

Chapter 3: Signing and Certification

INTRODUCTION:

- ✓ The Companies Act, 2013 requires companies to file e-forms, which must be authenticated with digital signatures.
- ✓ Professionals like ICSI members certify the e-forms for compliance and accuracy.
- ✓ These professionals ensure all legal requirements are met and all attachments are correct.
- ✓ Once certified, the Registrar accepts the e-form.
- ✓ False certification or omission of important information by professionals can lead to penalties and misconduct charges.

PRE- CERTIFICATION:

- ❖ Certification verifies a document's authenticity by an independent professional.
- ❖ Pre-certification means a professional confirms a document's correctness before it is filed with the Registrar.
- ❖ It was introduced to avoid delays and ensure accuracy in filings.
- ❖ The aim is to promote self-regulation and reduce reliance on government authorities.
- ❖ Pre-certification of e-forms by professionals helps reduce the ROC's workload.
- ❖ Once certified, the ROC can accept the e-form.
- ❖ Professionals can face penalties and disciplinary action for certifying false or incomplete information.
- ❖ They must ensure all requirements are met and attachments are clear and complete.

Authentication of Documents:

- E-forms must be signed digitally by authorized company personnel.
- If there are changes in directors or Company Secretary, the remaining personnel must file the relevant form.
- Scanned documents must be clear and signed.
- The signer and certifying professional ensure all attachments are complete and legible.
- E-forms for companies in insolvency or liquidation must be signed by the relevant insolvency professional.
- A PCS must thoroughly check e-forms for legal compliance and be aware of issues like disputes or complaints before certifying them.

When certifying an e-form, the professional declares that:

1. They have been hired to certify the form and have reviewed the Companies Act, 2013, and related rules.
2. They have verified the information in the form and attachments from the company's original records, ensuring they are true, complete, and accurate.
3. They confirm that all necessary documents are attached and in order.
4. They understand they may be liable for wrong certification under Section 448 of the Companies Act, 2013.

Pre-certification is a careful process, not a routine task, requiring thorough review and understanding of the law.

IMPORTANCE OF PRE-CERTIFICATION:

1. **Ensures Correctness:** The professional checks the form's details against company records, ensuring accuracy. If there are any issues, they guide the company to fix them before certifying the form.
2. **Pre-emptive Step:** Pre-certification ensures the form is correct before submission, allowing the Registrar to accept it without further checks. This reduces errors in filings.
3. **Aids Good Governance:** Pre-certification helps ensure transparency and proper disclosure to protect shareholders and stakeholders, aligning with the company's legal responsibilities.
4. **Promotes Self-Regulation:** It reduces government involvement by allowing professionals to certify forms, ensuring accuracy and compliance based on company records.

If a professional certifies incorrect or incomplete information knowingly, they face penalties and disciplinary action.

HISTORICAL BACKGROUND:

Pre-certification was introduced to speed up document registration and expanded to include verifying documents filed with the MCA. The Institute of Company Secretaries of India helped the MCA issue circulars allowing documents certified by professionals like Company Secretaries or accountants to be accepted by the Registrar of Companies.

The Ministry of Industry issued two circulars to speed up document registration:

1. **Circular No. 14/90 (5th Sept 1990):** Documents related to charges (like modifications or satisfactions) filed by companies or creditors, if certified by a Company Secretary, Chartered Accountant, or Cost Accountant, should be accepted within 10 days. If not collected in 7 days, the documents should be sent by post.
 2. **Circular No. 5/91 (26th Feb 1991):** This circular reinforced the earlier one, stating that all documents filed with the Registrar should be accepted within 10 days if certified as correct by a Company Secretary, Chartered Accountant, or Cost Accountant.
- In 2000, the Parliamentary Committee supported pre-certification by Company Secretaries.
 - In 2002, the Naresh Chandra Committee recommended it to reduce errors and workload.
 - The 2003 amendment proposed making pre-certification mandatory.
 - In 2004, the Company Law revamp included this requirement.
 - The Companies Act, 2013, and 2014 Rules made pre-certification official for all forms.

VARIOUS CERTIFICATIONS BY COMPANY SECRETARY IN PRACTICE:

- SEBI Regulations: Certifying compliance with SEBI rules for listed companies.
- Companies Act 2013: Certifying compliance with the Companies Act.
- Other Acts: Certifying compliance with other relevant laws.

