obtain a compliance certificate from a CSP.

### **4. Compulsory requirement for obtaining of the Compliance Certificate**

Every company which is not required to employ a whole-time secretary under sub-section (1) of section 383A of the Act and having a paid-up share capital of Rs. 10.00 lakh or more shall obtain a certificate from a CSP.

Requirement of obtaining compliance certificate is mandatory for a company to which proviso to sub-section (1) of section 383A applies, even if it has appointed a whole-time secretary. Therefore, every company which is not required to employ a whole-time secretary and whose paid-up share capital is Rs. 10.00 lakh or more at any point of time during the financial year, shall be required to obtain Compliance Certificate from a CSP in respect of that financial year.

However, the Department of Company Affairs has issued a Circular 35/2003 dated 11<sup>th</sup> December, 2003 which states as follows:

"Proviso to section 383A(1) of the Companies Act, 1956 *inter alia* provides that every company not required to employ a whole-time secretary under sub-section (1) of section 383A 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 as to whether the company has complied with all the provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.



2. The issue whether a company which is not required to appoint a whole-time company secretary but has voluntarily appointed a whole-time secretary, is required to obtain compliance certificate from secretary in whole-time practice was under examination in this Department.

3. In consultation with the Department of Legal Affairs it is clarified that a company which is not required under law to employ a whole-time secretary, but has nevertheless employed a whole-time company secretary within the meaning of section 2(1)(c) of the Company Secretaries Act, 1980, such a company is not required to obtain compliance certificate from company secretary in practice. In other words, no company employing a full time company secretary is required to also obtain a compliance certificate from a company secretary in practice."

### **SCOPE OF COMPLIANCE CERTIFICATE**

#### **5. Matters to be specified**

The scope of compliance certificate would comprise of certification of compliance of various requirements under the Companies Act and the Rules there under. The CSP should certify compliance only in respect of matters specified in the Form prescribed under the Rules. If any matter is not applicable, it should also be specified accordingly.

#### **6. Flexibility in the form of Compliance Certificate**

As mentioned in sub-rule (2) of rule 3 that the compliance certificate shall be in the Form appended to the Rules or as near thereto as circumstances admit. It provides certain flexibility in the prescribed form, which means that if any information required to be given in the certificate does not fit into the format, necessary modifications may be made accordingly in the format of compliance certificate by the CSP.

#### **7. Verification of records and documents**

For issuance of the first compliance certificate, CSP should verify the various statutory registers, forms and other relevant records and documents maintained by the company from the first day of the financial year as well as for the previous period for his satisfaction. In case of any doubt on compliance specially for filing of various forms and returns the CSP should also check the proof for filing and receipts obtained from the Registrar and other authorities.

#### **8. Crucial area of the Compliance Certificate**

There are certain classes prescribed under the compliance certificate, in which probability for defaults may be committed by the company and its director is more, due to various reasons, therefore proper care must be taken specifically in the matter of increase in the authorised share capital, appointment and cessation of office of directors, issuance of share certificate for the shares allotted in the earlier years, acceptance of deposits from the general public, unsecured loans obtained from the various sources, loan given to directors, approval of contracts in which directors are interested, appointment in the office or place of profit, registration of creation, modification and satisfaction of charges, transfer of amount of dividend in a separate bank account, remittance of security deposits collected from the employees, payment of dividend and payment of managerial remuneration, etc.

#### **9. Period of the Certification**

Sub-rule (2) of rule 3 provides that the Compliance Certificate shall relate to the period pertaining to the financial year of the company.

Certification should be on the basis of the financial year/accounting year of the company, it may be for a period of less than or more than one year, depending upon the period of balance sheet.

#### **10. Scale of fee to be charged for issuance of Compliance Certificate**

The Institute of Company Secretaries of India (ICSI) has published Guidance Notes on Compliance Certificate for the guidance of the practicing Company Secretaries according to which the scale of fees to be charged to the companies for issuance of compliance certificate may be based on criteria like paid-up share capital, number of shareholders and debentureholders, nature and standard of secretarial practices prevalent in the company, man-hours involved, etc. However, the minimum fee for certification shall ordinarily be not less than the following amounts for a financial year:

| Paid-up share capital of the company         | Amount of Fees (Rs.) |
|----------------------------------------------|----------------------|
| Less than Rs. 50.00 Lacs                     | 5,000                |
| Rs. 50.00 Lacs but less than Rs. 100.00 Lacs | 7,500                |
| Rs. 100.00 Lacs and above                    | 10,000               |

#### **11. Ceiling on number of Compliance Certificate which may be issued by a Company Secretary in Practice**

The Council of the Institute has specified that a member of the ICSI in whole-time practice can issue compliance certificate to 50 companies in a calendar year from 1<sup>st</sup> January, 2003. However, in the case of a firm of company secretaries, the ceiling of 50 companies would apply to each partner therein who is entitled to sign the compliance certificate in terms of the proviso to sub-section (1) of section 383A of the Companies Act, 1956.

#### **12. Filing of the Compliance Certificate with the Registrar**

Every company, on which these Rules apply, shall be required to file with the Registrar of Companies, the Compliance Certificate attached with e-Form 66, electronically within thirty days from the date/last date on which its annual general meeting is held. Provided that where, even if the annual general meeting of such company for any year has not been held, irrespective of that such certificate has to be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of the Companies Act, 1956. (Appendix 2)

In case, if the annual general meeting is held and adjourned for a later date, the Compliance Certificate shall be filed with the Registrar within thirty days, from the date on which such adjourned meeting was held provided such adjourned meeting is held within the statutory limit.

#### **13. Payment of filing fee on the Compliance Certificate**

The Compliance Certificate is required to be filed as an attachment with e-Form 66 with the prescribed filing fees as per provisions of Schedule X of the Companies Act, 1956.

#### **14. Right to access records**

Sub-rule (3) of rule 3 provides that the CSP for the purpose of issuance of Compliance Certificate shall have the right to access at all times to the registers, books, papers, documents and records of the company whether, kept in pursuance of the Act or any other Act or otherwise, and whether, kept at the Registered office of the company or elsewhere, and shall also be entitled to require from the officers or agents of the company, such information and explanations as the CSP may think necessary for the purpose of such certificate.

