

Signing and Certification

Lesson 3

KEY CONCEPTS

- Certification ■ Authentication ■ Scrutiny ■ E-forms ■ Digital signatures ■ Professional Misconduct
- Peer Review

Learning Objectives

To understand:

- Certification
- Pre-certification & its importance
- Impact of false certification
- Key considerations for certifications
- The list of certifications by PCS
- Peer Review
- Professional misconduct

Lesson Outline

- Various Certifications by Company Secretary in Practice
- Pre-certification of forms
- Signing & Certification of Annual Return
- Corporate Governance Certification
- Signing of Financial Statement
- Obligations and Penal provisions
- Case Laws & Case Studies
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (Including Websites/Video Links)

REGULATORY FRAMEWORK

- The Companies Act, 2013
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- The Company Secretaries Act, 1980
- The SEBI (Depositories and Participants) Regulations, 2018

INTRODUCTION

The Companies Act, 2013 requires filing of various e-forms by the companies which may be event based or annually. Hence all the e-forms are required to be authenticated by authorized signatories of the company filing the same, using digital signatures. MCA has entrusted practicing professionals like members of the Institute of Company Secretaries of India (ICSI) with the responsibility of certifying the compliances and ensuring reliability of documents filed by companies with MCA in electronic mode and also ensuring proper due diligence for the same.

The authorized signatory and the professionals, who certify e-form, are responsible for the correctness of the contents of e-forms and enclosures attached with the e-form. They are expected to verify/certify, whether all the requirements as per the provisions of the Act and the rules made thereunder have been complied with and all the attachments to the forms have been duly scanned and attached completely and legibly.

Once an e-form has been pre-certified by a professional towards its authenticity based on the contained in the books of accounts and records of the company, the Registrar takes on record such e-form. If a professional gives a false certificate or omits any material information knowingly, he is liable for punishment under the provisions of Companies Act, 2013 as well as liable for professional or other misconduct.

PRE- CERTIFICATION

What is Certification?

As per Cambridge dictionary, 'Certification' means the process of earning an official document, or the act of providing an official document, as proof that something has happened or been done. In ordinary parlance, certification means authentication of the document by an independent professional. Such a certification provides more reliability about the genuineness and contents of the document. In India, the certified documents are essential part of filings with various regulators.

Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice, before the same is filed with the Registrar in terms of the requirements of the Companies Act, 2013 (hereinafter referred to as "the Act"). Company Secretaries are recognized to pre-certify the e-forms which are required to be filed with the Registrar. Initially, pre-certification was introduced to avoid registration delays and eventually evolved to check correctness of documents filed by professionals.

Further, Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice, before the same is filed with the Registrar in terms of the requirements of the Companies Act, 2013.

The introduction of pre-certification by an independent professional in the e-form is aimed at self-regulations of companies and reduce the involvement of government machinery, i.e. the Registrar of Companies.

Ministry of Corporate Affairs have introduced pre-certification of e-forms by practicing professionals to reduce the workload of registrar of companies. Once a professional pre-certifies an e-form, based on examination of forms & documents attached thereto, ROC is entitled to take on record such e-form. Professionals are also responsible for certifying documents, if professional certifies false information to be true or knowingly omits any material information, he shall be liable to punishment under Companies Act. Besides this he is also subject to disciplinary action by respective Institute which has issued certificate of practice.

The requirement of authentication of documents prescribed under Rule 8 (Authentication of Documents) of the Companies (Registration Offices and Fees) Rules, 2014 elaborates on the responsibility of professionals certifying the forms. The professional certifying the form must verify whether all the requirements as per the provisions of the Act and the rules made thereunder have been complied with and all the attachment to the forms have been duly scanned and attached completely and legibly.

Authentication of Documents

As per the Rule 8(1), (2) & (5) of the Companies (Registration Office and fee) Rules, 2014 provides that all electronic forms are required to be authenticated by authorised signatories using digital signatures. The e-forms are required to be authenticated on behalf of the company by the Managing Director or Director or Company Secretary or other key managerial personnel. In case of any change in directors or Company Secretary, the form relating to appointment of such directors or Company Secretary is required to be filed by continuing director or Secretary of the company or other Key Managerial Personnel.

As per Rule 8(6), scanned image of documents must be of the original signed documents relevant to the e-forms and the scanned document image shall not be left blank without bearing actual signature of authorised person.

As per rule 8(7), the person signing the form and the professional certifying the form are responsible to ensure that all the required attachments relevant to the form have been attached completely and legibly to the forms or applications or returns filed as per the Act and the rules.

Rule 8A regarding signing of forms was inserted w.e.f 23rd January 2023. It states that E-forms wherever applicable shall be signed by Insolvency resolution professional or resolution professional or liquidator of companies under insolvency or liquidation, as the case may be, and filed with the Registrar along with the fee as mentioned in Table annexed these rules.

A Practicing Company Secretary (PCS) while exercising due diligence need to be keen and alert while certifying the forms with their eyes wide open. They should not merely restrict themselves to the content of the form and along with mandatory attachments they need to focus whether substantial laws were complied or not. They should exercise vigilance in circumstances such as management disputes, Regulatory complaints, investor complaints etc.

While certification of e-form the declaration is given by the certifying professional which is as follow:

"I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed.

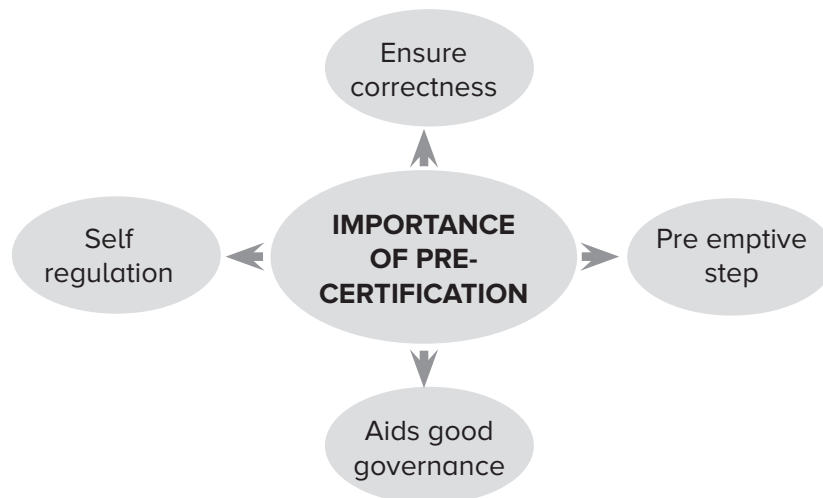
I further certify that:

- 1. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;***
- 2. All the required attachments have been completely and legibly attached to this form.***
- 3. It is understood that I shall be liable for action under Section 448 of the Companies Act, 2013 for wrong certification, if any found at any stage.***

Therefore, Pre-certification of forms is, not a routine or mechanical exercise but is a serious and involved work calling for sound application of mind in verifying the averments made in the respective forms after due consideration of the provisions of the Act read with the relevant rules.

IMPORTANCE OF PRE-CERTIFICATION

From a Company's perspective and also from regulators standpoint, pre-certification is important to:

**Ensure correctness:**

The professional checks the correctness of the particulars stated in the prescribed forms after due consideration of the provisions of the Act and the Rules made thereunder. He also ensures that the particulars stated in the Forms are in agreement with the books and records of the company. If he notices any defect or finds that the information provided in the form is incomplete or defective, he appropriately advises/provides guidance for completion of document/rectification of defect and makes pre-certification only after completion of documents/rectification of such defects.

Pre-emptive step:

Pre-certification acts as a pre-emptive check to ensure that the particulars stated in the form or return are as per the books and records of the company and are true and correct. This would mean that the Registrar can rely on the certification of the Company Secretary in Practice and may take the document on record without further examination. Thus, Pre-certification by a Company Secretary in Practice ensures that no form or return filed with the Registrar of Companies is defective or incomplete.

Aids good governance:

Disclosure of information to shareholders is a critical requirement of good governance mechanism with a view to protect the interests of the shareholders and other stakeholders and to ensure better governance.

Accordingly, the Act has stipulated stringent measures and requirements for disclosure, included in financial statements, Board's report and annual return. The Act has also prescribed onerous duties and responsibilities on the Director of a company as well as the Company Secretaries. The punishment for violation of provisions of the Act has also been enhanced under the Act, to ensure the correctness of information filed by the corporates.

Self-regulation:

The introduction of pre-certification by an independent professional in the e-form was aimed at self-regulations of companies and to reduce the involvement of government machinery, i.e. the Registrar of Companies. Once any form has been pre-certified by a professional based on the particulars contained in the books of accounts and records of the company, same can be taken on record without further examination.