FORMS & RETURNS WHICH REQUIRED PRE-CERTIFICATION UNDER THE COMPANIES ACT, 2013:

- INC 20A - Declaration before starting business.
- INC-22 - Notice of registered office change.
- INC-28 - Notice of Court order.
- PAS-3 - Return of share allotment.
- SH-7 - Notice of share capital change.
- CHG-1 - Charge registration application.
- CHG-4 - Charge satisfaction details.
- CHG-9 - Charge modification for debentures.
- MGT-14 - Filing resolutions and agreements.
- DIR-6 - Director's details change.
- DIR-12 - Director/Key personnel appointment.
- MR-1 - Return of MD/WTD/Manager appointment.

- MR-2 - Application for director's approval/remuneration.
- MSC-3 - Dormant company return.
- MSC-1 - Application for dormant status.
- MSC-4 - Application for active status.
- GNL-1 - Applications to Registrar.
- GNL-3 - Details of officers in default.
- ADT-1 - Auditor appointment details.
- NDH-1 - Statutory compliance return.
- NDH-2 - Extension of time application.
- NDH-3 - Half-yearly return.
- MGT-7 - Annual return.
- AOC-4 - Financial statements filing.
- DIR-3 KYC - Director's KYC.
- AOC-4 CFS - Filing consolidated financials.
- AOC-4 XBRL - Filing XBRL financials.

Other declarations, attestations and certifications under the Companies Act:

1. Incorporation Rules: Declare compliance with registration requirements and the company's memorandum (Section 7, Section 8).
2. Prospectus Rules: Submit Form PAS-6 for half-yearly returns by unlisted public companies (Rule 9A).
3. Share Capital Rules: Certify buyback of securities compliance (Rule 17).
4. Managerial Personnel Rules: Issue Secretarial Audit Report for large listed/public companies (Section 204).
5. Management Rules: Certify annual return for large companies (Form MGT-8) and act as e-voting scrutinizer (Rule 20).

PRE-CERTIFICATION UNDER SEBI REGULATIONS:

- a) Regulation 40(9): Listed entities must get a certificate from a company secretary confirming share transfers and related actions were done within 30 days.
- b) Regulation 24A: Secretarial audit report by a practicing company secretary.
- c) Regulation 55A: Quarterly audit report by a company secretary for capital reconciliation.
- d) Regulation 76: Share Capital Audit Report reconciliation.
- e) SEBI Circular SEBI/110/DDHS/2018: Certification by Company Secretary and CFO for debt securities issuance disclosures.
- f) SEBI Circular SEBI/HO/DDHSRACPOD1/2022: Compliance report certified by the Company Secretary and senior management.

- g) SEBI (Buy-Back of Securities) Regulations, 2018: Filings to SEBI must be digitally signed by the company secretary.

Other Certifications:

- ❖ Certificate for compliance with corporate governance conditions.
- ❖ Certification regarding directors' disqualification.
- ❖ Certification for offers/allotments to 50-200 investors.
- ❖ Compliance certificate for investment advisers.
- ❖ Annual audit certification for research analysts' compliance.
- ❖ Certification of shareholding pattern for corporates or partnerships.
- ❖ Certifications during IPO, including allotment basis and employee quotas.
- ❖ Certification for compliance with SEBI bonus issue regulations.
- ❖ Certification of receipt of application/allotment monies.
- ❖ Certification of floor price for QIB placements.
- ❖ Certification for debenture holders' consent on changing terms.
- ❖ Certification for REIT unit allotment and fund receipt.
- ❖ Certification for lock-in securities with non-transferability conditions.

CASE LAW: In **SEBI vs. Shankar (2023)**, the Supreme Court ruled that the compliance officer must ensure compliance with regulations like the Buyback Regulations, not just handle investor grievances. The Court overturned the SAT's decision and sent the case back for further review.

PRE-CERTIFICATION UNDER LIMITED LIABILITY PARTNERSHIP ACT, 2008:

1. Form 3: Information about LLP Agreement and any changes.
2. Form 4: For changes in designated partners or partners.
3. Form 11: Annual return of the LLP.
4. Form 15: Shifting of registered office of the LLP.