#### **15. Attachment of the Compliance Certificate with the Directors' Report**

Proviso to section 383A(1) of the Act provides that the Compliance Certificate shall be attached with the Directors' Report referred to in section 217. It is also necessary for the company to attach a copy of the Compliance Certificate with the Directors' Report while forwarding the same to members and others under section 219 of the Act. Necessary comments on the Directors' Report regarding appointment of CSP should also be given (See Appendix 3).

It is desirable for the Board to give full information and explanations in its report to the members under section 217 of the Act on every reservation, qualification or adverse remarks contained in the Compliance Certificate.

#### **16. Laying of the Compliance Certificate at the annual general meeting**

Sub-rule (4) of rule 3 requires that the Compliance Certificate shall be laid by the company in its annual general meeting and shall be read at the meeting and also be made available to the members of the company for their inspection.

#### **17. Penalty**

If any company fails to comply with the requirement of filing the Compliance Certificate with the Registrar or to attach a copy of such certificate with the Directors' Report, in terms of sub-section (1A) to section 383A(1), the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 500 for every day during which the default continues.

## **18. Appointment and tenure of CSP**

The Compliance Certificate is required to be addressed to the members of the company, therefore, it would be appropriate that the appointing authority should be members to whom this certificate is addressed. It is advisable that the CSP is appointed by the members in the annual general meeting of the company by way of a special business as an ordinary resolution. Such appointment should be made from the conclusion of that annual general meeting until the conclusion of the next annual general meeting. The first appointment of the CSP may be made by the Board of directors to hold office until the conclusion of the annual general meeting held after such appointment. (Appendix 4)

The Board may fill any casual vacancy in the office of CSP to hold office until the conclusion of the next annual general meeting. However, if such a vacancy is caused due to resignation of CSP, it should be filled up by the company in general meeting as in the case of the auditors of the company.

## **19. Disqualifications for appointment of CSP**

To ensure that CSP shows utmost integrity and independence of judgment in the performance of his duties, a person referred to in sub-section (3) or sub-section (4) of section 226 of the Act, should not be appointed or re-appointed for giving compliance certificate to a company.

Therefore, the following persons should not be appointed by a company:—

- (a) a body corporate;
- (b) an officer or employee of the company;
- (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- (d) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;
- (e) a person holding any security of that company which carries voting rights.

However, any securities held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest should be excluded from such disqualification.

Further, if a person is not qualified for appointment as CSP of a company for reasons stated above, then he is also disqualified for appointment as CSP of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company.

## **20. Maintenance of Register of Attestation of Services by the Practising Company Secretaries**

Pursuant to Notification No. 1/2005 dated 01.04.2005, w.e.f. 1<sup>st</sup> April, 2005 every Practising Company Secretary (PCS)/Firm of Practising Company Secretaries shall maintain register in the format given in Appendix 5 regarding attestation services provided by him/her/it.

The Register shall be open for inspection by the authorized representatives of the Institute. For the purposes of this Register, the attestation services shall include:

1. Signing of Annual Return pursuant to proviso to sub-section (1) of section 161 of the Companies Act, 1956.
2. Issue of Compliance Certificate pursuant to proviso to sub-section (1) of section 383A of the Companies Act, 1956.
3. Issue of certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchanges.
4. Audit for the purposes of reconciliation of capital, updation of Register of Members etc. pursuant to Regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996.
5. Conduct of Internal Audit of Operations of the Depository Participants.
6. Any other service as may be notified by the Council from time to time.

## Appendix 1

### Text of the Companies (Compliance Certificate) Rules, 2001<sup>1</sup>

*Notification No. GSR 52(E), dated 31-1-2001*

In exercise of the powers conferred by sub-section (1) of section 642 read with proviso to sub-section (1) of section 383A of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely:—

**1. Short title and commencement.**—(1) These rules may be called the Companies (Compliance Certificate) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.**—In these rules, unless the context otherwise requires,—

(a) "Act" means the Companies Act, 1956 (1 of 1956);

(b) "Certificate" means a certificate referred to in the proviso to sub-section (1) of section 383A of the Act;

(c) "Form" means Form appended to these rules; and

(d) the words and expressions used in these rules but not defined in these rules shall have the same meanings respectively assigned to them in the Act.

**3. Other conditions.**—(1) Every company not required to employ a whole-time secretary under sub-section (1) of section 383A of the Act and having a paid-up share capital of ten lakh rupees or more shall obtain a certificate from a secretary in whole-time practice.

(2) The company referred to in sub-rule (1) shall file with the Registrar a certificate in Form or as near thereto as circumstances admit in respect of each financial year within thirty days from the date on which its annual general meeting was held:

Provided that where the annual general meeting of such company for any year has not been held, there shall be filed with the Registrar such certificate within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of the Act.

(3) Every secretary in whole-time practice for the purpose of issue of certificate referred to in sub-rule (2) shall have right to access at all times to the registers, books, papers, documents and records of the company whether kept in pursuance of the Act or any other Act or otherwise and whether kept at the registered office of the company or elsewhere and shall be entitled to require from the officers or agents of the company, such information and explanations as the secretary in whole-time practice may think necessary for the purpose of such certificate.

(4) Every certificate referred to in sub-rule (2) shall be laid by the company in its annual general meeting.

#### Form

[See rule 3]

Compliance Certificate

To,

The Members

..... (Name of the company)

I/We have examined the registers, records, books and papers of ..... Limited (the Company) as required to be maintained under the Companies Act, 1956, (the Act) and the rules made thereunder and also the provisions contained in the memorandum and Articles of Association of the Company for the financial year ended on 31st March, 20..... In my/our opinion and to the best of my/our 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 in respect of the aforesaid financial year:—

---

<sup>1</sup> See section 383A(1) proviso of the Companies Act, 1956.