If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under the provisions of the Act as well as liable for professional or other misconduct under Company Secretaries Act, 1980.

HISTORICAL BACKGROUND

Pre-certification was introduced after detailed deliberations and it has been refined over time. Though it initially aimed at avoiding delays in Registration of charge and other Documents, its scope was expanded to authentication and verification of documents being filed with the MCA, in view of the benefits arising out of it.

With a view to avoid delay in the Registration of documents, MCA (the then Department of Company Affairs) on the initiative taken by the Institute of Company Secretaries of India issued two circulars advising the Registrars of Companies to take on record documents that are filed by companies or the creditors concerned, duly certified as correct by a Company Secretary/ Chartered Accountant/ Cost Accountant in Practice. The circulars read as under: -

<p>Delay in Registration of Charges (Issued by the Ministry of Industry, Department of Company Affairs, vide No. 1/1/90 CL.V. dated 5-9-1990; Circular No. 14/90)</p>	<p>'I am directed to say that with a view to taking on record the documents relating to charges/modification of charges/satisfaction of charges, it has been decided that as and when the aforesaid documents are filed by the companies or the creditors concerned, duly certified as correct by a Chartered Accountant/Cost Accountant/ Company Secretary in practice, the same may be taken on record within a reasonable period of say, ten (10) days. You are also advised that in case the relevant certificate of charge, etc. is not collected by the company's representative concerned within seven (7) days thereafter, the same may be sent by post. A copy of this circular is being endorsed to all the three professional Institutes with a request to suitably advise their members to ensure that the documents certified by them have been completely and correctly filled in.'</p>
<p>Delay in Registration of Documents (Issued by the Ministry of Industry, Department of Company Affairs, vide Nos.1/3/ 91-CL.V; Circular No.5/91 dated 26-2-1991)</p>	<p>'This has reference to this Department's Circular No. 14/90 dated 5-9-1990 on the above-mentioned subject. It has been decided that all documents required to be filled with you by companies be taken on record within a reasonable period, say, ten days, if the same are duly certified as correct by a Company Secretary/ Chartered Accountant/ Cost Accountant, in practice.'</p>

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

The High Level Committee on Corporate Audit and Governance (Naresh Chandra Committee) in its report in 2002, while observing wide gap between prescription and practice, recommended a system of pre-certification by Company Secretaries to remove defect in documents so that these could be taken on record immediately and to reduce workload on Ministry.

It was also recommended that the system should provide for monetary and other penalties on Company Secretaries who certify the forms incorrectly, even though error or oversight.

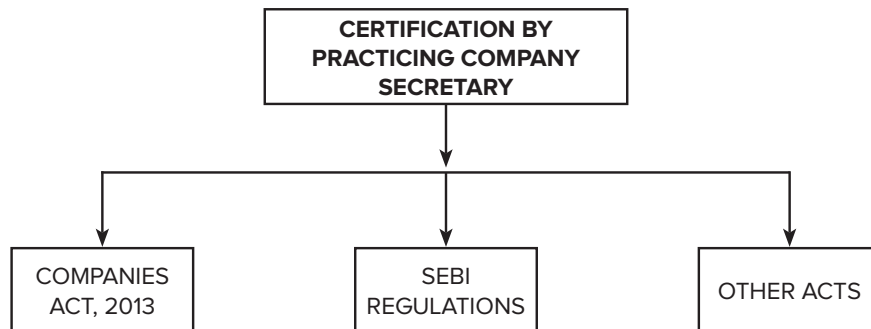
Accordingly, the Companies (Amendment) Bill, 2003 introduced in the Rajya Sabha sought to add a new Section 383C to provide that all documents, returns, forms required to be filed with the Registrar or any statutory authority shall be pre-certified by a Company Secretary in Practice.

In the meantime, the Government issued a Concept Paper for revamping of Company Law in the year 2004, containing a model codified company law which incorporated the provisions of section 383C of the Companies (Amendment) Bill, 2003.

After enactment of the Companies Act, 2013, the provision of Pre-certification was introduced in the Companies (Registration Offices and Fees) Amendment Rules, 2014 [Sub-rule (12) of Rule 8, inserted by Notification No. G.S.R. 297(E) dated 28th April, 2014].

The requirement of authentication of documents prescribed under Rule 8 of the Companies (Registration Offices and Fees) Rules, 2014, elaborates on the responsibility of professionals certifying the forms. The professional certifying the form must verify whether all the requirements as per the provisions of the Act and the rules made thereunder have been complied with and all the attachment to the forms have been duly signed/authenticated, scanned and attached completely and legibly.

VARIOUS CERTIFICATIONS BY COMPANY SECRETARY IN PRACTICE



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

S. No.	e-Form/ web Form	Purpose
1.	INC 20A	Application for Declaration prior to the commencement of business or exercising borrowing powers
2.	INC-22	Notice of situation or change of situation of registered office
3.	INC-28	Notice of Order of the Court or any other competent authority
4.	PAS-3	Return of Allotment

5.	SH-7	Notice of Registrar of any alteration of share capital
6.	CHG-1	Application for registration of creation, modification of charge (other than those related to debentures)
7.	CHG-4	Particulars for satisfaction of Charge
8.	CHG-9	Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures
9.	MGT-14	Filing of Resolutions and agreements to the Registrar
10.	DIR-6	Intimation of change in particulars of Director to be given to the Central Government
11.	DIR-12	Particulars of appointment of Directors and the key managerial personnel and the changes among them
12.	MR-1	Return of appointment of MD/WTD/Manager
13.	MR-2	Form of application to the Central PCMA Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors.
14.	MSC-3	Return of Dormant Company
15.	MSC-1	Application to Registrar for obtaining the status of Dormant Company
16.	MSC-4	Application for seeking status of active company
17.	GNL-1	Applications made to Registrar of Companies
18.	GNL-3	Details of persons/directors/charged/specified "officer who is in default"
19.	ADT-1	Information to the Registrar by Company for appointment of Auditor
20.	NDH-1	Return of Statutory Compliance
21.	NDH-2	Application for Not available extension of Time
22.	NDH-3	Half yearly Return
23.	MGT-7	Annual Return
24.	AOC-4	Form for filing financial statement and other documents with the Registrar
25.	DIR-3 KYC	KYC of Director
26.	AOC-4 CFS	Form for filing consolidated financial statements and other documents with the Registrar
27.	AOC-4 XBRL	Form for filing XBRL document in respect of financial statement and other documents with the Registrar

Other declarations, attestations and certifications under the Companies Act:

Rules	Declarations/Attestations/Certifications
Companies (Incorporation) Rules, 2014	To make declaration that all the requirements of the Companies Act, 2013 and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with. {Section 7(1)(b) read with Rule 14 of the Companies (Incorporation) Rules, 2014}
	To make declaration that the memorandum and articles of association have been drawn up in conformity with the provisions of Section 8 of the Companies Act, 2013 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with. [Section 8 read with Rule 19 of the Companies (Incorporation) Rules, 2014]
Companies (Prospectus and Allotment of Securities) Rules, 2014	Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (the Registration Office and Fees) Rules, 2014 within sixty days from the conclusion of each half year. [rule 9A]
Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	To issue Secretarial Audit Report to every listed company and every public company having a paid-up share capital of fifty crore rupees or more; or every public company having a turnover of two hundred fifty crore rupees or more; or every company having outstanding loans or borrowing from banks or public financial institutions of one hundred crore rupees or more. {Section 204 & Rule 9 of Companies (Appointment and Remuneration Personnel) Rules, 2014}
Companies (Management and Administration) Rules, 2014	To certify annual return of a listed company or a company having paid up share capital of ten crore rupees or more or turnover of fifty crore rupees or more (Form MGT-8). {Section 92(2) read with Rule 11(2) of the Companies (Management and Administration) Rules, 2014}
	To be appointed as a scrutinizer in every listed company or a company having not less than one thousand shareholders to scrutinize the Administration) Rules, e-voting process in a fair and transparent manner [Rule 20 of Companies (Management and Administration) Rules, 2014]

PRE-CERTIFICATION UNDER SEBI REGULATIONS

- Secretarial Audit Report and Secretarial Compliance Report given by a Company Secretary in Practice as per Regulation 24A of SEBI (Listing Obligation and Disclosures Requirements) Regulations, 2015.
- Certificate regarding Compliance of Conditions of Corporate Governance (Schedule V, Clause E).
- Certificate under Schedule V Clause C (10)(i) pertaining to directors' disqualification. [Regulation 34(3)].
- To issue certificate of compliance to an investment adviser under SEBI (Investment Advisers) Regulations, 2013.
- To conduct annual audit of Research analyst or research entity in respect of Compliance with SEBI (Research Analysts) Regulations, 2014.
- Certification of shareholding pattern for registration as authorised person & Board Resolution in case the applicant is a Corporate body/ Sharing Pattern of Profit/loss in case the applicant is Partnership Firm / LLP.