Company Secretaries also provide other services such as valuation reports, corporate governance certificates, search reports, and due diligence reports.

PREPARATIONS BEFORE PRE-CERTIFICATION:

Before starting pre-certification work, a professional should:

- Read the Companies Act 2013 and related rules, and understand the practices followed.
- Get an engagement letter or board resolution from the company.
- Keep copies of all verified documents and ensure they are clear.
- Check the documents against the company's original records for accuracy.
- Make sure the form is signed by an authorized person.
- Know the relevant rules, processes, and approvals before certifying anything.

The professional must also maintain a register of certification services, available for inspection, and avoid letting unauthorized individuals sign certifications, as it would be professional misconduct.

COMMON ERRORS NOTICED IN E-FILING:

- Digital signature is not registered or has expired.
- Payment is not made before the due date.
- Duplicate payments are made.
- The form size exceeds the allowed limit.
- E-forms are not verified before submission.
- Incorrect information is entered in the form.
- Using outdated software versions like older Adobe, Java, or web browsers.
- Not using recommended versions of Adobe Reader (Version XI or later) and Java (Update 92).

CONSIDERATIONS IN FILLING E-FORMS:

- ✓ Read the instruction kit for the e-form on the MCA-21 portal.
- ✓ Ensure Directors' DIN details are updated on the MCA portal.
- ✓ Register the Digital Signature (DSC) on the MCA portal before use.
- ✓ Check the company's Master Data before filing.
- ✓ Attach complete documents in order, with page numbers.
- ✓ File forms early, not at the last minute.

- ✓ Double-check that all entries match supporting documents.
- ✓ Once filed, e-forms cannot be revised or cancelled on the MCA portal.
- ✓ If using the "pay later" option, ensure the fee is paid before the challan expires.
- ✓ Regularly advise the company on necessary filings to avoid penalties.
- ✓ Attach scanned documents in PDF format with minimal size.
- ✓ Use "PREFILL," "CHECK," and "PRE-SCRUTINY" utilities for form completion.
- ✓ Verify the date of the resolution and minutes before entering it in the form.
- ✓ Ensure the DSC used matches the authorized person's designation.

REGISTER OF CERTIFICATION:

A practicing company secretary (PCS) should maintain a register for the following 11 services:

1. Signing of Annual Return (MGT-7).
2. Certification of Annual Return (MGT-8).
3. Issuance of Secretarial Audit Report (MR-3).
4. Certification of E-forms under the Companies Act, 2013 / LLP Act, 2008.
5. Internal Audit for Depository Participants, Portfolio Managers, and Stock Brokers.
6. Annual Compliance Audit under SEBI (Research Analyst) Regulations, 2014.
7. Issuance of Securities Transfer Certificates as per the Listing Agreement with Stock Exchanges.
8. Certification of Capital Reconciliation and Register of Members as per SEBI guidelines.
9. Internal Audit of Depository Participants' operations.
10. Corporate Governance Certification under SEBI (LODR) Regulations, 2015.
11. Information about certified and signed E-forms and reports issued.

CERTIFICATION OF ANNUAL RETURN:

- Company Secretaries must exercise diligence when certifying Annual Returns to avoid penalties under the Companies Act, 2013 and the Company Secretaries Act, 1980.
- All companies, except OPCs and Small Companies, must file the Annual Return in Form MGT-7.
- OPCs and Small Companies will file Form MGT-7A starting from the 2020-2021 financial year.
- For listed companies or those with paid-up capital of Rs. 10 Crore or more, or turnover of Rs. 50 Crore or more, the Annual Return must be certified by a Company Secretary in whole-time practice using Form MGT-8.

Return certification is required by a Company Secretary in practice for:

- Every listed company.
- Companies with paid-up capital of Rs. 10 crore or more.
- Companies with a turnover of Rs. 50 crore or more.