1. the company has kept and maintained all registers as stated in Annexure 'A' to this certificate, as per the provisions and the rules made thereunder and all entries therein have been duly recorded.
2. the company has duly filed the forms and returns as stated in Annexure 'B' to this certificate, with the Registrar of Companies, Regional Director, Central Government, Company Law Board or other authorities within the time prescribed under the Act and the rules made thereunder.
3. the company being private limited company has the minimum prescribed paid-up capital and its maximum number of members during the said financial year was ..... excluding its present and past employees and the company during the year under scrutiny:
  - (i) has not invited public to subscribe for its shares or debentures; and
  - (ii) has not invited or accepted any deposits from persons other than its members, directors or their relatives.
4. the Board of directors duly met ..... times on ..... (dates) in respect of which meetings proper notices were given and the proceedings were properly recorded and signed including the circular resolutions passed in the Minutes Book maintained for the purpose.
5. the company closed its Register of Members, and/or Debentureholders from ..... to ..... and necessary compliance of section 154 of the Act has been made.
6. the annual general meeting for the financial year ended on ..... was held on ..... after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in Minutes Book maintained for the purpose.
7. .... extraordinary meeting(s) was/were held during the financial year after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in the Minutes Book maintained for the purpose.
8. the company has advanced loan amounting to Rs. .... to its directors and/or persons or firms or companies referred in the section 295 of the Act after complying with the provisions of the Act.
9. the company has duly complied with the provisions of section 297 of the Act in respect of contracts specified in that section.
10. the company has made necessary entries in the register maintained under section 301 of the Act.
11. the company has obtained necessary approvals from the Board of Directors, members and previous approval of the Central Government pursuant to section 314 of the Act wherever applicable.
12. the Board of directors or duly constituted Committee of Directors has approved the issue of duplicate share certificates.
13. the Company has:—
  - (i) delivered all the certificates on allotment of securities and on lodgment thereof for transfer/transmission or any other purpose in accordance with the provisions of the Act;
  - (ii) deposited the amount of dividend declared including interim dividend in a separate bank account on ..... which is within five days from the date of declaration of such dividend;
  - (iii) paid/posted warrants for dividends to all the members within a period of 30 (Thirty) days from the date of declaration and that all unclaimed/unpaid dividend has been transferred to Unpaid Dividend Account of the Company with ..... Bank on .....
  - (iv) transferred the amounts in unpaid dividend account, application money due for refund, matured deposits, matured debentures and the interest accrued thereon which have remained unclaimed or unpaid for a period of seven years to Investor Education and Protection Fund;
  - (v) duly complied with the requirements of section 217 of the Act.
14. the Board of directors of the company is duly constituted and the appointment of directors, additional directors, alternate directors and directors to fill casual vacancies have been duly made.
15. the appointment of Managing Director/Whole-time Director/Manager has been made in compliance with the provisions of section 269 read with Schedule XIII to the Act and approval of

- the Central Government has been obtained in respect of appointment of ..... not being in terms of Schedule XIII.
16. the appointment of sole-selling agents was made in compliance of the provisions of the Act.
  17. the company has obtained all necessary approvals of the Central Government, Company Law Board, Regional Director, Registrar or such other authorities as may be prescribed under the various provisions of the Act as detailed below:—
  18. the directors have disclosed their interest in other firms/companies to the Board of Directors pursuant to the provisions of the Act and the rules made thereunder.
  19. the company has issued ..... shares/debentures/other securities during the financial year and complied with the provisions of the Act.
  20. the company has bought back ..... shares during the financial year ending, ..... after complying with the provisions of the Act.
  21. the company has redeemed ..... preference shares/debentures during the year after complying with the provisions of the Act.
  22. the company wherever necessary has kept in abeyance rights to dividend, rights shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act.
  23. the company has complied with the provisions of sections 58A and 58AA read with Companies (Acceptance of Deposit) Rules, 1975/the applicable directions issued by the Reserve Bank of India/any other authority in respect of deposits accepted including unsecured loans taken, amounting to Rs. .... raised by the company during the year and the company has filed the copy of Advertisement/Statement in lieu of Advertisement/necessary particulars as required with the Registrar of Companies ..... on ..... The company has also filed return of deposit with the Registrar of Companies/Reserve Bank of India/other authorities.
  24. the amount borrowed by the Company from directors, members, public, financial institutions, banks and others during the financial year ending — is/are within the borrowing limits of the company and that necessary resolutions as per section 293(1)(d) of the Act have been passed in duly convened annual/extraordinary general meeting.
  25. the company has made loans and investments, or given guarantees or provided securities to other bodies corporate in compliance with the provisions of the Act and has made necessary entries in the register kept for the purpose.
  26. the company has altered the provisions of the memorandum with respect to situation of the company's registered office from one State to another during the year under scrutiny after complying with the provisions of the Act.
  27. the company has altered the provisions of the memorandum with respect to the objects of the company during the year under scrutiny and complied with provisions of the Act.
  28. the company has altered the provisions of the memorandum with respect to name of the company during the year under scrutiny and complied with the provisions of the Act.
  29. the company has altered the provisions of the memorandum with respect to share capital of the company during the year under scrutiny and complied with the provisions of the Act.
  30. the company has altered its articles of association after obtaining approval of members in the general meeting held on ..... and the amendments to the articles of association have been duly registered with the Registrar of Companies.
  31. a list of prosecution initiated against or show cause notices received by the company for alleged offences under the Act and also the fines and penalties or any other punishment imposed on the company in such cases is attached.
  32. the company has received Rs. .... as security from its employees during the year under certification and the same has been deposited as per provisions of section 417(1) of the Act.

33. the company has deposited both employee's and employer's contribution to Provident Fund with prescribed authorities pursuant to section 418 of the Act.

*Note.*—The qualification, reservation or adverse remarks, if any, may be stated at the relevant places.

Place:

Signature

Date:

Name of Company Secretary:

CP No.:

#### Annexure A

Registers as maintained by the Company

1. .... under section .....
2. .... under section .....
3. .... under section .....

#### Annexure B

Forms and Returns as filed by the Company with the Registrar of Companies, Regional Director, Central Government or other authorities during the financial year ending on 31st March, 20....

1. Form No. .... Filed under section ..... for .....
2. Form No. .... Filed under section ..... for .....
3. Form No. .... Filed under section ..... for .....