- Certifications required during IPO's - certifying basis of allotment, allotment of shares from employees quota, etc.
- Certifying that the SEBI (ICDR) Regulations, 2018 for bonus issue has been complied with.
- Reconciliations of Share Capital Audit Report as per Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018.
- Certifying that the floor price for the proposed placement to QIBs is based on the pricing formula prescribed under Chapter VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
- Certifying that debenture holders have provided their consent for changing the terms of the Debentures whereby mentioning the existing as well as revised terms.
- Listing of units of REITs-Certifying that:
 - Allotment of units has been made as per the basis of allotment approved by designated Stock Exchange.
 - All the funds have been received before the allotment of units of REITs.
- The certificates corresponding to Securities under lock in have been enforced with non-transferability condition.

CASE LAW

In Re Securities and Exchange Board of India Vs. Shankar Civil Appeal No. 527 OF 2023, Supreme Court of India dated 08.02.2023, in this matter the SAT came to conclusion that role of compliance officer, was limited to redressing grievances of investors and he was nowhere responsible for false or misleading open offer made by company. The Apex court held that, crucial point which had been missed by SAT was that compliance officer was also required to ensure compliance with Buyback Regulations as expressly stipulated by regulation 19(3) of SEBI (Buyback of Securities) Regulations, 1998, decision of SAT was to be set aside and proceeding were to be remitted back.

PRE-CERTIFICATION UNDER LIMITED LIABILITY PARTNERSHIP ACT, 2008

S. No.	Form/Web Form	Purpose
1.	Form- 3	Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein
2.	Form- 4	In case of change in designated partners or partners in the LLP (i.e. appointment or cessation)
3.	Form- 11	Annual Return of Limited Liability Partnership
4.	Form- 15	Shifting of registered office of Limited Liability Partnership

Apart from the above the Company Secretaries also provide various other reports and certification services including the Valuations report, Corporate Governance certificate, Search Reports, Due diligence Report, etc.

PREPARATIONS BEFORE PRE CERTIFICATION

Professional in Practice before undertaking the work relating to Pre-certification should thoroughly read the:

- Requirements of the provisions of the Companies Act, 2013 and Rules made thereunder; and
- Familiarize himself with the actual practices that are followed in this regard.

Further he should particularly ensure the following:

- Ensure that letter of engagement/Board Resolution authorizing the professional for the assignment by the company to be obtained.
- Maintain a physical/scanned of all documents verified (subject to confidentiality requirement).
- Ensure that all relevant documents and attachments are legible & visible.
- Verification of the documents from the original records of the company.
- Correctness of the records and the material departure from the facts.
- The form is signed by the authorised person of the company.
- Before certification of any form, the person should be aware about the relevant provisions under the Act and Rules made thereunder, process to be followed by the company, approval if any required etc.

For the purpose of maintaining quality of attestation /certification services provided by Company Secretaries in Practice, every Practicing Company Secretary/Firm of Practicing Company Secretaries shall maintain a register regarding attestation /certification services provided by him/her/it, which shall be open for inspection by such person as may be authorised.

As per clause 11 of Part I of the First Schedule of Company Secretaries Act, 1980, if a PCS allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto it is considered as Professional misconduct.

CONSIDERATIONS IN FILLING E-FORMS

- Before filling of e-forms, the professional should go through the instruction kit of the respective e-form provided by the MCA on MCA-21 portal;
- DIN is mandatory for e-filing of documents. Therefore, the professional should ensure that the details related to DIN of the Directors has been updated on the MCA Portal;
- Digital Signature (DSC) is mandatory and same shall be registered on the MCA Portal before it first use;
- Check Master Data of the company before filing any documents;
- The attachments to the e-forms should be complete and all pages of the attachment should be page numbers and shall be attached in order;
- It would be advisable to file the forms early, without waiting for the last days or the due date of the filing of e-forms;
- Adequate care shall be taken in filing the forms, ensure that the all the entries in the forms are correct and as per the supporting documents to be attached;
- Option for revision/cancellation of e-forms is not available on MCA Portal once it is taken on Record;

- If the pay later option is selected, ensure that the filing fees is paid before the expiry date of the challan as non-payment of fees liable for cancellation of transaction;
- As a trusted advisor of the Company, keep track of various reportable events and advise the Company regularly to file requisite forms to avoid penalties and regulatory actions;
- Attach the required documents duly scanned or converted into PDF with minimum size as possible;
- Use various inbuilt utilities like “PREFILL” and complete the form by clicking on “CHECK” and “PRE-SCRUTINY” options;
- Check the date of resolution and minute book, which authorizes the Director/Secretary before filling the date of resolution in the form;
- DSC used by Director/ Secretary/Signatory should be same as per authority delegation by the Board etc., as the case may be.

REGISTER OF CERTIFICATION

For the purpose of maintaining quality of attestation /certification services provided by Company Secretaries in Practice, every PCS should maintain a register regarding attestation/certification services provided by him including:

1. Signing of Annual Return (MGT-7);
2. Certification of Annual Return (MGT-8);
3. Issue of Secretarial Audit Report (MR-3);
4. Certification of E forms of MCA under Companies Act, 2013 / LLP Act, 2008;
5. Internal Audit of Depository Participants/ portfolio Manager/ Stock Broker;
6. Annual Compliance auditor under SEBI (Research Analyst) Regulations, 2014;
7. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges;
8. Certificate of reconciliation of capital, updation of Register of Members, etc. as per the SEBI Circular D&CC/ FITTC/Cir-16/2002 dated December 31, 2002;
9. Conduct of Internal Audit of Operations of the Depository Participants;
10. Corporate Governance Certification under SEBI (LODR) Regulations, 2015;
11. Information relation to E-forms certified and signed;
12. Register of various reports issued.

CERTIFICATION OF ANNUAL RETURN

The Companies Act, 2013 provides a new and significant area of practice for Company Secretaries, it also casts immense responsibility on the Company Secretaries. As they are the professionals certifying the critical documents like Annual Return, Company Secretaries must exercise adequate diligence and care in certification. Any failure or lapse on the part of PCS may attract penalty both under the Companies Act, 2013 as well as under the Company Secretaries Act, 1980 for professional or other misconduct.

Under sub-section (2) of section 92 of the Act read with rule 11(1) of the Companies (Management and Administration) Rules, 2014, every company shall file its annual return in Form MGT- 7, except One Person Company (OPC) & Small Company. OPC & Small Company shall file annual return from the financial year 2020-2021 onwards in Form MGT-7A.

The Annual Return of a listed company or of a company having a paid up share capital of Rs. 10 Crore or more or turnover of Rs. 50 Crore or more shall be certified by a company secretary in whole time practice in the Form No. MGT-8.

Annual Return certification-threshold:

Under sub-section (2) of section 92 of the Act read with rule 11(2) of the Companies (Management and Administration) Rules, 2014 Annual Return certification by Company Secretary in practice:

- Every listed company ;
- Every company having paid-up capital of Rs. 10 crore or more;
- Every company having turnover of 50 crore rupees or more.

While certifying the Form No. MGT 8, the PCS shall certify that:

- A. the Annual Return discloses the facts as at the close of the financial year correctly and adequately; and
- B. the Company has complied with the provisions of the Act & Rules made there under during the financial year in respect of:
 1. Its status under the Act;
 2. Maintenance of registers/records & making entries therein within the time prescribed therefore;
 3. Filing of forms and returns as stated in the Annual Return, with the Registrar of Companies, Regional Director, Central Government, the Tribunal, Court or other authorities within / beyond the prescribed time;
 4. Calling/ convening/ holding meetings of Board of directors or its committees if any, and the meetings of the members of the company on due dates as stated in the annual return in respect of which meetings, proper notices were given and the proceedings including the circular resolutions and resolutions passed by postal ballot, if any, have been properly recorded in the Minute Book / registers maintained for the purpose and the same have been signed;
 5. Closure of Register of Members / Security holders, as the case may be;
 6. Advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act;
 7. Contracts/arrangements with related parties as specified in section 188 of the Act;
 8. Issue or allotment or transfer or transmission or buy back of securities/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates in all instances;
 9. Keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer in compliance with the provisions of the Act;
 10. Declaration/ payment of dividend; transfer of unpaid/ unclaimed dividend/ other amounts as applicable to the IEPF in accordance with section 125 of the Act;
 11. Signing of audited financial statement and report of directors is as per section 134 of the Act;
 12. Constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them;

13. Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act;
14. Approvals required to be taken from the Central Government, Tribunal, Regional Director, Registrar, Court or such other authorities under the various provisions of the Act;
15. Acceptance/ renewal/ repayment of deposits;
16. Borrowings from its director, members, public financial institutions, banks and others and creation / modification /satisfaction of charges in that respect, wherever applicable;
17. Loans and investments or guarantees given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act;
18. Alteration of the provisions of the memorandum and / or articles of association of the Company.