While certifying Form MGT-8, the PCS must confirm:

- A. The Annual Return accurately reflects the facts as of the financial year-end.
- B. The company has complied with the Companies Act in these areas:
 1. Company status.
 2. Maintaining registers and making timely entries.
 3. Filing forms and returns on time.
 4. Holding meetings with proper notices and records.
 5. Register of Members/Security holders closure.
 6. Loans/advances to directors or related parties.
 7. Related party transactions.
 8. Issuing, allotting, or transferring securities.
 9. Holding back dividend/bonus rights when needed.
 10. Declaring dividends and transferring to IEPF.
 11. Signing audited financial statements.
 12. Director and KMP appointments, retirements, and remuneration.
 13. Appointing auditors.
 14. Obtaining necessary approvals from authorities.
 15. Handling deposits (acceptance, renewal, repayment).
 16. Borrowing and managing charges.
 17. Loans and investments to other companies.
 18. Altering the company's memorandum or articles.

While granting the certificate under Form MGT-8, the PCS must check:

- Statutory registers (members, shareholders, etc.).
- Incorporation documents (Memorandum & Articles).
- E-forms filed with MCA.
- Latest financial statements.
- List of promoters.
- Shareholding structure.
- Minutes of meetings (board, committee, general), resolutions, and notices.

SIGNING OF THE ANNUAL RETURN - SECTION 92 (1):

- ✓ The Annual Return must be signed by a Director and the Company Secretary, or by a Company Secretary in Practice if there is no Company Secretary.
- ✓ For OPCs, Small Companies, and start-up private companies, it can be signed by the Director if there is no Company Secretary.

CASE LAW: In the case of **Deep Himanshu Desai vs. Union of India (2020)**, disqualified directors requested to reactivate their DIN and DSC to file the annual return. The court ordered the reactivation to allow them to fulfil their statutory obligations.

When signing Form MGT-7 (Annual Return), the Company Secretary or Director certifies that:

1. The return accurately reflects the facts as of the financial year-end.
2. The company has complied with the Companies Act, unless stated otherwise.

For private companies, they also confirm:

3. The company has not invited the public to subscribe to its securities.
4. If there are more than 200 members, the excess members are excluded as per the law.

Additionally, they declare:

- The information is true, correct, and based on the company's original records.
- All required attachments are complete and legible.

It is advised that the Board appoints the Practicing Company Secretary (PCS) at the start of the financial year, as the Annual Return verification is detailed and must match the company's financial records.

SCOPE AND EXTENT OF WORK FOR PCS:

The PCS must carefully review and verify the accuracy of the data before certifying the Annual Return. This includes checking primary documents such as:

1. Memorandum and Articles of Association.
2. Forms and receipts filed with the Registrar of Companies.
3. Statutory Registers (e.g., Register of Members, Directors, Debenture holders, Related Party Contracts, Charges, etc.).
4. Minutes of various meetings (Board, General, Committee, Creditors, Debenture holders, etc.).
5. Notices and agendas for meetings.
6. Attendance Registers of all meetings.
7. Latest Financial Statements, Board's Report, and Auditors' Reports.

8. Notices for AGMs, EGMs, and other meetings.
9. Shareholder list and share transfer details.
10. Certificate from RTA on shareholder count.
11. Indebtedness Certificate from Company Secretary/CFO/Auditors.
12. Changes in company name, share face value, or ISIN.
13. Board resolutions for corporate actions.
14. Corporate Action Forms filed with Depositories.
15. Shareholding pattern and breakdown.
16. Orders from courts or regulatory bodies.
17. Other statutory registers and records.
18. List of Promoters.
19. Approvals from Stock Exchanges and confirmations from Depositories (NSDL/CDSL) on corporate actions.

The PCS must ensure all documents are reviewed thoroughly to certify the return.

It is good practice to have the Annual Return reviewed by a different professional before certification. A Company Secretary in employment signs under section 92(1), while a Company Secretary in Practice certifies under section 92(2).

TIME LIMIT FOR FILING ANNUAL RETURN:

The Annual Return must be filed with the Registrar within 60 days from the date of the Annual General Meeting (AGM). If no AGM is held, it should be filed within 60 days from the date the AGM should have occurred, along with a statement explaining the reasons for not holding the meeting.

CONSEQUENCES OF NOT FILING ANNUAL RETURN:

If a company fails to file its Annual Return, it faces penalties:

- A penalty of ₹10,000 for default.
- An additional ₹100 for each day of continued failure, up to a maximum of ₹2 lakh for the company and ₹50,000 for the officer in default.