### Appendix 2

#### Specimen e-FORM 66

##### Form for submission of compliance certificate with the Registrar

[Pursuant to section 383A of the Companies Act, 1956, and rule 3(2) of the Companies (Compliance Certificate) Rules, 2001]

*Note.*—All fields marked in \* are to be mandatorily filled.

1. (a) \*Corporate identity number (CIN) of company 

|               |
|---------------|
| XXXXXXXXXXXXX |
|---------------|

  
(b) Global location number (GLN) of company 

|  |
|--|
|  |
|--|
2. (a) Name of the company 

|               |
|---------------|
| GREAT G. LTD. |
|---------------|

  
(b) Address of the registered office of the company 

|                                           |
|-------------------------------------------|
| 160, KANCHAN BAGH INDORE<br>(M.P.) 452003 |
| Greatgalleon@yahoo.com                    |

  
(c) \*e-mail-ID
3. Financial year to which the compliance certificate relates  
(a) \*From 

|            |
|------------|
| 01/04/2005 |
|------------|

 (DD/MM/YYYY) (b) \*To 

|            |
|------------|
| 31/03/2006 |
|------------|

 (DD/MM/YYYY)
4. \*Whether annual general meeting (AGM) held 

|                                  |
|----------------------------------|
| <input checked="" type="radio"/> |
|----------------------------------|

|                       |
|-----------------------|
| <input type="radio"/> |
|-----------------------|

  
(a). If yes date of AGM 

|            |
|------------|
| 30/09/2006 |
|------------|

 (DD/MM/YYYY)  
(b). \*Due date of AGM 

|            |
|------------|
| 30/09/2006 |
|------------|

 (DD/MM/YYYY)  
(c). \*Whether any extension for financial year or AGM granted Yes 

|                       |
|-----------------------|
| <input type="radio"/> |
|-----------------------|

 No 

|                                  |
|----------------------------------|
| <input checked="" type="radio"/> |
|----------------------------------|

  
(d). If yes, due date of AGM after grant of extension 

|  |
|--|
|  |
|--|

 (DD/MM/YYYY)

**Attachments**

1. \*Compliance certificate pursuant to rule 3 of the Companies (Compliance Certificate) Rules, 2001

Attach

2. Optional attachment(s) - if any  
List of attachments  
(DD/MM/YYYY)

**Verification**

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I have been authorised by the board of directors' resolution dated \*

01/09/2006

to sign and submit this form.

\*Designation

Managing director

Director identification number of the director or membership number of the secretary

00012345

**This e-Form has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company**

Annexure 1 of Appendix 2

**Specimen of Compliance Certificate**

CIN: 10-XXXXXXXXXXXXXXXXXX

Nominal Capital : Rs.50.40 Crores

To,

The Board of Directors

**GREAT G LTD.**

(Formerly Known as K. Great G Ltd.)

160, Kanchan Bagh

Indore (M.P.)

We have examined the registers, records, books and papers of **GREAT G LTD.** (Formerly Known as *K. Great G. Ltd.*) (the Company) as required to be maintained under the Companies Act, 1956, (the Act) and the rules made thereunder and also the provisions contained in the Memorandum and Articles of Association of the Company for the financial year ended **31st March, 2006** (from 1-4-2005 to 31-3-2006). In our opinion and to the best of our information and according to the examinations carried out by us and explanations furnished to us by the Company and its management, we certify that in respect of the aforesaid financial year:

1. the company has kept and maintained all registers as stated in **Annexure 'A'** to this certificate, as per the provisions and the rules made thereunder and all entries therein have been recorded.
2. the company has filed the forms and returns as stated in **Annexure 'B'** to this certificate, with the Registrar of Companies and the Central Government, within the time prescribed under the Act and the Rules made thereunder, except Form 32 and Balance Sheet which was filed after some delay with adequate late filing fee.
3. the company, being a public limited company, comments are not required.
4. the Board of directors met 11 (Eleven) times on 5th April, 2005; 15th June, 2005; 21st June, 2005; 30th July, 2005; 12th August, 2005; 15th Oct., 2005; 20th Nov., 2005; 18th Dec., 2005; 21st Feb., 2006; 28th Feb., 2006 and 12th March, 2006 in respect of which meetings proper notices were given and the proceedings were properly recorded and signed in the Minutes book maintained for the purpose.
5. the company was not required to close its Register of Members during the financial year.



6. the Annual General Meeting for the financial year ended on 31st March, 2005 was held on 30th Sept., 2005 after giving notice to the members of the company and the resolutions passed thereat were recorded in Minutes book maintained for the purpose.
7. an Extra Ordinary General meetings were held during the year on **30th March, 2006** after giving notice to the members of the company and the resolutions passed thereat were recorded in Minutes book maintained for the purpose.
8. the company has not advanced any loans to its directors or persons or firms or companies, referred to under section 295 of the Act.
9. the company has not entered with any contract falling within the provisions of section 297 of the Act during the financial year 2005-06.
10. the company has made necessary entries in the register maintained under section 301 of the Act.
11. the company has not appointed any of the relatives of its directors during the year 2005-06 under the provisions of section 314.
12. the company has not issued any duplicate share certificates during the financial year.
13. the company:—
  - (i) was not required to deliver any certificates of securities as there was no instances for allotment, transfer or transmission of shares during the financial year.
  - (ii) was not required to deposited any amount in a separate Bank Account as no dividend was declared during the financial year.
  - (iii) was not required to post warrants to any member of the company as no dividend was declared during the financial year.
  - (iv) was not required to transfer any amount to the Investors Education & Protection Fund as there was no amount due for transfer to the abovesaid account relating to unpaid dividend, application money due for refund, matured deposits, matured debentures and the interest accrued thereon as remain unpaid or unclaimed for a period of 7 years.
  - (v) has complied with the requirements of section 217 of the Act.
14. the Board of directors of the company is duly constituted and the appointment of directors were made during the financial year and has complied with the provisions of the Act. However, there was no appointment of alternate directors and directors to fill casual vacancy during the financial year.
15. the company has not appointed Managing Director and Whole-time Director during the financial year 2005-06.
16. the company has not appoint any sole-selling agents during the financial year.
17. the company was not required to obtain approval of the Central Government/ Registrar of Companies, Company Law Board, Regional Director, and/or any other such authorities prescribed under the various provisions of the Act during the financial year.
18. the directors have disclosed their interest in other firms/companies to the Board of directors pursuant to the provisions of the Act and the rules made thereunder.
19. the company has not issued any shares or other securities during the financial year.
20. the company has not bought back any shares during the financial year.
21. there was no redemption of preference shares or debentures during the financial year.
22. there were no transactions necessitating the company to keep in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer of shares.
23. the company has not invited/accepted any deposits including any unsecured loans falling within the purview of section 58A during the financial year.
24. the amount borrowed by the company from the financial institutions, banks and others during the financial year ending 31st March, 2006 are within the borrowing limits of the company and that