While granting certificate under Form MGT-8 CS must examine following:

1. Statutory registers, such as the register of members, shareholders, debenture holders, securities, charges etc.
2. Incorporation documents, i.e, Memorandum & Articles of association.
3. E-forms filed with MCA.
4. Latest Financial statements of the company.
5. List of Promoters.
6. Shareholding pattern/ ownership structure of the company.
7. Minutes of board, committee & general meetings. Resolution passed, notices & agenda of meetings.

Note: The qualifications, reservation or adverse remarks; if any, may be statial at the relevant places.

SIGNING OF THE ANNUAL RETURN - SECTION 92 (1)

Annual Return is required to be signed by a Director and the Company Secretary, or where there is no company secretary, by a Company Secretary in Practice.

As per the proviso to section 92(1), the Annual Return of One Person Company and Small Company and private company (if such private company is a start-up) shall be signed by the Company Secretary or where there is no Company Secretary, by the Director of the company.

CASE LAW

In Re Deep Himanshu Desai (petitioners) Vs. Union of Indian (Respondents) Civil Writ Petition No.9564 of 2020 High Court of Rajasthan dated 02.09.2020, in this matter it was held that the petitioners who were treated as disqualified directors under section 164(2)(a) sought direction to use their Director Identification Number (DIN) and Digital Signature Certificate for purpose of filing annual return. As per the decision of court the respondents were directed to reactivate Director Identification Number (DIN) of petitioner(s) and Digital Signature Certificate to enable petitioner(s) to file necessary annual return and also to discharge their statutory obligations.

While signing the Form MGT-7 (Annual Return) Company Secretary/ Company Secretary in Practice and Director certifies that:

1. The return state the facts, as they stood on the date of the closure of the financial year aforesaid correctly and adequately.
2. Unless otherwise expressly stated to the contrary elsewhere in this return, the company has complied with applicable provisions of the Act during the financial year.

In Case of the Private Company, the Company Secretary/Company Secretary in Practice and Director also certifies that:

3. The company has not, since the date of the closure of the last financial year with reference to which the last return was submitted or in the case of a first return since the date of the Incorporation of the company, issued any invitation to the public to subscribe for any securities of the company.
4. Where the annual return discloses the fact that the number of members, (except in case of a one person company) of the company exceed two hundred, the excess consists of wholly of persons who under second proviso to clause (ii) of sub - section (68) of section 2 of the Act are not to be included in reckoning the number of two hundred.

Further, Company Secretary/Company Secretary in Practice and Authorised Director declares that -

- i. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
- ii. All the required attachments have been completely and legibly attached to this form.

When a Company Secretary or Company Secretary in practice signs the annual return, he certifies that the facts stated and the material furnished as attachment to the form are duly and fully (correctly and adequately) stated and given.

Further, he has to state that the company has made compliances as well as disclosures in respect of applicable provisions of the Companies Act during the year, also he should give reasons or observations in respect of non-compliances.

Time and Mode of Appointment of Practicing Company Secretary (PCS)

With a view to carry out the voluminous work involved in certifying the Annual Return and considering the fact that an extract of annual return is also required to be prepared before the annual general meeting which forms part of Board's report, it will be advisable that the PCS is appointed by the Board, at the beginning of the respective financial year. The contents to be verified are quite exhaustive and the facts and figures in the Annual Return should match with the financial statements and other statutory registers, records and documents maintained by the Company.

Scope and extent of work for PCS:

For the purpose of certification, PCS should carry out a scrutiny of the data available and check the correctness of the same. Since almost all the events happened between closure of two financial years i.e, between 01 April – 31 March or as approved by Tribunal are captured in the Annual Return, the PCS should be prudent in understanding the events and its impact and consequences, while certifying the same.

PCS should carry out a detailed scrutiny and cross verification of documents. For ensuring the correctness of information contained in the Annual Return, the primary source documents should be looked into. While doing the detailed scrutiny, he may rely on certified copies of the resolutions, forms, agreements as also certificates from the management.

Documents to be Obtained/Verified before Certification of Annual Return by Company Secretary in Practice

1. Memorandum and Articles of Association;
2. Forms & receipts filed with the Registrar of Companies;
3. Statutory Registers;
 - Record of Private Placement Form PAS-5 (Section 42)
 - Register of Members Form MGT-1 (Section 88)
 - Register of Debenture holder Form MGT-2 (Rule 4 of the Companies (Management & Administration) Rules, 2014)
 - Register of Directors & their Shareholding (Section 170)
 - Register of Key Managerial Personnel (Section 170)
 - Register of Related Party Contracts Form MBP-4 (Section 189)
 - Register of Loan and Investment Form MBP-2 (Section 186)
 - Register of deposit [Rule 14 of Companies (Acceptance of Deposits) Rules, 2014]
 - Register of Charge Form CHG-7 (Section 85)
 - Register of Employee Stock Options under Form SH-6 (Section 62)
 - Register of Shares and other securities bought back in Form SH-10 (Section 68)
 - Register of Sweat Equity shares under Form SH-3 (Section 54).
4. Minutes of the Meetings;
 - Board Meeting
 - General Meeting
 - Committee Meeting
 - Creditors Meeting
 - Debenture holders Meeting
 - Court convened Meetings for the purpose of restructuring and amalgamation
 - Postal ballot minutes.
5. Notices and agenda papers for convening meetings of the Board and Committees thereof;
6. Attendance Registers of all Meetings;
7. Copy of Latest Financial Statements along with the Board's Report and Auditors Reports;
8. Copy of Notice of Annual General Meeting/Extraordinary General Meetings/Postal Ballots/Court convened meetings/Creditors meetings and debenture holders meeting;
9. Shareholder List in Compact Disc (CD) in PDF Format, details of Share Transfers taken place between close of the previous financial year and close of the financial year to which Annual Return relates, Controls of the Data as on the Date of Annual General Meeting of the company or the Beneficial Positions as on close of financial year downloaded from the records of the Depository participants by Registrar Transfer Agent (RTA) of the company on record/book closure date prior to AGM;

10. Certificate from RTA stating the number of shareholders as on the close of the financial year;
11. Indebtedness Certificate signed by Company Secretary/CFO/ Statutory Auditors of the company;
12. Change of name of the company, change in the face value of the shares of the company, new ISIN No of the company in respect of the allotment or as a result of any change in capital structure due to any corporate action taken by the company during the Financial year;
13. Board Resolution for any type of corporate actions taken by the company;
14. Corporate Action Forms filed by the company with Depositories;
15. Shareholding pattern and its break up;
16. Any orders received by the company, Director or officer from the High court or from any other regulatory body under any act;
17. Other Statutory Registers and Records;
18. List of Promoters;
19. Listing and Trading Approval(s) from Stock Exchanges, Credit Confirmation from Depositories namely NSDL and CDSL respectively/confirmation from both depositories in respect of allotment of equity shares of the company during the period between the previous AGM date and current AGM date. Intimation to Stock Exchanges, Confirmation from National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL) for change of the name of the company, change in the face value of equity shares, change in ISIN of the company and the Scrip Code/Symbol of the company, etc.

As a good practice, it is advisable to have the Annual Return reviewed/verified by a different professional before it is certified, as part of maker and checker concept for independent verification of the Returns being certified. These two different signing mechanisms include one for the purpose of signing under section 92(1) and the other for certification under section 92(2) of the Companies Act, 2013.

However, where a company is having a Company Secretary then signing of the annual return as per section 92(1) shall be done by the Company Secretary in employment only, but not by the Company Secretary in Practice.

Time limit for filing Annual Return

As per Section 92(4) every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

Consequences of not filing Annual Return

Under Section 92 (5) If a company fails to file its annual return under sub section (4), such company and its officer who is default shall be liable to a penalty of 10,000 rupees and in case of continuing failure with further penalty of 100 rupees for each day after the first day during which such failure continues, subject to a maximum of 2,00,000 rupees in case of company and 50,000 rupees in case of an officer who is in default.