For Directors:

- **Penalty for Non-filing:** Directors can be penalized similarly, with the company and officers facing fines.
- **Disqualification:** If the company fails to file for 3 consecutive years, directors are disqualified from reappointment for 5 years.

- **Penalty for Misstatement:** Directors making false or incomplete statements in the Annual Return can face 6 months to 10 years in prison and fines up to three times the amount involved.

Additionally, shareholders or depositors can file class action suits under Section 245 if the company's affairs are prejudicing their interests.

For the Company:

- **Penalty:** ₹10,000 fine and ₹100/day for continued delay, up to ₹2 lakh for the company and ₹50,000 for the officer (Section 92).
- **Winding up:** Company may be wound up if it has not filed Annual Returns for 5 years (Section 271).
- **Inactive Status:** Company will be labelled "inactive" if it misses Annual Returns for two years (Section 455(1)).
- **Dormant Status:** Company may be marked dormant by the Registrar after two consecutive years of non-filing (Section 455(4)).
- **Compounding:** Offences can be compounded under Section 441.

CASE LAWS:

- **Abbas Maru Case:** Section 164(2) applies only from FY 2014-15 for non-filing of returns, not retroactively. (Writ Petition No. 15683, Madhya Pradesh, 09.06.2022)
- **Gautam Mehra Case:** Directors are disqualified for any time during the 3-year non-filing period, not just the whole period. DIN is cancelled upon disqualification. (W.P.A. No. 22790, Calcutta, 15.10.2020)
- **AVS Enterprises Case:** Company not filed returns since 2006-07, was struck off, but restored after filing pending documents with late fees. (Company Appeal No. 47 of 2021, NCLAT, 05.04.2022)

CONSEQUENCES OF WRONG CERTIFICATION OF ANNUAL RETURN:

1. **Penalty:** Company Secretary may face a Rs. 2,00,000 fine for incorrect certification (Section 92(6)).
2. **Disciplinary Action:** The ICSI may take action against the Company Secretary.
3. **False Statements:** Falsifying documents can lead to penalties under Section 448.
4. **Further Penalties:** Sections 447 and 449 may apply, including criminal charges.
5. **MCA Action:** MCA can bar the professional from filing documents on its portal.

FILING ANNUAL RETURN WHEN AGM IS NOT HELD:

1. **Filing Deadline:** If no AGM is held, the Annual Return must be filed within 60 days of the date it should have been held, along with an explanation for not holding the AGM (Section 92(4)).
2. **Late Filing Fees:** If the return is not filed on time, it can be filed with additional fees as per Section 403. The fee can be a minimum of Rs. 100 per day.
3. **Higher Fees for Multiple Defaults:** For repeated failures to file, higher additional fees may be applied.
4. **No Excuses:** The company must file the return regardless of AGM status, and the management is responsible for filing the return.
5. **Penalties for Non-Compliance:** The company and its officers may face penalties for failing to file the Annual Return within the prescribed time.

DETAILED SCRUTINY OF ANNUAL RETURN:

- PCS must ensure accuracy of the Annual Return.
- PCS is not required to check every document or transaction.
- Similar to auditors not verifying every invoice.
- PCS does not need to inspect every shareholder record or share transfer.
- Checking everything would be time-consuming and impractical.
- PCS performs a reasonable level of verification to ensure compliance.
- The PCS should use sampling and test checks to ensure the Annual Return reflects the true state of affairs.
- There are no strict rules, but these guiding principles can help decide the level of checking required:
 1. **Internal Controls:** Review the company's internal systems. If controls are effective, detailed checking is less needed, as errors may be automatically detected and corrected.
 2. **Materiality:** Choose representative samples for checking. For example, focus on large share transfers or busy periods for share transfers.
 3. **Risk Assessment:** Understand the company, its industry, and corporate governance to identify high-risk areas. These should be checked more thoroughly, like shares with transfer restrictions.
- The PCS is ultimately responsible for the certified document.
- The extent of checking is a professional judgment, but the PCS should document the procedures and conclusions to avoid negligence claims.