- necessary resolutions as per section 293(1)(d) of the Act have been passed in duly convened Annual General Meeting held on 20th December, 1994.
25. the company has made loans and investments or given guarantees or provided securities to other bodies corporate in compliance with the provisions of the Act and has made necessary entries in the register kept for the purposes.
  26. the company has not altered the provisions of the Memorandum with respect to situation of the company's registered office from one State to another during the year under scrutiny.
  27. the company has not altered the provisions of the Memorandum with respect to the objects of the company during the year under scrutiny.
  28. the company has not altered the provisions of the Memorandum with respect Clause of the company during the financial year 2005-06.
  29. the company has not altered the provisions of the Memorandum with respect to share capital of the company during the year under scrutiny.
  30. the company has not altered its Articles of Association during the financial year 2005-06.
  31. there was no prosecution initiated against and no fines or penalties or any other punishment was imposed on the company during the financial year for offences under the Act.
  32. the company has not received any money as security from its employees during the financial year.
  33. the company has not constituted any trust of PF for its employees under section 418 of the Companies Act, 1956. The Company is depositing both employees and employers contribution to the prescribed PF authorities.

Date: 23rd April, 2006  
Place: Indore

**For, D.K.JAIN & CO.**  
**COMPANY SECRETARIES**  
**DILIP KUMAR JAIN**  
**PROPRIETOR**  
CP NO. 2382

### Appendix 3

#### **Specimen for disclosure to be given in the Directors' report for Compliance Certificate**

The Compliance Certificate received in accordance with the provisions of section 383A read with the Companies (Compliance Certificate) Rules, 2001 being annexed to the Directors' report. The said Compliance Certificate is self-explanatory and needs no comments.

The Board has appointed M/s D.K. Jain & Co., Company Secretaries for issuance of the Compliance Certificate in terms of the provisions of section 383A(1) of the Companies Act, 1956 and to hold the office until the conclusion of the forthcoming annual general meeting on such remuneration as may be determined by the Board and agreeable to them. Your directors recommend to re-appoint them for the abovesaid work and to hold office till the date of the next annual general meeting.

### Appendix 4

#### **Specimen Resolutions**

##### **I. Board resolution for first time appointment of CSP for issuance of compliance certificate**

**RESOLVED THAT** M/s D.K. Jain & Co., Practising Company Secretaries, be and is hereby appointed for issuance of Compliance Certificate in terms of the provisions of section 383A(1) of the Companies Act, 1956 and to hold the office until the conclusion of the next annual general meeting on such remuneration as may be determined by the Board and agreeable to them.

## II. General meeting resolution for appointment of CSP

**RESOLVED THAT** M/s D.K. Jain & Co. Practising Company Secretaries, be and is hereby appointed for issuance of Compliance Certificate in terms of the provisions of section 383A(1) of the Companies Act, 1956 and to hold the office till the conclusion of the next annual general meeting on such remuneration as may be determined by the Board and agreeable to them.

### Appendix 5

#### Format of Register of Attestation

| <i>Sr.<br/>No.</i> | <i>Name and Registration No. of the<br/>Company to which attestation<br/>services are provided</i> | <i>Services<br/>Rendered</i> | <i>Date of<br/>signing of<br/>Certificate/<br/>Return/Audit<br/>Report, etc.</i> | <i>Signature of<br/>the PCS</i> | <i>Signature of<br/>the person<br/>authorised for<br/>verification</i> |
|--------------------|----------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------------------------------------|---------------------------------|------------------------------------------------------------------------|
| <i>1</i>           | <i>2</i>                                                                                           | <i>3</i>                     | <i>4</i>                                                                         | <i>5</i>                        | <i>6</i>                                                               |
|                    |                                                                                                    |                              |                                                                                  |                                 |                                                                        |

## Chapter 3

---

### Practicing Company Secretary and Pre-certification of documents

#### Synopsis

1. Meaning of practising Company Secretary
2. Area of practice available for a company secretary in practice
3. Services can be rendered by Practising Company Secretaries
4. Pre-certification of Forms and returns under the Companies Act, 1956
5. Issuance of certificates regarding compliances by Trading Members
6. Use of Digital Signatures by practicing professionals for the purposes of e-filing under MCA21

Appendix 1 Notices issued by the Ministry of Company Affairs prohibiting professionals from using their DSC for e-Filing of Forms

#### 1. Meaning of practising Company Secretary

A member of the ICSI not in any employment is entitled to practice after obtaining a Certificate of Practice from the Institute. Section 2(45A) of the Companies Act, 1956 defines the term 'secretary in whole-time practice' which means a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980.

#### 2. Area of practice available for a company secretary in practice

Section 2(2) of the Company Secretaries Act, 1980 (hereinafter called the Act) provides that a member of the Institute shall be deemed to be in practice when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, does any of the following in consideration of remuneration received or to be received:

- (a) engages himself in the practice of the profession of company secretaries to, or in relation to, any company; or
- (b) offers to perform or performs services in relation to the promotion, formation, incorporation, amalgamation, reconstruction, reorganisation or winding up of companies; or
- (c) offers to perform or performs such services as may be performed by:
  - (i) an authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
  - (ii) a share transfer agent,
  - (iii) an issue house,
  - (iv) a share and stock broker, a secretarial auditor or consultant, an advisor to a company on management including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947,
  - (v) the Industries (Development and Regulation) Act, 1951, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, any of the rules or bye-laws made by a recognised Stock Exchanges, the Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Management Act, 1999, or under any other law for the time being in force,
- (d) issuing certificates on behalf of or for the purposes of, a company; or
- (e) holds himself out to the public as a company secretary in practice; or
- (f) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of company secretaries; or renders such other services as, in the opinion of the Council, are or may be rendered by a company secretary in practice.