Consequences of Non-Filing Annual Return:

For the Director:

- **Penalty for default:** If the company has not filed its Annual Return from the date by which it should have been filed with fee and additional fees, every officer who is in default shall be liable to a penalty of Rs.10,000 and in case of continuing failure, with further penalty of Rs.100 for each day during which such failure continues, subject to a maximum of Rs.2 lakh incase of a company and Rs.50,000 incase of officer in default. (Section 92)

- **Disqualification:** If the company has not filed its financial statement or Annual Return for continuous period of three financial years, then every person who is or has been director of that company shall not be eligible for re-appointment as Director of that company or appointed in any other company for a period of five years from the date on which the said company fails to do so. [Section 164(2)]

CASE LAW

1. In *Re Abbas Maru Vs. Union of India, High Court of Madhya Pradesh writ petition No. 15683 of 2020 dated 09.06.2022*, it was held that Section 164(2), which had come into force from 1-1-2014 would have prospective and not retrospective effect and defaults contemplated under section 164(2)(a) with regard to non-filing of financial statements or annual returns for any continuous period of three financial years to be counted from financial year 2014-15 only.
2. In *Re Gautam Mehra Vs. Union of India W.P.A. NO. 22790 OF 2019, High Court of Calcutta dated 15.10.2020*, in this matter it was held that the Section 164(2)(a) has not limited disqualification to a person who has been a director of a company for entire period of three continuous years for which company was in default of non filing of annual returns but also to a person who has been a director of defaulting company for any period of time of relevant continuous period of three years and DIN of such person stands cancelled immediately upon such person being visited with a disqualification under section 164.

- **Penalty for Misstatement:** If in Annual Return, any Director or any Person makes a statement (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material, he shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. (Section 448)
- **Class action suits:** Under section 245, the class of shareholders or depositors may file an application with the Tribunal alleging that the management or conduct of the affairs of any company are being conducted in a manner prejudicial to the interest of the company, its members or depositors. Such class action may include suite against the company, its directors, officers, experts or any other person for wrongful or fraudulent act. The order passed by the Tribunal shall be binding on the Company, its directors and officers.

For the Company:

- **Penalty:** If the company has not filed its Annual Return from the date by which it should have been filed with fee and additional fees, every officer who is in default shall be liable to a penalty of Rs.10,000 and in case of continuing failure, with further penalty of Rs.100 for each day during which such failure continues, subject to a maximum of Rs.2 lakh in case of a company and Rs.50,000 in case of officer in default. (Section 92)
- **Winding up:** If the Company has defaulted in filing Annual Returns for the immediately preceding five financial years, the Company may be wound up by the Tribunal. (Section 271)
- **Inactive status:** If the Company has not filed its Annual Return for last two financial years, it will be termed as “inactive company” [Section 455(1)].

CASE LAW

In *Re AVS Enterprises (P.) Ltd. Vs. Registrar of Companies, Delhi, Company Appeal (AT) no. 47 of 2021, NCLAT New Delhi dated 05.04.2022*, in this matter the appellant company had not filed annual returns with Registrar of Companies from year 2006-07 onwards and, its name was ‘struck-off’ from Register of Companies. Further, in view of fact that company was carrying on business operation and right to seek restoration of name of company was not extinguished, name of company was to be restored in register of companies subject to filing of all pending statutory documents along with late fee.

- **Dormant status:** If the Company has not filed its Annual Return for two financial years consecutively, the Registrar shall issue notice to the Company and enter its name in the Register of Dormant Companies. [Section 455(4)]
- **Compounding of Offences:** Provisions and procedure for compounding of offences, which are punishable under Companies Act, 2013 are stipulated under Section 441.

Test Yourself:

Question: Whether non-filing of Annual Return is a compoundable?

Answer: Offence in respect of default in filing Annual Return is compoundable (section 441), in accordance with the procedure laid down in this section for compounding of offences. If any company fails to file its annual return under section 92 (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to penalty of ten thousand rupees and in case of continuing failure, with further penalty of Rs.100 for each day during which such failure continues, subject to a maximum of Rs.2 lakh incase of a company and Rs.50,000 incase of officer in default.

Consequences of Wrong Certification of Annual Return

Under Section 92 (6) of the Companies Act, 2013, if a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of Rs. 2,00,000.

A Practicing Company Secretary will be liable for disciplinary actions by the Disciplinary Committee of the ICSI under the provisions of the Company Secretaries Act, 1980. Further, Section 448 of Companies Act, 2013 also imposes a penalty if any return, report, certificate, financial statement, prospectus, statement or any other document makes a false statement or omits any material fact.

Further, Company Secretary in practice may also attract the provisions of Section 447, sections 448 and 449 of Companies Act, 2013.

Authority to initiate action against Professionals

MCA vide its circular no. 10/2014 dated 07.05.2014 has clarified that Regional director/ ROC would initiate action under section 448 and 449 of the Act in the cases of submitting false or misleading or incorrect information. Further, the cases u/s 448 and 449 may also be referred to the concerned Institute for conducting disciplinary proceedings against the errant member and the MCA may debar the concerned professional from filing any document on the MCA portal in future.

Filing Annual Return when Annual General Meeting is not held

Where no AGM is held in a particular year, the Annual Return has to be filed within 60 days from the last day on which the meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403. [Section 92(4)]

Consequently, the company cannot excuse itself from the obligation on the plea that AGM was not held. As per Section 403, if the Annual return under section 92 is not filed within the due date the same can be filed on payment of additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:

Where the document, fact or information, as the case may be, in cases other than referred to in the first proviso, is not submitted, filed, registered or recorded, as the case may be, within the period provided in the relevant section, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered

or recorded as the case may be, on payment of such additional fee as may be prescribed and different fees may be prescribed for different classes of companies.

Further, where there is default on two or more occasions in submitting, filing, registering or recording of such document, fact or information, as may be prescribed, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee, as may be prescribed.

In case a company fails or commits any default to submit, file, register or record any document, fact or information under Section 92 (1) before the expiry of the period specified, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Thus, the management of the company cannot escape from the responsibility of filing the return, even if the AGM is not held or the company is inoperative. This section casts an important obligation on the part of management to file the returns and can be relinquished only when the company is wound-up or its name is struck-off from the Register maintained by the Registrar of Companies.

Detailed Scrutiny of Annual Return

The PCS is required to exercise due caution and care, since he/she is bound by the certification in the Annual Return. A very pertinent question which arises for consideration is the extent of detailed verification that has to be performed for certifying the Annual Return.

It is a well-established principle in any auditing practice that an auditor is not expected to carry out a 100% checking of company's documents, in arriving at the final facts and figures represented in the certified document. In financial audit, for instance, the auditor is not expected to do vouching of each and every invoice raised / voucher created by the company before accepting the sales figure given in the Financial Statements. Similarly, while certifying the list of past and present shareholders given in the Annual Return, a PCS cannot be expected to check every folio of the Registrar of Members, whose number could run into lakhs. Similarly, the number of share transfers registered in a year could run into thousands. If one is expected to check every transaction in these matters, it could be well almost impossible to meet the statutory time limits for filing the documents.

Therefore, certain techniques of sampling and test checks should be applied for forming a reasonable opinion that the document being certified reflects a true and correct view of the state of affairs. There are no specific modalities or stringent test practices applicable for certification of Annual Return. However, the following guiding principles can be adopted while deciding about the extent of checking that is required.

- (i) **Internal Controls:** The PCS shall perform a detailed review of the internal controls, checks and balances built into the systems and procedures of the Company. If appropriate internal controls exist, and operate effectively, the need for detailed checking is reduced to a large extent. For instance, the procedure for registration of share transfers could be so designed that the mistakes and errors committed at one stage are automatically detected and corrected by another before the whole process is complete. The system could also provide for inherent checks, particularly in cases where the process is automated/computerized.
- (ii) **Materiality:** Similar to any audits, the principle of materiality is another important and relevant concept. The sample chosen for detailed checking should be representative of the whole, or the 'population', in statistical parlance. For example, in share transfers, instances of transfer of large blocks of shares could be chosen for detailed scrutiny. Or, the 'busy' period for transfer of shares in the year could be identified and selected for sample checking.
- (iii) **Risk Assessment:** The PCS shall have an overall understanding of the Company, the industry in which it operates, corporate governance practices, etc., and perform risk assessment to identify the 'high risk' areas. These 'High risk' areas shall be subjected to more extensive verifications. For instance, in the case of shares on which there are restrictions on transfer statutory or otherwise, a more extensive examination is warranted.

In conclusion, it may be noted that the ultimate responsibility of the document certified will rest with the professional. While the extent of checking is a matter of professional judgment, he should safeguard himself against any possible charge of negligence in respect of inaccurate or incomplete statements certified by him, by adequately documenting the procedures performed and conclusions drawn.