Certification With Reservation /Qualification /Observations /Adverse Remarks:

- A PCS can certify the Annual Return with comments if there are inaccuracies or non-compliance.
- The PCS must follow ICSI guidelines and use professional judgment.
- The PCS should review documents and record facts to support the certification.
- In Form MGT-8, the PCS must ensure the statements are accurate and include necessary comments or disclaimers.

CORPORATE GOVERNANCE CERTIFICATION BY PRACTICING COMPANY SECRETARY:

- ❖ The Corporate Governance Certificate confirms compliance with SEBI rules.
- ❖ It can be issued by statutory auditors or a PCS.
- ❖ It must be attached to the director's report.
- ❖ A Compliance Certificate confirming corporate governance must be attached to the director's report.
- ❖ Listed companies must submit quarterly reports to the stock exchange within 15 days of each quarter's end.
- ❖ Half-yearly and annual compliance reports must also be filed.
- ❖ Quarterly reports should be submitted within 21 days after the quarter ends.
- ❖ New disclosures on loans/guarantees to promoters or related entities must be made in half-yearly reports, starting FY 2021-22.
- ❖ Compliance reports on Corporate Governance must be submitted in the following formats:
 1. Annex - I: Quarterly basis
 2. Annex - II: End of financial year
 3. Annex - III: End of 6 months from the financial year
 4. Annex - IV: Half-yearly basis (from FY 2021-22)
- ❖ Students should refer to the SEBI circular (SEBI/HO/CFD/CMD-2/P/CIR/2021/567) for detailed formats.
- ❖ Regulation 17(3) requires the Board of Directors to review compliance reports and actions taken to address any non-compliance.
- ❖ Corporate governance provisions (Regulations 17-27, Regulation 46(2), Schedule V) do not apply to:
 - Listed entities with equity share capital under ₹10 crore and net worth under ₹25 crore.
 - Entities listed on the SME Exchange.

IMPORTANT POINTS RELATING TO CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE (CGCC):

- The company must give the PCS access to records for issuing the CGCC.
- The CGCC must cover the company's financial year.
- The PCS must notify the previous certifier if it's their first time.
- The PCS should be available at the AGM for CGCC clarifications.
- Negligence in issuing the CGCC can lead to disciplinary action and liability.

MODE OF ISSUING CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE (CGCC):

To issue the CGCC, the PCS:

1. Gets the company's draft Corporate Governance report.
2. Reviews records and gathers information from management.
3. Certifies compliance and submits it to the Board.
4. Certifies compliance with Voluntary Guidelines, if applicable.

TYPES OF CERTIFICATIONS:

1. **Unqualified:** Issued when the company fully complies with Corporate Governance.
2. **Qualified:** Issued when there are specific non-compliances, with issues highlighted.
3. **Unable to Form Opinion:** If the PCS cannot form an opinion, they must explain why.
4. **Restricted Scope:** If limitations exist (e.g., missing documents), the PCS should mention them.
5. **Material Limitations:** If the limitations are too significant, the PCS should state they can't certify compliance.

PENALTY FOR FALSE CGCC:

- ✓ PCS must follow the code of conduct; failure may result in professional misconduct charges.
- ✓ Section 448 (Companies Act): False statements can lead to fraud charges.
- ✓ Section 449 (Companies Act): Giving false evidence can lead to 3-7 years in prison and a fine up to ₹10 lakh.
- ✓ Section 23H (SCRA): Non-compliance can result in a fine up to ₹1 crore.
- ✓ Section 23M (SCRA): Violating SCRA rules can lead to up to 10 years in prison, a fine up to ₹25 crore, or both. Non-payment of fines may result in additional penalties.

CORPORATE GOVERNANCE AND SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015:

1. Rights of Shareholders: The listed entity must protect and enable shareholders to:

- Participate in decisions about major corporate changes.
- Vote effectively at general meetings.
- Be informed about rules and voting procedures for meetings.
- Ask questions, suggest agenda items, and propose resolutions.
- Participate in decisions like board member nominations and elections.
- Exercise ownership rights, including by institutional investors.
- Have a system to address shareholder grievances.
- Protect minority shareholders from actions that unfairly favor controlling shareholders.

2. Timely Information: The listed entity must provide shareholders with timely information, including:

- Details about general meetings (date, location, agenda) and the issues to be discussed.
- Information on capital structures that give certain shareholders excessive control.
- Disclosure of rights attached to different types of shares before investors buy them.