### **3. Services can be rendered by Practising Company Secretaries**

The educational background, knowledge, training and exposure that a Company Secretary acquires makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organisations, small scale units, firms, etc. on retainerhip or job basis. The plethora of services, which a Practising Company Secretary can render, are listed below:

#### **(a) Project Planning**

- (i) Promotion, formation and incorporation of companies, and matters related therewith including choice of type of company, availability of name, drafting of Memorandum and Articles of Association and other documents, their stamping and registration with the Registrar of Companies.
- (ii) Identification of Project.
- (iii) Selection of location for the project and advising on various incentives available.
- (iv) Selection of land, search of titles, and getting required approvals for carrying out industrial/commercial activities on such land.
- (v) Advising on size of the project, drawing schedule of implementation and follow up from the stage of conceiving of project upto the commencement of commercial production.
- (vi) Advising on expansion and modernisation.

#### **(b) Raising of resources/financial services**

- (i) Preparation of Project Reports and Feasibility Studies.
- (ii) Syndication of long term and short term loans from financial institutions, banks and other agencies.
- (iii) Loan documentation, registration of charges, search and status report.
- (iv) Advisor/Consultant in issue of shares and other securities.
- (v) Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities, and obtaining various approvals in association with lead managers.
- (vi) Listing of securities/delisting of securities with recognised stock exchanges.
- (vii) Private placement of shares and securities.
- (viii) Buy-back of shares and other securities.
- (ix) Raising of funds from international markets - ADR/GDR/ECB.
- (x) Investment subsidies, sales tax and other incentives.
- (xi) Liaisoning with financial institutions, banks, other lenders, and stock exchanges, and furnishing periodical returns, reports and information required by them.
- (xii) Advising sick companies with respect to the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, and drafting of rehabilitation schemes.

#### **(c) Foreign collaborations and joint ventures abroad**

- (i) Advising on Foreign Collaborations.
- (ii) Advising on setting up of subsidiaries in India.
- (iii) Advising on setting up of joint ventures abroad or setting up of subsidiaries abroad.
- (iv) Drafting of Memorandum of Understanding, Promoters' Agreement, Shareholders' Agreement and Commercial Agreements.

#### **(d) Corporate restructuring**

- (i) Planning strategies for amalgamation/merger, acquisition, takeover, spin off, reconstruction, reorganisation, restructuring and winding up of companies.
- (ii) Change of name, change of objects and shifting of registered office of the company.
- (iii) Drafting schemes of amalgamation or arrangement, public offer for acquisition or takeover, and Promoters Agreement.
- (iv) Complying with necessary legal and procedural requirements.
- (v) Advising the management on post restructured scenario.

**(e) Corporate Laws advisory services**

- (i) Companies Act:
  - (a) Filing, registering, representing, attesting or verifying any document including forms, returns and applications by or on behalf of the company as an authorised representative.
  - (b) Compilation of status/search reports for companies, banks and financial institutions.
  - (c) Pre-certification of forms relating to Registration/Modification/Satisfaction of charges and their filing with the Registrar of Companies.
  - (d) Pre-certification of other documents and returns required to be filed with the Registrar of Companies.
  - (e) Advising on legal and procedural matters under the Act.
  - (f) Maintenance of secretarial records, statutory books and registers.
  - (g) Acting as Secretarial Auditor, Advisor or Consultant.
  - (h) Filing of petitions before the Company Law Board.
  - (i) Appearing as authorised representative before the Company Law Board, Central Government, Regional Director and Registrar of Companies.
  - (j) Acting as Scrutinizer for postal ballots voting process.
- (ii) MRTP Act/Consumer Protection Act:
  - (a) Appearing as authorised representative before the MRTP Commission/Consumer Forums.
  - (b) Advising company on dealership agreements, trade practices, sales promotion schemes, marketing and sales campaigns.
- (iii) Foreign Exchange Management Act:
  - (a) Advising on legal and procedural matters falling under FEMA.
  - (b) Advising Non-Resident Indians regarding investment in India and repatriation of such investments and returns thereon.
  - (c) Obtaining RBI/FIPB approvals.
- (iv) Depositories Act:
  - (a) Appearing as authorised representative before Securities Appellate Tribunal.
  - (b) Conduct of Internal Audit of Operations of Depository Participants.
- (v) State Laws: Advising on legal and procedural matters on various laws of different states on Pollution Control, Co-operative Societies, Public Trusts, Non Trading Corporations, Land Ceilings, Sales Tax, Revenue Laws etc.
- (vi) Appearance before Regulatory Authorities: Appearing as authorised representative before the Company Law Board, Central Government, Regional Director, Registrar of Companies, MRTP Commission, Consumer Forums, Securities Appellate Tribunal Central Excise authorities, Wealth Tax Authorities, Customs Authorities, Income Tax Authorities, Appellate Tribunals, Central Electricity Regulatory Commission, Gujarat Electricity Regulatory Commission, Telecom Disputes Settlement and Appellate Tribunal, BIFR.

**(f) Tax Planning and management**

- (i) Income Tax:
  - (a) Computation of tax payable, filing of returns of income of the company and its directors and obtaining permanent account numbers
  - (b) Computation and payment of advance tax.
  - (c) Computation of deduction of tax at source, filing of forms and issue of TDS certificates.
  - (d) Acting as authorised representative before the Income Tax authorities during assessment proceedings, furnishing of records/documents/explanations called for.
  - (e) Filing of appeals, claiming refunds, getting the transactions registered.