Certification With Reservation /Qualification /Observations /Adverse Remarks

A PCS may certify the Annual Return subject to certain reservations /qualifications/ observations/adverse remarks by way of an annexure to his certificate. However, this course of action can only be resorted to in case where material facts are not stated correctly and completely in the Annual Return or where the company has not complied with the applicable provisions of the Companies Act.

While signing of the Annual Return of a company by a Company Secretary or a Company Secretary in practice shall ensure compliance with the guidance note on the Certification of the Annual Return as published by the ICSI and make appropriate professional judgments, wherever necessary.

It is the duty of the certifying professional to take the copy of the relevant documents and record such facts, based on which he has certified the Returns.

While the certification of Annual Return in Form No. MGT-8, the certifying professional should observe all the statements in a true and fair manner. It is the duty of the professional to give the observation, limitation and disclaimer as may be required and appropriate for the certification.

CORPORATE GOVERNANCE CERTIFICATION BY PRACTICING COMPANY SECRETARY

This certificate on the compliance of conditions of Corporate Governance by the Company, is issued under the regulations 17 to 27 and clauses (b) to (i) of regulation 46(2) and para C and D of Schedule V of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI(LODR)']. The certificate can be issued either by the statutory auditors or PCS and shall be annexed to the director's report.

Clause E of Schedule V of the Regulations prescribes that a Compliance Certificate from either the auditors or Practicing Company Secretary regarding compliance of conditions of corporate governance shall be annexed to the directors' report.

Further, in terms of regulation 27(2) of LODR Regulations, the listed entity is required to submit a quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognized Stock Exchange(s).

Regulation 17(3) of the SEBI (LODR) provide that the Board of Directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, as prepared by the company as well as steps taken by the company to rectify instances of non-compliance, if any.

However, the compliance with the corporate governance provisions as specified in Regulations 17 to 27 and clauses (b) to (i) of Regulation 46(2) and para C , D and E of Schedule V shall not apply, in respect of following –

1. The listed entity having:
 - paid up equity share capital not exceeding rupees 10 crore; and
 - net worth not exceeding rupees 25 crore, as on the last day of the previous financial year.
2. The listed entity which has listed its specified securities on the SME Exchange.

IMPORTANT POINTS RELATING TO CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE (CGCC)

- In order that the PCS can carry out the necessary verification for the purpose of issuing Corporate Governance Compliance Certificate (CGCC), the Company should provide the PCS access to the registers, books of accounts, papers, documents, reports and records of the Company wherever kept.

- The CGCC from the PCS should relate to the financial year of the listed Company under Report.
- When a PCS is assigned the compliance certification work of the Company for the first time, he should communicate his appointment to the earlier incumbent, if a PCS, by registered post.
- The PCS who has issued the CGCC should make himself available at the Annual General Meeting to provide clarifications, on CGCC, if required.
- Any failure or lapse on the part of a PCS in issuing a CGCC, may not only attract disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980, but also make him liable for any injury caused to any person due to his negligence in issuing the CGCC.

MODE OF ISSUING CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE (CGCC)

For issuing CGCC a three-step procedure needs to be followed:

- (i) The PCS would first obtain from the listed entity its draft report on Corporate Governance.
- (ii) PCS would examine relevant records relating to Corporate Governance and obtain necessary information and explanation from the management. An illustrative list of compliance inputs and checklists has been indicated in each paragraph in this Guidance Note. The list is however, not exhaustive.
- (iii) PCS on the basis of the report and verification of such other records as well as information and explanation so obtained, would certify the compliance of the conditions of Corporate Governance and give his certification to the Board to be annexed to the Board's Report.
- (iv) Where a Company has adopted the Voluntary Guidelines, the PCS would also certify the compliance thereof.

TYPES OF CERTIFICATION

The certification may be unqualified or qualified:

- (a) **Unqualified Certificate:** An unqualified certificate should be issued when the PCS forms the opinion that the conditions of Corporate Governance have been duly complied with by the Company.
- (b) **Qualified Certificate:** A qualified certificate should be issued when the PCS concludes that there are certain specific non-compliances or inadequacies. A qualified certificate should contain a brief description of non-compliances or inadequacies in compliances and the extent thereof.
 - It is recommended that the qualifications, if any, should be stated in bold type or in italics in the CGCC.
 - If the PCS is unable to form any opinion with regard to any specific matter, the PCS shall state clearly the fact that he is unable to form an opinion with regard to that matter and the reasons therefor.
 - If the scope of work required to be performed is restricted on account of limitations imposed by the client, or on account of other limitations (such as certain books or papers being in custody of another person or Government Authority), the certificate may indicate such limitations.
 - If such limitations are so material that the PCS is unable to express any opinion, the PCS should state that "in the absence of necessary information and records, he is unable to certify compliance or otherwise of the conditions of Corporate Governance by the Company".

PENALTY FOR FALSE CGCC

In certifying the compliance of conditions of Corporate Governance, the PCS should comply with the code of conduct issued by the Institute of Company Secretaries of India. Failure to comply with the code of conduct would render the PCS liable to charge of professional misconduct and the consequences thereof.

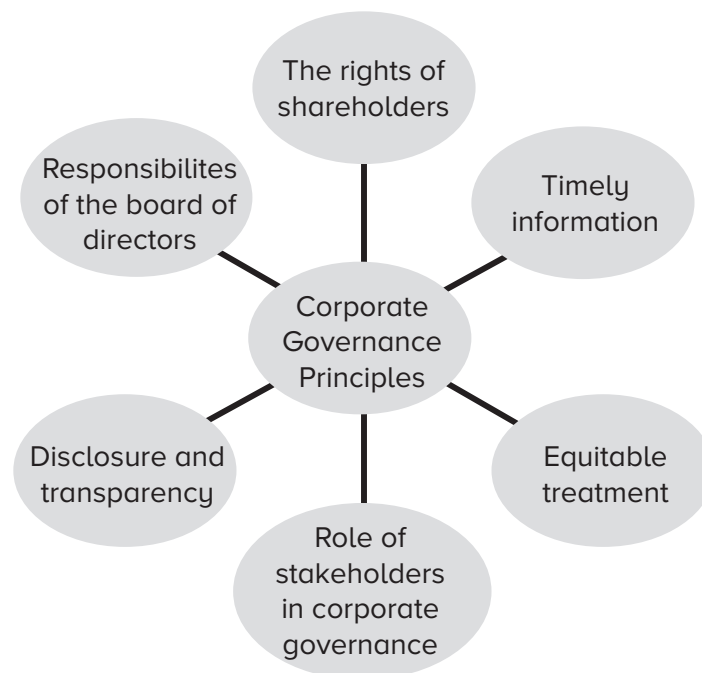
Section 448 of the Companies Act provides that if, in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of the Act, any person makes a statement which is false in any material particular, knowing it to be false or which omits material fact, knowing it to be material, he shall be punishable under section 447 (Punishment for Fraud).

Section 449 of the Companies Act further provides penalty of imprisonment for a minimum period of 3 years and a term which may extend to seven years, and fine which may extend to ten lakhs rupees, if any person intentionally gives false evidence upon any examination on oath or solemn affirmation, authorized under the Act or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under the Act, or otherwise in or about any matter arising under the Act.

Section 23H of the Securities Contracts (Regulation) Act, 1956 ("SCRA"), provides that, whoever fails to comply with any provision of SCRA, the rules or articles or bye-laws or the regulations of a recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Further Section 23M of the SCRA provides that, without prejudice to any award of penalty by the adjudicating officer under SCRA, if any person contravenes or attempts to contravene or abets the contravention of, the provisions of SCRA or of any rules or regulations or bye-laws made there under, for which no punishment is provided elsewhere in SCRA, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both. If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term, which shall not be less than one month, but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

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



CORPORATE GOVERNANCE PRINCIPLES UNDER LISTING REGULATIONS :

The listed entity which has listed its specified securities shall comply with the corporate governance principles under following broad headings as specified in Regulation 4 :

- (a) The rights of shareholders:** The listed entity shall seek to protect and facilitate the exercise of the following rights of shareholders:
- (i) right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes.
 - (ii) opportunity to participate effectively and vote in general shareholder meetings.
 - (iii) being informed of the rules, including voting procedures that govern general shareholder meetings.
 - (iv) opportunity to ask questions to the board of directors, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.
 - (v) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors.
 - (vi) exercise of ownership rights by all shareholders, including institutional investors.
 - (vii) adequate mechanism to address the grievances of the shareholders.
 - (viii) protection of minority shareholders from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and effective means of redress.
- (b) Timely information:** The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:
- (i) sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.
 - (ii) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership.
 - (iii) rights attached to all series and classes of shares, which shall be disclosed to investors before they acquire shares.
- (c) Equitable treatment:** The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:
- (i) All shareholders of the same series of a class shall be treated equally.
 - (ii) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors, shall be facilitated.
 - (iii) Exercise of voting rights by foreign shareholders shall be facilitated.
 - (iv) The listed entity shall devise a framework to avoid insider trading and abusive self-dealing.
 - (v) Processes and procedures for general shareholder meetings shall allow for equitable treatment of all shareholders.
 - (vi) Procedures of listed entity shall not make it unduly difficult or expensive to cast votes.
- (d) Role of stakeholders in corporate governance:** The listed entity shall recognise the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:
- (i) The listed entity shall respect the rights of stakeholders that are established by law or through mutual agreements.
 - (ii) Stakeholders shall have the opportunity to obtain effective redress for violation of their rights.