3. Equitable Treatment: The listed entity must ensure fair treatment for all shareholders, including minorities and foreigners, by:

- Treating all shareholders of the same class equally.
- Enabling effective participation in key decisions, like board member nominations.
- Facilitating voting for foreign shareholders.
- Preventing insider trading and self-dealing.
- Ensuring fair processes for general meetings.
- Making voting procedures easy and affordable.

4. Role of Stakeholders in Corporate Governance: The listed entity must:

- Respect stakeholders' rights as defined by law or agreements.
- Ensure stakeholders can seek redress if their rights are violated.
- Provide stakeholders with timely, relevant, and reliable information to participate in governance.
- Create a whistleblower policy that allows stakeholders, including employees, to report illegal or unethical practices freely.

5. Disclosure and Transparency:

- Ensure timely and accurate disclosure of key matters like finances and governance.
- Follow required standards for financial and non-financial reporting.
- Provide equal and timely access to information.
- Keep meeting minutes, including dissenting opinions.

6. Responsibilities of the Board of Directors:

a. Disclosure of Information:

- Board members and key managers must disclose any material interest in transactions affecting the entity.
- Board members and senior management should balance transparency with confidentiality.

b. Key Functions:

- Guide corporate strategy, budgets, and risk policies, and oversee major business actions.
- Monitor governance practices and make improvements as needed.
- Select, compensate, and evaluate key management, ensuring succession planning.
- Align management's compensation with the long-term interests of the entity and shareholders.
- Ensure a transparent nomination process for the board, promoting diversity.
- Manage conflicts of interest, including misuse of assets and related party transactions.
- Ensure integrity in financial reporting, audits, risk management, and legal compliance.
- Oversee communication and disclosure processes.
- Review the board's evaluation framework.

c. Other Responsibilities:

- Provide strategic guidance, monitor management, and be accountable to shareholders.
- Set the corporate culture and values for the organization.
- Act in the best interest of the entity and shareholders, with due diligence and care.
- Encourage ongoing director training.
- Treat all shareholders fairly, especially when decisions affect them differently.
- Maintain high ethical standards and consider stakeholder interests.
- Exercise independent judgment in corporate affairs.
- Assign non-executive members to tasks where there may be conflicts of interest.
- Balance positive thinking with risk recognition, avoiding over-optimism.
- Challenge assumptions underlying strategy and key initiatives.

- Define and disclose the mandates, compositions, and procedures for committees.
- Ensure directors are committed and have access to relevant, timely information.
- Support independent directors in performing their roles effectively.

SIGNING OF FINANCIAL STATEMENTS:

- Financial statements must comply with Section 129 and Schedule III of the Companies Act, 2013.
- These statements should be presented at the Annual General Meeting.
- "Financial statement" includes:
 - Balance sheet at the end of the financial year.
 - Profit and loss or income and expenditure account (for non-profit companies).
 - Cash flow statement.
 - Statement of changes in equity (if applicable).
 - Explanatory notes to the above documents.
- The Board of Directors must approve the financial statements before signing. They should be signed by:
 - ❖ Chairperson (if authorized), OR
 - ❖ Two Directors (one being the Managing Director), AND
 - ❖ CEO, Company Secretary, or CFO (as appointed).
 - ❖ If the company lacks a CFO or CS, the Chairperson signs. If there is no Chairperson, two Directors (one being the Managing Director) and the CFO sign.
 - ❖ In a One Person Company, only one director signs.
- **CASE LAW:** In **Re Sourajit Ghosh Vs. Union of India (2020)**, the court stated that a director who fails to file financial statements is disqualified from holding or being re-appointed as a director in any company.

ADOPTION AND CIRCULATION OF FINANCIAL STATEMENTS:

- The company must adopt the financial statements at the AGM within 6 months of the financial year end.
- After signing, the financial statement, auditor's report, Board's report, and annexures must be circulated.

Penalties:

- Company: ₹3 lakh penalty for non-compliance.
- Officers in default: ₹50,000 penalty.

CASE LAW: In **HIFFCO Farming Ltd. (2022)**, the company's name was struck off for not filing financial statements. It can be restored by filing all pending documents with late fees.