- (f) Advising on tax planning and tax management, availing tax concessions, incentives, reliefs and tax benefits.
- (ii) Wealth Tax:
  - (a) Acting as authorised representative before wealth tax authorities in matters of disputes relating to valuation of shares, debentures, stocks, assets, etc.
  - (b) Acting as registered valuer of shares, stocks, debentures, shares in partnership firm and of business assets including goodwill.
- (iii) Excise:
  - (a) Acting as authorised representative before Central Excise Authorities.
  - (b) Valuation and classification of goods.
  - (c) Assessment of duty and obtaining refunds.
  - (d) Complying with formalities for removal of excisable goods for home consumption and exports.
  - (e) CENVAT procedures.
  - (f) Advising on search, seizure etc.
  - (g) Documentation.
- (iv) Customs:
  - (a) Acting as authorised representative before Customs Authorities and the Appellate Tribunal.
  - (b) Assisting in clearance of import/export classification of goods.
  - (c) Valuation of goods and assessment of customs duty and obtaining refunds.
  - (d) Documentation.
  - (e) Availing duty exemptions and drawback benefits.
- (g) Export-Import and Forex dealings**
  - (i) Advising on Export-Import policy and regulations.
  - (ii) Export-Import documentation.
  - (iii) Advising on Letters of Credit, and drafting suitable conditions in L/Cs.
  - (iv) Advising and assisting in receipt and remittance of funds in foreign currency.
- (h) Arbitration and conciliation**
  - (i) Advising on arbitration, negotiations and conciliation.
  - (ii) Drafting Arbitration/Conciliation Agreement/Clauses.
  - (iii) Acting as Arbitrator/Conciliator in Domestic and International Commercial disputes.
- (i) Intellectual property rights and WTO**
  - (i) Advising on Intellectual Property Licensing and drafting of agreement.
  - (ii) Acting as registered Trade Mark Agent.
  - (iii) Advising on passing off/infringement matters.
  - (iv) Advising on registration of patents, trademarks and copyrights.
  - (v) Advising on all matters related to Intellectual property and TRIPs of WTO.
  - (vi) Valuation of Intellectual Property Rights.
  - (vii) Advising on anti-dumping matters-computation of Normal Value, Sale Price, Comparisons and Appraisals.
- (j) Personal matters**
  - (i) Manpower planning and development.
  - (ii) Recruitments, fixation of terms of appointment and devising pay packages.
  - (iii) Advising on matters with respect to labour and industrial laws, maintenance of registers and records, filing of various forms and registers, and follow up with the authorities.
- (j) Issue of certificates under various statutes**
  - (i) Companies Act/Stock Exchanges:

- (ii) Compliance Certificate for companies not required employing a whole-time secretary and having paid-up share capital of Rs. 10 lakhs or more.
- (iii) Making a verified declaration of compliances for obtaining a certificate of commencement of business/commencement of other business.
- (iv) Making the statutory declaration that all requirements of the Companies Act and the rules thereunder have been complied with in respect of registration of a company and matters precedent and incidental thereto.
- (v) Give declaration in respect of section 25 companies that the Memorandum and Articles of Association have been drawn up in conformity with the provisions of the Act and compliance of provisions with respect to registration or matters incidental thereto.
- (vi) Signing of annual return of listed companies.
- (vii) Certificate regarding dispatch of certificate after transfer etc. under clause 47(C) of the Listing Agreement.
- (viii) Certification of statement of amounts credited to Investor Education and Protection Fund.
- (ix) Certificate regarding compliance with Private Limited Company and Unlisted Public Limited Company (Buy-back of Securities) Rules, 1999 including those relating to extinguishments and destruction of certificates which has to be done in the presence of a Practising Company Secretary.
- (x) Certificate on appointment of Managing Director/Whole-time Director/Manager under Schedule XIII.
- (xi) Certification to listed companies to the effect that all refund orders/certificates issued were dispatched within prescribed time and manner and securities were listed on the stock exchanges as specified in the offer document.

**(k) Export-Import Policy**

- (i) Various certificates under the Export-Import Policy and Procedures.
- (ii) Foreign Exchange Management Act:
- (iii) Various Certificates for exchange control purposes under FEMA.
- (iv) Charter Policy 1986 of the Deptt. of Agriculture and Co-operation:
- (v) Certifying particulars of the company chartering foreign fishing vessels.

**4. Pre-certification of Forms and returns under the Companies Act, 1956**

The company secretary in practice is eligible to certify the following forms and documents under the Companies Act, 1956:

| <i>S. No.</i> | <i>Section</i>                               | <i>Form No.</i> | <i>Particulars</i>                                                                                       |
|---------------|----------------------------------------------|-----------------|----------------------------------------------------------------------------------------------------------|
| 1             | 33(1) & (2)                                  | 1               | Application and declaration for incorporation of a company                                               |
| 2             | 75(1)                                        | 2               | Return of allotment                                                                                      |
| 3             | 75(2)                                        | 3               | Particular of contracts relating to shares allotted in fully or partly paid up otherwise then in cash    |
| 4             | 95,97,94(A)(2), 81(4)                        | 5               | Notice of consolidation, division, etc or increase in the share capital or increase in number of members |
| 5             | 125, 127, 128, 129, 130, 132, 134, 135 & 600 | 10              | Particular for registration of charges for debentures                                                    |
| 6             | 138 & 600                                    | 17              | Particular for satisfaction of charge                                                                    |
| 7             | 146                                          | 18              | Notice of situation or change of situation of Registered Office                                          |
| 8             | 149(1)(d)                                    | 19              | Declaration of compliance with the provisions of section 149(a), (b) and (c)                             |
| 9             | 149(2)(c)                                    | 20              | Declaration of compliance with the provisions of section 149(2)(c)                                       |