- (iii) Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.
- (iv) The listed entity shall devise an effective vigil mechanism/whistle blower policy enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

(e) Disclosure and transparency:

The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:

- (i) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.
- (ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.
- (iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

(f) Responsibilities of the board of directors:

The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

- 1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.
- 2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) Key functions of the board of directors:

- (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.
- (2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.
- (3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.
- (4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.
- (5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.
- (6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
- (7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
- (8) Overseeing the process of disclosure and communications.
- (9) Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities:

- (1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.
- (2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.
- (3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.
- (4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.
- (5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.
- (6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.
- (7) The board of directors shall exercise objective independent judgement on corporate affairs.
- (8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
- (9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.
- (10) The board of directors shall have ability to 'step back' to assist bexecutive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.
- (11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.
- (12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.
- (13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.
- (14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

SIGNING OF FINANCIAL STATEMENTS

The financial statements of a company shall be prepared in accordance with Section 129 and schedule III of Companies Act, 2013 and such financial statements shall be laid before the shareholders at the Annual General Meeting of the Company.

Section 2 (40) of the Companies Act, 2013 states that "financial statement" in relation to a company, includes-

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).

As per the provisions of Section 134(1) of Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board and the Financial Statement will be signed by the following:

- (i) Chairperson of the Company (if he is authorized by the board of directors); OR
- (ii) Two Directors (out of which one shall be Managing Director); AND
- (iii) Chief Executive Officer/ Chief Financial Officer and Company Secretary of the Company (on the basis of their appointment in the Company).

Test Yourself:

Question: Is it mandatory to sign financial statement from the company secretary?

Answer: As per Section 134(1), the company in which the Whole-time Company Secretary is appointed, then it is mandatory that the Financial Statement is signed from the Whole-time Company Secretary. Further if the company appointed Chief Executive Officer or Chief Financial Officer then the financial statement shall also be signed from them.

The signed financial statement submitted to the auditor then the auditor shall prepare an Auditors' report and the same shall be attached to the financial statement.

Where the company does not have a CFO and CS then only chairman can sign the financial statement. Where the company does not have a chairperson or not authorized by the board, signing of financial statements by two directors one of which shall be managing director and the CFO, if he is a director.

However, Financial Statement of One Person Company shall be signed by only one director.

CASE LAW

In Re Sourajit Ghosh Vs. Union of India W.P. NO. 5774(W) OF 2020, High Court of Calcutta dated 30.07.2020, it was held that if a director of a company who has failed to file financial statements incurs disqualification for appointment of a director in another company or re-appointment as a director, as the case may be, his right to continue as director in all companies which may have filed financial statements of annual returns as required under Companies Act would immediately be forfeited.

Adoption and Circulation of Signed Financial Statement

The company is required to adopt the Financial Statement in the Annual General meeting. The Annual General Meeting of the company can be held within 6 months from the end of the financial year i.e. 30 September. As per section 134(7) of the Companies Act, 2013, after signing the financial statement, including consolidated financial statement, if any, shall be circulated along with a copy each of—

- (i) any notes or annexure;
- (ii) the auditor's report; and
- (iii) the Board's report.

Penal Provisions:

If a company is in default in complying with the provisions of section 134 of the Companies Act, 2013, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

CASE LAW

In Re *HIFFCO Farming Ltd. Vs. Registrar of Companies, NCLAT New Delhi, Company Appeal (AT) no. 51 of 2022, dated 21.04.2022*, in this matter the appellant company had not filed financial statement with Registrar of Companies from year 2006-07 onwards and its name was 'struck-off' from Register of Companies, in view of fact that company was carrying on business operation and right to seek restoration of name of company was not extinguished, name of company was to be restored in register of companies subject to filing of all pending statutory documents along with late fees.

PEER REVIEW

The Institute of Company Secretaries of India provides a mechanism of Peer Review of their Members in Practice to enhance the quality of attestation services, to enhance credibility and provide competitive advantage and provide a forum for Guidance and knowledge sharing.

It is a process for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement. Each Practice Unit would be required to be peer reviewed at least once in a block of five years. The Practising Company Secretary/ Firm may apply voluntarily to be peer reviewed or it may be done through random selection by the Peer Review Board.

Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable Technical Standard.

The main objectives of Peer Review is to ensure that while rendering Professional Services, the members in practice would:

- (a) comply with the ICSI Guidance on Office Administration and Systems in the Office of PCS, ICSI Auditing Standards, Guidance Notes, Manuals, Referencers and advisories issued by the Institute; and
- (b) have in place proper systems (including documentation systems) for maintaining the quality of professional assignments undertaken by them. Peer Review is directed towards enhancement of quality of professional services by providing guidance to members to improve their performance and adhere to various statutory and other regulatory requirements

Students are advised to refer Lesson 15 (Peer Review Audit and quality Review Audit) for more details.

OBLIGATION & PENAL PROVISIONS

A wrong signing/pre-certification leads to the following threat to the company, its authorised person and to the certifying professional.

To the company:

- The provisions of the Companies Act, 2013 provides for the actions/ fine/ penalty to be imposed on the companies in case of the default made by the company/its officers.

CASE LAW

In Re *Registrar of Companies, CP. NO. 338/441/ND/18, NCLT Delhi dated 19.03.2019*, in this case default was committed in compliance with provisions of sections 159 and 220 of Companies Act, 1956 for not filing its annual return and balance sheet and profit and loss account for F.Y. 2013-14 due to inadvertent mistake with no mala fide intentions and applicant had put an end to offence by filing its annual return and annual accounts, the offence was compounded.

- Further the action may be taken up by Central Government up to the order of the compulsory winding up of the company.

CASE LAW

In Re D3R Gateway Logistics (P.) Ltd. Vs. Registrar of Companies, Tamil Nadu C.P. 85/(252)/2017 dated 09.11.2017, in this matter the applicant-company failed to file annual returns for last four years with Registrar of Companies and its name was 'struck off' from Register of Companies under section 248(5), its name was to be restored to register of companies upon filing all pending financial statements and annual returns.

To the authorised representative of the company:

- The provisions of the Companies Act, 2013 provides for the actions/ fine/ penalty to be imposed on the companies in case of the default made by the company/its officers.
- Further the action may be taken up by Central Government under section 447,447 and 449 of the companies Act, 2013

To the Certifying professional:**i. Risk on Reputation:**

- Wrong certifications will not only lead to penal provisions but also will affect the reputation of a Company Secretary's firm and also in his individual capacity.
- It may lead to possibility to lose the practice also. Apart from this there is bad rift to ICSI. So, a PCS has to keep this in mind while certifying or attesting the forms.

ii. Under the Company Secretaries Act 1980:

- The Second Schedule to the Company Secretaries Act, 1980 in clause 2 provides that "where a Company Secretary in Practice certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in Practice," he shall be deemed to be guilty of professional misconduct.
- Further, clauses 5, 6, 7 and 8 provide that "where a Company Secretary in Practice while pre-certifying any e-Form or document fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, or fails to report a material mis-statement known to him or does not exercise due diligence, or is grossly negligent in the conduct of his professional duties or fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion," he would be deemed to be guilty of professional or other misconduct under the provisions of the Company Secretaries Act, 1980.
- In case there is any false statement in any material particular or omission of any material fact in the form certified as correct by a Practicing Company Secretary, he would be liable for disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980.
- In view of section 21B(3) of the Company Secretaries Act, 1980, in case he is found guilty of professional or other misconduct mentioned in the second schedule to the Company Secretaries Act, 1980, he will be liable for the following actions
 - (a) Reprimand,
 - (b) Removal of name from the registrar of members permanently or for such period as may be thought fit by the disciplinary committee,
 - (c) Fine which may extend to five lakh rupees.