PEER REVIEW:

- ❖ The ICSI's Peer Review process helps improve the quality of services by practicing Company Secretaries.
- ❖ It involves reviewing a peer's work to check systems and practices, offering suggestions for improvement.
- ❖ Every practice unit must be reviewed once every 5 years.
- ❖ The goal is to ensure compliance with ICSI standards and improve service quality.

Main Objectives:

- Ensure adherence to ICSI's guidelines and auditing standards.
- Help improve performance and maintain quality in professional services.

OBLIGATION & PENAL PROVISIONS:

- **For the Company:**
 - Penalties and actions (including fines or winding up) apply if a company or its officers fail to comply with regulations.
- **For the Authorized Representative:**
 - Penalties can be imposed on the company and its officers. The Central Government can take action for fraud or false statements.

CASE LAWS:

1. In a case (March 2019), a company failed to file its annual return and accounts for 2013-14 due to an honest mistake, but the issue was resolved by filing the documents, and the offence was compounded.
2. In another case (November 2017), a company did not file returns for four years, leading to its name being struck off. The name was restored once the necessary documents were filed.

- **For the Certifying Professional (Company Secretary):**

- a. Reputation Risk:**

- Incorrect certifications can harm the reputation of the professional and their firm.
- It may lead to losing the practice and negatively impact the reputation of the Institute of Company Secretaries of India (ICSI).

- b. Under the Company Secretaries Act, 1980:**

- **Clause 2:** A professional is guilty of misconduct if they certify without proper examination or verification.
- **Clauses 5-8:** A professional is guilty of misconduct if they fail to disclose important facts, fail to report misstatements, or are negligent in their duties.
- **Penalties for False Statements:** False statements or omissions can lead to disciplinary action, including:

- Reprimand
- Removal from the register of members
- Fine up to ₹5 lakh

c. Under the Companies Act, 2013:

- **Form Scrutiny:** The Registrar may randomly review forms. If they contain false or incomplete information, penalties apply.
- **False Statements (Section 448):** Anyone making false statements or omitting important facts in company documents can be penalized.
- **Fraud (Section 447):** If guilty of fraud, penalties include 6 months to 10 years in prison and fines up to three times the fraud amount. If public interest is affected, the minimum prison term is 3 years.
- **Company Secretary Responsibility:** A Company Secretary in Practice can be penalized for submitting false or incomplete information, even in their audit reports.
- **Penalty for False Information:** Sections 448 and 447 apply to anyone, including Company Secretaries, for false statements or omissions in official forms.

d. Action by Regulator:

- **Digital Signature Deactivation:** If documents have false or misleading info, the Central Government can deactivate the Digital Signature Certificate.
- **Inquiry:** An inquiry will be conducted if false or incomplete information is found, with a 15-day notice for the concerned person.
- **Action & Report:** The Regional Director sends a report to the E-Governance cell. Action may be taken under sections 447 and 448 of the Companies Act.
- **Disciplinary Action:** Cases are referred to the relevant professional body for disciplinary proceedings. The professional may be banned from filing on the MCA portal.
- **Reporting:** The Registrar submits bi-weekly reports, and a consolidated monthly report is sent to the Ministry.

CASE STUDY:

A. A Company Secretary was fined ₹15,000 for errors in a Compliance Certificate. The mistakes included:

- Incorrectly stating no new equity shares were issued.
- Wrong information about Board meetings.
- Misstating the applicability of the Provident Fund.
- The inquiry showed that the Company Secretary failed to reflect changes in share capital, inaccurately reported Board meetings, and relied on incorrect company info about PF.
- The Disciplinary Committee found the Company Secretary guilty and imposed a ₹15,000 fine, with a 60-day removal from the register if not paid on time.

B. A Company Secretary was penalized for professional misconduct for certifying Compliance Certificates for 2009-10 and 2010-11. The issues included:

- ❖ Incorrectly stating that proper notices for Board meetings were given, relying on management's confirmation instead of verifying all proofs.
- ❖ Failing to report the illegal allotment of shares due to insufficient authorized capital.
- ❖ Not reporting the 1st AGM as illegal.
- ❖ The Company Secretary was found guilty of lacking due diligence and fined.