| S. No. | Section                                                                                                 | Form No.   | Particulars                                                                                                                                                                                                                                          |
|--------|---------------------------------------------------------------------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10     | 149(2A)(ii)                                                                                             | 20A        | Declaration of compliance with the provisions of section 149(2A) or 149(2B)                                                                                                                                                                          |
| 11     | 192                                                                                                     | 23         | Registration of resolution and agreement                                                                                                                                                                                                             |
| 12     | 295                                                                                                     | 24AB       | Form for filing application for giving loan, providing security or guarantee in connection with loan                                                                                                                                                 |
| 13     | 269(2)                                                                                                  | 25C        | Return of appointment of Managing Director or Whole-time director or Manager                                                                                                                                                                         |
| 14     | 303(2), 264(2), 266(1)(a) & 266(1)(b)(iii)                                                              | 32         | Particular of appointment of Managing Director, director, manager and secretary and the changes among them or consent of candidate to act as a managing director, director or secretary and/or undertaking to take and pay for qualification shares. |
| 15     | 166, 210, 294, 560, 621(A)                                                                              | 61         | Form for filing an application with the Registrar of Companies.                                                                                                                                                                                      |
| 16     | 205(A)(3)                                                                                               | Form       | Form of application for approval for declaration out of reserves.                                                                                                                                                                                    |
| 17     | Rule 3 of the Investors Education and Protection Fund (Awareness and Protection of Investors Rules 2001 | Form I     | Statement of amount credited to Investors Education and Protection Fund                                                                                                                                                                              |
| 18     | 159                                                                                                     | Schedule V | Annual Return of a listed company                                                                                                                                                                                                                    |
| 19     | 266E                                                                                                    | DIN 3      | Intimation of DIN by the company to Registrar                                                                                                                                                                                                        |

##### 5. Issuance of certificates regarding compliances by Trading Members

NSE vide its Circular No. 541 Ref. NSE/MEM/7835 dated September 06, 2006 has authorized Practising Company Secretary to issue certifications regarding Compliances by Trading Members at par with Chartered Accountants.

Accordingly, the Practising Company Secretaries are authorized to issue the following Certifications:

1. Net-worth Certificate alongwith the relevant computation in Format C-1 as per Annexure 4.1(a) of Annual Return submitted by Trading Member to the Stock Exchange. (Applicable to Corporates & Individuals)
2. Net-worth Certificate alongwith the relevant computation in Format C-1 as per Annexure 4.1(b) of Annual Return submitted by Trading Member to the Stock Exchange (Applicable to Firms)
3. Net-worth Certificate alongwith the relevant computation in Format C-1 as per Annexure 4.1(c) of Annual Return submitted by Trading Member to the Stock Exchange (Applicable to Professional Clearing Members)
4. Details of directors/proprietor in Format C-3 as per Annexure 4.3 of Annual Return submitted by Trading Member to the Stock Exchange.
5. Details of shareholding pattern/sharing pattern of corporates in format C-6 as per Annexure 4.4(a) of Annual Return submitted by Trading Member to the Stock Exchange.
6. Details of shareholding pattern/sharing pattern of firms in format C-6 as per Annexure 4.4(b) of Annual Return submitted by Trading Member to the Stock Exchange.
7. Details of Dominant group of corporates in Format C-7 as per Annexure 4.5(a) of Annual Return submitted by Trading Member to the Stock Exchange.

8. Details of Dominant group of firms in Format C-7 as per Annexure 4.5(b) of Annual Return submitted by Trading Member to the Stock Exchange.
9. Undertaking from Relative of Persons constituting Dominant Promoter Group in Format C-8 as per Annexure 4.6(a) of Annual Return submitted by Trading Member to the Stock Exchange.
10. Undertaking from corporates supporting Dominant Promoter Group in format C-8 as per Annexure 4.6(b) of Annual Return submitted by Trading Member to the Stock Exchange.

**6. Use of Digital Signatures by practicing professionals for the purposes of e-filing under MCA21**

The Ministry of Company Affairs *vide* its Notice dated 22.08.2006 and 16.10.2006 has prohibited any other person from filing e-Forms using their own Digital Signature on behalf of the authorized signatories/company either by means of power of attorney or obtaining a disclaimer certificate. (See Appendix 1)

Any such act on the part of professional shall be treated as act of impersonation. Any practicing professional indulging in this practice will invite disciplinary action from the Institute under the conduct rules besides proceedings for impersonation under the appropriate law.

**Appendix 1**

**Notices issued by the Ministry of Company Affairs prohibiting professionals from using their DSC for e-Filing of Forms**

**I. Notice No. HQ/79/2006 dated 16.10.2006**

"1. As you are aware that the Companies Act empowers only the authorized signatories of the company to file eforms/documents on behalf of the companies. After mandating electronic filing using Digital Signatures from September 16, 2006, all filings should necessarily be signed by the authorized signatories only. Any other person facilitating filing using their own Digital Signature on behalf of the authorized signatories/company either by means of power of attorney or obtaining a disclaimer certificate does not hold good in the eyes of law and it would mean an act of impersonation. In spite of clear instructions in this regard on the MCA21 portal and a notice to all the members through the Professional Institutes, it has come to the notice of the Ministry that some professionals are still practicing this facilitation.

2. It is again requested that the Ministry's notice dated 22.08.2006 (copy enclosed) may be given wide publicity amongst your members through the Institute's journals and also through website and bring to their notice specifically that any practicing professional indulging in this practice will invite disciplinary action from the Institute under the conduct rules besides proceedings for impersonation under the appropriate law."

**II. Notice No. HQ/79/2006 dated 22.08.2006**

"1. It has been brought to the notice of the Ministry that some of the practicing professionals have been facilitating e-filing of e-forms/documents on behalf of companies using their own Digital Signatures even though they may not be the authorized signatories under the Act (Managing Director/Director/Secretary). It has also been learnt that they are obtaining a Disclaimer Certificate in the same manner as is being allowed in the Facilitation Centres set up by the Ministry and managed and operated by the service providers.

2. It may kindly be noted that the staff at the Facilitation Centres have been specifically authorised by the Ministry to use their DSCs to facilitate e-filing by obtaining the disclaimer and this authorization does not operate in the case of anybody else. As for the e-filings facilitated through the professionals/CFCs, these are filings made directly using the MCA portal and are not on the same footing as the filings facilitated from the Facilitation Centres.

3. You are, therefore, requested to bring it to the notice of all the practicing professionals registered with your Institute not to use their DSCs to sign on behalf of the authorized signatories. It may be specifically stated that any practicing professional indulging in this practice will invite disciplinary action from the Institute under the conduct rules besides proceedings for impersonation under the appropriate law."