iii. Under the Companies Act, 2013

- With a view to ensure that the Company Secretary in practice carries out his work with due diligence, the Registrar may carry out scrutiny of Forms on random basis. As per rule 8(9) of the Companies (Registration Officers and Fees) Rules, 2014, where any instance of filing document, application or return etc. containing a false or misleading information or omission of material fact, requiring action under section 448 or section 449 is observed, the person shall be liable under section 448 and 449 of the Act. Section 448 of Companies Act, 2013 deals with penalty for false statements.
- The section provide that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement, –
 - which is false in any material particulars, knowing it to be false; or
 - which omits any material fact, knowing it to be material, he shall be liable under section 447.
- Section 447 deals with punishment for fraud which provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
- In view of this, a Company Secretary in Practice will be attracting the penal provisions of section 448, for any false statement in any material particular or omission of any material fact in the e forms. However, a person will be penalized under section 448 in case he makes a statement, which is false in any material particular, knowing it to be false, or which omits any material fact knowing it to be material.
- It is pertinent to note that section 448 applies to “any person”. In view of this, a company secretary in practice, who is an independent professional, will be attracting the penalty, as prescribed in section 448 in case his observations in the secretarial audit report turns out to be false or he omits any material fact, knowing it to be false or material.

iv. Action by Regulator

Further as per rule 8(10) The Companies (Registration Offices and Fees) Rules, 2014, without prejudice to any other liability, in the case of certification of any form, document, application or return under the act containing wrong or false or misleading information or omission of material fact or attachments by the person, the Digital Signature Certificate shall be de-activated by the central government till a final decision is taken in this regard. As per MCA circular no. 10/2014 dated 07.05.2014, where any instance of filing of documents, application or return or form etc, containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules, 15 days’ notice may be given for the purpose. The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action under section 447 and 448 of the Act wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.

The E-Governance cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action under section 448 and 449 of the Act wherever prima facie cases have been made out. The E-Governance cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.

The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Governance Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month.

CASE STUDY

1. The disciplinary Committee of the institute of Company Secretaries of India (ICSI) has imposed penalty on a Company secretary for committing professional misconduct by making mistakes in the Compliance Certificate issued by him for a Company. The respondent, a Company Secretary, is a member of the ICSI. A complaint was lodged in the year 2014 alleging that the respondent, in a Compliance Certificate issued by him for a Company wrongly indicated that:
 - (i) the company has not issued any equity shares in the relevant year,
 - (ii) wrong statement on the conducting of meeting of the Board of Directors,
 - (iii) wrongly stated that the Provident Fund is applicable to the company.

The respondent denied all the allegations. After the enquiry, the Director of Discipline observed that the Form 23AC has been filed by the company for filing the balance sheet and other documents with the Registrar of Companies through Chartered Accountant showing increase of Share Capital. However, the fact of increase of share capital is not reflected in the Compliance Certificate. It was observed that the Respondent has stated that the Board of Directors has duly met 4 times during the period under review but it appears that the Board was not constituted as two directors had resigned for which the Respondent has stated that they had written to the ROC, but failed. With regard to the applicability of PF scheme, it was observed that the respondent merely relied on the information provided by the Company instead of the relevant documents.

After considering the rival submissions, the disciplinary Committee found that the respondent is guilty of Professional Misconduct and imposed a fine of Rs. 15,000/-, on failure of remitting the same within the stipulated time, the respondent will be removed from the register for 60 days.

2. The Disciplinary Committee of the Institute of Company Secretaries of India (ICSI) has punished a Company Secretary for committing professional misconduct for filing Compliance Certificate without due diligence. A complaint was filed against the respondent, a Company secretary alleging that several acts of Professional and Other Misconduct was committed by him while certifying the Compliance Certificates of a company for the years 2009-10 and 2010-11. It was noted in the complaint that in the Compliance Certificate, it was wrongly stated that proper notices for Board meetings were given by the Company held during the year 2009-10. The Respondent has admitted that out of eight meetings held in the year, the Respondent has admitted that he had verified the proof of only three meetings. In regard to the other five meetings, the Respondent relied on the letter of the management confirming dispatch of notices.

It was alleged that the Respondent failed to disclose in his Certificate that the allotment of 72,660 equity shares of Rs. 10/- each on 31st March 2009, by the Company, was illegal and beyond the authority of the Company as its Authorised Capital was only Rs. 5,00,000 as on that date. It was further alleged that the Respondent failed to report that the 1st AGM held by the Company on 1st January 2010, was illegal and void as it was held in complete disregard of Section 166 read with Section 210 of the Companies Act, 1956.

The Director (Discipline) recorded a prima facie opinion that there was laxity on the part of the Respondent as he failed to verify the proofs of dispatch of notices of all the eight meetings of the Board of Directors. Also, the Board of Directors of the Company in its meeting held on 10.12.2009 had authorized any Director to sign Form 23AC, Form 23ACA, and Form 20B. However, while preparing e-form 20B, the date was inadvertently mentioned as 20.12.2009 instead of 10.12.2009. Further, the Respondent has failed to notice the variation in the paid-up capital and authorized capital wherein the Authorised Capital was lesser than the Paid-up Capital.

Before the Disciplinary Committee, the Respondent pleaded guilty for non-exercising due diligence in the issuance of Compliance Certificate for the year 2009-2010 with reference to the issue of proper notices to the Directors for Board Meetings of the company.

After considering the submissions, the disciplinary Committee found that the respondent is guilty of Professional Misconduct and imposed a fine.

LESSON ROUND-UP

- MCA has entrusted practicing professionals like members of the Institute of Company Secretaries of India (ICSI) with the responsibility of certifying the compliances and ensuring reliability of documents filed by companies with MCA in electronic mode and also ensuring proper due diligence for the same.
- Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice, before the same is filed with the Registrar in terms of the requirements of the Companies Act, 2013.
- Under sub-section (2) of section 92 of the Act read with rule 11(1) of the Companies (Management and Administration) Rules, 2014, every company shall file its annual return in Form MGT- 7, except One Person Company (OPC) & Small Company.
- Annual Return is required to be signed by a Director and the Company Secretary, or where there is no Company Secretary, by a Company Secretary in Practice (PCS).
- For the purpose of certification, PCS should carry out a scrutiny of the data available and check the correctness of the same.
- Practicing Company Secretaries (PCS) have been given a role to contribute towards improvement of standards of good Corporate Governance among listed companies, The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) prescribes that a Compliance Certificate from either the auditors or Practicing Company Secretary regarding compliance of conditions of corporate governance shall be annexed to the directors' report.
- The financial statement of a company shall be prepared in accordance with Section 129 and schedule III of Companies Act 2013 and such financial statement shall be laid before the shareholders at the Annual General Meeting of the Company.
- For the purpose of maintaining quality of attestation /certification services provided by Company Secretaries in Practice, every Practicing Company Secretary/Firm of Practicing Company Secretaries shall maintain a register regarding attestation /certification services provided by him/her/it, which shall be open for inspection by such person as may be authorised.

GLOSSARY

Certification : Certification means the process of giving official or legal approval to a document, that has complied with the required standards, legislative or regulatory requirements.

Pre-certification : Pre-certification refers to examination and authentication of various forms required to be filled with Authorities governed under various laws. In other words, Pre-certification means to check the form by the Independent Professional before filling it with the Ministry of Corporate Affairs.

Professional misconduct : Professional misconduct is the behavior outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession. Professional misconduct refers to disgraceful or dishonorable conduct not befitting a professional.

Disciplinary Proceedings : Disciplinary proceedings means the institution of formal discipline procedures against a member by way of the laying of a written charge or allegation for any misconduct.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation).

1. Describe the various forms which are exclusively certified by the company secretary in practice under the Companies Act, 2013.
2. How the scrutiny of the annual return take place and what are the guiding principles for scrutiny of annual return?
3. Describe the points covered in the form MGT- 8 which are need to be certified?
4. Azra Limited has not been compliant in filing the Annual Returns for more than two years. Explain in brief the penal provisions which will apply to the directors of the Company for not filing the annual returns.
5. Nixal Limited has a paid-up equity share capital of Rs.8 Crores and for the year ended March 31, 2021 the Company reported a turnover of Rs.55 crores. The Managing Director is of the view that the Company does not require a Company Secretary to sign its annual return. Is the MD's view correct?

LIST OF FURTHER READINGS

ICSI Publications:

- Referencer on Pre-certification of e-forms
- Guidance Note on the Annual Return
- Corporate Governance Certification under Listing Regulations - A Referencer

